

February 4, 2008

Federal Trade Commission  
Project No. R611017

Board of the Governors of the Federal Reserve System  
Docket No. R-1300

Office of the Comptroller of the Currency  
Docket No. OCC-2007-0019

Federal Deposit Insurance Corporation  
RIN 3064-AC99

Office of Thrift Supervision  
Docket No. OTS-2007-0022

National Credit Union Administration  
12 CFR Part 717

Re: Comments regarding 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, Project No. R611017

Dear Sir/Madam:

We are writing to comment on the proposed Regulations and Guidelines issued by the federal banking regulators and Federal Trade Commission (FTC) (collectively as "Regulators") under Section 312 of the Fair and Accurate Credit Transactions Act of 2003. We appreciate the efforts undertaken by the Regulators in drafting the proposal, but we believe that significant changes must be made in the proposal in order for it to (1) promote the furnishing of information that is accurate, timely, up to date, complete, and fully substantiated and to (2) provide a workable method for consumers to dispute information directly with the entity that furnished that information.

The changes which must be made include:

- The Regulations must clearly state that the purpose of the regulatory requirement for furnisher policies is to achieve accurate reporting of information which is timely, complete, up to date, and substantiated.
- The Regulations must define "accuracy" and "integrity." We support the "Regulatory Definition Approach" because it is more substantive in its requirements and because these key definitions are much too important to be relegated to flexible Guidelines which only inform a furnisher's policies.

- The definition of “accuracy” must require that information furnished to consumer reporting agencies (CRAs) be “complete.”
- The Regulations should define “accuracy” to require that information furnished to CRAs be substantiated. In addition, the Guidelines should include requirements as to what kind of substantiation is required.
- The proposal should not artificially divide “accuracy” and “integrity,” because that would prevent consumers from submitting valid disputes to furnishers about errors falling in the “integrity” category.
- “Accuracy” should require that information furnished to CRAs be updated so that it is, and remains, current.
- The direct dispute Regulations should require that the furnisher in fact conduct a reasonable investigation, including an attempt to seek documentation before rejecting a consumer’s dispute.
- The Guidelines should require that records about the account should be kept at least as long as the account or other relationship with a furnisher is being reported.
- The Regulations and Guidelines should provide consumers with a workable, understandable, effective system to report and obtain correction of errors, by informing consumers of what types of disputes can be presented to the furnisher and where to submit those disputes. A key element of this is to require that a furnisher refer to a CRA any dispute that the furnisher declines to investigate because that dispute is of a type that the Regulations do not require it to consider.

Credit reports and credit scores are increasingly important in the determination of who gets credit and other economic opportunities, such as insurance, rental housing, and even jobs, as well as what prices consumers are offered for credit and services. There is an increased focus on credit quality during any economic downturn – the very time that access to jobs, services, and the price of credit take on special importance for families. These factors make it extremely important that the contents of consumer credit reporting files be accurate, complete, and up to date.

Even small inaccuracies in a credit report can have a significant impact on the economic opportunities offered to hardworking individuals and their families, because they can cause significant changes in a credit score. Thus, any standards for accuracy and integrity of information furnished to a CRA must examine not only the potential for an incorrect evaluation by a user of a credit report, but also the potential for an incorrect evaluation by the user of a credit score.

**I. The Regulations Must Clearly State That the Purpose of the Regulatory Requirement for Furnisher Policies is to Achieve Accurate Reporting of Information.**

The package of proposed Regulations and Guidelines has three parts. The Regulations describe what types of disputes the furnisher must resolve if reported directly to the furnisher. In addition, the Regulations require that furnishers establish and implement policies concerning the information which they furnish to consumer reporting

agencies. Finally, the regulatory package contains proposed Guidelines to shape the content of those policies.

The regulatory text on furnisher policies is missing a key element – it does not require that the furnisher policies must be reasonably designed to accomplish the objective that all information furnished in fact meet standards of accuracy and integrity. Instead, the Regulation simply requires that furnishers have policies “regarding” the accuracy and integrity of furnished information. The Regulation says that the policies “must be appropriate to the nature, size, complexity, and scope” of the furnisher’s activities.

