Comments

of the

Consumer Data Industry Association

Concerning the Interagency Notice of Proposed Rulemaking

on

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

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Department of the Treasury, Office of the Comptroller of the Currency

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Federal Reserve System

12 CFR Part 222

Docket No. R-1300

Federal Deposit Insurance Corporation

12 CFR Parts 334

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Department of the Treasury, Office of Thrift Supervision

12 CFR Part 571

Docket No. OTS-2007-0022

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National Credit Union Administration

12 CFR Part 717

Federal Trade Commission

16 CFR Part 660

RIN 3084-AA94

The Consumer Data Industry Association ("CDIA") is pleased to offer comments on the above captioned matter.[1]

Accuracy and integrity of data are key priorities for our members. While our comments will focus primarily on the furnishing of information to nationwide consumer reporting agencies as that term is defined in FCRA § 603(p), it is important to remember that there is a diversity of consumer reporting agencies producing data products regulated under the FCRA and other data furnisher communities may also be affected by the final regulations and guidelines.

I. Data Furnishing

A. Recognition of the voluntary system of data furnishing

The key to successful guidelines and regulations is that they must take into account the factual reality that no data furnisher is required to provide any data to any type of consumer reporting agency. We agree with the Agencies inclusion of encouragement to furnish data to CRAs and applaud the Agencies' recognition of the fact that this voluntary system provides substantial benefit to consumers. However, we do not believe that the proposed regulations and guidelines sufficiently account for this factual reality.

To restate the context for the current process of issuing guidelines and regulations, in 1996 and again in 2003 substantial new obligations were placed on data furnishers by the Congress. Actions in the courts and federal banking agency examination practices have added to the statutory compliance burdens that are in place today. These proposed accuracy and integrity guidelines and rules will add yet again additional obligations to the substantial existing burdens and obligations. Thus, care and balance are critical in order to avoid a confusing, unnecessarily complex or overly rigid structure that could result not only in current data furnishers choosing not to supply data but also discourage future furnishers from providing data to CRAs. This result would harm consumers individually and the financial services system as a whole.

B. The proposed rule or guidelines could reduce data reported to consumer reporting agencies

"[I]imposing additional legal liability penalties, may, in a system of voluntary reporting, lead to unintended consequences, including less information reporting and a less efficient and effective system." *Credit Reporting Accuracy and Access to Credit,* Federal Reserve Bulletin, Summer 2004, 322 ("Federal Reserve Bulletin"). There are a number of components to the proposed rule and guidelines that could significantly reduce data reporting to CRAs. These include: the overbroad and unnecessary definitions of "accuracy", "integrity", and "furnisher", the requirement that furnishers have written guidelines, a lack of protections from frivolous disputes for furnishers and the granularity of the direct dispute provisions.

There are over 18,000 furnishers to the nationwide consumer reporting agencies alone and not all of them are alike. The Notice of Proposed Rulemaking ("NPR") appears to be drafted with the assumption that (a) all furnishers are large and report only to nationwide consumer reporting agencies, and (b) all consumer reporting agencies are operating on a nationwide basis. However, there are thousands of small and sometimes occasional furnishers that do not fit the assumed mold. There are many consumer reporting agencies that also do not fit the assumed role of a nationwide CRA. The value of a wide array

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[1] CDIA is the international trade association representing over 250 consumer data companies that provide fraud prevention and risk management products, credit and mortgage reports, tenant and employment screening services, check fraud and verification services, data for insurance underwriting and also collection services.

of data is well recognized in the Federal Reserve Bulletin, by lenders,[2] the Federal Financial Institutions Examination Council,[3] members of Congress, [4] and policy researchers.[5] Indeed, the FTC is conducting a study to determine ways to encourage the reporting of data from non-traditional sources because "many Americans may be missing out on the benefits associated with the consumer reporting system."[6]

It seems incongruous for the FTC to study additional reporting while at the same time overly rigid requirements contained in the NPR could actually and significantly reduce reporting. The NPR's lack of recognition of these furnishers could result in a reduction or elimination of data being reported from smaller or non-traditional furnishers and from all furnishers to all CRAs.

A voluntary system of consumer reporting that is fair and accurate must be balanced and flexible to meet a diverse group of furnishers providing data to a wide array of consumer reporting agencies. Overly rigid rules or guidelines layered on top of complex and unnecessary definitions could provide just enough disincentive for furnishers to stop reporting to consumer reporting agencies. A final rule should recognize the value the reporting of data to CRAs and be structured in a way that provides the robust data flows that Congress supports, banking agencies want, lenders need, and consumers have come to expect.

C. Data furnished today is very accurate

The context for the issuance of guidelines and regulations is one of significant ongoing efforts, progress, innovation and success. To help set the context attached as Appendix I is testimony CDIA delivered before the House Committee on Financial Services. Significant strides have been made in the last few years to enhance the accuracy and integrity of information, including fraud and active duty alerts, tradeline blocking, red flag guidelines, and address discrepancy notices. These and other processes have and will continue to reduce inaccuracies and increase the integrity of information supplied to CRAs. We urge the Agencies to be cautious about imposing burdens that would harm the data furnishing systems that exist today. A cautious and deliberative approach makes sense initially while allowing for further review at a later date.

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[2] "One challenge facing lenders [considering lending to underserved markets] is finding borrowers with limited credit experience. Credit bureaus…often lack files on such people, or have only limited information about them * * * [To solve this problem] the biggest players in the home lending and credit card businesses have asked [credit bureaus] to collect data from nontraditional sources like utility, phone, and cable companies, as well as from landlords." Lisa Fickenscher, *Credit Bureaus Dig for Data on CRA Prospects, American Banker,* (March 24, 1995, at 20).

[3] "[W]here financial institutions rely on [scoring] in their underwriting and account management processes, their ability to make prudent credit decisions is enhanced by greater completeness of credit bureau files." Federal Financial Institutions Examination Council Advisory Letter to Chief Executive Officers regarding Consumer Credit Reporting Practices. Jan. 18, 2000.

[4] *See, Hearing* entitled "Helping Consumers Obtain the Credit They Deserve," *before the House Financial Services Subcommittee on Financial Institutions and Consumer Credit, May 12, 2005 (Statement of Chairman Michael G. Oxley)* ("As was conclusively demonstrated during the exhaustive hearings on the [FACT Act]…giving potential creditors access to detailed, continuously updated information about consumers…our national credit reporting system has vastly expanded the availability of credit to all segments of American society."), Serial No. 109-29, 42.

[5] *Eg.*, Giving Underserved Consumers Better Access to the Credit Systems, The Promise of Non-Traditional Data, Information Policy Institute, July 2005.

[6] Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003, FTC (Dec. 2004), 78.

II. General - Scaleable and Flexible Structure

We agree with the Agencies' decision to make clear "that a furnisher's policies and procedures must be appropriate to the nature, size, complexity, and scope of the furnishers' activities." Going forward, furnishers should take in to account the type and amount of information they provide to CRAs and how that information might be used in consumer reports. For example, educational and employment confirmation to an employment screening company, or tenancy confirmation to a residential screening company might be feel chilled from furnishing data. Providing sufficient regulatory flexibility is essential so that new burdens do not overwhelm data furnishers and operate as a disincentive for current data furnishers to continue to report and as an incentive for potential new data furnishers to choose not to begin reporting.

III. General - Recognition of A Data Reporting Standard for Furnishing Data to Nationwide Consumer Reporting Agencies

The NPR acknowledges the value of using data standards for reporting information to consumer reporting agencies by including this practice in the outline of "specific components of policies and procedures" of a data furnisher. *See*, 72 Fed. Reg. 70944, 70953 (Dec. 13, 2007). We agree that the use of data reporting formats can enhance the precision of the data reported and agree that the nationwide credit reporting industry's Metro 2 format is an example of such a standard.

Today, even in the absence of finalizing the details of this NPR, the nationwide consumer reporting agencies receive more than 81% of all data via the Metro 2 format. The Metro 2 format works because it is based on market needs, rather than legal requirements. Market forces have driven nearly all of the 18,000 data furnishers supplying data to nationwide consumer reporting agencies to use Metro or Metro 2. The broad adoption of this standard demonstrates the effectiveness of the marketplace in addressing data furnishing practices.

IV. General - Guidelines are Preferable to Regulations

By their nature, guidelines are more flexible than regulations and more adaptable to evolving technologies and marketplace changes. The Agencies should strive towards balanced guidance that will assure the flexibility and adaptability the credit marketplace needs to function today and in the future. Under a guidance approach, the Agencies would still retain the ability to make appropriate adjustments to address marketplace changes and new technologies. Thus CDIA urges use of guidance to provide the flexibility and ultimately the preservation of the current voluntary system of data reporting as well as the expansion of it to new data sources which otherwise might be dissuaded from participating. Further, guidance will help with the flexibility needed to consider how it applies to different data furnishing practices in the context of different types of consumer reporting agencies. Rules should simply require data furnishers to implement the guidance as appropriate to their respective circumstances.

