Comment #5

EQUIFAX

Via Courier and Electronic Mail: AccuracyPilotStudy@ftc.gov

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

Re: Accuracy Pilot Study: Paperwork Comment

## I. INTRODUCTION AND OVERVIEW

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., which is not a consumer reporting agency.

We appreciate the opportunity to provide comments on the proposed accuracy pilot study ("Proposed Pilot").[1] Equifax has a critical interest in the accuracy and integrity of our credit database. Accurate and reliable information is fundamental to our success. We believe that it is a testament to the extent of accuracy and reliability in the U.S. credit reporting system that lenders are willing to risk their capital, in many instances, with only an application and a copy of a consumer's credit report. Former Commission Chairman Timothy Muris called the timely access to credit "a miracle [that]

[1] 69 Fed. Reg. 61675 (Oct. 20, 2004).

is only possible because of our [nation's] credit reporting system."[2] Long gone are the days when a loan required a face-to-face meeting with a lender and days-long decision making processes. In fact, companies are able to so finely tune risk that reliable credit decisions are often made in a matter of minutes.

We believe, as described below, that the Proposed Pilot will be an immense challenge, as will the actual accuracy study. Determining what is or is not accurate is not as easy as it would first appear. While seemingly a simple concept, application of the term "accuracy" in this context is complicated. It will take considerable effort on the part of the Commission and its contractors to produce a statistically valid study, which properly accounts for potential biases and misunderstandings that could improperly affect the result.

The *Federal Register* notice regarding the Proposed Pilot does not detail the methodology of the actual accuracy study, focusing instead on preliminary issues surrounding the use of consumer consultations as a means of identifying inaccuracies during the Proposed Pilot. In our view, however, it is important to consider the methodology of the actual accuracy study prior to conducting the Proposed Pilot because the methodology will impact the role consumers will play in the process and how much of the consumer's time will be required to accomplish that role.[3] Toward that end, it is

[2] Timothy J. Muris, "Protecting Consumers' Privacy: 2002 and Beyond," Remarks at the Privacy 2001 Conference (Cleveland, Ohio: Oct. 4, 2001).

[3] We recognize that the Commission has given attention to methodology issues surrounding the actual accuracy study, including the June 30, 2004 "Roundtable on Methodologies for Assessing Accuracy and Completeness of Credit Reports" hosted by the Commission's Bureau of Economics. (http://www.ftc.gov/be/workshops/methodologiesaacc/index.htm). Given the limited scope of information

important to properly establish the parameters of the study by recognizing what the credit file is and what the credit file is not and by defining what constitutes "accurate" data, which was not done in the *Federal Register* notice regarding the Proposed Pilot.[4] In addition, other parameters of the Proposed Pilot, including the role of the Commission's contractor and the role consumers will play, must also be carefully considered. Further, the manner in which credit scores will be utilized and other aspects of the proposal require additional consideration and clarification by the Commission.

## II. UNDERSTANDING THE CREDIT FILE

At the outset, we believe that it is important that the Proposed Pilot, as well as the actual accuracy study, be designed to reflect what the credit file does and does not include. We believe that the framework for the Proposed Pilot and the actual accuracy study, as well as the guidance given to consumers by the Commission's contractor, should reflect and convey the following:

- <u>A consumer's credit file is not the same thing as a consumer's personal financial statement</u>. A credit file is not a listing of every asset and liability the consumer has or has ever had. Rather, it reflects the manner in which the consumer utilizes credit, as reported by participating data furnishers of a particular consumer reporting agency

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provided in the *Federal Register* notice regarding the Commission's methodology, however, we believe it is important to comment on these issues even if it results in the duplication of earlier efforts.

[4] The Commission's *Federal Register* notice refers to "accuracy", but not "completeness," which is also a required element of the study mandated by § 319 of the Fair and Accurate Credit Transactions Act of 2003. We assume that the Commission intends for the study to address both accuracy and completeness issues. For purposes of convenience, in this comment we use "accuracy" to encompass both accuracy and completeness unless otherwise noted.

and select public record information (*e.g.* bankruptcy, liens and judgments) that the consumer reporting agency and creditors believe have value for a credit risk decision.

