

MEMORANDUM TO: The Board of Directors

FROM: Sandra L. Thompson  
Director  
Division of Supervision and  
Consumer Protection

Sara A. Kelsey  
General Counsel

SUBJECT: Interagency Notice of Proposed Rulemaking Relating to the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies and Consumers' Right to Dispute Inaccurate Information Provided to Credit Reporting Agencies

**RECOMMENDATION:**

We recommend that the Board authorize the Executive Secretary to publish in the *Federal Register* a joint notice of proposed rulemaking (NPR) with the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Trade Commission (collectively, the Agencies) to implement Section 312 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). The attached NPR contains proposed regulations and guidelines that relate to the accuracy and integrity of information furnished to credit reporting agencies. It also contains proposed regulations that will govern the manner in which consumers may dispute the accuracy of information provided to credit reporting agencies directly with the entities that furnished such information.

We also recommend that the Board authorize the Executive Secretary and the General Counsel to make technical, nonsubstantive, or conforming changes to the text of the NPR where necessary to ensure that the Agencies can jointly publish the NPR, and to take such other actions and issue such other documents as they deem necessary or appropriate to fulfill the Board's objectives.

**DISCUSSION:**

***Background.***

Credit reporting is voluntary. However, where a party elects to provide information to a credit reporting agency (credit bureau), Section 623 of the Fair Credit Reporting Act (FCRA) has long required that it be furnished in an accurate manner.<sup>1</sup> Section 312 of the FACT Act<sup>2</sup> requires the Agencies to issue:

- guidelines for use by furnishers regarding the accuracy and integrity of consumer information that they furnish to credit bureaus;
- regulations that require furnishers to establish reasonable policies and procedures to implement the guidelines; and

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<sup>1</sup> 15 U.S.C. 1681s-2.

<sup>2</sup> Pub. L. No. 108-159, 117 Stat. 1952 (Dec. 4, 2003).

- regulations that explain when a furnisher must investigate a dispute about the accuracy of information contained in a consumer report that a consumer raises directly to the furnisher, rather than to a credit bureau.

**ANPR.** Given the technical nature of furnishing information to credit bureaus, the Agencies solicited public comment through an advance notice of proposed rulemaking (ANPR) in March 2006.<sup>3</sup> The ANPR contained detailed requests for comment related to the accuracy and integrity guidelines, and the circumstances when furnishers must investigate disputes raised directly by consumers.

**Comments Received.** The Agencies received comments from financial institution trade associations, interested businesses, consumer and privacy advocacy groups, credit score service providers, and individuals.

Many of the individual commenters explained the difficulty they had experienced in attempting to correct errors in their credit reports and asked for robust regulation. Some industry group commenters agreed that inaccurate information has been furnished and suggested that one reason for this is the failure of some furnishers to adhere to uniform reporting standards. Other industry commenters asserted that additional regulatory action is unnecessary on the basis that furnishers already have standardized procedures in place to ensure the accuracy of information and are currently investigating many consumer disputes. Consumer advocates agreed that the furnishing of inaccurate information remains a problem, suggested a number of causes, and requested express regulatory requirements to ensure accuracy and integrity. These commenters also stated that furnishers should provide credit bureaus with enough information to give a true picture of a consumer's creditworthiness.

Agency staff has carefully considered the comments received in response to the ANPR in developing the attached draft NPR.

## **NPR**

### "Accuracy" and "Integrity" Guidelines and Regulations

#### Definitions

Neither the text nor the legislative history of the FACT Act resolves how the terms "accuracy" and "integrity" should be defined. However, the Agencies propose that "accuracy" should be defined to mean any information that a furnisher provides to a consumer reporting agency about an account or other relationship with a consumer that reflects, without error, the terms of and liability for the account or relationship or the consumer's performance and other conduct with respect to the account or relationship.

The Agencies propose to seek comment on two alternative definitions of "integrity." Under the first approach, this term would be defined to mean that when a furnisher provides information to a credit bureau, it must put the information in context so that it does not contribute to an incorrect evaluation of a consumer's creditworthiness, credit standing, credit capacity, or other listed factors. Under this approach, information may be technically "accurate" yet lack "integrity" because it presents a misleading picture of the consumer's creditworthiness by omitting critical information, such as a credit limit on a revolving credit account.

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<sup>3</sup> 71 FR 14,419 (March 22, 2006).

Under the second approach, “integrity” would be defined to mean that a furnisher’s policies and procedures should ensure that information is provided in a form and manner designed to minimize the possibility that accurate information is erroneously reflected in a consumer report. The furnisher’s policies and procedures should also ensure that furnished information is substantiated by the furnisher’s own records.

#### Approach to Guidelines and Regulations.

The proposed *guidelines* encourage the voluntary furnishing of information to consumer reporting agencies. They list the objectives that should be accomplished by policies and procedures, explain practices that should be carried out, and describe components that should be included. The proposed guidelines also specifically include a provision stating that the policies and procedures should address compliance with all of the requirements that a furnisher must meet pursuant to the FCRA.

The draft *regulations* require each furnisher to establish and implement reasonable written policies and procedures concerning the accuracy and integrity of such information. These policies and procedures must be appropriate to the nature, size, complexity and scope of the furnisher’s activities. In addition, in establishing its policies and procedures, each furnisher must consider the proposed guidelines and incorporate those guidelines that are appropriate.

The Agencies also seek comment on whether the terms “accuracy” and “integrity” should be defined in the proposed guidelines or in the proposed regulations. Under the first alternative discussed above, the Agencies would define “accuracy” and “integrity” *in the regulations*. Under the second alternative, the Agencies would define the terms *in the guidelines*.

#### Direct Dispute Regulations

The draft NPR also proposes joint interagency regulations concerning the circumstances under which a furnisher is required to investigate a dispute raised directly by a consumer about the accuracy of information furnished in a consumer report.<sup>4</sup>

The proposed regulation would require a furnisher to investigate a direct dispute if it relates to items under the furnisher’s control, such as the consumer’s liability to the furnisher. However, the proposed regulation would not require a furnisher to investigate disputes that relate to information contained in a consumer report that is beyond the furnisher’s control. Such information includes, for example, the consumer’s employment record. In addition, the proposed regulation would not require a furnisher to investigate a “frivolous or irrelevant” direct dispute. However, a furnisher must inform a consumer of such a determination no later than five days after making it, must explain why it has been made, and must identify any information needed to remove the dispute from this category and conduct an investigation.

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<sup>4</sup> Currently, a consumer must dispute inaccuracies in his/her consumer report through the relevant credit bureau. *See* FCRA §611(a) (15 U.S.C. §1681i(a)). When it receives such a dispute, a credit bureau must contact the furnisher of disputed information, and the furnisher must conduct an investigation and take further steps required in the FCRA. *See* FCRA §623(b) (15 U.S.C. §1681s-2(b)).

Comment Period

Comments are due within 60 days of the publication of the interagency rule in the Federal Register.

Staff members knowledgeable about this case:

David P. Lafleur  
Division of Supervision and Consumer  
Protection (x86569)

April Breslaw  
Division of Supervision and Consumer  
Protection (x86609)

Ruth R. Amberg  
Legal Division (x83736)

Richard M. Schwartz  
Legal Division (x87424)

Richard B. Foley  
Legal Division (x83784)

Attachments