



## **Position on Reissue/Secondary Use**

The National Credit Reporting Association (NCRA) supports strict compliance with the Fair Credit Reporting Act (FCRA), the Gramm-Leach-Bliley Act (GLB), and all other federal and state laws governing the credit reporting industry. Moreover, to promote increased consumer transparency in the credit reporting process, and to protect consumer privacy and prevent identity theft, we support many other initiatives above and beyond these laws. We cannot, however, support excessive and unnecessary restrictions designed to eliminate competition in the name of compliance with federal law and consumer protection.

### **New “Reissue/Secondary Use” Guidelines**

What is now being referred to as “reissue” or “secondary use” is really “joint use”. Joint use is a long-standing practice recognized in the FCRA, by the Federal Trade Commission, and by the Office of the Comptroller of the Currency. It has been over a decade since Congress last addressed the issue of end user disclosure, resulting in provisions of the FCRA that have governed end user disclosure for more than nine years. At present, a credit report compiled for a particular transaction is routinely understood to be jointly used by all persons or entities legitimately engaged with the disclosed end user in originating that mortgage. Joint use, moreover, is essential to the process by which consumers shop for and obtain mortgage credit and for the proper functioning of the mortgage banking, brokerage, and financing industries.

Recently, however, two of the credit repositories, Equifax and Experian (E&E), have chosen to radically reinterpret the nearly decade-old laws relating to end user disclosure, forcing vast and technologically impossible changes to the mortgage credit industry by December 31, 2006. Inexplicably, consumers will now be faced with the prospect of paying for two, three, four or more credit reports or other excessive additional credit report fees for originating a single mortgage transaction due to this change. By artificially increasing the volume of credit reports issued to the mortgage industry, E&E stand to increase by several-fold the revenues they earn in mortgage-related activities, a sector already plagued with inflated unit prices.

Moreover, no new legislation, court case, regulatory decision, or other external event justifies such a drastic change in how the mortgage credit reporting industry functions. Significantly, the other repositories, TransUnion and the emerging fourth repository, Innovis, have not seen fit to reinterpret the law or drastically alter the joint use procedure. We understand that TransUnion is currently evaluating a new position, but has not taken one, while CBC Companies, the parent of Innovis, is challenging E&E’s proposed new guidelines in federal court as a violation of the U.S. antitrust laws.

### **Higher Costs for Consumers**

In other credit industries that do not depend on three-file merged credit reports, per unit fees are 300-500% less than in the mortgage credit reporting industry. Such supra-competitive pricing is made possible by the monopoly power bestowed on the repositories by the mandatory tri-merge requirement. Similarly, this monopoly power has emboldened E&E to propose new reissue and

secondary use guidelines that promise to double, triple, or quadruple the fees they presently earn on a single mortgage transaction.

Ultimately, this unnecessary and wasteful duplication will be borne by consumers. Moreover, the consumers facing the highest cost increases will be low income and first time homebuyers. First-time home buyers and credit-challenged consumers are the least able to afford a new and unnecessary policy that unjustly enriches some—but not all—repositories under a pretext of consumer protection and compliance with the law.

### **Uncertainty in the Mortgage Credit Reporting Industry**

The new “Reissue/Secondary use” guidelines also create uncertainty for participants in the mortgage credit industry. By requiring a contractual relationship between the reseller and all entities that must review the mortgage credit report as part of the origination process, the proposed guidelines severely undermine competition. The entities involved are wholesale lenders, mortgage investors, government sponsored enterprises, Fannie Mae and Freddie Mac, and the federal government, in the case of the Department of Housing and Urban Development (HUD). These parties do not lack an understanding of their responsibilities for data security. They serve the most crucial role in the mortgage transaction, the actual funding of the loan. The sensitive consumer data within their files, from many sources, includes Social Security numbers, the location and account numbers of savings, checking, Certificates of Deposit, 401K’s and IRA accounts, in addition to the information in the credit report. To require resellers to have a full end user contract with every possible entity that may review a mortgage credit report creates an unnecessary burden for no apparent reason other than the elimination of competition in the mortgage credit reporting market.

