

Supporting Statement
FTC Follow-up Pilot Study Pursuant to Section 319 of the
Fair and Accurate Credit Transactions Act of 2003
(Reinstatement of OMB Control No. 3084-0133)

Section 319 of the Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”), Pub. L.108-159 (2003), requires the Federal Trade Commission (“FTC” or “Commission”) to study the accuracy and completeness of information in consumers’ credit reports and to consider methods for improving the accuracy and completeness of such information. Accurate credit reporting is important to consumers and to the industry. For consumers, credit reports – and the associated credit scores– may be the key to getting approval for such items as a mortgage, an automobile loan, a major credit card, a job, the rental of an apartment, phone service, insurance coverage, and other financial products or services. For the industry, credit reports provide lenders the information about a borrowers’ credit history with which they can estimate default risk and may thus tailor interest rates and other credit terms to the risk that is presented by the borrower.

The FTC intends to conduct a pilot study in connection with Section 319 of the FACT Act. The proposed pilot study is a follow-up to the Commission’s previous pilot study conducted from October 2005 through June 2006. After the initial pilot study was conducted, the FTC requested that the Office of Management and Budget (“OMB”) discontinue the clearance (OMB Control No. 3084-0133).¹ The FTC is now requesting that the OMB reinstate that clearance so that it can conduct a follow-up pilot study.

The FTC believes it is necessary to conduct a follow-up pilot study to evaluate additional design elements prior to carrying out a nationwide survey on the accuracy and completeness of consumer credit reports. The additional design elements would permit the FTC to further assess whether certain data pertinent to credit report accuracy can be obtained in a way that is not unduly resource-intensive or otherwise cost-prohibitive if extended to a nationwide survey. As was true of the initial study, the follow-up pilot study will not rely on the selection of a nationally representative sample of consumers, and statistical conclusions will not be drawn.

A. JUSTIFICATION

1. Necessity for Information Collection

Among other purposes, the FACT Act amends the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§ 1681, to enhance the accuracy of consumer reports. The FACT Act requires the

¹ The clearance for the initial study was originally set to expire in December 2006. However, rather than seek an extension of the existing clearance to conduct the proposed follow-up pilot study, FTC staff asked OMB to discontinue the clearance in September 2006. This procedural approach ensured that the FTC’s December 2006 Report to Congress, which includes the contractor’s report on initial pilot study, would be publicly available before the end of the comment period for the proposed follow-up pilot study. See 71 FR 61776 (October 19, 2006).

Commission to conduct a number of studies on consumer reporting and related issues. Specifically, Section 319 of the Act requires the Commission to study the accuracy and completeness of information in consumers' credit reports and to consider methods for improving the accuracy and completeness of such information. The Act requires the FTC to issue a series of biennial reports to Congress over a period of eleven years, and the FTC has submitted two reports thus far: one in December 2004 ("December 2004 Report") and another in December 2006 ("December 2006 Report").²

Through a variety of means, such as a consideration of prior studies, published reports of other governmental agencies, a roundtable on credit report accuracy, and contact with numerous relevant parties, the Commission found that although prior approaches to the study of credit report accuracy provide some useful information, none provides a reliable and comprehensive assessment. Indeed, none of the existing sources of information relied on the participation of all three of the key stakeholders in the credit reporting process: consumers, data furnishers, and the CRAs. The proposed follow-up pilot study is a second step in preparing for a nationwide survey of credit reports. (See also discussion in Section 4 below).

2. How Data Will Be Collected and Used

Scope of Work to be Performed

The design of the proposed follow-up pilot study is similar in many respects to the initial pilot study because both involve a consumer survey approach to assessing the accuracy of credit reports. In brief, the key modifications from the initial study will include: changes in the recruitment process, improved follow-up measures with certain study participants, and a larger respondent pool.³

The design elements for the proposed 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 consist of adult members of households to whom credit has been extended in the form of credit

² *Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003*, Federal Trade Commission, December 2004, and *Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003*, Federal Trade Commission, December 2006. The December 2006 Report includes a full copy of the contractor's report on the initial pilot study. The respective reports are available at <http://www.ftc.gov/reports/index.htm#2004> and <http://www.ftc.gov/reports/index.htm#2006>.

