

CARL LEVIN, MICHIGAN
DANIEL K. AKAKA, HAWAII
THOMAS R. CARPER, DELAWARE
MARK L. PRYOR, ARKANSAS
MARY L. LANDRIEU, LOUISIANA
CLAUDE MCCASKILL, MISSOURI
JON TESTER, MONTANA
ROLAND W. BURRIS, ILLINOIS
MICHAEL F. BENNET, COLORADO

SUSAN M. COLLINS, MAINE
TOM COBURN, OKLAHOMA
JOHN McCAIN, ARIZONA
GEORGE V. VOINOVICH, OHIO
JOHN ENSIGN, NEVADA
LINDSEY GRAHAM, SOUTH CAROLINA
ROBERT F. BENNETT, UTAH

MICHAEL L. ALEXANDER, STAFF DIRECTOR
BRANDON L. MILHORN, MINORITY STAFF DIRECTOR AND CHIEF COUNSEL

United States Senate
COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

December 7, 2009

The Honorable Jon Leibowitz
Chairman
Federal Trade Commission
Office of the Secretary
Room H-135 (Annex T)
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

**RE: Comments on Proposed Amendments to the Free Annual
File Disclosures Rule, also known as the Free Credit Report Rule**

Dear Chairman Leibowitz:

The purpose of this letter is to express support for the Federal Trade Commission's proposed amendments to the Free Annual File Disclosure Rule to implement Section 205 of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act), a section that I authored to prevent the deceptive marketing of free credit reports. My Permanent Subcommittee on Investigations has over the past few years exposed industry-wide credit card abuses. In 2007, my Subcommittee held hearings which brought before the Senate not only consumers victimized by unfair practices, but also the credit card CEOs who approved those practices. In many cases, the card issuers that engaged in these practices relied upon information in a credit report.

Credit reports are a record of an individual's history of receiving and repaying bills, loans, and lines of credit, and they frequently contain errors. At the same time, these credit reports are used to calculate the credit scores that have become so central to evaluating a person's creditworthiness. Credit scores are used to determine whether someone will qualify for a credit card, what interest rate they will get, and whether and when that rate will increase. Credit scores perform a similar function for home mortgages, car loans, and other consumer lines of credit. Some companies use these scores to screen applicants for apartments, insurance, security clearances, and even jobs. The important role a credit score plays in our everyday lives makes it all the more critical that the reports used to calculate these scores are accurate and accessible to consumers.

Until Congress passed the Fair and Accurate Credit Transactions ("FACT") Act of 2003, consumers had to pay a fee in order to access or attempt to correct the information in their credit reports. The FACT Act gave consumers the right to a free annual report from each of the three nationwide consumer reporting companies. The FTC mandated the establishment of a website, AnnualCreditReport.com, to provide consumers access to their federally mandated free credit

reports. In these difficult economic times, it is critical that consumers have a clear understanding of their right to get free annual credit reports, an easy way to obtain those reports, and the ability to correct any mistakes since mistakes in a credit report could cost someone a loan or a job.

Today, however, television, radio, and the Internet are awash in misleading advertisements for free credit reports. A cottage industry has sprung up of unscrupulous marketers who confuse or deceive consumers into buying products or services they may not need or want by tying the purchases to the offer of a so-called "free credit report." Many of these marketers deliberately obscure the difference between the free reports to which consumers have a right under federal law - which come with no strings attached - and the "free reports" that marketers condition on purchase of credit monitoring, credit scores, or other products.

Deceptive advertisements direct consumers to contact commercial sources unaffiliated with the government-authorized AnnualCreditReport.com. Consumers who request "free" credit reports from these sources often find they have unwittingly signed up for credit monitoring or other services they must pay for. Some of these offers include notice that they are not affiliated with the federally mandated free report, and that consumers who accept the offer will either have to pay for another product or cancel a "trial membership" within a short time to avoid being charged. These disclaimers, however, are often buried in fine print or appear in places where most consumers won't see them. They simply are not adequate to correct the overall impression that the offer is for the free, no-strings-attached credit report available under federal law. Deceptive advertisements using free credit reports as bait are particularly destructive, because they take advantage of a consumer's general knowledge that free credit reports are available under law, and subvert the law's intent to protect consumers.

The FTC has received hundreds of complaints from consumers who have been confused or deceived into paying for what they thought was their free report provided by law. The Better Business Bureau reports that just one prominent advertiser of free credit reports, FreeCreditReport.com, has been the subject of more than 10,000 complaints over the last 36 months. FreeCreditReport.com requires a potential customer to provide a credit card number in order to establish an account and request a credit report. Many consumers assume this information is necessary for the company to identify the correct credit file, because why else would you have to provide a valid credit card to receive a free report? In fact, in the small print it is revealed that customers that request a free credit report must also opt out of a credit monitoring service or else they will be charged \$15 a month, indefinitely.

A 2007 study by Robert Mayer and Tyler Barrick of the University of Utah for Consumer Reports WebWatch analyzed 24 websites that market free credit reports and scores and revealed them to be rife with deceptive practices. Many of the websites studied had the word "free" in the domain name; others had names similar to the FTC-mandated AnnualCreditReport.com, such as NationalCreditReport.com. Of the 58 sales pitches for credit reports or scores across the 24 websites analyzed, 41 pitches were for "free" reports or scores that in fact required purchase of a product or enrollment in a credit monitoring service. The study concluded that the "enticement of free credit reports and free credit scores is an integral part of marketing credit-related services." Interestingly, the study also revealed that of the 24 websites analyzed, nine were

owned by, or closely connected to, the nationwide credit bureau TransUnion; and eight were owned by or closely connected to the nationwide credit bureau Experian.

