CUNA
Credit Union National Association
601 Pennsylvania Ave., NW | South Building, Suite 600 | Washington, DC 20004-2601 | PHONE: 202-638-5777 | FAX: 202-638-7734
cuna.org

VIA E-MAIL – regcomments@ncua.gov

February 7, 2008

Ms. Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428

RE: CUNA Comments on Notice of Proposed Rulemaking Part 717 – Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies under Section 312 of the Fair and Accurate Credit Transactions Act

Dear Ms. Rupp:

The Credit Union National Association (CUNA) appreciates the opportunity to comment on an interagency notice of proposed rulemaking regarding guidelines and rules that the National Credit Union Administration (NCUA) and other agencies are required to develop under the provisions of the Fair and Accurate Credit Transactions (FACT) Act. These guidelines and rules are intended to enhance the accuracy and integrity of information that is furnished to the consumer reporting agencies (CRAs).

The rules issued by NCUA will apply to federally–chartered credit unions, while the rules issued by the Federal Trade Commission (FTC) will apply to state-chartered credit unions. CUNA represents approximately 90 percent of our nation's 8,400 federal and state-chartered credit unions, representing over 88 million members.

Summary of CUNA's Comments

- The proposal outlines two approaches for implementing these FACT Act provisions. One approach is referred to as the Regulatory Definition approach and the other is the Guidelines Definition approach. Although similar, credit unions would prefer the Guidelines Definition approach as it may provide more flexibility.

- CUNA is very concerned with the definition of “accuracy,” which requires that the information provided to the CRAs be completely “without errors” and suggest that this phrase be deleted in the definition.
- Subject to this modification, the definition of “accuracy” should also apply to the provisions of this proposal that require furnishers of credit information to investigate disputes, based on a direct request from the consumer.
- CUNA does not believe it is necessary for the definition of “accuracy” to include a requirement that furnishers update the information as necessary to ensure the information is correct. Credit unions recognize that updating the information is necessary, but are concerned that new regulatory requirements may necessitate significant operational changes. The agencies should clearly indicate that institutions will not be required to undergo arbitrary exercises, but will be expected to keep the information current.
- CUNA is concerned with the definition of “integrity,” as outlined under the Guidelines Definition approach, as it may allow the CRAs to dictate the form and manner is which credit information should be reported. The definition under the Regulatory Definition approach would be preferable, although we are concerned that this definition may be subject to different interpretations by examiners.
- Examiners should also be trained so they understand that many credit unions may not need to develop extensive policies and procedures. The agencies should consider developing model policies and procedures that credit unions may use.
- CUNA agrees that a specific period may be included as to how long furnishers should maintain its own records, although it should mirror current practices, such as twenty-four months.
- As for the provisions requiring furnishers of credit information to investigate disputes, based on a direct request from the consumer, CUNA agrees with the approach in the proposal that will allow consumers to do so in most circumstances.
- As for the address for consumers to use to initiate these “direct disputes,” the address on the credit report would always be appropriate, as well as any other address of the furnisher that the consumer uses. Furnishers should be allowed to provide these addresses orally to the consumer.
- Because of the cumulative regulatory burden associated with the rules that have been enacted under the FACT Act, CUNA believes it is important that the agencies agree to review the rule’s impact and the cumulative FACT Act compliance burden one year after compliance is required with this rule, and periodically thereafter. Information on the impact of the FACT Act should be provided to Congress and financial institutions.
- In order to allow credit unions sufficient time to comply with these and all of the other new rules and guidelines issued under the FACT Act, CUNA requests that the agencies provide a required compliance date that is no less than eighteen months after the final version of these rules is published.

Discussion

The FACT Act contains provisions that are designed to enhance the accuracy of credit reports. These provisions require NCUA, the other Federal financial institution agencies, and the FTC to establish and maintain guidelines for use by those who furnish information to the CRAs that address the accuracy and integrity of the information. These provisions also require the regulators to issue rules to require furnishers to develop policies and procedures to ensure the accuracy and integrity of the information provided to the CRAs and to consider the guidelines, as appropriate. The regulators must also issue rules identifying the circumstances in which a furnisher, based on a direct request from a consumer, must investigate disputes about the accuracy of information in a credit report.

The proposal outlines two approaches for implementing these FACT Act provisions. One approach is referred to as the Regulatory Definition approach and the other is the Guidelines Definition approach. The significant difference between these two approaches is how the terms “accuracy” and “integrity” are defined and whether these definitions are placed within the regulation or within the guidelines.

