

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.

f. *What factors account for the differences in the consumer report that is relied on by a creditor versus the credit report that is seen by a consumer who requests a credit report after receiving an adverse action notice? In particular, are there differences due to (i) differences in the time at which the credit report is requested, (ii) differences in the format in which a credit report is presented to a consumer versus a creditor, or (iii) differences in the identifying information that is used to request a credit report? Are there differences due to the matching technologies used to respond to requests for information by the consumer versus the user of a consumer report? If the same identifying information was used by the creditor and the consumer to request a credit file and if the requests were placed at the same time, could the creditor receive multiple “in files” while the consumer only receives one file? Are there differences due to other factors? If so, what are these factors and why do they result in different credit reports being relied on by the creditor versus the consumer? Please describe in detail the source of any differences.*

Substantive differences occur because consumers get more information in their disclosure file than creditors receive in their credit report as discussed above. Otherwise, there are no major differences in the credit report the creditor gets and the credit file disclosure the consumer receives. The differences are primarily ones of timing. Credit files are updated on a regular, ongoing basis and information is added or deleted between the time a creditor receives a report and when a consumer subsequently receives a disclosure. The matching technology used to retrieve a report for creditors and consumers is the same. If the identifiers entered are the same, the same credit file information is located for the credit report and for consumer disclosure.

g. *What information do consumer reporting agencies require consumers to provide to obtain a copy of their credit report? What information do consumer reporting agencies require creditors to provide to obtain information on an individual? To the extent that there are differences in the credit report seen by the creditor versus the consumer due to differences in identifying information, are these differences due to (i) differences in the amount of information that is required (e.g., a creditor is not required to provide the middle name of the individual, but the consumer is required to provide a middle name), (ii) differences in the completeness of the information (e.g., the consumer reports his name as John Doe, Jr., but the creditor reports only John Doe), (iii) typographical errors (e.g., social security number or name is typed in incorrectly by the creditor), or (iv) something else? Please describe in detail the source of any differences, as well as the extent to which they occur.*

Both consumers and creditors are requested to provide full consumer identification to identify the credit file to be used for consumer disclosure and the credit report. Differences in the information a creditor and a consumer receive are not due to differences in data input. However, there are differences in the format and the information (as discussed above) that a consumer receives in a file disclosure from that a creditor receives in a credit report. There are differences when different identifiers are

entered. However, there is no requirement for consumers to provide more identifiers than creditors, except under the circumstances discussed in answer to question 1e above.

2. What current problems exist when the consumer receives a report that is different in form or content from the report relied on by the creditor? Please provide examples of specific situations in which consumers would benefit from the proposed requirement that a consumer who has experienced an adverse action based on a credit report receives a copy of the same credit report that the creditor relied on in taking the adverse action.

We are not aware of any problems when a consumer receives a disclosure of their current credit file from a credit reporting agency as opposed to the credit report a creditor received at some time in the past. The Fair Credit Reporting Act sets out a process for dispute resolution that contemplates a consumer receiving the current information from the credit reporting agency—disclosure, reinvestigation, resolution, sending modified reports to prior recipients or adding dispute statements. If a credit reporting agency disclosed a report that a creditor received at some time in the past, none of the processes provided for in FCRA would make any sense. There is no reason to reinvestigate information that may no longer be in the file, it would not make sense to change information in an old report that may have already been changed in the current file, and sending an old report to prior recipients that may have corrected information or a dispute statement but does not contain any other current information would not help the consumer obtain credit.

Also, ECOA requires that creditors provide to consumers the reasons for credit denial upon the consumer's request so that consumers know why the action was taken. Finally, the 1996 amendments to FCRA, §607(c), prohibits credit reporting agencies from contractually prohibiting users from disclosing the actual credit report they received to the consumer who is the subject of adverse action. Accordingly, all the mechanisms currently in place under the FCRA assure that consumers know why they are the subject of adverse action - all without the fundamental change to the credit reporting system and industry that the "same report" procedure would require.

b. Would the proposed requirement increase the ability of consumers to identify errors in their credit reports? If so, how?

