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MasterCard
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February 11, 2008

Office of the Comptroller of the Currency
250 E Street, SW, Mail Stop 1-5
Washington, DC 20219
Attention: Docket Number OCC-2007-0019

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attention: Docket No. R-1300

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
RIN 3064-AC99

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: OTS-2007-0022

Ms. Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428
Re: Proposed Rule Part 717

Federal Trade Commission
Office of the Secretary
Room 135 (Annex C)
600 Pennsylvania Avenue, NW
Washington, DC 20580
Re: Project No. R611017

To Whom It May Concern:

MasterCard Worldwide ("MasterCard")[1] submits this comment letter in response to the Interagency Notice of Proposed Rulemaking ("Proposal") published by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Trade Commission (collectively, the "Agencies") in the *Federal Register* on December 13, 2007. MasterCard appreciates the opportunity to offer its comments on the Proposal.

In General

Section 623(e) of the federal Fair Credit Reporting Act ("FCRA") directs the Agencies to establish and maintain guidelines for used by entities that provide information to consumer reporting agencies ("CRAs") ("furnishers") regarding the "accuracy and integrity" of the information furnished and to prescribe regulations requiring each furnisher to establish reasonable policies and procedures for implementing the guidelines ("Accuracy and Integrity Provisions"). Section 623(a)(8)(A) of the FCRA directs the Agencies to identify the circumstances under which a furnisher is required to investigate a dispute concerning the accuracy of information contained in a consumer report on the consumer ("Direct Dispute Provisions"). The Proposal implements these two provisions.

MasterCard applauds the Agencies for issuing a Proposal that is intended to implement key portions of the FCRA in a manner that does not impose inordinate or undue burdens. Like MasterCard, the Agencies recognize that consumers and lenders alike benefit from a robust consumer reporting system. This system is entirely dependent on furnishers voluntarily providing quality information to CRAs—information furnished by the private sector is the lifeblood of the consumer reporting system. It is critical that regulatory and legal burdens do not

[1] MasterCard Worldwide (NYSE:MA) advances global commerce by providing a critical link among financial institutions and millions of businesses, cardholders and merchants worldwide. Through the company's roles as a franchisor, processor and advisor, MasterCard develops and markets secure, convenient and rewarding payment solutions, seamlessly processes more than 16 billion payments each year, and provides industry-leading analysis and consulting services that drive business growth for its banking customers and merchants. With more than one billion cards issued through its family of brands, including MasterCard®, Maestro® and Cirrus®, MasterCard serves consumers and businesses in more than 210 countries and territories, and is a partner to 25,000 of the world's leading financial institutions. With more than 24 million acceptance locations worldwide, no payment card is more widely accepted than MasterCard. For more information go to www.mastercard.com.

dissuade furnishers, large or small, from providing this information, otherwise consumers and lenders will suffer.

In many respects, MasterCard believes the Agencies have proposed reasonable and appropriate methods for implementing the Accuracy and Integrity Provisions and the Direct Dispute Provisions. We believe, however, that the Agencies should clarify and improve certain aspects of the Proposal to make it less burdensome on furnishers without detracting from the Proposal's benefits. If these comments are incorporated in a final rule, we believe it would be less likely that the regulatory and legal burdens associated with furnishing information would discourage furnishers from continuing to furnish information to CRAs.

Accuracy and Integrity Provisions

In General

The Agencies' description of the Accuracy and Integrity Provisions demonstrate that the Agencies do not intend to create significant legal or regulatory compliance burdens. For example, the Agencies state that they "do not believe that the requirement for written policies and procedures [addressing the accuracy and integrity of information furnished] will be unduly burdensome, particularly since, under the guidelines, a furnisher may include any of its existing policies and procedures that are relevant and appropriate." Furthermore, the Agencies estimate it would take a furnisher "a total of 21 hours per institution" to implement the requirement to have a written program addressing the accuracy and integrity of information furnished to CRAs ("Accuracy/Integrity Program"). In other words, it appears the Agencies expect furnishers to rely on their existing policies and procedures to comply with the Proposal, so much so that they estimate that it will take a single employee less than three work days to review the furnisher's program, evaluate and implement improvements, and commit the Accuracy/Integrity Program to writing.

