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February 8, 2008

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

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

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

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

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

Federal Trade Commission
Office of the Secretary
Room 159-H (Annex C)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Accuracy and Integrity of Information Furnished to Credit Bureaus

Dear Sir or Madam:

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to comment on the interagency proposal that will establish guidelines to ensure the accuracy and integrity of consumer information maintained by credit reporting

¹ The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.

With nearly 5,000 members, representing more than 18,000 locations nationwide and employing over 268,000 Americans, ICBA members hold more than \$908 billion in assets, \$726 billion in deposits, and more than \$619 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

agencies. This proposal is another step to implement provisions of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). The statute requires the agencies to issue guidelines on accuracy and integrity of information furnished to consumer reporting agencies as well as provide guidance for resolving direct disputes between consumers and furnishers of information.

In developing this proposal, the agencies have stressed they are particularly sensitive to the voluntary nature of information sharing and their desire to avoid burdens that would become a barrier to data submission. In drafting the proposal, the agencies evaluated information from a variety of sources, including comments from a 2006 advanced notice of proposed rulemaking. The agencies have now proposed a rule with three components: (1) rules on accuracy and integrity; (2) proposed guidelines to help implement the rules; and (3) proposed direct dispute resolution rules.

Overview of ICBA Comments

Generally, ICBA supports the proposed steps and applauds the agencies' efforts to provide flexible guidance that encourages rather than creates hurdles to information reporting. With the current turmoil in credit markets, particularly consumer credit markets, vibrant information sharing and transparency is important to ensuring continuing availability of credit for consumers. ICBA firmly believes that it is important to avoid a one-size-fits-all approach to the accuracy and integrity of information reporting.

An informal survey of ICBA members finds that most community banks report customer data to credit reporting agencies on a monthly basis. They submit the information electronically, either directly or through a third-party processor. However, ICBA concurs with the need for sensitivity by regulators when developing rules that impact credit reports to avoid impeding the flow of data. For example, one community bank that does not report states that additional requirements and increased regulatory burden would definitely be a barrier to changing this practice.

Not all community banks have written policies and procedures for reporting customer data. However, since the information is submitted and processed electronically, community banks follow established instructions from the credit reporting agencies or third party processors for submitting the information which in effect become the written procedures. ICBA encourages the agencies to take this into account when issuing the final rules.

ICBA agrees it is important to establish guidelines for accuracy and integrity of information furnished to consumer reporting agencies. Nearly every community bank in our informal survey reported finding errors in consumer files they obtained from credit reporting agencies. Usually, these involved inaccurate data from other companies. Typical errors include collection accounts not updated to show payment; duplicate student loan data; or misfiled data, especially where customers have similar names such as a father and son or mother and daughter living at the same address. Community banks

have also experienced customers' credit reports showing a second unknown spouse or customers erroneously reported as deceased.

When a customer contacts a community bank regarding a credit report error, the bank will typically research the information if it involves data that the bank provided and make corrections as appropriate, often through E-Oscar. If the bank did not furnish the data, it will refer the customer to the appropriate furnisher to correct the problem. Community banks generally let customers take the necessary steps to correct information involving other companies but also find that it can be a slow process to get credit bureaus to correct the data.

The Proposal

Definitions

Accuracy and Integrity. The FACT Act does not define “accuracy” or “integrity.” According to the legislative history, the intent is to focus on the quality of information furnished rather than its completeness.² The proposal would define “accuracy” as information furnished to a credit bureau without error, including details about the account such as terms and liability along with information about the consumer’s performance on the account. “Integrity” would be defined by the proposal as information about an account or other relationship that does not omit details, such as a credit limit or opening date, where the omission could contribute to an incorrect evaluation of the credit report.

The proposal offers two alternative approaches: a Regulatory Definition Approach and a Guidelines Definition Approach. The definition of “accuracy” is virtually identical under both alternatives, with slight differences in how “integrity” is defined. The key distinction is whether the definitions are in the rule or the supplemental guidelines.

