experian

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

RE: FACTA Credit Score Fee, Project No. R411004

Thank you for the opportunity to provide comments in response to the Federal Trade Commission (the Commission) advanced notice of proposed rulemaking (ANPR) regarding section 609(f) of the Fair Credit Reporting Act (FCRA), added by amendment through the Fair and Accurate Credit Transactions Act (FACT Act). The comments herein specifically address section 609(f)(8), which allows consumer reporting agencies to charge a "fair and reasonable fee" as determined by the Commission.

Experian Information Solutions, Inc. (Experian) is a leader in providing information solutions to organizations and consumers. We help organizations find, develop and manage profitable customer relationships by providing information, decision-making solutions and processing services. We empower consumers to understand, manage and protect their personal information and assets. Experian works with clients across diverse industries. Its U.S. headquarters are in Costa Mesa, California.

The following comments are provided in response to the questions raised by the Commission and address the importance of allowing "fair and reasonable" fees for score disclosure products to be determined by the marketplace rather than through an artificial calculation establishing a mandated maximum fee or allowable price range.

The market for consumer credit score disclosure products is robust and will continue to grow as consumer knowledge and awareness increase. Competition in the marketplace is keen. Market differentiation is defined not by a number that is generated, but rather by the quality and quantity of credit education and management tools that give meaning to the raw score. As a result, consumers can choose from a wide range of products at various levels and price points.

Today, credit score products are available to consumers from many competing sources. Consumers are able to choose the score disclosure products that best suit their needs from both content and cost perspectives. Market response to available credit score disclosure products has effectively established "fair and reasonable" fees for the product offerings. Businesses that fail to provide credit score products at prices perceived to be fair and reasonable are not competitive and fail.

Additionally, the Commission's notice recognizes that the consumer reporting agencies already are providing credit score disclosures at "reasonable" prices, as required by state laws in California and Colorado since 2001 and 2002 respectively.

Credit score disclosure products are valuable and meaningful for consumers. Contrary to popular perception, the value of a score is not found in the number, per se; rather, the utility of a consumer credit score disclosure is derived from the quality of the educational information and credit management tools that accompany the score. A score disclosure has value when a consumer not only knows a number, but also knows what that number means to them and how to use that knowledge to their advantage.

The scoring models meant specifically for disclosure directly to consumers are designed to provide a general understanding of the consumer's creditworthiness. The scoring models work in conjunction with associated tools to help consumers see how changes in their credit behavior can positively impact their credit standing and to better manage their personal finances.

Mandating pricing for basic score disclosures would stifle innovation and creativity critical to a robust market. As a result, the number and quality of credit score disclosure products available to consumers would diminish, particularly with regard to educational tools that make credit score disclosures meaningful and assist consumers in changing their behavior to become more creditworthy.

In our opinion, the Commission's observations regarding maximum price or price range schemes are correct. Mandating a maximum price would drive all regulated organizations to the highest price point allowed. At the same time, the incentives for additional investment in credit score disclosure products would be bound by the return on investment under the effective price ceiling. Any interest in developing products that are innovative, more sophisticated, and therefore more costly to implement, would be stifled.

As noted by the Commission, pricing regulation applicable only to consumer reporting agencies would omit from its coverage numerous other companies that provide consumer credit score products. Consumer reporting agencies are direct competitors with non-consumer reporting agencies in the market for credit score disclosure products. Mandated pricing, whether a statutory cap or range scheme, would unjustly isolate consumer reporting agencies from the marketplace, interfering with their ability to participate fully.

Such a discriminatory approach would likely force below-market pricing on only the nationwide credit reporting agencies and disadvantage them in a highly competitive marketplace. Alternatively, regulating only credit reporting agencies would establish an artificial price point to which the rest of the industry would be driven. In the latter scenario, incentive for competitive innovation will be removed, disadvantaging both consumers and businesses.

We believe that the Commission also correctly observed that the public utility environment was not directly analogous to the credit score disclosure marketplace. While there may be a single public utility provider serving a given market, there are many participants in the credit score disclosure market, and a robust marketplace. It is essential that competition in that market be preserved and encouraged. Doing so ensures consumers will receive the most innovative and useful tools at the most fair and reasonable prices possible.

As recognized by the Commission, it is Experian's view that mandating a maximum price, whether stand-alone or as part of an allowable price range, will result in all governed participants setting prices at the maximum allowed. This is evidenced in various markets including public utilities and consumer credit reporting, where maximum fees are specified in law or regulation. Such schemes eliminate competition and any incentive to compete on price. As a result, all products will be priced the same, namely the maximum amount allowed.

A free market approach encourages competition not only on product quality, but also on price. Market response validates price points that are fair and reasonable for the level and quality of the products provided. Mandating a given price range, whether static or subject to revision through any of the schemes identified in the ANPR, discriminates against a segment of the businesses offering credit scoring products. Therefore, Experian joins with the Consumer Data Industry Association (CDIA) to urge the Commission to determine that the fees for score disclosures set in the existing competitive marketplace are "fair and reasonable." Absent any material, demonstrable defect in that market, the Commission need not set an explicit fee or range of fees.

Thank you for the opportunity to submit comments regarding this important issue. With respect to the specific questions raised in the ANPR, please refer to the responses set out in the comments submitted by the CDIA.

Sincerely,

Jason Engel
Vice President &
Assistant General Counsel