MasterCard agrees with the Agencies that most furnishers should need to make only minor modifications, if any, to their existing practices to develop and implement the Accuracy/Integrity Program. Even if only minor modifications are made to such programs, however, the compliance burdens will be significantly more than 21 hours, especially for furnishers of significant amounts of data from a wide range of business lines. The compliance burdens could increase exponentially depending on how the Agencies amend the Proposal. We discuss these issues in more detail below, but as an example, we note that the suggestion that furnishers audit their furnishing practices prior to designing the Accuracy/Integrity Program could take several employees several days simply to design the audit, much less to perform it and provide an audit report. This could also be a very costly undertaking. We strongly urge the Agencies to consider the impact of their requirements, keeping in mind that the cumulative burden and cost increases quickly.

It would also be critical for the Agencies to communicate clearly and publicly to their respective examiners the expectations the Agencies have regarding the implementation of an Accuracy/Integrity Program. For example, it would be inappropriate for examiners to expect furnishers to have engaged in an implementation process that is inconsistent with the Agencies' views that the final rule will impose very little compliance burden or cost on furnishers.

Regulatory Approach v. Guidelines Approach

The Agencies have proposed two approaches to the Accuracy and Integrity Provisions. One approach, dubbed the Regulatory Approach by the Agencies, would define the terms "accuracy" and "integrity" in the text of the regulation requiring furnishers to have reasonable policies and procedures addressing the accuracy and integrity of the information furnished. The other approach—the Guidelines Approach—would define these terms as part of the guidelines issued by the Agencies for use by furnishers when developing their policies and procedures. As it relates to the format of how the Agencies define "accuracy" and "integrity," MasterCard believes the Agencies should do so in the guidelines as opposed to the text of the regulation itself. We believe such an approach will provide furnishers with the flexibility necessary to develop their programs to comply with the Accuracy and Integrity Provisions. Furthermore, adopting the definitions in the guidelines will reduce the risk that examiners, plaintiffs' attorneys, and others will attempt to allege a violation of the final rule if a furnisher provides any information to a CRA that does not meet one or both definitions.[2]

Definition of "Accuracy"

The Proposal includes substantially similar definitions of "accuracy," regardless of whether the definition appears in the regulation or in the guidelines.[3] Specifically, "accuracy" means that information a furnisher provides a CRA about a relationship with a consumer "reflects without error the terms of and liability for the...relationship and the consumer's performance and other conduct with respect to the...relationship." The Agencies state in the Supplementary Information that the proposed definition "is intended to require that furnishers have reasonable procedures in place to ensure that the information they provide to CRAs is factually correct."

Although MasterCard concurs that furnishers should have policies and procedures reasonably designed to furnish information that is factually correct to CRAs, we caution the Agencies against requiring furnishers to develop an Accuracy/Integrity Program to "*ensure* that the information they provide to CRAs is factually correct." (Emphasis added.) The most a furnisher can do, and the most the Agencies should reasonably expect, is that a furnisher will take reasonable care in relying on account records and other information as necessary when furnishing information to CRAs. Just as a furnisher cannot "ensure" that its own records "reflect without error" all consumers' transactions, such as in the case of identity theft or account fraud, a furnisher can take commercially reasonable steps designed to promote the accuracy of its own database for the sake of its own business operations. We believe that this is probably consistent with the Agencies' expectations for purposes of developing an Accuracy/Integrity Program, and we ask the Agencies to revise the Proposal to reflect such expectations more accurately.

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[2] Although the FCRA specifically precludes private rights of action with respect to the enforcement of the Accuracy and Integrity Provisions, some may attempt to impose unintended liability on furnishers through use of state law claims predicated on alleged violations of the Accuracy and Integrity Provisions.