V. Technical Problems with Specific Wording of the Regulations

While CDIA encourages the Agencies to adopt guidelines rather than regulations, there are a number of specific technical differences between the FACT Act and the proposed regulations. These differences could result in compliance difficulties and unnecessary legal jeopardy for CRAs and furnishers.

Proposed Secs. 660.3(a) and (c) all use standards for compliance that are significantly different from the statutory requirements.[7] Proposed Sec. 660.3(a) requires furnishers to "establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishers to a [CRA]." However, the FACT Act requires a different standard. Specifically, the FACT Act requires regulations for furnishers that "establish reasonable policies and procedures for implementing the guidelines..." 15 U.S.C. Sec. 1681s-2(e)(1)(B).

Proposed Sec. 660.3(c) requires each furnisher to "review its policies and procedures...and update them as necessary to ensure their continued effectiveness." However, the FACT Act requires a different standard. Specifically, a furnisher is not required to review its policies and procedures to ensure continued effectiveness, but rather, the obligation for review is to ensure that the policy is reasonable. 15 U.S.C. Sec. 1681s-2(e)(1)(B).

Overly prescriptive and sometimes conflicting requirements like those found in Proposed Sec. 660.3 are just part of the burdens that might reduce the furnishing of data to CRAs, especially from occasional or small furnishers to nationwide and non-nationwide CRAs alike.

VI. Specific - Definitions

CDIA members have a general concern with the inclusion of new definitions for terms which in some cases have been used in the FCRA for decades. We do not believe that definitions are necessary to issuing appropriate guidance or that they can be drafted to account for the variety of data furnishers and consumer reporting agencies regulated under the Act.

We believe that the Agencies should simply forego definitions and issue general guidance. Below we discuss in more detail our concerns with various definitional approaches whether they are included in a guideline or a regulation.

A. Defining "accuracy" is problematic

Regulatory and Guidelines Definition Approach: "*Accuracy means that any information that a furnisher provides to a CRA about an account or other relationship with the consumer reflects without error the terms of and liability for the account or other relationship and the consumer's performance or other conduct with respect to the account or other relationship.*"

As the NPR itself points out the Fair Credit Reporting Act does not define the term "accuracy", nor did Congress choose to do so when it enacted the FACT Act in 2003. Congress limited the definition of accuracy to that which a furnisher knows or has reasonable cause to believe is inaccurate. 15 U.S.C. Sec. 1681s-2(a). Further, Congress did not require the Agencies to formulate a definition in establishing the duty to issue guidelines and regulations regarding accuracy and integrity. Congress rightly so has not determined that a definition of this term is necessary or helpful to the operation of the FCRA. We would urge the Agencies to reach the same conclusion.

In the context of data furnishers, the FCRA properly structures the responsibilities of furnishers of information to consumer reporting agencies around the concept of "knows or has reasonable cause to believe the information is inaccurate." Any Agency guidance, even without establishing a definition, should hew to what the law itself says and should not unintentionally alter case law as it has evolved over time relative to what is considered accurate in the context of a particular pattern of facts.

[7] This provision is similar to other provisions in the NPR. For the sake of convenience, citations to the other provisions are not cited here, but the comment applies equally to the other provisions.

To expand on this point, we noted in our ANPR comment (attached as Appendix I), defining accuracy is problematic at best, and the examples we provided are still valid. Further, the Agencies are proposing an accuracy definition in the context of FACTA § 312 when the FTC is still "evaluating ways to study the accuracy and completeness of consumer report" under FACTA § 319.[8] For more than three years, the FTC has been engaged in a study to "determine the accuracy of information in credit reports". The "pilot study" of this research is ongoing.[9] It is incongruous to develop an accuracy definition for furnishers while the FTC has not resolved how to determine accuracy for consumer reports.

To the extent that agencies determine that a definition of the term "accuracy" is necessary, it should be placed in a guideline and not in a regulation regardless of the particulars of the definition. A guideline definition offers the flexibility the marketplace needs while still allowing the Agencies to adopt necessary changes as may be appropriate later.

B. Defining "integrity" is problematic

Regulatory Definition Approach: *"the term 'integrity' means that any information that a furnisher provides to a CRA about an account or other relationship with the consumer does not omit any term such as a credit limit or opening data, of that account or other relationship, the absence of which can be reasonably be expected to contribute to an incorrect evaluation by a user of a consumer report or a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mod of living."*

Guidelines Definition Approach: "*The guidelines would define 'integrity' to mean that any information that a furnisher provides to a CRA about an account or other relationship with the consumer: (1) Is reported 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; and (2) should be substantiated by the furnisher's own records.*

The NPR rightly points out that the FCRA does not define the term "integrity." Further, it cites a lack of statutory guidance on a definition of "integrity" and points to conflicting statements of Representative Oxley and Senator Sarbanes. Representative Oxley correctly noted that "'[a]ccuracy and integrity' was selected [by the Congress] as the relevant standard rather than 'accuracy and completeness' …to focus on the quality of the information furnished rather than the completeness of the information furnished." By contrast, Sen. Sarbanes suggested that "[t]he term 'integrity' relates to whether all relevant information that is used to assess credit risk and to grant credit is accurately provided."[10]

Establishing a definition may not contribute to the overall objective that is to issue guidance that encourages the reporting of data which is both accurate and that has integrity. To the extent that the Agencies determine that there must be a definition of the term "integrity" it should be in a guideline rather than a rule. Further, regarding the question of an approach to the definition of integrity, that which is proposed in the guidelines is preferred over the regulatory approach.

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[8] 69 Fed. Reg. 61675 (Oct. 20, 2004).

[9] Processes for Determining Accuracy of Credit Bureau Information, Pilot Study Performed for the Federal Trade Commission Under Contract FTC04H0173, Sept. 12, 2006 < http://ftc.gov/reports/FACTACT/FACT_Act_Report_2006_Exhibits_1-12.pdf> ("Contractor's Report"), 5.

[10] 72 Fed. Reg. 70949 (citations omitted).

C. Furnishers

i. Defining a furnisher is unnecessary and could reduce reporting to consumer reporting agencies

Since 1970, the term "furnisher" has appeared in the FCRA and in the intervening 37 years a substantial amount of judicial history has developed around the FCRA, including the meaning the term "furnisher". It is unnecessary and inappropriate that the NPR would propose to define a term that has stood successfully without a definition for over a generation. CDIA is concerned that any definition now would unnecessarily alter the meaning of the term.

The Agencies propose to define furnisher in order to exclude consumer report users when they provide information to consumer reporting agencies in order to obtain consumer reports and also to make clear that consumers are not furnishers when they self-report information to consumer reporting agencies. The Agencies can accomplish that end simply by providing that consumer report users and consumers are not furnishers subject to the guidelines and regulations under these circumstances.

The proposed definition of a furnisher is so broad it could include occasional furnishers which would then be required to have written policies and procedures and accept direct disputes. These burdens, without additional regard to the diversity of furnishers and CRAs, could significantly reduce the number of furnishers to CRAs and limit the data that is reported to CRAs.

There is no indication that the Congress intended to alter the customary understanding of what constitutes a furnisher. The NPR definition might be read to cover many entities not considered to be furnishers (like public record repositories, court runners, and employers verifying employment status). Any guideline or final rule should recognize the diversity of data furnishers.

ii. Resellers are not data furnishers

Should the final rule contain a definition of a furnisher, that definition should also specifically exclude resellers. The proposed definition of a furnisher may inadvertently include resellers, even though there is no indication that Congress or the Agencies intended to do so.

A reseller is –

> a consumer reporting agency that—
>
> (1) assembles and merges information contained in the database of another consumer reporting agency or multiple consumer reporting agencies concerning any consumer for purposes of furnishing such information to any third party, to the extent of such activities; and
>
> (2) does not maintain a database of the assembled or merged information from which new consumer reports are produced.

15 U.S.C. § 1681a(u). Under the FCRA, resellers have an obligation to reinvestigate disputes and, under certain circumstances, convey the notice of dispute "to each consumer reporting agency that provided the reseller with the information that is the subject of the dispute". *Id.*, §§ 1681i(f), (f)(2)(B). Thus, the nature and duties of furnishers are very different from those of resellers, and any definition of furnishers, should specifically exclude resellers and those CRAs that provide information to resellers.

iii. The proposed definition of a "furnisher" unnecessarily alters the FCRA definition of "person".

