



July 16, 2004

Donald S. Clark
Secretary of the Commission
Federal Trade Commission
Office of the Secretary
Room H-159 (Annex M)
600 Pennsylvania Avenue N.W.
Washington, DC 20580

RE: FACT Act Section 318(a)(2)(C) Study, Matter No. P044804

Dear Mr. Clark:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation's federal credit unions, I am responding to a request for comment from the Federal Trade Commission (Commission) on the Request for Comment to assist the Commission in preparing a study mandated by section 318(1)(2)(C) of the Fair and Accurate Credit Transactions Act of 2003 (the FACT Act).

Section 318(a)(2)(C) of the FACT Act requires the Commission to conduct a study on the effects of requiring a creditor or a credit reporting agency to provide a consumer who has experienced an adverse action based on a credit report with a copy of the same credit report that was relied on in taking the adverse action. Pursuant to the FACT Act, the Commission published a Notice and Request for Comment in the *Federal Register* on June 15, 2004.

Definition of "Same Report"

As a threshold issue, the Commission seeks comment on how to define the phrase "the same report that the creditor relied on." Where a creditor has used a credit score only to determine creditworthiness, the "same report" would consist of only that score under a restrictive definition, while under an expansive definition the "same report" would include the score and the underlying data, presented in a consumer-friendly format. NAFCU believes that if a credit report is to be provided to a consumer who experiences adverse action, the consumer should receive all of the information that the creditor received from the credit reporting agency to determine the adverse action. In

most cases, credit decisions are based not only on credit scores, but on underlying data as well. The underlying data would provide value to the consumer in the form of specific ratings and comments, especially if these ratings and comments are provided in a consistent and reasonably understandable manner. NAFCU believes the consumer should have the opportunity to review that data to check for inaccuracies that may have led to the adverse action. It should be noted that adverse action notices already inform consumers of the right to receive a free credit report from the consumer reporting agency.

Definition of “Adverse Action”

Similarly, the Commission requests comment on whether the term “adverse action” should be defined more expansively than it is currently under the Fair Credit Reporting Act (FCRA). The FCRA currently defines adverse action as: (1) a refusal to grant credit in substantially the terms requested in an application unless the creditor makes a counteroffer and the applicant uses or expressly accepts the credit offered; (2) the termination or other unfavorable change in the terms of an account that does not affect all or substantially all of a class of the creditor’s accounts; or (3) a refusal to increase the amount of credit available after a request to do so.

NAFCU encourages the Commission to retain this definition. Adoption of a more expansive definition would unduly burden creditors and provide no benefit to the consumer. On the contrary, consumers understand the current definition of adverse action, and expanding the definition is likely to result in confusion. Furthermore, NAFCU believes the more expansive definition, which would include “offering terms that are materially less favorable than the most favorable terms offered to a substantial portion of consumers,” is too vague and open-ended to provide the necessary guidance to creditors attempting to comply with an implementing regulation. Finally, retention of the current definition will permit creditors to continue to provide combined adverse action notices required by the FCRA and the Equal Credit Opportunity Act (ECOA) rather than providing different notices triggered by inconsistent definitions of adverse action. NAFCU believes training of lending staff on the distinctions would also be unduly burdensome.

Availability of Credit Reports

The Commission requests comment on whether creditors currently make credit reports available to consumers who experience adverse action. Current adverse action notices required by the FCRA already inform consumers of their right to receive a credit report from the credit reporting agency and provide contact information for them to do so. Many credit unions also provide the member with an opportunity to see or receive a copy of the credit report that the credit union uses to make an adverse credit decision. This opportunity is generally offered after the adverse action is taken. This opportunity is generally provided to applicants for all credit products. However, the reports that consumer reporting agencies provide are often difficult for the consumer to understand;

therefore, many credit unions review the reports with applicants who experience adverse action.

Use of Credit Reports

The Commission requests comment on how credit reports are used. Credit unions usually request credit reports from one source and seldom receive multiple in-files or credit scores in response to a request for information about a consumer. In determining whether to extend credit, credit unions may use a variety of models and seldom rely on a simple credit score except when the credit score is above a certain number determined by underwriting standards. In-file or merged credit reports are generally used because they provide a more complete assessment of creditworthiness than a simple credit score.

Differences in Credit Reports

The Commission requests comment on any differences between the credit report that a creditor uses to make credit decisions and the credit report that the consumer receives in response to a request to a consumer reporting agency for a credit report following an adverse credit decision. NAFCU understands that the credit report that a consumer requests from a consumer reporting agency will often differ from the credit report that the creditor used to render a credit decision. These differences can result in a variety of problems for the consumer. For example, the difference in timing between the creditor request and the consumer's request can result in a report that reveals account delinquency to the creditor but later shows payments as current to the consumer. Problems also arise when consumers obtain credit reports from a consumer reporting agency other than the consumer reporting agency that the creditor has used. Even credit scores may differ from one credit reporting agency to the next. These inconsistencies may result in consumer confusion.

Benefits to Consumers

NAFCU believes providing the same credit reports would benefit consumers in a more meaningful way if they are provided in a reasonably understandable and consistent manner. Providing the same information would help applicants better understand why their applications were denied and may improve a consumer's general understanding of his or her credit. Providing consistent information is also necessary to the ability of a consumer to verify of the accuracy of information contained in a credit report. A consumer would be better able to identify errors, including inaccurate information that appears in a credit report as a result of identity theft, and have these errors corrected. Greater consumer understanding of their credit reports will improve the operation of the FCRA.

Donald S. Clark
July 16, 2004
Page 4 of 4

Providing the Credit Report

NAFCU strongly believes that if a credit report is to be provided to a consumer who experiences adverse action, the credit reporting agency can provide it at the lowest cost and greatest efficiency. Credit reporting agencies are in a unique position to provide standardized information to consumers in a consistent and readily understandable manner. Credit reporting agencies are already required to provide a credit report upon request to consumers who experience adverse action and therefore have pre-existing mechanisms for providing the reports. Creditors are not required to do so, and would incur substantial costs in implementing delivery systems. These costs would include postage, printing supplies, and additional staff to administer the delivery of the reports.

NAFCU would like to thank you for this opportunity to share its views on this proposed rule. Should you have any questions or require additional information please call me or Robert Byrer, NAFCU's Regulatory Compliance Counsel, at (703) 522-4770 or (800) 336-4644 ext. 278.

Sincerely,



Fred R. Becker, Jr.
President/CEO

FRB/rgb