



VIA ELECTRONIC MAIL

August 31, 2009

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)

Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, NW  
Washington, DC 20429  
Attention: RIN 3084-AA94  
[comments@fdic.gov](mailto:comments@fdic.gov)

Office of Thrift Supervision  
1700 G Street, NW  
Washington, DC 20552  
Attention: No. OTS-2008-0026  
[regs.comments@ots.treas.gov](mailto:regs.comments@ots.treas.gov)

National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314  
Attention: ANPR Part 717  
[regcomments@ncua.gov](mailto:regcomments@ncua.gov)

Federal Trade Commission  
Office of the Secretary  
Room 159-H (Annex C)  
600 Pennsylvania Avenue, NW  
Washington, DC 20580  
Attention: Project No. R611017  
<https://secure.commentworks.com/ftc-FACTAproviders>

Office of the Comptroller of the Currency  
250 E Street, SW  
Mail Stop 1-5  
Washington, DC 20219  
Attention: Docket No. OCC-2008-0022  
[regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov)

**Re: Interagency Advance Notice of Proposed Rulemaking  
Procedures to Enhance the Accuracy and Integrity of Information Furnished  
to Consumer Reporting Agencies Under Section 312 of the FACT Act**

Ladies and Gentlemen:

In response to the interagency advance notice of proposed rulemaking (“ANPR”), HSBC Finance Corporation<sup>1</sup>, and HSBC Bank USA, N.A., are pleased to offer comment on the questions posed procedures to enhance the accuracy and integrity of information furnished to Consumer Reporting Agencies (“CRAs”) under section 312 of the Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”). HSBC Finance Corporation and HSBC Bank USA,

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<sup>1</sup> Among other companies, HSBC Finance Corporation wholly owns HSBC Auto Finance Inc., HSBC Consumer Lending (USA) Inc., Beneficial Company LLC, HSBC Mortgage Services Inc., HSBC Card Services Inc., HSBC Bank Nevada, N.A., and HFC Company LLC.

N.A. (collectively “HSBC”) are part of HSBC North America Holdings Inc., one of the top ten financial services companies in the United States. HSBC – North America comprises all of HSBC’s U.S. and Canadian businesses with assets totaling \$547 billion at June 30, 2009. The company’s businesses serve customers in the following key areas: personal financial services, credit cards, specialty insurance products, commercial banking, private banking, and global banking and markets. With such a broad and expansive customer base, HSBC is a significant furnisher of information to CRAs, providing information on roughly 45 million accounts monthly.

## **I. Background**

Section 312 of the FACT Act amended section 623 by requiring the Office of the Comptroller of the Currency, the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Trade Commission (collectively, the “Agencies”) to issue guidelines for use by furnishers regarding the accuracy and integrity of the information about consumers that they furnish to CRAs and to prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines.

On December 13, 2007, the Agencies published a notice of proposed rulemaking (NPRM) in the Federal Register containing proposed rules to implement section 312 of the FACT Act. Section 312 of the FACT Act amends section 623 of the Fair Credit Reporting Act (“FCRA”), which describes many of the responsibilities of furnishers of information to CRAs. Among other topics, the NPRM sought comment as to the Agencies’ proposed definitions for “accuracy” and “integrity.”

On July 1, 2009, the Agencies published final rules to amended section 623 of the FCRA (the “Final Rules”). The Final Rules implement the requirement that the Agencies issue guidelines for use by furnishers regarding the accuracy and integrity of the information about consumers that they furnish to CRAs and prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines. The guidelines define the term “integrity” to mean, among other things, that information a furnisher provides to a CRA about an account or other relationship with the consumer and includes the information in the furnisher’s possession about the account or other relationship that the Agencies have: (i) determined that the absence of which would likely be materially misleading in evaluating the consumer’s creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living; and (ii) specifically listed in the guidelines. However, with respect to the definition of “integrity,” the Final Rules only mandated the reporting of credit limit within the Agencies’ guidelines.

## **II. HSBC Comment**

The Agencies issued this ANPR, which seeks comment as to whether it would be appropriate for the Agencies to add a requirement to the guidelines that would require a furnisher to provide an account opening date to a consumer reporting agency to promote the integrity of

the information, and to specify the circumstances under which a furnisher would be expected to do so. Further, the Agencies have sought comment more broadly on whether furnishers should be expected to provide any other types of information to a consumer reporting agency in order to promote integrity. Specifically, the Agencies requested comment on whether there are other items of information the absence of which would likely be materially misleading in evaluating a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, and which the Agencies should list in section I.(b)(2)(iii) of the guidelines. HSBC appreciates the opportunity to respond to the Agencies' request and hopes the following information proves useful to the Agencies in their consideration of the proposed rule.