³ A larger study group will be used as an aid for evaluating the additional elements. The initial pilot study had 30 participants; the proposed follow-up pilot study will have 120.

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 pilot study. The contractor will screen consumers by conducting 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 will use, and may also experiment with, a variety of methods for recruiting participants. In addition to the randomized selection procedure used in the initial pilot study (which made use of telephone directories), the contractor may engage consumers through referrals from financial institutions as they apply for credit, e.g., mortgages, automobile loans, or other forms of credit. (Lenders will know – and have a permissible purpose for knowing – the consumer's credit score and certain other characteristics; consumers can then be informed of the FTC study and invited to participate.) The contractor may employ additional methods for securing participation, provided that no method would violate the permissible purposes for obtaining a consumer's credit report (FCRA sec. 604).

(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 representations of credit scores across the designated categories.

(d) The contractor will help 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.

(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).

(f) The contractor will help participants locate any material differences or discrepancies among their three reports and check whether these differences indicate inaccuracies.

(g) The contractor will facilitate a participant's contact with CRAs and data furnishers as necessary 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.⁴ The contractor will not directly contact CRAs or data furnishers during the course of

⁴ Section 611 of the FCRA (15 U.S.C. §1681i) sets forth the process by which a consumer may dispute data in his or her credit files with a CRA, and the CRA's duty to investigate the dispute. Section 623(b) (15 U.S.C. §1681s-2(b)) spells out the duties of persons
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the study, as the outcome of a dispute may still be pending. The contractor will determine whether any changes in the participant's credit score result from changes in credit report information.⁵

(h) For study participants who have alleged material errors and expressed an intention to file a dispute but do not file within 6 weeks, the contractor will prepare draft dispute letters on their behalf (together with stamped envelopes, pre-addressed to relevant CRAs). The contractor will ascertain from the consumer whether the letter correctly describes 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, the proposed 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 the reports of study participants, with the help of expert advice, would not at all be indicative of a consumer's normal experience in reviewing a credit report. The FTC recognizes that consumers often are not familiar with credit reporting procedures and may have difficulties in understanding a credit report (which may be partly due to a consumer's own misconceptions). Also, as noted above, some consumers may need extra guidance and help in completing the process of filing disputes for alleged errors. In all of the proposed activities, the contractor will again use procedures that avoid identification of study participants to CRAs and data furnishers.

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that have furnished disputed items of information to a CRA, after receiving notice of a dispute from the CRA. The FCRA dispute resolution process thus involves the review of disputed items by data furnishers and CRAs, and the process 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 FCRA 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). The CRAs track these possible actions by using a form called "Online Solution for Complete and Accurate Reporting" (e-OSCAR). *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. The report is available at <http://www.ftc.gov/reports/index.htm#2006>.

⁵ In making this comparison, the contractor will not just obtain a new credit report and score from the relevant CRAs after items have been corrected (although such 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, thereby re-scoring the consumer's "frozen file." This method addresses the concern that changes in credit scores retrieved from CRAs could be the result of the addition of new items rather than corrected items.

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As was further true of the initial study, the proposed follow-up pilot study will not employ a specific definition of accuracy and completeness and no decision has been made on the definition of these terms for a nationwide survey.⁶ Instead, both the initial and follow-up pilot 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.

Finally, the follow-up pilot study will list an array of possible outcomes for items reviewed on the participants' credit reports. FTC staff anticipates this list will include the following categories (the contractor may supply additional categories as warranted by matters 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 or modify* the item;”
- “disputed by consumer and data furnisher *disagrees*, maintaining the item to be correct;”
- “item not disputed by consumer;” or
- “item not present on the report.”⁷

As discussed in the December 2006 Report (at 7), which recognizes that the results of the dispute process do not establish the “accuracy” of credit reports in an absolute sense, it is still anticipated that these categories will be useful in designing a nationwide survey regardless of how “accuracy” and “completeness” may be delineated for such a survey.

