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

Re: FACTA Credit Score Fee, Project No. R411004

To Whom It May Concern:

This comment letter is submitted to the Federal Trade Commission (“FTC”) on behalf of TransUnion LLC and its affiliates (“TransUnion”) in response to the Advance Notice of Proposed Rulemaking published in the *Federal Register* on November 8, 2004 regarding fees for credit scores (“Notice”). TransUnion is a “nationwide” consumer reporting agency, as described in Section 603(p) of the Fair Credit Reporting Act (“FCRA”) and has approximately 4,000 employees with operations on five continents and in 34 countries. TransUnion has access to consumer credit information voluntarily supplied by data furnishers on substantially all of the credit active consumers in the United States.

In addition to offering consumers access to the information in their credit file, TransUnion has, for several years, offered a variety of consumer credit-related informational products and services, either directly or through an affiliate, including a calculation of a consumer’s credit score. Although lenders and other entities that access credit reports for permissible purposes use many different models to score consumer files (TransUnion houses hundreds of proprietary models belonging to the entity that created or owns the model), the credit score offered by TransUnion to consumers is a generic score developed by TransUnion that, through a numerical explanation, allows the consumer to understand where in the credit active population their personal credit history is ranked. Under the FCRA, offering consumers access to credit scores is now required of consumer reporting agencies (“CRAs”). Furthermore, Section 609(f)(8) of the FCRA states that a CRA “may charge a fair and reasonable fee, as determined by the [FTC], for providing” consumers access to credit scores. Since it is clear from Congressional intent that a fee is appropriate and must be permitted in this circumstance, we applaud the FTC for issuing the Notice and TransUnion appreciates the opportunity to provide its comments.

## **In General**

TransUnion firmly believes that the existing market for credit scores offered to consumers has produced a variety of products that enable consumers to obtain a credit score, not only for a fair and reasonable fee, but also for free in certain circumstances. In particular, a consumer can obtain a file disclosure and credit score information from CRAs or from other types of companies (“non-CRAs”) for only a few dollars more than it would cost to obtain the file disclosure alone.<sup>1</sup> For example, TransUnion currently charges a maximum fee of \$5.95 (in addition to any applicable fee for the file disclosure) for a credit score.<sup>2</sup> Therefore, as a result of the free file disclosure requirement in the Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”), a consumer could obtain a file disclosure *and* a credit score once a year from TransUnion for only \$5.95.<sup>3</sup> This fee is well below the maximum amount of the range cited by the FTC in its Notice, which was between \$4 and \$8.

As the FTC is aware, there are several CRAs and non-CRAs competing to provide consumers with personal credit informational products, including a credit score product. For example, TransUnion competes with other nationwide consumer reporting agencies, as well as consumer services organizations (e.g., banks, retailers, personal financial consultants, resellers, score developers, etc.) to provide consumers with personal credit informational products, including credit score products and services. Some of these entities offer a credit score product without charge to their customers as part of the suite of value-added services provided by that entity to its customers. Clearly this competition has benefited consumers in the terms of product innovation, availability, and price. We believe that such a highly competitive marketplace, coupled with consumer demand, unequivocally establishes that the fees for credit scores are now *per se* “fair and reasonable”, and no further action is needed or warranted by the FTC.

## **Potential Approach #1: Establishment of a Mandatory Price**

In the Notice, the FTC describes several different approaches for determining a fair and reasonable fee for credit scores. One such approach “would be to establish a single mandatory price that [CRAs] must charge for a score disclosure.” We believe the FTC has properly noted the fatal drawbacks to this approach and we urge the FTC to reject it. There is a risk that the fee established by the FTC would be too high or too low depending on the circumstances. Given that the market has not produced a “uniform” pricing structure for credit scores, we do not believe it is possible to establish a uniform fee that is “just right.” This is evidenced by comments from many consumers already made to the FTC about this issue. That is, a “just

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<sup>1</sup> For obvious reasons, it is necessary for the consumer to obtain a file disclosure from a CRA (or have a non-CRA obtain the file disclosure on the consumer’s behalf) before a credit score can be calculated and be meaningful to the consumer.

<sup>2</sup> TransUnion periodically runs promotions where the score is offered free of charge or at a cost less than \$5.95, when bundled with other products.

<sup>3</sup> In the Notice, the FTC asks whether CRAs will choose to fulfill the statutory requirement through non-CRA subsidiaries. Depending on the request channel used by the consumer, TransUnion intends to fulfill its obligations directly or through the facilities operated by a non-CRA subsidiary.

right” fee is very individualized to each consumer and would be dependent on many factors, including the reason why the score was being requested. Simply, there is no “one size fits all” approach that will work in all circumstances. To place an obligation on the CRA to determine the “right price” for a particular consumer is simply unworkable.