The end user agreements presently required by E&E are typically thirty pages long with onerous requirements, including the use of independent site inspectors. Requiring every credit reporting reseller in the country to negotiate a full end user contract and carry out end user site inspections on every potential joint user of an issued credit report, in order to verify that entities such as Citibank, Washington Mutual, Countrywide Funding, Fannie Mae, and even HUD itself are legitimate businesses that will not compromise the privacy of the information in a consumer’s credit report, is not only unnecessary for compliance with the law (or any other reason), but departs from the longstanding and well-functioning customs and practices of the mortgage credit sector. While NCRA supports initiatives that will help curb identity theft and increase data security, including those that go beyond the FCRA, we see absolutely no rationale for policies that mandate duplicative, superfluous, and repetitive measures that yield no additional benefits of any kind, except to the private interests of the firms requiring the policies in the first place.

### **A Solution In Search of a Problem**

The end user disclosure (joint use) requirements have been working well since they were enacted in 1997 as part of the FCRA. Those amendments ushered in new responsibilities for both resellers and the end users they service. System changes, additional documentation, and new procedures were all implemented with no new fees, assessments, or consumer costs. E&E’s new interpretation of the same amendment that in 1997 brought about no increases in cost now raises the prospect of a 100%, 200%, 300% or potentially greater increase in costs to the credit reporting industry, the lender and ultimately, the consumer.

NCRA’s support for complete and full compliance of the FCRA is amply demonstrated by our FCRA Compliance Certification Program which is second to none in the industry. Moreover, our privacy model, developed by one of the nation’s foremost privacy experts, supports our members’ efforts to protect the privacy of consumer credit data. We also support any initiatives, even those that go beyond the law, that make sense and truly provide consumers with additional protection. The reissue/secondary use guidelines proposed by E&E, however, are not such an initiative. The NCRA

cannot support the implementation of programs that are nothing more than blatant abuses of monopoly power designed to increase revenue and eliminate competition shrouded behind a veil of legal compliance and consumer privacy.

### **A Solution to the Created Problem**

Since the mortgage transaction is a much more complex transaction than any other type of credit transaction, and to promote increased consumer transparency into this complex mortgage process to protect consumer privacy, NCRA would support an initiative above and beyond the FCRA to fulfill the stated purpose of E&E on reissue. To obtain this support the process must eliminate the anticompetitive elements currently required. This could be accomplished with three simple adjustments to the current plans by E&E. They are:

1. Continue to classify the GSE's, HUD, and any other ancillary technology system that is part of the mortgage origination process (like the CreditXpert) as joint use, not the new created "reissue" or "secondary use" classification.
2. Allow Credit Reporting Agencies, at the direction of the end user of record, to reissue to any firm on one of the approved mortgage seller or servicer lists of Fannie Mae, Freddie Mac or HUD without end user documentation and site inspections.
3. Designate a flat fee for reissue which is reflective of the actual additional task of adding the names of the reissues to the consumer's disclosure. Since sweeping changes of the 1993 FACT Act, which included a free credit report to each American consumer on an annual basis only required an \$0.11 per file price increase it is impossible to understand how the addition of another name on the consumers credit inquiry could justify the charge of \$1.05 to \$3.50 per file as currently required by E&E's new regulations.

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### ***Founded in 1992, the National Credit Reporting Association, Inc.***

*(NCRA) is a national trade organization of consumer reporting agencies and associated professionals that provide products and services to hundreds of thousands of credit grantors, employers, landlords and all types of general businesses.*

*Headquartered in the Chicago suburb of Bloomingdale, Illinois, NCRA serves members in the United States and Puerto Rico. NCRA's membership includes two of every three mortgage credit reporting agencies in the United States that can produce a credit report that meets the requirements of Fannie Mae, Freddie Mac and HUD for mortgage lending. Additionally, our members produce reports for employment screening and tenant screening.*

*NCRA members must agree to comply with all federal and state applicable laws, including the Fair Credit Reporting Act, the Fair and Accurate Credit Transactions Act, and the Gramm- Leach-Bliley Act. These laws define the appropriate procedures for obtaining consumer and credit information, establishing the responsibilities and privacy protocols of the users and furnishers of consumer information.*

*NCRA's Online Study Guide, Employee Certification Program, and Comprehensive Information Security Program set one of the most stringent " Best Practices" standards in the industry to assist its members in adhering to the Federal regulations. NCRA's members are committed to solid business practices, including agreement with the associations Code of Ethics.*

*NCRA shares its knowledge and understanding of the industry with its members through the Annual Conference, Educational Tele- Seminars, The Credit Reporter and The Advocate publications. For more information visit us at [www.ncrainc.org](http://www.ncrainc.org).*

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