3. Use of Information Technology

⁶ See also December 2004 Report at 5 n.10, which discusses different definitions of completeness, and at 16-18, which discusses FCRA accuracy and completeness requirements.

⁷ 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 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.

The study participant's credit reports will be obtained via the internet. Additional use of electronic methods pursuant to the Government Paperwork Elimination Act, Pub. L. No. 105-277, Title XVII, 112 Stat. 2681-749, would be impractical. The contractor will review reports with participants by telephone. Study participants will likely feel more comfortable discussing their credit reports over the phone instead of by electronic mail.

4. Efforts to Identify Duplication/Availability of Similar Information

FTC staff has reviewed all prior studies of credit report accuracy and conducted a roundtable on June 30, 2004.⁸ Roundtable participants included various consumer-interest groups, industry representatives, academic researchers, and participants from other government agencies. All of the principal parties involved in the prior studies were at the roundtable. The FTC's December 2004 Report (at 21-31) reviews the prior studies used to solicit information on credit report accuracy. In its December 2004 Report, the Commission (at iii) concluded that, although the prior approaches provide some useful information about credit report accuracy and completeness, none provides a comprehensive view. Indeed, none of the existing studies relied on the participation of all three of the key stake-holders in the credit reporting process: consumers, data furnishers, and the CRAs.

In order to test an appropriate study methodology, the FTC undertook the initial pilot study referenced above from October 2005 through June 2006. Some of the contractor's key findings in the initial study include: (i) participants were successfully engaged in conducting a thorough and effective review of their credit report information over the telephone; (ii) effective mechanisms to protect consumers' personal information can be employed, and (iii) sufficient information was provided for a subsequent analysis of the accuracy of items placed in CRA files and presented in credit reports.

The contractor for the initial pilot study also identified two matters that would need to be addressed further: additional procedures to help consumers follow through with the entirety of the study, and additional ways of identifying and recruiting consumers to become participants in the study. There is no currently available information that addresses these concerns and, as discussed below in section 6, failure to obtain this additional information would jeopardize a proper design for a nationwide survey.

5. Efforts to Minimize Small Organization Burden

Not applicable. The study participants are individual consumers.

⁸ A transcript of the proceedings, agenda, list of participants, and summary of the discussions are available at <http://www.ftc.gov/be/workshops/methodologiesaacc/index.htm>.

6. Consequences to Federal Program and Policy Activities/Obstacles to Reducing Burden

If this follow-up pilot study is not undertaken, the FTC will lack critical information on potential improvements in designing a comprehensive study of the accuracy and completeness of credit reports. As discussed above, the contractor for the initial pilot study identified two matters that would need to be addressed further: additional procedures to help consumers follow through with the entirety of the study, and additional ways of identifying and recruiting consumers to become participants in the study. The majority of participants who alleged errors on their credit reports and indicated that they would file a formal dispute did not follow through with their intention to file. Considering that this was also true for those who alleged *material* errors in the expert opinion of the research team, the need to explore how to best follow-up with consumers who indicate they will file a dispute is clear. Further, the outcome of the study suggests that people who did not have Internet access or experience may have been less willing to participate. Although the contractor would have offered to provide Internet access to otherwise qualified participants, all who ultimately became participants in the study had Internet access.⁹ In consideration of these and other matters, the FTC plans to conduct a follow-up pilot study.

7. Circumstances Requiring Collection Inconsistent with Guidelines

The collection of information in the proposed survey is consistent with all applicable guidelines contained in 5 C.F.R. § 1320.5(d)(2).

