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Federal Trade Commission
Office of the Secretary
Room H-159 (Annex M)
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

RE: FACT Act Section 318(a)(2)(C) Study, Matter No. P044804

Thank you for the opportunity to provide comments in response to the above-referenced matter. The Federal Trade Commission has been tasked with studying the effects of requiring that “the same report” be provided to consumers as that used by a lender when adverse action is taken. Understandably, myriad questions are raised in the request for comment regarding this complex issue, and we appreciate FTC’s acknowledgement of this fact in its request for public comment. The Consumer Data Industry Association (CDIA) has submitted comments that address nearly all of the questions put forward. Experian supports the CDIA submission and appreciates the opportunity to provide additional remarks regarding two broad topics to be covered by the study: the extent to which requiring “the same report” would benefit consumers, and balancing consumer benefit against industry costs. Additional comments also are offered in response to certain questions arising from the request for comment.

Consumer benefit of a “same report” standard

The FACT Act requires the FTC to examine the (i) extent to which providing the same credit report that the creditor relied on in taking adverse action to consumers would increase the ability of consumers to identify errors in their credit reports and (ii) the extent to which providing such reports would increase the ability of consumers to remove fraudulent information from their reports. In fact, Experian believes such a requirement would decrease the ability of consumers to identify errors and to remove fraudulent information.

We are compelled to note that the idea that such a requirement would be a benefit to the consumer seems to be supported only by certain testimony to Congress during the FACT Act legislative debate. Lenders, this testimony posited, often see completely different data than that disclosed to the consumer. Experian uses the same data matching logic to return a report to a customer as it does to return a consumer disclosure. Indeed, the consumer file disclosure contains more data than is provided to a customer, in order to meet Experian’s FCRA requirements. As outlined below, any differences in the report a customer uses and the consumer file disclosure typically occur because of the natural evolution of data in the consumer’s file. In Experian’s FileOneSM consumer reporting database, the possibility of a consumer getting a wholly different file than a lender is extremely remote, and would only occur with a system or processing error which, when brought to light, would be corrected.

A standard requiring consumers to receive “the same report,” tied to a specific date or time frame, as that used by the lender would indeed result in consumer confusion and even harm by preventing access to the most current data in the consumer’s credit history.



A credit history is a constantly evolving record. Credit reports are not static documents stored in files, organized by time or date. Rather, a credit history is changing continuously as payment information is reported, outdated information is deleted, and records of inquiries are added. A “report” is a snapshot of the credit history at a moment in time, compiled only at the instant it is requested, but not stored for later retrieval. Design, development and maintenance of a system that stored these individual snapshots during the period in which a consumer would have a right to request a disclosure as a result of an adverse action – and there are serious questions as to whether this can even be achieved – would cost tens of millions of dollars.

A requirement that a consumer receive “the same report” as the lender would result in the consumer receiving obsolete information. In some instances, this obsolete information may be harmful to a consumer. For example, new data reported after adverse action was taken but before the consumer requested their report may alert them to fraud. Requiring that the “same report” used by the lender be provided to the consumer would prevent the consumer from receiving the new information, subverting the opportunity to identify fraudulent activity or perhaps new erroneous information.

The adverse action requirements of Section 609(a) of the Fair Credit Reporting Act set the correct standard. The current, full disclosure of information in the credit reporting agency’s files is a complete history, inclusive of the data provided to the lender at the time adverse action was taken. The only exceptions may be data reported after the adverse action but prior to the consumer’s request for a report and outdated data deleted prior to the consumer’s request as required by the FCRA.

Making a full disclosure of the most current credit history information ensures the consumer receives the data provided to the lender that took adverse action, as well as any new data reported since that time. Having access to complete and current information maximizes the ability of consumers to identify and correct errors and to remove fraudulent information from their credit histories. It also avoids situations where consumers try to dispute information which is no longer present in their credit report or is present in a different form, creating wasted effort and frustration for the consumer and the credit reporting agency.

One implication made by the FTC’s line of questioning in its request for public comment, which has often been alleged by some in the consumer advocacy community, is that all consumer reporting agencies have a practice of returning multiple, similar files to a lender who may act upon these multiple files when assessing creditworthiness. Therefore, the consumer ought to see the same information a lender receives in these transactions. It must be understood clearly that Experian does not have a practice of returning multiple consumer files to a lender.

Experian asserts that consumers do, in fact, see all information in their consumer files that is provided to a lender with a permissible purpose because of the FCRA requirement for full disclosure under Section 609(a). However, a consumer disclosure may not provide all information used by a lender when making a decision, since consumer reports are often supplemented with information the lender receives from its affiliates or other third parties. The only true means for a consumer to see exactly the same information used by lender would be to require the lender to make the disclosure.

Balancing consumer benefit against industry costs

As stated above, credit histories are continuously evolving. Credit reports are not compiled monthly, weekly, daily, or by the hour and stored in files organized by date or time. Rather, a credit report is



compiled from the credit history data on file at the moment the report is requested. The report is then instantly transmitted to the lender for use in its decision making process. The credit history information is simultaneously updated by the credit reporting agency with an inquiry indicating who accessed the credit history and why, as required by the FCRA.

