

July 13, 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”

Dear Sir or Madam:

I am writing on behalf of Bank of America in response to the Federal Trade Commission’s request for comment on the effects of requiring 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. This is a proposed requirement described in Section 318(a)(2)(C) of the Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”).

Bank of America is pleased to have this opportunity to opine on the proposed requirement.

Part 1. Acknowledgment of Existing Process

Information contained in the consumer credit report, which Bank of America obtains from various credit repositories (also called credit bureaus or credit reporting agencies) is vital in making safe and sound underwriting decisions for our credit applicants. Bank of America relies on this data in making thousands of credit decisions every day.

Consumers who have received adverse action decisions follow an industry-standard process for obtaining a copy of their credit report from the repository that originally supplied the report to the creditor. In this process the consumer may or may not receive a copy of their credit report containing the same information from that which was used to make the adverse decision, because of the intervening time that has elapsed.

Part 2. Definition and Intent of the Proposed Requirement

The proposed requirement calls for disclosing “the same credit report” that the creditor relied on in making the adverse decision. Therein lies a fundamental and nontrivial question: How does one define “the same credit report?” For that matter, what constitutes a credit report?

Bank of America believes the **intent** of the proposed requirement is to show the consumer the information contained in their credit profile that formed the basis on which they received a decision, at the point in time when that decision was made.

Considering the intent, we would define “the same credit report” as the information contained at the credit bureau that was queried by the creditor that had material bearing on the adverse decision, without regard to the format in which the information is stored. For purpose of this opinion, we consider a subsequently-provided credit report “the same credit report” as the one used at the point of decision if the following test is met:

- The customer receives a copy of the data that was identified by the credit bureau appertaining to the customer in response to an inquiry from the creditor or the customer’s agent (for example, a mortgage broker), and which had material bearing on the subsequent adverse decision. It is acceptable to reformat the data to make it readable.

We believe it is important to define “the same credit report” in terms of what existed at the credit bureau, not in terms of what was received by the creditor, and not as an exact copy of what was received by the creditor.

Creditors sometimes make adverse action decisions with as little as a single risk score or policy rule flag, and a single reason code, without the creditor having possession of the full credit report. This approach is common in a batch portfolio risk management setting, such as credit line review. It is therefore inappropriate to define “the same credit report” in terms of what the creditor received, because a single score or policy rule flag and a single reason code would offer scant value to a consumer seeking to understand an adverse decision.

It is also important to define “the same credit report” not as an exact copy, but simply one which omits no material component relating to the adverse decision. Credit reports may contain optional data that a creditor uses for other purposes (for example, fulfillment) that are irrelevant to the adverse decision. Providing this optional data to the consumer would cause confusion.

An exact copy in identical format is also impractical because most institutions, including Bank of America, do not receive “human-readable” credit reports. It is normal to obtain machine-readable streams of text data via automated electronic links. This raw data would be meaningless to nearly every consumer. The proposed requirement should allow consumer-friendly reformatting of the data.

Currently it is not Bank of America’s policy, nor that of most financial institutions, to provide consumers with a copy of their credit report. Reasons for this policy include:

- a. We do not wish to be perceived, expressly or implicitly, as a credit reporting agency;
- b. We want our customers to know that Bank of America is not the “owner” of this data, but that it was provided to us by a third party;
- c. We want our customers to understand that if errors exist in the report then it is the consumer’s obligation to resolve the issue with the reporting agency, not with us.

Part 3. Implications of Implementing this Provision

Bank of America is of the opinion that the current process, whereby consumers obtain a copy of their credit report from the credit bureaus, is working.

Few consumers would materially benefit from this proposed change. Most customers will not notice a benefit because typical factors triggering an adverse action are usually major blemishes

on the credit report (for example a past bankruptcy, or a past delinquent account). These major blemishes are reflected just as clearly in a time-lagged report as they are in a “point-of-decision” report.

Implementing this proposed provision would almost certainly result in significant extra expense that will ultimately be passed along to the consumer. This burden will increase the cost of extending credit, resulting in decreased availability of credit to consumers.

Part 4. Conclusion

Bank of America believes today’s process is working well for the consumer. In today’s process, the consumer receives a readable, consumer-friendly formatted version of their credit report. The proposed requirement offers minimal benefits to the consumer that are greatly outweighed by the implications for financial institutions and/or the credit bureaus.

The definition of “the same report” must be clarified before the proposed requirement could be implemented, in any event. We believe “the same report” must be defined in terms of the data existing at the credit bureau, not in terms of what was provided to the creditor. Today we purchase this data; and today the onus is, and it should continue to be, on the providers of the data.

The proposed requirement must clarify that it is acceptable to reformat the credit report to make the data human-readable. This is how consumers receive copies of credit reports from the credit reporting agencies today.

The proposed requirement should clearly define how disclosure should be handled when the adverse decision is based upon a score or policy flag which summarizes the information in a credit report, and not the credit report itself.

Bank of America is committed to higher standards of customer satisfaction. We support making our customers better informed with regard to the data contained at the consumer reporting agencies, but we oppose this proposed requirement.

Thank you for this opportunity to comment.

Sincerely,

James M. Allen
Senior Vice President
Bank of America
Consumer Risk Solutions
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