## **1. HSBC as Furnisher and User of Credit Reports**

HSBC understands and acknowledges the necessity for accurate credit reports of the highest integrity, as HSBC is not only a furnisher of information but also an end user of the finished product, i.e. the credit report. Indeed, HSBC's consumer lending businesses are heavily reliant upon a credit reporting system that ensures credit reports reflect consumers' complete and accurate credit history in order to make sound credit decisions. Therefore, HSBC has a vested interest in assuring that the information supplied by every lending institution to the CRAs is complete, correct and timely delivered. This is paramount to the economic success of the financial services industry, and benefits both consumers and lenders.

## **2. Account Opening Date**

As an initial point, HSBC notes that several of the Agencies' questions seek comment as to both account opening date and other items of information. HSBC will focus its comments in this Section 2 as to account opening dates, and will respond more comprehensively as to other types of information within its Section 3 comments below. The Agencies have invited comment on the following questions related to the furnishing of an account opening date:

**Question 1: To what extent, and under what circumstances, do furnishers provide account opening dates to CRAs? What factors determine whether that information will be provided?**

HSBC regularly furnishes account opening date as part of its credit reporting. HSBC follows Consumer Data Industry Association ("CDIA") guidelines and reports on its consumer credit products in the standard Metro 2 format, which includes account opening date as an element of the base reporting. There are infrequent circumstances where account opening date is not able to be reported, typically due to system conversion, where data becomes irretrievable. Should the Agencies decide to revise their guidelines to require the reporting of account opening date, HSBC requests that any such requirement create exceptions for scenarios where the creditor does not possess an original account opening date in its files.

**Question 2: Would the absence of an account opening date or any other specific item in the information a furnisher provides to a CRA likely be materially misleading in evaluating a consumer’s creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living? If so, how, and under what circumstances?**

The lack of an account opening date can have an impact to the credit scoring of a consumer’s credit report. However, it may not have material impact to the overall evaluation of credit worthiness or character given there may be other relevant data on the profile that contributes to the overall assessment of the consumer. For example, account opening dates are used to define a consumer’s length of credit experience, which is often a factor in credit scoring models or underwriting criteria. If a consumer has other prolonged credit relationships appearing on his/her credit report, the lack of an account opening date as to an individual credit relationship may have minimal or no impact on an evaluation of creditworthiness. Conversely, if the account opening date inaccurately reports a more recent date, it may be misinterpreted to reflect recently sought/extended credit.

**Question 3: Does the omission of an account opening date or other items of information otherwise compromise the integrity of information provided by furnishers to CRAs? If so, how, and under what circumstances?**

The omission of an account opening date can impact the ability of the CRAs to accurately update account information contained on consumer’s credit files. When data furnishers provide monthly updates, the CRA typically uses the details of the account itself, including account opening date, to determine if that account has previously been reported. If the updated information is matched to an existing account on the consumer’s credit file, the CRA will update the existing account information accordingly. If the CRA is unable to match the updated information to an existing account, the CRA may add the information to the consumer’s credit file as a new account. If account opening date is not reported, it would make it more difficult for the CRAs to accurately match to existing accounts on the credit files. It is also possible that the lack of an account opening date will cause the reported information to fail the CRA’s internal data quality controls, and the CRA may not add the account information at all into the consumer’s credit file.

**Question 4: Should certain types of credit or other products or services be exempt from any proposed guideline for furnishing an account opening date or other items of information? For example, should any such new rules or guidelines be applicable only to mortgage or credit card products? Alternatively, should such rules or guidelines apply only to credit that is “consumer credit” as defined by Regulation Z (12 CFR 226)? Should any other types of credit products or services be exempt, and, if so, why?**

Specifically as to account opening date, HSBC believes it is able to furnish account opening date with respect to all loan types it currently reports. The only scenarios where HSBC would not be able to report account opening date are those instances described previously where HSBC does not possess the information as to an account.

**Question 6: Should accounts for which both positive and negative activity has been furnished on a regular basis for a certain period of time be exempt from any proposed rule**

**or guideline for furnishing an account opening date or other items of information? If so, what is the appropriate period of time, and why?**

HSBC understands the Agencies' question to be asking whether new reporting requirements should have retroactive effect as to historic reporting, causing a need to update historic reporting with account opening date in the event this information had not been previously reported. HSBC comments that it has not reported account opening date only in circumstances where it did not possess this information in its systems. Therefore, HSBC would remain incapable of re-reporting an account opening date in instances where it did not report that information previously.

