

February 11, 2008

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

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

Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue, NW  
Washington, DC 20551

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

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

Federal Trade Commission  
Office of the Secretary, Room 159-H  
(Annex C)  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Re: 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, Docket ID OTS-2007-0022

Dear Ladies and Gentlemen:

Countrywide Financial Corporation, on behalf of its subsidiaries Countrywide Home Loans Inc. and Countrywide Bank, FSB (collectively "Countrywide"), appreciates the opportunity to comment on the joint proposed rulemaking (the "Proposal") of the Office of the Comptroller of the Currency (the "OCC"), Board of Governors of the Federal Reserve System (the "FED"), Federal Deposit Insurance Corporation (the "FDIC"), Office of Thrift Supervision (the "OTS"), National Credit Union Administration (the "NCUA") and Federal Trade Commission (the "FTC") (collectively the "Agencies") concerning the proposed regulations and guidelines to implement the accuracy and integrity provisions in Section 312 of the Fair and Accurate Credit Transactions Act ("FACTA") of 2003. 72 Fed. Reg. 239 (December 13, 2007).

Countrywide is the nation's largest mortgage loan servicer serving a base of more than nine million customers. Countrywide strives to furnish accurate credit information and we believe that we have systems in place to attain that goal. If it is determined that additional regulatory requirements are necessary we believe that some of the proposed rules and guidelines could be improved and modified in such a way to minimize the impact on furnishers, without negatively impacting the goal of improving the accuracy of the furnished information. Greater flexibility, along with some changes to the proposed language of the final rules and guidelines, will achieve the desired level of accuracy and integrity of information furnished to the credit reporting agencies (the "CRAs"). Towards that end, we offer the following comments.

## General Comments

Countrywide believes that of the two suggested approaches, the Guidelines Definition Approach (“GDA”) and the Regulatory Definitions Approach (“RDA”), the GDA is the better alternative. Although similar concerns arise under both approaches, the GDA permits more flexibility.

Both approaches seem to impose requirements that are outside the control of furnishers. Under the RDA, section I B 1 of the guidelines requires furnishers to ensure that the information they furnish about a consumer account or other relationship “(b) accurately **reports** the terms of those accounts or other relationship; and (c) accurately **reports** the consumer’s performance and other conducts...” (emphasis added). The proposed guideline could be interpreted as requiring furnishers to police the credit reports of their customers to ensure that the information they have furnished is accurately reported. This would be a daunting proposition and would require furnishers to increase their operations in a manner that would be cost prohibitive. If the RDA approach is adopted, we recommend that these references be modified to refer to information provided as “furnished” as opposed to “reported.” This would achieve the desired result of improving furnished information permitting CRAs to improve the quality of credit reporting.

Similarly, under section I B 2(i) of the GDA, the definition of “integrity” implies that furnishers must furnish information “in a form and manner that is designed to minimize the likelihood that the information, although accurate, may be erroneously reflected in a consumer report.” As stated above, Countrywide asks that the Agencies clarify the rule to distinguish between information that is “furnished” and that which is “reported.” This definition of “integrity” appears to require that furnishers monitor the CRAs to ensure that their information, although accurate, is not reflected erroneously on a consumer’s credit report. This requirement would be daunting for furnishers as they would have to staff whole departments just to monitor consumer reports. Ultimately, Countrywide always strives to furnish accurate credit information. How that information gets reported by the CRAs is up to the interpretation and application of CRA business rules which define how and when information is actually reported and displayed. We would like to ask Agencies to clarify that a furnisher’s use of the industry standard Metro II reporting format would be sufficient under this definition and sufficient to meet the requirements of section IV L of the Guidelines. If the Agencies aren’t careful, furnishers will be responsible for the CRAs’ reporting responsibilities.

