Comments to the Federal Trade Commission

"Fair and Reasonable Fee for Credit Score Disclosure"

Advance Notice of Proposed Rulemaking
Fair and Accurate Credit Transactions Act of 2003
Docket Id: RIN 3084-AA94

Submitted by [1]

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January 5, 2005

Federal Trade Commission
Office of the Secretary, Room H-159 (Annex H)
600 Pennsylvania Avenue, N.W.,
Washington, D.C. 20580
Filed electronically: https://secure.commentworks.com/ftc-CreditScoreFee/

To the Commission:

The Privacy Rights Clearinghouse and the above-named organizations[1] are pleased to provide comment on the Commission's Advanced Notice of Proposed Rulemaking (ANPR) about "fair and reasonable fees" for credit scores. The ANPR invites comment on approaches and factors that should be considered in determining a fee for credit scores as well as comment on the underlying premises that should be employed.

1. Introduction and Background

[1] Contact information and descriptions of these consumer organizations are provided at the end of the comments.

For years lenders have relied on scoring models to evaluate risk in extending credit to individual consumers for a car loan, mortgage or credit card. Derived from information maintained by credit bureaus, scores are, in effect, a snapshot version of a consumer's financial health. However, until recently, the score itself as well as factors that went into arriving at the score were virtually unknown to consumers. Even as recently as 1996, when Congress amended the Fair Credit Reporting Act (FCRA) through the Consumer Credit Reporting Reform Act of 1996, consumers were specifically blocked from knowing their score and component factors.

Following the lead of states like California and Colorado, Congress amended the FCRA with the Fair and Accurate Credit Reporting Act of 2003, Pub. L. 108-159, (FACTA), and gave consumers the right to view their score as well as get an explanation of the factors that went into the score. This move by Congress was only right since the three-digit score has all but replaced the lender's line-by-line review of the consumer's credit report. Furthermore, the market in scoring has exploded in recent years with various score models developed and marketed directly to the public by private companies, credit card issuers, insurers, and the credit reporting agencies themselves. Only the scores compiled by the regulated companies, that is the three national credit bureaus are covered by FCRA §609(f)(7)(A)

The ANPR examines ways the Commission might determine fees for scores. Here the Commission focuses almost entirely on how its decision would affect credit agencies, the regulated entities required to disclose scores, versus the agencies' competitors, the non-regulated entities that are not subject to mandatory score disclosures. Noticeably missing from the ANPR discussion is what "fair and reasonable" means for consumers.

When consumer interests are factored in, the only fair and reasonable approach is for the Commission to set a fee limited to the actual cost of producing and delivering the score to consumers. To account for changes in costs, either up or down, the Commission may incorporate a mechanism to review costs periodically on its own or upon petition by the consumer reporting agencies covered by mandatory score disclosure. Further, costs should be limited to *direct* costs of providing the score to consumers, and not to include assessments for overhead or any other indirect costs.

In any case, the amount charged to the consumer should not exceed $2.00. There is some evidence that credit scores are sold to industry users for as little as 25-35 cents per score.[2] It stands to reason that the actual cost to the CRAs of providing the score to consumers is minimal, and certainly not in excess of $1.00 to $1.50, especially if delivered electronically.

Ideally, our preference would be that scores should be incorporated into credit reports and provided for free. But absent that, Congressional intent is clear -- to make the scores "fair and reasonable" And that means fair and reasonable to *consumers,* not to the bureaus.

2. Underlying Premises

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[2] See Comments submitted to the FTC for this proceeding by the Consumer Federation of America in reference to the report by the American Antitrust Institute. See also Evan Hendricks, *Credit Scores & Credit Reports* (2004, Privacy Times), p. 58.

In deliberating a "fair and reasonable" fee for credit scores, the Commission should be guided by the premises underlying the FCRA itself and the most recent amendments made by FACTA. This is, above all, consumer protection legislation, including measures that are preventive, remedial, and educational. Consumers' ability to obtain scores easily and at a fair price will further all three of these objectives. At a time when financial literacy is a major public policy issue, the educational factor alone warrants a price most favorable to consumers.

