VISA

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By Electronic Delivery

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attention: Docket No. R-1250

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attention: Comments
RIN 3064-AC99

Federal Trade Commission
Office of the Secretary
Room 159-H (Annex C)
600 Pennsylvania Avenue, NW
Washington, DC 20580
Attention: Project No. R611017

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

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: No. 2006-06

Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 1-5
Washington, DC 20219
Attention: Docket No. 06-04

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

Ladies and Gentlemen:

This letter is submitted on behalf of Visa U.S.A. Inc. in response to the advanced notice of proposed rulemaking ("ANPR") by the Board of Governors of the Federal Reserve System ("Board"), the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency and the Office of Thrift Supervision (collectively, the "Agencies"), published in the Federal Register on March 22, 2006.[1] The ANPR requests public comment to assist the Agencies in proposing the furnisher guidelines and regulations required under section 623 of the Fair Credit Reporting Act ("FCRA"), as amended by the Fair and Accurate Credit Transactions Act of 2003 ("FACT Act"). Visa appreciates the opportunity to comment on this important matter.

[1] 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, 71 Fed. Reg. 14,419 (Mar. 22, 2006).

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The Visa Payment System, of which Visa U.S.A.[2] is a part, is the largest consumer payment system, and the leading consumer e-commerce payment system, in the world, with more volume than all other major payment cards combined. In calendar year 2005, Visa U.S.A. card purchases exceeded a trillion dollars, and as of March 31, 2006, over 497 million Visa cards were in circulation. Visa plays a pivotal role in advancing new payment products and technologies, including technology initiatives for protecting personal information and preventing identity theft and other fraud, for the benefit of Visa's member financial institutions and their hundreds of millions of cardholders.

ACCURACY AND INTEGRITY GUIDELINES AND REGULATIONS

Section 623(e) of the FCRA, as added by section 312(a) of the FACT Act, directs the Agencies to issue accuracy and integrity guidelines and regulations for persons that furnish information to consumer reporting agencies ("CRAs"). Specifically, the Agencies must, with respect to the entities that are subject to their respective FCRA enforcement authority, establish and maintain guidelines regarding the accuracy and integrity of the consumer information that the furnishers provide to CRAs.[3] In addition, the Agencies must prescribe comparable and consistent regulations that require furnishers to establish reasonable policies and procedures to implement the guidelines issued by the Agencies.[4]

In the ANPR, the Agencies have requested comment on "whether and to what extent furnishers maintain and enforce policies and procedures to ensure the accuracy and integrity of information furnished to [CRAs]."[5] Financial institutions, in fact, currently maintain sophisticated systems, policies and procedures to ensure the accuracy and integrity of information about the consumers with whom they do business, and these institutions furnish that information to CRAs in a manner that is both consistent with the FCRA and that serves the interests of both consumers and the institutions themselves. As the Agencies consider developing accuracy and integrity guidelines to improve the voluntary system of furnishing information to CRAs, Visa urges the Agencies to carefully consider the existing practices that financial institutions have developed to promote the maintenance of accurate information about consumers. In light of these existing practices, the Agencies should only require changes to those practices when the Agencies determine that such changes are essential to avoid compromising the accuracy and integrity of information furnished to CRAs.

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[2] Visa U.S.A. is a membership organization comprised of U.S. financial institutions licensed to use the Visa service marks in connection with payment systems.

[3] 15 U.S.C. § 1681s-2(e)(1)(A). In this regard, the Agencies must: (1) identify patterns, practices and activities that can compromise the accuracy and integrity of information furnished to CRAs; (2) review the methods used to furnish information; (3) determine whether furnishers maintain and enforce policies to assure the accuracy and integrity of information that is furnished; and (4) examine the policies and processes that furnishers use to conduct reinvestigations and correct inaccurate information that has been furnished. 15 U.S.C. § 1681s-2(e)(3).

[4] 15 U.S.C. § 1681s-2(e)(1)(B).

[5] 71 Fed Reg. at 14,423.