Under the FCRA, a "person" means "any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity." 15 U.S.C. Sec. 1681a(b). The FACT Act amendment to the FCRA that gave rise to the NPR requires the Agencies to "establish and maintain guidelines for use by each *person* that furnishes information to a [CRA]". Id., Sec. 1621s-2(e) (emphasis added). There seems to be disharmony between Sections 1681a(b) and 1621s-2(e) on the one hand, and the NPR's proposed definition of a "furnisher" on the other, which defines a "furnisher" to be an "entity". This possible change in legal effect can be easily rectified by elimination of the proposed furnisher definition.

D. The definition of a direct dispute presents a technical problem

The NPR takes the position that a direct dispute occurs when a consumer is disputing any information contained in the consumer's "consumer report". See, Proposed Sec. 660.2(e).[11] However, under the FCRA the consumer does not dispute information contained in a consumer report, the consumer disputes information contained in the "file". 15 U.S.C. Sec. 1681i(a)(1)(A). A consumer is not likely to have seen or ever see the "consumer report". However, consumers can readily receive disclosures of the information in their file from a consumer reporting agency. To comport with existing law and marketplace standards, any direct dispute should apply to either information contained in the consumers file or information contained in the disclosure provided to a consumer from a CRA under Sec. 1681h.

VII. The Interagency Guidelines Must Be Flexible and Acknowledge the Diversity of Furnishers and CRAs

We applaud the Agencies' comment in the introduction that "a furnisher may incorporate in its accuracy and integrity policies and procedures any of its existing policies and procedures that are relevant and appropriate." This concept should be carried forward into final guidelines. However, rigid guidelines or rules, or a requirement that all furnishers must have written policies and procedures could discourage data reporting.

A. Reasonable written procedures may be unnecessarily burdensome

The NPR "would require each furnisher to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information about consumers that it furnishes to a CRA." NPR § 660.3(a). While CDIA strongly supports the premise that "[t]he policies and procedures must be appropriate to the nature, size, complexity, and scope of the furnisher's activities", *id.*, the Agencies may be able to do more to reduce the burdens that a written policies and procedures requirement might impose on furnishers. There may be situations where polices need not be written as this may be too onerous for some small or occasional furnishers. For example, in the case of companies that report to CRAs in the Metro 2 format, the final rule could permit a furnisher's written policy to do no more than acknowledge, where applicable that the furnisher is reporting data in the Metro 2 format in the case of data furnished to nationwide consumer reporting agencies. The Agencies acknowledges as much in the supplementary information. *Eg.*, 72 Fed. Reg. 70954, 70951, 70969 (Dec. 13, 2007), and Appendix E to Part 41 IV.B.

[11] This provision is similar to other provisions in the NPR. For the sake of convenience, citations to the other provisions are not cited here, but the comment applies equally to the other provisions.

Similarly, the final rule should provide for alternative means of compliance for merchants that furnish to check verification companies, employers furnishing to employment screening companies and other small businesses that do not regularly furnish credit information to consumer reporting agencies and that may not be well positioned to develop their own written policies and procedures or to review and update the Agencies' guidelines. For example, it is not reasonable or realistic to expect a small merchant to comply with the proposed formal requirements in order to participate in a check verification program. The final rule could provide that these kinds of furnishers would satisfy the rule's requirements for reasonable policies and procedures concerning the accuracy and integrity of furnished information under NPR § 660.3 by agreeing to adhere to the contractual requirements and procedures for furnishers established by the consumer reporting agencies to which they furnish information. By following these requirements and procedures, a furnisher's policies and procedures would be "appropriate to the nature, size, complexity, and scope of the furnishers' activities."

B. A specific time limit for FCRA § 611(a)(5) is not necessary

In Section IV, which outlines specific components of policies and procedures, the NPR notes that "section 611(a)(5) of the FCRA "contains no time limit on the requirement that if a CRA reinvestigates a consumer dispute, it must modify or delete items that cannot be verified" and inquires "whether a specific time period for recordkeeping should be incorporated in the final regulations." *Id.*, 70944, 70953.[12]

In undertaking its § 611(a)(5) responsibilities, a CRA must "promptly delete" or modify the item in question. The FCRA already requires a 30-day period for the entire reinvestigation process. 15 U.S.C. Sec. 1681i(A)(1)(B). In connection with a time period for recordkeeping, there is no evidence that a problem exists to warrant inclusion in the final rule and thus no timeframe in connection with recordkeeping is necessary. Moreover, because there is no evidence of a problem, there is no empirical data on which to base any required time period.

C. Additional flexibility in the guidelines is necessary to encourage data reporting

Since furnishers are encouraged to "include any of its existing policies and procedures that are relevant and appropriate", Appendix A to Part ___, the nature and scope of the policies and procedures should "consider", rather than "reflect" the attributes enumerated in Appendix __ to Part ___ I.A. The same concerns apply to rigidity of requirements in III and IV. Rather than require something to be done, the guidelines should require actions and situations to be considered. In that same vein, it is inappropriate for policies and procedures to require a furnisher to obtain feedback from CRAs. *Id.*, III.A.3, but better placed for such action to be a suggestion.

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[12] FCRA § 611(a)(5) requires that

> [i]f, after any reinvestigation under…of any information disputed by a consumer, an item of the information is found to be inaccurate or incomplete or cannot be verified, the consumer reporting agency shall—
>
> (i) promptly delete that item of information from the file of the consumer, or modify that item of information, as appropriate, based on the results of the reinvestigation; and
>
> * * *

15 U.S.C. § 1681i(a)(5).

In keeping with the need for flexibility, the guidelines should not require a furnishers policies and procedures "ensure" that information about a consumer meets certain standards, Appendix A to Part ___ I.B., but rather, the furnisher should have "reasonable policies and procedures for implementing the guidelines." 15 U.S.C. Sec. 1681s-2(e)(1)(B).

Since furnishers are already required to comply with the FCRA it seems at best redundant to require in the guideline a statement that it does so. Appendix A to Part ___ II. At worst, this provision creates an additional path to liability for furnishers and an additional roadblock on the way to furnishing data.

The proposed guideline presents additional potential obstacles to data reporting. The proposed guideline under the regulatory definition approach would require a furnisher to ensure that information furnished about account or other relationships with a consumer "avoids misleading a consumer report user", Appendix __ to Part ___I.B.2. The guideline offers no guidance to furnishers concerning the meaning of "misleading" and the net result of the lack of guidance in the guideline could be the further reduction in data being reported to CRAs. It is inappropriate to require a furnisher to intuit from users whether information a furnisher provides to a CRA might mislead a user. These concerns also apply to Appendix __ to Part __ IV.I.

The proposed guideline requires furnishers to ensure that information furnished is updated to reflect the "current status of the consumer's account or other relationship." *Id.*, I.B.4. This provision provides little guidance and encourages guesswork about the timeframes surrounding the update and we suggest that the Agencies incorporate language so that the updates are done consistent with the normal course of business in which the furnisher transacts business with the CRA.

D. Additional record retention requirements are unnecessary and could limit data reporting

Under state and federal statutes, common law, and insurance agreements, data furnishers are most likely under multiple obligations to retain records. Additional recordkeeping requirements are unnecessary and will stand as yet another excuse to not furnish data to CRAs.

E. Several specific components of the proposed policies and procedures present potential compliance problems and could reduce data furnishing to CRAs.

Part IV of the proposed Appendix provide for 13 specific components for proposed polices and procedures. One of these components requires, in part, that each furnisher conduct a periodic evaluation of "consumer reporting agency practices of which it is aware." It is unclear what such an evaluation would encompass and whether furnishers would then be expected to question the practices of a consumer reporting agency to which it furnishes data if it were to conclude that such practices were in some way lacking. This uncertainty represents a breeding ground for unnecessary new areas of litigation.

VIII. Specific - Direct disputes

The NPR sets out proposed "regulations identifying the circumstances under which a furnisher must reinvestigate disputes concerning the accuracy of information provided by a furnisher to a CRA and contained in a consumer report based on a direct request from a consumer..." *Id.*, 70946.

While our members believe that it can be appropriate for data furnishers to handle consumer disputes directly, the direct dispute proposal poses some challenges to furnishers. Section 623(a)(8)(F) of the FCRA provides that a furnisher is not required to investigate a dispute that a furnisher reasonably determines to be frivolous or irrelevant. However, the NPR's provisions concerning frivolous or irrelevant dispute determinations weaken the meaning and intent of the FACT Act making it harder for

furnishers to lawfully make such determinations. Credit clinics continue to generate about one-third of all consumer contacts with CRAs. We are concerned that a similar rate will be experienced with furnishers and that a weakened frivolous or irrelevant determination standard could increase fraud and ultimately the deletion of accurate, predictive data which contributes to safety and soundness.