8. Public Comments Sought/Consultation Outside the Agency

As discussed above, the FTC conducted a roundtable on June 30, 2004 regarding the proposal for an initial pilot study and a potential nationwide survey. Roundtable participants included various consumer-interest groups, industry representatives, academic researchers, and participants from other government agencies. In addition, the FTC published two notices seeking public comment on the initial pilot study. See 69 FR 61675 (October 20, 2004); 70 FR 24583 (May 10, 2005).

As required by 5 C.F.R. § 1320.8(d), the FTC published a notice seeking public comment on the proposed follow-up pilot study. 71 FR 61776 (October 19, 2006). The comments received by the FTC on the proposed information collection request are discussed below. Pursuant to the OMB regulations that implement the PRA (5 CFR Part 1320), the FTC is

⁹ A broad spectrum of credit scores was attained in the study group, but the distribution tended toward relatively higher credit scores. The contractor compared participants' credit scores to the national distribution, and the study data revealed that low scores were under-represented in the sample, while high scores were over-represented.

providing a second opportunity for public comment while seeking OMB approval for the proposed follow-up pilot study.

In response to its October 19, 2006 notice, the FTC received three comments: one from ACA International (“ACA”), another from the Consumer Data Industry Association (“CDIA”), and a third from TransUnion, LLC (“TransUnion”).¹⁰ The comments from each of these organizations are addressed below.

(a) ACA Comment

ACA supports the goal of both the initial and proposed follow-up pilot study (ACA at 5), while it also expresses concerns. ACA (at 5-7) views it as a shortcoming that the pilot study design does not include definitions of the terms “accuracy,” “completeness,” or “dispute,” and does not categorize the types of data furnishers who may be addressed by a dispute.

The terms “accuracy” and “completeness” do not require specific definition at this time for the following reason: the pilot studies are not used to draw any conclusions, statistical or otherwise, about accuracy or completeness but are formulated solely as vehicles for assessing the feasibility of a certain study methodology (i.e., an assessment of a consumer survey approach that directly involves consumers in a review of information in their credit reports for the purpose of identifying alleged materials errors and attempting to resolve disputed items through the FCRA dispute resolution process). As discussed above, it is anticipated that the related categories outlined in this notice will be useful in designing a nationwide survey regardless of how the terms accuracy and completeness may be delineated for such a survey.

Regarding ACA’s question about the term “dispute” and a classification for “data furnisher,” staff uses these terms – expressly for the purpose of the pilot studies – in the following way: in regard to items on a credit report, a “disputed item” is a consumer alleged error that is communicated by the consumer, either in writing or electronically, to a CRA or to a data furnisher; a “data furnisher” is simply a party who provides to a CRA any of the items that appear on a credit report.¹¹ In giving this description, staff sees no need to classify, at this stage, the types of data furnishers who may be involved with consumer disputed items.¹²

¹⁰ The comments are available on the FTC’s website at <http://www.ftc.gov/os/comments/FACTA-accuracystudy-2/index.htm>.

¹¹ In offering this description, staff is not proposing any legal determination of duties or actions that may be required of a CRA or a data furnisher under the FCRA.

¹² In preparation for the Commission’s stated goal of classifying credit report errors by type and seriousness in terms of potential consumer harm (see, December 2006 Report at 2), it is expected that the studies will rank categories of credit report information according to the
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(b) CDIA Comment

The CDIA expresses support for the FTC's plan to continue testing a methodology for a prospective nationwide study (CDIA at 1), and it also gives comment on a number of related matters. For purposes of staff's response, we summarize CDIA's concerns as follows: (1) specific concerns and advice pertaining to the design of a nationwide survey, (2) concerns with the contractor's report on the completed pilot study in relation to the proposed follow-up pilot study, and (3) concerns that some of the activities of the study may fall outside the scope of the mandate given to the FTC by Section 319 of the FACT Act. FTC staff addresses each of these areas in turn.