The Voluntary System of Furnishing Information to CRAs Must Be Preserved

As a threshold matter, Visa urges the Agencies to avoid developing accuracy and integrity guidelines or rules that alter in any respect the voluntary nature of the system of furnishing information to CRAs. The FCRA reflects a longstanding policy for voluntary reporting to CRAs and nothing in the FACT Act amendments should be interpreted as modifying that policy. The FCRA imposes requirements on an entity that elects to furnish information to CRAs. By furnishing information to a CRA, an entity bears the risks of noncompliance. If, after assessing the relative costs and benefits of furnishing information in accordance with the FCRA, an entity concludes that the potential costs are too great, it may decide not to furnish information. To maintain and promote broad participation in the consumer reporting system, the Agencies must avoid developing any guideline or regulation that would modify the existing system of voluntary reporting to CRAs.

Accuracy and Integrity Guidelines and Rules Must Focus On Specific Errors

Visa believes that, in developing accuracy and integrity guidelines and regulations in accordance with section 623(e), the Agencies should identify the classes of furnishers that are the sources of significant errors, as well as the nature of those errors, and should identify the practices best tailored to address those particular furnishers and errors. In this regard, we believe that the Agencies will conclude that financial institutions are not likely to be among the furnishers that regularly commit errors that "compromise the accuracy and integrity of information furnished to [CRAs]."[6] Financial institutions have strong incentives to maintain accurate information about their customers as a fundamental part of conducting their businesses. In addition, financial institutions have established policies and procedures to comply with a wide range of regulatory requirements that enhance their ability to maintain and furnish accurate information about their customers. The Agencies should not propose guidelines or rules designed to require financial institutions to address errors caused by other types of entities but not by financial institutions. The Agencies should develop rules for financial institutions only to the extent they are needed to address particular practices of financial institutions themselves.

Financial Institutions Have Strong Incentives to Maintain Accurate Information About Their Customers and Voluntarily Furnish Accurate Information to CRAs

Financial institutions maintain information relating to accounts established with their current and former customers to conduct their businesses, and that information—which is the same information furnished to CRAs—must be accurate. In order to operate a profitable business and to promptly and effectively serve its customers, a financial institution depends on the accuracy of the information it maintains. A financial institution cannot conduct its business successfully without developing robust systems to maintain accurate information about its customers. If, for example, a bank does not maintain accurate information relating to the checking accounts or loan accounts of its customers, the bank cannot possibly track its assets and liabilities with respect to its customers. Put

[6] 15 U.S.C. § 1681s-2(e)(3)(A).

simply, a financial institution's books have to balance and to do that they have to be accurate with respect to each customer.

Financial institutions also must maintain accurate information relating to their customers in order to build and to protect their customer relationships. Further, incorrectly handling or reflecting transactions that are important to its individual customers, such as a customer's instruction to make a payment to the bank itself or to another lender, will cost the financial institution its customers. In the competitive market for financial services, customers will hold their financial institutions accountable for problems that they experience with their accounts, or the information relating to those accounts. Accordingly, financial institutions have developed sophisticated systems to maintain accurate information about their customers in order to preserve their customer relationships, and those same systems are used for furnishing information to CRAs.

In addition to maintaining systems to maintain accurate accounts and to effectively serve their customers, financial institutions also invest significant resources in order to prevent fraud from occurring on their accounts. A financial institution can incur significant costs from account fraud and identity theft, either in the form of direct dollar losses from credit that will not be repaid or in the form of indirect costs, including reputational harm and damaged customer relationships. Accordingly, financial institutions aggressively protect their account information and adopt a variety of measures to safeguard the integrity of information in order to prevent and reduce the costs associated with fraud. These measures to protect against fraud also are used to promote the accuracy and integrity of the information that financial institutions furnish to CRAs.

Accurate Customer Information Systems are Necessary to Comply With Regulatory Requirements

Accurate and effective systems, policies and procedures also are necessary for financial institutions to comply with various regulatory requirements that also promote the accuracy and integrity of the information that they maintain and furnish to CRAs. Compliance with such regulatory requirements mandates the collection and use of accurate customer information.

