January 5, 2005

Federal Trade Commission
Office of the Secretary
Room H-159 (Annex R)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: FACTA Credit Score Fee, Project No. R411004

To Whom It May Concern:

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to comment on the *Fair and Reasonable Fee for Credit Disclosure* rule proposed by the Federal Trade Commission (FTC). The proposal is designed to reflect changes made by the Fair and Accurate Credit Transactions Act of 2003 (FACT Act).

Background

The FACT Act amends the Fair Credit Reporting Act (FCRA) by adding a section that gives consumers the right to obtain their credit score from credit bureaus. For mortgage loans, there is no charge to consumers, but the FACT Act authorizes the FTC to set a "fair and reasonable fee" for credit scores for non-mortgage consumer loans. The FTC is requesting comments on what would make a credit score fee "fair and reasonable" and guidance on the appropriate amount to allow credit bureaus to charge.

Under current practices, when credit scores are provided to consumers, they are typically provided as a supplement to credit reports with an additional fee for furnishing the credit score. For example, Colorado and California law allow consumers to obtain free credit reports but also permit a charge between $5 and $8 for consumers to receive their credit score.

The FTC is considering several approaches when deciding how and what fee to allow credit bureaus to charge: a mandatory price, a capped price, or a

[1] The Independent Community Bankers of America represents the largest constituency of community banks of all sizes and charter types in the nation, and is dedicated exclusively to promoting the interests of the community banking industry. With nearly 5,000 members, ICBA members employ more than 225,000 Americans and hold more than $778 billion in total assets. For more information, visit ICBA's website at www.icba.org.

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market based approach. A mandatory price would provide the industry with "clarity and certainty." However, the drawback to this approach is that the consumer might pay a higher fee than they would in a competitive market. And, if the fee is too low, it may discourage competition on other terms of the transaction. A cap, or a maximum fee, may be preferable to a mandatory fee because it would allow competition on the price assessed for the credit score. However, it shares many of the disadvantages of a mandatory price if the cap is set too low. Further, a maximum price could become a "de facto" price.

However, any fee established by the federal government might become obsolete. For instance, if costs of production increase, the fee might become too low or it might become too high if improvements in technology lower the cost of selling the score. Therefore, the FTC is also considering including a provision to allow it to adjust the price to a predetermined index, such as the consumer price index. The adjustments could be periodic, after a review by the FTC, or automatic.

A market-based approach is third approach being considered by the Commission. For example, the FTC might conduct a market survey to determine the range of prices charged and whether those prices are the product of competition, and set a price or range of prices.

ICBA Position

ICBA supports the FTC adopting a market-based approach. Competition in the market place will generally allow for the best prices, which benefits the consumer. This is attractive because a competitive market generally provides the most rational, responsive, and efficient form of pricing. The market is able to account for factors including prices, quality, service, costs, and competition. Moreover, changes in technology can increase efficiency dramatically and a competitive market should result in fair and rational pricing, while government price mandates often produce unforeseen consequences that can actually harm consumers.[2]

However, if the FTC were to choose a mandatory fee, community banks agree that a price between $5-$8 generally would be fair and reasonable. If the FTC were to choose a capped fee, the ICBA believes that $10 should be the maximum that credit bureaus should charge, given current conditions.

Further, if an approach other than the market based approach is chosen, ICBA recommends that periodic adjustments over time should be made. The ICBA suggests that an index, such as the Consumer Price Index, should be used to adjust the prices accordingly. To keep pace with rapid changes in credit reporting systems, especially the many changes mandated under the FACT Act, the FTC should review all the factors involved and adjust the price at least annually.

[2] For example, rent controls can often cause a decline in available housing due to the resulting disincentive for new construction.

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Thank you for the opportunity to comment. If you need additional information or have any questions, please contact me by phone at 202-659-8111 or by e-mail at katie.bragan@icba.org.

Sincerely,

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