American Financial Services Association

February 11, 2008

Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 1–5
Washington, DC 20219

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

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

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

Robert E. Feldman
Executive Secretary
Attn: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

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

RE: Interagency Notice of Proposed Rulemaking: Procedures To Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies Under Section 312 of the Fair and Accurate Credit Transactions Act [Docket ID OCC–2007–0019, Docket No. R–1300, RIN 3064–AC99, Docket No. OTS–2007–0022, RIN 3084–AA94]

Ladies and Gentlemen:

The American Financial Services Association ("AFSA") appreciates the opportunity to comment on the proposed 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 ("FACTA"). We commend the Office of the Comptroller of the Currency, Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, and Federal Trade Commission ("Agencies") for their efforts in this area.

AFSA is the national trade association for the consumer credit industry protecting access to credit and consumer choice. The Association encourages and maintains ethical business practices and supports financial education for consumers of all ages. AFSA has provided services to its members for more than 90 years. The Association's officers, board, and staff are dedicated to

continuing this legacy of commitment through the addition of new members and programs, and increasing the quality of existing services.

Furnishers Report Information Voluntarily

AFSA believes that the information our members furnish to CRAs is generally accurate and that the systems in place are designed to assure accuracy and to reflect technological innovations that can improve accuracy. We also believe that our members take appropriate steps to investigate any disputes regarding that accuracy. We urge the Agencies to recognize our members' efforts and consider the fact that certain regulatory requirements may create compliance burdens and substantial disincentives to our members that could discourage them from continuing to provide information to CRAs voluntarily. In that way, overly burdensome regulatory requirements placed on furnishers could have the effect of diminishing the quantity and value of information furnished to CRAs.

Furnishers provide information to CRAs on a voluntary basis, incurring costs to prepare and provide information to CRAs. They engage in this activity because they understand the intrinsic value of a reliable credit reporting system. After all, most furnishers are also users of consumer reports. It is critical for the Agencies to understand, however, that furnishers may not be willing to continue to participate in the credit reporting system at any cost; at some point the benefits of furnishing will be outweighed by the cost. This determination will vary among furnishers, although smaller furnishers will likely have a lower threshold for compliance obligations. For example, one AFSA member company significantly reduced the types of accounts on which it reports to the credit bureaus in 2004, right after FACTA was signed into law, due to its increased obligations and legal exposure.

Therefore, while AFSA recognizes and supports the public policy goals associated with improving the accuracy and integrity of information maintained in a consumer's file at a CRA, we urge the Agencies to avoid imposing requirements that could result in significantly less information furnished to CRAs with no demonstrable improvement in quality. In this regard, we believe the Agencies should make clear that a furnisher's obligation is only with respect to the transaction and experience information it furnishes to a CRA; the furnisher has no obligation to seek public record information or other third party information, particularly information involving bankruptcy filings and other court actions with respect to the accounts that are furnished.

Regulatory Definition Approach Versus Guidelines Definition Approach

AFSA's member companies support the Guidelines Definition Approach ("GDA"), rather than the Regulatory Definition Approach ("RDA") described in the proposed rules.

Comments regarding the RDA

The RDA focuses heavily, but imprudently, on how a particular user of a credit report may interpret information in that credit report. For example, under the definition of "integrity" in proposed §334.41 (b), information furnished would be lacking in integrity if it omitted any "term . . . which can reasonably be expected to contribute to an incorrect evaluation by a user" of a credit report. Users of credit reports may vary in their sophistication, methods and uses of the credit report. The proposed definition would require a furnisher to anticipate which terms may be relevant to such varied users and furnish information in a manner that accounts for substantial variation among users. This would create insurmountable practical burdens on furnishers.

Additionally, the proposed definition of "integrity" focuses on whether a given user's evaluation based on the credit report is "incorrect." Many of the purposes for which a user might evaluate a credit report involve subjective, judgmental attempts to ascertain a consumer's present characteristics as a predictor of future behavior. In some instances an individual evaluates the credit report, in others credit report data is evaluated using complicated statistical models. Given all of those factors, how would the Agencies propose the relative inaccuracy of any such evaluation be measured? Any proposed standard of inaccuracy would likely focus too heavily on a subjective user's characteristics and opinion as to what is accurate and would therefore impose excessive burdens on furnishers.

Furthermore, proposed section I B.2 of the Guidelines under the RDA would require furnishers to ensure that the information they furnish "avoids misleading a consumer report user as to the consumer's creditworthiness." This guideline suggests that a furnisher is responsible for how a user of a credit report might evaluate a particular trade-line in the context of a consumer's overall credit history. For example, if a consumer has a history of delinquent payment on credit card obligations but has paid consistently on-time with respect to their automotive financing, would the automotive finance company furnishing accurate information of satisfactory payment history be misleading a user of the consumer report? Any proposed standard that might clarify what is misleading to a consumer report user would likely focus too heavily on a particular user's subjective characteristics and assertions as to whether they were misled and therefore impose excessive burdens on furnishers.