- The voluntary nature of the credit reporting system affects the contents of the file. The credit file primarily is a compilation of information reported to a consumer reporting agency on a ***voluntary basis*** by data furnishers. As a result, the information in a particular consumer reporting agency's file varies depending upon whether the data furnisher chooses to contribute credit information to that agency, as well as what information that furnisher elects to furnish. Congress is well aware of the benefits and drawbacks of the voluntary reporting system governed by the Fair Credit Reporting Act and a consumer's file should not be considered to be inaccurate because it lacks information from some collections agencies, credit grantors, or public record sources.

- Business decisions also affect the contents of the file. The content of a consumer file is also shaped by the reliable availability of certain types of data and business decisions made by the consumer reporting agency. Some consumer reporting agencies may report tenant history data, others may not. For example, the information may be fragmented, unreliable and generally not provide added value to the risk decision process. Similarly, in the case of public record information, a consumer reporting agency might reasonably decide that it will only obtain public record information that it believes its customers will find to be reliable for their use in making credit decisions. Similarly, where not prescribed by law, a consumer reporting agency may also exercise judgment regarding how long to report information. Consumer reporting agencies may decide, for example, the length of time for reporting positive information about a consumer's credit history, such as on-time payment history.

- Credit files, while regularly updated, do not provide an "up to the minute" snapshot of the consumer's credit standing. As discussed in detail below, the credit file represents the consumer's credit history over time. There can be a lag time of up to 30 days or more between when a consumer engages in a transaction (*e.g.*, opening or closing an account, making a payment, or incurring new charges) and the date upon which the furnisher supplies updated information to the consumer reporting agency for inclusion in the consumer's file.

## III. DEFINING "ACCURACY" (AND INACCURACY) IS CENTRAL TO THE STUDY

In the abstract, accuracy is a straightforward concept. Data is either accurate, or it is not accurate. In reality, however, determining the accuracy of information in a credit file is complicated, as the Federal Reserve Board's Division of Research and Statistics noted in its recent study of credit report accuracy.[5] How the Commission defines

[5] Federal Reserve Board Division of Research and Statistics, "Credit Report Accuracy and Access to Credit," Federal Reserve Bulletin (Summer 2004) 297 (available online at http://www.federalreserve.gov/pubs/bulletin/2004/summer04_credit.pdf). The Federal Reserve report examines the challenges of assessing the "accuracy" of credit files, including issues related to failures by some furnishers to supply complete and up-to-date account information and particular issues surrounding collection agency accounts, public records, and creditor inquiries. *Id.* at pp. 304-307.

accuracy will have a critical impact on the conduct of the Proposed Pilot as well as the findings of the actual accuracy study.

The definition of accuracy is important for the Proposed Pilot because it will frame the expectations of participating consumers and also shape the nature of any disputes the consumer elects to file. The definition of accuracy that is used will also have a significant bearing on the extent to which the contractor will have to educate consumers during the report-review portion of the Proposed Pilot.

Accuracy, for purposes of this study, should focus on information that is incorrect regarding reported accounts or file information reported to a particular consumer reporting agency; excluding differences that arise due to timing issues. Information in a file should be considered inaccurate, for example, if there is an error on the part of the data furnisher or an error or omission on the part of the consumer reporting agency, such as incorrectly reporting the amount of a debt or failing to include available information about a debt reported in the consumer's file.

Factors that we believe the Commission should be mindful of in formulating its definition of accuracy include:

- Only reported accounts should be factored into accuracy determinations. A credit file is not inaccurate because every credit account that the consumer has—or has ever had—is not included in the credit file.

- As noted above, the consumer reporting system is based on voluntary reporting by data furnishers and business decisions by the consumer reporting agencies regarding what types of public record and other information is of use and benefit to their customers. Some of the consumer's creditors may not report to consumer reporting agencies at all. Other creditors may report only to select consumer reporting agencies. Yet others may report to a consumer reporting agency, but may only do so by selectively reporting accounts with a poor performance history or certain classes of account.

- In addition, consumer reporting agencies may elect not to accept or report information from creditors, debt collectors or others because the consumer reporting agency does not believe that the data furnisher is a reliable supplier of accurate data or because the consumer reporting agency does not believe its customers would find the data reliable for decision making. Similarly, as noted above, a consumer reporting agency may only report certain public record information. Such content issues are not inaccuracies.

