

**Report to Congress
Under Section 319 of the
Fair and Accurate Credit Transactions Act
of 2003**

December 2006

Federal Trade Commission

Deborah Platt Majoras, Chairman
Pamela Jones Harbour, Commissioner
Jon Leibowitz, Commissioner
William E. Kovacic, Commissioner
J. Thomas Rosch, Commissioner

Report to Congress Under Section 319 of the FACT Act

Summary

The Federal Trade Commission (“FTC” or “Commission”) submits this report pursuant to Section 319 of the Fair and Accurate Credit Transactions Act of 2003, Pub. L. 108-159, 117 Stat. 1952 (“FACT Act”). The FACT Act, which was enacted on December 4, 2003, amends the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 *et seq.* (“FCRA”), and contains a number of provisions that are designed to enhance the accuracy and completeness of credit reports. Specifically, Section 319 of the FACT Act requires the Commission to conduct:

an ongoing study of the accuracy and completeness of information contained in consumer reports prepared or maintained by consumer reporting agencies and methods for improving the accuracy and completeness of such information.

The study is to take place over eleven years, with the final report due to Congress in 2014 and five interim reports to be completed every two years from December 2004 onward (until December 2012). In its final report (or earlier, if advisable), the Commission will provide recommendations for legislative and administrative action that it deems appropriate.

Pursuant to this mandate, the Commission submitted the first report to Congress in December 2004¹, and this report constitutes the second interim report. In the first report, the FTC: (i) examined the history and current practices of the credit reporting industry; (ii) identified the key areas where errors in credit report data can occur; (iii) reviewed and evaluated studies conducted to date on credit report accuracy and completeness; (iv) examined possible methodologies for conducting a more reliable and comprehensive study; and (v) described a pilot study to test a potential methodology for a nationwide survey.²

The FTC engaged a contractor to conduct the pilot study outlined in the first report, and the results of the study are now available.³ By design of the study, the contractor had consumers review their credit reports together with an expert to identify potential errors. Consumers then disputed potential errors that the expert believed could have a non-trivial effect on their credit

¹ Federal Trade Commission, *Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003*, December 2004.

² The design of that study and a summary of related public comments were provided in two respective Federal Register Notices (FRNs). 69 FR 61675 (October 20, 2004) and 70 FR 24583 (May 10, 2005).

³ The contractor’s report on the initial pilot study is included as an Appendix to this report. The attachment presents the work- product, findings, and opinions of the contractor, which are not necessarily findings or opinions of the FTC.

Report to Congress Under Section 319 of the FACT Act

standing. The results of the pilot study suggest that this type of consumer survey is generally feasible. However, the pilot revealed two methodological challenges that would need to be addressed before undertaking a nationwide survey: (i) developing follow-up procedures to encourage consumers who say they will file a dispute to follow through with the dispute process; and (ii) developing alternative methods for recruiting participants that will ensure that participants represent consumers with a wide range of credit scores. Subject to OMB clearance under the Paperwork Reduction Act, the Commission plans to undertake a follow-up pilot study that incorporates the indicated modifications.⁴

As was true for the initial pilot study, the follow-up pilot study does not rely on a nationally representative sample of consumers, and statistical conclusions will not be drawn. The purpose of a further pilot study is to help improve the design for a nationwide survey. As stated in the December 2004 report, the Commission anticipates conducting a nationwide survey of credit reports that focuses on consumers and their experiences in identifying and disputing errors in credit report information, is based on a nationally representative sample, uses a reliable method for identifying errors and omissions, and categorizes errors by type and seriousness in terms of potential consumer harm.⁵ A nationwide survey will be a substantial undertaking that presents significant challenges, and the follow-up pilot study will provide information necessary to ensure that a larger survey can accurately measure the credit reporting process.

