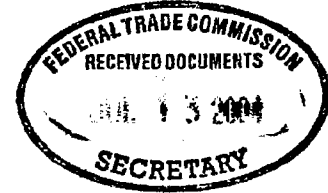




ORIGINAL



July 8, 2004

Federal Trade Commission  
Office of Secretary, Room H-159  
600 Pennsylvania Ave. N.W.  
Washington, DC 20580

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

Dear Sir or Madam:

Boeing Employees' Credit Union (BECU) appreciates the opportunity to comment on the FACTA study regarding credit reports and adverse action. BECU is a state-chartered, federally insured credit union with assets of \$4.6 billion and a membership base of over 350,000.

We admire the purpose of this proposal, however we feel this will create a huge financial and operational burden to financial institutions as well as increase identity risk to consumers that is completely unnecessary.

There were a number of questions that you wanted information on. We will answer each one in the order presented.

A. Extent to Which the Proposed Requirement Would Benefit Consumers.

1. How does the credit report received by the creditor currently differ from the information that consumers receive from a consumer reporting agency (CRA) when they request a copy in response to an adverse action?

The creditor's format is not as user-friendly as the consumer format. The codes used to identify trade lines and status do not contain a legend to help with translation and create understanding. In addition, the creditor format does not contain all of the information that a consumer report does. The consumer's report reflects both "soft" and "hard" inquiries.

2. What are the different types of consumer reports that are used by a creditor (e.g., credit score, "in-file" credit report, merged credit report)?

We use all three types of credit reports for different purposes. Credit scores are used for prescreens and automated decisions. Credit scores and "in-file" reports are used for manual decisions, and merged files are used in mortgage lending.

3. To what extent are credit scores, as opposed to "in-file" or merged credit reports, relied on by creditors in making decisions regarding the extension of credit?

At present, we use credit scores for less than 20% of our decisions. A credit score in and of itself will be of little benefit to the consumer without the credit report information to show how the score was determined.

4. To what extent do creditors rely on two or more types of consumer reports (e.g., a credit score, an “in-file” credit report, and/or a merged credit report) in their decision on whether to extend?

We rely on two or more types of credit reports approximately 80% of the time.

5. Does the forms in which the credit file information is revealed to creditors differ significantly among creditors?

Creditors can chose from three major CRAs. Each agency has a variety of credit report formats and a variety of score models. In addition, creditors can develop their own custom models instead of an off-the-shelf solution. It will be better for the consumer to obtain the information from the CRA. This will ensure that the information that consumers receive is consistent. If the information comes from the CRAs, the consumer has a baseline to use as they obtain information from different creditors and/or different CRAs. If a consumer has a “consumer friendly” credit report provided by ABC Bank and a separate one provided by CDE Industrial Loan Company, they would not be able to compare them apples to apples.

6. How frequently are multiple “in-files” and/or multiple credit scores received in response to a request for information on a single individual?

Approximately 1%. For the month of May, we received 18,619 applications and of those 192 were returned based on a review rule for multiple files.

7. How do parties in their credit granting decisions treat multiple “in-files” and/or multiple credit scores?

The first step for any creditor is to determine if there is an obvious reason why there are multiple “in-files”. The reason for multiple files may be due to a generation issue (Junior and Senior), married/maiden/hyphenated name issue, or some other logical reason. Multiple “in-files” are screened out of automated decision and require manual review by an underwriter. The underwriters can ask for additional information from the consumer, use a report from a separate credit-reporting agency, or run a DTEC on the tax identification number for additional verification.

8. Does the creditor use all of the information that it receives in response to a request for information on an individual or, in certain situations, does it use only a subset of that information?

Our IT system provides three different methods for handling multiple files. We are using two of the methods.

9. What are the situations in which the creditor relies on a subset of the information in its credit granting decision?

Since we use two of the methods, we are utilizing all of the information and not a subset.