The proposed guideline requires furnishers to "promptly notify" CRAs of a determination that the furnished information is not complete or accurate and provides different obligations for a furnisher that furnishes information in the regular course of business. Appendix __ to Part __II.A. . CDIA suggests that "prompt[] notif[ication]" within the meaning of this provision should be harmonized to conform to long-standing understandings of promptly elsewhere in the FCRA. Similar to other provisions, any reporting of a determination that information furnished is not complete or accurate should be done by all furnishers in their regular course of business.

IX. Conclusion

Through the ANPR, the Agencies fostered a thorough and productive dialogue on this subject. We hope that these comments are helpful to the Agencies as they consider proposed guidance and regulations with far reaching consequences .

CDIA firmly believes that the key to a successful credit reporting system is its voluntary nature. CDIA is concerned that new furnisher obligations that are significant, complex, or confusing will reduce the amount of data being provided to consumer reporting agencies. A reduction in data provided to consumer reporting agencies will ultimately harm consumers.

Respectfully submitted,

Eric J. Ellman
Vice President and Counsel, State Government and Federal Regulatory Affairs

Enclosure

Appendix I

STATEMENT OF

STUART K. PRATT

CONSUMER DATA INDUSTRY ASSOCIATION

WASHINGTON, D.C.

BEFORE THE

Committee on Financial Services

House of Representatives

ON

"Credit Reports: Consumers' Ability to Dispute and Change Inaccurate Information"

June 19, 2007

Chairman Frank, Ranking Member Bachus and Members of the Committee, thank you for this opportunity to appear before the Committee on Financial Services. I am Stuart Pratt, President and CEO for the Consumer Data Industry Association (CDIA).

The CDIA, is an international trade association representing approximately 300 consumer data companies that are the nation's leading institutions in credit and mortgage reporting services, fraud prevention and risk management technologies, tenant and employment screening services, check fraud prevention and verification products, and collection services.

We commend you for holding this hearing and welcome the opportunity to share our views. Thanks to the leadership of this Committee, the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*) was materially amended in 2003 through enactment of the Fair and Accurate Credit Transactions Act of 2003.[1] This Act changed the FCRA in a number of ways that are relevant to today's hearing.

My comments today will focus on:

- Our members' management of the quality of data in their databases, and consumer dispute processes, which have been stories of hard work and success.

- Tying up 30% of the industry's resources for assisting consumers with repetitive disputes that are deceptive is a problem worth solving. We believe that deceptive

[1] See Public Law 108-159, "The Fair and Accurate Credit Transactions Act of 2003."

credit repair activities are best addressed through additional resources dedicated to the FTC which has primary enforcement responsibilities over CROA. The FTC is doing a good job and could do more if resources are made available.

- Finally, CDIA data shows that the FACT Act has already had a positive effect on consumers. However, we believe that its provisions should be given time to work in the marketplace and that the full effectiveness of the Act cannot be assessed until all rulemaking processes are final

Data Accuracy – Industry and the Law

The FCRA makes it clear that all consumer reporting agencies are to "…follow reasonable procedures to ensure the maximum possible accuracy of information concerning the individual about whom the report relates."[2] The term accuracy is difficult to define and an extensive discussion of this point can be found in Appendix I.

The Federal Trade Commission's (FTC) own Commentary on the FCRA provides insight into the question of intent regarding the FCRA duty to be accurate:

> "General: The section does not require error free consumer reports. If a consumer reporting agency accurately transcribes, stores and communicates consumer information received from a source that it reasonably believes to be reputable and which is credible on its face, the agency does not violate this section simply by reporting an item of information that turns out to be inaccurate. However, when a consumer reporting agency learns or should reasonably be aware of errors in its reports that may

[2] FCRA Sec. 607(b) or 1681e(b).

indicate systematic problems (by virtue of information from consumers, report users, from periodic review of its reporting system, or otherwise) it can review its procedures for assuring accuracy."

Our members employ a range of internal strategies for ensuring the quality of data reported to them. Some are proprietary, but the sampling below gives you an idea of what goes into managing incoming data.

New data furnishers – all of our members report having specialized staff, policies and procedural systems in place to evaluate each new data furnisher. Common practices include reviews of licensing, references, and site visits. All apply robust tests to sample data sets and all work with the furnisher to conform data reporting to the Metro 2 data standard. Once a furnisher is approved, there may be ongoing monitoring of this data reporting stream during a probationary period of time.

Ongoing furnishing – Our members report a variety of practices; some of these are listed below:

- Producing reports for data furnishers which outline data reporting problems, including errors in loading data and data which is not loaded. This reporting process ensures data furnishers are receiving feedback regarding the quality of their data furnishing practices.
- Cross-referencing data in certain fields to look for logical inconsistencies are often used as a data quality check.

- Historical data reporting trends, at the database level or data furnisher level, are used as baseline metrics upon which to evaluate incoming data.
- Manual reviews of data can occur when anomalous data reporting trends are identified.
- Reviewing incoming data for consistency with the Metro 2 data standard.

Beyond the extensive, individual corporate strategies for ensuring data quality, our members have undertaken industry-level strategies as well. Central to these efforts has been the development of a data reporting standard for all 18,000 data sources which contribute to their databases. The latest iteration of this standard is titled Metro2. Appendix III provides an overview of this standard. Standardizing how data is reported to the consumer is a key strategy for improving data quality. The National Consumer Law Center, writing on behalf of a range of consumer groups, appears to agree with this point when it stated in its letter to the Federal Reserve Board[3]:

> *"However, the failure to report electronically or to use Metro2 creates even more inaccuracies."*

Use of the Metro 2 data reporting format is climbing steadily. In 2005 CDIA reported to the FTC that approximately 50 percent of all data provided to our members' data bases was reported using the Metro2 Format. Today, this percentage has grown to 81.3 percent. Our members' data quality teams believe this 62.6 percent increase is directly

[3] Comments of the National Consumer Law Center, ANPR: Furnisher Accuracy Guidelines and Procedures Pursuant to Section 312 of the Fair and Accurate Credit Transactions Act, Pp. 16.

attributable not only to our members' tenacious efforts, but also to the FACT Act's focus on accuracy and yet-to-be proposed guidelines and rules governing accuracy and integrity of data.[4]

In addition to our members' individual efforts to encourage adoption of the Metro 2 Format, CDIA provides access to a "Credit Reporting Resource Guide" which is the comprehensive overview of the Metro2 Format. This guide is designed for all types of data furnishers, but it also provides specific guidance for certain types of furnishers to encourage proper use of the format. Target audiences include collection agencies, agencies which purchase distressed debt, all parties which report data on student loans, child support enforcement agencies and utility companies.

More than 500 of these guides are provided free of charge to data furnishers each year. Further, since 2004, CDIA and its Metro2 Task Force have administered telephonic and in-person workshops for thousands of data furnishers on a range of specialized topics regarding Metro2 including, for example:

- Reporting Requirements for Third Party Collection Agencies and Debt Purchasers.
- Reporting Requirements Specific to Legislation & Accounts Included in Bankruptcy.

[4] No data furnisher must report any data to a consumer reporting agency or to do so using a particular reporting standard. We will discuss this point in greater detail later in this testimony, but the voluntary nature of our system of data furnishing is important context.

Data Accuracy – Studies

Both the General Accountability Office and the FTC have also acknowledged the difficulty of developing a working definition of accuracy that is meaningful.

As this Committee knows, Congress believed that more information was necessary to understand the true error rate in credit reports. Section 319 of the FACT Act requires the FTC to conduct an ongoing study of credit report accuracy and completeness. Five interim reports are due over the period of time between the date of enactment and 2014, which is when a final report to Congress is due. The FTC has issued two reports and is still working on a methodology by which to measure the accuracy and completeness of reports.

Often quoted statistics about rates of accuracy are flawed. In fact the GAO's statement below is a clear warning against using these studies as a yardstick for measuring accuracy:

> 'We cannot determine the frequency of errors in credit reports based on the Consumer Federation of America, U.S. PIRG, and Consumers Union studies. Two of the studies did not use a statistically representative methodology because they examined only the credit files of their employees who verified the accuracy of the information, and it was not clear if the sampling methodology in the third study was statistically projectable.'
>
> *Statement of Richard J. Hillman, Director, Financial Markets and Community Investment, General Accountability Office, Before the Senate Banking Committee, July 31, 2003.*

In contrast to the studies discussed above by the GAO the Federal Reserve Board conducted research on more than 300,000 credit reports and made the following observations regarding the accuracy of reports:

> "This analysis of the effects of data problems on credit history scores indicates that the proportion of individuals affected by any single type of data problem appears to be small…"
>
> "Available evidence indicates that the information that credit-reporting [sic] agencies maintain on the credit-related experiences of consumers, and the credit history scoring models derived from these experiences, have substantially improved the overall quality of credit decisions while reducing the costs of such decision making.
>
> *Avery, Robert, et al., Federal Reserve Bulletin, "Credit Report Accuracy and Access to Credit", Summer 2004.*

While The FACT Act requires studies of the question of accuracy, it also sought to "connect" consumers with their credit file disclosures with the goal of ensuring consumers review their reports proactively and on an annual basis. Consider the following data that result from enactment of the FACT Act.

