

July 16, 2004

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

RE: FACT Act Section 318(a)(2)(C) Study, Matter No. P044804

I. Introduction

Equifax Information Services LLC (Equifax) is a consumer reporting agency that furnishes consumer reports to its financial institution customers, other businesses that have a permissible purpose as defined in the Fair Credit Reporting Act (FCRA), and consumers. It is a subsidiary of Equifax Inc., a 105-year-old company and member of the Standard & Poor's (S&P) 500® Index, a global leader in turning information into intelligence, serving customers across a wide range of industries and markets, including financial services, retail, telecommunications, utilities, mortgage, brokerage, insurance, automotive, healthcare, direct marketing and transportation. Equifax Inc. is not a consumer reporting agency.

Equifax appreciates the opportunity to submit formal written comments in the above referenced matter. The Fair and Accurate Credit Transactions Act of 2003 (FACT Act) instructs the Federal Trade Commission (Commission) to conduct a study of ways to improve the operation of the Fair Credit Reporting Act (FCRA) by examining several areas. Included is a study of the effect of requiring that a consumer who has experienced an adverse action based on a credit report¹ receives a copy of the same credit report that a creditor relied on in taking the adverse action.

We appreciate the care the Commission has taken in developing the comprehensive and thorough questions raised in the request for comments. We believe they provide a full framework from which to appropriately evaluate the issues raised and the direction to the Commission in the FACT Act.

¹ We agree with the Commission that the only study this language appears to contemplate is one related to credit transactions and adverse action involving creditors.

For the reasons discussed below, we believe FCRA works effectively for the benefit of consumers and the credit economy of the United States. The consumer reporting industry works transparently—consumers may see information that pertains to them at any time and know their credit standing. They can dispute information they disagree with and add dispute statements if a reinvestigation does not satisfy their claims. Creditors make credit decisions based on current information. And credit reporting agencies work hard to assure the accuracy of the current information.

There is no consumer or economic benefit in requiring credit reporting agencies to maintain billions of additional records of reports previously issued when they have no relevance to future credit reports. There is only added cost.

We, therefore, urge the Commission to give the FACT Act time to work and allow the structure of the consumer reporting industry remain as it has been for its entire history.

II. Overview

We will address the specific questions in the request for comment below but first will provide some background information. The credit reporting industry² developed historically with a focus on furnishing information to creditors as it existed in a credit reporting agency's files at the time of the request. The records were updated and changed on a continuing basis and old reports were never considered relevant to or used for issuing a new credit report. Also, the cost of maintaining copies of old reports would have been prohibitive. Credit reporting agencies still follow this model of not maintaining copies of previously issued credit reports. Therefore, credit reporting agencies do not currently have the capability of furnishing reports that were previously furnished. Any requirement that credit reporting agencies disclose the same report previously furnished to a user would fundamentally change the way the industry and its systems operate and substantially increase its costs of providing credit reports.

A. Requiring credit reporting agencies to disclose reports previously furnished would require an historic change in the structure of the industry

Credit reporting agencies historically provided an information exchange among creditors. The credit reporting agencies (1) received information about consumers' credit performance from creditor members, (2) recorded the information in hard copy documents manually kept in a paper "file" on each consumer and (3) read information from the hard copies in the consumer's file over the telephone to members on inquiry. Since the report was oral, there was no "copy" of a report provided to creditors and no copy to provide to consumers. Accordingly, when FCRA was passed in 1970, it was consistent with the structure of the credit reporting industry and required credit reporting agencies to disclose to consumers on inquiry the "nature and substance" of the

² Because this request for comments relates to credit reports and creditors, we will use the term "credit reporting industry" and "credit reporting agency" to refer to that subset of consumer reporting agencies that furnish reports to creditors for credit purposes.

information in their files rather than a “copy” of either the information in the credit file or the credit file. If they had been required to provide a copy, credit reporting agencies would not have been able to comply because the photo copies were not available and oral reports were not recorded.

By the time FCRA was amended in 1996, Congress recognized that, over the years, credit reporting agencies had become automated and oral reports were no longer being furnished. Credit files in 1996 existed in a database and credit reporting agencies had been disclosing copies of the current information in their credit file to consumers for many years. Accordingly, FCRA was amended so that consumers are now entitled to a “copy” of “all of the information in the consumer’s file at the time of the request.”³ As in the original FCRA, the focus is on information in the file⁴ at the time of the request so that a consumer knows what could be reported about him or her has an opportunity to review it and can request a reinvestigation of any information the consumer questioned. There was never a focus in FCRA or industry practice on historical credit report information that may have been used to make credit decisions in the past.

Based on this statutory scheme and the history of the credit reporting industry in the United States, credit reporting agencies retain only current information about consumers in their active database. The credit reporting systems were not developed and credit reporting agencies never had the ability to disclose reports issued in the past.

