

April 17, 2009

MEMORANDUM TO: The Board of Directors

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

Roberta K. McInerney
Acting General Counsel

SUBJECT: Interagency Final Rule and ANPR on the Accuracy and
Integrity of Information Furnished to Consumer Reporting
Agencies

Interagency Final Rule on Consumers' Right to Dispute
Inaccurate Information Provided to Consumer Reporting
Agencies

RECOMMENDATION

We recommend the Board approve and authorize for publication in the *Federal Register* interagency final rules and guidelines and an advance notice of proposed rulemaking (ANPR) implementing Section 312 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). These documents are to be issued 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).

The final rules and guidelines relate to the accuracy and integrity of information provided (furnished) to consumer reporting agencies (CRAs). They also contain rules that will govern the manner in which consumers may directly dispute (with the company that furnished the information) the accuracy of information provided to CRAs. If implemented, they would take effect on the first day of the first calendar quarter following one year from the date of publication in the *Federal Register*. The attached ANPR requests comments related to a potential amendment to one aspect of the "integrity" definition in the final rule.

DISCUSSION

Background.

Credit reporting is voluntary. However, where a party elects to provide information to a CRA, the Fair Credit Reporting Act (FCRA) has long required that it be furnished

accurately.¹ Section 312 of the FACT Act² created additional requirements by directing the Agencies to issue:

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

2006 ANPR. Given the technical nature of how information is furnished to CRAs, the Agencies solicited public comment through an ANPR in March 2006 on how data is furnished and received.³ The ANPR contained detailed requests for comment related to the accuracy and integrity guidelines and the circumstances when furnishers must investigate consumer disputes. The Agencies received 197 comments from financial institution trade associations, interested businesses, consumer and privacy advocacy groups, credit score service providers, and individuals.

NPR. After carefully considering the comments received, the Agencies issued a notice of proposed rulemaking (NPR) in December 2007.⁴ The proposal would have required that each furnisher establish reasonable policies and procedures regarding the accuracy and integrity of the information about consumers that it furnishes to a CRA. The proposal would have required each furnisher to consider the accuracy and integrity guidelines in developing its policies and procedures and to periodically review and update these policies and procedures in order to ensure their continued effectiveness.

The proposal included an appendix to each Agency's regulations containing accuracy and integrity guidelines that (1) set forth the nature, scope, and objectives of a furnisher's policies and procedures; (2) enumerated the accuracy and integrity duties of furnishers under the FCRA; (3) identified the steps furnishers should take when establishing accuracy and integrity policies and procedures; and (4) detailed specific components that should be addressed in a furnisher's policies and procedures.

The proposal included two alternatives on the placement and substance of the "accuracy" and "integrity" definitions, which are not defined by Section 312. Under one option, called the "Regulatory Definition Approach," the definitions were placed in the proposed regulations. Under the other option, called the "Guidelines Definition Approach," the definitions were placed in guidelines rather than the regulations.

¹ FCRA § 623 (15 U.S.C. § 1681s-2).

² Pub. L. No. 108-159, 117 Stat. 1952 (2003).

³ 71 Fed. Reg. 14,419 (Mar. 22, 2006).

⁴ 72 Fed. Reg. 70,944 (Dec. 13, 2007).

Finally, the proposal set forth the circumstances under which a furnisher must investigate a dispute concerning the accuracy of information contained in a consumer report received directly from the consumer.

The FDIC received 19 comment letters in response to the NPR.⁵ The Agencies received comments from banks, thrifts, credit unions, credit card companies, mortgage lenders, other non-bank creditors, trade associations, consumer organizations, and individual consumers.

In general, commenters supported the accuracy and integrity proposal, except that all consumer organizations supported the specificity of the “Regulatory Definition Approach,” while most industry commenters favored the flexibility provided by the “Guidelines Definition Approach.” A number of industry commenters and most consumer organizations generally supported the proposed direct dispute rules.

Final Rule.

“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. Based on our review of the comments, the attached draft final rule places the definitions in the text of the final regulations. By doing so, the draft rule more clearly establishes that these definitions apply to all aspects of the regulations covering both the required policies and procedures and the responses to direct disputes.

Under the draft final rules, “accuracy” means that information that a furnisher provides to a CRA about an account or other relationship with the consumer correctly reflects the terms of and liability for the account or other relationship, the consumer’s identity, and the consumer’s performance and other conduct with respect to the account or other relationship.

Under the draft final rules, “integrity” means that information that a furnisher provides to a CRA about an account or other relationship with the consumer:

- Is substantiated by the furnisher’s records at the time it is furnished;
- Is furnished in a form and manner designed to minimize the likelihood that the information may be incorrectly reflected in a consumer report; and
- Includes the information in the furnisher’s possession that the Agencies have determined that the absence of which would likely be materially misleading in evaluating a consumer's creditworthiness or credit standing and have listed in the guidelines.

⁵ The other Agencies received between 16 and 27 comment letters.

The draft final rule includes credit limits, if applicable and in the furnisher's possession, as an item that must be furnished in order to ensure the "integrity" of the information. (As discussed below, the attached draft ANPR seeks comment on other types of information that should be covered under the "integrity" definition.)

Approach to Regulations and Guidelines.

The draft rule requires each furnisher to establish and implement reasonable written policies and procedures concerning the accuracy and integrity of the information it furnishes to CRAs. Under the draft rule, 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 policies and procedures must be reviewed and updated periodically.

The attached draft guidelines encourage the voluntary furnishing of information to CRAs and list the objectives that should be accomplished by policies and procedures, explain practices that should be implemented (for example, review existing practices, historical records, and feedback received from outsiders), and describe components that should be included, such as standardized data reporting formats and procedures.

Direct Dispute Regulations

The draft final rule sets forth 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. Currently, a consumer must dispute inaccuracies in his/her consumer report through the relevant CRA.⁶ Under the draft rule, the circumstances where a direct dispute is proper include, for example, disputes related to a consumer's liability; the terms of a credit account (such as the account balance or the credit limit), and the consumer's performance (such as the date a payment was made or the amount of such payment). This approach enables consumers to submit a dispute directly to the furnisher (with certain exceptions) when the issue in dispute relates to information for which the furnisher is responsible.

The draft rule further sets forth requirements for the address to be used for direct disputes, the content of a dispute notice, and the duties of furnishers after receiving a direct dispute. Finally, the draft rule establishes when a furnisher may deem a direct dispute to be frivolous or irrelevant which, pursuant to Section 312, it need not investigate.

Effective Date

⁶ See FCRA § 611(a) (15 U.S.C. § 1681i(a)). When it receives such a dispute, a CRA 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)).

The attached draft final rule will become effective on the first day of the first calendar quarter following one year from the date of publication in the *Federal Register*.

ANPR

As stated above, the final rule and guidelines include one example of information that must be furnished in order to ensure the “integrity” of the information: credit limits, if applicable and in the furnisher’s possession. In the NPR, the agencies also proposed including the opening date of an account or other relationship as an example of the type of information that must be furnished to ensure integrity. Based on the comments received, staff believes that we need further information to determine whether, and under what circumstances, the omission of an account opening date undermines the “integrity” of furnished information. Therefore, staff recommends that the Board approve the publication of the attached draft ANPR to obtain information, with a comment period of 60 days, that would assist the Agencies to determine whether, and under what circumstances, it would be appropriate to propose any additions to the “integrity” definition, including account opening dates.

CONCLUSION

For the reasons explained above, the staff recommends that the Board approve and authorize the publication in the *Federal Register* the final rules and guidelines and ANPR.

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Attachments