The regulatory section requiring furnisher policies should be amended to add the basic requirement that the policies must be reasonably designed to facilitate the reporting only of accurate, complete, up to date information which is fully substantiated and has no tendency to mislead users of a credit report or credit score. The statutory and regulatory requirement for policies should not be satisfied by policies that do not serve this goal, regardless of the nature or size of the furnisher.

## **II. Accuracy and Integrity Definitions**

The Regulators have proposed two alternative approaches to define accuracy and integrity: the “Regulatory Definition Approach” and the “Guidelines Definition Approach.” The key differences in these Approaches are:

- Where the definitions are placed, *i.e.*, in the Regulations vs. in the Guidelines, which affects their enforceability.
- The definition of “integrity” in the Regulatory Definition Approach includes a requirement that information is complete, *i.e.*, that it “not omit any term, such as credit limit or opening date, ...the absence of which can reasonably be expected to contribute to an incorrect evaluation by a user...”
- In addition, Regulatory Definition Approach includes as an Objective in the Guidelines that information furnished to CRAs in general should “avoid misleading a consumer reports user.”
- The Guidelines Definition Approach takes a more procedural approach to integrity, focusing on whether the procedure for reporting is likely to avoid error rather than on the quality of the information in fact reported or omitted.

We support the Regulatory Definition Approach, which requires that the information both be without error and not omit any term which can reasonably be expected to contribute to an incorrect evaluation by a user of a credit report. We suggest this definition should be augmented to also refer to a user of a credit score.

- a. *The definition of accuracy rightfully requires information to be “reflected without error,” but it should be clear that such reflection must be “objective.”*

In both Approaches, “accuracy” is defined to mean that information provided to a CRA “reflect without error the terms of and liability for the account or other relationship and the consumer’s performance and other conduct with respect to the account or other relationship.”

We support the concept in the definition of accuracy that information furnished to a CRA should “reflect without error” the actual terms of, liability for, and other conduct about the account or relationship. It is fundamentally important that “accuracy” requires information to be accurate as a matter of fact, not simply requiring conformity between the furnisher’s records and information in a CRA’s database. We recommend making this absolutely clear by adding the word “objectively” before the word “reflects.”

Furthermore, the definition of “accuracy” should also require that information reported to a CRA reflects without error the *furnisher’s* performance or other conduct with respect to the account or other relationship.

*b. The definitions of “accuracy” and “integrity” should be set forth in the Regulations.*

We believe “accuracy” and “integrity” must be defined in the Regulations. The requirement that furnishers report information with accuracy and integrity should not be merely a goal or Guideline to be considered. It should be mandatory; indeed it should be the core purpose of a furnisher’s credit reporting systems.

*c. The definition of “accuracy” must include “completeness.”*

Accuracy must include a requirement that information furnished must be complete, *i.e.*, must not omit any important terms. If the failure of the furnisher to provide complete information creates a misleading evaluation of a consumer’s creditworthiness, including a different credit score if the information were included, the furnisher has reported inaccurate information.

The Regulators have proposed either requiring completeness to be part of integrity (Regulatory Definition Approach) or omitting it altogether (Guidelines Definition Approach). The Guidelines Definition Approach is simply unacceptable. Information cannot be “without error” if its omission of critical terms creates a misleading evaluation or a different credit score. Indeed, the omission of a material term that creates a misleading impression is a form of deception under the FTC Act. If information could be considered “deceptive” under the FTC Act, how can it be “accurate” under the FCRA?

The Regulatory Definition Approach is not perfect either in that it separates completeness from accuracy, when the former is a necessary element of the other. We support a definition of “accuracy” that includes completeness. This point is critical, because nowhere else is “accuracy” defined in the Act or Regulations, yet the term is used several times in the FCRA, including requirements for CRAs to follow reasonable

procedures to assure maximum possible accuracy. We do not want a definition of accuracy that inadvertently allows CRAs to have procedures that result in incomplete misleading information in their files.

In the alternative, if completeness is included in the definition of “integrity,” rather than as part of accuracy, then at a minimum the Regulations should make clear that such a definition is applicable only to Section 1681s-2(e) of the FCRA and does not affect the meaning of the term “accuracy” under other parts of the FCRA which impose other duties with respect to accuracy.

