Comment #: 96

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Via e-mail to FACTAscoringstudy@ftc.gov

Re: FACT Act Scores Study, Matter No. P044804

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A. Introduction

I am thrilled to see that Congress ordered the FTC to study credit scoring. Unfortunately, it appears that the legislators are not at all familiar with credit scores and the enormous damages inflicted on the disadvantaged, not only due to absurd score factors, but also due to blatant violations of the Fair Credit Reporting Act ("FCRA") and the so-called regulators' refusal to enforce consumer protection laws.

I believe that ALL people deserve equal opportunities, including the disadvantaged, the people who are struggling to get by, often working 2 jobs, self-employed, ill, old, single parents or otherwise handicapped – regardless of race, color, etc. Many, but not all disadvantaged are also covered by the ECOA.

Instead of attaching numerous documents, I am including the links to relevant documents posted on the web.

To gain a basic understanding of credit scoring practices, please read **"Credit Scoring Basics,"** posted at http://www.fight-back.us/forum/index.php?showtopic=47.

Congress should immediately:

- order the regulators to enforce the FCRA, investigate willful and continual violations by CRAs and data furnishers and order immediate compliance.
- amend the FCRA to void mandatory arbitration clauses.
- order the regulators to learn how credit scoring works by investigating individual consumer complaints.

This should be accomplished by the end of 2004, <u>not</u> 2005.

I have already conducted extensive research for several years, the regulators only need to verify the authenticity of my documentation and apply a little bit of common sense.

An ECOA credit scoring study could possibly be useful AFTER:

- Capital One, Bank One and Target (Retailers National Bank) complied with the FCRA.
- the many millions of affected accounts have been corrected in all credit files.
- Fair Isaac and other score vendors complied with the orders to eliminate absurd score factors such as inquiries.

According to Fair Isaac, its FICO scores are utilized in over 75% of all credit decisions.

<u>Why should a credit score be lowered because a consumer applied for a job or moved and ordered electric, water and telephone service?</u>

According to a credit score designer, one inquiry can lower the scores by 35 points!

In my own extensive research I learned that a single inquiry often lowers already low scores by 15 to 25 points while it has no impact at all on scores above 700.

On 8/13/04 Hurricane Charlie devastated Florida. Do you think we should study the effects of the disaster? Or should immediate actions be taken to assist the people who were harmed?

<u>The damages caused by Charlie pale compared to the damages inflicted on hard working Americans while you "study" the effects of credit scoring.</u>

Consumers lose their homes to foreclosure, lose their savings, lose all hope – on a daily basis and nobody cares.

<u>Financial problems are major contributing factors to divorces, spousal and child abuse, suicides and murders.</u>

It is time for immediate action!

<u>B. The Regulators must be Ordered to Enforce Consumer Protection Legislation</u>

1. Capital One maliciously disregards the FCRA with the regulators' approval

Capital One has almost 50 million credit card accounts and specializes in "sub prime" (predatory) lending to consumers with bad credit. Capital One deliberately ignores the FCRA requirement for complete and accurate reporting, resulting in artificially low credit scores for their customers.

One of the most important FICO score factors is the Balance/Limit ratio.

The Fair Isaac credit scoring software utilizes the balances and credit limits for all revolving open accounts as well as closed and charged off revolving accounts with balances as reported by the credit reporting agencies. ("CRAs.")

Instead of reporting the credit limit, Capital One reports the amount "most owed" and subsequently increases the ratio and lowers the credit scores.

The calculation for a credit report with only one reported revolving account:

Credit limit: $1,000
Most owed (highest balance): $100
Current balance: $100

The B/L ratio: 100% for a Capital One account instead of 10%.

The difference in credit scores:

Depending on the other score factors, the scores are probably lowered by over 50 points and possibly over 100 points.

Capital One is maximizing its profits. Due to the artificially low credit scores, consumers are declined by other credit card issuers with more favorable terms and the Capital One customers have to continue to pay high rates and fees to Capital One.

Why are the FTC, the Federal Reserve Bank of Richmond (FRB Richmond) and Congress refusing to enforce the FCRA?

The summary of my efforts to have the regulators take action and order Capital One to comply with the FCRA:

1) In 2002 I submitted my complaint about the Capital One refusal to report the credit limits to the FTC.

2) The FTC referred my complaint to the FRB Richmond.

3) James McAfee, General Counsel and Senior Vice President, FRB Richmond, faxed his promise to investigate in November 2002.