As discussed above, consumers would not have any greater ability to identify errors in their reports if they saw a credit report issued previously as opposed to their seeing the current credit file information. Consumer file disclosures contain current information and reflect file updates that can be reinvestigated if disputed. The disclosure and reinvestigation procedures contained in FCRA work best when applied to current file information not old credit reports.

c. Would the proposed requirement aid consumers who seek to have the adverse action decision reversed because of inaccuracies or incomplete information in the credit report relied on by the creditor?

For the reasons discussed above, it is unlikely that creditors would reverse adverse action decisions based on an old report that had information changed. They are more likely to rely on a current report with all accounts updated including the reinvestigation results of the disputed information. Current FCRA procedures call for revised credit reports based on the results of a consumer requested reinvestigation to be sent to prior recipients of consumer reports upon the request of the consumer. The current report contains current balances, accounts, payment histories and public records which a creditor would want to see before granting credit. We do not see any benefit in a credit reporting agency disclosing to consumers credit reports that were previously furnished to creditors rather than the current file disclosure. We do not believe consumers would be assisted in obtaining credit based on old credit reports.

d. Would the proposed requirement aid consumers who seek to obtain credit from other parties following an adverse action?

We believe only the disclosure and review of the current credit file would aid a consumer in obtaining credit from other parties. We do not believe creditors rely on outdated information in making credit decisions.

e. Would the proposed requirement increase the ability of consumers to identify identity theft and/or remove fraudulent information from their credit report? If so, how?

We believe the most effective way to identify identity theft victims is by examining a current file. Reviewing an old report may help identify whether a consumer was a fraud victim in the past, but the same information would almost always also be in the current file disclosed to the consumer. If it is not, the consumer is no longer an identity theft victim as far as the credit file is concerned, but that rarely occurs without the consumer's intervention. Reviewing the old report does not help in the process.

In fact, reviewing the report that the creditor used may prevent the recognition of identity theft. If the consumer is the victim of identity theft, the current file may have additional fraudulent accounts and inquiries that the consumer would need to dispute since the credit reporting agency would not know that they are fraudulent without some consumer intervention. In fact, if the report relied on by the creditor and disputed by the consumer has only one incorrect account, the consumer and the credit reporting agency may not recognize that it is the beginning of an identity takeover scheme. The current file may have additional fraudulent activity and the credit reporting agency and consumer would recognize that identity theft is taking place and take appropriate steps to rectify it, including notices to the creditor for the account as required by the FACT Act. The credit reporting agency would also provide the consumer with the summary of their rights as a

victim of identity theft, and upon receipt of an identity theft report block fraudulent information in the credit file, and place the appropriate fraud alert on the consumer's credit file. If the credit reporting agency working with the consumer fraud victim was a "nationwide consumer reporting agency" the fraud alert request and blocked information would be referred to the other "nationwide consumer reporting agencies" for handling of their credit file for the consumer. But all that works with the current file, not a previously issued report.

f. Is the proposed requirement, in and of itself, sufficient to generate the benefits noted above, or are other requirements also necessary (e.g., credit report must be provided by a certain party at a certain time in the credit granting decision process) in order for the benefits to be generated? If so, what additional requirements are necessary?

As discussed above, we see no consumer benefit in requiring the disclosure of a previously issued credit report and therefore do not believe any additional requirements are necessary. The Fair Credit Reporting Act works as currently in operation to the benefit of consumers and creditors.

3. What information would consumers gain if they receive the same credit report that the creditor relied on in taking the adverse action?

a. Is there any information that appears in the report that the creditor relied on that is not currently reported to consumers, that, if corrected or deleted, would improve the consumer's ability to obtain credit?

b. Is there any information that appears in the report that the creditor relied on that is not currently reported to consumers that would enable the consumer to detect if he/she is a victim of identity theft, or if he/she continues to be a victim of identity theft?

c. Is there information that appears in the report that the creditor relied on that is not currently reported to consumers that generates benefits other than those noted above? If so, what additional information generates the benefits and what are the benefits?

