Comment #7

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# COALITION TO IMPLEMENT THE FACT ACT

America's Community Bankers
TransUnion
State Farm Insurance
USAA
AFSA
Nationwide On Your Side
MetLife
MBNA
CBA Consumer Bankers Association
MasterCard
JPMorganChase
HSBC
CUNA
GE
Ford Credit
Farmers
ICBA Independent Community Bankers of America
Fair Isaac
Allstate
National Retail Federation

December 20, 2004

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

Re: "Accuracy Pilot Study: Paperwork Comment"

Dear Sir or Madam:

This comment letter is respectfully submitted on behalf of the Coalition to Implement the FACT Act ("Coalition") in response to the Commission's request for public comments on the potential benefits and burdens of a Pilot Study on the accuracy and completeness of consumer report information.[1] The Commission seeks comment on whether the proposed collection of information from consumers, furnishers of credit information and consumer reporting agencies required to conduct the pilot study, "is necessary for the proper performance of the functions of the agency… and whether the information will have practical utility." It also seeks comment on ways to minimize the information collection burdens on Pilot Study participants. The comments are requested for the purpose of fulfilling the requirements of the Paperwork Reduction Act of 1980. A 1996 OMB Memorandum to federal departments and agencies posits as a principal assumption of the Act that, "In order to minimize the cost and maximize the usefulness of government information, the expected public and private benefits derived from government information should exceed the public and private costs of the information…".[2]

Coalition members represent a broad cross-section of financial services companies and associations and are among the nation's leading providers of credit and insurance.[3] Each of the Coalition's members, or their affiliates, are active participants in the credit reporting system as furnishers and/or users of consumer credit information; and, each has experience in the consumer information dispute investigation and resolution process. The Coalition greatly appreciates the opportunity to provide its comments on the proposed Pilot Study.

## Executive Summary

**Assessment of the accuracy of the FTC's estimate of the costs and burdens of the pilot study should not exclude consideration of the information collection requirements of the follow-on series of contemplated biennial studies over the next 11 years:** In order to respond to the Commission's request for comment on the accuracy of its estimate of the information collection burdens of the proposed project, the Coalition believes it is necessary to consider the Pilot Study as merely the first in a contemplated series of much larger and more difficult follow-on biennial studies over eleven years on this topic.[4] To do otherwise would be to greatly understate the totality of the probable costs of, and the information collection burdens on, the credit and insurance industries and other participants in the multi-year accuracy initiative. Although the FTC characterizes the Pilot (projected to involve the credit reports of only 35 consumers) as a kind of feasibility study, its overriding purpose is to set the stage for the additional studies, each of which will require a much larger sample of consumers and their credit reports, conceivably on the order of several thousand. Accordingly, it seems to the Coalition that these additional follow-on studies must be factored into any realistic assessment of the burdens the proposed collection of information will have on its members and other participants in the study process.

As to the accuracy of the Commission's burden estimate for the Pilot Study itself, we understand the difficulty of arriving at such estimates and we appreciate the Commission's good faith attempt to do so. We are concerned, however, that the estimates may substantially understate the hours necessary to screen for consumer participants; train FTC contract facilitators; identify allegedly inaccurate and/or incomplete information; establish through back-and-forth communication among consumers, furnishers and facilitators whether the disputed information should or should not be counted as an actual error or omission; and, even if an error or omission is declared, whether and how it would impact the creditworthiness of the consumer. Finally, even if the estimated burden of 5 hours per participant for the Pilot turned out to be correct, there should be consideration of how this 5 hour number (or some other number) would project out for the much larger sample of thousands of consumers required for the follow-on biennial studies.