- <u>Differences between credit files maintained by different consumer reporting agencies do not represent inaccuracies</u>. It is not correct to contend that an error has occurred because credit reports on the same consumer from the three national credit reporting companies do not contain exactly the same data. These are simply differences, not errors or inaccuracies. Many differences are accounted for by the fact that, as noted previously, not all lenders report to all three companies. For this reason, some credit reports may not contain certain information on certain credit accounts; however, it is incorrect to conclude that the report itself is "inaccurate." In addition, even if a lender does report information to multiple consumer reporting agencies, the lender may do so on different dates, or the consumer reporting agencies may load the data into their systems on different dates, both of which may produce variations in the information reported in the credit files on any given date. These variations, however, are not inaccuracies.

- <u>Timing Issues</u>. As noted above, there is an inherent lag between the date in which a consumer engages in a transaction with a creditor and the date on which that activity is reflected in the individuals credit file (assuming the creditor reports it). This lag time can be up to 30 days or more from the date the consumer engaged in the transaction. This has important implications for the framing of any accuracy study. Such time lags can mean that a file indicates a balance due, even though the consumer may have paid the debt off in the interim; or conversely, indicate no debt because the consumer incurred charges after the furnisher's most recent reporting date.

Consumers participating in the Proposed Pilot are likely to have engaged in recent credit transactions and, unless they understand how the credit reporting system works, may mistakenly believe that the credit report is inaccurate. This lag time is also important for the Proposed Pilot because consumers may not remember what their account balance was last month or two months ago, only recalling the most recent bill they paid. As a result, consumers may need to consult account statements for prior months.

We also note that the terminology used by consumer reporting agencies relating to timing issues and file updating can vary. An agency may use "date reported" to mean the billing period for which the furnisher has supplied the data to the agency, rather than the date on which the furnisher supplied the data to the agency. Another agency could handle certain information differently.

**Measuring the impact of inaccuracies**

The *Federal Register* notice for the Proposed Pilot does not explicitly state that the Commission intends to take the materiality of an error into account in its accuracy study. The fact that the Commission is considering the use of "before" and "after" credit scores to determine the extent to which any identified errors produce credit score changes suggests, however, that the Commission intends to attempt to quantify not only the number or type of inaccuracies, but also the "materiality" of those inaccuracies. While we have some concerns about the proper use of scores as a proxy for materiality (discussed separately, below), we believe that the Commission is correct to recognize that not all inaccuracies have an equal impact on consumers.

## IV. ESTABLISHING THE OTHER PARAMETERS OF THE STUDY IS ALSO IMPORTANT

The *Federal Register* notice regarding the Proposed Pilot raises some additional issues regarding the parameters of the Proposed Pilot that the Commission should carefully consider.

- The role of the contractor. The *Federal Register* notice provides little detail regarding procedures or conduct parameters which will be required of the contractor facilitating the consumers' file review. It is important that such constraints be carefully considered, as the contractor will be in a position to significantly influence what is identified by the consumer as "inaccurate," thereby having a critical impact on the outcome of the study. We believe that it is essential that the contractor operate in accordance with pre-established criteria which properly define what constitutes accuracy, as discussed above, and which protect against improperly influencing the outcome (either intentionally or inadvertently) of the study.

- Limitations on a consumer-only focused study. Consumers, undoubtedly, can be an excellent source of information regarding their own credit history. Reliance on consumers alone for an accuracy study, however, has potential limitations, as the Commission noted in its recent report to Congress.[6] We draw the Commission's attention to the following issues:

[6] Federal Trade Commission, "Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003" (December 2004) at pp. 34-35.

- It is possible that some consumers may be more inclined to dispute inaccurate negative information, while not objecting to positive information that is inaccurate. Likewise, consumers may not indicate that negative information is missing from their file. These problems may be difficult to resolve without significant data furnisher participation.

- Care should be taken in the selection of the sample for the Proposed Pilot as well as the actual accuracy study to ensure that it constitutes an unbiased, statistically-valid national sample.
    - We are concerned that the Commission may artificially skew participation towards individuals with "relatively lower credit scores."[7]
    - We are concerned that consumers willing to participate may be unrepresentative of consumers as a whole because they may be either particularly credit savvy or unsophisticated. Similarly, individuals that agree to participate may be particularly disposed toward disputing the contents of their files.
    - We also are concerned that only 35 consumers may not be a sufficient number of participants for the Commission to properly validate its methodology.