As discussed throughout this comment, creditors receive less information from a credit reporting agency in a credit report than the consumer received directly from the credit reporting agency through the file disclosure. Consumers have the right under ECOA to be told by the creditor the reasons for adverse action and creditors are not prohibited from disclosing the report to consumers under the 1996 amendments to FCRA. If information that is the result of identity theft is not currently being furnished to the credit reporting agency, or is not in the current file, this change would be the result of an extraordinary intervention such as a consumer dispute or notice from the account creditor that it was a fraudulent account and not the routine merging or updating of information into the file. Therefore, fraud or identity theft information that was in the credit report is likely to still be in the current file making disclosure of the old credit report pointless. We can think of no benefit that disclosing of an old credit report would bring to consumers,

but rather believe it can only lead to confusion and wasted resources and delays as old information is reinvestigated that may not be relevant to the current file.

4. Are there situations in which the consumer already has an opportunity to see a copy of the credit report that the creditor is relying on prior to the creditor taking an adverse action? In particular, what is the extent to which this situation occurs in the mortgage industry?

Consumers receive a copy of their report under FCRA before they are denied employment and have an opportunity to get a copy of their mortgage credit reports from mortgage lenders, and many do so. Our experience has been that this does not help consumers. Consumers that have received a copy of their employment report from their prospective employer are given a special fax number to use to request disclosure of their credit file from Equifax. Equifax then discloses the current file. Any disputes made by the consumer relate to the consumer disclosure copy not the copy provided by the employer. The disclosure copy includes a toll-free telephone number for the consumer to use in order to speak with an operator. The report received by the consumer from the employer or the mortgage lender does not contain that telephone number.

If the consumer has received a copy of his or her report from a creditor or was told what is in the report received by the creditor and disputes information in the report to Equifax, or the consumer includes a copy of the credit report he or she received from the creditor with the disputed information identified, Equifax will pull a current copy of the consumer's file to see if the disputed information is on the current file. If it is, then a normal reinvestigation takes place. If the disputed information is not on the current file, the consumer is sent a letter stating that the disputed information is no longer in the current file. Accordingly, there is no advantage to the consumer getting a copy of the report relied on by a creditor.

5. Are there situations in which the consumer already receives a copy of the credit report that the creditor relied on in taking the adverse action, after the action is taken? In particular, what is the extent to which this situation occurs in the mortgage industry?

Consumers have an opportunity to see the report the creditor is relying on by asking the creditor for it, since creditors are not prohibited from disclosing the file under the 1996 amendments to FCRA. They also have an opportunity to be told what in the report resulted in adverse action under ECOA.

Consumers often contact EMS, a mortgage reporting credit reporting agency, after they have received a copy of their mortgage report from a mortgage lender. Their mortgage report is a merged report containing information from the files of Equifax, Experian and Trans Union. EMS handles the consumer dispute by contacting the creditor or other source of the disputed information. EMS then modifies or doesn't modify its mortgage report based on the results of its reinvestigation. We believe other companies in the mortgage reporting industry operate the same way. Whether the consumer has received a copy of the actual report from the mortgage lender or asks for a disclosure from EMS does not change the process since EMS would disclose its actual merged mortgage report to the consumer in any event.

IV. Specific Questions—B. The Cost of Implementing the Proposed Requirements

1. What are the various means by which the proposed requirement that a consumer who has experienced an adverse action based on a credit report receives a copy of the same credit report that the creditor relied on in taking the adverse action could be implemented? What would be the costs associated with implementing the proposed requirement via these various means? Which party (creditor versus the consumer reporting agency) can provide the same report that the creditor relied on in taking the adverse action to consumers at least cost?

As discussed throughout this comment, credit reporting agencies are not in a position to disclose credit reports that were previously issued that resulted in adverse actions. They do not retain copies that are readily available for subsequent disclosure. The credit reporting industry and the credit reporting systems were not established with a need or a capability to furnish credit reports previously issued. The FCRA as originally enacted in 1970 contemplated the disclosure of current files to consumers not previously issued reports. The FCRA mechanisms work with a disclosure to a consumer of the current file not the disclosure of a report previously issued. Also, FCRA and ECOA contemplate the creditor making a credit decision to be in the best position to disclose the reasons for the action along with any information that influenced the decision. The adverse decision often involves factors in addition to the credit report, so that making disclosure of the credit report by a credit reporting agency would at best only provide a partial disclosure of the reasons, if that. The adverse action notice is also required to inform the consumer that the credit reporting agency did not make the decision and cannot tell the consumer why the adverse action was taken. These two conflicting messages to consumers would only cause greater confusion and frustration for consumers.