**The Coalition believes that questions about the accuracy and completeness of consumer report information have been extensively studied by government, academicians, the private sector and consumer groups over many years; and, as a consequence, that there is very little of a fundamental nature about this issue that isn't already known:** The Coalition acknowledges the vital importance of the subject matter proposed to be studied by the Commission. No one involved in the credit system has a greater stake in and commitment to, the accuracy and completeness of consumer report information than credit grantors and insurance companies which rely on such information to help establish the terms and conditions under which credit or insurance will be granted. Nevertheless, the nature and extent of credit report inaccuracies and/or incompleteness and their effects on consumers and businesses alike, have been extensively studied and analyzed by government agencies (particularly the Federal Reserve Board), consumer groups, the private sector and academia.[5] We are convinced that as a consequence of these studies, very little of a fundamental nature about the subject matter remains unknown. Even the debates over the legitimacy of the results of some of these studies have added to the body of knowledge about accuracy and completeness issues.

The Coalition believes that authoritative studies of credit report accuracy and the consequences of inaccuracy, demonstrate the following: (1) While some credit reports occasionally include erroneous or incomplete information, key indicators of creditworthiness in credit reports are overwhelmingly accurate and complete; (2) Credit reports and credit scores derived from them are highly accurate predictors of borrower performance and the potential for loss; (3) There has been steady improvement in credit report accuracy and completeness over the last decade and the credit-reporting system has become more comprehensive; (4) Without the information that the credit industry maintains, consumers on the whole would receive less credit at higher prices; (5) Credit report information and credit history scores have substantially improved the overall quality of credit decisions by businesses while reducing the costs of such decision-making; (6) The effects of most single types of data problems on credit history scores appear to be modest; and, credit report inaccuracies often benefit consumers; (7), Because of amendments to the Fair Credit Reporting Act in 1996 and 2003, there is an effective system in place which gives consumers regular access to their credit reports ensuring an opportunity to identify and correct erroneous and incomplete information.

Given all that is presently known in-depth about the accuracy and completeness of credit report information and given the multiple corrective mechanisms built into the current credit reporting system, there is no reasonable basis on which eleven years of additional studies of the same subject matter can be justified.

Using the language of OMB's statement of the purposes of the Paperwork Reduction Act, it is the Coalition's considered judgment that "the expected public and private benefits" to be derived from the Commission's anticipated information collection requests over eleven years of biennial studies, will NOT "exceed the public and private costs of the information".

## Additional Comments

In addition to the above, the Coalition urges the FTC to take note of what we believe are a number of objective indicators that consumers themselves do not believe the current credit reporting system is rife with misrepresentations of their credit histories. One such indicator is the steady and significant drop in the numbers of Fair Credit Reporting Act (FCRA) complaints registered with federal agencies which have enforcement responsibilities for the Act. At the federal level, that means primarily the FTC and the bank regulatory agencies.

A review of consumer complaints received by these agencies over the past several years indicates that credit information concerns are a sharply declining problem area. For example,

(I) Consumer Complaints Sent To The FTC

— Between 1998 and 2002 the total number of consumer complaints received directly by the FTC IN ALL CATEGORIES of complaints INCREASED substantially, from 59,919 to 376,301;

— During this same period, complaints involving "credit bureaus" DECREASED 77% from 15.25% of all complaints received by the FTC in 1998 to 3.53% received in 2002;

— Complaints involving "credit information furnishers" DECREASED 43% from 5.29% of all complaints to 3.01%;

— Complaints involving "users of credit reports" DECREASED 60% from 0.93% of all complaints to 0.37%;

— In 1998, complaints involving credit bureaus occupied the number 1 category of consumer complaints. In 2002, the ranking of complaints involving credit bureaus DROPPED to number 5;

— In 2002, all complaints involving FCRA-related credit issues were about 6.9% of all consumer complaints received by the FTC.

— Although the FTC was unable to report on the results of its investigations of FCRA complaints and the percentage found valid or not valid, some sense of the valid/invalid ratio can be surmised from the FDIC's consumer complaint data on FCRA, which included such information. Over the three most recent years, FDIC investigations of FCRA consumer complaints found that 80% were NOT valid. While the FTC's valid/invalid percentage will certainly be different, what can be said with certainty is that in many of the FTC's consumer complaints involving FCRA an actual violation of the Act will is likely not to be found. So, even the small numbers described above almost certainly overstate consumers' problems with the credit information system.