Regarding the design of a nationwide survey, CDIA (at 2-4) raises many matters, including the selection of sample participants and institutions that may be involved in helping to identify potential participants, appropriate sample size for a national survey, potential sample bias, and the need to ensure that the sample of credit reports utilized in a national survey have a distribution of credit scores representative of the national distribution. In connection with all of these matters, CDIA's overriding request appears to be (CDIA at 2) that the FTC present a national survey design for public comment. FTC staff has no disagreement with CDIA regarding these stated concerns but believes that a staff response would presently be premature. The design for a nationwide study depends in part on what the proposed follow-up pilot study reveals. More generally, staff affirms that a proposed design for a nationwide survey will be made publicly available.¹³

Regarding the work-product contained in the contractor's report, CDIA objects to some of the ways in which data were presented, and it disagrees with certain views and recommendations of the contractor (CDIA at 4-6). Before responding to these matters, staff notes that in order to have a transparent study process in connection with Section 319 of the FACT Act, the FTC made public the entirety of the contractor's report on the initial pilot study (appendix to the FTC's December 2006 Report to Congress). In the same report to Congress (at 2-4), the FTC brought forward those salient features in the contractor's report that were used in proposing a follow-up pilot study. Overall, staff believes that CDIA raises two or three matters that relate to

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frequency of consumer disputes and determined errors. This type of ranking may be expected to render, concurrently, some categorization of corresponding data furnishers.

¹³ Staff anticipates that upon completion of the follow-up pilot study, a subsequent design for a nationwide survey will be submitted for OMB clearance. As is also true of the present matter, the clearance process involves two Federal Register Notices which set forth the design elements of the study. Each notice provides opportunity for public scrutiny and comment.

both the work-product of the contractor and the FTC's formulation of a follow-up pilot study; these are discussed below.¹⁴

As described in section 2(e) above, when conducting the proposed follow-up pilot study, the FTC anticipates that the contractor will help participants to locate any material differences or discrepancies among their three credit reports and to check whether these differences indicate inaccuracies. In regard to this proposed study design element, CDIA (at 6-7) strongly objects to using a "cross-file analysis...publishing score range differences..." for the initial study or for the proposed follow-up pilot study. Staff agrees with CDIA that differences in credit scores across a consumer's credit reports (including very substantial differences) need not indicate errors. Given the voluntary basis on which information is reported to a CRA, (see note 7 above), there may be various explanations for differences in credit report information. Nonetheless, a score difference is relevant to the study if this score difference should be based on informational differences or discrepancies arising from some error in a consumer's credit files. (Staff anticipates that certain credit score ranges will be used to categorize the impact of determined errors; see discussion below.)

A second matter raised by CDIA that pertains to both the work-product of the contractor and the formulation of a follow-up pilot study involves the meaning of the term *material* and score ranges used for assessing materiality. CDIA (at 5) notes that certain credit score ranges were used by the contractor in assessing potential materiality.¹⁵ For the follow-up pilot study, FTC staff anticipates that disputed information will likely be categorized, incrementally, in terms of 10 point movements in score changes derived from a re-scoring of frozen files.¹⁶

¹⁴ The December 2006 Report (at 1) noted that the work-product and opinions of the contractor are not necessarily findings or opinions of the FTC. Staff sees no fruitful purpose to respond to matters in the contractor's report that were not used to formulate the follow-up study.

¹⁵ Based upon staff discussion with the contractor, the contractor viewed an alleged error as *material* if a re-scoring of the frozen file in regard to the challenged item yielded a change of approximately 30 points (deeming the later score range to be a commonly accepted estimate of normal variation in credit scores across a consumer's three credit reports). However, any consumer who wanted to dispute an item, regardless of anticipated impact, could do so and would be instructed on how to file. The contractor would summarize the results for *all* disputed items, as categorized by a re-scoring of frozen files to obtain the materiality of alleged errors. But the paucity of filed disputes that occurred in the initial pilot study rendered the procedures for assessing and reporting the materiality of disputed items as largely moot.