3. Factors the Commission Should Consider

a. Value to consumer

The Commission's determination of a "fair and reasonable" price for this score disclosure should take into account the value of this information to consumers. The Commission should consider the reasons Congress directed the mandatory score disclosure. As an educational tool, this score should help consumers better understand the things lenders view as negative risk factors. This knowledge should help consumers make necessary adjustments to ultimately improve their score.

Then again, the score required by Section 609(f)(7)(A) is a limited disclosure with a limited value to consumers. There are, as the ANPR points out, many players involved in the scoring industry with varying factors calculated in and various score ranges. The limited nature of the score covered by this section is best illustrated by the Commission's statement in the ANPR:

> The provision requires only the disclosure of a "mortgage score" or "educational score," and does not require disclosure of other risk scores based on credit information, such as those used to underwrite auto loans, personal loans, credit cards, or insurance products.

In other words, this is not the score most likely to be used by lenders in making decisions about whether to offer credit or at what price, nor is it the credit score that the credit reporting bureaus offer for sale to consumers at $5.45.[3] The Commission's determination of a "fair and reasonable" price for this score should reflect its limited value in the financial marketplace.

Although the score disclosure must be accompanied by a notice to the consumer that the "information and credit scoring model may be different than the credit score that may be used by the lender," we are concerned that consumers may be inclined to place more credence in the score than is actually warranted. A fee limited to actual costs will prevent credit bureaus from over marketing and over charging for the "mortgage score" or "educational score."

b. Tool to detect inaccuracies

The above is not to say that score disclosure mandated by FACTA has no value to consumers. As discussed above, the score disclosure required by FACTA should help consumers better understand the factors that go into scoring, which, in turn, will allow consumers to act on factors

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[3] The web sites of the three credit bureaus, visited Jan. 4, 2005, each display a product for $14.95 that consists of the credit report plus the credit score. The current allowable price for a credit report is $9.50. So by deduction, the CRAs are valuing the credit score alone at $5.45.

that detract from the overall score. The score is also useful as a preliminary means to detect serious problems in the credit report itself, the source material for the score. Like the lender that uses the three-digit score to obtain a snapshot of the consumer's credit file, the consumer, with the score in hand, can use this as yet another tool to detect inaccuracies in the underlying credit report.

We believe most consumers have a general feel for their overall financial standing. Those who pay their bills on time, have not filed for bankruptcy, have no collection or charge-offs, or any of the other circumstances that render one a high risk, expect to have a good score. When the score does not match the consumer's perceived notion of his or her credit standing, this may be an early warning of identity theft or errors or omissions in the underlying credit report.

It is the credit bureaus that are required to disclose the score that are also charged with accuracy in the credit reports. There have been numerous studies that question the reliability and accuracy of credit reports. Indeed, much of the debate surrounding the passage of FACTA was centered on improving accuracy in credit reporting.

Credit bureaus' responsibility for accuracy is even greater when it is considered that the information maintained by credit bureaus form the basis of all scores sold through the reseller market. For consumers, the required score disclosure may act as a monitoring method for accuracy in the underlying credit reports. However, the cost of this added benefit should not be passed on to consumers. Again, for consumers a "fair and reasonable" fee should be limited to the costs incurred by the credit bureaus.

c. Competitive advantages/disadvantages for credit bureaus

The ANPR discusses various approaches to establishing a "fair and reasonable" fee for score disclosures with an eye toward how each approach would either help or harm the regulated credit bureaus in competing with private, non-regulated entities now in the market of selling credit, or other consumer "scores."

First, Congress recognized the competitive environment when it allowed credit bureaus to charge any fee at all. Congress could very well have directed a free credit score to go along with the free credit report consumers are now entitled to receive. However, only free credit reports are mandated, perhaps because the credit bureaus have no competition in this market. Furthermore, an element of unfairness could be perceived in requiring the credit bureaus to bear the cost of free credit reports *and* free credit scores.

