



Capital One Financial Corporation
1680 Capital One Drive
McLean, VA 22102

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Office of the Comptroller of the Currency
250 E Street, S.W.
Public Reference Room, Mail Stop 1-5
Washington, DC 20219
Attn: Docket No. 06-04
regs.comments@occ.treas.gov

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attn: Docket No. 2006-06
regs.comments@ots.treas.gov

Mr. Robert E. Feldman
Executive Secretary
Attn: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
RIN 3064-AC99
comments@fdic.gov

Ms. Jennifer Johnson
Secretary
Board of Governors of the Federal Reserve
System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attn: Docket No. R-1250
regs.comments@federalreserve.gov

Ms. Mary Rupp
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428
regcomments@ncua.gov

Office of the Secretary
Federal Trade Commission
Room 159-H (Annex C)
600 Pennsylvania Avenue, NW
Washington, D.C. 20580
Project No. R611017
<https://secure.commentworks.com/ftc-FACTAfurnishers>

Re: Interagency Advance Notice of Proposed Rulemaking: 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

Ladies and Gentlemen:

Capital One Financial Corporation (“Capital One”) is pleased to submit comments on the federal regulatory agencies’ (the “Agencies”) Advance Notice of Proposed Rulemaking on the accuracy and integrity of information furnished to consumer reporting agencies, and reinvestigation of consumer disputes, under Section 312 of the Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”).

Capital One Financial Corporation is a financial holding company whose principal subsidiaries, Capital One Bank, Capital One, F.S.B., Capital One Auto Finance, Inc., and Capital One, N.A. (formerly Hibernia National Bank), offer a broad spectrum of financial products and services to consumers, small businesses, and commercial clients. Capital One’s subsidiaries collectively had \$47.8 billion in deposits and \$103.9 billion in managed loans outstanding as of March 6, 2006, and operated more than 300 retail bank branches. These subsidiaries of Capital One regularly and in the ordinary course of business furnish information to the three major consumer reporting agencies (“CRAs”).¹

1. Accuracy and Integrity

Incentives To Furnish Accurate Information Already Exist

There are substantial practical reasons for most participants in the credit reporting system to ensure that the data they furnish is correct. As owners and users of consumer credit information, financial services institutions are aligned with the CRAs and the Agencies in their interest in ensuring the accuracy and integrity of that information.

First, the information furnished to CRAs is the same data that we ourselves use to conduct business and manage our relationships. Financial services institutions must collect, store and retrieve the data accurately if our businesses are to operate successfully. In particular, Capital One’s success is inextricably tied to its Information Based Strategy (IBS), a highly analytical and data-driven approach to financial services that depends on timely and consistent access to extensive information on consumers’ creditworthiness. If the accuracy and integrity of that data were materially compromised, then so would be the quality and competitiveness of our products, services, and risk management practices.

Second, incorrect consumer report information is likely to generate customer complaints, which we must deal with as a business matter regardless of what the law and regulations require (see Direct Disputes comments below). In fact, the possibility of customer complaints is an increasingly important factor because of expanded customer access to account information through the internet, telephone systems and periodic

¹ In March, Capital One announced that it has agreed to acquire North Fork Bancorporation, Inc., which operates over 300 bank branches throughout New York, New Jersey, and Connecticut and is the third-largest depository institution in the greater New York region. That acquisition is projected to close by the end of this year.

disclosures. Similarly, as consumers continue to become more aware of the information contained in consumer reports through the collective efforts of legislators, the Agencies, CRAs, financial institutions, the media, and others, they are more likely to identify and make known any actual or perceived inaccuracies. Capital One has a strong incentive to maintain and report accurate data in order to minimize the resources that must be expended on dispute resolution, and to maintain desired levels of customer satisfaction.