¹⁶ We distinguish between disputed items and determined errors. The categorization of disputed items would start with items having an expected impact of 10 points or more, then 20 points, 30 points, and so forth. The various outcomes of the dispute process would also be summarized in terms of these same categories, including any actual changes in credit scores that
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The CDIA (at 5) also inquires how the study will address items that remain unresolved after the dispute process is complete; i.e., items for which a data furnisher maintains the information to be accurate but the consumer maintains that it is not. Staff does not intend that the pilot study would resolve such items and further anticipates that the study will simply identify certain items (in terms of both the categories of credit report information and their frequency) that remain unresolved. As noted in the FTC's December 2006 Report (at 7), knowing the results of the dispute process does not establish the accuracy of credit reports in an absolute sense. Yet, a study using the dispute process appears to be the only feasible way of performing a study of credit report accuracy, in view of the enormous difficulty and cost of attempting to ascertain the ultimate accuracy regarding alleged errors.

The CDIA also comments on the mandate given by Section 319 of the FACT Act and maintains that such matters as comparing scores across credit bureaus (as discussed above), attempting to ascertain why consumers do not dispute alleged inaccuracies, and engaging non-English speaking consumers in a review of their credit reports, all fall outside the scope of the Act (CDIA at 7). FTC staff disagrees. Staff believes that all of the design elements set forth regarding the follow-up pilot study (section 2 above) fall within the two-prong scope of the mandate: to study the accuracy and completeness of credit report information and to study methods for improving the accuracy and completeness of such information.

(c) TransUnion Comment

Beyond the support expressed for CDIA's comments, TransUnion's comment letter conveys critical concern and advice in four main areas: (1) disappointment that the FTC has not defined the terms accuracy and completeness in the context of the present studies, (2) concern that the FTC's scope in executing the mandate of Section 319 of the FACT Act appears to be limited to the three nationwide credit bureaus (Equifax, Experian, and TransUnion), (3) advice that, since Fair Isaac has recently developed a subsidiary that acts as a consumer reporting agency, Fair Isaac should not play a part in any follow-up study, and (4) a request that any person who has disputed credit report information in the past be excluded from the follow-up study.

In the above discussion of ACA's concerns, staff has explained why the terms "accuracy" and "completeness" do not require definitions in the context of these pilot studies; the same response serves as a reply to TransUnion's comment on this matter.

¹⁶ (...continued)

arise from *determined errors* (those alleged inaccuracies that the dispute process confirms as being errors). As noted above in section 2(g), actual changes in scores retrieved from CRAs could be the result of the addition of new items rather than corrected items, so that actual score changes need not correctly convey the impact of an error in a credit report. Hence, we categorize outcomes by credit score ranges that refer to a re-scoring of frozen files.

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Regarding TransUnion's question (at 2) about the scope of the study on the variety of consumer reporting agencies encompassed under section 319 of the FACT Act, staff notes that the proposed pilot study does indeed involve credit reports and scores from Equifax, Experian, and TransUnion. We recognize there are many consumer reporting agencies, but credit reports from the three nationwide CRAs are the most widely used in making credit, insurance, and employment decisions. Staff has not foreclosed the possibility of recommending that additional consumer reporting agencies may be included in a broader survey. As noted above, any design for a nationwide study will, in due course, be made available for public comment.

TransUnion also requests (at 2) that Fair Isaac not be part of the contracting team for any follow-up study. The background for TransUnion's request appears to be that Fair Isaac has recently developed a new credit score (an "Expansion Score") in regard to which a subsidiary of Fair Isaac acts as a consumer reporting agency. As described by the company,¹⁷ this score has been developed for credit grantors in connection with consumers who have insufficient credit histories to render the traditional FICO-based scores that are used by the nationwide CRAs.

