



National Association of Federal Credit Unions

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February 11, 2008

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

RE: Comments on Part 717, Procedures to Enhance the Accuracy and Integrity of Information
Furnished to Consumer Reporting Agencies under Section 312 of the FACT Act

Dear Ms. Rupp:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation's federal credit unions (FCUs), I am writing in response to the request for comment on the interagency proposed regulations and guidelines to implement section 312 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), which amends the Fair Credit Reporting Act (FCRA). The proposal, jointly issued by the National Credit Union Administration (NCUA), the Federal Trade Commission (FTC), Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and Office of Thrift Supervision (OTS) (collectively, the Agencies), would require financial institutions to establish reasonable policies and procedures to help ensure the accuracy and integrity of information furnished to consumer reporting agencies. The proposed rule also addresses the circumstances under which a furnisher must, upon the direct request of a consumer, reinvestigate disputes about the accuracy of information contained in a consumer report.

NAFCU recognizes the importance of ensuring that information contained in a consumer report is as accurate as possible to ensure that credit scoring is fair and truly predictive of a consumer's future credit performance. NAFCU believes that the proposal will help to enhance the accuracy and integrity of information furnished to consumer reporting agencies; as such, we are generally supportive of the proposed rule. However, NAFCU continues to have concerns about the potential consequences and costs associated with allowing consumers to dispute information directly with furnishers. We elaborate on these views in more detail below.

Proposed Accuracy and Integrity Regulations and Guidelines

Definition of “Accuracy” and “Integrity”

The FCRA requires the Agencies to establish and maintain guidelines for use by furnishers regarding the “accuracy” and “integrity” of the consumer information; however, the statute does not define these terms. As such, the Agencies have proposed two alternative approaches to defining these terms (referred to as the Regulatory Definition Approach and the Guidelines Definition Approach, respectively). The definition of “accuracy” is the same under both alternatives but the two approaches differ in terms of the definition of “integrity” and the placement of the definitions (i.e., in the regulations or in the guidelines). The Agencies have requested comment on whether the definitions of “accuracy” and “integrity” should be placed in the regulatory text or in the guidelines.

NAFCU recommends that the Guidelines Definition Approach be adopted in the final rule. In our opinion, the Guidelines Definition Approach is more straightforward, particularly with regard to the definition of “integrity.” This approach also provides furnishers with greater flexibility in handling consumer information in a manner that is appropriate to each particular furnisher’s own structure, operations, and activities, which will help to ensure the accuracy and integrity of furnished consumer information.

Additionally, NAFCU believes that the Regulatory Definition Approach is susceptible to misinterpretation. In the preamble to the proposed rule, the Agencies note that “[c]onsistent with the FCRA, under which the furnishing of information about consumers is *voluntary*, the proposed [regulatory] definitions would apply only to information that the furnisher *elects* to report to CRAs . . .” 72 FR 70944, 70950 (December 13, 2007) (Emphasis added). However, NAFCU believes that, despite the Agencies’ stipulation that “these proposed definitions . . . are not intended to require furnishers to [report all available information about an account or other relationship],” placing the definitions in the regulatory text may create confusion regarding that fact. By placing the definitions in Appendix E alongside the guidelines, any potential confusion regarding the voluntariness of furnishing consumer information would be alleviated. Accordingly, NAFCU urges the Agencies to adopt the Guidelines Definition Approach to defining the terms “accuracy” and “integrity.”

Updating Consumer Information

The Agencies have also requested comment on whether the definition of “accuracy” should specifically provide that accuracy includes updating information as necessary to ensure furnished information is current.

NAFCU believes that furnishing “accurate” information should include furnishing current, updated information. NAFCU members have indicated that most credit unions already have very effective policies and procedures in place to ensure that accurate information is furnished to credit reporting agencies. Typically, such procedures include transmitting updated information to credit reporting agencies on a regular, periodic basis (usually monthly).

Definition of "Accuracy" Relative to Direct Disputes

Should the Agencies adopt the Guidelines Definition Approach in the final rule, NAFCU believes that the definition of "accuracy" should be made applicable to direct disputes for consistency and uniformity. However, the proposed definition should be clarified to clearly delineate those disputes that, while subject to the CRA dispute process, would not be subject to the direct disputes regulation. Providing greater clarification about the types of disputes that are covered (or not covered) by the direct disputes rule would be beneficial to both consumers and furnishers.

Proposed Direct Dispute Regulations

In our response to the Agencies' 2006 advance notice of proposed rulemaking, NAFCU expressed a number of concerns about the potential impact and costs associated with allowing consumers to dispute information directly with furnishers.

NAFCU continues to believe that in most circumstances it would be more appropriate for consumer disputes to be made through the consumer reporting agencies. Consumers perceive consumer reporting agencies as being independent third-parties that will handle disputes objectively. Also, centralization of the dispute and reinvestigation process contributes to a more controlled flow of information between furnishers and consumers and allows for a more organized resolution process. Additionally, time frames for the reinvestigation of disputes are mandated for consumer disputes that are made through CRAs. In contrast, there is no time requirement for credit bureaus to update information that has been voluntarily corrected by a furnisher after direct contact with a consumer. As such, consumers are afforded greater protection by disputing information through consumer reporting agencies.

Further, direct contact by a consumer with the furnisher may not necessarily provide a more expeditious resolution of a disputed error. For example, if the error is determined to have been caused by the credit reporting agency, the dispute would still need to be referred to the CRA for correction. Moreover, even if the furnisher is the source of the error, and the information held by the furnisher is promptly rectified, correction of the consumer report could still be delayed. Furnishers generally submit information to credit bureaus only periodically (monthly, for example). As such, even if the information were promptly corrected in the furnisher's own system, the consumer report would still not be immediately updated.

Frivolous or Irrelevant Disputes

NAFCU would also like to reiterate our concern that allowing consumers the right to dispute information directly with the furnisher may increase both the volume of requests, and the volume of frivolous disputes. NAFCU member credit unions have observed that many of their members have the mistaken belief that they can "clean up" a poor credit history by simply disputing, wholesale, any and all negative information contained in the consumer's credit report. Our members estimate that up to 90 percent of disputed errors are frivolous and ultimately

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verified as being reported correctly. Nevertheless, the additional time and staff required to investigate these claims would result in a significant financial burden to federal credit unions.

Under proposed §__.43(e)(1)(iii) of the proposed rule, a furnisher would not be required to investigate a direct dispute that is submitted by, is prepared on behalf of the consumer by, or is submitted on a form supplied to the consumer by, a credit repair organization as such a dispute would be considered “frivolous or irrelevant.”

NAFCU supports this proposed stipulation; however, we do not believe that the proposed provision goes far enough to mitigate the potential costs to furnishers for investigating frivolous claims by consumers attempting to “clean” their credit histories. Unscrupulous credit report organizations (e.g., so-called “credit doctors”) can easily circumvent the rule by advising consumers to submit frivolous disputes on their own behalf.

Accordingly, on balance of the relevant policy considerations, NAFCU urges the Agencies to take a more targeted approach and require investigations of direct disputes only where the consumer first raises the dispute with the consumer reporting agency.

NAFCU appreciates the opportunity to comment on this proposed rulemaking. Should you have any questions or require additional information please call me or Pamela Yu, NAFCU’s Associate Director of Regulatory Affairs at (703) 522-4770 or (800) 336-4644 ext. 218.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Dan Berger". The signature is stylized and somewhat cursive.

B. Dan Berger
Senior Vice President of Government Affairs

BDB/py