

## Comment #2



December 27, 2004

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

### **RE: Accuracy Pilot Study: Paperwork Comment**

On behalf of the members of the Consumer Data Industry Association<sup>1</sup> (CDIA) we provide the following comments with regard to the proposed accuracy pilot study. We thank the Federal Trade Commission (FTC) for this opportunity to comment. The CDIA supports the FTC's decision to pilot test methodologies to ensure that such a study can be conducted. Further our members believe that the FTC should not launch a full-study of data accuracy until it has

- Defined key terms which influence hypotheses and choice of methodologies.
- Addressed concerns with the design of the pilot study.
- Sought and received the funding necessary to properly conduct a study that is statistically sound and sufficiently thorough rather than designing a study based on possible funding limitations.

### **Defining Accuracy and Completeness**

The FTC has not proposed a definition for either the term "accuracy" or "completeness." The FTC is required by Section 319 of the Fair and Accurate Credit Transactions Act of 2003 to study both the accuracy and completeness of consumer reports. Absent discussion and ultimately agreement on these two pivotal terms, the CDIA does not believe that a study should proceed. CDIA respectfully suggests that the definitional question be addressed before any final decision on the structure of a pilot study.

Accuracy is not an easily defined term. CDIA has suggested in the past that simply identifying a possible inaccuracy is not enough. Even properly identifying an inaccurate item of information is not enough, if the inaccuracy is not material to users which make decisions. A key question is the extent to which the possible inaccuracy is material to the decision being made by a user. Should perceived inaccuracies be "counted" when they are immaterial to the lending decision and may be accurate representations of the data as it was reported? What about accuracy in the eyes of the user as compared to accuracy in the eyes of the consumer? These few examples drive home the point that defining accuracy is pivotal to conducting this study and in developing a pilot study.

The term "completeness" is also very problematic. As we have stated in many fora, the entire system of "credit reporting" is voluntary. Thus no data source<sup>2</sup> (e.g. a mortgage bank or retailer, etc.) which furnishes information to a consumer reporting agency is obligated to do so. Further, no data source is obligated by law or regulation to report

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<sup>1</sup> CDIA is an international trade association representing more than 300 leading companies which provide a range of consumer-information-based products and services including credit and mortgage reporting, employment and tenant screening, check acceptance and fraud prevention, as well as collection services.

<sup>2</sup> CDIA's credit reporting system members estimate that there are more than thirty thousand data sources providing more than two billion data updates per month to each national system.

a specific set of factual data about a consumer's account<sup>3</sup>, though the CDIA's national credit reporting agency members have made a firm, long-term commitment to providing all data furnishers with extensive, standardized guidance with regard to data reporting.<sup>4</sup>

A creditor may choose to report on most of its portfolio, but not all, or it may choose to withhold a particular data element, such as a credit limit. Likewise, it may choose to report to just one consumer reporting agency, but not all, and in some cases a lender may simply not report to any consumer reporting agency. Nevertheless, consumer reporting agencies attempt to compensate for the range of decisions which may influence a creditor's decisions about data reporting, which include concerns about competition, costs, and even concerns about liability.<sup>5</sup>

The FTC's recent report to Congress discusses "common unreported transactions" which raises another concern with the term "completeness".<sup>6</sup> While there has been progress in encouraging sources of data to report to national credit reporting systems, not all possible data sources can report due to state regulatory restrictions such as those imposed on public utilities. Other sources of data may not meet the accuracy and integrity requirements which have been or will be imposed on data furnishers via current law and prospective regulations, as well as those data integrity standards administered by CDIA members. Some data sources are diffuse, such as rental payment data, where the FTC's report indicates that "...the CRA would have to collect data from 12,000 locations in order to provide payment information for only 8% of renters." Further, these data, which come from very small data furnishers, may be less reliable.

Further, the FTC's report acknowledges, in the context of mortgage lending in particular, "...the importance of 'scoreable' credit files in automated underwriting." Thus, completeness isn't merely the presence or absence of data, but the value of the data to the type of decision being made by a user of a consumer report.