The Initial Pilot Study

The FTC's contractor for the initial pilot study – a research team that included members from the Center for Business and Industrial Studies (University of Missouri-St. Louis), Georgetown University Credit Research Center, and the Fair Isaac Corporation – engaged 30 randomly selected consumers in an in-depth review of their credit reports. Participants obtained copies of their three credit reports and credit scores by using the Web site *myfico.com*, including one report and score from each of the three nationwide consumer reporting agencies: Equifax, Experian, and TransUnion (“CRAs”). The contractor reviewed these credit reports with the participants to identify alleged inaccuracies and gave advice on the difference between a small inaccuracy and a potentially significant error that could affect credit scores. After the research team evaluated alleged errors for materiality, they encouraged the consumers who alleged material errors to file a formal FCRA dispute, so as to obtain a review of the challenged items by data furnishers and CRAs. Although the outcome of the dispute process may not always provide a

⁴ An FRN has been published regarding the FTC's plans for a follow-up pilot study. 71 FR 61776 (October 19, 2006). The notice may be found at the agency's Web site under “FACT Act” Actions at <http://www.ftc.gov/os/statutes/fcrajump.htm>.

⁵ December 2004 Report (at page iii). As further noted there, the FTC expressed a possible need for an additional pilot study (depending on the outcome of the initial study).

Report to Congress Under Section 319 of the FACT Act

definitive answer as to whether the consumer's information is accurate, the results of this process are important in providing a clearer picture of the accuracy of credit reports.⁶

The first goal of the initial pilot study was to assess the feasibility of engaging consumers in an in-depth review of their credit reports for the purpose of identifying alleged material errors. In assessing this feasibility, the contractor found:

(a) Participants were successfully engaged in conducting a thorough and effective review of their credit report information by means of the telephone. The members of the research team and the participants were unanimous in judging the review of information as thorough and objective.

(b) Effective mechanisms to protect consumers' private information can be employed. For example, in the protocols of the pilot study, participants were not required to reveal their social security numbers ("SSNs") to University members of the research team, who conducted all interviews. Only Fair Isaac received SSNs upon an initial request for credit reports by participants (because this receipt was necessary to produce the reports). Moreover, all financial account numbers, including credit and debit card numbers, were truncated to 3 or 4 digits in any information available to University researchers. These restrictions did not hinder the quality of information produced by the study.

(c) The methodology provides sufficient information for a subsequent analysis of the accuracy of items presented in credit reports. Beyond an assessment of alleged errors as being material or not, the methodology also provides the necessary information for analyzing the following array of questions. What is the specific nature of errors alleged by consumers, and which categories of credit report information generate more frequent concerns? Do consumers take the initiative to have alleged errors corrected, i.e., do they file a formal dispute? Are the alleged errors contained in the credit reports from more than one CRA, and is there

⁶ The FCRA dispute procedure renders a specific outcome for each alleged error. By direct instruction of the data furnisher, the following outcomes may occur: delete the item, change or modify the item (specifying the change), or maintain the item as originally reported. Also, a CRA may delete a disputed item due to expiration of statutory time frame (the Act limits the process to 30 days, but the time may be extended to 45 days if the consumer submits relevant information during the 30-day period). All of these actions track certain categories of response on a form called "Online Solution for Complete and Accurate Reporting" (e-OSCAR) that is used by CRAs for resolving FCRA disputes. (See Federal Trade Commission and Board of Governors of the Federal Reserve System, *Report to Congress on the Fair Credit Reporting Act Dispute Process*, August 2006.)

Report to Congress Under Section 319 of the FACT Act

consistency across credit bureau files in representing the creditworthiness of consumers? For example, the methodology can assess consistency in reporting employment status, length of credit history, late payments, public derogatories, utilization of revolving credit, collection activity, as well as additional information.

The contractor also identified two issues that would need to be addressed further: (i) many who alleged errors did not file a dispute, and thus did not provide FTC staff any way to evaluate the consumer's allegation regarding errors, and (ii) the study group may have been biased toward consumers with relatively higher credit scores. First, regarding the dispute process, intensive follow-up was required for those who said they would file a dispute. Overall, regarding all those who alleged errors and said they would file a dispute (7 people), only 2 took action in an effort to correct their records. Perhaps more importantly, only 1 out of the 3 people who alleged material errors subsequently filled a dispute. Second, regarding the procedures for creating the study group (the protocol for inviting people to join the study), potential participants were told during the screening interview that Internet access would be desirable, but not required.⁷ Yet, the outcome suggests that people who did not have Internet access or experience may have been less willing to participate. Indeed, after telephone screening and further contact with prospective participants, all those who ultimately became participants in the study had Internet access. A broad spectrum of credit scores was attained in the study group, but the distribution tended toward those who had relatively higher credit scores.⁸ In view of these results and further considerations, the FTC plans to conduct a follow-up pilot study.⁹

⁷ By using a set of detailed instructions (Exhibit 5 of contractor's report, attached), participants would make use of the Web site *myfico.com* to establish an account free of charge in order to receive online reports, as well as printed copies mailed to their home. The contractor would offer to provide Internet access for those who did not have access if a person otherwise qualified for the study.