Between December of 2004 and December of 2006, over 52 million free reports have been issued through www.annualcreditreport.com. In fact, CDIA estimates that through the combination of direct-to-consumer products and consumers exercising their rights under the FCRA (including the new FACT Act right to one free disclosure per year) our members operating as nationwide consumer reporting agencies have issued over 160 million disclosures since December of 2004.

Further, while consumer groups claim error rates as high as 79 percent of "credit reports" reviewed by consumers, data from www.annualcreditreport.com shows that 89 percent of the credit file disclosures issued resulted in no disputes. There are a number of points to consider with regard to the 11 percent of consumers who did submit a dispute:

- The 11 percent dispute rate is low by all measures. The GAO's 2004 FACT Act-required survey of consumers regarding credit report literacy suggested that dispute rates ranged from 18-21.8 percent of the disclosures made to consumers. In fact, a CDIA study conducted in 1991 showed a dispute rate of 25 percent of disclosures.
- Out of 52 million credit file disclosures reviewed by consumers, only 1.98% of these resulted in a dispute where data was deleted.
- Many disputes, perhaps as much as 55 percent, are in reality a request for an update of accurate data.[5]
- A dispute is not synonymous with an error. As discussed below deceptive disputes submitted by credit repair agencies have nothing to do with the accuracy of data. In approximately 25 percent of the disputes, the data is verified as accurate.
- A dispute is not synonymous with an error which is consequential and which will lead to an adverse result.[6]

[5] Note that in the Federal Reserve Board's Federal Reserve Bulletin, Summer 2004, it was reported that data furnishers did not always report as consistently as they should and that approximately 29 of all accounts in the sample of 300,000 credit reports had not been updated in the 90 days. Further the Federal Reserve Board found that most disputes related to accounts closed by the consumer but which were not annotated by the lender as such.

Data Accuracy and the FACT Act

This Committee specifically addressed the question of ensuring the accuracy of data through bipartisan provisions in the Fair and Accurate Credit Transactions Act of 2003. The FACT Act passed the Committee by a bipartisan margin of more than a sixty votes and passed the House with more than 300 votes.

Many of the FACT Act requirements became effective on December 1, 2004, and one of the most relevant changes to the FCRA was the amendment to Sec. 623(a)(1)(A). This amendment directly addressed the accuracy of data furnished by a lender or other data source to a consumer reporting agency. The new standard of liability for furnishing accurate data to consumer reporting agencies is now "...knows or has reasonable cause to believe that the information is inaccurate" and it operates in stark contrast with the old standard of "...knows or consciously avoids knowing that the information is inaccurate."

Certain debt collection practices were also addressed in the FACT Act which speak to accuracy of data furnished to our members. For example, a prohibition on the sale or transfer of a debt where the owner of the account has been notified that it has been blocked by a consumer reporting agency due to an identity theft report (Sec. 615(f)). This provision ensures that accounts are not re-reported to a CDIA member, thus penalizing the consumer a second time. Sec. 615(g) requires third-party debt collectors

[6] The FRB/FTC Report to Congress on the Fair Credit Reporting Act Dispute Process cites a 2005 GAO survey of consumers where 13% of the reasons for submitting a dispute were due to either incorrect personal information (such as a misspelling reported by a data furnisher) or incorrect information on a former spouse (where a divorce is not accounted for by a data furnisher).

to notify the owner of the account when a consumer notifies it that the debt "may be fraudulent or may be the result of identity theft..." Here again, if an account can be properly identified as associated with identity theft, then the collector can return it to the owner and can proactively delete the account from the consumer's file.

The above provisions are effective today, however a number of rules which could have an effect on overall accuracy of data reporting to CDIA members are not yet complete, but are worth noting.

Accuracy and Integrity - An interagency advance notice of proposed rulemaking for enhancing the accuracy and integrity of information furnished to consumer reporting agencies was issued and CDIA provided comments on May 22, 2006. This particular rulemaking process includes consideration of the reinvestigation process, as well as practices regarding the upfront furnishing of data.

Red Flag Guidelines - Also incomplete are red flag guidelines which include rules for resolving address discrepancies. Resolving such discrepancies at the account opening will reduce the likelihood that data reported to a consumer reporting agency is inaccurate.

Direct Disputes - Finally, rules have not been promulgated regarding the circumstances under which a consumer may dispute information directly with a data furnisher rather than having to go through the consumer reporting agency (see Sec. 623(a)(8)). We believe this rule could be particularly helpful to consumers if drafted properly, taking into

account the effects it could have on a voluntary system of data furnishing. The GAO found in their 2004 FACT Act Survey of credit report literacy that 64 percent of consumers wish to dispute information directly with the furnisher of information.

Regardless of which rulemaking processes are not complete, CDIA members have sought to assist data furnishers which choose to respond to consumers who come to them directly. Through the e-Oscar system, all 18,000 data sources have an automated means of updating data previously reported. This voluntary effort results in 35 million automated updates to data per year that are not a result of consumer disputes or regular, cyclical data reporting. These updates are a strong indicator that consumers are already interacting with their lenders and lenders wish to work with their customers.

In closing this discussion, we believe that the agencies are exercising care in their work and we can appreciate the complexity of issuing guidance and rules that have a positive effect for consumers and lending practices, but which do not harm the voluntary system of data furnishing. We cannot fully assess many of the positive, longitudinal effects of the FACT Act until these regulatory processes are complete and the regulations have been given time to work.

Accuracy and a Voluntary System

It would be wrong to close out our discussion of accuracy without first touching on the careful balance which has to be maintained in a voluntary system of data provision.

Again, not a single one of the more than 18,000 data furnishers has to provide a single record of data to our members. Some tend to think of the data furnisher community as just large financial institutions. To the contrary, amongst these 18,000 furnishers of data are thousands small banks, credit unions and retailers. These furnishers remain committed to furnishing data and often provide data which ensures that all credit-active consumers have a full and complete report. A regulatory overreach, sending costs and liabilities too high, will not "fix" anything, but it will likely have the effect of driving data furnishers to reconsider reporting any data at all to our members' databases. We discuss this point in greater detail in our letter to the FRB found in Appendix I.

Accuracy Summary

It is no surprise that this Committee already has a very good understanding of the importance of data flows to consumers, not just at the macro-economic level, but at the level of each individual consumer. Just this year, H.R. 1852 was passed out of committee. It included an amendment offer by Congressman Green requiring The FHA to find ways to ensure that alternative credit data is used in automated underwriting systems. Clearly data empowers consumers to build better lives and vouches for them when a lender otherwise has no relationship.

In closing, the consumer reporting industry is constantly working to ensure that data reported is of the highest quality. In the context of a system where data is provided voluntarily, we must not stifle or retard the growth of alternative data sources as a means of empowering more consumers to qualify for a sustainable and responsible loan. Nor

should we develop a regulatory framework that encourages data furnishers to drop out of the world's most sophisticated "credit reporting" system. Either result harms consumers most of all.

Reinvestigation Process – FACT Act

The FACT Act amended the FCRA significantly with regard to the reinvestigation process both for consumers in general and for those who may be victims of identity theft. Consider the following provisions:

1. FCRA Sec. 623(a)(6) – Data Furnisher Accuracy & Identity Theft – This newly created section of law requires that a data furnisher accept a consumer's allegation that he/she is a victim of identity theft where the consumer provides an identity theft report. Where this takes place the data furnisher may not continue to furnish such information to a consumer reporting agency.

2. FCRA Sec. 623(a)(8) – Data Furnishers & Direct Disputes – this newly created section of law requires data furnishers to accept disputes directly regarding an item of data they have previously reported to a consumer reporting agency. This provision is not effective until the FRB, NCUA and FTC issue regulations. Regulations have not been issued at this time.

3. FCRA Sec. 623(e) – Data Furnishers & Regulations – For the first time in the history of this Act, Congress determined that the question of the accuracy and integrity of the data reported to consumer reporting agencies would not only be regulated by the law, but by the federal banking agencies issuing guidelines and implementing regulations. These guidelines and regulations would also address reinvestigations conducted by data furnishers when in receipt of a dispute from a consumer reporting agency. To date, guidelines and regulations have not been issued.

