

**National Consumer Law Center (on behalf of its low-income clients)
Allied Progress
Americans for Financial Reform
Consumer Action
National Association of Consumer Advocates
U.S. PIRG
Woodstock Institute
World Privacy Forum**

February 12, 2018

Via regulations.gov
Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Comments in Response to Request for Information Regarding
Consumers' Experience with Free Access to Credit Scores, Docket No. CFPB-2017-0037

The undersigned consumer groups are pleased to submit the following comments in response to the CFPB's Request for Information Regarding Consumers' Experience with Free Access to Credit Scores. We believe that the programs providing free credit scores are very helpful to consumers, and should be commended. However, there are still some consumers who are being misdirected to paid products when they seek free ones. And for consumers who want to purchase a credit score, the CFPB should complete the long overdue task set forth in the Fair Credit Reporting Act (FCRA) of determining the "fair and reasonable" fee for such scores.

Free credit scores are undeniably a benefit for consumers. Free score programs from scoring developers such as FICO and VantageScore, and well as personal finance websites such as NerdWallet and CreditKarma, allow consumers to have valuable information about how lenders view their creditworthiness. The most useful programs are the ones that provide scores that lenders actually use, such as FICO Open Access, which supplies the "account review" score used by credit card issuers. Access to a real score used by lenders is much preferable to obtaining an educational score that no lender actually uses.

Some of the programs that provide free scores also provide regular access to the underlying credit report, as well as credit monitoring-type services such as alerts. Given the availability of free versions, no consumer should ever need to pay an expensive monthly subscription fee for credit monitoring. In fact, even one of the Big Three credit reporting companies (CRCs), namely TransUnion, is providing a free monitoring product, albeit without a free score. However, we have seen media reports that some consumers who attempt to access this free product end up

subscribing to the paid version.¹ The CFPB's supervision program for the Big Three CRCs should review their websites and policies & procedures for confusing or deceptive information, *i.e.*, whether the websites are prone to misdirecting consumers to a paid product when consumers are seeking the free one.

Despite the availability of free credit scores from many sources, there will still be consumers who wish to purchase a credit score. While tens of million consumers do have access to a free score through the participation of their credit card issuers in the FICO Open Access program,² not every consumer has a credit card, particularly low-income consumers. Personal finance websites that offer free scores may require consumers to receive advertising. Some consumers might decide they would rather pay a fee to avoid that.

We remind the CFPB that the Bureau has the authority under the FCRA to set the fees that the CRCs are permitted charge for credit scores. 15 U.S.C. § 1681g(f)(8) ("A consumer reporting agency may charge a fair and reasonable fee, as determined by the Bureau, for providing" a credit score). This provision was added back in 2003 by the Fair and Accurate Credit Transactions Act, and at that time it authorized the Federal Trade Commission (FTC) to determine the fee for a credit score. Unfortunately, the FTC never made a determination as to what constitutes a "fair and reasonable fee." Instead, the FTC allowed the CRCs to charge any amount that did not significantly exceed the current market rate for credit scores.³ The FTC stated that until the CFPB determines what constitutes a "fair and reasonable fee," the FTC staff would look to the market for credit scores to determine whether a fee is permissible.⁴

It is way past time for the CFPB to set the "fair and reasonable" fee for credit scores. The Bureau should finish the long-delayed rulemaking, first started by the FTC's Advance Notice of Proposed Rulemaking in 2004,⁵ to establish this amount. And given that so many outlets are making credit scores available for free, we believe the CFPB should set the fee at a very low amount, not more than a few dollars. After all, any fee of more than a few dollars would "significantly exceed the current market rate" of credit scores being generally available for free.

Furthermore, we ask the CFPB to urge the Big Three CRCs to stop selling or providing "educational" scores that no lender actually uses. While the FCRA does permit the CRCs to sell or provide educational scores, these score are far inferior to providing the credit scores actually used by the lenders, such as FICO scores provided via the Open Access program. As the CFPB's own research has found, twenty percent of consumers receiving an educational score would be

¹ Teresa Dixon Murray, Want to freeze your TransUnion file? You may end up paying \$19.95 a month by mistake or locking it instead, Cleveland Plain-Dealer, Sept. 22, 2017, http://www.cleveland.com/business/index.ssf/2017/09/want_to_freeze_your_transunion.html

² Press Release, FICO® Score Open Access Reaches Milestone of 200 Million Consumer Financial Credit Accounts, April 17, 2017.

³ FTC, 40 Years of Experience with the Fair Credit Reporting Act: An FTC Staff Report with Summary of Interpretations, § 609(f) item 3.

⁴ *Id.*

⁵ 69 Fed. Reg. 64,698 (Nov. 8, 2004).

provided a score that is in a different category or would place them in a different credit tier as their FICO score. This large difference could result in consumers receiving incorrect impressions about their creditworthiness with respect lenders using FICO scores.⁶ Frankly, the CRCs should be ashamed to charge money for educational scores.

In Question 11, the CFPB asks about educational content that accompanies credit scores. We believe that one thing that consumers desperately need is better and more accessible educational materials that explain the variety of scores in the market and why they differ. Consumers are understandably confused when they receive different credit scores from their credit card issuer versus from a personal finance website. Consumers need easy-to-understand educational materials explaining how credit scores will differ depending on which CRC the score is obtained from and on which scoring model is used. They also need to know how these differences will affect their ability to obtain credit and the price they pay for it. While some (but not all) of these materials are available on personal finance websites or through the free score programs, they are not universal. They also need to be prominent, easily accessible, and easily comprehensible.

Finally, we urge that both credit scores and credit reports be made available in languages other than English. Currently, the over 20 million Limited English Proficient (LEP) adult consumers in the United States are shut out of access to free credit scores, and are also shut out from free annual credit reports given that there is no requirement to provide translated reports via annualcreditreport.com. Free credit scores (and free annual reports) should be made available in Spanish and the other seven most frequently spoken languages by LEP households as determined by the U.S. Census Bureau (Chinese, Vietnamese, Korean, Tagalog, Russian, Arabic, and Haitian Creole). We note that two of the CRCs (Experian and TransUnion) at one point did make credit reports and other information available in Spanish, but for a fee.⁷ Translated reports and scores should be made available at the same cost as scores and reports in English, especially given that the cost of translation is so much lower with the advent of translation software.

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⁶ Consumer Financial Protection Bureau, *Analysis of Differences Between Consumer- and Creditor-Purchased Credit Scores* 17 (2012).

⁷ Experian's product was called *Credito Y Mas*: <http://www.experian.com/blogs/news/2014/10/08/credito-y-mas/>. Both Experian and TransUnion made credit reports in Spanish available through www.myfico.com. *FICO now has credit reports and information in Spanish*, Consumer Reports, February 2, 2012.

Thank you for the opportunity to submit these comments and for your work in promoting free credit scores. If you have questions about these comments, please contact Chi Chi Wu at cwu@nclc.org or 617-542-8010.

Respectfully submitted,

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