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The Honorable Michael McRaith
Chair, NAIC Property and Casualty Insurance Committee
The Honorable Kim Holland
Chair, NAIC Market Regulation and Consumer Affairs Committee

Dear Commissioners McRaith and Holland:

I write on behalf of the Consumer Data Industry Association (CDIA) to offer comments in connection with your review of credit-based insurance scores.

CDIA was founded in 1906 and is the international trade association that represents over 200 consumer data companies. CDIA members represent the nation's leading institutions in credit reporting, mortgage reporting, check verification, fraud prevention, risk management, employment reporting, tenant screening and collection services. Our members help their customers more effectively manage risk using precise, current, and reliable information.

We note that the call for the April 30, hearing did not specifically seek information concerning the underlying credit data that goes in to a credit-based insurance score. Since credit information is the building block of a credit-based insurance score, you might be interested in CDIA's comment.

Credit report information is heavily regulated by federal and state law, the credit report information is proven to be reliable by those that use consumer reports, those that regulate consumer reports, and consumers themselves. Credit information sets a solid foundation upon which credit-based insurance scores are built.

I. Background on Insurance Scoring

Sometimes confused with credit scores that determine creditworthiness, an insurance score is designed to measure risk of loss. Insurance scores often, but not always, contain credit information. In a credit-based insurance score, credit information is one just one part of an overall score that also may include information like application information, MVA/DMV data, claims history, home or auto information, and more. Credit histories by themselves, or as part of insurance scores, are used by insurers because they are highly predictive of risk of loss. We will let others speak more directly and greater length to the actuarial predictiveness of insurance scores. For this comment CDIA will focus on the credit data.

II. Building a Credit Report

A credit report is like a financial biography of a consumer and for most consumers the story is extraordinarily positive. Equifax, Experian, and TransUnion receive three billion updates every month from 18,000 data furnishers on 200 million Americans. More than 90% of all consumers have no adverse information on their files. For those consumers with information that is likely to be viewed as negative, in general that information cannot stay on a credit report beyond seven years.

Credit reports will contain credit information, like car loans, credit cards, and similar items. Consumers may also find preapproved offers of credit or insurance on their credit reports. By law, only that consumer sees such offers, better known as inquiries. No other lender, insurer, or other user is allowed to see such non-consumer initiated offers of credit or insurance.

Just as important as what is on a credit report is what is not on a credit report. Credit reports do not contain information about gender, race, religion, creed, color, national origin, or income.¹ Credit reports also do not contain medical histories.

III. Credit Information and the Law

The federal Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 *et seq.* heavily regulates the consumer reporting industry, including those that furnish data to and use data from consumer reporting agencies. The most comprehensive changes to the FCRA were in 2003 when Congress passed the Fair and Accurate Credit Transactions Act of 2003 (FACTA or FACT Act). The FCRA, which now has over 23,000 words, substantially controls the intake and output of consumer reporting data. Many states also have their own credit reporting laws.

The touchstone of the FCRA is the accuracy obligation of consumer reporting agencies. The law requires that consumer reporting agencies maintain reasonable procedures to assure maximum possible accuracy. 15 U.S.C. § 1681e(b). Determining what is accurate may sometimes be a challenge and may mean different things to different people, but it is important to note that even the Federal Trade Commission believes that credit reports cannot be completely error free.² A more thorough review of accuracy is found in Appendix I.

In addition to the accuracy obligations imposed upon consumer reporting agencies by federal and state law, federal law imposes restrictions on those that furnish data to consumer reporting agencies. For example, furnishers cannot provide data they know or have reasonable cause to believe is inaccurate. Furnishers are required to correct and update information. *Id.*, § 1681s-2(a).

¹ The committees should be aware of two studies in 2007 on credit scoring by the Federal Reserve Board and the Federal Trade Commission. Among the Fed's conclusions was this: "credit characteristics included in credit history scoring models do not serve as substitutes, or proxies, for race, ethnicity, or sex". In fact, "[c]redit scoring likely increases the consistency and objectivity of credit evaluation and thus may help diminish the possibility that credit decisions will be influenced by personal characteristics or other factors prohibited by law, including race or ethnicity." While the FTC's study was focused on credit-based insurance scores, it too found that "[c]redit-based insurance scores appear to have little effect as a 'proxy' for membership in racial and ethnic groups in decisions related to insurance."

² 16 C.F.R. Part 600 App. (2000). The Federal Trade Commission acknowledges that the law does not contemplate

error free consumer reports. If a consumer reporting agency accurately transcribes, stores and communicates consumer information received from a source that it reasonably believes to be reputable and which is credible on its face, the agency does not violate this section simply by reporting an item of information that turns out to be inaccurate.