The FTC's task is unenviable, but CDIA's members believe that the definitions of these terms are essential, before it proceeds with the final design of even a pilot methodology.

### **FTC Pilot Study – Discussion and Concerns**

#### *Goal of Pilot:*

The FTC states in its Federal Register notice that "...the most important information to be obtained from the study is an assessment of the degree of difficulty with which each of the above tasks was performed by the participants, including the average amount of time needed for the respective tasks." CDIA does not fully agree with this statement. The pilot should test the fundamental value of the methodology in allowing the FTC to study the required subject, and not merely measure the degree of difficulty, though this too is a reasonable goal. As discussed below, the CDIA is concerned about the apparent decision by the FTC to pilot test a single methodology.

CDIA has concerns with the stated pilot and while we provide comments on the pilot, our members are concerned that a more detailed outline of the specific elements of the pilot is not provided for public comment. Our members believe that a more detailed explanation of how the FTC will address the range of concerns we have is important before the FTC finalizes the design of a pilot study.

#### *Sample Selection Issues:*

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<sup>3</sup> Note that this situation may change depending on the "accuracy and integrity" rules which must be issued by the federal banking agencies as a result of the enactment of the FACT Act, PL 108 - 159.

<sup>4</sup> CDIA's members maintain an industry data standard, the most recent of which is entitled Metro 2. More than 99 percent of all data is reported via the industry data reporting standard, although not all lenders choose to use all fields of information which are available to them, or the most recent version of the standard.

<sup>5</sup> Congress continues to increase the standard of liability for inaccurate data reporting by furnishers of information. This liability is found under FCRA Section 623 (1681s-2).

<sup>6</sup> See the FTC's December 2004 "Report to Congress, Under Sections 318 and 319 of the Fair and Accurate Transactions Act", pages 77-86.

There are reasons to believe that the study will draw consumer subjects whose participation will *not* be especially informative of whether a larger study can engage consumers for the following reasons:

1. The study insists that it makes no attempt to be representative since it aims to measure (i) the difficulty of engaging consumers in an accuracy study, rather than (ii) the scope and scale of inaccuracies and inconsistencies. However, the changed object of measurement doesn't change the need for a representative sample. If the study aims to test the extent to which consumers can in fact be engaged, it will need to survey and test a representative sample of consumers. Without a representative sample of consumers, any conclusion that consumers can or cannot be engaged threatens to be based on "noise" rather than an assessment of the likelihood that a statistically valid representative sample of consumers can be engaged. To the extent that the assessment of difficulty of engaging consumers is qualitative, the lessons will be largely anecdotal and full conclusions about the difficulty of including consumers comprising a representative sample cannot be fully drawn.
2. These concerns about sample size are doubly true of any attempt to use the pilot exercise to look at score impacts. Models weigh different pieces of information according to their predictive value. File thickness, data type, age of data, and a host of other factors will dictate the degree to which any given inaccuracy or omission remedied by the dispute process produces a change in a consumer's score. With a sample this small, score impacts may largely reflect "noise" and either wildly overstate or understate the score impacts across risk segments. Also, see comments below regarding not drawing substantive conclusions from this pilot study.
3. This method for assessing whether consumers can be engaged in a larger study is limited by the fact that there may be a bias generated by the fact that consumers who will engage in the process may be either credit savvy, contentious, or both. That is, consumers who may be drawn to the process may already be aware of the reporting system and have established biases that will influence results. Their participation can lead to overly sanguine conclusions about the ability to engage a larger consumer population. How will the FTC address this likely bias in the selection sample process?
4. The FTC states in its Federal Register notice that "...if the respective categories of credit scores have an unequal distribution of consumers, then an array will be chosen to favor consumers with relatively lower credit scores." The lack of any definition of terms alone makes this statement troublesome. What does "relatively lower" mean and is this term defined in the context of users of consumer reports? Fundamentally our members oppose the FTC inserting a bias into the sample and attempting to study a sample of consumers which is not representative.
5. The FTC does not address whether or not samples of the population are being developed for use longitudinally, or whether new samples of the consumer population will be drawn during each year in which the FTC conducts their study.