- Some consumers may be inclined to dispute trade lines that are less favorable to them as a result of timing issues (*e.g.*, the report is inaccurate because the

[7] 69 Fed. Reg. 61676 (Oct. 20, 2004).

account was paid-off last week), than they would be to dispute an account where the balance is too low (*e.g.*, the report is inaccurate because the trade line shows a zero balance, but a new one thousand dollar charge was made last week). This problem can be ameliorated by recognizing the importance of timing issues (as discussed above) and excluding timing issues (whether to the consumer's perceived benefit or detriment) from what is considered to be inaccurate.

 - Will consumers have additional interactions with the contractor after the results of the reinvestigation process are returned? In addition, how will the study account for situations where the data furnisher re-confirms the accuracy of disputed information, but the consumer continues to dispute the accuracy of the information?

- <u>Known victims of ongoing identity theft should be excluded from sample</u>. In evaluating consumers for participation in the study, the Commission should exclude known victims of identity theft with ongoing identity theft problems from the sample (and establish procedures to assist any individuals that learn that they are identity theft victims in the course of their participation in the Proposed Pilot or the actual accuracy study). Identity theft problems are not always easy to resolve quickly and participation of identity theft victims could unduly skew the results of the study. File problems that result from identity theft are unique in that they are not the result of reporting errors on the part of consumer reporting agencies or data furnishers, but rather occur as a result of the criminal victimization of the consumers, creditors, and consumer reporting agencies.

- How do the Proposed Pilot and its participants fit into the Commission's ongoing accuracy study obligations? The *Federal Register* notice provides little explanation of how the Commission plans to undertake the multi-year accuracy reporting required by § 319 of the FACT Act. Will consumer-focused surveys, of the sort outlined for the Proposed Pilot, be the only means of accessing accuracy for purposes of § 319?[8] As the Commission noted in its report to Congress earlier this month, consumer-focused studies are only one way to attempt to assess the accuracy of credit files and there are benefits to other approaches.[9] The Commission should clarify its intentions regarding the use of survey methods in addition to the consumer-focused approach to assess the accuracy of credit reports. The Commission should give particular consideration to assessing accuracy as it relates to the use of credit reports by end-users for purposes of extending credit and managing their credit portfolios (*e.g.*, whether credit reports are accurate for their intended purpose, permitting creditors to manage their risk).

[8] Also, does the Commission intend to conduct one longitudinal study focusing on the same set of consumers (once the initial sample is set) or to seek new consumers for each iteration of the study? Use of only one set of consumers may affect consumer participation (11 years, after all, is a long time); it may also impact the outcome of the study.

[9] Federal Trade Commission, "Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003" (December 2004) at pp.22-30.

## V. RELIANCE ON CREDIT SCORES IN THE PROPOSED PILOT AND THE STUDY REQUIRES ADDITIONAL CONSIDERATION AND CLARIFICATION

As previously noted, the *Federal Register* notice suggests that scoring will be used as a proxy for determining the "materiality" of any "inaccuracies" in the consumer's file. We support the scoring component's implicit recognition that not all "inaccuracies" impact consumers or the decision making process to the same extent, if at all. The *Federal Register* notice provides only limited detail regarding the use of credit scores in the Proposed Pilot, making detailed comment difficult. We, therefore, submit several broad observations for the Commission's consideration:[10]

- Number and timing of the score requests. The *Federal Register* notice in unclear at what point the initial "baseline score" will be obtained. The notice indicates that scores will be used as a factor in determining which consumers to invite to participate in the Proposed Pilot and again after the dispute resolution process has been completed.
    - To establish a proper baseline, however, a score should be pulled at the time the file is requested for the consumer's review. As such, it may be necessary to obtain three scores: One to determine whether to invite the consumer to participate; one with the initial file disclosure; and one at the

[10] In addition, we refer the Commission to the Federal Reserve Board's Report, which discusses the methodological issues that the Federal Reserve's researchers had to address as part of their effort to use credit score changes as a basis for assessing the impact of inaccurate or incomplete credit report data. Federal Reserve Board Division of Research and Statistics, "Credit Report Accuracy and Access to Credit," Federal Reserve Bulletin (Summer 2004) 297, 303-304 & 307-317 (available online at http://www.federalreserve.gov/pubs/bulletin/2004/summer04_credit.pdf).

time of follow-up to assess the potential impact of any corrections to the file.