(2) Consumer Complaints Sent To The FDIC

The FDIC is responsible for ensuring FCRA compliance by the 5,400 FDIC insured, state non-member banks for which it has primary supervisory responsibility. In this regard, it tracks the numbers of FCRA-related and other categories of complaints it receives - and their disposition - from customers of these banks. An analysis of FDIC complaint data demonstrates that not only do FCRA complaints in all major categories (i.e., adverse action notices; credit histories; credit scoring; consumer disclosures; pre-approved solicitations; and erroneous reporting of information), represent a very small fraction of all consumer complaints; but that after investigation, the vast majority of FCRA complaints (well above 80%) are determined NOT to be valid. For example,

— In 2000, the FDIC received a total of 600 FCRA complaints (and 194 inquiries) in the categories set forth above, from the millions of customers of the 5,400 financial institutions it examines. When the FDIC examined the 600 complaints, 540 (90%) were found NOT to involve "an apparent bank error or violation"; while only 60 were found to involve an error or violation;

— In 2001, the FDIC received a total of 100 FCRA complaints. Of them, 65 (65%) were found NOT to involve "an apparent bank error or violation", while 35 involved an error or violation;

— In 2002, the FDIC received a total of 452 FCRA complaints. Of these, 391 (86%) were found NOT to involve "an apparent bank error or violation", while only 61 involved an error or violation.

(3) Consumer Complaints Sent To OCC

The Treasury Department's Office of Comptroller of the Currency (OCC) is responsible for ensuring that the national banks it supervises comply with the FCRA and other consumer protection statutes. A review of consumer complaints filed over the past several years with the OCC indicates that FCRA complaints are an extremely small percentage of all complaints; and have declined sharply as a problem area. Although OCC was unable to provide data on the disposition of the FCRA complaints it received, the ratio of invalid to valid complaints is likely to be comparable to that of the FDIC, which did supply such data and where 4/5ths of all complaints were found not to constitute an error or violation:

— In 2002, complaints relating to bank compliance with FCRA represented only 5.6 % of all consumer complaints filed with OCC (2,187 out of 38,839);
— Between 1999 and 2002, all FCRA complaints involving OCC regulated banks declined 29%, from 2,816 to 2,187.

Coalition members believe they have a strong and detailed understanding of the issues surrounding credit report data accuracy. We want the Commission to know that furnishers of credit information are involved in an ongoing search for ways to ensure that credit reports are as fully accurate and complete as humanly possible. Recent enhancements to the ability of consumers to have regular access to the data in their credit reports will be helpful in this regard. It is our view that a Pilot Study and eleven years of additional biennial studies will add very little, if anything, to what is already known about how a very good credit system can be made even more accurate than it now is. Any additional information derived from such studies will have little or no practical utility.

Sincerely,

Jeffrey A. Tassey

Jeffrey A. Tassey
Executive Director

[1] *Federal Register*, October 20, 2004, page 61675.

[2] OMB Circular No. A-130 (Revised Feb 1996), "(Transmittal Memorandum No. 3)", February 8, 1996, "Management of Federal Information Resources, Memorandum For Heads Of Executive Departments and Establishments", Paragraph 7, Basic Considerations and Assumptions.

[3] Members include Allstate Insurance Company, America's Community Bankers, American Financial Services Association, Consumer Bankers Association, Credit Union National Association, Fair Isaac, Farmers Insurance, Ford Motor Credit Company, General Electric Company, HSBC Household, Independent Community Bankers of American, J.P. Morgan Chase & Company, Mastercard International, MBNA, MetLife, National Retail Federation, Nationwide Insurance, State Farm Insurance, TransUnion, USAA.

[4] Section 319 of the FACT Act calls for a series of biennial studies over eleven years, by the FTC, of the accuracy and completeness of information in consumers' credit reports.

[5] See, for example, "An Overview of Consumer Data and Credit Reporting," Federal Reserve Bulletin, February 2003; "Credit Report Accuracy and Access to Credit," Federal Reserve Bulletin, Summer 2004; "The Economic Importance of Fair Credit Reauthorization," Information Policy Institute, June 2003.