10. Are credit scores based on more information than that which appears in a file that is disclosed to consumers?

The Beacon or FICO score comes directly from credit report characteristics. The same applies to the MDS (bankruptcy predictor). For a custom model, some information from the loan application may be used in developing a score for pricing or a credit decision. Custom model factors from the application are kept confidential to prevent manipulation by staff or consumers. We do not use any credit report information that is blocked or suppressed from the consumer's file.

11. Do consumers ever receive multiple file disclosures in response to their request to see their credit file?

We presently do not allow our members to see their credit report, as we are not defined as a CRA.

12. What factors account for the differences in the consumer report that is relied on by a creditor versus the credit report that is seen by a consumer who requests a credit report after receiving an adverse action notice? In particular, are there differences due to (i) differences in the time at which the credit report is requested, (ii) differences in the format in which a credit report is presented to a consumer versus a creditor, or (iii) differences in the identifying information that is used to request a credit report?

A credit report is a snapshot of the consumer's credit at a particular moment in time. The report file is dynamic; the report used for a particular decision is static. The report the consumer receives is user-friendly. It incorporates additional information about "soft inquiries" and includes information necessary for an unskilled user to understand the contents of the report.

13. What information do CRAs require consumers to provide to obtain a copy of their credit report? What are creditors required to provide to obtain a copy of a consumer's report? To the extent that there are differences in the credit report seen by a consumer versus a creditor, what contributes to these differences?

The information required to be provided on both instances is the same. Name, current and previous addresses. Some of the differences can be attributed to the consumer themselves. They do not consistently apply using the same name or initials. Robert can apply under Robert, Bob, Rob, Robby or Bobby or his initials and create several different files. A married person can use a maiden name, the man's surname, a hyphenated name or a new combined name. Applicants can choose whether or not to use their middle initial. Creditors and CRAs are doing their best to match up information and create unified files. Given the variables of consumer name selection, within the law, and human data entry, the credit industry, in our opinion, is doing a good job.

14. What current problems exist when the consumer receives a report that is different in form or content from the report relied on by the creditor?

If the report is different in content than that used by the creditor, it poses some difficulty for the consumer in terms of consistency of the information and their ability to determine the source of the problem. Normally there is something on the credit report that the consumer must address. The creditor has the option to accept any documentation the consumer may have that addresses the problem, or if the consumer wants to use the new credit report information as the basis for

the decision, the creditor can encourage the consumer to reapply. We do not feel this is a serious problem. There may be minor consumer confusion agreeing that he/she and the creditor are talking about the same thing. Often, consumers try to control what notations are made. They want the creditor to add specific situational notes instead of our using the industry status codes (e.g. account included in bankruptcy).

15. Please provide examples of specific situations in which consumers would benefit from the proposed requirement that a consumer who has experienced an adverse action based on a credit report receives a copy of the same credit report that the creditor relied on in taking the adverse action.

In our opinion, we do not believe that it is necessary that a consumer receive a copy of his/her report unless that individual requests it. Generally, consumers are aware of their credit problems. Consumers have difficulty reading a credit report to determine which accounts are delinquent and caused the adverse action. Perhaps, some instructions as to how to read a credit report should be included with the credit report sent by the CRAs.

16. Do the problems arise primarily from differences in the scope of the information seen by the creditor versus the consumer, differences due to the time in which the report is requested or both?

The most important thing to emphasize here is that substantial differences do not occur that often. Consumers think that their credit report is in error if it contains information about previous employment, old addresses, or reference to an ex-spouse. In almost all cases, these differences have no bearing on the credit decision. What matters to the creditor is the debt information, payment history, public records, inquiries, and other measures of performance. The measures of performance do not generally change rapidly over a short period of time. The legislation proposes a blanket solution for every adverse action in order to address a small percentage of adverse actions taken. The problem of “differences” is overstated.