[3] The Agencies do not state why they must define this term—or "integrity"—for purposes of implementing the Accuracy and Integrity Provisions. It is not clear that this is necessary, and we ask the Agencies to consider deleting the notion that such terms must be defined. If the Agencies retain a definition for "accuracy" they must be mindful of how the term (or similar terms/concepts) are used in the FCRA and how a regulatory definition may affect other workings of the FCRA.

The Agencies ask for comment as to whether the term "accuracy" should specifically provide that it includes updating information as necessary to ensure that information furnished is current. It is not clear that such a clarification is necessary, and we caution the Agencies against creating an expectation that a furnisher have specific furnishing timetable requirements. Many furnishers furnish information to CRAs on a periodic basis, such as every 30 days. If the Agencies were to adopt this provision, it would suggest that a furnisher must provide daily (or even instantaneous) "updates" to any information previously furnished. This would be impossible for many furnishers given their existing programs and available resources, and would be unnecessarily costly and burdensome to other furnishers. We therefore ask the Agencies not to adopt this clarification to the definition.

Definition of "Integrity"

The Proposal contains two different possible definitions for "integrity." The Agencies correctly note that Congress did not define the term "integrity" in the statute, creating some ambiguity regarding its meaning. The Agencies also go into detail about how the legislative history surrounding the term "integrity" is inconclusive. The legislative history may have conflicting accounts with respect to this provision, suggesting a need for the Agencies to review the history in a broader sense. It would seem clear that Congress did not intend for the term "integrity" to be synonymous with the term "completeness," as Congress ultimately rejected the latter term in favor of the former. The conflicting rhetoric of congressional *statements* aside, we respectfully suggest that the congressional *action* on this topic is instructive.

Having said this, we note that one of the alternative definitions proposed by the Agencies essentially embodies the concept that the information furnished by furnishers should be "complete." The Regulatory Approach defines "integrity" to mean that "any information that a furnisher provides to a [CRA] about...[a] relationship does not omit any term, such as a credit limit or opening date, of that account or other relationship, the absence of which can reasonably be expected to contribute to an incorrect evaluation by a user of a consumer report of" certain consumer characteristics, such as creditworthiness. For the reasons we provide below, we ask the Agencies to reject this definition of "integrity."

The scope of information that could be required of a furnisher is immense. The plain language definition suggests that if a furnisher has any information whatsoever that could reasonably affect any user's interpretation of a consumer's creditworthiness, the furnisher must furnish it to a CRA. Although the definition suggests that the information necessary is limited to a "term" of an account or relationship, the example of an account opening date as an account "term" suggests a much broader scope of information than simple account terms. Not only is the scope of information immense, but a furnisher must attempt to determine whether it is information of the type that could be useful to a user in considering a consumer's creditworthiness. Would the interest rate on an account be necessary, as a user may incorrectly evaluate a consumer's creditworthiness if the user is not aware of whether the account in question is obviously a prime or subprime account? What about if the consumer routinely exceeds the credit limit on a credit card, or has bounced multiple checks with the creditor? What if the furnisher was willing to furnish the information but a CRA was unwilling to provide the infrastructure to accept it, such as by not providing appropriate fields on a reporting format? Conversely, simply because a credit scoring company has developed a model that uses a certain

variable, and the model is used by some undefined critical mass of creditors, must all furnishers furnish such variable and all CRAs (or at least those used by such creditors) develop the infrastructure to receive and compile it?

MasterCard believes that the above questions illustrate why Congress abandoned the term and the concept of "completeness" from the furnisher obligations in the FACT Act in the first place. It is impossible to define the concept with any specificity or scope, and it would be unreasonable to expect furnishers to develop a compliance program if they do not know with confidence what information they are expected to furnish, now or in the future. Furthermore, allowing users (or the developers of credit scoring models) to dictate what furnishers must provide to CRAs creates unnecessary risks that some furnishers choose to provide nothing instead of everything a credit score statistician can possibly conjure. Of course, to the extent a furnisher believes it must also report information it considers proprietary from a competitive standpoint, such furnisher may decide to furnish nothing at all rather than reveal competitive datapoints.