For example, the joint customer identification program ("CIP") rules under section 326 of the USA PATRIOT Act require a financial institution to implement a CIP that includes risk-based procedures designed to enable the financial institution "to form a reasonable belief that it knows the true identity of each customer."[7] In order to maintain a CIP that complies with the CIP rules, a financial institution must develop systems to collect, transmit and store key pieces of information about each of its customers, including the customer's name, date of birth, address and taxpayer identification number.[8] If an institution is not able to accurately and routinely perform these functions, the institution likely would have difficulty satisfying the requirements regarding the use of identifying information to verify the customer's identity. By maintaining systems to obtain identifying

[7] 31 C.F.R. § 103.121(b)(2).
[8] 31 C.F.R. § 103.121(b)(2)(i)(A)(1)-(4), 103.121(b)(2)(ii).

information relating to each customer and verify the customer's identity in a manner that complies with the CIP requirements, the financial institution also effectively enhances its policies and procedures to maintain the accuracy and integrity of information about its customers, including for purposes of reporting information to CRAs.

Other rules also effectively require financial institutions to develop systems to accurately collect, use and transmit information about their customers. For example, the Board's Regulation Z requires a creditor to provide its customer with a periodic statement at the end of each billing cycle in which the customer's open-end credit account has a balance or on which a finance charge has been imposed.[9] The required periodic statement must include detailed information relating to the customer's account, including, for example, the outstanding account balance at the beginning of the billing cycle and an identification of the transactions on, and credits to, the account during the billing cycle.[10] Regulation Z requires creditors to resolve errors contained on their customers' periodic statements, including, for example, fraudulent transactions or the failure of the financial institution to properly credit a payment.[11] Similarly, the Board's Regulation E requires a financial institution to provide its customers with periodic statements for each monthly cycle in which an electronic fund transfer ("EFT") has occurred on the customer's account.[12] The periodic statement must include information relating to EFTs made to or from the customer's account, including, for example, the amount of an EFT, the third parties to or from whom funds were transferred and the account balance at the beginning and close of the statement period.[13] Regulation E also prescribes error-resolution procedures relating to any EFT, including an unauthorized or incorrect EFT or a computational or bookkeeping error relating to an EFT.[14] The robust systems that financial institutions use to maintain accurate records about accounts that enable them to comply with Regulation Z, Regulation E and other regulatory requirements are integral for assuring the accuracy and integrity of the information about customers that financial institutions furnish to CRAs, and their compliance efforts are subject to periodic examination.

Best Practices for Voluntarily Furnishing Accurate Information to CRAs Must Be Reasonable and Limited

If after reviewing the methods used by financial institutions to furnish information to CRAs and identifying particular practices that, in fact, *compromise* the accuracy and integrity of that information, as mandated under section 623(e)(3), the Agencies determine that specific guidelines or regulations are necessary, the Agencies should judiciously develop a limited set of best practices for financial institutions focused on the identified form(s) of activity prone to creating the erroneous information. The guidelines or regulations applicable to financial institutions, if any are determined to be necessary, should only require institutions to establish "reasonable policies and procedures for

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[9] 12 C.F.R. § 226.5(b)(2).
[10] 12 C.F.R. § 226.7.
[11] 12 C.F.R. § 226.13.
[12] 12 C.F.R. § 205.9(b).
[13] 12 C.F.R. § 205.9(b)(1)-(6).
[14] 12 C.F.R. § 205.11.

implementing the guidelines."[15] In this regard, Visa believes that any accuracy and integrity regulations should be designed to allow a financial institution to develop a policy or set of procedures that: (1) incorporates or refers to relevant parts of its existing systems; and (2) is consistent with the measures currently used to comply with regulatory requirements that promote the accuracy and integrity of information, such as the financial institution's CIP or the systems used to comply with Regulation Z and Regulation E. Moreover, as discussed above, Visa urges the Agencies to avoid developing accuracy and integrity guidelines and regulations that would alter the longstanding policy under the FCRA for voluntary furnishing of information to CRAs.