The Regulatory Definition Approach is designed to ensure furnished information accurately identifies the consumer, the terms of accounts or other relationships and the consumer’s performance. This approach outlines six objectives:

- Ensure information accurately identifies the consumer and accurately reports account terms and conduct with the furnisher;
- Avoid presenting information in a way that might mislead a user;
- Conduct reasonable investigations of consumer disputes;
- Update information as needed;
- Minimize the likelihood that information, though accurate, might be erroneously reflected in a consumer report; and
- Ensure information is substantiated by the furnisher’s records.

² See, e.g., remarks of House Financial Services Committee Chairman Michael Oxley (R-OH) at 149 Cong. Rec. E2512, E 2516 (Nov. 4, 2003).

Under the Guidelines Definition Approach, the definition of accuracy would be the same but integrity would mean information is reported in a form and manner designed to minimize the likelihood that the information, though accurate, may be erroneously reflected in a consumer report. In addition, reported information must be substantiated by the furnisher's own records. This approach would establish four objectives for furnishers:

- Ensure information is accurate, i.e., reflects without error the terms of and conduct involving the account;
- Present information with integrity, i.e., report information in a way designed to minimize the chance the information is inaccurately presented in a consumer report;
- Conduct reasonable investigations of consumer disputes; and
- Update information as necessary.

ICBA believes either a regulatory or a guidelines approach would be acceptable but prefers the guidelines approach. Essentially, both proposals achieve the same ultimate goal. However, since revising regulations can be more difficult than updating guidelines and since flexibility and adaptability are critical, ICBA prefers the Guidelines Definition Approach.

ICBA believes the final rule should require information to be updated as necessary to ensure it is current. All users want reliable credit report information and current updated information is important to ensure reliability. However it is important that the final rule clarify that "updating" should be consistent with standard business practices. In other words, to be certain information is current, a furnisher should only be required to update information with its regular submission to a credit bureau.

ICBA agrees it is appropriate to define "integrity" to mean that information is presented in a way to ensure it is not misleading. ICBA also recommends that the final rule recognize that as long as a furnisher submits data in "good faith" it meets this standard. If a furnisher submits data that is current and complete to the best of its own records and does not selectively edit data it submits, that should be deemed acceptable.

Reasonable Policies and Procedures

The proposal would require furnishers to establish written policies and procedures to ensure the accuracy and integrity of information submitted to credit bureaus. The policies and procedures would have to be appropriate to the nature, size, complexity and scope of the furnisher's activities. Based on the premise that most community banks already have procedures that meet these requirements, the agencies do not believe this will be burdensome.

Not all community banks currently have written policies and procedures for submitting data to credit reporting agencies. While they follow instructions from credit bureaus or third party processors for submitting data, requiring banks to establish additional policies and procedures could be burdensome, contrary to the understanding of the agencies. While small reporters should be *encouraged* to implement written policies

and procedures, and while it may be appropriate to identify this as an *optional best practice*, ICBA is concerned that making this a mandate could discourage smaller reporters, including community banks, from reporting. In other words, rather than creating a new set of policies and procedures, smaller companies could find it easier to simply discontinue reporting. Therefore, **ICBA recommends that the final rule clarify that instructions established by credit reporting agencies or third party processors for data submission is acceptable** to meet this element of the proposal, as long as the instructions are designed to ensure accurate data.³

Elements of Policies and Procedures. When developing policies and procedures, the proposal would require furnishers to consider the accompanying guidelines to the rules. Furnishers would be expected to:

- Periodically review their policies and procedures, updating and revising them as needed to maintain their effectiveness;
- Conduct reasonable investigations of consumer disputes about the accuracy or integrity of information in consumer reports and taking appropriate action based on the outcome of such investigations; and
- Include policies and procedures reasonably designed to ensure information is updated as necessary to reflect the current status of a consumer's account, including any transfer of an account to a third party and any cure of a consumer's failure to abide by the terms of the account or relationship.