We also believe that credit reports are complicated and contain substantial information about a consumer’s credit performance and portfolio. They can be difficult to read (both the consumer and the credit reports). It can impact consumers positively and negatively, depending on how a consumer has managed their accounts. For consumers who are negatively impacted, they react with frustration and irritation, often blaming the creditor or the CRAs for adverse action. In most cases, we find the information reported is accurate.

17. Would the proposed requirement increase the ability of consumers to identify errors in their credit reports?

Yes and no. Consumers will be able to make adjustments and address issues using the same basic foundation – if, and only if there are errors. However, the format used for creditor viewing of credit reports is not friendly to the end user and contains less information than the consumer report. Adverse action notices will trigger the dispute of credit reports. We do not see that providing consumers with a credit report and/or with an adverse action will add any value. It may create a huge burden on creditors and CRAs if members dispute accurate reporting just because they do not understand the credit report or are angry that a late payment to a creditor kept them from getting the credit requested.

18. Would the proposed requirement aid consumers who seek to have the adverse action decision reversed because of inaccuracies or incomplete information in the credit report relied on by the creditor?

In our case, we actively work with consumers that seek to have an adverse action decision reversed. The consumer is given the opportunity to provide documentation regarding credit report errors, regardless if they have the credit report in hand or not. In our opinion, this will create a huge burden on creditors dealing with individuals who want to argue that we should remove accurate reporting because it impacted them negatively. The Fair Credit Reporting Act (FCRA) and Regulation B already require the adverse action notification, process to obtain a consumer credit report, and a process to deal with consumer disputes in a timely and efficient manner. We do not see that the small benefits obtained by flooding members with credit reports will in any way make up for the soft and hard costs for creditors and CRAs in supplying them.

19. Would the proposed requirement help consumers who seek to get credit from other parties following an adverse action?

We believe it won't. We are all part of the same industry and understand credit reports and what is necessary for a person to qualify for credit. This proposal does not add any efficiencies or clarification for creditors. It will create a huge burden for creditors to add to their process of explaining the credit report and what each entry means. It will also put the burden on creditors to try and explain other creditors' derogatory information to the consumer.

20. Would the proposed requirement increase the ability of consumers to identify identity theft and/or remove fraudulent information from their credit report?

Yes, however, we feel that it's overkill. Adverse action notices already provide the same trigger. If an individual gets an adverse action notice from a company he/she never applied to, the person would contact the creditor to question them.

21. Is the proposed requirement, in and of itself, enough to generate the benefits noted or are other requirements also necessary in order for the benefits to be generated?

Additional requirements are not needed. In fact, this legislation proposes a one-size fits all solution that will place a burden on creditors and CRAs. The costs of this burden will be passed on to the consumers. The focus is on the error or fraud population. When considered alone, the error or fraud population seems large. That is a myopic view. The error or fraud population that will actually have a different credit decision based on an updated credit report is small.

Forcing a regulatory burden on all adverse actions to address the smaller population of errors is a case of managing an entire population based on the exception. It creates a lot more work and expense for all involved and it adds little or no value. In addition, it potentially exposes more consumers to fraud or identity theft risk by forcing creditors or CRAs to provide a large volume of credit reports to consumers. That volume will travel through channels that ultimately put the consumer at risk. If fraudsters are able to use a monthly credit card statement to do significant damage to consumers, what will they be able to do with an entire credit report? When you

consider that this will force more credit reports to be delivered to consumers than ever before, you have to ask whether the proposed legislation will end up doing more harm than good.

Our institution has \$4.6 billion in assets and we denied 3,200 applications in May 2004. If you use our volume and approximate results across the consumer finance industry, the result is that the legislation proposes that hundreds of thousands of complete credit reports be provided to consumers every month. The information is beneficial to the consumer, however at the same time it increases the cost of credit and places consumers' entire identity at risk.