Consumers have a right to dispute information on their credit reports with consumer reporting agencies and the laws require dispute resolution in not more than 30 days (45 days in certain circumstances). If a dispute cannot be verified then the information must be removed in the consumer's favor. *Id.*, § 1681i. Under the FACT Act, consumers will soon be able to file disputes directly with the data furnisher. *Id.*, § 1681s-2(a)(8).

In 2004 the FTC reported to Congress that the FACT Act “imposed a host of new requirements that, when fully implemented, should further enhance the accuracy and completeness of credit reports.”³ A summary of all of the new FACTA consumer protections, consumer reporting agency obligations, and data furnisher obligations is available at Appendix II.

IV. Accessibility of Credit Reports

A. Credit Reports are Accessible to All Consumers

Credit reports are easy to obtain and are usually free. Consumers who wish to access their free annual credit reports can do so by going to www.annualcreditreport.com. In addition to the one free report per year, per nationwide consumer reporting agency, consumers are entitled to a free credit report if they believe they might be a fraud victim, are unemployed and seeking employment, on public assistance, or have been denied credit or insurance on the basis of a credit report. As noted below in more detail between 2004 and 2006, more than 52 million free credit reports were provided to consumers who exercised their free credit report rights under the FACT Act.⁴

B. Dispute Resolution is Fast and Efficient

Dispute resolution is treated uniformly and electronically via the Online Solution for Complete and Accurate Reporting (e-OSCAR) system. This system works to resolve disputes in an even faster, more efficient, user-friendly, and accurate manner than ever before. A majority of all disputes are resolved within seven days or less and an additional 18% are resolved between days 8 and 14.

Consumers who disagree with the result of the dispute process are entitled by the FCRA to place a 100-word statement on their files explaining the dispute. The GAO found that 18% of consumers disputed information in their file and just 30% of that 18%, or 1% of those surveyed, submitted a dispute statement to the consumer reporting agency.⁵

It is important to remember that a dispute is not synonymous with an error that will lead to an adverse result. The General Accountability Office found in 2005 that 10% of consumers who disputed information on their credit reports disputed personal information like their name and address.⁶ A dispute must always be viewed in the context of whether that item, had it been correct, would have led to a different credit or insurance result.

³ Federal Trade Commission, *Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003*, Dec. 2004, vii.

⁴ The GAO undertook a study of financial literacy and issued a report in March 2005. The GAO found that 79% of consumers who looked at their credit reports “felt that the information on their reports was very or somewhat easy to understand.” *General Accounting Office, Credit Reporting Literacy; Consumers Understood the Basics but Could Benefit from Targeted Educational Efforts Child Support Enforcement; Better Data and More information on Undistributed Collections are Needed*, GAO-05-223 (March 2005), 22. Hereinafter, “2005 GAO Report”.

⁵ *Federal Trade Commission, Board of Governors of the Federal Reserve System, Report to Congress on the Fair Credit Reporting Act Dispute Process*, (Aug. 2006), 22, 24.

⁶ 2005 GAO Report, 30.

Another reason for consumer disputes are attempts to “credit repair” a file. Although the FTC tells consumers that “[n]o one can remove accurate negative information from your credit report”⁷, tens of thousands try each year to flood consumer reporting agencies through credit repair operators who promise to assist consumers by disputing inaccurate or “unverifiable” information and trying to have accurate, predictive derogatory data removed. Our nationwide consumer reporting agency members estimate that on average approximately 30% of disputes filed are tied to credit repair.

V. Reliability of Credit Reports

A. Industry Standards to Ensure Maximum Accuracy

Federal law imposes accuracy standards on consumer reporting agencies and data furnishers. In addition to legal standards, there are operational standards in place to ensure reliability. The Metro 2 data reporting format is the data standard used by thousands of furnishers to report information to consumer reporting agencies. Approximately 82% of all data furnished to consumer reporting agencies is sent using the Metro 2 format; a 63% increase since 2005.

B. Economic Incentives to Ensure Maximum Reliability

In addition to legal obligations and industry standards, there is an even bigger incentive for credit reports to be reliable. Simply put, there is a “market incentive[] to maintain and improve the accuracy and completeness of [credit] reports.”⁸ There are approximately 200 million Americans with credit reports and credit reports are requested from Equifax, Experian, and TransUnion 27.4 million times each day. If credit reports were not reliable they would not be used by banks, insurance companies, or others. Furthermore, the American economy is a credit-based economy. The consumer reporting industry is the foundation upon which that economy is built and because of that importance, credit reports *must* be reliable and predictable.