4. FCRA Sec. 605B – Consumer Reporting Agencies and Reinvestigations – Consumers who have a valid ID Theft Report can direct a consumer reporting agency to block data which is identified as resulting from the crime.

5. FCRA Sec. 611(a)(1)(A) – Consumer Reporting Agencies & Reinvestigations - This amendment changed the standard by which reinvestigations are conducted by consumer reporting agencies. The new standard states that a consumer reporting

agency "shall, free of charge, conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate."

6. FCRA Sec. 611(a)(5)(A)(ii) – Consumer Reporting Agencies & Reinvestigations- This amendment ensured that the data furnisher received confirmation from the CRA that the CRA had in fact followed through on the data furnisher's response to a dispute (e.g., delete or modify the data). This confirmation also serves as a reminder to the data furnisher to ensure that its system does not attempt to reinsert disputed information that is now correct.

Not only did the FACT Act directly address the reinvestigation process, but the FRB and FTC were also required to study the process, as well. This study was issued in August of 2006 and included no new legislative requirements. The statement below explains the agencies' thinking in this regard.

> "The FACT Act Section 313(b)(4) requires the FTC and the Board include in this report any legislative or administrative recommendations for improvements to the dispute process that the agencies jointly determine to be appropriate. The agencies recommend that no legislative action be taken at this time, in large part because the agencies believe such action would be premature. The FACT Act imposes a number of new requirements on CRAS and furnishers that should enhance the consumer dispute process and improve accuracy, including measures to reduce identity theft and new requirements on furnishers. Many of these requirements are being implemented, and their effects on the dispute process have yet to be seen. This is particularly important given the voluntary nature of the reporting system and the uncertainty of how additional requirements and burdens would affect that system."
>
> *Federal Trade Commission "Report to Congress on the Fair Credit Reporting Act Dispute Process", August 2006, Pp. 34.*

CDIA strongly agrees with this conclusion. However, the absence of legislative recommendations does not mean that the FACT Act has not already had a positive effect in the marketplace.

For example the number of disputes handled by our members' automated system for handling consumer disputes (named e-Oscar) has risen from 83 percent per the FRB/FTC report (see page 15) to 94 percent today (up 13.35 percent).[7] This is only good news for consumers because data furnishers that use the e-Oscar system respond to more than 72 percent of all disputes in 1-14 days. Consumers want responses that are both correct and timely. e-Oscar accomplishes this goal.

Consumers also expect their file to be complete and e-Oscar helps data furnishers manage this consumer expectation. When a lender does not respond to a dispute, law requires that data be deleted. This is not always a good result and may mean the removal of an entire account rather than only a particular item in dispute. The e-Oscar system provides data furnishers with tools necessary to effectively manage incoming disputes. Much wider use of the e-Oscar system and ongoing investments to ensure ease of use for data furnishers has led to a dramatic drop off in the percentage of disputes for which a data furnisher fails to respond. In CDIA's 2003 testimony before the Senate Banking Committee we reported that fully 16 percent of all disputes were not processed by data furnishers and thus data was deleted. This failure of a data furnisher to respond to a consumer's dispute has been reduced from 16 percent to 6.27 percent of all disputes. This is tremendous progress by any measure and benefits both consumers and our lending system.

The increase in the percentage of disputes handled by the e-Oscar system is, not surprisingly, paralleled by an increase in the number of users from 15, 400 per the

[7] For a complete discussion of the e-Oscar system, see Appendix II.

FTC/FRB report (see page 15) to more than 17,500 users[8] (which is a 13.63% percent increase). This is also positive for consumers because it means that virtually all disputes are now handled in a standardized way and, thus, whether a consumer is working with one of the largest or smallest lenders in the country, he or she can have confidence in the quality of the dispute process.

Consumer Disputes and Automated Dispute Processing

The FRB/FTC report on the reinvestigation process states that "Consumer groups commented that consumers often supply CRAs with information and documentation sufficient to support their disputes (including account applications, billing statements, and letters), but CRAs neither review the documentation nor forward it to furnishers." CDIA strongly disagree with this assertion based on the following data. First, on average across our members' consumer relations divisions 54.34 percent of all disputes are submitted by consumers through telephone or the Web. Use of these channels is increasingly the choice consumers themselves are making.

Of the 44.43 percent of consumers who submitted data in writing:

- Approximately 85% submitted only a standardized form or letter.
- Approximately 10% involved an identity theft report.
- Approximately 2-3% of communications involved other information.

[8] CDIA estimates that there were approximately 1000 users on the e-Oscar System in 2001.

It is clear from these data that, in fact, very few disputes involve extensive data and disputes are most often successfully processed to the satisfaction of the consumer with little more than a Web or telephonic communication. The FRB/FTC report cites data from TransUnion suggesting that 95 percent of the disputes handled are done to the satisfaction of the consumer with only 5 percent of consumers coming back to dispute the same data again (see page 24). Note that repetitive disputes are not necessarily an indication that the process is failing, when you consider that on average 30 percent of all disputes submitted are a result of credit repair activities. The problem of credit repair is discussed more thoroughly below.

The underlying concern some have expressed about automation is that the system of coding disputes used by our members often means consumer data is not submitted. The above data tells you that this is clearly not the case and that perceptions of the extent to which consumer's provide supporting data are inflated.

However, leaving aside how often a consumer submits additional data related to a dispute, the perception that our members' system for coding disputes is not effective is also wrong. As stated in the FTC's report on reinvestigations (page 17), CDIA's members estimate that a free-form field is used an average of 30 percent of the time to augment the dispute codes, clearly demonstrating that our members take a responsible approach to balancing the codes with additional data. This field allows an operator to include additional data for a data furnisher to consider.

It is also important to note that not all material submitted is legitimate and as discussed below efforts by credit repair agencies are an ongoing concern. For example, one of CDIA's members has a sample document which was ostensibly from Bank of America except that the name of the bank was misspelled on the stationery. One of the challenges our members have is ensuring that the dispute system is effective for consumers with legitimate concerns, but is not a system for deleting predictive data necessary for safety and soundness.

Credit Repair is a Concern

Our discussion of data accuracy and also reinvestigation processes would not be complete without acknowledging the problem of credit repair. It was this committee which enacted what is now known as the Credit Repair Organizations Act (citation) as Title II of the reform of the Fair Credit Reporting Act, all of which was passed in 1996. This enactment followed on the heels of more than 30 states which have enacted laws regulating such companies.

Historically credit repair operators would promise to delete accurate but negative data from a consumer's file for fees that in some cases exceeded $1,000. Their primary tactic was to flood the reinvestigation system with repeated disputes of the same negative data in an effort to "break" the system and cause the data furnisher to both give up and not respond or to simply direct the consumer reporting agency to delete the data. Today,

operators are savvier and often avoid making false promises but even now they suggest that they will assist the consumer with disputing inaccurate or "unverifiable" information. In many cases "unverifiable" equates to the same practice of flooding the system and trying to have accurate, predictive derogatory data removed.

Our members estimate that on average across our members operating as nationwide consumer reporting agencies, no less than 30% of disputes filed are tied to credit repair. Repetitive disputes can be particularly harmful to smaller data furnishers such as community banks, thrifts, credit unions and retailers. These data sources are often a key to ensuring full and complete data on all credit-active consumers, but their ability to absorb costs is limited. In extreme cases, small-business data sources may simply choose not to report at all if costs of responding to disputes are too high.

Thankfully, no one data source is usually the target of a credit repair operator and credit repair efforts most often end up in failure. But this failure is at a cost to our members and to consumers. Consumers spend money on a service that cannot deliver. Industry incurs costs as well when it has to dedicate resources which could be used to service legitimate disputes, to disputes that are not likely to be valid.

The FTC has materials for consumers cautioning them when it comes to using credit repair and in fact one official made the following quote:

> "The credit repair people that claim there's a bullet, a loophole in the laws that's going to let you instantly fix your credit, are lying to you. It's not true."

Steven Baker, Federal Trade Commission as quoted on MSNBC, 4-30-02

We believe the FTC should be given greater resources to investigate and prosecute violations of CROA. We also support amendments suggested by the FTC that would make their job of investigating and prosecuting those who violate the law.

Summary

In closing, let me touch on my opening three points again:

Our members' efforts to manage the quality of data in their databases, and consumer disputes have been a story of hard work and success. The data we've presented speaks for itself.

Tying up 30% of the industry's resources for assisting consumers with repetitive disputes that are deceptive is a problem worth solving. We believe that the problem of deceptive credit repair is best addressed through additional resources dedicated to the FTC which has primary enforcement responsibilities over CROA. The FTC is doing a good job and could do more if resources are made available.