Staff has considered this matter and does not think TransUnion's stated concern would justify excluding Fair Isaac from the bidding process for a follow-up pilot study.¹⁸ In the initial study, all participants had credit histories that were evaluated by traditional FICO-based scores, and Fair Isaac's role was limited to using its expert knowledge of these scores in connection with a re-scoring of participants' frozen files for consumer alleged errors.¹⁹ In evaluating the proposals for the extended pilot from various contractors, staff will consider how susceptible a proposal may be to possible bias in the data collection process.

Finally, TransUnion (at 2) requests that anyone who has disputed any credit report item in the past be excluded from the follow-up study, further adding that individuals who have already alleged an error at an earlier time should not be allowed to use the study as a means to recast their issues or complaints. Staff has several observations here. If it should be that some items may be "re-disputed" (as TransUnion suggests), the outcome for such disputes would follow from whatever normal procedures may be employed. For example, if a CRA has a reasonable basis for deeming a dispute frivolous, it can advise the consumer so and decline to act further. Or, if a

¹⁷ Description obtained from Fair Isaac's website at www.fairisaac.com.

¹⁸ Presently, no determination has been made about a contract award. FTC staff anticipates that a contract will be let out for competitive bidding during the spring of 2007.

¹⁹ See, 70 FR 24583 (May 10, 2005) on the design of the initial pilot study on this matter. The follow-up pilot study has the same design element (i.e., element 2(g), note 5 above). Staff further notes that prospective participants are screened to consist of 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 (design element 2(a) above). Typically, such consumers have credit histories capable of evaluation by traditional credit bureau scores.

CRA can identify the dispute as being a “re-dispute” of an already considered matter, it can again advise the consumer accordingly. Such responses would be part of the outcome of the study. On the other hand, should a CRA not have a readily available way of identifying “re-disputed” items, then neither would the contractor.

More generally, staff sees no basis for restricting the study to the reports of consumers who have never disputed any item prior to the study. It is possible that the accuracy of credit reports may differ based on items that have, or have not been, disputed. In light of this, staff plans to include a question in the study about whether consumers have disputed any item in one of their credit reports at an earlier time, and if so, to briefly indicate when and what. But a currently alleged error need not be related to a prior dispute, and we do not see any justification for excluding all consumers who have disputed some item(s) in the past. Staff adds that an important element of both the initial and proposed pilot study is that any contractor must have the expertise to evaluate alleged errors and to assess whether a dispute would be material to creditworthiness. In this context, it is very unlikely that frivolous or immaterial disputes would go forward.

9. Payments or Gifts to Respondents

In the initial pilot study the contractor discovered that a sufficient number of consumers joined the study without the need for financial inducement (contractor’s report at 5), although certain compensation to participants was authorized. Possibly, the same may hold true for a follow-up study. The contractor will budget funds to be able to compensate some respondents for their participation (some may be offered \$50, others \$100). The maximum payment of \$100 is in accordance with the reasonable and customary procedures of the contractor. The purpose of the varying amount of the honorarium is to obtain a preliminary indication of the level of monetary compensation, if any, that would affect a consumer’s decision to participate in a survey that involves their personal financial matters and approximately 5 hours of their time. In addition, participants will receive (free of charge) their three credit reports and credit scores.

10. & 11. Assurances of Confidentiality/Matters of a Sensitive Nature

The contractor is required to obtain the permission of participants before viewing their credit reports. Although the contractor will obtain the names, telephone numbers, and credit reports of the participants, such information will not be externally disclosed. If the results of the study should be made publicly available (see section 16 below), the FTC will not include any personal information about individual respondents.

In a comment received regarding the initial pilot study, and equally applicable to this pilot study, Privacy Rights Clearing House asked²⁰ whether participants' credit reports will be treated as agency records subject to the Privacy Act, 5 U.S.C. 552a, and, if so, whether participants will receive any notice required by that Act. To the extent, if any, that the Act applies, the reports would be part of the agency's existing system for legal, investigational and other records,²¹ and, whether or not the Act applies, the FTC will include a notice consistent with the Act on any information collection forms (e.g., the letter sent by the FTC to potential study participants). Further, the letter to potential participants will inform them that the contractor is permitted to collect the data only for the purpose of the pilot study, and that other uses have been prohibited.

