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## Credit Report Fee Discrimination?

Recently, the FDIC referred a bank to the Department of Justice (DOJ) for an ECOA violation. Apparently the bank charged married applicants for a single merged report, but charged un-married joint applicants for two separate reports.

The FDIC examiner believed this to be a *marital status discrimination* violation and the bank was asked to find a vendor (credit report agency) who could accommodate the ordering of a 'single, merged' report for unmarried joint borrowers. When told by their vendor that a joint report required a common address, the bank was told to find a new vendor or be cited to the DOJ.

**First, let's talk definitions.** The word *merge* is used in the credit agency industry to describe the merging of information about one consumer that is separately maintained by three national repositories. The repositories, also known as bureaus, are: Equifax, Experian, and TransUnion. Credit agencies obtain much of their information about a consumer from the bureaus and obtain other information from public records and other sources. Because the information collected or

maintained by one bureau may be discrepant from the other, the credit agencies utilize a process called "de-duplication", thus creating a **merged report**. The merging process does not involve more than one consumer.

**Credit agencies do not issue "single" reports for married borrowers.** It is called a "joint" report. Joint reports are also available, at the same price, for unmarried borrowers who meet the following conditions:

- A) the two individuals live at the same address; and/or
- B) the two individuals have jointly-held credit accounts

If two individual borrowers are:

- A) currently or recently living at different addresses, and/or
- B) have credit accounts in their individual names,

then in order for a lender to have sufficient credit history to render a decision on a mortgage, two individual reports will be required.

**Let's talk "red flags",** a timely topic since non-depositories have until November 1st to put their plans in place. FACTA 114 requires creditors

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(mortgage broker, lender, bank or credit union) to have a system for detection and mitigation of red flags to help prevent Identity Theft. Under Section 315 of FACTA, any lender who receives an "address discrepancy" on a consumer report must immediately report to the credit agency what information, if any, was obtained to correct or update the address information.

**It is in the lender's and the consumer's best interest to have a consumer credit report that provides address history, public records, tradeline payment history, employment and all known facts about the individual. Otherwise, if the borrower were a victim of identity theft, how else would this be uncovered?**

Two individual reports may cost a total of \$22 per transaction vs. \$16 per transaction. Lenders are not going to risk facing a \$10,000 per day fine for a FACTA Red Flags violation by ordering an insufficient credit report to save borrowers \$4. So-called "merged, single" reports on two individuals who do not share consumer credit accounts or live at the same address could open up a whole new area of risk for both consumers and lenders.

As a consultant and policy-writer, I urge all Bankers Advisory clients and associates, including FDIC-insured institutions, to please use practical judgment before making any changes in your credit ordering procedures. I suggest that you take a moment to amend your internal policy & procedure to reflect a workflow step and fee schedule that does not discriminate applicants on a prohibited basis, including marital status.

You may want to also furnish the applicant with a disclosure that explains your fee policy, such as: *"consumer credit reports shall be ordered for each individual borrower listed on the loan application*

*based on any of the following criteria: different surname, different residence, length of residence, individually-held credit accounts or other reason for the purpose of obtaining information sufficient to render a credit decision."*

Please email with comments or questions.

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