C. Debunking the Public Interest Reports

Often cited to perpetuate the myth of inaccuracies are reports issued by the U.S. Public Interest Research Group (PIRG) and Consumers Union (CU). The first PIRG report, issued in 1998, reviewed 133 files of 88 people (out of 200 million Americans with credit histories). The second PIRG report in 2004 reviewed the credit reports of 154 people, most of whom were PIRG members or staffers. The sample sizes were not representative of the population nor were the conclusions drawn statistically sound. For example, PIRG did not seek the input of creditors with regard to likelihood of an adverse credit decision, and based its conclusions on its own staffs’ opinions as to who would or would not receive credit. Consumers Union’s report was based on its asking 57 employees and their relatives to obtain their credit reports and identify anything they thought was wrong, regardless of whether it might actually impact the credit decision and again based on the consumers’ own conclusions.

The Federal Trade Commission reviewed the PIRG and CU reports and found that not only have “questions...been raised about the sample size and representativeness of the samples”, but neither of these “relied on the participation of all of the...key stakeholders in the credit reporting process.”⁹

⁷ “Credit Repair: How to Help Yourself” <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre13.shtm> (viewed April 20, 2009).

⁸ Federal Trade Commission, *Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003*, Dec. 2004, 7.

⁹ Federal Trade Commission, *Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003*, Dec. 2004, iii.

The General Accounting Office reviewed available literature on perceived inaccuracies in consumer reports and concluded that

the studies did not use a statistically representative methodology, examining on the credit files of their employees who verified the accuracy of the information, and counted any error as an inaccuracy regardless of the potential impact. Similarly, these studies use varying definitions in identifying errors, and providing some obscure explanations of how they carried out their work.¹⁰

D. What the Regulators Say About Reliability

The Federal Reserve has reviewed the reliability of consumer reports and made several observations. First, the Federal Reserve, which looked at over 300,000 credit reports, noted that

Overall, research and creditor experience has consistently indicated that credit reporting company information, despite any limitations that it may have, generally provides an effective measure of the relative credit risk posed by prospective borrowers.¹¹

The report also noted that

Available evidence indicates that these data and the credit-scoring models derived from them have substantially improved the overall quality of credit decisions and have reduced the costs of such decision-making. Almost certainly, consumers would receive less credit and the price of the credit they received would be higher, if not for the information provided by credit reporting companies.¹²

In the context of the use of credit for insurance purposes, the 1997 NAIC White Paper *Credit Reports and Insurance Underwriting* cited the FTC. While the White Paper stated that "...various studies have indicated different results of the accuracy of credit reports," it went on to state that

[a] representative of the FTC, speaking to regulators on October 26, 1995, stated that the FTC is only able to estimate the accuracy of credit reports based upon the volume of complaints it receives. The number of complaints has been decreasing, thus the FTC assumes that the accuracy of credit report information is improving.

Indeed. Between 2004 and 2006, more than 52 million free credit reports were provided to consumers who exercised their free credit report rights under the FACT Act. Just 10% (520,000) of consumers had questions about that report or filed a dispute. Of the 10% who filed a dispute, just 1.98% (102,960) of disputes resulted in a deletion of data.

According to the Wall Street Journal of July 26, 2002: "The Federal Trade Commission, responsible for monitoring the activities of both the bureaus and data providers under the Fair Credit Reporting Act, says the different players in the credit-reporting process overall do a good job of making sure credit reports are accurate."

¹⁰ *General Accounting Office, Consumer Credit – Limited Information Exists on Extent of Credit Report Errors and Their Implications for Consumers*, GAO-03-1036T (July 31, 2003), 9-10.

¹¹ *An Overview of Consumer Data and Consumer Reporting*, *Federal Reserve Bulletin*, Feb. 2003, 50-51 (citations omitted); See also, *Credit Reporting Accuracy and Access to Credit*, *Federal Reserve Bulletin*, Summer 2004, 320.

¹² *Id.*, 70 (citations omitted); See also, *Credit Reporting Accuracy and Access to Credit*, *Federal Reserve Bulletin*, Summer 2004, 320.

E. What the Users of Consumer Reports Say About Reliability.

In 2001, Allstate ordered over 17 million credit reports. The number of written requests from consumers disputing information on their credit report totaled less than 3,000, or .017 percent of the total number of reports ordered. Of that small number, only some of the disputes were legitimate. Of the number of legitimate disputes, only some would have any bearing on the insurance score because we only look at certain characteristics. Of the number affecting the insurance score, only some would affect the discount amount because the score must change by a certain amount to move into another discount category. Thus, the number of inaccurate credit reports that affect the premium charged is at most a subset of a subset of a subset of .017%.¹³

Conclusion

The use of credit report information for insurance purposes is lawful and heavily regulated, commercially accepted by businesses and consumers, and statistically proven. Credit reports are reliable because the law requires it, industry tests it, and the economy demands it. Credit information sets a solid foundation upon which credit-based insurance scores are built.

Sincerely,

Eric J. Ellman
Vice President, Public Policy and Legal Affairs

Attachments

¹³ Allstate Insurance Company's Additional Written Testimony: Allstate's Use of Credit Scoring, before the Michigan Office of Financial and Insurance Services, July 23, 2002.