Some Enhancements to Reporting Process May Promote Greater Accuracy and Integrity

For the reasons discussed above, Capital One has long recognized the need to have internal processes designed to reasonably address our own and customers' expectations of data accuracy and reliability. To that end, we have helped to develop and have adopted sophisticated processing, recordkeeping and reporting systems. Nevertheless, we believe that there are several vectors along which industry-wide progress can be made toward greater accuracy and integrity, and less confusion, in consumer credit reports.

A. Greater uniformity in reporting

Capital One, like most financial institutions today, furnishes information using the "Metro 2" format established by the major CRAs. Use of a common reporting format such as Metro 2 serves to significantly reduce the number of errors that can be introduced into a consumer report as a result of misunderstanding by a person or automated system. However, furnishers are not required to adopt the Metro 2 reporting format. In fact, it appears that there are still furnishers reporting under the previous Metro 1 format. Use of a single, standard reporting format by furnishers and CRAs would further enhance the accuracy and integrity of consumer reports.

Even universal use of Metro 2 as currently implemented leaves the consumer reporting system exposed to some unnecessary data errors due to variation from one CRA to the next. Adoption by all major CRAs of the same numerical or letter codes would reduce the risk that the same information, when furnished to two different CRAs, can be reported accurately at one, but not the other. Similarly, to avoid consumer confusion, the CRAs could agree to use the same verbal interpretations and descriptions of numerical or letter codes on reports that are generated for consumers.

B. Greater frequency and regularity of reporting

Most financial institutions send account history and payment information for all accounts on a monthly basis. Others report cyclically (that is, on or around the statement cycle date of the particular customer). Capital One firmly believes that more-frequent reporting can greatly enhance the accuracy and integrity of information in consumer reports. To that end, for credit card accounts, we are moving toward daily intra-cycle reporting. This means that, on a daily basis, we will report changes to any of the major fields that we routinely report to CRAs. Furnishing information daily may not be necessary for other types of accounts or even for other credit card issuers. However,

reporting only sporadically, or less frequently than every thirty days, exacerbates the actual or perceived inaccuracy of consumer reports both by allowing reporting errors to linger and by delaying the availability of more recent data.

C. More-robust operational controls around reporting

Capital One would welcome greater collaboration between furnishers and CRAs in enhancing the current controls environment. Examples of better controls include:

- a more formalized process for Metro 2 modifications;²
- establishing a reconciliation process to ensure that the information as received and interpreted by a CRA matches the information that was sent; and
- preventing duplicate reporting by detecting when the same account or a successor account is being reported multiple times or under different variants of identifying information.

Agencies Should Not Mandate Specific Practices; Detrimental Effects of Doing So Likely Outweigh the Benefits

While Capital One believes that the above-described recommendations are important initiatives, we also believe that all of them are best undertaken by the data furnishers and by the CRAs, either by themselves or working with one another on industry committees. That is how Capital One is approaching these issues.

While the statute's expectation that data furnishers establish "reasonable policies and procedures" "regarding the accuracy and integrity of the information relating to consumers that [they] furnish to consumer reporting agencies" is a fair one, it does not follow that the Agencies should prescribe by regulation either the content of the information reported or the procedures adopted to ensure accuracy and integrity. Seeking to specifically regulate those activities could prove counterproductive. The more extensive the regulatory requirements and burdens placed around information reporting, the more likely it is that some participants in the credit economy will avoid those burdens by simply not reporting at all. That could lead to a number of unintended and undesired consequences, including consumer reports that are less accurate, less informative, and less useful. In addition, specifically mandated requirements might not keep up with, and would actually impede, dynamic industry-driven improvements in the credit reporting system. Those are results that no one should desire, because the current credit reporting system is one of America's great facilitators of economic activity.