Instead of adopting the definition in the Regulatory Approach, we urge the Agencies to adopt a definition similar to that included in the Guidelines Approach. Essentially, information would have "integrity" if it is furnished in a manner designed to avoid errors in its compilation by the CRA (recognizing, however, that not every furnisher will furnish in the same manner or in the same format) and in a manner that is substantiated by the furnisher's account records. This is a much more reasonable approach that gives furnishers more comfort regarding their compliance obligations.

Definition of "Furnisher"

The Agencies have defined a "furnisher" to mean "an entity that furnishes information relating to consumers to one or more [CRAs]" but that an entity is not a furnisher "when it provides information to a [CRA] solely to obtain a consumer report." We believe this definition is overly broad and vague. To be a furnisher, the entity must provide personally identifiable information that is accepted by a CRA to be placed in a consumer's file for purposes of providing consumer reports to third parties. It is not clear why the obligations proposed by the Agencies would be necessary with respect to any other entity.

Reasonable Policies and Procedures

The primary requirement of the Accuracy and Integrity Provisions is for a furnisher to establish and implement "reasonable written policies and procedures regarding the accuracy and integrity" of the information it furnishes to CRAs. Such policies and procedures, according to the Proposal, must be appropriate to the nature, size, complexity, and scope of each furnisher's activities. In developing its Accuracy/Integrity Program, a furnisher must consider the guidelines provided by the Agencies and incorporate them as appropriate. Each furnisher must review its Accuracy/Integrity Program periodically and update it as necessary. MasterCard commends the Agencies for proposing a reasonable and appropriate requirement regarding the adoption of an Accuracy/Integrity Program. We are particularly pleased that the Agencies recognize that not all furnishers will have similar programs, and that there is no "one-size-fits-all" expectation.

Guidelines: Objectives

As we describe above, we believe the Agencies should adopt the objectives in the guidelines as they were proposed under the Guidelines Approach, and incorporate our comments on the definition of the term "accuracy." Generally speaking, we believe the objectives provided in the guidelines are reasonable objectives for furnishers to consider when formulating their Accuracy/Integrity Programs.

One such objective relates to a furnisher ensuring that it conducts "reasonable investigations of consumer disputes" about the accuracy and integrity of information in consumer reports and takes appropriate actions based on the outcome of such investigations. We believe this objective should relate only to the accuracy and integrity of information the furnisher furnishes to a CRA, not any information from any source in a consumer's file at a CRA.

Another objective relates to updating the information furnished "as necessary to reflect the current status of the consumer's account or other relationship." We ask the Agencies to clarify that this objective is not intended to suggest that furnishers provide "real time" (or nearly so) feeds of consumer information to CRAs to meet this objective. Rather, a furnisher could furnish information to CRAs on a periodic basis with current information to meet this objective.

Guidelines: FCRA Requirements

As part of the guidelines the Agencies offer summaries of selected provisions of the FCRA relating to furnisher requirements. We ask the Agencies to delete this portion of the Proposal in the final rule. To the extent the Agencies seek to interpret or clarify the FCRA as it relates to furnishers, we believe it would be more appropriate to do so under a separate rulemaking. To the extent the Agencies seek only to paraphrase or summarize the requirements, we do not believe such assistance is necessary. In fact, the Agencies unintentionally call the substance of some of the FCRA obligations into question by providing high level summaries of the law. For example, Section II.B. of the guidelines says a furnisher has the duty to "[p]rovide notice of a dispute by a consumer about the accuracy or completeness of information furnished to a [CRA]" pursuant to Section 623(a)(3) of the FCRA. Yet, the statutory requirement states only that a furnisher may not furnish such information to a CRA without such notice. In short, little is gained by paraphrasing the extant legal requirements of the FCRA in the guidelines, but the Agencies' paraphrasings could cause confusion over the statutory obligations.