While we believe this proposal is well intended, it will create a huge burden on CRAs and creditors to reach the intention. We do not believe that the benefits justify the burden. Regulation B and FCRA adverse action requirements reach applicants successfully by requiring that a consumer must be provided with a credit report each time he/she applies or is denied for credit creates a substantial privacy and confidentiality concerns. Our members do not like us mailing their confidential information unless they specifically requested it, as mail is not secure. This proposal takes that consumer right away. Additionally, many consumers just throw this type of information in the unsecured trashcan. We believe this is putting those individuals at risk for dumpster divers and identity theft and fraud.

22. Would the proposed requirement generate benefits other than those noted above?

We do not believe they will generate the benefits above or any others. We feel it will generate a lot of consumer complaints about privacy and lack of confidentiality.

23. What would consumers gain if they receive the same credit report that the creditor relied on in taking the adverse action?

None. The only thing is that the information will be the same. The consumer report includes "soft" inquiries so it actually contains more information. Consumers complain because they think what we see is "better" or "easier" or we have something that they don't. Creditors are just more familiar with them.

24. Is there information that appears in the report that the creditor relied on that is not currently reported to consumers, that, if corrected or deleted, would improve the consumers' ability to obtain credit?

No. It should be the same as the consumer report. The only exception is Beacon, FICO, or MDS scores.

25. Is there any information that appears in the report that the creditor relied on that is not currently reported to consumers that would enable the consumer to detect if he/she is a victim of identity theft or if he/she continues to be a victim of identity theft?

No. It should be the same as the consumer report.

26. Is there information that appears in the report that the creditor relied on that is not currently reported to consumers that generates benefits other than those noted above?

No. It should be the same as the consumer report.

27. Are there situations in which the consumer already has an opportunity to see a copy of the credit report that the creditor is relying on prior to the creditor taking an adverse action? In particular, what is the extent to which this situation occurs in the mortgage industry?

At our institution, a copy of the credit report is sent to all members applying for a mortgage loan. The member sees everything that the underwriter would be considering in determining if a loan is approved or declined.

Additionally, some members, if concerned with their credit, have already obtained a copy of their report prior to applying for a loan. At our institution, our financial planners encourage members to check their credit reports annually to identify any problems and to create awareness. Consumers should be educated to proactively obtain the information themselves, ensuring their credit report is accurate before they apply for credit. A credit report is a marketable product and service. If consumers want a credit report check up, then they should have to pay for a credit report. Consumers should have an obligation to be responsible and manage their credit and their credit reports properly. This proposal removes all of the proactive responsibility from the consumer and places a reactive and negative mode on the creditors and CRAs.

28. Are there situations in which the consumer already receives a copy of the credit report the creditor relied on in taking an adverse action, after the first action is taken? In particular, what is the extent to which this situation occurs in the mortgage industry?

At our institution, a copy of the credit report is sent to all members applying for a mortgage loan. The member sees everything that the underwriter would be considering in determining if a loan is approved or declined.

#### B. The Cost of Implementing the Proposed Requirement.

29. What are the various means by which the proposed requirement that a consumer who has experienced an adverse action based on a credit report receives a copy of the same report that the creditor relied on in taking the adverse action could be implemented?

Through the mail system (from either the CRA or creditor) or a secure web access from the CRAs. New mail pieces would have to be developed or in the case of a secure website, the site itself will need to be developed. The new mail pieces will have to include a primer on how to read a credit report.

30. Which party (creditor vs. CRA) can provide the same report that the creditor relied on in taking the adverse action to consumers at least cost?

Both the creditor and the CRA can provide the same report that was relied on. The CRAs know what format and score each of its creditor/clients use. The cost for each would be about the same. However, we are a third party regarding credit reports. Creditors should not be forced to get into the credit reporting agencies' business. The business that creates the report should be the one that provides it.

31. Why do CRAs not currently give consumers a copy of the same report that the creditor relied on in taking the adverse action? What would be the costs to CRAs of requiring them to do so?

Requiring CRAs to provide the same report the creditor relied on in taking adverse action would be counter productive. The format that the CRAs use to provide the information to the consumer increases understanding. The creditor format does not speak the consumer's language.

