

February 11, 2008

By Electronic Delivery

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve
System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Docket No. R-1300

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

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: OTS-2007-0022

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

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

Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 1-5
Washington, DC 20219
Docket Number OCC-2007-0019

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

Ladies and Gentlemen:

This comment letter is submitted on behalf of Visa Inc. in response to the notice of proposed rulemaking ("Proposed Rule") by the Board of Governors of the Federal Reserve System, 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 December 13, 2007. The Proposed Rule provides proposed furnisher guidelines and regulations required under section 623(e) of the Fair Credit Reporting Act ("FCRA") and proposed regulations implementing the direct consumer dispute provisions of section 623(a)(8). Visa appreciates the opportunity to comment on this important matter.

ACCURACY AND INTEGRITY GUIDELINES AND REGULATIONS

Visa believes that the accuracy of our national credit reporting system is crucial to our consumer economy. Accurate consumer report information is important to consumers so that they can protect their good names. In addition, accurate consumer report information is critical to financial institutions that use it to determine to whom they are extending credit. In addition to appropriate data security safeguards, accurate consumer report information helps financial institutions prevent identity theft. Moreover, accurate consumer information coupled with an improved consumer understanding of financial products and services will help to ensure that consumers receive the best possible financial services. In this regard, Visa has undertaken multiple programs in its commitment to promote financial literacy for all consumers, including, for example, maintaining an online Web site, Practical Money Skills for Life, to provide consumers with the practical knowledge to manage personal finances.

Visa supports efforts to ensure the quality of the consumer information that is available through the credit reporting system. Financial institutions use consumer report information in making important credit decisions. In this regard, financial institutions have strong incentives to maintain accurate information about their customers and to furnish information to consumer reporting agencies (“CRAs”) with accuracy and integrity. 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, 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 promote the accuracy and integrity of the information that financial institutions furnish to CRAs.

Nonetheless, Visa is concerned that an overly prescriptive approach in the Proposed Rule would be counterproductive and could discourage the voluntary furnishing of information to CRAs. In this regard, Visa believes that the guidelines approach to defining the terms “accuracy” and “integrity” is the most appropriate in light of the additional flexibility that such an approach would provide. While Visa does not believe that the term “accuracy” should be defined in light of its clearly understood meaning within the context of the FCRA, Visa believes that the definition of “integrity” in the guidelines is more consistent with the language of the statute, as described in more detail in Attachment A.

Similarly, Visa is concerned that some aspects of the guidelines are too detailed and would limit the flexibility of financial institutions in complying with them. For example, as described in more detail in Attachment A, Sections II and IV of the guidelines would require that a furnisher’s policies and procedures address compliance with a checklist of various requirements, including, for example, a furnisher’s existing duties under the FCRA. These requirements will reduce a furnisher’s flexibility in complying with the accuracy and integrity regulations and

guidelines. In addition, these requirements are likely to impose unwarranted costs on the furnisher that would not improve the quality of the information that it furnishes to CRAs. As a result, Visa believes that the Agencies should significantly narrow the guidelines. Specifically, Visa believes that the guidelines should be limited to Section I relating to the nature, scope and objectives of a furnisher's policies and procedures and that Sections II through IV should be removed. This approach would avoid providing financial institutions with incentives not to furnish information to CRAs to the detriment of our national credit reporting system.

In addition to the general comments above, Visa has specific comments relating to the proposed accuracy and integrity guidelines, which are included as Attachment A.

DIRECT CONSUMER DISPUTE REGULATIONS

Visa believes that the Agencies should limit the circumstances under which a furnisher is required, by regulation, to reinvestigate direct consumer disputes to those disputes that relate to whether an account is fraudulent. In these cases, the 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. In contrast, errors with respect to valid accounts may come from either information provided by a furnisher or the CRA itself and are more effectively investigated through the existing dispute resolution process, as prescribed by sections 611 and 623(b) of the FCRA.

In addition to the general comments above, Visa has specific comments relating to the proposed direct dispute regulations, which are included as Attachment A.

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 (202) 419-4100.

Sincerely,

Daniel J. McDermott
Vice President
Government Relations

Attachment A

Accuracy and Integrity Guidelines and Regulations

Visa has the following specific comments relating to the proposed accuracy and integrity guidelines:

- Visa believes that the definition of “integrity” in the guidelines approach is more consistent with the plain language of the statute. In this regard, the definition in the regulatory approach incorporates the open-ended concept of completeness by requiring that information provided by a furnisher “not omit any term” that could contribute to an incorrect evaluation of the consumer.¹ Visa believes, however, that the term “integrity” must mean something different than “completeness.” For example, the FCRA includes a number of provisions where Congress referred to accuracy and completeness, as opposed to, and distinct from, accuracy and integrity.² While the Agencies note that the legislative history behind the Fair and Accurate Credit Transactions Act of 2003 provides different views concerning the meaning of the term “integrity,” Congress clearly knew how to describe the completeness of information. Visa believes that by using the term “integrity,” as opposed to “completeness,” Congress must have intended “integrity” to mean something other than “completeness.” In this regard, Visa believes that the definition of “integrity” in the guidelines approach is more likely to reflect the Congressional intent, *i.e.*, that information is reported in a manner that reduces the likelihood that the information will be erroneously reflected in a consumer report.
- Section I.B.2. under the regulatory definition approach indicates that a furnisher should ensure that information it furnishes “avoids misleading a consumer report user.” This standard, in essence, requires that a furnisher prove a negative, *i.e.*, that it is furnishing information in a manner that would not mislead a consumer report user. In light of the many different types of users of consumer reports and the varied levels of sophistication of such users, it is not clear how a furnisher ever could satisfy this requirement.
- Section I.B.3. under the regulatory definition approach indicates that a furnisher must investigate consumer disputes concerning the “accuracy or integrity” of information. The FCRA, however, does not require that a furnisher conduct an investigation of a

¹ The definition in the regulatory approach suggests that “credit limit” is a term that should not be omitted. In this regard, it is important to note that some credit cards do not include “credit limits,” and, as a result, an issuer of such a credit card could not furnish a credit limit for such an account.