**Question 7: How should “account opening date” or other terms used to identify other items of information be defined, if at all? Are there types of credit or other products or services that, because of their nature, would not have an account opening date or other identified items of information? If so, please identify such credit products or services and explain why they would not have an account opening date or other identified items of information.**

While most loan products carry an opening date reflecting the date the account was opened, HSBC believes it is not feasible to have a strict definition for account opening date. There are too many loan types, each with unique nuances, to enable a general definition. With respect to mortgage loans, an account opening date may remain the same if the loan terms are merely modified, but may change if the loan has been refinanced (where the prior loan account becomes reported as closed and fully paid). For credit cards, there may be a consolidation of several accounts, the transferring of a balance from one account to an existing or new account, or the acquisition of an account from an entirely different account originator. In these instances, the account opening date would reflect the actual date of the surviving or reissued account, with predecessor accounts becoming reported as closed and/or sold, but this is not always the case. For example, if a credit card is lost or stolen, and is reissued under a new account number, the date of account opening may reflect the opening of the predecessor account. Each loan product has its own unique scenarios and reporting of account opening date. Finally, loan type aside, when one financial institution acquires another institution, the prior creditor's name may simply be replaced, leaving the rest of the trade lines of acquired loans intact, including original account opening dates.

In summary, the life-span of the initial extension of credit is often reflected by the reported account opening date, but this is not always true, such as the instances of an account transfer or loan refinance. While the account opening date typically is associated with the opening of the account by the current creditor, there are scenarios where the opening date of a predecessor account may be reported. Should the Agencies decide to add account opening date as a required data element within their guidelines, HSBC comments that creditors should be given reasonable flexibility to report an account opening date which is not strictly defined, and which allows flexibility for the myriad of circumstances which may exist as to a particular loan type.

**Question 8: What specific costs and benefits would be incurred and realized by consumers if furnishers were expected to furnish an account opening date or other items of information to CRAs?**

With respect to account opening dates, HSBC does not anticipate any cost to consumers for data furnishers to report account opening date. Whether there would be a benefit to individual consumers would be a case-by-case question which depends on their overall credit history and the number of trade lines which have extended history. For example, if the consumer has other credit accounts dating back 10+ years, the adding of an account opening date from 5 years ago may not have any material impact on the evaluation of the consumer's credit worthiness. In contrast, adding a very recent account opening date could have a negative impact on the consumer, because it could indicate the customer has a recent need for credit.

**Question 9: What specific costs and benefits would be incurred and realized by furnishers and users of consumer reports if furnishers were expected to furnish an account opening date or other items of information to CRAs?**

With respect to HSBC as a furnisher of data, HSBC would anticipate no cost or benefit to itself in the event it is required to furnish an account opening date, so long as there is an exception for instances where it does not possess this data. As mentioned, HSBC furnishes account opening date as part of its current reporting when it possesses this information. As a user of credit reports, HSBC anticipates minimal benefit in the event the Agencies require reporting of account opening dates. While this information allows a user to more reliably determine a consumer's creditworthiness, this information is largely already being reported by furnishers. However, as noted, to the extent reporting requirements become overly prescribed, HSBC expects that certain existing furnishers may decide to cease their reporting. This would result in a less complete consumer profile for users of credit reports.

**Question 10: What would be the effect on the credit reporting system if furnishers were expected to furnish an account opening date or other items of information to CRAs?**

With respect to account opening date, HSBC would anticipate little change to the existing reporting system in the event the Agencies require this information to be furnished by those who report to a CRA. HSBC furnishes this information today, and expects to continue to do so voluntarily even if the guidelines do not prescribe such reporting. As to other items of information, HSBC will respond more comprehensively below.

**4. Reporting of other types of information**

The Agencies have requested comment more broadly on whether furnishers should be expected to provide any other types of information to a consumer reporting agency in order to promote integrity of reporting. Specifically, the Agencies request comment on whether there are other items of information the absence of which would likely be materially misleading in evaluating a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, and which the Agencies should list in section I.(b)(2)(iii) of the guidelines.

