



# CONSUMER CREDIT COUNSELORS OF LOS ANGELES®

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a non-profit organization dba

Consumer Credit Counseling Service  
of Los Angeles

Consumer Credit Counseling Service  
of the Sacramento Valley

Consumer Credit Counseling Service  
of Mid-Counties

April 14, 2004

Federal Trade Commission  
FACTA Free Reports  
Post Office Box 1031  
Merrifield, VA 22116-1031

Re: FACTA Free File Disclosures Proposed Rule, Matter No. R411005

Dear Sir/Madam:

Consumer Credit Counselor of Los Angeles would like to go on record in support of the comments made by Fair Isaac Corporation in their letter April 9, 2004 to the Federal Trade Commission:

Fair Isaac's comments focus on: (1) the proposed authorization of consumer reporting agencies ("CRAs") to market products and services through the centralized source; (2) the opportunity for nationwide CRAs to collect consumer information through the centralized source; and (3) the participation of other entities in activities permitted through the centralized source. Fair Isaac appreciates the opportunity to comment on these very important matters.

## I. PROPOSED AUTHORIZATION TO MARKET PRODUCTS AND SERVICES

### A. Marketing Through the Centralized Source Should Be Prohibited

In general, Fair Isaac supports the FTC's Proposed Rule, which would enable consumers to make one request to obtain annual file disclosures from each of the nationwide CRAs through a centralized source by using: (1) a single, dedicated Internet Web site; (2) a single, dedicated toll-free telephone number; or (3) mail directed to a single address ("Centralized Source"). Fair Isaac also believes it is appropriate and efficient for the Proposed Rule to provide that nationwide CRAs will jointly design, fund, implement and maintain the Centralized Source. However, Fair Isaac strongly opposes the provision of the Proposed Rule that would allow CRAs to market consumer products and services through the Centralized Source.

#### 1. FACT Act Does Not Authorize Marketing Through the Centralized Source

The supplemental information accompanying the Proposed Rule ("Supplemental Information") states that nationwide CRAs may market products and services to consumers who utilize the Centralized Source. Specifically, the Supplemental Information states: "[t]he [P]roposed [R]ule would not prohibit the nationwide [CRAs from] advertising their products and services through the [C]entralized [S]ource, nor offering those products and services, as well as additional file disclosures, directly through the [C]entralized [S]ource." The Proposed Rule does not appear to establish any limits on the types of products and services that could be offered through the Centralized Source, as long as the products or services are offered by one of the nationwide CRAs. We oppose this provision on two grounds. First, Section 211(d) of the FACT Act does not authorize the FTC to permit nationwide CRAs to market consumer products and services through the Centralized Source. Instead, section 211(d) authorizes the FTC to establish "a [C]entralized [S]ource through which consumers may obtain a consumer report from each . . . [CRA], using a single request, and without charge to the consumer." Therefore, we believe the FTC's

proposed authorization for nationwide CRAs to engage in marketing activities through the Centralized Source exceeds the authority granted to the FTC by the FACT Act and, thus, should be stricken from the Proposed Rule.

Second, using the Centralized Source to market to consumers will detract from and undermine the principal goal of the Proposed Rule—enabling consumers to easily access and use the Centralized Source to request and receive free credit reports from the nationwide CRAs. The FTC recognizes the problem of allowing marketing information through the Centralized Source. In particular, Proposed Rule section 610.2(g) states that, “[a]ny communications or instructions, including any advertising or marketing, provided through the [C]entralized [S]ource shall not interfere with, detract from, contradict, or otherwise undermine the purpose of the [C]entralized [S]ource.” Notwithstanding this proposed section, it will be difficult, if not impossible, to determine when and what type of marketing activity would interfere, detract, contradict or undermine the purpose of the Centralized Source. **In fact, we believe it simply is not possible for the FTC to fairly conclude that such marketing activities of the nationwide CRAs at the Centralized Source will not confuse consumers and detract from the sole purpose of the Centralized Source—to enable consumers to quickly and easily obtain the free annual reports contemplated by the FACT Act.** Instead, the presence of such marketing activities may well discourage consumers from using the Centralized Source at all, defeating one of the principal Congressional goals in enacting the FACT Act. Therefore, we believe the final rule should incorporate a simple, bright-line test that prohibits all marketing through the Centralized Source.