The definition of “integrity” under the RDA is also problematic because it is vague. The definition relies on how a particular user of a credit report may interpret information in that credit report. The definition of “integrity” in § .41(b) states that information furnished would lack “integrity” if it omits any “term . . . which can reasonably be expected to contribute to an incorrect evaluation by a user of a credit report of a consumer’s credit worthiness.” This definition confuses the furnishers’ role in credit reporting by implying that furnishers have control over what gets reported. More importantly, this definition of “integrity” creates a subjective standard that makes interpretation and compliance difficult for furnishers. Users of credit information employ a wide array of methods by which they evaluate credit information and credit worthiness. These methods range from subjective individual evaluations of information found in the credit report to complex statistical data models. It would be impossible to measure the relative inaccuracy of any one evaluation method as each method is presumably tailored to an individual user’s trade-line or business. Any definition of “integrity” based on how users evaluate credit reports essentially increases a furnisher’s liability for any given user’s “incorrect” evaluation of credit worthiness.

Regardless of the final approach that is adopted, furnishers should have no continuing obligation to furnish credit information for consumer accounts that have been sold or otherwise transferred. Both the RDA and the GDA appear to impose such a continuing obligation. Under the RDA a furnisher must "ensure that it updates information it furnishes as necessary to reflect the current status of the consumer's account or other relationship, including: (a) any transfer of an account . . . to a third party; and (b) any cure of the consumer's failure to abide by the terms of the account or other relationship." Similarly, the GDA would require furnishers to implement policies and procedures that would include "furnishing information about consumers to consumer reporting agencies following mergers, portfolio acquisitions or sales, or other acquisitions or transfers of accounts or other debts in a manner that prevents re-aging of information, duplicative reporting or other problems." These requirements exceed the obligation placed on furnishers that sell or transfer accounts under the FCRA. It would be exceedingly difficult for a furnisher to receive credit information about an account that it no longer holds. Additionally, there might be some privacy concerns that prohibit the practice altogether. Countrywide asks the agencies to rewrite the sections to remove any implication that furnishers have a continuing obligation to furnish credit information on accounts which they have sold or transferred.

Proposed section IV K would require that furnishers utilize technological means of communication with CRAs that are "designed to prevent duplicative reporting of accounts, erroneous association of information with the wrong consumer(s), and other occurrences that may compromise the accuracy and integrity of information contained in consumer reports." This proposed language appears to impose liability on furnishers for the reporting of information furnished. We have no control over the technology that is used by the CRAs to report the information furnished. Countrywide believes that furnishers should only be responsible for accurately furnishing the appropriate credit information to the CRAs. To expect furnishers to bear the expense of adopting technological initiatives for the benefit of aiding CRAs in creating consumer reports would be unreasonable.

Likewise, proposed section IV M would require that a furnisher evaluate "its own practices, consumer reporting agency practices, investigations of disputed information, correction of inaccurate information, means of communication and other factors that may affect the accuracy and integrity of information furnished to consumer reporting agencies." This proposed guideline is written in a manner that suggests that furnishers are required to evaluate, investigate and correct not only their own policies and procedures, but those of the CRAs and possibly other furnishers as well. It is unlikely that furnishers will have the access or the means to evaluate the policies and procedures of the CRAs or those of other furnishers. This provision should be rewritten to make it clear that a furnisher should periodically review its own practices of furnishing credit information, investigating disputes and correcting information and should also periodically review information available to furnishers generally that affects the accuracy and integrity of information the furnisher furnishes.

Regarding the proposed direct disputes rules, Countywide stresses that consumers already have an appropriate method for disputing reported credit information. Consumers can indicate on their credit reports that an item is in dispute. Requiring furnishers to report a dispute sent directly to furnishers or the status of such direct dispute is duplicative of any dispute already filed by the consumer with the CRA.

Countrywide would also like the Agencies to clarify that furnishers should only be responsible for the furnishing of information that is contained in their own records. A prime example of this problem is the reporting of the status of a consumer's bankruptcy case. The furnisher's sole responsibility is to furnish the CRA with the fact that the specific account on which information is being furnished is involved in the bankruptcy case. Like most furnishers, Countrywide does

not monitor the status of the consumer's bankruptcy case beyond the fact that it was filed. Information about a consumer's bankruptcy comes directly from the bankruptcy court or vendors with whom the CRAs contract to furnish such information. Furnishers should not be held responsible for information that is outside their own experience with consumers, nor should they be required to check the status of a borrower's bankruptcy proceeding.

