FACT Act Scores Study, Matter No. P044804

COMMENTS OF THE NATIONAL INDEPENDENT AUTOMOBILE DEALERS ASSOCIATION DIRECTED TO THE FEDERAL TRADE COMMISSION, WASHINGTON, D.C. 20580

On December 4, 2003, President Bush signed into law the Fair and Accurate Credit Transactions Act (FACT Act) in an attempt to reduce the risk of consumer fraud and related crimes, including identity theft, and to assist any victims. In general, the FACT Act amends the Fair Credit Reporting Act (FCRA) to enhance the accuracy of consumer reports and to allow consumers to exercise greater control regarding the type and amount of marketing solicitations they receive. To promote increasingly efficient national credit markets, the FACT Act also establishes uniform national standards in key areas of regulation regarding consumer report information and requires a number of studies be conducted on credit reporting and related issues.

Section 215 of the FACT Act requires the Federal Trade Commission (FTC) and the Federal Reserve Board (FRB), in consultation with the Office of Fair Housing and Equal Opportunity of the Department of Housing and Urban Development, to conduct a study on the effects of credit scores and credit-based insurance scores on the availability and affordability of financial products, including auto loans. Section 215 further requires the FTC and FRB to study 1) "the statistical relationship, utilizing a multivariate analysis that controls for prohibited factors under the Equal Credit Opportunity Act and other known risk factors, between credit scores and credit-based insurance scores and the quantifiable risks and actual losses;" and 2) "the extent to which, if any, the use of credit scoring models, credit scores, and credit-based insurance scores impact on the availability and affordability of credit to the extent information is currently available or is available through proxies, by geography, income, ethnicity, race, color, religion, national origin, age, sex, marital status, and creed, including the extent to which the consideration or lack of consideration of certain factors by credit scoring systems could result in negative or differential treatment of the protected classes, under the Equal Credit Opportunity Act, and the extent to which, if any, the use of underwriting systems relying on these models could achieve comparable results through the use of factors with less negative impact." On June 15, 2004, the FTC released its Notice and Request for Public Comment on how the FTC and FRB should conduct "the prescribed methodology and research design of the study" and requested that comments be submitted by August 16, 2004.

The National Independent Automobile Dealers Association (NIADA) has represented independent motor vehicle dealers for over 50 years. The National Association and its State Affiliate Associations represent more than 19,000 independent motor vehicle dealers located across the United States. In 2003, a record 43.6 million used motor vehicles were retailed generating more than $366 billion in revenues. Because vehicles are lasting longer (the average vehicle on the road today is over 8.5 years old), projections of future used vehicle sales volumes suggest that the used vehicle market will maintain its 40-million-plus volume in the years to come.[1] In a recent survey of NIADA Members, 38.2% of the responding motor vehicle dealers indicated that they offer in-house or "buy here-pay here" financing (The Dealership itself finances the consumer's motor vehicle purchase).[2] Industry estimates place the total sales

---

[1] The 2004 Used Car Market Report, Manheim Auctions, 1400 Lake Hearn Drive, NE, Atlanta, GA 30319-1464.

[2] 2004 NIADA Independent Used Car Industry Report, National Independent Automobile Dealers Association, 2521 Brown Blvd., Arlington, TX 76006, and Leedom, and Associates, LLC, 40 Sarasota Center Blvd., Suite E, Sarasota, FL 34277.

volume of buy here-pay here transactions between $80 and $110 billion per year, representing almost 8.5 to 10 million motor vehicle sales.[3] Approximately 24 million consumers are driving buy here-pay here financed vehicles today.[4]

NIADA does not have access to how credit scores are calculated and, therefore, is unable to provide specific information regarding the proper methodology and research design to study the effects of credit scores and credit-based insurance on the availability and affordability of financial products. NIADA does know firsthand, however, the impact credit scores have on the price and availability of motor vehicle loans and related credit and insurance products. Lack of credit and poor credit are the primary reasons individuals are unable to purchase motor vehicles and they are becoming increasingly prevalent throughout the motor vehicle industry.

Recent research by the Federal Reserve Board indicates that household debt was at $8.9 trillion in 2003, a record high relative to disposable income.[5] The number of new bankruptcies filed during calendar year 2003 rose to a historic high of 1,625,208 cases.[6] There was one bankruptcy filed for every 73 U.S. households during calendar year 2003.[7] Lenders also tightened underwriting standards on automobile loans in 2003, supported by a 7% increased average credit score for booked loans.[8] Average new and used booked loan bureau credit scores were reported at 716 in 2003 versus 668 in 2002.[9] These facts, combined with the trend of various subprime lenders exiting the market of financing purchases of used vehicles, makes the situation even more disconcerting. It is becoming next to impossible for individuals with impaired credit to find and obtain affordable transportation, which, in today's world, has become a necessity, not a luxury. While there are numerous reasons why an individual's credit may become impaired, including loss of a job, health problems, divorce and a countless other reasons beyond their control, the current credit reporting system is a major factor in the negative or differential treatment of credit impaired individuals.

One of the only ways consumers can repair their credit is to obtain a loan and repay the obligation in full. As a result, it is important that those consumers who pay of an obligation in a timely fashion get the benefit from having done so. It allows them not only to improve their overall credit rating, but to get better interest rates on future loans. For many consumers, the largest credit transaction they will enter into is for the purchase of a motor vehicle and a motor vehicle dealership that is willing to extend credit to the customer is one of the few places credit impaired consumers have to turn for financing. Often times, a major incentive for these individuals to make payments in a timely fashion is knowing that they can return to the dealership to purchase their next vehicle and, at the same time, improve their credit rating.

---

[3] Analysis of the Buy Here-Pay Here Capitalization Market, December 2003, Leedom and Associates, LLC, 40 Sarasota Center Blvd., Suite E, Sarasota, FL 34277.

[4] Industry Overview Keynote Remarks, Chris Leedom, October 2003 National Special Finance/Buy Here-Pay Here Conference.

[5] June 21, 2004 Press Release from the American Bankruptcy Institute citing research by the Federal Reserve Board.

[6] June 21, 2004 Press Release from the American Bankruptcy Institute citing data from the Administrative Office of the U.S. Courts.

[7] Id.

[8] May 6, 2003 Press Release from the Consumer Bankers Association citing data from the Consumer Bankers Association's 2003 Automobile Finance Study.

[9] Id.

In the past, credit reporting agencies accepted all credit information, good and bad, reported by motor vehicle dealers. The main credit reporting agencies are now requiring a minimum number of accounts be maintained (typically in the 500 range) in order to report good credit. This requirement poses a problem for dealers and consumers alike. Many dealerships that offer in-house financing do not maintain a large number of accounts and consumers with impaired credit do not have anywhere else to go to obtain financing and re-establish their credit. In conducting its study on credit scoring, therefore, NIADA urges the FTC to consider the extent to which the failure of credit reporting agencies to establish an efficient, cost effective way for motor vehicle dealers to report positive credit experiences for all consumers impacts the availability and affordability of loans and other financial products. NIADA believes this activity has a significant effect on consumer credit and that it results in the negative or differential treatment of credit-impaired individuals, many of whom may meet the criteria for an ECOA protected class.

NIADA would like to thank the FTC for the opportunity to comment with respect to the FACT Act Scores Study. Any questions the FTC has regarding NIADA's comments and the position taken herein may be directed to NIADA's Legal Counsel, Keith E. Whann or Deanna L. Stockamp, of the Law Firm Whann & Associates located at 6300 Frantz Road, Dublin, Ohio 43017, (614) 764-7440 or via e-mail to whannassoc@rrohio.com.