B. Prior reports do not fit into the FCRA framework

Previously issued reports are not relevant to the purposes of FCRA. The Fair Credit Reporting Act provides for consumers getting disclosure of all information the credit reporting agency has about them, reviewing the information, disputing information they believe is inaccurate and having it changed, corrected or deleted, adding a consumer statement, and having revised reports based on current information sent to recipients of a prior credit report. This makes sense since that is the information that will form the basis of any future credit reports on the consumer. Historical credit reports will not be used for future reports and may have already been changed in the current credit file so disclosing, reinvestigating and changing prior credit reports makes no sense.

The 1996 amendments to FCRA, §609(a)(1), prevent credit reporting agencies from contractually prohibiting creditors from disclosing reports in connection with an adverse action. Also, factors other than just the credit report or credit score enter into the risk analysis used by creditors. The amount of the loan, the collateral, the income or debt to income ratio of the borrower may also play a role. Therefore disclosing just the credit report by a credit reporting agency does not provide the full picture and does not support the purposes of FCRA.

³ FCRA §609(a)(1)

⁴ FCRA §603(g) defines “file” as “all the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.”

C. Disclosing previously issued reports to consumer would not lead to any new consumer benefits at great cost to the industry

Consumers obtaining a previously issued report from the credit reporting agency, which does not know how or why credit decisions are made,⁵ would be confused and could be sidetracked from the purpose of the disclosure, which is to enable the consumer to review and question information in their credit file that could be reported in the future. Consumers are likely to challenged information in the old report. But it is no longer relevant to future credit decisions since creditors make credit decisions based on current credit reports not updated old reports.

In addition, the cost of providing credit reports to creditors would greatly increase. Equifax would have to develop a database of “reports provided.” Equifax currently provides creditors close to one billion credit reports per year. In addition, in the case of customers who wish to review the credit performance of their existing customers on an ongoing basis, called “account review,” we provide an even larger number of reports. Because of the new statute of limitations in FCRA as a result of the FACT Act, these prior, old reports could have to be stored for about 5 years, resulting in a database of multiples of 5 billion records, compared to the current database of approximately 210 million credit files. The cost of developing a system to retrieve these reports as well as the current file, reinvestigate disputed information, provide operators who can handle all the calls and make changes to the files and reports as needed would be passed on in higher report prices to creditors.

Also, creditors would have higher costs responding to reinvestigation requests from credit reporting agencies, particularly when the reinvestigation involves outdated information. They may not respond rather than investigate old information, resulting in the deletion of possibly accurate information—but from an old report that is no longer relevant. However, that likely would mean that the information would have to be deleted from the current file as well if it is still being reported. Since it may be accurate, the credit file would become less reliable. Or some creditors may stop reporting information to avoid the added costs of reinvestigation. Either result would be costly to consumers and the banking system.

The higher costs are also likely to reduce the number of reports purchased—which means credit decisions would be made based on other factors. Consumers have been well served by having credit decisions based on individual credit performance rather than other economic and geographic factors. Consumers and the economy have benefited from the growth of the credit reporting system and credit decisions based on objective factors and would be harmed if decisions were based on other factors, which would result if prices for credit reports were too high.

⁵ The 1996 amendments to FCRA also require that the adverse action notice by the creditor inform the consumer that the consumer reporting agency did not make the decision and cannot tell the consumer why the action was taken.

D. The FACT Act should be given time to work

The Fair and Accurate Credit Transactions Act also made some important changes in the operation of the credit reporting system that are more consumer focused. A study prior to full implementation of the FACT Act provided consumer benefits and requirements on consumer reporting agencies, users of consumer reports, and data furnishers would not take account of these changes and would be misleading. Therefore, we believe that disclosure by a credit reporting agency of the same credit report that a creditor received should not be required.

The following are answers to specific questions raised in the request for comment.

III. Specific Questions—A. Benefit to Consumers

1. *How does the credit report received by the creditor currently differ from the information that consumers receive from a consumer reporting agency when they request a copy of their credit report in response to an adverse action notice?*

The consumer receives some additional information that a creditor does not receive. A consumer gets prescreening and account review inquiries and consumer disclosure inquiries. A consumer sees account numbers that are sometimes truncated for creditors. Consumers get full social security numbers that may not be furnished to users. Consumers also receive information about the identities of the inquiring companies and the identities of the creditors for the accounts in their credit file and the contact information for them, all in plain language. The report issued to a creditor does not have this information. Also, under the FACT Act, the identity of medical information providers⁶ cannot be disclosed to creditors, but would be disclosed to consumers. Creditors also may get no credit report if not enough identifiers are entered whereas a consumer generally provides enough detailed information to match to a credit file and receive disclosure.