Additionally, regarding proposed section IV H of the GDA, Countrywide asks that the agencies remove any affirmative duty by furnishers to attempt to "obtain the information...from a consumer before determining that the consumer's dispute is frivolous or irrelevant." Under §623 (a) (8) (F) of the FCRA a furnisher has no duty to investigate a consumer's dispute if that dispute is frivolous or irrelevant. Imposing a duty of to affirmatively contact consumers to investigate direct disputes that are frivolous or irrelevant would impose substantial costs on furnishers. Consumers would no doubt send in frivolous and irrelevant disputes in order to frustrate the furnishing of credit information and impose additional liability on furnishers. This would lead many furnishers, including Countrywide, to rethink its credit furnishing activities.

Finally, Countrywide asks the Agencies to specifically reiterate that a consumer does not have a private cause of action against a furnisher under the FCRA if the furnisher fails to update information that is the cause of the direct dispute with the furnisher.

### Specific Comments

1. What definition of "integrity" should be adopted and where should the definitions of "accuracy" and "integrity" be placed in the regulatory text or in the guidelines?

The Agencies should adopt the definition of "integrity" found in the GDA because the RDA approach is overly burdensome and difficult to adopt. The definitions of "accuracy" and "integrity" should be placed in the guidelines themselves. Placing these definitions in the text of the guidelines provides all of the information pertaining to the "accuracy" and "integrity" of consumer information in one place. This will allow all users to more easily access and process the information. This also encourages readers to look at the comprehensive definitions of "accuracy" and "integrity" as opposed to the limited definition that would be found in the regulations under the RDA.

2. Should the definition of "accuracy" include updating information as necessary to ensure that the information furnished is current?

The definition of "accuracy" should not include updating information as necessary to ensure that the information is "current" unless the term "current" is defined by the Agencies. Countrywide, like most other large furnishers, updates furnished information on regular recurring cycles. Without a definition of what "current" means, consumers may seek to impose liability on furnishers for not updating information immediately. It is not feasible for Countrywide to update all consumer information furnished immediately as this practice would be cost prohibitive. Countrywide requests the Agencies adopt a definition of "current" which states that information is considered current if furnished in accordance with a furnisher's policies and procedures and is consistent with information reflected in the furnisher's internal records.

Countrywide believes that information should be considered "accurate" if it was accurate at the time it was furnished. All the CRAs to which Countrywide furnishes credit information include in their credit reports the last date on which that information was furnished. Countrywide understands, as do other users of credit reports, that although credit information may have been accurate on the date when furnished, it may no longer be accurate when reported. Credit report

users, such as Countrywide, always take into consideration the date on which information was furnished when analyzing reported credit information.

3. Should the definition of "accuracy" be made applicable to direct disputes if the Guidelines Definition Approach is adopted?

Countrywide believes that the definition of "accuracy" should be made applicable to direct disputes if the GDA is adopted. Applying the definition of accuracy to direct disputes will not substantially increase the responsibility of furnishers with respect to direct disputes. However, ensuring that consistent definitions and standards are imposed on furnishers will improve the quality of information furnished to consumer reporting agencies.

4. Is the proposed definition of "accuracy" appropriate for the direct dispute rule, and in particular, does the definition of "accuracy" need to be clarified in order to more clearly delineate those disputes that, while subject to the CRA dispute process, would not be subject to the direct dispute rule?

We believe the definition of "accuracy," as modified, appropriately delineates those disputes that would not be subject to the direct dispute rule. Under the GDA definition of "accuracy," the information provided by the furnisher is based on the records of that furnisher at the time the information was furnished. This clarifies who is responsible for the information that the consumer is disputing. A furnisher should not be responsible for responding to a direct dispute relating to information that it did not furnish to a CRA. Under the RDA approach, the definition of "accuracy" does not clearly state what information the furnisher is responsible to validate in a direct dispute with the consumer.

5. Does the Agencies' approach to direct disputes appropriately reflect the relevant considerations, or does a more targeted approach represent a more appropriate balancing of relevant policy considerations?

Countrywide believes that the Agencies' approach to direct disputes, with the exceptions of our comments in this letter, appropriately reflect the relevant policy consideration. Implementing a more targeted approach would take away any flexibility a furnisher may have in dealing with direct disputes.

6. Should proposed § .43(c)(2) be amended to permit furnishers to notify consumers orally of the address for direct disputes and, if so, how can oral notice can be provided clearly and conspicuously?