Finally, we believe that the provisions of the FACT Act, which are extensive, should be given time to work in the marketplace and that the full effectiveness of the Act cannot be assessed at this time, though CDIA data shows that it has already had a positive effect.

Thank you for this opportunity to testify and I am happy to answer any questions.

Appendix I - Defining Accuracy

Following is a discussion of the difficulty of defining what constitutes accurate information and ultimately what is consequential.

We all know what we mean by the term 'accuracy.' But when we apply this term to an industry that sells three billion consumer reports per year and in fact which loads three billion updates of information per month, there's some context that can help us in our discussion. Consider the following points about the term "accuracy."

Accuracy and Voluntary Reporting: Fundamental to understanding the flow of information to consumer reporting agencies from more than 18,000 data furnishers is the fact that these data are provided voluntarily. Thus, there is always a careful balance that has to be maintained in order to ensure that the law creates appropriate duties for ensuring accuracy and alternatively, does not create a legal regime that imposes a strong disincentive to report at all.

Accuracy, Consumer Reporting Agencies and the Law: The CDIA's members are governed under the Fair Credit Reporting Act (15 U.S.C. Sec. 1681, *et seq.*), which establishes a duty that any consumer reporting agency must employ reasonable procedures to ensure the maximum possible accuracy of the information contained in the consumer report produced on a given consumer at a given point in time. Simply put, the law requires that the information contained in the report must be accurate as of the date reported. The Federal Trade Commission's own Commentary on the FCRA provides the following comment:

> "General: The section does not require error free consumer reports. If a consumer reporting agency accurately transcribes, stores and communicates consumer information received from a source that it reasonably believes to be reputable and which is credible on its face, the agency does not violate this section simply by reporting an item of information that turns out to be inaccurate. However, when a consumer reporting agency learns or should reasonably be aware of errors in its reports that may indicate systematic problems (by virtue of information from consumers, report users, from periodic review of its reporting system, or otherwise) it can review its procedures for assuring accuracy."

Accuracy, Data Furnishers and the Law: In 1996, the FCRA was materially amended. Perhaps the most significant change was the addition of Section 623, which imposed for the first time an express duty on data furnishers to report accurate data to the consumer reporting agencies. In taking this step, the Congress acknowledged that consumer reporting agencies, on their own, could not fully ensure the accuracy of information absent the partnership with the data furnishers that voluntarily provide information to the databases of consumer reporting agencies.

Accuracy and the Absence of Information in All Files: Some have posited that consumer reports are inaccurate when there is data missing from the file. CDIA disagrees with this characterization. There is no doubt that while the vast majority of the nation's largest lenders report voluntarily to all of the nationwide consumer reporting agencies which produce what are commonly called "credit reports", there are some smaller data furnishers which may choose to report only to one system. Some variance in product will always be evident in a competitive marketplace. However, while there are modest variances between nationwide consumer reporting agencies' databases, they all compete based on file quality and content and, thus, all are constantly seeking to ensure that their reports are complete and fully representative of the consumer about whom the report relates.

Note that credit repair can have a deleterious effect on the completeness of a consumer's credit report and, thus, where third-party file comparisons identify absences of data between files, this is in part attributable to credit repair. One of our members testified that more than 30 percent of all consumer disputes were generated by credit repair agencies, which commonly dispute accurate, derogatory information with the sole intention of having that information deleted from the file. In 1996, the Congress recognized the seriousness of the credit repair problems and enacted the Credit Services Organizations Act (Public Law 90-321, 82 Stat.164). That law prohibits the following with regard to credit repair activities and there is a continued need for even greater enforcement resources in order to ensure the effectiveness of the Act:

> SEC. 404. PROHIBITED PRACTICES. (7)
> (a) In General. --No person may--
> (1) make any statement, or counsel or advise any consumer to make any statement, which is untrue or misleading (or which, upon the exercise of reasonable care, should be known by the credit repair organization, officer, employee, agent, or other person to be untrue or misleading) with respect to any consumer's credit worthiness, credit standing, or credit capacity to--
>
> (A) any consumer reporting agency (as defined in section 603(f) of this Act);

Accuracy and Data Furnishing/Data Reporting Timing Issues: Some have reviewed reports about the same consumer obtained from more than one nationwide consumer credit reporting system and have suggested that differences in the status of a particular account (e.g., 30- v. 60-days delinquent) is an inaccuracy. The data are in fact accurate as of the date reported. There are a number of reasons for differences in the status of the same account on different "credit reports" produced by different credit reporting systems. For example, if a lender's data center is on the west coast and it ships physical media of accounts receivable information to each nationwide credit reporting systems, then the physical media may arrive on different days. The result is one of the nationwide systems may receive and load its update of a particular account sooner than the others. Thus, the status of a particular account is shown as sixty days delinquent on one system as of June

1, and on another the same account may, until the update is loaded, display the same account as thirty days delinquent (pending the update to sixty days as of June 1). Another reason may be that a data furnisher produced an incorrect set of data for one of the three systems and, via the credit reporting systems' audit controls, this physical media is sent back to the data furnisher for reprocessing and correction. Physical media are also, though infrequently, damaged in transit and have to be sent back to a data furnisher for reprocessing. Our members report success in migrating data furnishers from physical media reporting to electronic. One member reports that 90% of data is now reported electronically.

Accuracy and the Consumer – Perceptions and Realities: One of our members observed that items in a consumer's credit file may be accurate, but not in sync with the consumer's perspective. Consumers have a tendency to "dispute" such items that are not in sync with their perspective, even when the data is accurate. Below are a few examples[9]:

(1)Maiden name – A married woman obtains a copy of her file and sees that her married name is not on file. She calls to dispute this and the representative asks her if she has applied for any credit in her married name. She replies in the negative and offers that she and her husband are now starting to apply for joint credit accounts. She is advised that information in her file is reported to us by the credit grantors with whom that she holds accounts. Since she does not have any credit accounts in her married name, we would have no way of knowing that she has changed her name unless she reported this directly to us.

(2) A consumer sees an old, dormant account on his file and indicates that he had long ago instructed the credit grantor to close the account. He might have confused that request with a similar request to another credit grantor. Or maybe he might have instructed the credit grantor to close the account and they never did. The point is that the information on file is "accurate", because it is an open account.

(3) A consumer sees an account with General Electric Consumer Credit (GECC) on his file and swears that he never did business with GECC before. However, the account in question was with a retailer who subsequently outsourced their lending to GECC and the consumer never knew of that relationship or isn't aware that some retailers outsource their lending. In this case, the consumer will be adamant that the account is incorrect, but, in fact, it is accurate. Once they are made aware of the retailer's name (i.e. Home Depot for example), they acknowledge they do have a Home Depot account. The file was accurate.

(4) A consumer sees a previous address listed as the current address and vice versa. He cannot understand how the credit bureau could make that mistake. However, the consumer had failed to notify some of his credit grantors about the previous move, so some credit grantors are still reporting the old address as current. This hasn't been an

[9] These are actual examples are drawn from the industry experts who lead consumer relations/assistance units for the nation's largest consumer reporting agencies which maintain files on the majority of credit-active consumers.

issue for the consumer because the mail from those credit grantors is getting forwarded or the account is so inactive the credit grantors do not need to send him/her a billing statement very often.

(5) A consumer sees his or her name listed with an unrecognizable combination of personal initials they don't remember using. The consumer's inclination is to believe the credit bureau is responsible for this. However, the fact is that our members' systems are incapable of making up a name. That particular name was transmitted to us by the credit grantor. Either the consumer previously used that name with a credit grantor in the past or the credit grantor transmitted the erroneous name.

(6) Consumers also often find that employment data is not current on their file disclosures. This is due to the fact that many lenders do not report employment data any longer. Nonetheless, the FCRA requires that a consumer reporting agency disclose "all information in the file at the time of the request" and this includes dated employment data.

The previous examples have no bearing on the lender's risk decision. Yet, the consumer has questions about this data and regards these as "errors" by the credit reporting agency.

Accuracy and Divorce: One very significant challenge for CDIA's members is the problem lenders and consumer reporting agencies have with how credit obligations are handled incorrectly by divorce courts. A divorce decree does not supersede an original contract with a creditor and does not release a consumer from his or her legal responsibility on those accounts entered into jointly with the former spouse.

A consumer will see an item on his or her report and call to dispute the accuracy of it because they feel the divorce court adjudicated it. Despite the explanation that the debt is still owed the consumer will argue that her lawyer did not advise her at the time of her divorce that this would be the case. We explain to the consumer that it is ultimately his or her responsibility to contact creditors and seek a binding legal release of the debt obligations that have been incurred.