"Completeness" of Consumer Report Information Is Out of Scope

The Advance Notice identifies a number of "issues that may affect the accuracy of consumer report information" that in fact are issues of completeness, not accuracy. They include reporting of only negative information, and not reporting credit limits (as well as alleged issues of incompleteness, in addition to inaccuracy, in public record data

² Currently, the major CRAs can independently alter Metro 2 without broadly disseminating the change to furnishers.

and collection data).³ Additionally, the Agencies specifically seek descriptions of problems that result in credit files that omit “potentially significant information about the consumer account or transaction, such as credit limits for or positive information about the account.”⁴ However, FACT Act Section 312 requires the Agencies to issue regulations regarding the *accuracy and integrity* of information furnished to the credit bureaus, not *accuracy and completeness*. The formulation “accuracy and completeness” was offered in an alternative version of Section 312 by Senators Shelby and Sarbanes⁵ but was not accepted by Congress. Representative Oxley, who had moved the legislation through the House Financial Services Committee, explained: “‘Accuracy and integrity’ was selected [by Congress] as the relevant standard, rather than ‘accuracy and completeness’ as used in Sections 313 and 319, to focus on the quality of the information furnished rather than the completeness of the information furnished.”⁶

The FACT Act does not change the fundamentally voluntary nature of credit reporting and, except in very specific circumstances,⁷ the FCRA does not authorize the Agencies to mandate particular elements of data to be reported. Those would have been dramatic changes in the pre-existing law, which Congress did not make, and which would have created significant challenges for many furnishers. For example, some credit granters may have systems that are not well suited to reporting a data universe that the Agencies would regard as “complete.” Indeed, there is no reliable criterion of “completeness,” because what is relevant and important in a credit report may vary both by user and from time to time in a dynamic credit marketplace. Third parties who are not credit grantors, by building credit-scoring models using one or more data elements that they believe to be relevant, cannot thereby compel credit grantors to report those elements, and the FACT Act gives the Agencies no authority to enable them to.

2. Direct Disputes

An Effective Dispute-Resolution Process Requires Handling of Direct Disputes

Most credit report disputes handled by Capital One are received through the CRAs’ E-OSCAR automated dispute system. E-OSCAR provides a simple and relatively efficient method of communicating basic information between the furnishers and the CRAs. Nevertheless, the system has its limitations. Additionally, as previously noted, the need to service customers in a timely and appropriate manner demands that we do more. Therefore, we think that consumers should be able to dispute the accuracy of

³ 71 Fed. Reg. 14419, 14420 (March 22, 2006.)

⁴ *Id.* at 14423, Request for Comment A1(4).

⁵ 149 Cong. Rec. S13912 (Nov. 4, 2003).

⁶ 149 Cong. Rec. E2512, E2516 (Nov. 21, 2003).

⁷ Notice of dispute when subsequently furnishing to a credit bureau previously disputed information, Notice indicating that an account was voluntarily closed by a consumer, and Notice of the date of delinquency.

credit report information directly with the data furnisher in nearly every case in which the dispute relates to information in the report about a relationship with that furnisher. There are two principal reasons underlying our current practice of broadly handling direct disputes.

First, the CRAs, by their nature, are often an inefficient channel for resolving such disputes. In most cases, the information necessary to investigate the dispute is in the possession of the furnisher and not the CRA. Additionally, while E-OSCAR facilitates communication of basic information between furnishers and CRAs, we find that in a significant number of disputes, the information forwarded to us by CRAs is insufficient to enable a meaningful investigation. Therefore, in many cases, a data furnisher can only review the information provided by the CRA and compare it to the information in the consumer's file at the furnisher. The process simply results in a return communication to the CRA to the effect that the furnisher's own record matches the data originally reported to the agency. While sometimes a dispute can be resolved or corrected based on this simple verification, other times that process provides little satisfaction to the consumer and is likely to generate a follow-up dispute presented directly to the furnisher. By contrast, when the request is received directly from a consumer, we receive additional information useful to the investigation that is either not typically relayed or cannot currently be relayed by E-OSCAR.

Second, in most disputes involving a financial institution, the consumer presenting the dispute is the financial institution's own customer. As a responsible provider of financial services, and as a matter of sound business practice, we will want to investigate the dispute either to correct an error for the benefit of the customer, or to assure the customer that the information provided to the CRAs was correct.