Credit unions would generally prefer that the agencies adopt the Guidelines Definition approach. In most situations, the differences between the two approaches would not be significant, as credit unions generally follow guidelines to the same extent they follow regulatory requirements. However, the guidelines would allow some additional flexibility as credit unions would be permitted to consider the guidelines, as appropriate, when they develop their policies and procedures, as opposed to being required to follow the regulatory requirements, especially as they pertain to the definition of “accuracy” and “integrity.”

The distinction may be particularly important with regard to the definition of “accuracy.” Under both the Regulatory Definition approach and the Guidelines Definition approach, the definition of “accuracy” will require that the information provided to the CRAs about an account or other relationship with the consumer reflect without errors the terms of and liability for the account or other relationship, as well as the consumer’s performance or other conduct with respect to the account or relationship.

Credit unions strive to provide the most accurate to the CRAs, but are concerned that inadvertent errors would occur. Such minor errors do not affect the overall quality of the information and should not be considered a violation of this requirement, especially if it is included in the regulation, as opposed to the guidelines. We recommend the definition be modified to clarify that minor errors will not be considered a violation.

In the proposal, the agencies requested comment as to whether the definition of "accuracy" should specifically include a requirement that furnishers update the information as necessary to ensure the information is correct. Credit unions recognize that updating the information is necessary, but are concerned that new regulatory requirements may necessitate significant operational changes. For example, we are concerned that adding a requirement to update the information within the definition of "accuracy" may be interpreted to mean that credit unions and other creditors will be required to review all accounts constantly, as opposed to current practices, such as reviewing a sampling of the accounts or reviewing accounts where there have been payment problems. We recommend the guidelines or rules be clarified to state that examiners will not arbitrarily require account revisions.

Also, this concept of updating information is already incorporated in one of the objectives that is outlined under both the Regulatory Definition and Guidelines Definition approach. This objective specifies that the information reported to the CRAs should reflect the current status of the consumer's account or other relationship, including any transfer, sale, or assignment to a third-party for collection and any cure of the consumer's failure to abide by the terms of the account.

In the proposal, the agencies have also requested comment as to whether the definition of accuracy under the Guidelines Definition approach should also apply to the provisions of the rule that require furnishers to resolve disputes directly with consumers. Subject to our comments above regarding our concerns with the proposed definition, we would agree that the definition of accuracy used in the guidelines should also apply to these "direct dispute" provisions, since those focus on ensuring that the consumer information is reflected accurately on the credit report.

Although we prefer the Guidelines Definition approach, we are concerned as to how the term "integrity" is defined, which is different from how the term is defined under the Regulatory Definition approach. Specifically we are concerned with the requirement that the information provided to the CRAs be reported in a form and manner designed to minimize the likelihood that the information, although accurate, may be erroneously reflected in a consumer report, by ensuring the information is reported with the appropriate identifying information about the consumer, in a standardized and clear manner, and with the time period in which the information pertains.

We are concerned that this definition will be interpreted to allow the CRAs to dictate the form and manner in which the information will be reported. We disagree with this approach and request that this definition be clarified or modified to indicate clearly that the CRAs will not be the arbiter of how the information will be reported. Over the years, a number of credit unions have expressed concerns regarding e-OSCAR, the online credit reporting system

developed by the CRAs. These concerns focus primarily on the difficulty in using the system, and credit unions are concerned that these difficulties may be exacerbated if the CRAs were to dictate further how this information should be reported.

Although the definition of "integrity" under the Regulatory Definition approach is similar, it does not specifically mention these form and manner requirements and would, therefore, be preferable. Here, "integrity" would mean that any information a furnisher provides to a credit bureau about the account or relationship must not omit any term of the account or relationship, if the absence of which can reasonably be expected to contribute to an incorrect evaluation of the consumer's creditworthiness, credit standing, credit capacity, character, reputation, personal characteristics, or mode of living. Although this definition would be preferable, we are concerned with how the term "reasonably" will be interpreted and that there may be different interpretations among examiners.