As further support for rejection of a uniform mandatory fee approach it is very clear that establishing such a fee could have significant negative consequences for consumers. If the fixed price is too high, consumers will be asked to pay more than they would if competitive forces determined the price. A high fixed price will also work against the objective of encouraging consumers to learn about their credit scores. This would, in essence, work against a critical mandate by Congress to promote consumer financial literacy and education.<sup>4</sup> In other words, some consumers who are interested in learning more about their credit scores and would purchase a score at a competitive price would be discouraged from doing so by the imposition of a mandatory price. This premise is supported by the historical experience the consumer credit industry has had with respect to the reasonable mandatory fee for a credit file disclosure, to which consumer groups and Congress reacted by articulating the need for a free credit file disclosure to every consumer once every 12 months by each nationwide CRA.

We also note that establishing a mandatory price for CRAs would competitively disadvantage CRAs relative to other companies. Under such an approach, it can be anticipated that non-CRAs will offer credit scores developed by their organizations at a lower price than the mandatory fee established for CRAs. In this circumstance, CRAs may not be able to effectively compete with non-CRAs and the FTC will have implicitly supported this anti-competitive environment. Consumers again would be disadvantaged because they would have fewer score providers, fewer score products and services among which to choose, and would not be able to have access to the best score at the best price for their purposes. In addition, this circumstance could result in non-CRAs establishing a price that is lower than that mandated by the FTC for CRAs, but is higher than the price that would result from a fully competitive market, because much of the competition from CRAs would be eliminated.

Establishing a fixed price that is too low also creates significant negative consequences for consumers. In this regard, if the price is too low, CRAs, who understand their data better than any other organization, would have little or no incentive to invest additional resources to improve their offerings to consumers or to provide financial incentives to consumers to promote an educational understanding of credit scores. Furthermore, non-CRAs that may offer creative alternatives or combinations may be forced out of the market if they cannot match the artificially low price, resulting in reduced incentives for innovations by non-CRAs as well.

### **Potential Approach #2: Establishing a Price Cap**

The FTC correctly explains that another approach that it could take would be to establish a maximum fee for a credit score, or a price cap. We urge the FTC to reject this approach. Because of the effectiveness of the competition in this area, establishing a price cap is, at best, unnecessary. Moreover, the wrong price cap could have many of the same negative effects as

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<sup>4</sup> See §511 of the FACT Act.

establishing a mandatory fee and we believe, as noted above, that it simply is not possible to develop a price cap that is “just right.” Any cap, unless set so high as to be irrelevant, would discourage participation, investment, and innovation in the business of furnishing credit scores to consumers. Moreover, any price cap would be susceptible to being too high or too low, either at the time it is set or at some point thereafter. In view of the negative effects of a price cap that is too high or too low, establishing a price cap would appear difficult to justify, particularly in view of the efficiency with which the current marketplace is providing credit score disclosures at low cost to consumers.

We do not believe that the significant limitations of a price cap can be overcome through periodic adjustments such as changes based on the Consumer Price Index (“CPI”). Although the CPI can be a useful tool for measuring changes in certain types of *costs*, we are unaware of any evidence that the CPI would appropriately reflect cost changes associated with credit score disclosures. Moreover, any adjustments based purely on cost are unlikely to account for other significant variables that affect *price* such as innovation, legal requirements, quality of service, and other consumer benefits that will occur through the continued operation of the competitive marketplace. We also note that, despite the best efforts of the FTC, any approach which requires a rulemaking to modify prices simply cannot keep pace with the market forces that affect those prices.

### **Potential Approach #3: Reliance on the Competitive Market**

We strongly urge the FTC to use a market-based approach as its basis for determining a fair and reasonable fee for credit scores. As the FTC has stated in the Notice:

A market-based approach is attractive because a competitive market generally provides the most rational, responsive, and efficient form of pricing. Typically, the market is able to produce and account for relevant factors: prices, quality, service, costs, encouragement of investment, and promotion of competition. The government often sets cost-based fees in the public utility context, because regulators often have no competitive market to which they can refer. In the case of direct-to-consumer credit scores, however, there currently exists a market with many buyers and sellers on which the [FTC] might base a determination.