The rule would impose three steps for furnishers to take when establishing accuracy and integrity policies and procedures: (1) identify practices or activities that might compromise the accuracy and integrity of information; (2) evaluate the effectiveness of existing policies and procedures; and (3) evaluate the effectiveness of specific methods, including technology, used to provide information about consumers to credit bureaus.

Generally, ICBA finds these steps appropriate. ICBA agrees it is important for information furnishers to take steps to ensure information they submit is accurate. However, ICBA also strongly recommends the agencies incorporate flexibility to encourage smaller reporters to continue submitting data. That is, the final rule should reflect the fact that one size does *not* fit all and provide that the steps and processes taken by individual reporters should be commensurate with their size, operations, market area, and product offerings.

Where a community bank has policies and procedures, ICBA recommends that another *optional best practice* would be to encourage – not mandate – that the bank review the policies and procedures regularly, possibly annually, to ensure they remain current.

³ An added benefit to letting smaller entities rely on existing instructions will be consistency across furnishers of consumer data.

Again, it is important the agencies recognize that any mandate will be seen as another burden and cost that can add to elements that might discourage reporting. One of the critical components stressed by the agencies in developing this proposal is the desire to avoid burdens that could discourage reporting. Because examiners have been known to interpret guidance or best practices as mandates, **ICBA believes it is critical that examination procedures stress the flexibility of these steps and the fact that they are not designed as a checklist banks must follow.** If examiners start applying these as required elements, community banks will re-assess the benefits of reporting. In other words, eliminating reporting could become a proxy for reducing regulatory burden if examiners are inflexible.

Specific Components of Policies and Procedures. The proposal also outlines specific elements furnishers must address in developing policies and procedures, including:

- Developing a system appropriate to the nature, size, complexity and scope of the furnisher's business operations;
- Using standard data reporting formats and procedures;
- Maintaining appropriate records on information reported;
- Establishing appropriate internal controls for furnishing information;
- Training staff as appropriate;
- Providing appropriate and effective oversight of relevant service providers whose activities might affect the accuracy and integrity of information provided to credit bureaus;
- Furnishing information following mergers or sales to prevent errors through re-aging of information, duplicate reporting, or other problems that might affect the accuracy or integrity of information;
- Obtaining appropriate information from a consumer before making a final determination that a dispute is frivolous or irrelevant;
- Conducting investigations of direct disputes in a way that promotes efficient resolution of the dispute;
- Ensuring technology and other means of communication avoid errors;
- Providing credit bureaus with sufficient information to properly identify consumers; and
- Conducting periodic evaluations.

ICBA agrees that steps that encourage standard data formats are useful. This will help ensure information is reported in a manner that can be easily understood by all users, thereby increasing transparency and facilitating use of the data. It will also simplify submitting data if all companies are using the same approach. This is another reason to let data furnishers use or adapt instructions from credit reporting agencies and third party processors to meet any requirement for written policies and procedures.

ICBA generally supports the requirement that reporters should maintain records that can be used to substantiate the data. Furnishers need to maintain the information to research and resolve disputes. However, the final rule should clarify that this does not require a furnisher to maintain data other than what it would maintain in the

normal course of business nor does it add a new record retention requirement. Moreover, the final rule should permit a furnisher to arrange with a third party provider, such as a service bureau, to maintain records. And, it should be clarified that record retention practices should be reasonable and that the provision does not require a furnisher to maintain records indefinitely.

ICBA agrees it is helpful to incorporate a *recommendation* in the guidelines that appropriate internal controls are beneficial. However, ICBA is concerned that setting this as mandatory would be burdensome and discourage small reporters from continuing to submit data. Most community banks have procedures for auditing and reviewing internal controls and internal control practices of banks are regularly examined by the federal banking agencies. Therefore, including this as mandatory for this proposal is redundant and unnecessary for banks.