4) Mr. McAfee ignored my subsequent inquiry and did not respond.

5) In 2003 I named Capital One, the FTC, the FRB Richmond and Mr. McAfee in my Phoenix, AZ, federal suit CIV 2003-525.

6) The FRB Richmond and Mr. McAfee were dismissed due to lack jurisdiction, the FTC was dismissed because apparently the government has immunity and Capital One was dismissed because they were served late. I have no legal skills and no money to pay an attorney, I learn from Judge Broomfield's rulings.

7) I submitted my renewed request for FCRA enforcement to Mr. McAfee. He failed to address the issue and he CONTINUED to actively protect Capital One.

8) I filed a new suit (CIV 2004-1192) and named Capital One and Target (dba Retailers National Bank) who also substitutes the credit limit with the amount "most owed."

9) Despite my lawsuits and my submission of my Capital One statements with the correct credit limits in 2003 to Experian and Equifax, both refused to correct the credit limits.

Did Capital One bribe Mr. McAfee?
Did Capital One blackmail Mr. McAfee?
Was Mr. McAfee ordered by a superior to protect Capital One? If so, by who? Why?

<u>A **criminal investigation** should be conducted to determine what exactly happened and James McAfee, General Counsel and Senior Vice President, Federal Reserve Bank of Richmond, should spend at least a few years in prison.</u>

Why are the CRAs allowing Capital One to report without the credit limits?

<u>The FCRA requires that CRAs implement reasonable procedures to ensure maximum accuracy of consumer credit reports.</u>

The CRAs have known for a number of years that Capital One categorically reports without the credit limits. Equifax even published a paper on it. All three CRAs were served with my complaint in 2003.

To date, the CRAs condone this incomplete reporting, knowing exactly how the scores for millions of consumers are devastated.

My correspondence with Mr. McAfee and the court filings are posted at my **CreditCourt website** at http://forum.creditcourt.com/discus/messages/803/3839.html.

2. Bank One (First USA) willfully reports accounts discharged through bankruptcy as charged off, with the delinquent balances and no notation of the bankruptcy

Bank One reported discharged accounts as charged off with the delinquent balance and refused to correct the reporting upon consumer disputes with the CRAs and Bank One. Consumer Randolph Foster complained with the OCC, the Bank One regulator. On 8/13/03, Julie Girmscheid, Office of the President, Bank One, wrote to Mr. Foster:

"The credit reporting that reflects, *Charged Off with a balance*, accurately shows that the balance was taken as a loss to the Bank and reflects your relationship with us at the time we received your notice of bankruptcy."

Ms. Girmscheid copied the OCC and Mark Reuling, Senior Vice President, Bank One, and I **scanned and posted her letter** at http://forum.creditcourt.com/discus/messages/14/2538.html.

The issues:

1) Bank One refused to report ACCURATELY that the account was discharged in bankruptcy.

2) The FICO scores include this discharged, yet reported balance in the B/L ratio.

3) An underwriter manually reviewing this credit report would conclude that the borrower is a poor credit risk as he will be subjected to Bank One collection efforts for the reported delinquent balances – there was no mention of the bankruptcy with the Bank One reporting.

4) Other than suing, the consumers' only remedy is to PAY the Bank One discharged balance.

5) The fresh start that a bankruptcy is supposed to provide is eliminated.

6) Even so-called consumer advocate attorneys refused to take Mr. Foster's case on contingency and he had to file pro se.

7) Due to the arbitration clause, Judge Schwab dismissed those claims against Bank One. Arbitration is the death of justice.

8) A nationally renowned FCRA attorney wrote to me that he will not take these cases because a bankruptcy is the worst damage a credit report can sustain. This is not true at all. On 2/8/04 one of my clients had a FICO score of 726, only 24 months after the Ch. 7 filing!

   While creditors and CRAs argue that the credit reports can not be damaged when a bankruptcy public record is reported, I have the documentation to prove them wrong and I posted **my bankruptcy affidavit** at http://www.creditcourt.org/bk-affidavit.htm.

   Is it ok to cut off someone's foot because he already lost a foot and is disabled?

The scans of the credit reporting with the balance as well as the re-aged reporting are attached to **my Bank One press release** at http://www.emediawire.com/releases/2004/3/prweb113432.htm.

These two Capital One and Bank One intentional and malicious FCRA violations cause enormous damages to many millions of Americans.

The CRAs not only do absolutely nothing to ensure the accuracy of credit reports, but they even verify the disputed data they KNOW to be incorrect!

