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Secretary,  
Board of Governors of the  
Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551  
Attention: Docket No. R-1300  
[regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)

Robert E. Feldman  
Executive Secretary  
Attention: Comments  
on RIN 3064-AC99  
Federal Deposit Insurance  
Corporation  
550 17<sup>th</sup> Street, NW  
Washington, DC 20429  
[Comments@FDIC.gov](mailto:Comments@FDIC.gov)

Regulation Comments,  
Chief Counsel's Office  
Office of Thrift Supervision  
1700 G Street, NW  
Washington, DC 20552  
Attention: OTS-2007-0052  
<http://www.regulations.gov> (Federal  
eRulemaking Portal)

**Re: Federal Reserve Board Docket No. R-1300  
Federal Deposit Insurance Corporation RIN 3064-AC99  
Office of Thrift Supervision OTS-2007-0052**

**Procedures to Enhance the Accuracy and Integrity of Information Furnished to  
Consumer Reporting Agencies**

Ladies and Gentlemen:

This letter is submitted by American Express Travel Related Services Company, Inc., on behalf of itself and its affiliates (collectively "American Express"), in response to 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 ("FACTA").

American Express appreciates the opportunity to comment on the proposed rule and thanks the Federal banking agencies (the "Agencies") for their hard work in developing it. As a diversified financial services company subject to regulation by several of the Agencies, we also thank the Agencies for coordinating their work on the proposed rule. The uniformity of rules that cut across the Agencies greatly assists our compliance efforts.

Overall, American Express believes the proposed rule represents a sound and reasonable implementation of both the furnisher information and direct dispute provisions of Section 312 of FACTA. In the sections of the letter that follow, American Express addresses these aspects of the proposed rule in more detail and comments on many of the discrete issues on which the Agencies have solicited comment.

### **I. Furnisher Information**

American Express believes the furnisher information provisions of the proposed rule establish the comprehensive but flexible regulatory regime for furnisher information contemplated by Section 312 of FACTA as codified in § 623(e) of the Fair Credit Reporting Act ("FCRA"), 18 U.S.C. § 1681s-2(e). Section 312 charges the Agencies with establishing "guidelines" for the accuracy and integrity of information furnished to consumer reporting agencies and with requiring furnishers of information to establish "reasonable" policies and procedures to implement those guidelines. The Agencies have fulfilled the letter and spirit of Section 312 by placing interagency guidelines at the heart of the furnisher information provisions. The Agencies have also recognized that the regulatory scheme authorized by Section 312 requires flexibility. In the words of Section I.A of the proposed guidelines, the reasonableness of furnisher policies and procedures depends on the "nature, size, complexity, and scope of each furnisher's activities."

#### **American Express Strongly Supports "Guidelines Definition Approach"**

The Agencies solicit comment on the "Guidelines Definition Approach" and "Regulatory Definition Approach" alternatives to the definition of information "integrity" and on the issue of whether the definitions of information "accuracy" and "integrity" should be placed in the furnisher information guidelines or the regulatory text itself. For the reasons discussed below, American Express strongly supports the "Guidelines Definition Approach" on both of these issues.

The Guidelines Definition Approach defines "integrity" as information (i) "reported in a form or manner [such as in a standardized format and with proper identifying information and dates] that is designed to minimize the likelihood that the information, although accurate, may be erroneously reflected" in the consumer's credit report, and (ii) "substantiated by the furnisher's own records." This definition will require furnishers to safeguard consumers against misdirected credit information and its attendant frustrations and other adverse

consequences. This definition is workable, verifiable, and provides furnishers with certainty on the meaning of “integrity.” It is also consistent with a fundamental duty of furnishers to ensure that such information as they choose to report is correctly packaged and labeled.