Devising a system to store and retrieve credit reports compiled for a specific time period or date would be necessary to provide “the same report” provided by the lender. In light of the fact that Experian produces in excess of 500,000,000 reports a year, implementing and maintaining such a system would be extraordinarily costly and would not be advantageous to consumers for the reasons discussed previously.

This concept is further complicated by the difficulty in defining what constitutes “the same report.” Reports provided to lenders are formatted for compatibility with their particular, proprietary software systems. Approximately 92 percent of Experian’s data users access credit reports in an automated response format, not a human-readable paper report. Each data user relies on internally created or purchased software to translate the credit report data from Experian into a format specific to the data user’s system. This translation process may eliminate specific data elements, put those elements into different terms, numerically code certain data fields or summarize Experian’s original output. Since Experian does not know the specific business rules used by each data user to interpret the data, Experian cannot produce “the same report” used by the lender. Again, only the report user could provide a copy of the actual report used in making its decision, consistent with the employer example referenced in the request for comment. The FCRA allows report users to provide a copy of the report they used. However, Experian would never support such a mandate in law or regulation.

In today’s computerized lending environments, often no “human-readable” report exists that could be shared in a meaningful way with consumers. In most instances lending decisions are made using automated credit scoring systems. A credit score cannot exist in the absence of a credit report or other data. A score or other automated analysis is simply a means of illustrating the level of lending risk represented by the data in the report used by the lender. Because there are thousands of credit scoring systems in use today, a number alone is in no way helpful to the consumer because the number in isolation is not actionable.

However, most lenders provide, either through direct conversation with the consumer or through adverse action notices, the score the lender used, and more importantly, the risk factor statements that describe what information from the report most impacted that particular score. Those score factors indicate what information from the report the consumer must address to improve their creditworthiness over time. The existing FCRA adverse action disclosure requirement provides access to the credit history data used in the lender’s particular scoring system. Comparing the risk factors to their credit report enables the consumer to take appropriate, effective steps toward improving their creditworthiness.

Existing FCRA adverse action notice and credit report disclosure requirements ensure consumers receive the information they need to make informed decisions and to take appropriate action upon receiving notice of adverse action. The FCRA strikes the appropriate balance between consumer benefit and industry costs.



Additional comments

The following six questions were raised in conjunction with the FTC request for comment. Responses specific to Experian's systems, policies and practices are offered for the record.

- 1) **Do you have any information on the extent to which multiple consumer reports are obtained in response to a single request?** Experian does not return multiple consumer reports in response to a single request. Only one report is generated using the inquiry information provided and Experian's proprietary data matching logic. If a sufficient match cannot be made using the identifying information provided, Experian will not return a report.
- 2) **Is the same matching algorithm used to obtain files in response to a request by a consumer and a business?** Yes. Experian uses the same proprietary data matching logic to generate a report for both consumers and businesses.
- 3) **Does a consumer ever receive more than one file disclosure if they request a copy of their file?** No. Only one file disclosure is sent to the consumer. If a sufficient match to a file cannot be made, no file is returned. When a file cannot be returned, additional documentation is requested from the consumer to verify their identity in order to protect them against fraud. Upon receiving appropriate documentation a single disclosure is provided.
- 4) **If a business requests a consumer report and obtains multiple consumer reports in response to that request, would the consumer also obtain multiple file disclosures in response to their request?** Experian's systems generate only one disclosure in response to a request, whether from a consumer or business.
- 5) **What identifying information do credit reporting agencies require businesses to provide in order to release a consumer report to them?** Experian has several proprietary inquiry formats that businesses may choose to use when requesting a file. Each is designed to meet the needs of the specific types of users and to provide Experian confidence that a match to a single consumer's file can be achieved. Experian encourages the use of as many of the following identifying elements as possible in the inquiry stream: full name, current address, former address if current address is less than two years, full Social Security number and date of birth. If less than this information is submitted with an inquiry and a file can be matched with confidence, Experian's system will return that individual's file. If less information results in a match that does not meet Experian's confidence level, a file will not be returned unless additional information is submitted to meet our confidence level.
- 6) **What identifying information do credit reporting agencies require consumers to provide in order to make a file disclosure to them?** Experian requires full name, current address, former address if current address is less than two years; full Social Security number and date of birth.

Conclusion

When a consumer obtains a full credit file disclosure, they receive a history that is inclusive of the credit data utilized by the lender when adverse action was taken. The consumer also receives the most current information available, a critical factor in responding quickly to fraudulent activity and promptly resolving any other issues that may arise.



The concept of providing “the same report” does not recognize the way in which credit reporting systems actually function; nor does it consider the cost or complexity of creating a system that could store, maintain and retrieve hundreds-of-millions of credit reports for a specific date or time.

Additionally, data not maintained or provided by credit reporting agencies may be considered by lenders, making it impossible for a credit reporting agency to provide the exact report used by the lender in making its decision. However, requiring that a lender provide a report is not a workable construct when considering the realities of automated application processing. In most instances, a report that is human-readable and understandable to a consumer is never generated. Providing a printed copy of such a report would result only in consumer confusion and frustration.

The FCRA adverse action notice and complimentary consumer disclosure requirements strike an appropriate and effective balance. The existing requirements ensure maximum consumer benefit and business efficiency alike.

Sincerely,

A handwritten signature in black ink that reads "Jason Engel". The signature is written in a cursive style with a large, looped "J" and "E".

Jason Engel
Vice President &
Assistant General Counsel