The Agencies should consider that many financial institutions, motivated by business needs, may already voluntarily resolve disputes brought directly by their customers. Capital One and institutions like it will continue to handle direct disputes in a manner that effectively improves the accuracy of information regardless of whether the current legal framework makes that channel available to the consumer. However, promoting a legal framework in which consumers are encouraged to present disputes directly will benefit all parties. Consumers will benefit because they will achieve resolution of their complaint (one way or the other) more quickly without having to pass through a frustratingly unsatisfactory preliminary step. The CRAs will save the resources, time and transmission costs required to pass through to data furnishers a large number of consumer disputes. And finally, the furnishers themselves benefit by having to address those disputes only once (when presented directly by the consumer), and avoiding the transmission costs of responding to the CRAs.

Agencies Should Not Impose Procedures that Impede the Direct Disputes Process

We believe that the Agencies should avoid imposing requirements that would limit in any way the ability of financial institutions to continue to resolve disputes received from customers on a voluntary basis. FCRA Section 623(a)(8) prescribes in

detail a furnisher's duties to address a dispute brought directly by a consumer, including responsibilities to conduct an investigation, review all relevant information provided by the consumer, complete the investigation within the statutorily prescribed time period and, if the investigation finds that the information was inaccurate, promptly notify each CRA to which the furnisher provided the information and correct the information to make the information accurate. However, financial institutions have developed different ways to effectively handle direct disputes and, as long as the statutory obligations are met, they should be permitted to continue using the processes that best suit their particular systems and the needs of their customers.

Certain Types of Disputes Are Less Likely to be Resolved by Making Direct Requests to Furnishers

Notwithstanding our conviction regarding the importance of furnishers handling direct disputes, Capital One believes that there are several instances in which the burdens associated with increased furnisher obligations likely outweigh the potential benefits. We also recognize that those instances likely vary from furnisher to furnisher based on the institution's type, size and scope of activities. For that reason, we wish to make clear that the following list is not intended to be comprehensive.

- A. Repeats – Furnishers cannot expend limited resources investigating the same, (or substantially the same) dispute request made by a consumer absent new facts or allegations.
- B. Duplicates – If a consumer has already initiated a dispute through a CRA, then a furnisher should not have an obligation to investigate a contemporaneous and substantially similar request made directly to the furnisher.
- C. Single Bureau Errors – In situations where a consumer identifies an error at one bureau that does not show up in other consumer reports, the consumer should be directed to first dispute the item with the CRA that produced that report and make the bureau aware that the error is unique to its report. This fact pattern suggests that the furnisher likely reported accurately, but the information was misinterpreted or miscoded by the CRA.
- D. Posting of Inquiries – Disputes related to the presence of an inquiry, improper type of inquiry, or excessive inquiries are likely more effectively handled through the CRAs. Since the CRAs control the inquiries, they are responsible for posting them when furnishing a consumer report to a user who certified a permissible purpose. Additionally, because the CRAs own and control access to consumer reports, they can most effectively verify if, when, and why a consumer report was accessed.
- E. Public Records – Accounts for which information has been furnished by a financial institution to CRAs may at times also be the subject of information

obtained separately from public records by the CRAs (*e.g.*, judgment, lien, satisfaction of judgment). In cases where the public record is inaccurate, a direct dispute by the consumer to the financial institution is unlikely to yield a satisfactory resolution since the financial institution did not furnish the disputed information. Additionally, having that consumer attempt to directly dispute with the source of the public record information seems onerous and, again, unlikely to yield a satisfactory resolution.

For these reasons, while the direct dispute process with furnishers is a necessary and appropriate avenue for a consumer to dispute the accuracy of a consumer report, it cannot replace the CRAs' obligations under FCRA Section 611.

* * *

Capital One appreciates the opportunity to comment on the Agencies' Advance Notice of Proposed Rulemaking under FACT Act Section 312. If you have any questions about this matter and our comments, please call me at (703) 720-2255.

Sincerely,

/s/

Christopher T. Curtis
Associate General Counsel
Policy Affairs