ICBA agrees training appropriate staff is useful for the guidelines. However, ICBA does not believe that additional detail is needed, such as who should be trained, how often training should be conducted or how it should be provided. Instead, to ensure the final rule has sufficient flexibility and does not become overly burdensome, it should allow each data furnisher to develop its own training mechanisms, letting it build on existing policies and procedures to ensure staff has appropriate knowledge and expertise.

Finally, the proposal would require furnishers to include appropriate and effective oversight of third-party service providers in their policies and procedures. **ICBA agrees this is appropriate.** Existing interagency guidelines and procedures require banks to take appropriate caution and conduct due diligence when evaluating and dealing with any third-party vendor or service provider.⁴ It also reflects the importance of permitting smaller companies, especially community banks, to rely on outside vendors and service agencies.

Direct Disputes

Another important component of the proposed rule would govern direct disputes between information furnishers and consumers. As noted by the agencies, many community banks already investigate direct disputes as a matter of good customer relations and sound business practices. The proposal would *require* a furnisher to investigate matters involving a consumer's liability for a credit account or other debt with the furnisher, the terms of the account, the consumer's performance on the account, and any other information in a consumer account involving the relationship between the furnisher and the consumer.

The proposal would also outline exceptions to this requirement. Furnishers would not be required to investigate disputes involving a consumer's identifying information; the identity of past or present employers; information derived from public records; or information related to fraud alerts or active duty alerts. Perhaps more important,

⁴ See, e.g., FDIC- Division of Supervision and Consumer Protection Risk Management Examination Manual for Credit Card Activities Chapter XX, THIRD-PARTY RELATIONSHIPS, pages 186 to 194, March 2007.

furnishers would not be required to investigate information prepared or submitted by a credit repair organization.

ICBA agrees with the proposed parameters for when a furnisher must investigate a direct dispute and the proposed exceptions. ICBA also agrees the dispute should come directly from a consumer and not from a credit repair organization. The requirement will help ensure consumers monitor and understand their credit reports, thereby also helping to encourage financial literacy. Requiring consumers to submit the information will also discourage less scrupulous credit repair schemes by directly involving the consumer.

Address. The proposal would restrict the address where a consumer could submit a direct dispute and only require a furnisher to investigate if the dispute is delivered to:

- (1) The address provided by the furnisher that is included on a consumer report;
- (2) An address clearly and conspicuously specified by the furnisher as the address where it will accept direct disputes; or
- (3) Any business address of the furnisher *if* the furnisher has not otherwise specified an address for direct disputes.

ICBA supports this element of the proposal. This will help eliminate confusion and ensure disputes are handled expeditiously and efficiently. It will also avoid unnecessary duplication of effort by preventing disputes from being delivered to more than one office at a bank, thereby helping minimize confusion and potential burden.

Content of the Notice. Before a furnisher would be required to investigate a dispute, the consumer would have to provide:

- His or her name, address and telephone number;
- Sufficient information to identify the account of other relationship in dispute;
- Specific information that the consumer is disputing and an explanation of the basis for the dispute; and
- All supporting documentation or other information reasonably required by the furnisher to substantiate the basis of the dispute.

ICBA supports this requirement. Outlining these elements in the rule will help avoid disputes about what is needed to trigger an investigation. It also will help clarify the specifics of the dispute and therefore help focus an investigation. Moreover, by setting the parameters of the information necessary to trigger an investigation, the rule will help expedite the investigation.

Frivolous or Irrelevant Disputes. As proposed, furnishers would not be required to investigate a frivolous or irrelevant dispute. Under the statute, these include disputes where a consumer fails to furnish sufficient information for an investigation or a dispute is substantially similar to one previously submitted and investigated. If a consumer does not provide enough information, the proposal would require the furnisher to make a good faith effort to obtain that information before concluding the dispute is frivolous or

irrelevant. However, once a furnisher determines a dispute is frivolous or irrelevant, it must notify the consumer, including an explanation about why the dispute is deemed frivolous or irrelevant.