And the regulators appear to be on the corporate payroll and refused to uphold the law..

<u>PLEASE take ENFORCEMENT ACTIONS immediately!</u>

<u>C. Studying Credit Scores</u>

My thoughts on specific questions in the FTC request for public comments.

> 1. How should the effects of credit scores and credit based insurance scores on the price and availability of mortgages, auto loans, credit cards, other credit products, and property and casualty insurance be studied? What is a reasonable <u>methodology</u> for measuring the price and availability of mortgages, auto loans, credit cards, other credit products, and property and casualty insurance, and the impact of credit scores and credit based insurance scores on those prices and availability?

Review the rate sheets.

<u>The effect is obvious:</u>

<u>People with low credit scores are declined or pay substantially higher interest rates, fees and insurance premiums.</u>

Request from creditors and insurers rating information such as **the PEMCO insurance credit score rate sheet**, attached to my Bank One/First USA press release at http://www.prweb.com/prfiles/2004/03/23/113432/PEMCO-scores.jpeg.

"PEMCO disguises the surcharge for the less than perfect credit scores as a discount. <u>Notably, even the very HIGH credit scores up to 799 are subjected to the premium surcharge</u>!"

The "discount tiers" are self-explanatory.

For mortgages the rate sheets with the scores are widely available. FNMA and FHLMC probably publish their score requirements for conventional mortgages, but many mortgage lenders and bankers impose their own minimum scores. They can supply mortgage rate sheets. Even FHA and VA loans require FICO scores.

Auto loan and credit card score requirements are not usually available and most creditors use modified scores, sometimes including data from the consumer's application. These scores can <u>not</u> be compared to the FICO scores available to consumers and required for mortgages.

Since all creditors have to provide adverse action letters to consumers, they should be able to supply the FTC with statistics about declines.

If the industries refuse to supply rating and adverse action data and the FTC cannot compel release of this data, the general public as well as employees with access to rating data should be invited submit score based adverse action letters, rate schedules and explanations.

As long as credit inquiries lower credit scores, underwriting guidelines should be available to consumers PRIOR to the application, not after they were declined and suffer from another score lowering inquiry.

2. An effect can often only be measured relative to a counterfactual (that is, relative to some hypothetical alternative situation). To determine the effects of credit scores on the price and availability of credit products, what is a reasonable counterfactual to the current use of credit scores? To determine the effects of credit-based insurance scores on the price and availability of property and casualty insurance, what is a reasonable counterfactual to the current use of credit-based insurance scores?

There is no counterfactual. Everybody in America is subjected to credit scores.

Rather than contemplate how and where to get data for useless statistics, I will describe some of the problems with credit scoring. Studying the effects of credit scoring on ECOA protected classes is not appropriate until the major problems with credit reporting and scoring are fixed.

Regulators and legislators need to study how credit scores impact on our lives as individuals.

D. Problems with the credit scoring and reporting system.

I am all FOR automated credit underwriting.

However, it is up to the legislators and regulators to ensure that consumers get the score they deserve. It is essential that:

- the underlying credit data is accurate
- the score factors are reasonable (no lower scores for credit inquiries)

1. Credit should never be utilized to rate insurance premiums since insurance is PREPAID and cancelled for non payment.

The insurers argue that fewer claims are filed by consumers with high scores. That's rather obvious, since someone with low scores probably faces financial problems and will file claims even for small amounts.

- It is not cost effective for wealthy Americans to spend hours dealing with claim forms for a few hundred dollars.

- Wealthy Americans are very aware that the filing of claims will increase their premiums and they can afford to not file claims, resulting in an overall savings to them due to lower premiums in the long run.

- Wealthy Americans are more likely to have a garage and live and work in low crime areas.

Insurers already rate according to zip codes, age and claim history, utilizing credit scores is not appropriate.

When people with low scores can not afford insurance, they won't HAVE insurance.

In extreme cases consumers were approved for the mortgage, but could not close because they were unable to obtain homeowners insurance or the premium was so high that they no longer qualified for the mortgage.

<u>Auto insurance is mandatory in most states.</u> Especially in rural areas, consumers who can't afford insurance have no choice but to drive to work without insurance, go on welfare or start earning or supplementing their income through illegal means. Few jobs come to the uninsured consumers' homes, drug buyers will.

2. Credit scores do NOT predict defaults, but often cause defaults.

Fair Isaac and other score vendors claim that they proved in their studies that scores accurately predict the probability of defaults.