² *See, e.g.*, 15 U.S.C. § 1681s-2(b)(1) (discussing “a dispute with regard to the completeness or accuracy of” furnished information).

consumer dispute relating to “integrity.” For example, the FCRA direct consumer dispute requirement relates only to “accuracy.” In addition, the CRA dispute process relates only to “completeness or accuracy.”³

- Section I.B.2. under the guidelines definition approach describes, in four instances, the action of furnishing information as “report[ing].” Throughout the FCRA, the concept of “reporting” generally refers to a CRA providing a consumer report. The FCRA describes the activities of a furnisher as “furnishing” or “providing” information to a CRA. In this regard, a furnisher should not be liable for how a CRA reports information that was provided by the furnisher. As a result, the Agencies should replace “reported” with “furnished.”
- Section II of the proposed guidelines would require that a furnisher’s policies and procedures “address compliance with all applicable requirements imposed on the furnisher under the FCRA.” This aspect of the guidelines is unnecessary. If an entity furnishes information to a CRA, the FCRA will impose a number of furnisher duties on that entity, whether or not the accuracy and integrity guidelines require the furnisher to address those duties in its accuracy and integrity procedures. In fact, by requiring a furnisher to “address compliance” with other furnisher requirements, the guidelines could subject a furnisher to double liability with respect to the same requirement. For example, section 623(a)(6)(A) requires that a furnisher employ reasonable procedures to respond to blocking notices that it receives from a CRA under section 605B. If a furnisher incorporated its “blocking” procedures into its accuracy and integrity procedures and the “blocking” procedures did not comply with section 623(a)(6)(A), the furnisher’s procedures to comply with the accuracy and integrity regulations arguably would not be “reasonable,” thereby potentially exposing the furnisher to double liability with respect to the requirements of section 623(a)(6)(A).⁴
- Section IV of the proposed guidelines would require that a furnisher’s policies and procedures “address” a checklist of 13 components, including, for example, using standard data reporting formats and standard procedures for furnishing information. Although the proposed regulations indicate that a furnisher must consider the guidelines and “incorporate those guidelines that are appropriate,” Section IV lacks this apparent flexibility. The proposed guidelines state that a furnisher’s policies and procedures should “address” each of these components. The requirement to address each of these 13 components is likely to not only reduce a furnisher’s flexibility in

³ 15 U.S.C. § 1681s-2(b).

⁴ The Agencies indicate in the Supplementary Information that Section II serves as a reminder to furnishers of their existing statutory duties. Visa believes that such a reminder should not be included in the final rule and would be more appropriately included in the supplementary information accompanying the final rule.

complying with the accuracy and integrity regulations and guidelines, but also to impose unwarranted costs on the furnisher that would not improve the quality of the information that it furnishes to CRAs.

Direct Consumer Dispute Regulations

Visa has the following specific comments relating to the proposed direct dispute regulations:

- The existing dispute resolution process, as prescribed by sections 611 and 623(b) 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. With respect to these disputes, the source of the error could be the CRA that provided the consumer report (or another CRA, such as a reseller) or the furnisher. As a result, these disputes are most efficiently resolved by including both the CRA and the furnisher in the investigation process.
- The definition of “direct dispute” does not, but should, clarify that a direct dispute is a dispute that relates to information “furnished to a CRA by the furnisher” that receives the dispute. As drafted in the Proposed Rule, the definition does not include this clarification, and, as a result, the direct-dispute regulations could be read to require an entity to investigate a direct dispute that relates to information furnished to a CRA by an unrelated third party.
- The Proposed Rule would not require a furnisher to investigate a direct dispute that is submitted by a credit repair organization. However, in many instances, a furnisher will not be able to determine with any certainty whether a dispute is submitted by, prepared by or submitted on a form supplied by an entity that is a credit repair organization or that would be a credit repair organization absent an applicable statutory exception. In this regard, Visa believes that the Agencies should clarify that a furnisher is not required to investigate a direct dispute if the furnisher “reasonably believes” or “has reason to believe” that the dispute is submitted by, prepared by or submitted on a form supplied by an entity that is a credit repair organization or would be a credit repair organization absent applicable statutory exception.
- With respect to frivolous or irrelevant disputes, the Proposed Rule provides three examples of disputes that “may be” frivolous or irrelevant, including because the consumer did not provide sufficient information to investigate the disputed information. The FCRA, however, provides that a furnisher is not required to investigate a direct consumer dispute if the furnisher reasonably determines that the dispute is frivolous or irrelevant, “including” because of two specified statutory

examples (which are substantially similar to the first two examples listed in the Proposed Rule). That is, the plain language of the statute provides two examples of disputes that are always frivolous or irrelevant. The Agencies must ensure that the Proposed Rule is consistent with the FCRA and make the two examples listed in the statute unconditional exceptions to the direct dispute investigation requirement.