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16 July 2004

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

Re: FACT Act Section 318(a)2(C) Study
Matter No. P044804
***Federal Register,* June 15, 2004**

The American Bankers Association ('ABA') is pleased to submit our comments to the Federal Trade Commission's ("Commission") request for comment on a study it will conduct, as required by Section 318(a)(2) of the Fair and Accurate Credit Transaction Act ("FACT Act"), of the effects of requiring that a consumer who has experienced adverse action with regard to a credit application receive a copy of the same credit report that the creditor relied on in making its decision. The request for comment is intended to assist the Commission in preparation of the study.

The ABA brings together all elements of the banking community to represent the interests of this rapidly changing industry. Its membership – which includes community, regional, and money center banks and holding companies, as well as savings associations, trust companies, and savings banks – makes ABA the largest banking trade association in the country.

The Commission is required to examine the extent to which providing such reports to consumers increases their ability to identify errors in their credit reports and their ability to remove fraudulent information. We do not believe that it will increase consumers' ability to do so. Our main concerns and objections are that receipt of the earlier report in many cases will confuse consumers and that any value to consumers is minimal and does not justify the costs to make the necessary operational, technical, and other changes in order to provide the report used by the creditor. Ultimately, those unnecessary costs are at least in part borne by consumers.

Requiring the creditor to provide to the consumer a copy of the credit report it relied on will be impractical in many cases and costly in others. As the Commission notes, creditors often rely on an electronic file that only computers can interpret. While it may be feasible to convert it to

a user-friendly format, doing so will require additional software and other operational changes. Moreover, this will not solve the problem of impracticality and cost. As the Commission notes, in many cases, depending on the type of credit, the individual creditor, and even the individual applicant, the creditor may only rely on a credit score or a summary of the credit report that in most cases will not enlighten the consumer about any errors in the underlying report.

Even if the report is complete and in a user-friendly format, there are issues. For example, automatically providing the report with the adverse action will increase the risk of identity theft because there will be greater volume of credit reports floating around for identity thieves to capture. Unlike the case where the consumer has specifically ordered a report and is expecting it, consumers denied loan applications will not be expecting or necessarily wanting a credit report. Accordingly, they will be less likely to dispose of it properly, either because they overlook it or are not interested. Identity thieves, especially those relying on repeated mail theft, will also have greater opportunities: preapproved credit solicitations fraudulently submitted, even though denied, will still produce a valuable credit report.

Requiring that it be provided only upon request also creates significant costs associated with report retention. Assuming the report is complete and in a user-friendly format, creditors will have to incur new costs to retain reports for a period sufficient to accommodate the Regulation B (Equal Credit Opportunity Act) notification period requirements. Reports would have to be retained for several months. First, there is the time that elapses between the time the creditor first obtains a credit report and the time it sends the adverse action notice. Creditors must provide the adverse action notices 30 days after receiving a "completed application," which may be some time after it has received the initial application and report. Second, the applicant would have to be given a period after receipt of the adverse action notice to make the request, probably 60 days. Thus, there could be a three month lag between time the creditor pulls the report and the consumer obtains the report used, and potentially a longer lag after taking into account handling and mail time and depending on when the creditor received all the necessary information to make a credit decision. The cost of report retention could be substantial.

The other option, to require the credit agencies rather than the creditors to provide a copy of the same report provided to the creditor, would also impose unnecessary costs. The credit agencies would have to set up a system to retain older reports that would also have to accommodate the time periods of Regulation B. Those systems would also have to be able to connect the report to the creditor. If only a credit score or summary were provided, the system would have to be able to connect the specific creditor to the underlying report.

Even if it is feasible to create a system to provide denied applicants with the same report used by the creditor, the costs, ultimately absorbed by consumers, simply do not justify benefits. Receiving the credit report relied on by the creditor will have marginal value and may even confuse consumers. Some examples illustrate. Today, in the case where no information has been disputed, the report used by the creditor and the one received by the consumer varies because of the dynamic nature of credit reports, but in most cases, only marginally and in a way the consumer expects and understands: different account balances, new loans, etc. In this case, there is little value to the consumer in receiving a copy of the report used by the creditor.

Receiving the same report that the creditor used will also not help consumers in the case where they successfully disputed incorrect information but the corrections were made after the creditor obtained the report. As a practical matter, if they went through the process of disputing information in the report and are denied credit, they can easily figure out that the creditor probably did not receive the updated report with the corrections. Moreover, most consumers who correct information in a credit report understand that before applying for credit, they should verify that the report has been corrected by reviewing a report. Otherwise, they risk incurring unrecoverable costs (e.g. application costs, contract costs associated with home purchase) if the corrections have not been made. This approach of verifying corrections before application is more practical and helpful for the consumer. In addition, it is more efficient than creating an expensive system to supply the applicant with a copy of the exact report the creditor used.

The other case when the consumer might receive a relevantly different report than the creditor used, is the one where the creditor relies on a report not belonging to the applicant. For example, the creditor receives a report about a different person with a similar name and other identifying information who has a negative report. First, we believe that this happens less and less as the identifying factors and systems improve. Second, applicants already receive an adverse action notice and the reasons for denial. If they believe their credit history is good, but the adverse action notice indicates otherwise, they naturally inquire and discuss with the creditor. Creditors are anxious and eager to lend to good applicants, so respond positively once the applicant brings the matter to their attention.

For these reasons, we do not believe it advisable to mandate that consumer receive a copy of the report used by creditors for adverse action.

In **question C.2.,** the Commission asks, “Do the FCRA’s section 604 requirements regarding adverse action in employment, where the

consumer already receives a copy of the same consumer report that the party taking the adverse action relied on, inform our analysis here?" We believe that there are compelling differences between these two occasions.

It is generally more useful in the case of employment for the applicant to have a copy of the actual report used. First, applying for a job is usually a far more rare and important event than a credit application, and unlike credit, the job may no longer be available once the negative decision has been made. In the case of employment, providing the actual report will often allow job applicants to receive the report more quickly and allow them an opportunity to explain any inaccuracies or accurate but negative information before the job is offered elsewhere. Second, job applicants are not necessarily expecting the potential employer to review a credit report, so usually do not review it in advance to ensure its accuracy. Even though the applicant's written permission is required in advance of obtaining the report, the window between the request for permission and obtaining the report is typically very short, allowing little time to obtain, review, and correct reports. Finally, the volume of reports creditors request and creditors' reliance on very automated systems make providing a readable version of the actual report used far more challenging. Employers have far less volume and do not tend to use sophisticated, automated systems that do not produce readable or complete reports.

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ABA appreciates the opportunity to comment on this important matter. We strongly oppose any requirement that credit applicants receive a copy of the same report used by the creditor to make an adverse decision. We do not believe it will enhance consumers' ability to detect identity theft or errors on reports or to delete fraudulent information in their reports. Even if feasible, the costs would simply to justify any marginal benefits to consumers and may confuse them in some cases. We are happy to provide any additional information.

Regards,

Nessa Eileen Feddis