Countrywide believes that § .43(c)(2) should not be amended to permit furnishers to notify consumers orally of the address for direct disputes. Otherwise, consumers could easily send the dispute to an incorrect address if they misunderstand the oral directions or write them down incorrectly.

7. What additional mechanisms should be required, if any, for informing consumers of their direct dispute rights?

Countrywide believes that the current mechanisms in place are more than adequate to inform consumers of their direct dispute rights. We would like to point out that multiple sources of information on direct dispute rights are available to consumers. For example, in the mortgage servicing industry, many of the regulators maintain information regarding direct dispute rights that they make available to consumers upon inquiry or on their websites. We feel that additional

mechanisms for informing consumers of their direct dispute rights would be redundant and excessive.

8. How do direct dispute requirements affect furnishers to smaller specialty CRAs, such as CRAs that report medical information, check writing history, apartment rental history, or insurance claim filings?

Countrywide reserves comment with regards to the effects of direct dispute requirements on furnishers to smaller specialty CRAs.

9. Should the guidelines incorporate a specific time period for retaining records in order to provide for meaningful investigations of direct disputes, and, if so, what record retention time period would be appropriate?

Countrywide does not feel that the guidelines need to incorporate a specific time period for retaining records. Incorporating specific time period requirements for retaining records would be redundant as most furnishers already observe various record retention requirements mandated by federal and state law. Furthermore, any such record keeping requirement could conflict with other record keeping requirements already imposed by state and federal law. Mandating record retention requirements is not beneficial to consumers in the majority of cases. Adequate record retention is something that is in the best interest of furnishers since the result of not being able to substantiate reported consumer information is that furnishers will be forced to withdraw that reported information once it is disputed. Adding a record retention requirement in the guidelines needlessly complicates the process of consumer reporting and increases the costs due to added monitoring and storage requirements.

10. Should § .42(c)(2) exclude certain types of business addresses, such as a business address that is used for reasons other than for receiving correspondence from consumer or business locations where business is not conducted with consumers?

Countrywide believes that § .42(c)(2) should state that furnishers are not obligated to respond to a direct dispute if that dispute is sent to an address other than an address specified by the furnisher for the purpose of receiving direct disputes. Doing otherwise would make furnishers responsible for failing to respond to disputes directed to erroneous addresses, depriving furnishers of the protections they have under §623 (a)(1)(B)(i) of the FCRA. Countrywide would like to point out that it has hundreds of discrete business locations; expecting Countrywide to effectively monitor all of these locations for direct disputes is simply impossible.

Countrywide urges the Agencies to revise proposed § .43 (c) to clarify that if a consumer report contains an address for the furnisher other than the address provided by the furnisher, the furnisher is not liable for failing to respond to a consumer's dispute made to the incorrect address.

Additionally, Countrywide asks the Agencies to adopt a requirement that direct disputes submitted to furnishers by consumers be clearly identified in order to avoid ambiguity as to the furnisher's obligation with respect to the disputes that may be sent to the same address as other general correspondence. This precaution will aid furnishers in responding to direct disputes in a timely manner.

11. The Agencies specifically request comment on the impact of this proposal on small institutions' current resources, including personnel resources, and whether the goals of the proposal could be achieved for small institutions through an alternative approach.

Countrywide reserves comment on this matter to the extent it can be considered a small institution.

12. The Agencies invite comment on how to minimize the burden of the final rule.

Countrywide recommends that the Agencies do the following to minimize the burden of the final rule: 1) give furnishers adequate time to implement the proposed changes to the FCRA; 2) clearly distinguish between the responsibilities of entities that furnish credit information and entities that report credit information; 3) eliminate liability from the possible requirements for "accuracy" and "integrity"; 4) make the definition of accuracy apply to furnishers only as of the date credit information was furnished, not reported; 5) remove any obligation to update information furnished after an account has been transferred or sold; 6) specify that furnishers must only respond to consumer's direct disputes if they are sent to the address provided for that purpose; 7) remove any possible record retention requirements for furnishers as they are not necessary; and 8) remove any affirmative duty to investigate frivolous or irrelevant disputes submitted by consumers.