The costs to credit reporting agencies if they were required to make the disclosures of previously issued reports would be enormous. As discussed above in the “Overview” section of this comment, Equifax furnishes close to one billion credit reports annually. It issues multiple times more account review reports which do not include a full credit report but only information that the credit file met certain criteria the creditor provided. Adverse action can result from any of the reports. Since credit reporting agencies do not know which reports will result in adverse action, all would have to be stored in some on-

line manner that is capable of subsequent access. The old credit reports would have to be tagged so that on a consumer's request the credit reporting agency would know which credit reports to disclose. All the credit reports would probably have to be stored for at least five years because of the statute of limitations period of the FACT Act.

Then, when consumers contact Equifax and ask for copies of their files, either because of an adverse action, because of the FACT Act requirement for free disclosures, because of other free disclosures or paid disclosures mandated by FCRA or because of state law requirements, all information in the file, as broadly defined by FCRA as well as some state laws, pertaining to the requesting consumer must be disclosed. This would include each report previously issued as well as any information used to prepare an account review report. There would be added cost in reformatting the old reports to make them understandable to consumers. At the end of the day, it is likely that the report would look like the current file. Consumers would receive an enormous disclosure package of multiple credit reports issued over a long period of time in addition to the current disclosure copy of their credit file. It would be extremely difficult, if not impossible to make the disclosure consumer friendly as mandated by FCRA.

In addition, state disclosure laws under FCRA equivalent legislation would have to be complied with and all information would have to be disclosed. After disclosure, assuming a consumer can interpret the vast amounts of information, the consumer can dispute the accuracy of any of the information disclosed and the credit reporting agency would have to reinvestigate it even if it is no longer current.

All this significantly increased cost along with the confusion and frustration for consumers would have no benefit since, as FCRA as originally enacted and amended up to this point recognized: only the current file is relevant. The current file is used to make credit decisions, not old files. The current file is used by new creditors. The current file is used by creditors who rejected a credit application, not the report they previously used with a few items updated.

If disclosure of prior reports is mandated, currently there is only one entity that would have them, and that is the creditor. Although disclosure of the same credit reports would not benefit consumers, creditors may be capable of making the disclosure and they will undoubtedly address the costs. In addition, we do not know whether they would have the capability to make an understandable disclosure since the reports creditors get are in computer language. In the case of account reviews, it is only a notice that the consumer's file met the pre-established criteria. However, credit reporting agencies cannot make the disclosures without significantly changing their systems at enormous cost.

2. Why do consumer reporting agencies not currently give consumers a copy of the same credit report that the creditor relied on in taking the adverse action? What would be the costs to consumer reporting agencies of requiring them to do so?

As discussed above, for over 30 years the structure and scheme of the FCRA and for the history of the credit reporting industry before that, there was no logic to credit reporting agencies providing copies of prior credit reports to consumers. Accordingly, credit reporting agencies have not developed expensive and costly systems to maintain copies of the billions of credit reports that are provided to creditors each year and are therefore not able to provide copies of these old reports to consumers. Requiring them to retain a retrievable copy would require a complete reconfiguration of the systems. The cost of doing so cannot be calculated with any specificity at this time. However, for some perspective, Equifax's current system stores current credit files on approximately two hundred ten million consumers that are regularly changing, almost on daily basis, with new inquiries, new and updated credit account information. Requiring the storage of over five billion old credit reports in such a way as to be readily accessible would have an enormous cost impact—and there would be no benefit that we can fathom.

a. Is the data base that is maintained by a consumer reporting agency kept in such a way that the consumer reporting agency can easily reconstruct a credit report from a prior date? If not, what would be the cost associated with requiring a change that would enable the consumer reporting agency to do that?

No, the data base is not maintained in a way that credit reports previously issued can be reconstructed. The cost cannot be specifically calculated at this time, but would require a structural change in the database architecture and would be very high.

b. Would a consumer reporting agency know what information is drawn from a credit file by a creditor and the manner in which it is displayed to them? If not, how costly would it be for the consumer reporting agency to obtain this information?

