



December 7, 2009

Donald S. Clark  
Federal Trade Commission  
Office of the Secretary  
Room H-135 (Annex T)  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

American Express Company  
General Counsel's Office  
200 Vesey Street  
New York, NY 10285

Attention: Free Annual File Disclosures, Rule No. R411005

**Re: Federal Trade Commission Free Annual File Disclosures, Rule No. R411005 –  
Proposed Rulemaking Implementing Section 205 of the Credit Card Accountability  
Responsibility and Disclosure Act of 2009**

Dear Mr. Clark:

This letter is submitted by American Express Travel Related Services Company, Inc. on behalf of itself and its affiliates (collectively, "American Express") in response to the proposed rulemaking of the Federal Trade Commission (the "Commission"), published in the *Federal Register* on October 15, 2009, to amend the Commission's Free Annual File Disclosures Rule, 16 C.F.R. Part 610, to implement Section 205 of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the "Act"). Section 205 of the Act requires the Commission to issue a rule designed to prevent the deceptive marketing of free credit reports.

American Express appreciates the opportunity to comment on the proposed rule and commends the Commission for its work in this area. American Express supports the goals of the Act and the proposed rule and believes that, on balance, they will address many of the concerns that have been expressed regarding the deceptive marketing of free credit reports. The proposed definition of "free credit report," however, may result in the application of the proposed rule to offers of certain products or services that are a benefit to consumers, the marketing and promotion of which clearly do not cause confusion for consumers attempting to obtain their free annual file disclosures. For that reason, we ask the Commission to consider clarifying that the rule does not apply to the offer or marketing of free credit reports as part of a package of products or services made available to consumers because they are being offered or have previously purchased the original product or service.

By way of background, as a service to American Express Cardmembers ("Cardmembers"), American Express offers a complimentary credit score and report once a year as part of a package of Cardmember services. American Express markets this complimentary service to current and prospective Cardmembers and provides it only to consumers who have an American Express card; the service is not otherwise tied to the purchase of any other product or service, including credit report or credit monitoring services. The free credit report offered by American Express is just one of the many services and benefits offered by American Express to Cardmembers (depending on what type of card they have), including, among others, protection for eligible purchases against accidental damage and theft, return protection for eligible items

when a merchant does not accept returns, roadside assistance, car rental loss and damage insurance, and insurance for lost, stolen or damaged carry-on and checked baggage.

The proposed rule sets forth advertising disclosure requirements for offers of a “free credit report,” defined as “a consumer report or file disclosure...that is, in any way, tied to the purchase of a product or service.” Proposed 16 C.F.R. § 610.4(a). These advertising disclosure requirements would cover “only ‘free credit report’ offers tied to the purchase of a product or service. The qualifier ‘tied to the purchase of a product or service’ makes clear that providers of truly free consumer reports – including the free file disclosures provided through the centralized source – need not comply with the advertising disclosure requirements of this section.” *Federal Register*, Vol. 74, at 52918.

The Commission noted in the *Federal Register* release of the proposed rule that consumer complaints it received “show that promotions selling products or services confuse and frustrate consumers attempting to obtain their free annual file disclosures. Indeed, consumers report feeling compelled to purchase these advertised products or services in order to obtain their free annual file disclosure.” *Id.* at 52917, n. 20. Thus, the very laudable goal of the advertising disclosure requirements stated in the proposed rule is to prevent marketers from deceiving consumers into paying for a “free” credit report or tying the offer of a free credit report to the purchase of other credit monitoring services and products. We note that the proposed rule’s disclosure requirements are designed to combat this problem, however, “without impeding the truthful advertising and marketing of products and services that consumers may choose to purchase.” *Id.* at 52917.

American Express believes the Commission should clarify that the free credit report service described above is not, “in any way, tied to the purchase of a product or service,” and the proposed rule’s marketing disclosure requirements do not therefore apply to such service. Requiring compliance with the proposed rule in this instance may result in confusion for consumers. Furthermore, the offering of this service does not cause consumers to pay for a free credit report, and the service is not marketed in a way that causes consumers to feel compelled to purchase any particular credit report or credit monitoring product or service in order to obtain the free annual file disclosure. The application of the proposed rule to offers of this service, therefore, would not serve any purpose of the proposed rule. Accordingly, American Express urges the Commission to clarify that the proposed rule does not apply to free credit reports marketed or offered in connection with products or services such as those described above.

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American Express thanks the Commission for its work on this proposal and the opportunity to comment on it. We would also welcome the opportunity to discuss our comments further with Commission staff. Toward that end, any staff member should feel free to contact me.

Sincerely,     A .

John M. Collins  
VP, Senior Counsel