### *2. The Proposed Rule Improperly Provides a Competitive Advantage to Nationwide CRAs*

Commercialization of the Centralized Source, in which the nationwide CRAs would have the ability to advertise or promote the particular products and services they offer to consumers, would create an unfair competitive advantage for nationwide CRAs over other entities that provide similar consumer products or services. As a result of this competitive advantage, consumers will be less inclined to shop through alternative channels for similar, and in many cases better, products and services, resulting in fewer consumer choices for products or features and higher consumer costs for those products and services.

The anticompetitive effects produced by the nationwide CRAs’ control over the Centralized Source could be exacerbated by the FACT Act’s consumer education campaign concerning the right to obtain annual credit reports and credit scores. In particular, given the efforts of the FTC to educate consumers about the availability and significance of the Centralized Source, consumers are likely to regard the products and services offered through the Centralized Source in a more favorable light than similar products and services offered by other entities. That is, the strong positive government sanction regarding the Centralized Source is likely to be interpreted by consumers as a strong endorsement of the **products and services offered through the Centralized Source.**

### *3. Compliance Costs Not a Basis to Permit Marketing*

Although the FTC has not offered a justification for the proposed authorization for nationwide CRAs to market products and services through the Centralized Source, one rationale that has been suggested by others is that nationwide CRAs should be permitted to try to “recover” compliance costs associated with the operation of the Centralized Source. To the extent this view may be held by the FTC, we believe it is inappropriate to consider this notion in connection with whether to permit CRAs to market goods and services through the Centralized Source. All regulations impose costs on the entities that are subject to those regulations, and compliance costs of operating the Centralized Source are no different from the operational costs associated with complying with the many other requirements of the FACT Act.

In this regard, while we recognize that there are costs associated with the design, function and maintenance of the Centralized Source, we believe that these design, function and maintenance costs, as distinguished from the direct and indirect costs of providing the free annual consumer reports themselves, are likely to be quite modest. In addition, such costs do not warrant the adoption of a rule that permits marketing by nationwide CRAs through the

Centralized Source, particularly where such marketing is contrary to the goals of the FACT Act. Moreover, while the FACT Act expressly requires coordination by the nationwide CRAs with respect to annual file disclosure requests (namely, the front-end of the process), there is no corresponding requirement under the FACT Act for coordination of the delivery of the requested file disclosures (the back-end of the process). In fact, once a consumer request is received by the Centralized Source and transmitted to each of the nationwide CRAs, those CRAs could fulfill those requests in the same way they do today without involving the Centralized Source in the back-end delivery process for such reports. Therefore, while the CRAs likely will incur costs associated with the coordination of file disclosure requests at the front-end of the process, we believe these costs would be modest, particularly when compared to the negative effects associated with the marketing of products and services through the Centralized Source.

## **B. If the FTC Authorizes Marketing, It Must Provide a Level Playing Field**

### *1. All Competitors Should Have Access*

If the FTC nevertheless determines to authorize the marketing of products and services through the Centralized Source, we believe it is essential that the resulting rule provide equal access to other entities who provide similar products and services. That is, we believe granting access to the Centralized Source for other entities providing comparable products or services would benefit consumers and mitigate the anticompetitive effect of marketing advantages for the nationwide CRAs that are promoted by the government. Specifically, for example, if nationwide CRAs are permitted to market credit scores and fraud monitoring services to consumers through the Centralized Source, or use information captured at the Centralized Source, comparable marketing of those same products and services by competing entities should be permitted. The resulting level playing field would benefit consumers, address anticompetitive issues, and avoid the perception of an FTC endorsement of the specific consumer products or services offered by nationwide CRAs.