Certainly in allowing bureaus to charge a 'fair and reasonable" fee for scores Congress did not intend for credit bureaus to recover revenue lost from the sale of credit reports. Nor do we believe a fair and reasonable fee for scores means that credit bureaus must match the unregulated market dollar for dollar. The credit bureaus themselves are the source of all information that goes into all "scores" whether sold by the bureaus or the larger private market.

We believe the ANPR adequately balances the pros and cons of the competitive environment. As the Commission points out, credit bureaus may well gain a competitive edge by advertising the sale of credit scores on the web site for free credit reports. Again, we do not believe Congress in allowing a “fair and reasonable fee” for scores intended to provide a new revenue stream for credit bureaus.

4. Conclusion

For the above reasons, the Commission should set a “fair and reasonable” fee based solely on actual costs that are reasonable and necessary in the production and delivery of the score to consumers. We appreciate the opportunity to offer our views on a “fair and reasonable” price for credit scores.

Sincerely,

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Norma P. Garcia, Senior Attorney Consumers Union 1535 Mission St. San Francisco, CA 94103 garcno(at)consumer.org www.consumer.org	Consumers Union, publisher of *Consumer Reports*, is a nonprofit organization that advances the interests of consumers by providing information and advice about products and services and about issues affecting their welfare, and by advocating a consumer point of view. Consumers Union’s income is solely derived from the sale of Consumer Reports, its other publications and services, and from noncommercial contributions, grants, and fees. Consumers Union’s publications and services carry no outside advertising and receive no commercial support.
Ken McEldowney Executive Director Consumer Action 717 Market St., Suite 310 San Francisco, CA 94103 Ken.mceldowney(at)consumer-action.org www.consumer-action.org	Consumer Action is a consumer education and advocacy that works on a broad range of issues including privacy, banking and telecommunications through a national network of more than 7,300 community based organizations that serve low and moderate income consumers.
Dian Black, Director Calegislation PO Box 1198 No 1127	Calegislation is a resource center that provides consumer privacy information with a focus on public safety. Based in San Diego, the center provides educational

Sacramento, CA 95812 Calegislation(at)sbcglobal.net	information to consumers, legislators, and governmental agencies and is part of a national information sharing network of domestic violence and privacy advocates.
Pam Dixon, Executive Director World Privacy Forum 2033 San Elijoh Ave. No. 402 Cardiff by the Sea, CA 92007 Pdixon(at)worldprivacyforum.org www.worldprivacyforum.org	The World Privacy Forum is a nonprofit, non partisan organization that conducts in-depth research and consumer education in the intersecting areas of technology and privacy. It investigates a broad range of emerging and maturing technologies for the purpose of informing and educating the public and policymakers about these issues. Specific areas of research include consumer data privacy, workplace privacy, job applicant rights and privacy, background checks and public records, communications privacy, and large technological infrastructures, including databases.
Linda Foley, Co-Executive Director Identity Theft Resource Center P.O. Box 26833 San Diego, CA 92196 Voices123(at)sbcglobal.net www.idtheftcenter.org	The Identity Theft Resource Center is a national nonprofit organization that focuses exclusively on identity theft. It was established in 1999. ITRC's mission is to research, analyze and distribute information about the growing crime of identity theft. It serves as a resource and advisory center of identity theft information for consumers, victims, law enforcement, the business and financial sectors, legislators, media and governmental agencies.
Deborah Pierce, Executive Director PrivacyActivism 4026 18th St. San Francisco, CA 94107 Dsp(at)privacyactivism.org www.privacyactivism.org	PrivacyActivism is a San Francisco-based nonprofit organization that focuses on issues of consumer privacy.
Richard Holober, Executive Director Consumer Federation of California P.O. Box 1340 Millbrae, CA 94030 Consumerfedofca(at)consumerfedofca.org consumerfedofca.org	The Consumer Federation of California is a non-profit organization that advocates for consumer rights and consumer protection legislation. The CFC is a federation of local and statewide organizations and also includes individual memberships.