TransUnion strongly agrees with the FTC’s views on this point. We also note that benefits of the market-based approach are not just theoretical. These benefits are already being achieved through current market forces that are making valuable credit score disclosures available to consumers at low prices. Consumers are paying a very small fee to have reputable companies assess their credit history and provide a numerical summary of the consumer’s creditworthiness based on statistically valid criteria.

With respect to active price competition, the FTC has observed that there are several sellers of credit score products with a range of prices. Competition for credit score products is likely to intensify as a result of the centralized source for the free annual file disclosure and the media attention associated with this decisioning tool. In effect, the

centralized source will draw consumers to a place where the consumers will be able to evaluate the offers of at least the three nationwide CRAs in close proximity to one another. The centralized source's "one-stop shopping" mechanism for consumers will only heighten competition among credit score providers.

The FTC also inquires about whether the market is producing "appropriate pricing incentives." TransUnion believes the market is producing the appropriate pricing incentives. The market has forced sellers to ensure their prices are competitive with other sellers. Innovation in product design is also evident in the broader marketplace (including monitoring services, educational materials, and other credit-related products). We also note that score providers continue to refine and perfect their models with a focus on consumer understanding to make their score offerings the most appealing to consumers.

The FTC seeks comment on "an appropriate methodology for determining a fair and reasonable fee if it elected a market-based approach." The FTC is seeking to identify and implement an approach that:

- Will result in a fee that is fair to consumers;
- Will provide regulated entities with a sufficient level of certainty;
- Will encourage regulated entities to compete on price, quality, and service;
- Will encourage innovation and cost-cutting;
- Will avoid unduly interfering in the unregulated market for credit scores; and
- Does not involve a lengthy rate-making proceeding or reliance upon proprietary cost or revenue data.

We applaud the FTC for devising a reasonable list of consumer-oriented goals as part of the Notice. Indeed, the current marketplace meets each of those goals. Therefore, we believe the FTC should, to the greatest extent possible, leave in place the current market-based approach. One way to achieve this would be to adopt a rule that makes clear that the free market currently enables consumers to obtain credit scores for a fair and reasonable fee. The rule could also make clear that the FTC will continue to monitor developments in this area and, if the market fails to meet these objectives in the future, the FTC will amend the rule to take appropriate corrective action.

TransUnion urges the FTC to reject any effort to set a fee based on market dynamics or any other measure. Not only would the FTC's rate setting have the significant likelihood of distorting the market it is attempting to preserve, but determinations of weighted averages and the like would require a review of proprietary sales data and a lengthy rate-making proceeding. We also note that weighted averages of fees will make it difficult for CRAs to develop new products that may or may not be economically feasible to offer to consumers depending on how the range may vary over time. For example, a CRA may not pursue a potential product if the CRA is not confident that it will be able to offer it at a target price for a profit, either in the short- or long-term. This could stifle innovation of new and more sophisticated products that would be appealing to a significant number of consumers.

The FTC has expressed concern about concluding or assuming that there will continue to be a market for credit scores that results in fees being fair and reasonable. Although it is not possible to guarantee future market dynamics for any product or service, including direct-to-consumer credit scores, it certainly seems clear that current market forces are working appropriately and we are unaware of any current factor that would reverse that result. For example, we note that there are publicly traded companies that have significant strategies dedicated specifically to this space that have not been alleged to be nationwide CRAs (such as Fair Isaac and Intersections). It is doubtful that they would impact their business models and shareholder value by exiting this market unless the FTC, by its action in connection with the Notice, forced them to take that action. We also note that by acknowledging the current market realities and making a determination that credit scores offered in the marketplace are *per se* fair and reasonable, the FTC would not be abdicating its ability to come to a different conclusion if the facts warrant a different conclusion in the future.

### **Effective Date**

The Notice indicates the FTC would propose an effective date of 30 days after a final rule is issued. TransUnion believes it is premature to discuss an effective date until the FTC settles on an approach with respect to determining a fair and reasonable fee for credit scores. On one hand, if the FTC relies on the current marketplace, it is unlikely that significant lead time would be necessary for CRAs to comply. However, if the FTC takes an approach that will result in significant changes for CRAs in their programs, marketing, and business models, a 30-day time period would be far too short. Therefore, TransUnion declines to comment on this matter in greater detail until the FTC proposes a rule.

### **Enforcement of Current Requirements**

Beginning on December 1, 2004, CRAs were required to make credit scores available to consumers for a fair and reasonable fee as determined by the FTC. According to the Notice, the FTC's enforcement of the "fair and reasonable" requirement will be by reference to the existing market for credit scores. The FTC states that it "may question" any fee that significantly exceeds the current market rates for credit scores, which are currently in the range of \$4 to \$8. We believe the FTC has stated a reasonable approach with respect to its position in this matter for the short period of time before a final rule is issued.