32. Is the data that is maintained by a CRA kept in such a way that the CRA can easily reconstruct a credit report from a prior date?

CRAs archive credit reports. There is a cost associated with searching in the archives for dated materials. We do not know what those costs would be.

33. Would a CRA know what information is drawn from a credit file by a creditor and the manner in which it is displayed to them?

Yes. The CRA should have the information. Scoring models are a different issue. The CRA may or may not know what type of model the creditor is using.

34. Are there situations in which the cost of requiring the CRA to provide a copy of the same credit report that the creditor relied on to a consumer who has experienced an adverse action would be minimal and/or nonexistent?

No. There will always be a cost. Costs will be associated with programming the form to print the same report, printing, stuffing the envelopes, and paying for postage. This proposal will increase the cost of credit. Currently, we do not charge our members for the credit report. With the additional responsibility of this proposal, the cost may increase so much that we will have to pass that cost to consumers. Creditors need CRAs to do our business. If they can't increase costs, you put them out of business and if they do increase costs consumers and creditors are impacted negatively. All this proposal does is force consumers to buy a credit report that they didn't request and wouldn't have if they knew they would have to pay for it.

35. Why do creditors not currently give consumers a copy of the same report that they relied on in taking the adverse action?

Credit reports and their contents are not the core competency of creditors. Creditors use the information in a responsible manner, but they are not the source of the information. Providing the credit report to the consumer makes the creditor a middleman between the customer and the CRA. The consumer expects direct action from the creditor since they provided the information. There is a cost associated with providing the information as well as an implied warranty. The problem is that a creditor can't warrant something that it does not own. There are also direct costs associated with printing a credit report and attendant explanatory documentation, and the indirect cost associated with phone calls and in person visits demanding explanations for credit report information that creditors are not responsible for. Mortgage lending often requires a tri-bureau or a merged bureau. The volume of information will have a direct impact on the cost in every instance.



36. What would the cost be to the consumers associated with obtaining a copy of the credit report that the creditor relied on in addition to or in lieu of the report that the consumer currently receives if he/she requests one after receiving an adverse action notice?

There will be direct costs associated with printing a credit report and attendant explanatory documentation. Financial institutions may incur costs from the CRAs for obtaining the credit report. The financial institutions should be allowed to pass that cost to the consumer.

37. Would the proposed requirement lead consumers to mistakenly conclude that there are inaccuracies in their credit report?

The proposal will put more information in the consumer's hands. Some consumers will invariably conclude that there is erroneous information on their report.

38. What sort of costs might result from disputes?

For the creditor, it means time, time, and more time. Providing the consumer a credit report in conjunction with an adverse action notice will encourage some consumers to haggle over a decision. This will be a positive when information on the credit report increases the consumer's awareness of a problem and they can explain or show they have resolved the problem to an underwriter's satisfaction. The negative side to that is when it brings no new information to the application or the underwriting process. Often times the consumer sees an old address or a misspelled employer name and sees that as a reason to claim that all information on the credit report is invalid. There are things that are wrong on the credit report in terms of history that the consumer can take care of or act on. There are also things that won't impact the decision. The consumer doesn't know the difference and will follow up with the creditor for any discrepancy.

If credit reports are provided in each instance of denials, consumers will have questions about how to read, what it means, why they received it and what to do with it as well as disputes. This will create a huge member service burden. It will also put financial institutions in the middle of disputes between members/customers and other creditors if that creditor's reporting created the denial. CRAs are the experts in credit reports. They should provide that service. Creditors are a poor substitute as our expertise is in lending. The burden should not be passed to creditors. Additionally, since there is a window between dispute resolution directly with a creditor and when that information is provided to the bureau and the update process, a lot of differing credit reports might be floating around, providing no benefit.

39. Would the proposed requirement make it more difficult for consumers to determine if there are inaccuracies in their credit report?