Guidelines: Establishing and Implementing Policies and Procedures

The guidelines provide several suggestions regarding how a furnisher may establish its Accuracy/Integrity Program. Generally speaking, we believe the Agencies have identified a reasonable approach to developing such a Program, such as by reviewing one's own experiences and making modifications that may enhance accuracy or integrity. We ask the Agencies, however, to reconsider some of the more detailed suggestions as to how a furnisher could establish and implement an Accuracy/Integrity Program. For example, the Agencies suggest that a furnisher should audit its existing practices. Although the Proposal does not *mandate* such an audit, it is not unreasonable to expect that an examiner will assume the necessity of audit absent justification otherwise. This could be an extremely costly undertaking which may cause some

furnishers to reconsider whether they want to continue to furnish information to CRAs. Furthermore, as discussed above, the fact that an audit is even suggested as necessary calls into question whether the Agencies intend the Proposal to impose significant regulatory burdens. It is also not clear how a furnisher should solicit feedback from a variety of parties, including consumers, nor why such feedback is even necessary to develop a regulatory compliance program.[4]

Guidelines: Specific Components of Policies and Procedures

The Proposal lists thirteen issues that a furnisher's Accuracy/Integrity Program "should" address. We believe these items are generally appropriate, although we caution the Agencies against suggesting that the Program should "ensure" certain outcomes. Rather, the Accuracy/Integrity Program should be designed to address the issues in an appropriate manner.

As for the specific issues raised, some may believe that they contradict the notion imbedded throughout the Proposal that not all furnishers will furnish using the same format or method. For example, the second component mentioned suggests that all furnishers should *compile* information in a standardized manner, yet it is not clear that the Proposal should address how furnishers compile their data. The second component also suggests that such information should be furnished electronically unless it is simply not "feasible" to furnish the data electronically. This suggests—especially to examiners and others—that electronic furnishing is required unless it is not "feasible".

One issue of significant concern relates to recordkeeping. The Proposal states that an Accuracy/Integrity Program should address how long a furnisher retains records for purposes of disputes. Some furnishers' recordkeeping practices may be driven by a variety of factors, including the need for dispute resolution. However, the adequacy of a furnisher's Program should not be called into question simply because its recordkeeping time periods may not coincide with the potential to receive disputes about such records. Indeed, the law provides several requirements for those circumstances in which a furnisher may be unable to verify the information subject to dispute—all of which are favorable to the consumer disputing the information. MasterCard is particularly concerned that the Agencies are considering whether it would be appropriate to impose certain recordkeeping requirements on furnishers. Not only would such a requirement be extremely burdensome, and have little corresponding consumer benefit, but it has the potential to be a *significant* disincentive to furnishing information to CRAs. We urge the Agencies to avoid any suggestion, much less requirement, that a furnisher must retain records of information furnished to CRAs for any period of time.

The last component mentioned in the Proposal suggests that a furnisher must conduct a periodic evaluation of a CRAs practices and how such practices may affect the accuracy and integrity of information furnished. We ask the Agencies to delete this reference. A furnisher will provide information to a CRA in a manner deemed acceptable by a CRA (otherwise the CRA will not accept the information). How the CRA uses, compiles, or interprets that information is not an issue for the furnisher to address, much less a topic for the furnisher to

[4] To the extent a furnisher has received complaints from consumers regarding specific issues, we assume the furnisher would take such complaints into account when reviewing its own experiences.

investigate or evaluate. For example, if a furnisher furnishes information using the METRO 2 format (or any other format a CRA is willing to accept), it is not clear what else the furnisher should do to respond to, or mitigate, the CRA's practices.

Direct Dispute Provisions

Scope of Regulatory Authority

Section 623(a)(8)(A) of the FCRA directs the Agencies to "jointly prescribe regulations that shall identify *the circumstances* under which a furnisher shall be required to reinvestigate" a direct dispute from a consumer. (Emphasis added.) Section 623(a)(8)(B) directs the Agencies to weigh certain factors when crafting such regulations. Once the Agencies identify the appropriate direct dispute circumstances, subparagraphs (D) through (G) of Section 623(a)(8) apply. These remaining subparagraphs of Section 623(a)(8) are self-effectuating after the Agencies adopt regulations under Section 623(a)(8)(A), and Section 623(a)(8)(A) does not authorize rulemaking for them.[5] Specifically, Section 623(a)(8)(C) states that subparagraphs (D) through (G) "shall apply in *any circumstance* identified under the regulations promulgated under" Section 623(a)(8)(A). (Emphasis added.) In other words, once the Agencies issue the rule, Congress has spoken with regard to the relevant requirements. Therefore, it does not appear that the requirements enumerated in subparagraphs (D) through (G) are "circumstances" for which rulemaking is authorized under Section 623(a)(8)(A).