In sum, this approach is not sufficient to draw conclusions about respondents in a broader national sample.

*Limits of testing only one method of "engaging consumers:"*

Testing only a single method of engaging consumers runs the risk that subsequent decisions about whether and how to engage consumers will be biased. There are presumably a number of ways to engage consumers, as well as number of ways to examine inconsistencies and inaccuracies in credit reports.<sup>7</sup> If the pilot study is only an evaluation of methodologies, the FTC cannot make a decision on which methodology for a larger study without testing several. The fact that only one will be tested strongly suggests that it will be adopted—for reasons of path dependence and insufficient information about alternatives. Practically, other methods are not considered and thus this is a deficiency in the pilot study design which should be remedied.

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<sup>7</sup> For example, the summer 2004 FRB study, conducted by Avery and Canner, et al., identified and analyzed a number of specific data quality issues such as data furnishers' failure to report the closing of an account and credit limits.

Further, the FTC does not appear to be committed to exploring a methodology for evaluating the accuracy and completeness of information as it relates to the ongoing success of users of consumer credit reports to assess risk in the context of new applications and also in the context of managing portfolios for purposes of safety and soundness. The consumer credit reporting system is the information infrastructure upon which our financial services industry is built and to not include this viewpoint would be a significant gap.

*Compensating for Consumer Bias and other Limitations:*

Using consumers in the FTC's study is generally appropriate, though we have discussed a range of sampling concerns above. We also have concerns about how the FTC will compensate for the fact that consumers have an imperfect knowledge of their own credit behavior and accounts. Consider the following:

- Missing accounts – The FTC itself, during its July 2004 roundtable, acknowledged that consumers may be biased against noting to the FTC where a consumer report is missing an item of adverse information such as a collection action, bankruptcy filing, etc. Cross-comparing files of a consumer may help mitigate this effect but it will remain to the extent that consumers have unreported adverse items of information.
- Limited recollection – A number of academics in attendance at the FTC roundtable indicated concerns about consumers' ability to accurately remember everything that might be included in the consumer's file. One provided the example wherein the Panel Study of Income Dynamics studied the question of consumer bankruptcy filings. When consumer responses were aggregated up to reflect the total U.S. population and compared with filing data, it appeared that only half of the respondents had properly recalled the bankruptcy filing. This example is illustrative of a significant concern CDIA has and for which the FTC must control.
- Consumer misunderstandings – Consistent with testimony the CDIA offered before the Senate Banking Committee, we again offer as Appendix A, a series of observations provided by CDIA member consumer relations executives about consumer perceptions and misunderstandings. The FTC is likely attempting to compensate for such misunderstandings through hiring an experienced contractor, but the list provided is a clear example of how difficult this task may be, and how critical the knowledge of those who work with consumers will have to be to guide consumers. The FTC should ensure that it establishes a methodology to measure the effectiveness of the skills and knowledge of the contractor to eliminate misstatements and misunderstandings which could otherwise arise out of a consumer review of file information. This is as important an activity as measuring the overall difficulty of administering the methodology and also measuring the effectiveness of the pilot in terms of actually gathering useful data on a statistically sound basis.
- Resolving the unresolved – There is no doubt that there will be times where a consumer and a data furnisher will disagree about the accuracy of an item of information. The pilot study does not suggest how the FTC will resolve or deal with such situations. The FTC should discuss this issue in the form of a public comment prior to finalizing any test methodologies involving consumers.