DIRECT CONSUMER DISPUTE REGULATIONS

Section 623(a)(8) of the FCRA, as added by section 312(c) of the FACT Act, directs the Agencies to prescribe regulations that "shall identify the circumstances under which a furnisher shall be required to reinvestigate a dispute concerning the accuracy of information contained in a consumer report on the consumer, based on a direct request of a consumer."[16] Visa believes that, in identifying the circumstances under which a financial institution would be *required* to comply with the direct-dispute process set forth in section 623(a)(8), the Agencies should consider that financial institutions already may voluntarily resolve disputes brought directly by their customers, and will continue to do so in a manner that effectively improves the accuracy of information about them. Further, a financial institution may choose to encourage its customers to resolve disputes directly with the financial institution for customer relations or other reasons. Visa believes that the Agencies should only *require* institutions to use the mandatory direct-dispute process under section 623(a)(8) in cases of fraudulent accounts. Accordingly, even if financial institutions are required to use the direct-dispute process under sections 623(a)(8)(D)-(G) under certain circumstances, the Agencies should clearly allow institutions to use the prescribed, or a similar process, for any kind of dispute on a voluntary basis.

The Agencies Should Not Develop Standard Procedures for the Direct-Dispute Process

To the extent that the Agencies require furnishers to respond to consumer disputes directly, Visa believes that the Agencies should avoid developing requirements under section 623(a)(8) for the direct-dispute process that would limit in any way the ability of financial institutions to continue to resolve disputes received from customers on a voluntary basis. Section 623(a)(8) prescribes in detail a furnisher's duties to address a dispute brought directly by a consumer, including responsibilities to conduct an investigation, review all relevant information provided by the consumer, complete the investigation within the statutorily prescribed time period and, if the investigation finds that the information was inaccurate, promptly notify each CRA to which the furnisher provided the information and correct the information to make the information accurate. However, financial institutions have developed many different types of systems to effectively respond to disputes brought directly from customers, as well as to notices of disputes received from CRAs, and should be permitted to continue using the procedures

[15] 15 U.S.C. § 1681s-2(e)(1)(B).
[16] 15 U.S.C. § 1681s-2(a)(8)(A).

that best suit their particular systems and the needs of their customers so long as these systems satisfy the statutory duties.

Direct-Dispute Process Should Supplement, But Not Duplicate, the Existing Process Required to Resolve Disputes

Section 611 of the FCRA already provides a dispute-resolution process in which a CRA must conduct a reasonable investigation to determine whether information disputed by a consumer is inaccurate. As part of the process prescribed under section 611,[17] a CRA must notify any person who furnished the items in dispute; that person, in turn, must investigate the disputed information, report the results of the investigation to the CRA and, if the information is incomplete or inaccurate, report those to all other CRAs and modify, delete or block reporting of that information.[18] As a result, if a consumer chooses to file a dispute with a CRA under section 611, both the CRA and the furnisher must investigate to determine whether the contested information contained in the consumer report is accurate. Thus, if prescribed by the Agencies, a furnisher's obligation under section 623(a)(8) to reinvestigate a dispute submitted directly by the consumer would be in addition to, yet independent of, the existing obligations under section 611 to reinvestigate a dispute received from a CRA. In order to maximize the effectiveness of a direct-dispute process, if any is determined to be required, the Agencies must weigh four factors.[19] Visa believes that the Agencies should carefully weigh the statutory factors to assure that the direct-dispute process supplements, but does not duplicate, the existing procedures for resolving disputes about information contained in consumer reports.

Required Direct-Dispute Process Should Apply Only to Fraudulent Accounts

Visa believes that the Agencies should limit the circumstances under which a furnisher is required by regulation to reinvestigate disputes brought directly by consumers to disputes that relate to the existence of fraudulent accounts. Unlike disputes pertaining to information about an otherwise valid account, a dispute concerning the fraudulent account itself could be efficiently resolved through the direct-dispute process prescribed by section 623(a)(8).