No.

40. Are there situations where a consumer who views the version that the creditor has relied on will miss the opportunity to fix inaccurate information that appears on the report after it was requested by the creditor? What sort of costs might result from these situations?

There will be a negative impact to the consumer in that the credit report information that they receive will not be the most current. The cost to the consumer is intangible. In the scenario in

question, the cost to the consumer is the rude surprise when they reapply and potential embarrassment when they experience another denial. For the creditor there is the cost associated with processing an application. That cost varies from institution to institution and from product to product. An approximate baseline is \$250.00 per application. Additionally, consumer frustration is a huge cost to a financial institution. It can sever our relationship with the individual.

41. What would be the cost to creditors associated with retooling their credit granting process to produce consumer friendly versions of the consumer report that they relied on?

The key words are “consumer friendly versions.” Until those specifications are precisely defined, it is impossible to estimate costs. For our institution, a wild guess would be \$10,000 and three month’s development time. We would have to create the entire document, map it for printing, test the printing solution, and obtain legal and process owner’s acceptance. With FCRA and Regulation B requirements, the adverse action disclosure is already lengthy. Creditors should not have to be in the business of producing credit reports. It puts creditors in a position of risk and then we would have all the CRA duties within FCRA.

42. Would the proposed requirement make it more difficult for consumers to determine if they are, or continue to be, a victim of identity theft?

No. Consumers will get more information to determine their present credit standing and identify problems. The added information carries the risk of being intercepted and used to perpetrate identity theft as well. The requirement has the potential to help and harm consumers.

43. Could the proposed requirement unintentionally increase identity theft, particularly in situations where credit is denied because identity theft is suspected or in situations in which multiple “in-files” or scores are received by the creditor in response to a request for information on a single individual?

The probability of identity theft will increase in proportion to the volume of credit reports being mailed to consumers. Information is a good thing in the right hands and a bad thing in the wrong hands. A certain percentage of ID theft/fraud is because of intercepted mail. The regulation will require an exponential increase in the volume of credit information sent through the mail and therefore the legislation will indirectly cause the harm that it is specifically trying to address.

44. Could the proposed requirement rise privacy concerns in situations in which multiple “in-files” or scores are received by the creditor in response to a request for information on a single individual?

Yes, especially when two or more generations of one family live at the same address and share the same or similar names.

### C. Additional Information.

45. What other additional information should the FTC consider in studying the effects of the proposed requirement?

FTC needs to analyze existing data about intercepted mail and its use in perpetrating identity theft or fraud. If there is a known frequency for intercepted mail use in fraud, FTC needs to multiply the known frequency by the estimated volume of credit reports that this will put in the mail and determine how many consumers will be harmed by this. For a true cost benefit analysis, FTC must measure the cost. New fraud on innocent consumers will be a direct cost. We recommend that FTC estimate this cost up-front to make an informed decision based on the risk to consumers. We'd also like to remind FTC that creditors and CRAs are businesses. We should not be forced to provide programs because some consumers fail to proactively maintenance their credit reports. We believe that the focus should be on consumer education and responsibility. Education should be provided to inform consumers of the necessity to be aware of credit reports and how to properly follow up on them.

46. What are your thoughts on the requirement that a consumer who has experienced an adverse action based on a credit report receives a copy of the same credit report that a creditor relied on in taking the adverse action.

The "same" report is formatted for credit professionals to use in making underwriting or membership decisions. It is not formatted with a legend or paint by number description to make it easy to use for the average person. Most consumers will have no clue how to interpret the abbreviations and codes contained in a creditor's version. The information will only be beneficial to the consumer if it is broken down to the terms of the least common denominator. The creditor version of the credit report is not in the terms of the least common denominator.

Thank you for the opportunity to respond to the proposal. We look forward to the final outcome.

Sincerely,



Gary J. Oakland  
President and CEO



Joe Brancucci  
Vice President of Lending , Chief Lending Officer