Direct Dispute Circumstances

The Agencies have determined that a furnisher, in virtually all circumstances, should have obligations under the FCRA relating to direct disputes from consumers. Specifically, the Agencies have stated that Section 623(a)(8) would apply to any direct dispute from a consumer relating to any information contained in a consumer report regarding an account or other relationship with the furnisher that bears on the consumers creditworthiness or other factors listed in the FCRA's definition of a "consumer report." The Agencies have provided exceptions to this requirement, noting that Section 623(a)(8) would not apply if the dispute relates to identifying information, identity of employers, inquiries, public record information, fraud alerts, or to certain disputes generated by credit repair organizations.

Although the net effect of the requirement appears to be that a furnisher would not be required to investigate information it did not actually furnish to a CRA, the Proposal does not state this explicitly. We ask the Agencies to clarify that a furnisher need not conduct an investigation relating to information it did not furnish to a CRA. We also ask the Agencies to clarify that the exception relating to credit repair organizations apply to those circumstances in which the furnisher reasonably believes the dispute was submitted by, is prepared on behalf of the consumer by, or is submitted on a form supplied to the consumer by a credit repair organization. This clarification is necessary, as a furnisher may not be in a position to *know* that the dispute involves a credit repair organization (*e.g.*, one that is compensated) although the furnisher may reasonably believe that an entity meeting the definition of a credit repair organization was involved in the dispute.

[5] Any rulemaking relating to Section 623(a)(8)(D) through (G) would be pursuant to Section 621, which is different in several respects to Section 623(a)(8)(A).

Mechanics of a Direct Dispute: In General

The remainder of the Direct Dispute Provisions address matters that are governed in portions of the FCRA not subject to rulemaking under Section 623(a)(8)(A). For example, the Direct Dispute Provisions describe information required in a direct dispute from a consumer, which is governed under Section 623(a)(8)(D). The Direct Dispute Provisions also attempt to address issues relating to disputes that are "frivolous or irrelevant," which is governed under Section 623(a)(8)(F). For the reasons described above, we believe these provisions should be addressed in a rulemaking pursuant to authority granted in Section 621, not Section 623(a)(8)(A). Therefore, the final rule should not address these issues. If the Agencies disagree, we offer the comments below on the mechanics of the Direct Dispute Process.

Mechanics of a Direct Dispute: Direct Dispute Address

Section 623(a)(8)(D) of the FCRA states that a consumer who seeks to dispute the accuracy of information directly with a furnisher must "provide a dispute notice directly to such [furnisher] at the address specified by the [furnisher]." This is an important provision in the FCRA, as a furnisher should not be expected to monitor hundreds of addresses, and train every employee who may have contact with a consumer, to receive direct dispute requests. It would be much more efficient for both the furnisher and the consumer if direct disputes were sent to a designated address so the appropriate actions could be taken promptly.