Accuracy and Expectations of Immediacy: Another very significant challenge is the perception by consumers that their credit reports should and can be updated nearly instantaneously. For example, consumers may review their credit reports and while data is accurate as of the date reported, they believe that recent payments should already be reflected showing a lower outstanding balance. A majority of data in the nationwide credit reporting systems is updated on a thirty-day cycle and this timing correlates with the thirty-day billing cycles for many types of contractually prescribed credit payments to creditors. A great many disputes are driven by a desire to update information, which is otherwise accurate.

Accuracy and Misunderstandings About the Law: Often enough our members report that consumers believe that when an account is delinquent and subsequently paid, that any negative information about the missed payments will be expunged from the record.

Similarly, consumers often believe that an item placed for collection should be expunged once paid. In fact, the law recognized that it is important for creditors to know when the account was paid and to also maintain a history of the timeliness of past payments for purposes of safety and soundness. Thus, the law permits adverse information to remain on the file, but for no more than seven years.[10]

We strongly believe that this context is essential. Anecdotes can be based on problems that are not real and in some cases are driven by perceptions or misconceptions about how the system does or should work and even how other laws work. Finally we caution against making the term "accuracy" synonymous with "consequential." Some inaccuracies are inconsequential to the consumer, such as a missing middle initial, and some inaccuracies may be very consequential, such as a lender incorrectly reporting a consumer as 30 days late on an account."

[10] Note that bankruptcies may stay on the file for as long as 10 years.

Appendix II – Background on E-OSCAR-web™

In 1993, CDIA's nationwide consumer credit reporting agency members voluntarily established an automated system to simplify and standardize the system of sending disputes to data furnishers. They recognized the importance of establishing a system which: (1) supported high response rates from data furnishers to disputes submitted by the consumer reporting agencies; (2) reduce the time for data furnishers to respond; (3) improve the quality of the responses received from data furnishers; and (4) lowered the cost of dispute processing for data furnishers and consumer reporting agencies.

In 1996[11] Section 611 the Fair Credit Reporting Act[12] was amended to include Section 611(a)(5)(D) which requires that "...any consumer reporting agency that compiles and maintains files on consumers on a nationwide basis shall implement an automated system through which furnishers of information to the consumer reporting agency may report the results of a reinvestigation that finds incomplete or inaccurate information in a consumer's file to other such consumer reporting agencies." This amendment codified the 1993 voluntary initiative of the association's nationwide consumer credit reporting agency members. Below you will find an excerpt from CDIA's testimony before the Senate Banking Committee[13] which describes this system:

E-OSCAR-web™

The consumer reporting industry, through the auspices of the industry association, came together in 1992 to build an Automated Consumer Dispute Verification (ACDV) process. This voluntary industry effort predated the FCRA amendments by a full five years. The network went live in November of 1993 and began growing quickly thereafter. Fully 50% of all consumer disputes sent by the consumer reporting industry to data furnishers were traveling through the ACDV process by 1996. From 1996 through 1998, the industry remained at that 50% market penetration. In 1998, we began a reengineering process to help capture additional users. We also took the opportunity to match up the ACDV process with the new Metro 2 Format. In 2001, we began beta testing the E-OSCAR-web™ network with data furnishers. We successfully went live in the early summer of 2001 and have retired our old network. The new network is secure, encrypted, and available to a larger number of companies because it is browser based. The industry has ambitious plans to encourage all of the data furnishers to migrate to the E-OSCAR network.

The essential process has remained the same since created in 1992, though recent technology innovations should encourage broader use of the system by smaller data furnishers. The consumer reporting agency receiving the dispute sends that dispute to the data furnisher.

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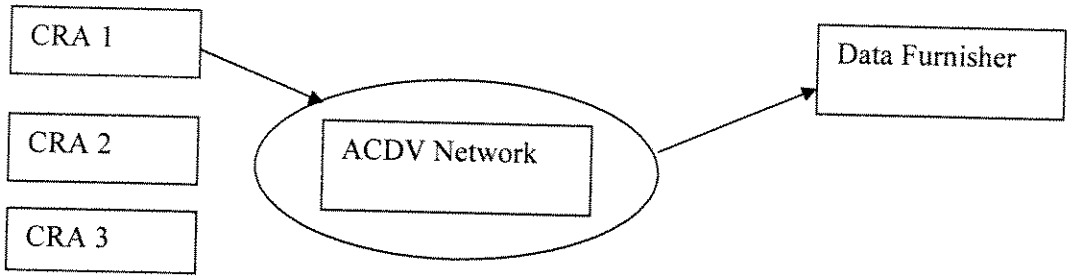
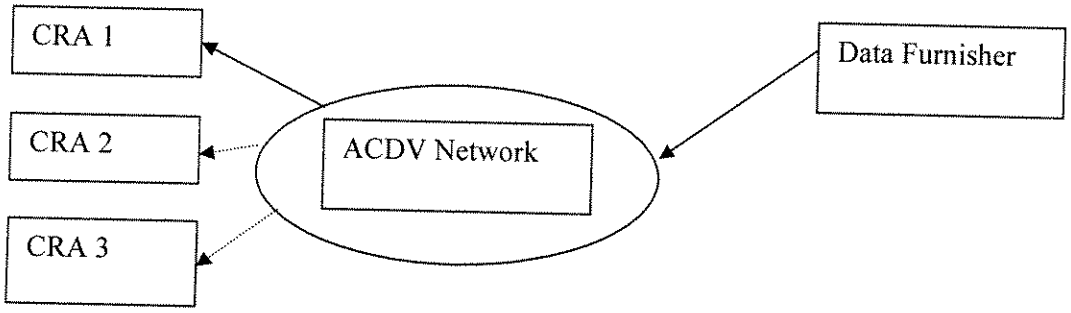
[11] PL 104-208
[12] 15 U.S.C. 1681 *et seq.*
[13] Testimony of Stuart K. Pratt before the Senate Banking Committee, July 10, 2003, Pages 18-19.



The data furnisher researches the dispute, provides an answer and, if changing the account or deleting it, provides a copy of the dispute and the response to each of the consumer reporting agencies to which it reported the data originally.



Appendix III – Background on Voluntary Industry Data Reporting Standards

METRO FORMAT

More than 18,000 data furnishers provide approximately three billion updates of information per month to the nationwide credit reporting systems. No law requires any furnisher of information to provide data to a consumer reporting agency.

A data format standard becomes a very important part of how the industry can ensure greater precision in the reporting of information, particularly with such a wide diversity of data furnishers[14]. If each of these data furnishers can choose how to report data and what data goes into what fields or how to define the status of accounts, etc., then the files of any given consumer are likely to reflect a wide variety of approaches to reporting information making it far more difficult to properly and fairly assess a consumer's risk.

The original Metro format for credit reporting was first developed in the mid '70s. Over the years, it has gained in popularity and achieved a high level of use in the market place. By 1996, more than 95% of all data was received by the nationwide credit reporting systems in this format. In 1996, the credit reporting industry took advantage of the opportunity afforded by the Year 2000 data processing "bug" to completely reengineer the format for credit reporting. The Metro 2 format was introduced in 1997 and has been steadily gaining in use by the data furnisher community. At this time, more than half of all accounts are reported in this new format.

Both the original and the new Metro 2 formats are maintained by an industry task force of volunteers from each of the national systems. This group meets on a regular basis to develop industry-wide responses to questions from data furnishers and create new codes or fields as necessary. Annually this group creates and delivers training sessions on the Metro 2 format for data furnishers that have not yet converted to the new format. More of these training sessions are scheduled for 2006.

Typically, data furnishers report data on a regular basis, usually monthly. The industry does encourage those companies that bill their customers in cycles (e.g., every 30 days) to report that data to the consumer reporting agencies in cycles thus ensuring that the data is not only accurate as of the date reported but is also as current as possible.

The Metro 2 Format documentation is distributed within the industry by the Association. Data furnishers can obtain the document in hard copy or can download it from the CDIA website. The documentation is quite extensive and granular. For example, for the FCRA Compliance/Date of First Delinquency field, a full page is devoted to a description of each particular circumstance under which this date should be reported. A full definition of the field is provided. Procedures for reporting data in the field if the account should become current are discussed. In addition, the industry developed three detailed

[14] Examples of data furnishers include credit unions, savings and loans, thrifts, mortgage lenders, credit card issuers, collection agencies, retail installment lenders, auto/finance lenders and more.

examples showing exactly how to calculate this important date in different situations. We also provide the exact language of the Fair Credit Reporting Act detailing this requirement for the convenience of customers.

81.3 percent of all data is voluntarily furnished using the Metro 2 format. CDIA's members continue to encourage data furnishers to migrate their practices from the Metro Format to Metro 2 due to the added precision this reporting format offers.