



February 1, 2006

**TO:** Board of Directors

**FROM:** Douglas H. Jones  
Acting General Counsel

Christopher J. Spoth  
Acting Director  
Division of Supervision and Consumer Protection

**SUBJECT:** Interagency Advance Notice of Proposed Rulemaking regarding the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies under the Fair and Accurate Credit Transactions Act of 2003<sup>1</sup>

### **I. Introduction and Recommendation**

The Fair and Accurate Credit Transactions Act of 2003 (FACT Act) was signed into law on December 4, 2003. The FACT Act requires regulations on a variety of measures. This Board Case requests approval of an interagency advance notice of proposed rulemaking (ANPR) related to Section 312 of the FACT Act.

Banks and other businesses furnish both favorable and unfavorable information about their customers to consumer reporting agencies. Section 312 requires the FDIC, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Trade Commission (the Agencies) to draft regulations and guidelines to help ensure the accuracy and integrity of information furnished by the businesses they supervise to consumer reporting agencies. That Section provides a number of factors that the agencies must consider when drafting those documents. The staff of the Agencies believe that it is appropriate to solicit public comment on these factors prior to proposing the required regulations and guidelines. Therefore, the draft ANPR requests public comment on issues relevant to the Section 312 requirements.

The Division of Supervision and Consumer Protection (DSC) and the Legal Division recommend that the Board approve publication of the ANPR in the Federal Register for a 60-day comment period. We recommend that the Board authorize the Executive Secretary and the General Counsel to make technical, nonsubstantive, or conforming changes to the text of the ANPR where necessary to ensure that the Agencies can jointly publish the ANPR, and to take such other actions and issue such other documents as they deem necessary or appropriate to fulfill the Board's objectives.

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<sup>1</sup> For further information, contact April Breslaw, DSC, (202) 898-6609; David Lafleur, DSC, (202) 898-6569; John Jackwood, DSC, (202) 898-3991, Ruth Amberg, Legal Division, (202) 898-3736; Richard Schwartz, Legal Division, (202) 898-7424; and Richard Foley, Legal Division, (202) 898-3784.

## II. Discussion

Section 312 of the FACT Act amends section 623 of the Fair Credit Reporting Act (FCRA). Section 623, which is codified at 15 U.S.C. 1681s-2, describes the responsibilities of persons that furnish information to consumer reporting agencies. It requires furnishers to correct and update information furnished about a consumer to any consumer reporting agency and to have in place procedures to prevent the refurnishing of information that has been blocked as a result of identity theft.

### Section 312(a) Guidelines and Regulations

Section 312(a) of the FACT Act requires the Agencies to consult and coordinate with each other in the preparation of two documents. First, the Agencies are to establish and maintain guidelines with respect to those who furnish information to consumer reporting agencies “regarding the accuracy and integrity of the information relating to consumers that such entities furnish to consumer reporting agencies.” The Agencies are also required to draft regulations requiring furnishers to establish reasonable policies and procedures for implementing those guidelines.

Section 312(a) states that the Agencies, when developing the guidelines, are to perform the following tasks:

- identify patterns, practices, and specific forms of activities that can compromise the accuracy and integrity of information furnished to consumer reporting agencies;
- review the methods used to furnish information relating to consumers to consumer reporting agencies;
- determine whether furnishers maintain and enforce policies to assure the accuracy and integrity of information furnished to consumer reporting agencies; and
- examine the policies and processes used by furnishers to reinvestigate and correct inaccurate information relating to consumers furnished to consumer reporting agencies.

### Section 312(c) Regulations

Section 312(c) of the FACT Act directs the Agencies jointly to write regulations that identify the circumstances under which a furnisher is required to reinvestigate a dispute regarding the accuracy of information contained in a consumer report, based on a direct request of a consumer. As with 312(a), this provision provides factors to be considered by the Agencies when drafting the regulations. In this case, Section 312(c) states that the Agencies are to weigh the following factors:

- the benefits to consumers with the costs to the furnishers and the credit reporting system;

- the impact on the overall accuracy and integrity of consumer reports of the regulation's requirements;
- whether direct contact by the consumer with the furnisher would likely result in the most expeditious resolution of the dispute; and
- the potential impact on the process if entities known as credit repair organizations<sup>2</sup> are able to provide notices of disputes on behalf of consumers (even though another portion of Section 312(c) states that consumers who provide notice of dispute from a for-profit credit repair organization should be excluded from the protections given to consumers providing direct notice).

### Reason for the ANPR

Given the technical nature of the factors in Sections 312(a) and (c), the staff of the Agencies believes that it is appropriate to solicit public comment on these factors prior to proposing the required regulations and guidelines. As such, the draft ANPR seeks comment on issues tied to these factors. For example, with respect to Section 312(a), the Agencies seek detailed descriptions of the patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of information furnished to consumer reporting agencies. An example relating to Section 312(c) seeks a discussion of the circumstances under which a furnisher should or should not be required to investigate a dispute concerning the accuracy of information furnished to a consumer reporting agency based on a direct request from a consumer.

For each issue, the Agencies request that commenters explain how their comments might differ depending on the type of furnisher providing the information, the type of information being provided, the frequency of the reporting, or the type of consumer reporting agency to which the information is provided.

### Attachments

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<sup>2</sup> The term "credit repair organization" is defined in Section 403(3) of the Consumer Credit Protection Act. 15 U.S.C. § 1679b(3).