Under the current configuration of the system, Equifax cannot know what information is drawn from a credit file by a creditor after the fact.

c. Are there situations in which the cost of requiring the consumer reporting agency to provide a copy of the same credit report that the creditor relied on in taking the adverse action to a consumer who has experienced an adverse action would be minimal and/or nonexistent? If so, what are these situations?

Other than in the current situation where certain mortgage reporting companies maintain a copy of the actual mortgage report which they disclose to consumers, there are no situations where the cost to Equifax of making the disclosure would be minimal or nonexistent. As discussed above, the Equifax system was originally designed to focus on current credit file information—that is what FCRA mandates be disclosed to consumers and what its customers want. Requiring the disclosure of the same report a creditor received would require a reconfiguration of the system and the philosophy behind it. We cannot envision a circumstance where the cost would be minimal let alone nonexistent.

3. Why do creditors not currently give consumers a copy of the same credit report that the creditor relied on in taking the adverse action? What would be the costs to creditors of requiring them to do so? Does the cost vary depending on the credit granting situation (e.g., mortgages versus instant credit)? Are there situations in which the cost of requiring the creditor to provide a copy of the same credit report that they relied on in taking the adverse action to a consumer who has experienced an adverse action would be minimal and/or nonexistent? If so, what are these situations?

We believe creditors are in the best position to respond to this question. Many creditors currently do so, and credit reporting agencies cannot keep them from doing so.

4. What would be the cost to consumers associated with obtaining a copy of the credit report that the creditor relied on in taking the adverse action in addition to or in lieu of the credit report that the consumer currently receives if he or she requests one after receiving an adverse action notice?

The costs to consumers would be confusion, delay and misdirection. Obtaining a credit report that is not the current credit file would result in misconceptions, disputes of irrelevant information, and delay in correcting the relevant current file. Obtaining only the report relied on by the creditor in taking adverse action would compound the problem since nothing meaningful can be done with the report and it does not reflect the consumer's current credit standing. It could give the consumer a false sense of security believing that his or her problem was addressed when in reality the consumer's file for future reporting purposes was not changed. The increased cost of credit reports will increase the cost of credit for consumers; if creditors don't order as many credit reports because of the increased cost, less credit may be available particularly for consumers most in need; and it would be more difficult for consumers to get credit if consumers

have to go back to demonstrating their credit worthiness without the benefit of the creditor ordering a new credit report.

a. Would the proposed requirement lead consumers to mistakenly conclude that there are inaccuracies in their credit reports? Would giving consumers an older version lead them to dispute inaccuracies that may have already been corrected? What sort of costs might result from these disputes?

We believe consumers are likely to conclude there are inaccuracies in their reports if the proposed requirement were adopted because the “same report” does not contain the full information (inquiries, account numbers, medical care providers, blocked accounts etc. as discussed above) that the Equifax file disclosure does. The missing information could be deemed an inaccuracy. Also, if any of this information that is not included in the credit report is inaccurate the consumer would not know about it.

We also believe consumers are likely to focus on the report the creditor relied on and challenge information in it when its correction in the current credit file is relevant to their ability to obtain credit. The cost to credit reporting agencies in reinvestigating old information would compound the cost of reinvestigating information in the current file. There would also be a cost to creditors in having to respond to the reinvestigation request when the information may no longer be in their files. Even if the information is correct and still in their files, the dates and amounts would no longer be the same resulting invariably in most information in old files that is disputed being changed. The changed information would then be sent to the credit reporting agency which would have to compare its file to make certain the current file reflects the information furnished by the creditor. If there are timing differences between when the creditor routinely reports its information and the date of the response to the dispute, the file in the credit reporting agency’s database may not reflect the current status of the account. As a result virtually every dispute of information in a report relied on by a creditor will likely result in some change even in cases where the status of the account (e.g. “paid as agreed”) is correct. All this reinvestigation by the credit reporting agency and creditor and change to the file would result in added cost to the credit industry—credit reporting agencies and creditors. Ultimately, consumers would bear this added cost and not receive any real benefit. As discussed in the “Overview” section above, the increased cost could also reduce access to credit and result in less reliable credit information. Reduced access to credit typically impacts those consumers on the borderline of credit eligibility, thus harming those most in need of credit.