The Federal Trade Commission has sued companies engaged in such misleading practices, but the deceptive advertisements have not stopped. Since 2005, for example, Experian has paid the government more than \$1.2 million in settlements over deceptive marketing of ostensibly free credit reports through the website FreeCreditReport.com. And yet FreeCreditReport.com, through its seemingly ubiquitous advertisements, continues to deceptively peddle its product. At this very moment the Florida Attorney General's office has an active investigation into FreeCreditReport.com for "Failure to adequately disclose negative option enrollment in credit monitoring with 'Free' credit report, deceptive advertising, misleading domain name, and failure to honor cancellations."

Section 205 of the Credit CARD Act, which I, along with Senator Collins and Senator Menendez, sponsored, is intended shore up the consumer protection in the FACT Act by requiring simple, honest disclosures in advertisements for "free" credit reports. Mandatory disclosures will help ensure that consumers are given accurate information about how to obtain a free credit report with no strings attached. It is an effort to end the deceptive activities of companies that attempt to trick people into buying something that they are entitled by federal law to receive for free.

Today, deceptive marketing of "free" credit reports is big business. Ads appear on television, the internet, and other media. One of the leading advertisers of ostensibly free credit reports that are, in fact, linked to paid services, is Experian, which vigorously opposed the disclosure requirements in Section 205. Despite its best efforts to sugarcoat its marketing practices, Experian acknowledged to Subcommittee staff that if it were required in its advertising to inform potential customers of their legal right to get a no-strings attached free credit report, it would have a harder time selling a "free" credit report that also requires consumers to sign up for credit monitoring at \$15 per month.

Key Provisions of the Proposed Rule

The rule proposed by the FTC would implement Section 205 in a fair, comprehensive, and sensible way. It is crafted to apply only to credit reports tied to the purchase of a product or service. Credit reports which are provided without any strings attached would be unaffected by the rule. Second, the rule provides provisions tailored to the various types of media used to advertise free credit reports, including television, radio, and the Internet.

With respect to television and radio, the proposed rule draws from the longstanding "Pay Per Call Rule" to reduce consumer confusion through clear disclosures during the relevant advertisements. For television, the proposed rule would require all advertisements for "free credit reports" to include the following disclosure: "This is not the free credit report provided for by Federal law." This disclosure would have to be displayed for at least four seconds, be at least four percent of the vertical picture height, and be easily readable by consumers. Radio advertisements would require the same statement to be read in a comprehensible manner to listeners. The Pay Per Call Rule suggests that these disclosures will be sufficient to notify

consumers that the advertised reports are not the free credit reports to which they are entitled by federal law.

With respect to Internet advertisements, the proposed rule would not require the same type of disclosure to be included in each and every Internet advertisement referencing a “free credit report,” since Internet advertisements and search engines are typically designed to provide short entries with minimal wording. Instead, the rule would require that, after clicking on an Internet advertisement or entry advertising a “free credit report,” but prior to visiting the website actually offering the “free credit report,” consumers would have to be transported to an intermediate landing page. That landing page would contain a prominent visual disclosure, whose required features would be comparable to the requirements in the Pay Per Call Rule.

Essentially, the landing page would have to contain the statement: “This is not the free credit report provided for by Federal law. To get your free report, visit www.AnnualCreditReport.com or call 877-322-8228.” This statement would have to appear above and in twice the text size as the landing page’s link to the advertised website and would have to include a link to the government-sponsored website where the free credit report available under federal law can be obtained. The proposed rule would require the landing page to occupy the full screen and contain no other information, graphics, or material. This approach is not only sensitive to the nature of Internet advertising, it would provide clear and easy to understand information to consumers at the very time they are seeking to obtain the free credit report to which they are entitled under federal law.

In addition, the proposed rule seeks to remedy abuses that have reduced the usefulness of the government-sponsored website intended to provide consumers with ready access to the free credit reports available under federal law. Today, the government-sponsored website is replete with advertisements and marketing information that distract and confuse consumers and may even interfere with a consumer’s ability to access the free credit reports available under federal law. Accordingly, the proposed section 610.2 would restrict all advertising and marketing information on the website until after a consumer has obtained access to a free credit report. While some consumer advocates would continue to ban advertising and marketing even after that point, the proposed rule recognizes advertisers’ interests by allowing advertisements after the free credit report is provided.

The proposed rule would also ban from the government-sponsored website the inclusion of hyperlinks to commercial websites. Today, the government-sponsored website often contains hyperlinks which, if used by a consumer, take the consumer away from the government-sponsored website and may make it difficult for the consumer to return. The proposed restriction would prevent this common ploy to redirect consumers away from the government-sponsored website to a commercial webpage.

Finally, the proposed rule would prohibit including on the government-sponsored website requirements for consumers to agree to various terms and conditions. The law providing consumers with access to a free credit report does not condition that access on consumers meeting other criteria, and it is misleading to indicate otherwise. Requiring consumers to agree to lengthy or confusing terms and conditions may discourage them from requesting the free

credit reports to which they are entitled under law. The proposed rule properly carries out the intention of the law that consumers be given unfettered access to the free credit reports.

As the author of Section 205 of the CARD Act, I support the proposed rule which carries out the intent of the law. Thank you for the opportunity to comment on the proposed rule.

Sincerely,

Carl Levin
Chairman
Permanent Subcommittee on Investigations