



NATIONAL ASSOCIATION OF REALTORS®

*The Voice For Real Estate®*

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REGULATORY & INDUSTRY  
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Federal Trade Commission  
Office of the Secretary, Room 159 (Annex O)  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

**RE: FACTA Credit Score Fee, Project No. R411004**

Ladies and Gentlemen:

On behalf of the more than 1 million members of the NATIONAL ASSOCIATION OF REALTORS® (NAR), the Institute for Real Estate Management (IREM), and the Certified Commercial Investment Member (CCIM) Institute, I am pleased to offer comments to the Commission on the Fair and Accurate Credit Transactions (FACT) Act credit score fee advanced notice of proposed rulemaking (ANPR). The NATIONAL ASSOCIATION OF REALTORS®, “The Voice for Real Estate,” is America’s largest trade association, representing more than 1 million members, including NAR’s affiliated commercial real estate institutes, societies, and councils. REALTORS® are involved in all aspects of the residential and commercial real estate industries. NAR members belong to one or more of some 1,700 local associations or boards and 54 state and territory associations of REALTORS®.

IREM, an NAR affiliate, is an association of professional property and asset managers who meet strict criteria in the areas of education, experience, and ethics. The 16,000 IREM members manage all types of investment real estate. The Institute educates real estate managers, certifies the competence and professionalism of individuals and organizations engaged in real estate management, advocates on issues affecting the real estate management industry, and enhances its members' professional competence to better meet the needs of their clients.

The CCIM Institute is also an NAR affiliate. The CCIM Institute confers the CCIM designation. The Institute stresses education, networking, and ethical practice. Over 7,500 commercial real estate professionals currently hold the CCIM designation and work in 1,000 markets.

**FTC Advance Notice of Proposed Rulemaking**

The FACT Act amended the Fair Credit Reporting Act (FCRA) to require consumer reporting agencies, upon request of a consumer, to make the consumer’s credit score and related information available for a “fair and reasonable fee” as determined by the Federal Trade



Commission (FTC). The FTC has published an ANPR inviting public comment in connection with implementation of the statutory requirement that the FTC determine what would be a “fair and reasonable fee” for releasing the score.

The FTC has identified several possible approaches for determining what a fair and reasonable fee should be, including:

- A single mandatory fee.
- A maximum fee.
- A market-based approach used to set a fee or set a range of fees, based on a periodic survey or other market analysis.

The law took effect on December 1, 2004. Pending issuance of FTC guidance, the FTC explained in the ANPR that in enforcing the statutory requirement, it will consider whether the fee charged “significantly exceeds the current market rates for credit scores, which are currently in the range of \$4 to \$8.” Apparently fees that do not exceed that range will be presumed to be fair and reasonable.

### **NAR Recommendations**

REALTORS® support ongoing efforts to improve the credit score system. It is especially important to make the system more transparent so consumers can obtain their scores easily, correct any errors that reduce their scores, learn about how their scores affect mortgage interest rates, and shop for the best possible mortgage. While the FACT Act made significant improvements in the system, NAR believes it didn’t go far enough. Considering the importance of credit scores for obtaining financing to purchase a home, NAR continues to strongly support requiring all credit reporting agencies, not just national agencies, to provide one free credit report annually, upon request, and to include the consumer’s credit score and related information as part of the free report. The FACT Act does not require any reporting agencies to disclose credit scores without charge.

Keeping the cost fair and reasonable does help make the system more transparent and help consumers shop more effectively for the best deals. NAR believes the system for determining a fair and reasonable fee for a credit score should encourage competition among providers to offer credit scores for the lowest possible price. Consumer reporting agencies have already automated the system for disclosing credit reports, thus reducing their marginal cost to near zero. NAR believes that including a consumer’s credit score in the credit report disclosure would cost very little and is hopeful that this fact means that competition will result in very low costs to consumers requesting copies of their credit scores.

NAR does not recommend that the FTC adopt either of the first two alternatives described in the ANPR—a set fee or a maximum fee. As FTC recognizes, setting a mandatory fee could result in fees higher than the private sector would otherwise charge if left unregulated. The same problem is

likely even if the FTC only sets a maximum fee because providers may cluster at or near the maximum. This is particularly inappropriate considering the very low marginal cost to reporting agencies of including a credit score as part of the free credit report disclosure.

NAR generally supports adoption of a market-based approach for setting a range of prices that it would consider fair and reasonable. But inherent in this approach are some of the same problems that may occur with the set fee or maximum fee options. For example, if the FTC surveys the market and announces a single range of fair and reasonable fees, the risk is that the upper part of the range could, like a maximum price, function as a set price. Even if some providers offer credit scores for less than the high end of the range, it is very likely that the lower dollar amount of the range would function as a floor, making competition to offer scores below the range unlikely.

These problems could be mitigated if any FTC analysis reflected the complexity of the market. For example, in the current market, FTC should determine if providers charge more when they provide not only the credit score but also extensive related information and high quality customer support than they charge when they simply provide a credit score. If so, the FTC determination of fair and reasonable fees should include various ranges based on whether the provider offers basic, average, or excellent service. Acknowledging market complexity will best indicate fair and reasonable fees.

In any case, determining a fair and reasonable fee using a market-based approach should include at least an annual assessment of the credit score market as it is likely to be dynamic and unpredictable. As FTC points out, the free credit report program now being implemented in stages by the national reporting agencies may increase competition among the national reporting agencies or give them a competitive advantage over other providers. A regular market assessment will not only provide a benchmark to prevent providers from charging more than a fair and reasonable amount, it will also give the FTC and the public an early warning if the market prices increase significantly, suggesting an absence of vigorous competition. Considering the importance of scores to consumers in qualifying for mortgage loans, such a result would signal the need for the FTC to reconsider its approach for determining what qualifies as a fair and reasonable fee.

Thank you for the opportunity to comment on the credit score fee ANPR. Please let me know if we may be of further assistance.

Sincerely,

A handwritten signature in blue ink that reads "Joseph M. Ventrone". The signature is fluid and cursive, with a long horizontal stroke at the end.

Joseph M. Ventrone  
Managing Director, Regulatory and Industry Relations Department