b. *Would the proposed requirement make it more difficult for consumers to determine if there are inaccuracies in their credit report? Are there situations where a consumer who views the version that the creditor has relied on might miss the opportunity to fix inaccurate information that appears on the report after it was requested by the creditor? What sort of costs (e.g., denial of future credit) might result from these situations?*

We believe a consumer may very well focus on the report that the creditor used to make a credit decision and miss the opportunity to change the current file. The result of not reviewing the current file may very well be future credit denials and the costs associated with that as well as a failure to recognize and stop identity theft.

d. *Would the proposed requirement make it more difficult for consumers to determine if they are, or continue to be, a victim of identity theft? If so, why?*

As discussed above, reviewing a report used to make an adverse credit decision in the past rather than the current file may obscure the occurrence of an identity theft. If the report only contains one incorrect account, the error may not be viewed as resulting from identity theft, whereas the current file may contain multiple fraudulent accounts. The reinvestigation would be conducted differently if identity theft is suspected which would be the case if information in the current file were disputed. We believe the best way to identify and stop identity theft is for consumers to monitor their current files not reports previously issued that do not reflect the consumer's current credit accounts.

e. *Could the proposed requirement unintentionally increase identity theft, particularly in situations where credit is denied because identity theft is suspected or in situations in which multiple "in files" or scores are received by the creditor in response to a request for information on a single individual?*

The proposed requirement could unintentionally increase the incidence of identity theft because the "same report" does not contain the full information (inquiries, account numbers, medical care providers) that file disclosure does. If any of this information that is not included in the credit report, is inaccurate or the result of fraud, the consumer would not know about it. However, we are not aware of how the relatively few instances where creditors receive multiple files relates to identity theft. We have not seen any correlation. However, as discussed above, identity theft in progress may not be discovered if the proposed requirement were implemented and required the disclosure of the previously furnished report by a credit reporting agency.

f. Could the proposed requirement raise privacy concerns in situations in which multiple “in files” or scores are received by the creditor in response to a request for information on a single individual?

As discussed above, in most situations involving multiple files, the secondary file also pertains to the same consumer. Therefore it should not raise any privacy concerns.

V. Specific Questions—C. Additional Information

2. Do the FCRA’s section 604 requirements regarding adverse action in employment, where the consumer already receives a copy of the same consumer report that the party taking the adverse action relied on inform our analysis here?

As discussed above, consumers get a copy of the consumer report relied on in taking adverse action in employment. However, when a consumer who already has a report disputes information in that report, Equifax consults the current file and does not use the old report as a basis for reinvestigation. As discussed throughout this comment, the old report does not help a consumer resolve an issue with a current file.

VI. Conclusion

We believe the above answers the questions raised. Our comments discuss in detail the impediments to implementing the proposal. There are enormous costs.

The costs to consumers result from frustration in disputing outdated information and delays resulting from re-investigations that have no effect on future credit reports. Further, the actual monetary cost that would result when credit report prices are increased and ultimately result in higher credit prices for consumers. There are also potential cost in increased identity theft and invasions of privacy.

There are increased costs to creditors in reinvestigating old files and in increased credit report prices if credit reporting agencies had to store and disclose all the previously issued reports to consumers on request.

The costs to credit reporting agencies would be significantly higher if they had to store and be prepared to disclose all this information, reinvestigate it on dispute, discuss the old credit reports with consumers and then make changes to old reports that are not relevant to future credit reports.

And there is no benefit to consumers since creditors do not make credit decisions based on old reports, and correspondingly no benefit to creditors, credit reporting agencies or the economy as a whole.

In light of the costs, even if there were some benefit that we cannot evaluate such benefits cannot come close to justifying the costs the economy will incur and the fundamental change to the credit reporting system the proposal would entail. We urge the Commission to allow the credit reporting industry to continue to operate as it has historically and permit consumers and the credit reporting industry to focus on the information that is relevant to creditors—the current consumer file.

Respectfully submitted,

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