In other respects the report is the same except for differences that may result from timing. Account updates, inquiries, new accounts or public records may have been added to a credit file after a credit report was furnished to a creditor. The only information that may not be present in a subsequent report is information beyond the period prescribed in the obsolete information requirements of FCRA §605. However, a credit file would not typically change in any major respect because all the updates and changes mentioned above would be made in an automated manner. A credit file can only change significantly if a consumer intervenes through the consumer disclosure process and information is deleted, modified or reinserted as a result of a reinvestigation. For example, unless a consumer contacted the credit reporting agency or the credit reporting agency was notified by the data furnisher, or under the FACT Act the consumer reporting agency was notified of a fraud by a nationwide credit reporting agency, if a credit file contained information resulting from identity theft, the information would remain in the consumer's

⁶ Such identities may be present in collection accounts.

credit file and be disclosed to the consumer in his or her credit file disclosure from the credit reporting agency. In other words, the consumer typically gets the same information furnished in the credit report to the creditor plus the consumer receives the benefits of the updates and other changes to their credit file since the credit report was provided to the creditor.

a. What are the different types of consumer reports that are used by a creditor (e.g., credit score, “in file” credit report, merged credit report)? To what extent are credit scores, as opposed to “in file” or merged credit reports, relied on by creditors in making decisions regarding the extension of credit? To what extent do creditors rely on two or more types of consumer reports (e.g., a credit score, an “in file” credit report, and/or a merged credit report) in their decisions on whether to extend credit? Does the form in which the credit file information is revealed to creditors differ significantly among creditors? If so, how?

Equifax generally provides a complete credit report to its customers. Credit scores are included for those customers who wish to purchase one. Very few customers receive only scores and none in the traditional banking or credit card industry get score only reports. In the case of customers who receive an account review report, we provide the information they ask for based on pre-established criteria. They receive a notice regarding those customers whose credit standing changed according to the criteria rather than a complete report.

Merged reports are generally provided by mortgage credit reporting agencies, such as Equifax Mortgage Services (EMS), to mortgage lenders. The Equifax credit report would be one of the reports used to provide the merged report to mortgage lenders. Merged reports are not furnished by Equifax to its banking and credit card customers.

b. How frequently are multiple “in files” and/or multiple credit scores received in response to a request for information on a single individual? How are multiple “in files” and/or multiple credit scores treated by parties in their credit granting decisions?

Files are created in the Equifax database when identifying information related to a new account provided by a data furnisher does not match an existing file to a high enough degree of confidence to permit the information to be added to an existing credit file. When no match at the high confidence level is found, the account is placed in a new credit file and not added to an existing credit file. However, on occasion the new account does belong to an existing consumer credit file and would have been added to it but not enough consumer identification information for there to be a high confidence level that it pertained to the credit file was provided when the new account was reported. It can also be that the consumer identifiers provided were incorrect in some particular preventing the match and resulting inclusion in an existing credit file.

Multiple credit reports are furnished to users when the identifying information they provide in an inquiry matches more than one file. The two credit files on their face may not appear to be the same individual, but an inquiry may add new data that changes that judgment—that links the two credit files. As a result, they are both presented for the creditor to make a credit decision. It is also possible that the linkage with the inquiry is so strong that the credit report provided is just from the one, now combined, credit file.

When two credit reports are presented, both are scored. The creditor does not receive a combined score. However, it should be remembered that the creditor must tell the consumer, under the Equal Credit Opportunity Act (ECOA), why an adverse action was taken and can disclose the credit report to the consumer. If the secondary report played a role in the decision, it is not a secret. The secondary credit report is usually not an in-depth credit report and would likely contain only one account where a variation of the consumer's name was used, a typographical error occurred, no social security number was present or some other variable that prevented the match. In most cases the credit file actually pertains to the consumer inquired on. The incidence of multiple credit reports being returned is very small.

d. Are credit scores based on more information than that which appears in a file that is disclosed to consumers? For example, is information used that is blocked or suppressed from the consumer's file?

Credit scores are derived only from information that is in the credit file and all information in the credit file is disclosed to the consumer. Blocked or suppressed information, prescreen inquiries or consumer relation inquiries are not used to prepare a credit score but are disclosed to consumers. In addition, multiple inquiries in a short period of time, such as for a car loan, are used in the score only as one inquiry but all such inquiries are disclosed to consumers.

e. Do consumers ever receive multiple file disclosures in response to their request to see their credit file? If so, how often does this occur?

Consumers request file disclosures through a Voice Response Unit process. If an exact match is found the credit file disclosure is mailed to the consumer. If the system identifies multiple files no file disclosure is sent in order to assure that information is not sent to the wrong individual and to prevent identity theft. The consumer is requested to mail to Equifax additional indicia of identity such as a copy of a driver's license, a utility bill or other information to help confirm identity. When the additional information is received, it is processed manually by an Equifax associate who searches the database for the consumer's credit file using all the identifiers available. If multiple files are located, the associate reviews them to see if they can be combined. If so, the combined credit file is mailed to the consumer. If the multiple files cannot be combined, but they both appear to pertain to the consumer, the multiple credit files are both mailed to the consumer. Multiple files are disclosed to the consumer in rare circumstances. However, the consumer receives more information than the creditor if the same identifiers are used.