The Regulatory Definition Approach, by contrast, would establish a vague definition of “integrity” that would prohibit a furnisher from “omit[ting] any term...the absence of which can reasonably be expected to contribute to an incorrect evaluation” of the consumer’s credit characteristics. This definition would provide furnishers with no certainty on the scope of their credit reporting obligations and would subject their choices in this regard to case-by-case challenge. Put another way, it is a recipe for a morass of unproductive litigation about the reasonableness of omitting various pieces of credit information in general and in any number of specific circumstances. In addition, this definition may require furnishers to make a Hobson’s choice between reporting proprietary, immaterial, or other credit information they would not otherwise report and risking liability for failure to report the information. The result may be to deter full participation in the credit reporting system by various furnishers, to clog the system with extraneous information, or both. In short, the uncertainties of the “integrity” definition in the Regulatory Definition Approach could do significant harm to the levels of participation and the quality of information in the nation’s credit reporting system.

The Guidelines Definition Approach also provides for placement of the definitions of “accuracy” and “integrity” in the guidelines for furnisher information rather than in regulatory text. American Express supports the placement of these definitions in the guidelines because they are an integral part of the guidelines and are easiest to read there. Placing the definitions in regulatory text, as proposed by the Regulatory Definition Approach, would wrench the definitions out of their natural context and make the guidelines less self-contained and harder to read. Equally important, the definitions of “accuracy” and “integrity” are used in the guidelines as the “objectives” of furnisher policies and procedures “reasonably designed” to accomplish those objectives. In other words, the definitions and concepts of “accuracy” and “integrity” are organizing principles and quality management goals for furnisher information, not absolute standards. Placing the definitions in regulatory text risks confusion on this point and the needless disputes such confusion might engender. In the final analysis, the definitions not only belong in the guidelines but are more likely to be construed and used properly if placed there.

### **American Express Does Not Believe Updating Requirement Should Be Added to “Accuracy” Definition**

The Agencies also ask whether an information updating requirement should be added to the definition of information “accuracy.” American Express believes this is unnecessary for three basic reasons. First, the proposed furnisher information guidelines already establish information updating as one of the four main objectives of furnisher policies and procedures. Accordingly, information updating is already a key element of the guidelines. Second, there is

no compelling need to address information updating further in the proposed guidelines. Information updating on a monthly or other periodic basis is already a ubiquitous feature of the voluntary credit reporting system. Third, moving information updating into the “accuracy” definition may be another invitation to disputes and litigation. Again, the information “accuracy” and “integrity” definitions are intended to shape furnisher policies and procedures and not to serve as tripwires for non-compliance. Expanding the “accuracy” definition with an updating requirement may blur that distinction.

### **American Express Is Concerned About Statements in the Proposed Information Furnisher Guidelines Encouraging Voluntary Reporting and Third Party Feedback**

Two specific provisions in the proposed furnisher information guidelines are also of concern to American Express.

First, American Express is concerned about the introductory sentence to the guidelines, which states that each Agency “encourages voluntary furnishing of information to consumer reporting agencies.” Specifically, we are concerned that this sentence may unintentionally create a *de facto* standard for bank examiners regarding the duty of supervised institutions to engage in credit reporting. This, in turn, may result in supervisory guidance requiring an institution to report on matters or in ways it has chosen not to report for competitive, customer service, or other reasons. Because such a result would be antithetical to the voluntary nature of the credit reporting system, we urge the deletion of this sentence from the proposed guidelines.

Second, American Express is concerned about the statement in Section III.A.3 of the guidelines that a furnisher should identify practices or activities that can compromise the accuracy and integrity of information furnished to consumer reporting by, among other things, “Obtaining feedback from consumer reporting agencies, consumers, the furnisher’s staff, or other appropriate parties.” Specifically, we are concerned that this statement may be construed as imposing an affirmative duty on furnishers to undertake costly market research or engage in a systematic program of information exchanges with third parties that may put at risk proprietary information of the furnisher pertaining to business processes, new products, marketing plans, and the like. We do not think that is the intent of the statement, and we believe that any affirmative information gathering efforts on the part of furnishers should be voluntary and based on the furnisher’s judgments regarding its needs. To address this concern, we believe this statement should be deleted or substantially modified to indicate that it does not require any affirmative information gathering efforts on the part of the furnisher. Toward that end, we suggest that the statement might be modified to read as follows: “Considering feedback received in the ordinary course of business or otherwise obtaining feedback from consumer reporting agencies, consumers, the furnisher’s staff, or other appropriate parties.”