12. Estimated Hours Burden

Consumer participation in the follow-up pilot study would involve an initial screening and any subsequent time spent by participants to understand, review, and if deemed necessary, to dispute information in their credit reports. The FTC staff estimates that up to 800 consumers may need to be screened through telephone interviews to obtain 120 participants, and that a screening interview may last up to 10 minutes, yielding a total of approximately 133 hours (800 screening interviews x 1/6 hour per contact).

With respect to the hours spent by study participants, in some cases the relative simplicity of a credit report may render little need for review and the consumer's participation may only be an hour. For reports that involve difficulties, it may require a number of hours for the participant to be educated about the report and to resolve any disputed items. For items that are disputed, the participant must submit a dispute form, identify the nature of the problem, present verification from the consumer's own records to the extent possible, and perhaps submit further information. As was true of the initial study, FTC staff again estimates the participants' time for reviewing their credit reports at an average of 5 hours per participant, resulting in a total of 600 hours (5 hours x 120 participants).²² Total consumer burden hours are thus approximately 750 hours (derived as 133 screening hours plus 600 participant hours, further rounding upwards to the nearest 50 hours).

²⁰ See 70 FR 24583 (May 10, 2005).

²¹ See <http://www.ftc.gov/foia/sysnot/i-1.pdf>

²² This estimate is given for the purpose of calculating burden under the PRA. Information contained in the contractor's report regarding the initial pilot study may indicate a somewhat lower estimate for the average time spent by the 30 participants, but it would not result in a noticeably different outcome for the overall consumer burden. In an effort not to underestimate the time spent by additional study participants, FTC staff has retained the estimate used for the initial study.

13. Estimated Cost Burden

The cost per participant should be negligible. Participation is voluntary, and will not require any start-up, capital, or labor expenditures by study participants. As with the initial study, participants will not pay for their credit reports or credit scores.

14. Estimated Cost to Federal Government

The FTC has not yet selected a contractor for the follow-up study and plans to let out the contract under competitive bidding during the spring of 2007. The contract award is thus to be determined.²³ In addition, the aggregate of FTC staff time and costs already expended to design the study and to further identify a subsequent contractor plus time that will be expended to assist a contractor in completing his duties and to analyze the data will sum to approximately 500 hours of economist and research analyst time, rendering a monetary total of \$30,000. The cost of FTC staff time is necessarily an estimate because factors in this calculation may vary, including the number of staff members involved and the amount of time required of each. These estimates include clerical and other support services.

15. Program Changes or Adjustments

The burden estimate for the proposed follow-up pilot study survey represents an increase of 550 hours from the estimate for the initial pilot study.

16. Plans for Tabulation and Publication

The FTC has not determined whether the results will be made public.²⁴

17 & 18. Display of Expiration Date for OMB Approval/Exceptions to Certification

²³ For the initial pilot study, the contractor was a consortium comprised of the Credit Research Center from Georgetown University, the University of Missouri via its Center for Business and Industrial Studies, and the Fair Isaac Corporation. FTC staff anticipates that the contractor for the initial study will be one of the parties submitting a bid on the follow-up study. Staff has its own estimate of the likely contract cost of the study, but is reluctant to publish such a figure in advance of competitive bidding.

²⁴ Staff believes that the results may be made public in the same manner that the initial study was made public; specifically, a copy of the contractor's report may be attached as an appendix to a future FTC report to Congress under the FACT Act.

The FTC will display the expiration date alongside the assigned OMB control number on the front pages of any documentation given to the participants of the study. There are no exceptions to certification.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable. The proposed follow-up pilot study is not a statistical study and no statistical conclusions will be drawn.