*d. Accuracy should include substantiation.*

We support the Regulators’ express recognition of the need for substantiation in the furnisher’s records of all furnished information. However, we believe that substantiation should be part of the definition of “accuracy.” Both Definition Approaches include a requirement for substantiation, but it is either stated as an Objective for the policies of a furnisher (Regulatory Definition Approach) or an element of integrity (Guidelines Definition Approach), not as a requirement for accuracy.

We support retaining and strengthening the requirement for substantiation by placing it in the Regulations, not just the Guidelines, and by locating it in the definition of accuracy. Substantiation should not merely be an objective, nor should it be something only in the Guidelines to be considered by furnishers as they develop their own policies. Instead, substantiation should be a core part of accuracy. Furnishers should be required to have in their possession documents that substantiate information they send to the CRAs. Furthermore, as discussed below, the Guidelines should include requirements as to what types of substantiation are required.

*e. “Accuracy” and “integrity” should not be artificially separated.*

The issues of whether “completeness” and “substantiation” should be elements of “accuracy” versus “integrity” points to another problem – that both the Regulatory Definition and the Guidelines Definition Approach artificially separate the two concepts, when they should be treated together. Integrity should be considered a subset of accuracy and not as a category separate and distinct from accuracy.

First, artificially separating accuracy and integrity does not make logical sense. Information provided without integrity will result in inaccuracies. If information is inaccurate, it lacks integrity.

Another reason that an artificial distinction between accuracy and integrity is problematic is that the statute contemplates direct disputes about accuracy, and the Regulations define a “direct dispute” which can be pursued directly with the furnisher as only those disputes which are about accuracy. Under the proposed Regulations, some types of errors by a furnisher constitute a lack of accuracy, while other types of errors are

put in the category of lacking integrity. This means that some types of real errors by a furnisher can be directly disputed, but others cannot.

An artificial distinction between accuracy and integrity will be harmful to consumers if consumers can use the direct dispute process only for accuracy and not for integrity disputes. Consumers should be able to seek and obtain direct corrections by a furnisher of erroneous information regardless of where the error falls on an artificial line between the definitions of accuracy and integrity. A simple way to do this is to treat integrity as an element or subset of accuracy, rather than as some wholly separate category to which no right of direct dispute can attach.

*f. Accuracy requires that information be updated so that it is, and remains, current.*

The Regulators ask whether the definition of “accuracy” should include updating information as necessary to ensure that information furnished is current. Our answer is an unequivocal “yes”. Similar to the issue of completeness, requiring information to be updated so that it is factually correct must be an inherent element of accuracy. Stale or out of date information cannot be accurate, especially when there is a subsequent material change in the status of the account.

The Regulators should include a requirement that accuracy requires information be updated as necessary to ensure that it is current. In addition, the Regulators should require that information should be updated when the consumer requests it or disputes the current status of information. Finally, the Regulators should include recommendations in the Guidelines on how regularly information should be updated to ensure it is current.

### **III. The Direct Dispute Regulations Should Require that the Furnisher in Fact Conduct a Reasonable Investigation, Including an Attempt to Seek Documentation Before Rejecting a Consumer’s Dispute.**

Some important aspects of the steps a furnisher must take when it receives a direct dispute are relegated to the Guidelines. These requirements belong in the direct dispute Regulations.

*a. The requirement for a reasonable investigation of a direct dispute should be in the Regulations.*

The Regulators have included the reasonable investigation standard for direct disputes only in the Guidelines, not in the proposed Regulations that will actually set the legal requirements for furnisher conduct in handling a direct dispute. Relegating the important obligation to investigate a direct dispute to Guidelines that merely inform the furnisher’s policies is illogical and troubling. Under current law, furnishers are required to conduct a reasonable investigation for disputes submitted to a CRA. A consumer dispute should not be subject to a lower, vague, or non-binding standard with respect to

the investigation merely because the consumer submits the dispute directly to the furnisher instead of submitting it through a CRA.