However, since ALL people in the US are subjected to credit scores, there is no control group to compare the effect of credit scoring to.

<u>It is only logical that the seriously flawed FICO credit scores, based on extremely inaccurate data, are causing many defaults.</u>

Case study:

Bill and Jose are coworkers, earn the same amount and they spend about the same for food, clothing and rent, they both have a $15K car loan and $5k in credit card debt.

They also have very similar credit reports, but Jose has a collection for a <u>paid</u> medical bill he disputed 6 years ago. The hospital ignored his dispute and assigned the $53 for collection. The collection was reassigned to new collection agencies, Jose doesn't get any of their letters because he moved, and this one collection mushroomed to 3 collections on his credit reports, the last one was assigned just a few months ago.

<u>Currently FICO scores rate a collection by the **date assigned**, not by the date of the default, resulting in very low scores.</u>

Bill's score is 728 – Jose's score is 623

Bill gets a car loan at 0% -- Jose pays 15%.

Bill pays $150/month for insurance.
Jose pays $225/month for the identical insurance.

Bill pays no interest on his credit card debt. He takes advantage of the 0% balance transfers.
Jose pays 20% interest.

At the end of the month, Bill puts a couple hundred dollars in his savings.
Jose adds to his credit card debt so he can continue to make his payments on time.

Who is going to default?

Billing fraud is rampant in America and condoned by the regulators.

I named Pacific Bell (SBC), Verizon Wireless and T-Mobile in my suit. They all refused to investigate my disputes and to date they have not corrected their records, they have not even apologized, and the regulators have done nothing to put a stop to their refusals to credit payments, provide accounting and accept cancellations.

In recent years phone companies and many hospitals have made it a normal practice to ignore consumer disputes and documentation and to assign the accounts to collection agencies that also blatantly ignore consumer protections laws such as the Fair Debt Collection Practices Act.

Many Americans are so afraid of damaging their credit rating, they pay bills twice or pay accounts reported in error – if they can afford it.

Life sucks for those whose budget allows for paying bills only once.

Billing fraud is as American as apple pie.

3. The Experian credit score statistics by metropolitan area.

From the 4/7/04 Experian press release: "Experian ranks 20 major U.S. metropolitan areas by credit score" at http://press.experian.com/documents/showdoc.cfm

The top rated areas: Minneapolis 707 and Boston 705

The bottom of the barrel: Houston 655, Dallas 653

Why are scores in Houston and Dallas over 50 points lower than in Minneapolis and Boston?

Are the nation's deadbeats congregating in Texas?

Maybe they're not all deadbeats, but people of color and immigrants?

Please ask Experian!

Important note: While it is interesting to compare the scores by area, these are the **fraudulent snake oil Experian PLUS scores no lender uses.**

In my case, the PLUS score lives up to its name. On 8/2/04, my Experian PLUS score was 58 points higher than the "real" FICO score.

Few consumers understand that the only purpose of the Experian PLUS scores is to maximize the Experian profits.

Consumers attempting to increase their scores by reading the Experian PLUS score explanations will most likely LOWER their FICO scores.

Experian's clients (the creditors) get to charge higher rates and fees for lower "real" scores.

4. Fair Isaac's NEW Expansion score and credit bureau

Fair Isaac recently released a new credit score based on data collected by its own new credit bureau. Fair Isaac apparently collects data about catalog sales, deposit accounts, payday loans and other accounts NOT reported to Equifax, Experian and Trans Union.

The Fair Isaac 7/27/04 press release:

Fair Isaac Launches FICO Score to Help Lenders Grow Presence in Credit-Underserved Markets
http://www.fairisaac.com/Fairisaac/News/Press+Releases/Fair+Isaac+Launches+FICO+score+to+Underserved+Markets.htm

"While an estimated 160 million Americans have documented credit histories adequate for calculating classic FICO credit scores, an estimated 50 million consumers do not."

FICO® Expansion™ score at https://www.ficoexpansionscore.com/Content/About.aspx

When I looked at the site, I was unable to find any information about consumer disclosures, disputes or any consumer rights as provided by the FCRA.

5. A few comments on the impact of scores on ECOA protected classes

Creditors discriminate because they know that it is less likely that they will get repaid when lending to colored people, immigrants, single women, etc.

Of course they are right!

Women earn less than men, colored people earn less than whites, people in rural areas earn less than people in metropolitan areas. Residents of low income areas are poor credit and insurance risks.

Redlining works. Target marketing works. Discrimination works.