The Proposal states that in any circumstance a consumer may send a direct dispute notice to an address provided to the consumer on a file disclosure.[6] The Agencies, however, state that a consumer may use any "business address" of the furnisher to submit a direct dispute unless the furnisher has specified a particular address—even if the consumer has been given an address as part of a file disclosure. We do not believe this is appropriate. Any legitimate direct dispute will be the result of a consumer reviewing his or her file disclosure (since that must be done to determine that there is information, in fact, to dispute and to provide sufficient information to the furnisher to investigate the dispute). In those circumstances in which a furnisher has not specified another address, such as if the furnisher has not previously communicated with the consumer as may happen in an identity theft situation, the consumer should be required to use the address provided in the file disclosure for the furnisher. The alternative, as embodied in the Proposal, is to require a furnisher to have compliance procedures for every possible business address (which could conceivably include all branch offices anywhere in the country). Yet this would not necessarily result in the most expeditious resolution of the consumer's dispute, if the dispute is investigated at all. Some business addresses are automated to handle only payments, for example, with extraneous material discarded. The Agencies also appear to believe that consumers will know to send the dispute to the correct business entity—the bank instead of the thrift bearing the same corporate name, for example. We believe there was wisdom when Congress required the consumer to send the dispute to a certain address as specified in the statute, and we urge the Agencies to reconsider their decision to modify the requirement.

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[6] The Proposal states to an address "set forth on a consumer report relating to the consumer." We assume the Agencies are referring to an address that appears on a file disclosure provided by a CRA to a consumer, and that they do not intend to limit it to an address a consumer may have found on a consumer report (*i.e.*, a report from a CRA to a third-party user).

Mechanics of Direct Dispute: Contents of a Direct Dispute Notice

Section 623(a)(8)(D) specifies the information a consumer must include in a direct dispute notice. The information in the Proposal is similar to the information specified in the statute. However, the Agencies should require the consumer to indicate that the dispute is one submitted pursuant to Section 623(a)(8) of the FCRA.[7] Absent such a statement by the consumer, it is not clear how a furnisher would know whether a letter from a consumer disputing an issue on an account is actually a direct dispute. This would create significant compliance burdens and discourage furnishers from participating in the system. This is especially troublesome given the fact that the Proposal would allow the consumer to deliver a dispute to one of many addresses. If this approach were retained, all tellers and other bank employees with any contact with the public would need to be trained regarding interpreting letters for purposes of complying with the direct dispute requirements.

Mechanics of Direct Dispute: Frivolous or Irrelevant Disputes

Section 623(a)(8)(F) of the FCRA describes a furnisher's obligations if a direct dispute is frivolous or irrelevant. The statute states that two possible reasons for finding a dispute to be frivolous or irrelevant include: (i) the consumer not providing sufficient information; and (ii) the submission of a duplicate dispute.[8] The Agencies have added a third example that creates significant confusion. Specifically, the Agencies state that an example of a frivolous dispute is one which the "furnisher is not required to investigate...under [the Proposal]." It would seem that if the dispute were of the type that a furnisher were not required to investigate that contacting the consumer for additional information—as is required in the context of a frivolous dispute—would not be necessary or appropriate. In short, it is not clear why the Agencies would even suggest that a furnisher would ever need to go through additional compliance procedures under the FCRA if the dispute itself is not subject to the FCRA.

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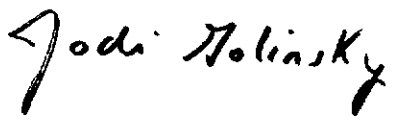
[7] The disclosures that accompany a file disclosure from a CRA would instruct the consumer to reference this portion of the statute in any direct dispute, for example. The Agencies should also consider requiring the consumer to use a specific form to avoid confusion on this point. Such a form could be provided by CRAs and made available on the Internet. The form would also promote expeditious investigations by reducing the likelihood that legitimate disputes are returned to the consumer for additional information.

[8] It is important to note that the statute does not *require* a furnisher to treat either type of dispute as frivolous, thereby requiring the furnisher to recontact the consumer for additional information. They are only examples of when a furnisher may reasonably treat the dispute as frivolous.

Once again, we appreciate the opportunity to comment on the Proposal. If you have any questions concerning our comments, or if we may otherwise be of assistance in connection with this issue, please do not hesitate to call me at (914) 249-5978 or our counsel at Sidley Austin LLP in connection with this matter, Michael F. McEneney at (202) 736-8368 or Karl F. Kaufmann at (202) 736-8133.

Sincerely,



Jodi Golinsky
Vice President &
Regulatory and Public Policy Counsel

cc: Michael F. McEneney, Esq.
Karl F. Kaufmann, Esq.