*Using Scores and Evaluating Score Variances:*

- How will the FTC decide on which production score model to use in their study? The FTC should provide input on this prior to engaging in a pilot study.
- How will the FTC account for the fact that many lenders use a more complex matrix of underwriting guidelines to approve a loan? A change in a particular score model does not necessarily demonstrate an impact on a lending decision. For example, Fannie Mae and Freddie Mac both publish underwriting guidelines for themselves that outline a range of factors which are used in approving the purchase of loans.
- Data-related discrepancies on an individual consumer's credit scores cannot necessarily be effectively measured using variance in scores as a proxy. This would require some means of control for model-related differences on credit scores. Changes in data may and will alter scores but the extent to which scores will be altered will not be meaningful unless there is some clear understanding of (i) what the segment mean differences in model related score variances are and (ii) whether these variances are constant in moving across the spectrum of scores, i.e., whether model based score differences are linear. CDIA acknowledges

that any study incorporating a method of measuring the materiality of a change in a consumer's score (pre- and post-reinvestigation) will have to consider this issue, but the FTC should discuss how it will address this concern none-the-less.

- There is a methodological issue to be considered when looking at the impact of correcting information in a credit report. A credit report is a snapshot of an individual's credit capacity and creditworthiness at a given point in time. It is not uncommon for a credit score to change during a 30 day period, as new data could have been introduced (both positive and negative data), data that was present during period 1 could have been expunged during period 2, and all data present during period 1 has "aged" by one month. As age of various trade lines is a determinant of the relative weight of individual variables in calculating an individual's credit score, the removal of or modification to any one variable resulting from a formal or informal dispute resolution may not account for the entire change in an individual's credit score.

*Drawing substantive conclusions:*

On another important note, it's also unclear what the purpose in connection with the pilot study is of "determin[ing] . . . whether any such change on the credit report led to a change in the participant's score, happens to be." If the stated goal of project is to "evaluate the feasibility of a methodology that directly involves consumer review of the information contained in their credit report," then the addition of this measure would suggest otherwise, namely, that it is an initial measure of the scope of inaccuracies and inconsistencies. While "statistical conclusions" may not be drawn, it does imply that substantive ones will be nonetheless.

As previously stated, we believe that the pilot study must include a full, statistically representative sample of the population. A pilot study that does not address the methodological issues raised above or which does not include a statistically valid sample of the population threatens to produce findings that will be taken as sound conclusions about the credit reporting system. That is, it will be the substantive and not methodological results that will be the focus of attention. Any form of a pilot should not result in the release of any data. The FTC should set a goal only of evaluating the various methodologies by which a study may be conducted to make a determination as to which combination of methodologies will be most effective.

**Adequate Funding:**

CDIA believes that it is profoundly important that the FTC conduct both the pilot and longitudinal studies only if it has adequate funding on a long term basis. It is entirely inappropriate to attempt to force a study where adequate financial resources are not available. During the FTC's July 2004 pilot study roundtable, representatives of the Federal Reserve Board indicated, as a cautionary note to the FTC about the extensive costs related to conducting high-quality studies, that their survey of consumer finances costs about six million dollars. This same representative was quoted as saying "...unless you're committed to layout those kinds of resources, my suspicion is you're not going to get the kind of quality in this data that you seek."

**Conclusion:**

CDIA believes that the FTC should not proceed with a pilot study until it has considered and provide public responses to concerns raised by commentators. We appreciate, however, the care with which the FTC has, with limited resources, attempted to map out their intentions and the openness they have sought in the process through this Federal Register notice and also through the July 2004 pilot study roundtable discussion. If the FTC is to conduct such a consumer survey, as proposed in the pilot study, it must be done right and with great care.

Thank you for this opportunity to comment.

Sincerely,

Stuart K. Pratt  
President & CEO

## APPENDIX A

“Accuracy and the Consumer – Perceptions and Realities: In assisting us with our responses to the GAO inquiry, one of our members observed that items in a consumer's credit file may be accurate, but not in sync with the consumer's perspective. Consumers have a tendency to "dispute" such items that are not in sync with their perspective, even when the data is accurate. Below are a few examples<sup>8</sup>:

(1) Maiden name – A married woman obtains a copy of her file and sees that her married name is not on file. She calls to dispute this and the representative asks her if she has applied for any credit in her married name. She replies in the negative and offers that she and her husband are now starting to apply for joint credit accounts. She is advised that information in her file is reported to us by the credit grantors with whom that she holds accounts. Since she does not have any credit accounts in her married name, we would have no way of knowing that she has changed her name unless she reported this directly to us.