## II. Direct Disputes

American Express believes the direct dispute provisions of the proposed rule appropriately balance the needs of consumers, furnishers, and the credit reporting system. Section 312 of FACTA as codified in FCRA § 623(a)(8), 18 U.S.C. § 1681s-2(a)(8), charges the Agencies with identifying the type of disputes concerning the “accuracy” of information furnished to consumer reporting agencies that furnishers must investigate “based on a direct request of a consumer.” It also sets forth the factors the Agencies should weigh in developing a rule on the issue. Among those factors are the benefits of such investigations to the consumer, their costs to furnishers, their impact on credit reports, and whether direct contact between the consumer and the furnisher “would likely result in the most expeditious resolution” of the disputes subject to such investigations. American Express believes that the direct dispute provisions of the rule proposed by the Agencies balance these factors superbly by limiting direct disputes to information discretely relating to the account or relationship between the consumer and furnisher and excluding general information best handled by inquiries to consumer reporting agencies. (American Express also appreciates and supports the express exclusion of disputes initiated on the consumer’s behalf by either for profit or non profit credit repair organizations, which is consistent with the statutory exclusion of such disputes in FCRA § 623(a)(8)(G), 18 U.S.C. § 1681s-2(a)(8)(G).)

American Express offers the following comments on certain of the discrete issues regarding the direct dispute provisions on which the Agencies have specifically requested comment:

- **American Express agrees that the definition of information “accuracy” should be made applicable to direct disputes if the Guidelines Definition Approach, which we strongly support, is adopted.** The reason, as summarized by the Agencies in the supplemental information for the proposed rule, is that the direct dispute provisions of Section 312 of FACTA require a furnisher to investigate the “accuracy” of information directly disputed by a consumer, FCRA § 623(a)(8), 18 U.S.C. § 1681s-2 (a)(8), in contrast to the furnisher’s obligation to investigate the “completeness or accuracy” of information disputed by a consumer through a consumer reporting agency. FCRA § 623(b), 18 U.S.C. § 623(b); see also FCRA § 611 (a)(1)(A), 15 U.S.C. § 1681i(a)(1)(A) (imposing same obligation on consumer reporting agency). Accordingly, we agree that it is appropriate for the Agencies to clarify that the concept of accuracy as applied to direct disputes means “without error” in terms of the account or relationship information provided by the furnisher and does not include any contextual information necessary for “completeness” of the information as presented in the credit report. We also believe a cross reference to the “accuracy” definition in the proposed guidelines might be the simplest way to achieve this clarification.

- **American Express supports an amendment to § .43(c)(2) permitting furnishers to notify consumers orally of the address for direct disputes.** This would permit customer service representatives to redirect consumers involved in a direct dispute to special handling or other non-standard addresses if and as warranted by the furnisher's internal procedures. The resulting efficiencies in handling direct disputes would benefit furnishers and consumers alike. We believe that "clear and conspicuous" oral disclosure of such address information can be achieved through appropriate customer service training, telephone scripts, and other standard business processes. Due to the many variations in customer service discussions, we do not believe it is helpful or necessary for the Agencies to mandate any particular form of oral disclosure of this address information for "clear and conspicuous" disclosure purposes. Accordingly, we urge the Agencies not to impose such a mandate.
- **American Express does not believe the direct dispute provisions of the proposed rule require a specific time period for retaining records for purposes of direct dispute investigations.** Record retention requirements for various types of consumer accounts are adequately addressed by other federal and state statutes and regulations. These requirements tend to be tailored to the particular types of consumer accounts at issue, and the record retention practices of various lines of business are often built around them. Any record retention requirement imposed solely for purposes of the direct dispute provisions of this rule may conflict with those other requirements. The results of such conflicts may be disruptions to well established record retention programs and an attendant increase in compliance burdens imposed on furnishers by the direct dispute provisions of the proposed rule.

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Once again, American Express thanks the Agencies for the opportunity to comment on this proposed rule. We would welcome the opportunity to discuss our comments further with staff members from any of the Agencies. Toward that end, any staff member should feel free to call me at any time at 212-640-5773.

Sincerely,



R. Benjamin Parks  
Senior Counsel