ICBA believes the parameters outlining a frivolous or irrelevant dispute are helpful. ICBA also recommends the final rule limit how far back a furnisher should be required to investigate a dispute; certainly, furnishers should not be required to investigate a dispute for which it no longer is required to retain records. ICBA also believes furnishers should be able to refuse to investigate disputes from customers who have abused the process, such as those who constantly dispute minor discrepancies. ICBA does agree it is appropriate to encourage furnishers to make a good faith effort to obtain additional information not initially provided by a customer, although the final rule should clearly recognize the customer's responsibility to furnish that information. If the customer is not cooperating or refuses to provide the information, the final rule should specifically provide that that the furnisher has no further obligation.

Finally, **ICBA believes that communications about disputed information should be written.** While oral communications may be helpful during the process, to avoid misunderstandings and disagreements, the official customer notice and the final resolution notice from a furnisher should be in writing.

Regulatory Burden

The agencies believe the proposal will ease the potential burdens of the new requirements in a number of ways. First, the agencies believe many furnishers already are likely to have policies and procedures in place and so the new requirements will only require updating those policies. Second, the agencies believe many furnishers already investigate direct disputes as a matter of good customer relations, sound business practices or because they are required to do so under other consumer protection statutes. Moreover, the proposed exceptions from mandatory investigation of direct disputes, including an exception for irrelevant and frivolous disputes, should alleviate burden. Finally, while the agencies are not authorized to grant an exception for smaller entities, the requirement is designed to be flexible, encouraging furnishers to tailor their policies and procedures to their own size and operations.

ICBA supports the flexibility in the proposal that allows a furnisher to tailor its procedures to its own size and operations. However, as noted above, not all furnishers have established policies and procedures. This is especially true with smaller entities, including community banks. Therefore, the final rule should permit furnishers to adapt or rely on the instructions of credit reporting agencies or service providers in lieu of establishing policies and procedures.

Time for Compliance. The agencies also are required to estimate the amount of time needed to meet the requirements of the proposed rule. Generally, the agencies estimate it will require 21 hours on average to implement the written policies and procedures on accuracy and integrity, including training appropriate staff on the changes. An additional four hours is estimated to adjust procedures for handling complaints received directly from consumers and another four hours to implement the new dispute

notice requirement. The agencies also estimate it will take approximately five minutes to send each notice.

ICBA seriously questions these estimates. Until furnishers actually begin to implement the elements of the proposal, it will be impossible to verify whether it will take more time to implement the final rule. Moreover, until a final rule is published, it is impossible to estimate how long it will take to comply. However, it is probably unreasonable to believe it will only take five minutes to prepare and send a notice since it is likely to take much longer than that merely to review and investigate a dispute.

Conclusion

ICBA commends the agencies for putting forth guidelines that will help ensure the accuracy and integrity of information in consumer credit reports. Community banks rely on that information to extend credit and open accounts with consumers, and the accuracy and integrity of that information is critically important. However, as the agencies recognize, the credit reporting system is entirely voluntary. To encourage reporting, therefore, it is important to ensure that individual furnishers can adapt the guidelines in the final rule to reflect their own unique and individual circumstances, including size, market and products and services offered.

ICBA strongly encourages the agencies to ensure that the final rule retains this flexibility. Moreover, ICBA recommends that any examination procedures that the banking agencies develop for these rules clearly reflect this flexibility so that examiners do not treat the elements as a mandatory checklist. Otherwise, the burdens imposed could become a barrier to continued reporting, thereby diminishing the value of the information and sapping the vitality of the credit reporting process.

Thank you for the opportunity to comment. If you have any questions or need additional information, please contact the undersigned by telephone at 202-659-8111 or by e-mail at robert.rowe@icba.org.

Sincerely,



Robert G. Rowe, III
Senior Regulatory Counsel