⁸ The contractor's report (p. 13) gives the distribution of participant credit scores obtained from the three CRAs, and further compares these scores to the national distribution. The data show that low scores are under-represented in the sample, while high scores are over-represented.

⁹ Regarding further considerations, a follow-up pilot study will provide more information on the expected costs of a broader study, especially the costs related to methods of recruitment and to additional follow-up procedures for those who express an intention to file a dispute. (See the next section on Follow-up Pilot Study, design elements (b) and (h).)

Report to Congress Under Section 319 of the FACT Act

Follow-up Pilot Study

The follow-up pilot study, which is subject to OMB clearance, will be similar in many respects to the initial pilot study because both address a consumer survey approach to assessing the accuracy of credit reports. In brief, the key modifications from the initial study are: changes in the recruitment process, measures to improve follow-up, and a larger study group.¹⁰ The overall design elements for the follow-up pilot study are the following:

(a) A study group of 120 consumers will be drawn by a randomized procedure that is screened to include adult members of households to whom credit has been extended in the form of credit cards, automobile loans, home mortgages, or other forms of installment credit. The FTC will send a letter to potential study participants describing the nature and purpose of the study, and the contractor will screen consumers through telephone interviews. Consumers who qualify and agree to participate will sign a prepared consent form giving the contractor permission to review the consumer's credit reports.

(b) In selecting the study group, the contractor may use a variety of methods for identifying and recruiting potential participants. In addition to the random selection procedure employed in the initial pilot study (which made use of telephone directories), the contractor will also request that financial institutions and lenders refer consumers to the study. When consumers apply for credit, e.g., mortgages, automobile loans, or other forms of credit, financial institutions and lenders will know (and have a permissible purpose for knowing) the consumer's credit score and certain other characteristics; consumers can then be given information about contacting the FTC's contractor if they are interesting in participating in the study. The contractor may employ further methods for securing participation, provided that the methods do not violate the permissible purposes for obtaining a consumer's credit report (FCRA §604). The contractor will consult with FTC staff regarding any recruitment procedure that is employed.

(c) The selected study group will consist of consumers having a diversity of credit scores over three broad categories: poor, fair, and good. The contractor will monitor the respective processes of recruitment so as to attain approximately equal representation of credit scores across the designated categories.

(d) The contractor will help the participants obtain their credit reports from the CRAs. Each participant will request his or her three credit reports on the same day, although different participants will generally request their reports on different days. Participants will not pay for their credit reports or credit scores.

¹⁰ A larger study group will be used as an aid for evaluating the additional design elements. The initial pilot study had 30 participants; the planned follow-up pilot study has 120.

Report to Congress Under Section 319 of the FACT Act

(e) The contractor will help the participants review their credit reports by resolving common misunderstandings that they may have about the information in their reports; this will involve educating the consumers wherever appropriate (thereby helping them to distinguish between accurate and inaccurate information). The contractor will further help participants to locate any material differences or discrepancies among their three reports, and check whether these differences indicate inaccuracies.

(f) The contractor will facilitate a participant's contact with the CRAs and data furnishers to help resolve credit report items that the participant views as inaccurate. To the extent necessary, the contractor will guide participants through the dispute process established by the FCRA. The contractor will not directly contact CRAs or data furnishers during the course of the study, as the outcome of a dispute may still be pending. The contractor will determine any changes in the participant's credit score resulting from changes in credit report information.

(g) In making a comparison between the "before" and "after" credit scores for items that have been corrected, the contractor will not just obtain a new credit report and score from the relevant CRAs (although such new credit reports will be obtained). The contractor is required to have the expertise to re-score the original credit report in the context of those changes directly related to the contractor's review, and thus will re-score the consumer's frozen file. (This method addresses a concern that changes in credit scores retrieved from CRAs could be the result of the addition of new items rather than corrected items.)

(h) Regarding study participants who have alleged material errors and expressed an intention to file a dispute and have not done so after 6 weeks, the contractor will prepare a draft dispute letter on the consumer's behalf (together with a stamped, pre-addressed envelope to the relevant CRAs). The contractor will ascertain from the consumer whether the letter correctly states the consumer's allegation, and upon confirmation, the participant will be asked to sign and send the letter.