HSBC believes that the existing credit reporting process generally functions effectively for furnishers, users and consumers alike, and recommends that the Agencies not adopt regulations that are overly prescriptive regarding the many detailed data elements that may be reported about an account. The many different types of credit products offered by data furnishers, and the myriad of specific circumstances that may arise during the course of an account relationship with a consumer, require that there be some flexibility in the reporting requirements to ensure the “integrity” that is sought. The CDIA Metro 2 format provides all data furnishers with common standards and guidance to facilitate data reporting that is consistent across data furnishers and similarly interpreted and presented in credit reports by the CRAs who independently process the information reported. Periodic updates to the format and the specific data elements that are reported ensures that the credit reporting process remains as accurate and representative of consumer’s creditworthiness as possible.

Given the fact that furnishing credit information to the CRAs is voluntary, it is important that the requirements not become so burdensome or difficult to achieve that data furnishers reconsider their willingness to continue reporting information to the CRAs. As more credit grantors withdraw from reporting, the Agencies’ objective to promote integrity of credit reporting may be undermined, as the credit report would be incomplete and would not reflect a consumer’s true creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living. Such a result would benefit neither consumers nor credit grantors.

HSBC believes that the Agencies should list additional items of information in section I.(b)(2)(iii) of the guidelines only when, as in the case of credit limits, industry efforts to persuade all data furnishers to report the items of information fail, and the absence of that information can be shown to be materially misleading in evaluating a consumer’s creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

The Agencies’ have sought comment as to the costs and benefits to consumers if other items of information are mandated within the guidelines, but such an assessment would hinge on whether the information is part of existing reporting being done by HSBC, or is a new type of information. Mandating the reporting of items of information which are not currently being reported should be expected to impose cost to a data furnisher, which may or may not be passed to the consumer as increased cost of credit. To the extent guidelines require the furnishing of data which is not currently being reported by a furnisher, this could cause certain data furnishers to cease voluntary reporting altogether. This could have detrimental impact to consumers who expected positive account history to be reported, as it would not be available to be considered by future lenders.

In regards to the Agencies’ question concerning the cost to furnishers if other items of information become required of furnishers under the guidelines, HSBC believes it would incur costs in the event guidelines provide reporting requirements which vary by product type. HSBC would expect that as different loan types require unique reporting, existing efficiencies would be impacted. To the extent the Agencies decide to supplement guidelines to require furnishing other items of information, HSBC recommends that any such other information be applicable to all

loan types, whether open/closed end credit, mortgage, auto or other type of loan. Such an approach will allow HSBC and other furnishers to continue benefiting from efficiencies of standardized reporting.

With respect to the Agencies' question above seeking comment as to the supplementing of historic reporting with new required reporting elements, HSBC comments generally that furnishers should be given time to react to become compliant with such new guidelines. If other types of data not currently reported become included within the guidelines, HSBC comments that such guidelines should have effect only as to future reporting, following a reasonable implementation period. HSBC believes that such historic updated reporting should not be required due to the burden it would impose on data furnishers and the potential for other inaccuracies on consumers' credit files to result. Often, credit grantors do not retain electronic records on their closed or inactive accounts on the accounts receivable systems from which regular credit reporting is generated. Such information may not be readily available to be provided to the CRAs, particularly when the CRAs retain account information for seven years or longer when the account reflects good credit history. Requiring credit grantors to provide this information retroactively would be unduly burdensome and subject to error.

Further inaccuracies in consumers' credit files could also result if data furnishers are required to update information on accounts that were previously reported to the CRAs with a "final" account status, such as paid in full, charged off, sold to another lender, or several other such final statuses. Typically, the CRAs' systems do not allow a data furnisher to provide any further updates to these accounts. If updated information is reported to the CRAs, it could potentially result in duplicate account records being reported on the credit files, which could adversely affect the evaluation of the consumers' credit worthiness.

### **III. Conclusion**

HSBC appreciates the opportunity to comment on the Agencies' ANPR. In summary, HSBC supports the efforts of the Agencies to continue developing guidelines pertaining to the integrity of information provided to the CRAs. HSBC encourages the Agencies to balance the benefits of a largely voluntary reporting system with the potential that overly prescriptive guidelines may cause some current furnishers to withdraw from reporting, resulting in a less complete profile of consumers' credit history. To the extent the Agencies deem it necessary to supplement guidelines provided through the Final Rule, HSBC urges the Agencies to include only that information which is universally applicable to all loan types. Further, HSBC urges the Agencies to avoid overly prescriptive definitions, which may not be workable for the various circumstances which arise as to a broad array of loan types.

If there are any questions concerning this letter, or the Agencies require additional information, do not hesitate to contact Jim Hanley at (952) 358-4847 or Patricia Grace at (716) 841-5733.

Very truly yours,



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