*b. The Regulations, not merely the Guidelines, should include the requirement that a furnisher seek documentation of a consumer's dispute before rejecting it.*

The Regulators have proposed including in the Guidelines a provision that a furnisher attempt to obtain necessary documentation from a consumer before rejecting a consumer's dispute as frivolous or irrelevant. We support this provision; however, we believe it should be a requirement in the Regulations, not just something to be considered in Guidelines about the content of the furnisher's policies. The direct dispute option will have little meaning for consumers if the furnisher can comply with the Regulations by rejecting a dispute before asking the consumer for the information that the furnisher believes is missing and essential.

#### **IV. Substantiation and Recordkeeping Are Essential**

As stated above, we strongly support a requirement in the Regulations that furnishers substantiate the information they initially furnish, and remove any disputed information that cannot be substantiated at the time of the dispute. In addition, we believe the Guidelines should include requirements as to what kind of substantiation is required. Otherwise, a furnisher may claim it has substantiation merely because its electronic records reflect the same information which it furnished to the CRAs.

To prevent any misunderstanding, the Guidelines should specify that certain documents must be in the possession of the furnisher to constitute substantiation. For example, credit card companies should be required to have in their possession account applications, agreements, and billing statements. Most importantly, debt buyers should be required to have certain evidence (that the consumer is the current individual liable on the account, account agreements and billing statements) in their possession, and to have reviewed such information before furnishing to a CRA.

The Regulators have asked whether the Guidelines should specify a time period for furnishers to retain records. We support a requirement that records should be kept at least as long as the account or other relationship with a furnisher is being reported. There should not be a specific time limit; the standard should be "as long as necessary to substantiate information reported."

#### **V. The Regulations and Guidelines Should Provide Consumers with a Workable, Understandable, and Effective System to Report and Obtain Correction of Errors.**

Effective notice and efficient referral are key elements to making the direct dispute process more than an empty procedure. In particular, when a dispute is rejected because it is of a type that should have been filed with the CRA rather than the furnisher, it is inherently misleading for a furnisher to reject the dispute without telling the consumer that the consumer can send the dispute to the CRA, and that this will start a

process in which the furnisher will have to investigate a dispute that it was not required to consider as a direct dispute.

The Regulations should require that:

1. Each furnisher must communicate effectively to the public, including on its web site:
  - The address(es) for filing a direct dispute;
  - A description of the types of disputes that the consumer can file with the furnisher; and
  - A clear and conspicuous statement that other types of disputes can be filed directly with the CRAs, along with the addresses to do so, and a plain statement that the filing of a dispute with the CRA can trigger a process leading to an investigation by the furnisher even if the dispute has been rejected by the furnisher as not appropriate under the direct dispute process.
2. Each furnisher must forward directly to any CRA to whom it furnishes information any dispute which the furnisher rejects because it is of a type not required to be considered by the furnisher, excluding only disputes that the furnisher determines to be substantively frivolous or irrelevant for reasons other than that the dispute should have been filed with the CRA rather than with the furnisher. A regulatory interpretation may be required so that CRAs must treat those referred disputes as if they had been filed by the consumer with the CRA.
3. When a furnisher rejects a dispute on the ground that the dispute is of a type that the furnisher is not required to consider, the furnisher must be required to provide with that rejection a clear written statement advising the consumer that he or she may dispute this information with the CRA, providing the address to do so, and stating that the furnisher will have an obligation to investigate the dispute once the CRA forwards the consumer's dispute to the furnisher. Without this disclosure, consumers can be misled into thinking that it would be pointless to file a dispute with a CRA after the furnisher has rejected that dispute. Where the reason for the rejection was "wrong place of filing," nothing could be further from the truth.
4. Each furnisher must make public, on its web site and on request of any member of the public, its policies for furnishing information to CRAs and for handling disputes about that information.

## **VI. Conclusion**

It is essential that the Regulators prescribe strong Regulations and Guidelines for furnishers that promote the initial reporting only of accurate, timely, complete and up-to-date information which is fully substantiated by the furnisher's own files. The dispute Regulations should serve this same goal. They should provide an effective, easy-to-use avenue for consumers to obtain corrections; should provide a true self-help method to ensure that information meets these standards; and should provide a method to effectively



dispute information which is contradicted by independent evidence provided by the consumer. Finally, the direct dispute process must require furnishers to engage in a real investigation and to fix errors shown by the consumer or otherwise revealed through the dispute process.

Sincerely,

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