### *2. Marketing Information Should Improve Consumer Understanding*

The FTC has recognized the beneficial effect of providing access to additional credit-related information, such as credit scores. However, there are many different types of credit scores available to consumers and some are more helpful than others at helping a consumer understand his or her credit standing and how to improve it. Therefore, if the FTC decides to authorize the marketing of products and services through the Centralized Source, as proposed, the rules should facilitate consumer access to information that will best help them improve their understanding of credit scores.

For example, section 212(b) of the FACT Act requires CRAs to provide credit score information to consumers upon request. The FACT Act also contemplates that these credit scores are to be derived from models that are widely distributed to the users of credit scores, such as lenders, or models that are designed to assist consumers in understanding credit scoring. In this regard, Fair Isaac believes the Proposed Rule's apparent grant of exclusive marketing rights through the Centralized Source to the nationwide CRAs, while intended to provide consumers with access to valuable tools to understand their credit history and credit scores, may actually harm consumers by denying them access to the broad-based national credit scoring information most often utilized by lenders.

Thus, if the FTC authorizes use of the Centralized Source for the sale of credit scores to consumers for a reasonable fee it should do so in a way that is most likely to help consumers. The regulations implemented by the FTC should explicitly require nationwide CRAs, and any other entity providing credit scores through the

Centralized Source, to offer individual consumers an *informed choice* between the broad-based national credit score most widely distributed to lenders and an alternative educational credit score. Since these two forms of credit scores may vary significantly, this approach will help to ensure that consumers have access to the most useful credit score information available and will help avoid the confusion consumers will experience if they unknowingly receive a credit score that is different than the one most often used by lenders for credit decisions.

## II. INFORMATION COLLECTION PRACTICES

Under section 610.2(b)(2)(ii) of the Proposed Rule, the nationwide CRAs may collect information through the Centralized Source as necessary to properly identify the consumer and to process the consumer's request. While the Supplemental Information states that, "the [P]roposed [R]ule limits the amount of information that each [CRA] may collect through the [C]entralized [S]ource to only what is reasonably necessary," Fair Isaac believes that the final rule should include clear regulatory guidance limiting the reuse of collected information so that privacy concerns will not discourage consumers from requesting annual file disclosures through the Centralized Source. Specifically, the final rule should prohibit the use of information collected for any purpose other than to identify the consumer and process the consumer's request for the annual file disclosure and, in particular, the rule should provide that data collected through the Centralized Source cannot be used for marketing purposes.

## III. NEW ENTRANTS TO THE CENTRALIZED SOURCE

While the Proposed Rule does not directly address the entry of new participants to the operation of the Centralized Source, the Supplemental Information states that, "[a]ny entity that meets the definition of [a] nationwide [CRA] . . . cannot be excluded by the currently identified nationwide [CRAs] from participating jointly in the [C]entralized [S]ource." However, because the Centralized Source would be maintained by the existing nationwide CRAs, Fair Isaac believes it is important that the final rule more specifically address the addition of new participant CRAs in a fair and equitable manner that would facilitate the transition of new participants into the coordinative operation of the Centralized Source. This is particularly important to facilitate the development of the collection of nontraditional information that will enable lenders to assess the credit risk of the population of consumers that are underserved by the consumer credit information currently available.

While Fair Isaac recognizes the financial responsibility that new participant CRAs will incur when transitioning to use of the Centralized Source, we believe the rules should provide that entry costs should be based on a fair and reasonable apportioned assessment. In this regard, entry costs based on premiums or a royalty system based on access could impede the ability of new entrants to participate in the Centralized Source by creating an anticompetitive preference for existing CRAs. For example, unfair entry costs could be discriminatory in nature and could be utilized as a bar to new participant CRA entry to Centralized Source operation. In addition, to further facilitate entry of new participant CRAs into the operation of the Centralized Source, the final rule should make it clear that candidates for participation must be given access to the technical and operational information related to the Centralized Source needed to enable new CRAs to participate in the Centralized Source in a manner that does not put them at a competitive disadvantage to the existing nationwide CRAs.

Thank you for the opportunity to comment. If you have any questions, please call me at 916-379-3608.

Sincerely,



Kathleen A. Stutts  
EVP