(2) A consumer sees an old, dormant account on his file and indicates that he had long ago instructed the credit grantor to close the account. He might have confused that request with a similar request to another credit grantor. Or maybe he might have instructed the credit grantor to close the account and they never did. The point is that the information on file is "accurate", because it is an open account.

(3) A consumer sees an account with General Electric Consumer Credit (GECC) on his file and swears that he never did business with GECC before. However, the account in question was with a retailer who subsequently outsourced their lending to GECC and the consumer never knew of that relationship or isn't aware that some retailers outsource their lending. In this case, the consumer will be adamant that the account is incorrect, but, in fact, it is accurate. Once they are made aware of the retailer's name (i.e. Home Depot for example), they acknowledge they do have a Home Depot account. The file was accurate.

(4) A consumer sees a previous address listed as the current address and vice versa. He cannot understand how the credit bureau could make that mistake. However, the consumer had failed to notify some of his credit grantors about the previous move, so some credit grantors are still reporting the old address as current. This hasn't been an issue for the consumer because the mail from those credit grantors is getting forwarded or the account is so inactive the credit grantors do not need to send them a billing statement very often.

(5) A consumer sees his or her name listed with an unrecognizable combination of personal initials they don't remember using. The consumer's inclination is to believe the credit bureau is responsible for this. However, the fact is that our members' systems are incapable of making up a name. That particular name has transmitted it to us by the credit grantor. Either the consumer previously used that name with a credit grantor in the past or the credit grantor transmitted the erroneous name.

(6) Consumers also often find that employment data is not current on their file disclosures. This is due to the fact that many lenders do not report employment data any longer. Nonetheless, the FCRA requires that a consumer reporting agency disclose "all information in the file at the time of the request" and this includes dated employment data.

The previous examples have no bearing on the lender's risk decision. Yet, the consumer has questions about this data and regards these as "errors" by the credit reporting agency.

Accuracy and Divorce: One very significant challenge for CDIA's members is the problem lenders and consumer reporting agencies have with how credit obligations are handled incorrectly by divorce courts. A divorce decree does not supersede an original contract with a creditor and does not release a consumer from his or her legal responsibility on those accounts entered into jointly with the former spouse.

A consumer will see an item on his or her report and call to dispute the accuracy of it because they feel the divorce court adjudicated it. Despite the explanation that the debt is still owed the consumer will argue that her lawyer did

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<sup>8</sup> These examples are drawn from the industry experts who lead consumer relations/assistance units for the nation's largest consumer reporting agencies which maintain files on the majority of credit-active consumers.

not advise her at the time of her divorce that this would be the case. We explain to the consumer that it is ultimately his or her responsibility to contact creditors and seek a binding legal release of the debt obligations that have been incurred.

Accuracy and Expectations of Immediacy: Another very significant challenge is the perception by consumers that their credit reports should and can be updated nearly instantaneously. For example, consumers may review their credit reports and while data is accurate as of the date reported, they believe that recent payments should already be reflected showing a lower outstanding balance. A majority of data in the nationwide credit reporting systems is updated on a thirty-day cycle and this timing correlates with the thirty-day billing cycles for many types of contractually prescribed credit payments to creditors. CDIA believes that a great many disputes are likely being driven by a desire to update information, which is otherwise accurate.

Accuracy and Misunderstandings About the Law: Often enough our members report that consumers believe that when an account is delinquent and subsequently paid, that any negative information about the missed payments will be expunged from the record. Similarly, consumers often believe that an item placed for collection should be expunged once paid. In fact the law recognized that it is important for creditors to know when the account was paid and to also maintain a history of the timeliness of past payments for purposes of safety and soundness. Thus, the law permits adverse information to remain on the file, but for no more than seven years.”