The existing dispute resolution process, as prescribed by section 611 of the FCRA, already provides an appropriate mechanism for resolving a wide range of disputes about information contained in a consumer report and, in particular, disputes about information relating to valid accounts. If a consumer obtains a consumer report and identifies inaccurate information relating to an otherwise valid account, the source of the error could be the CRA that provided the consumer report (or another CRA, such as a reseller who

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[17] 15 U.S.C. § 1681i.
[18] 15 U.S.C. § 1681s-2(b)(1).
[19] 15 U.S.C. § 1681s-2(a)(8)(B). Specifically, section 623(a)(8)(B) requires the Agencies to weigh: (i) the benefits to consumers, as well as the costs on furnishers and the credit reporting system; (ii) the impact on the overall accuracy and integrity of consumer reports; (iii) whether direct contact by a consumer with a furnisher would likely result in the most expeditious resolution of a dispute; and (iv) the potential impact on the credit reporting process if credit repair organizations ("CROs") are able to circumvent the prohibition on CROs submitting disputes directly with furnishers.

aggregates consumer reports) or the furnisher. Moreover, if a consumer chooses to file a dispute with a CRA under section 611, both the CRA and the furnisher would investigate the dispute to determine whether the contested information contained in the consumer report is accurate. By contrast, if a consumer submits a dispute directly to the furnisher under section 623(a)(8), only that particular furnisher would be involved in the investigation; the CRA that prepared the consumer report would not be involved in the investigation, even though the CRA might have been responsible for the error.

If a consumer identifies an account on a consumer report that the consumer did not, in fact, establish, the consumer may dispute the existence of that account with the CRA that prepared the consumer report, in accordance with section 611, but the CRA likely would not be the source of the error. By proceeding through the direct-dispute process under section 623(a)(8), a consumer and furnisher would be able to efficiently determine whether the account was validly established because the consumer would be able to explain the basis of the dispute and provide the necessary supporting documentation to demonstrate that the disputed account was not, in fact, opened by the consumer.

Limiting the Direct-Dispute Process to a Dispute About a Fraudulent Account is Consistent with the FACT Act

Moreover, providing consumers with rights to use the direct-dispute process prescribed by section 623(a)(8) only in connection with a fraudulent account contained in a consumer report is consistent with other provisions of the FACT Act designed to combat identity theft. For example, section 605B of the FCRA provides victims of identity theft with the right to require CRAs to block the reporting of information resulting from identity theft.[20] Similarly, section 623(a)(6)(B) provides victims of identity theft with the right to prevent furnishers from furnishing to CRAs information that resulted from identity theft.[21] If the Agencies require furnishers to reinvestigate only disputes received directly from consumers that relate to fraudulent accounts that are the manifestation of identity theft, they will be focusing on the errors that Congress has recognized pose the greatest potential for harm to consumers through the credit reporting system.

Financial Institutions Should be Allowed to Use Mandatory Direct-Dispute Process for Any Kind of Dispute

To the extent that the Agencies propose rules that would *require* financial institutions to use the statutorily prescribed direct-dispute process under certain circumstances, the proposed rules also should clearly *allow* institutions to apply that same process to any type of dispute. Financial institutions currently have systems in place to voluntarily resolve disputes regarding information furnished to CRAs that are brought directly by their customers, and will continue to use those systems in a manner that effectively improves the accuracy of the furnished information. Nevertheless, any proposed rules that would require financial institutions to use the direct-dispute process

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[20] 15 U.S.C. § 1681c-2.
[21] 15 U.S.C. § 1681s-2(a)(6)(B).

prescribed by sections 623(a)(8)(D)-(G) under certain circumstances could require them to modify their existing systems to resolve disputes regarding information furnished to CRAs.

Financial institutions that are required to adapt their particular dispute-resolution systems to the statutorily prescribed procedures under certain circumstances, such as in cases of fraudulent accounts, should be allowed to extend those mandatory procedures to any type of dispute raised directly by customers. By allowing financial institutions to apply the procedures required under sections 623(a)(8)(D)-(G) to some, or all, disputes about information furnished to CRAs, the Agencies would provide institutions with an appropriate degree of flexibility to establish their own systems to efficiently respond to disputes raised directly by their customers.

We appreciate the opportunity to comment on this important matter. If you have any questions concerning these comments or if we may otherwise be of assistance in connection with this matter, please do not hesitate to contact me, at (415) 932-2178.

Sincerely,

Russell W. Schrader
Senior Vice President and
Assistant General Counsel