As was true of the initial study, a follow-up pilot study is not intended to replicate normal circumstances under which consumers generally review their credit reports; nor is it intended to evaluate the adequacy or complexity of the dispute process. The scrutiny applied to study participants' reports with the help of expert advice would not at all be indicative of a consumer's normal experience in reviewing a credit report. Consumers are often not familiar with credit reporting procedures and may have difficulties in understanding their credit reports (which may partly be due to a consumer's own misconceptions). Also, as the contractor discovered in the initial pilot study, some consumers may need extra guidance and help in completing the process of filing disputes for items they believe to be in error. In all of the proposed activities, the contractor will use procedures that avoid identifying study participants to CRAs and data furnishers.

As was also true of the initial study, the follow-up pilot study would not employ any specific definition of accuracy and completeness, and no decision has been reached on the definition of these terms for a nationwide survey. Instead, both the initial and follow-up pilot

Report to Congress Under Section 319 of the FACT Act

studies seek to assess a methodology that involves consumer review of credit reports, and both seek to ascertain the variety of information pertinent to accuracy and completeness that can be garnered. The expanded pilot study would list an array of possible outcomes for items on participant credit reports by using the following type of categories (the contractor may supply additional categories as warranted by circumstances encountered in the study):

- “disputed by consumer and deleted due to expiration of statutory [FCRA] time frame”;
- “disputed by consumer and data furnisher agrees to delete the item”;
- “disputed by consumer and data furnisher agrees to change/modify the item”;
- “disputed by consumer and data furnisher maintains the item to be correct as originally reported”;
- “item not disputed by consumer”;
- “item not present on the report”.¹¹

It is anticipated that the above categories will be useful in designing a nationwide survey of credit reports regardless of how accuracy and completeness may be defined for such a survey.

Knowing the results of the dispute process does not establish the "accuracy" of credit reports in an absolute sense. As the FTC and the Federal Reserve Board reported in August,¹² there is disagreement about the effectiveness of the dispute process in investigating alleged errors. However, a study using the dispute process appears to be the only feasible way of performing a nationwide study of credit report accuracy, in view of the enormous difficulty and cost of attempting to ascertain the ultimate accuracy regarding alleged errors. Measuring both the number of consumers who allege material errors and the ultimate disposition of their disputes should provide as complete a picture as possible of the underlying rate of errors in credit reports.

¹¹ The FTC staff recognizes the different reporting cycles of data furnishers and the voluntary basis on which information is reported to a CRA. There may be different explanations for why an anticipated item is not on a particular credit report. The item may be missing because a data furnisher did not provide the information to a certain CRA, or – due to the specific reporting cycle of the data furnisher – because it was provided at a time after the credit report was viewed by the consumer. Alternatively, the item may have been submitted to a CRA but placed in the wrong consumer’s file. The contractor will seek to determine, to the extent practicable, which of these explanations may apply. For example, at the end of the study, the contractor may contact XYZ Mortgage, give a brief explanation of the FTC’s pilot study, and inquire whether this furnisher normally reports information to Credit Bureau A; if so, then inquire about the timing of the reporting cycle. When making such inquiries, the contractor will not disclose the identities of study participants.

¹² Federal Trade Commission and Board of Governors of the Federal Reserve System, *Report to Congress on the Fair Credit Reporting Act Dispute Process*, August 2006 (at 19 - 21).

Report to Congress Under Section 319 of the FACT Act

Conclusion

Under Section 319 of the FACT Act, the Commission has completed an initial pilot study that uses a consumer survey approach to studying credit report accuracy. As discussed above, this initial pilot study revealed certain methodological challenges that should be addressed before proceeding with a nationwide survey. The planned design for a follow-up pilot study is intended to deal with these challenges and provide further information about whether a nationwide survey can measure credit report accuracy and completeness in a manner that is not unduly resource-intensive and would not be cost-prohibitive. When the follow-up pilot has been completed, the Commission will report to Congress the results of that pilot study, as well as the Commission's further plans for any nationwide survey of credit reports.

Report to Congress Under Section 319 of the FACT Act

APPENDIX

Contractor's Report on Initial Pilot Study