### **Responses to Specific Questions in the Notice**

We believe that the comments provided above are responsive to many of the specific questions that the FTC poses in the Notice and must be considered in any final rule that is proposed with respect to this matter. However, we also believe certain questions call for specific responses or additional clarification:

### **FTC Question**

The Commission believes that the current market for direct-to-consumer scores is competitive and healthy—there appears to be price dispersion, innovation, and a variety of products and sellers. Is this an accurate characterization of the market? If so, why? If not, why? The Commission believes that one nationwide consumer reporting agency—TransUnion—sells stand-alone credit scores to consumers for \$4.95 in states that mandate free file disclosures. Three nationwide consumer reporting agencies sell stand-alone scores in California and Colorado for prices ranging from \$4.95 to \$8. Is this accurate? Are these the only circumstances under which consumers can obtain stand-alone credit scores? The Commission believes that most scores are sold as part of a package or are bundled with a consumer report and other information or services. Is this accurate? What is the range of prices for these products? By what method should the score component of a package or bundle of goods and services be valued?

### **TransUnion Response**

TransUnion does not sell “stand-alone” scores, directly or through its affiliates. Simply, we do not sell a consumer a credit score without also providing that consumer with a credit report (file disclosure)—either at no charge (e.g., a free annual disclosure through the central source request channel or due to an adverse action), or for a charge, as allowed by the applicable federal or state law. We believe that a score disclosure—any score disclosure—has little utility for a consumer without disclosure of the underlying credit information on which the score is based. The factors provided with the score provide a “road map” of sorts back to the credit report, guiding the consumer as to which behaviors or information (as reflected on the credit report) has adversely impacted that score. As noted above, our maximum charge to consumers for a score disclosure is currently \$5.95. If the consumer is entitled to receive a free file disclosure, that is the only fee that is collected from the consumer for these products. If the consumer is not entitled to a free file disclosure, the charge for the credit file disclosure and the score is generally the maximum permitted by law for the credit file plus up to \$5.95.

*The FTC also asks about the price of bundled products. TransUnion (through True Credit) currently offers a 3-bureau merged credit report, with a free score, for \$29.95, with the option to buy two additional scores for an additional \$9.95, and/or a debt analysis service for an additional \$5.95. TransUnion also offers a credit report, plus score, plus debt analysis for \$14.95. Caution must be exercised in any attempt to value the score component of a bundled product, to avoid the unintended result of stifling discounts; however, the total cost of a bundled product should not exceed the value of the components (e.g., \$9.95 for each bureau’s credit data, \$5.95 for the score, \$5.95 for debt analysis service, a fee for merging services, etc.).*

### **FTC Question**

It is the Commission’s understanding that many consumer reporting agencies do not currently provide scores directly to consumers, but do so through non-consumer reporting agency subsidiaries. Will consumer reporting agencies choose to fulfill the statutory requirement in FCRA Section 609 through non-consumer reporting agency subsidiaries?

**TransUnion Response**

TransUnion provides scores to consumers directly and through a non-consumer reporting agency subsidiary (“True Credit”).

**FTC Question**

Consumer reporting agencies can fulfill FCRA Section 609’s requirement by providing consumers with mortgage or educational scores. How will consumer reporting agencies choose to fulfill this requirement and what type of score are they most likely to provide to consumers? Why?

**TransUnion Response**

TransUnion discloses to consumers its proprietary TransRisk® score, modified to allow consumers to better understand the factors that materially adversely affect that score. Our TransRisk® score is used by various lenders in connection with credit decisions and, with respect to information contained within the TransUnion database, provides a better representation of a consumer’s credit standing than any other score currently available in the marketplace. We believe that positing a binary distinction between “educational” and “production” scores presents a false choice or impression to consumers. All production scores, like TransRisk®, are by their nature educational. That is, such scores present the credit standing of the consumer within the population to which that consumer is being compared. While any particular educational score may not actually be usable in a commercial application, it does not follow that any score actually used by a lender or insurer could not fulfill an educational purpose if disclosed with robust and consumer-friendly factors. That is the route TransUnion has pursued and will continue to pursue in connection with its obligations pursuant to FCRA Section 609.

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Thank you for providing this opportunity to comment on the Notice. If you have any questions with respect to this matter, please do not hesitate to contact the undersigned.

Sincerely,



John W. Blenke  
Executive Vice President & Corporate General Counsel