- Given that the Proposed Pilot will not be made up of a statistically valid sample, and further given the fact that the Commission pledges in the *Federal Register* notice that the Proposed Pilot will not be used to make statistical generalizations about the accuracy of credit files, we strongly believe that neither the scores nor the differential between scores from the Proposed Pilot should be published.

- <u>The dynamic nature of the credit file may undermine the reliable use of scores to determine materiality of identified inaccuracies</u>. The longer the length of time between when the initial baseline score is generated and when the "follow-up" score is generated, the greater the potential that changes to the file wholly unrelated to any identified inaccuracies will result in changes to the consumer's score. Ideally, if live scores are used, the study will be conducted in such as way as to minimize this problem to the greatest extent practicable.

If, on the other hand, a score simulator is used to determine the extent of score change, the impact of the dynamic nature of the file is reduced. In such a case, however, it would be particularly important to structure the study to exclude disputes based on timing issues for recent activity. If such recent activity is not excluded from the scope of the study, use of a score simulator potentially would allow consumers to artificially boost their scores (magnifying the materiality of errors) by disputing "unfavorable" line items while not identifying additional recent activity (*e.g.*, new charges or recently missed payments) which could adversely affect the score, thereby distorting the net score change.

- Credit scores obtained from each of the three nationwide consumer reporting agencies cannot be compared to one another for purposes of analysis. The algorithm for each consumer reporting agency's score is different; as a result, comparisons across scores are not necessarily helpful. Any analysis of scores should be based upon the use of the same score for both the baseline and post-dispute assessments.

- Evaluating score changes without reference to lender policies will limit the accuracy of the results. The risk tolerance of lenders varies widely. As a result, excluding wild swings of hundreds of points, a credit score swing of "x" number of points could result in little or no impact on the consumer when applying with a risk-tolerant lender, while that same score change could have significant implications for an application to another, more risk averse lender. This makes a meaningful determination of what impact a score change may have on a consumer difficult to assess.

- How will the study handle consumers with files that are too "thin" to score? The limited methodology detailed in the *Federal Register* notice for the Proposed Pilot suggests that consumers that do not have sufficient information in their credit files to generate a credit score will be excluded from the study, as scores will be used to select consumers for the study in the first instance. Is this the Commission's intention? If so, the Commission should consider whether this exclusion would adversely affect the representative nature of the sample and, if so, what steps can be taken to compensate for this outcome.

## VI. ADDITIONAL POINTS OF CLARIFICATION

In addition to the foregoing, there were two more discrete issues raised by the terminology in the *Federal Register* notice, which we believe would benefit from clarification by the Commission.

First, the *Federal Register* notice mentions the possibility that the study contractor may attempt to resolve perceived inaccuracies through "informal contacts" with the consumer reporting agencies. What is meant by "informal contacts" with the consumer reporting agencies? How does the Commission envision these informal contacts varying from the formal dispute resolution process? The Commission's recent report to Congress suggests that "informal contacts" will be contacts directly with the data furnisher[11]; the *Federal Register* notice regarding the Proposed Pilot is silent on this point, however.

Second, we note that the Federal Register notice refers at some points to "potential inaccuracies" rather than "inaccuracies." What does the Commission mean by

[11] Federal Trade Commission, "Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003" (December 2004) at p. 35.

the term “potential inaccuracies”? Is this meant to include items which the consumer believes may be incorrect, but is not quite sure? Clarification of this point should be provided.

## VII. CONCLUSION

Equifax appreciates the opportunity to provide comments to the Commission on this important matter. We hope that before preceding with the Proposed Pilot the Commission carefully establishes the parameters of the study by recognizing what the credit file is and what the credit file is not; by defining what constitutes “accurate” data; by defining the role of the Commission’s contractor and the role consumers will play; and further considering and clarifying the manner in which credit scores will be utilized in the Proposed Pilot, as well as the actual accuracy study.

Sincerely yours,

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