Similarly, we note that the guidelines under both the Regulatory Definition approach and the Guidelines Definition approach are very detailed, even though the rule clearly states that furnishers have flexibility in developing their policies and procedures, based on the size, complexity, and scope of their activities. Although flexibility is clearly permitted, we are concerned that smaller financial institutions, such as certain credit unions, may feel compelled to comply with all of the detailed components that are described in the policies and may not have the expertise to tailor them to their specific activities. For them, developing and implementing the policies and procedures will be very difficult. For this reason, we strongly urge the agencies to provide sufficient training to their examiners so they understand that many institutions will not need to develop extensive policies and procedures in this area.

In addition, credit unions are also concerned that examiners will also be critical of credit unions that may develop their policies and procedures based on a standard model that is either developed and shared among credit unions or is purchased from an outside vendor. In these situations, credit unions are concerned that they will be criticized because their policies are not tailored specifically enough to the operations of the credit union. For these reasons, we urge the agencies to consider developing one or more standard models of policies and procedures that credit unions may use that will be considered to be in compliance with these regulatory requirements. CUNA would be happy to work with the agencies to develop such models.

Under both the Regulatory Definition approach and the Guidelines Definition approach, one of the components of the policies and procedures provides that the furnisher maintain its own records for a "reasonable" amount of time. The agencies have requested comment as to whether a certain time period should be specified. We would agree that a specific time period can be specified but would request that it mirror current practices. For example, documentation for many

types of loans are maintained for twenty-four months after the loan is repaid, and we believe such a time period could be adopted under these policies and procedures.

The proposal also includes rules identifying the circumstances in which a furnisher, based on a direct request from a consumer, must investigate disputes about the accuracy of information in a credit report. The proposal will allow these "direct disputes" in most situations, while providing limited exceptions. We generally agree with this approach. Although the CRAs are often in the best position to resolve credit report disputes, we do understand that in the past it has been difficult for consumers to resolve these disputes directly with the CRAs. Both credit unions and their members may benefit under these circumstances, as opposed to the more circuitous option of requiring the members to report the dispute to the CRA first after which the CRA will address the issue with the credit union. Direct communication between members and their credit union would often be the more preferable means to resolve these disputes.

In the proposal, the agencies have requested comment as to whether there are circumstances in which it would not be appropriate for a consumer to submit a direct dispute notice to the address of the furnisher that is provided on the credit report. The agencies have also requested comment as to whether certain types of addresses should be specifically excluded under the rule, such as a business address that is used for reasons other than for receiving correspondence from consumers, or business locations where business is not conducted with consumers.

We believe the address on the credit report would be appropriate in any circumstance in which the consumer wants to contact the furnisher directly about a credit dispute. Consumers should not be required to look elsewhere for this information. Furthermore, we do not believe there is a need to exclude other addresses that the consumer may decide to use. Any furnisher that receives such a dispute at any of its addresses should have no problem in forwarding the dispute to the department or staff members who are responsible for handling these matters.

The agencies have also requested comment as to whether it should be permissible for furnishers to notify consumers orally of the address for direct disputes. We believe that oral notifications are appropriate. Consumers who dispute credit information with the furnisher will in many situations contact the furnisher by telephone and providing the address at that time should be sufficient, without requiring an additional, written notification.

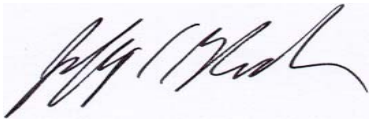
Finally, as we have highlighted in previous comment letters in response to prior FACT Act proposals, CUNA is very concerned about the cumulative regulatory burden associated with the rules that have been enacted under the FACT Act. We believe it is important that the agencies agree to review the rule's impact and

the cumulative FACT Act compliance burden one year after compliance is required with this rule, and periodically thereafter, as a means to address unnecessary burdens. This report should be shared with Congress, as well as with financial institutions.

Similarly, in order to allow credit unions sufficient time to comply with these and all of the other new rules and guidelines issued under the FACT Act, we request that the agencies provide a required compliance date that is no less than eighteen months after the final version of these rules is published. This will be necessary to ensure credit unions have sufficient time to review and analyze their existing operations, make the necessary changes, and to provide sufficient staff training.

Thank you for the opportunity to comment on this interagency proposal regarding these guidelines and rules that the NCUA and other agencies are required to develop under the provisions of the FACT Act. If Board members or agency staff have questions about our comments, please contact Senior Vice President and Deputy General Counsel Mary Dunn or me at (202) 638-5777.

Sincerely,



Jeffrey Bloch
Senior Assistant General Counsel