Proposed section I B.2 of the Guidelines, provides that the furnisher's policies and procedures should be reasonably designed to ensure that information that it furnishes about accounts or other relationships with a consumer among other things, "(b) accurately reports the terms of those accounts or other relationship; and (c) accurately reports the consumer's performance and other conducts…" This terminology confuses the furnishing of information to CRAs with the reporting of consumer report information by a CRA. Furnishers should be held responsible only for information furnished to CRAs; not for how such information is **reported** on a consumer report. We recommend that, if the Agencies adopt the regulatory approach, that these references be modified to refer to information being accurately "furnished" as opposed to "reported."

The RDA also requires that a furnisher "ensure that it updates information it furnishes as necessary to reflect the current status of the consumer's account or other relationship, including: (a) any transfer of an account . . . to a third party; and (b) any cure of the consumer's failure to abide by the terms of the account or other relationship." Currently, some member companies

report on an account until that account is transferred to a collection system that may or may not have a credit reporting interface. The proposed rules could be interpreted to require those companies to furnish the account history after the account is transferred to the collection system – thus to require furnishers to provide information other than their own transactions and experience. Such an interpretation would require AFSA member companies either to enhance their collection system to add monthly credit bureau reporting or stop all monthly reporting. Due to the expense of the first option, some AFSA member companies would likely stop furnishing on any accounts to the credit bureaus. Thus, AFSA respectfully requests that the final rulemaking allow a creditor to stop furnishing information on an account, as long as all information previously furnished was accurate when furnished.

Comments regarding the GDA

Although AFSA's member companies support the GDA, it also poses potential issues of great concern for furnishers.

The proposed definition of "integrity" in section I B 2 of the Guidelines would require furnishers to furnish information in a format that is "designed to minimize the likelihood that the information, although accurate, may be erroneously reflected in a consumer report." AFSA asks that the Agencies clarify that a furnisher's use of the industry standard Metro II reporting format would be sufficient under this definition and sufficient to meet the requirements of section IV L of the Guidelines. While neither AFSA nor its members will comment on the Metro II format itself, we do understand that the Metro II format is designed to ensure that information is reported in a standardized and clearly understandable form and manner, with a time stamp specifying the date to which the information pertains. Without this important change to the proposed rule, the current definition could be interpreted to impose an obligation on the furnisher to ensure that the information is **reported** with appropriate identifying information. Furnishers should be held accountable for information **furnished or provided** to the CRAs, but **cannot** be held accountable for the manner in which it is ultimately reported

Proposed section IV G of the Guidelines would require furnishers to implement policies and procedures that would include "furnishing information about consumers to consumer reporting agencies following mergers, portfolio acquisitions or sales, or other acquisitions or transfers of accounts or other debts in a manner that prevents re-aging of information, duplicative reporting or other problems." The references to "sales" and "other . . . transfers" in the context of this requirement imply that a seller of accounts would have a continuing duty to furnish information about consumers, or police the buyer/transferee's furnishing of information in some manner after the sale/transfer date to prevent the buyer/transferee from engaging in certain furnishing practices.

This obligation substantially exceeds the obligations imposed on an account-seller/furnisher under the FCRA. In fact, after a seller/transferor has sold/transferred an account to another party, they would have no basis under the FCRA to continue furnishing with respect to the account. Therefore, the provision should be rewritten to remove these references and avoid the implication that a seller/transferor has a continued duty with respect to how information is furnished on an account after the sale/transfer, by changing the word "following" to refer to "as

to." This would still require notification as to the sale or transfer, but not require information to continue to be furnished after the sale or transfer. The provision, as re-drafted, should make clear that either the seller or purchaser may give the notification as to the sale/transfer, consistent with the Metro II format. Lastly, the reference to "other problems" is vague and would not provide enough guidance to allow furnishers to develop compliant policies and procedures; it should be removed.

Proposed section IV K would require that a furnisher's technological means of communication with CRAs are "designed to prevent duplicative reporting of accounts, erroneous association of information with the wrong consumer(s), and other occurrences that may compromise the accuracy and integrity of information contained in consumer reports." AFSA's members understand the importance of using appropriate technological tools in the furnishing of information. However, this proposed guideline is written in a manner that suggests furnishers are responsible not only for assuring their own use of appropriate technological tools, but ensuring that CRAs agree the interface with any such tools a given furnisher may implement also meet this standard. The provision should be rewritten to make clear that a furnisher's responsibility to "ensure" use of appropriate technological and other means of communication applies only to the aspects of communication under the furnisher's control. Furnishers do not control the reporting platform and therefore should not be held responsible for the technological implementation of the platform.

Proposed section IV M would require that a furnisher's evaluate "its own practices, consumer reporting agency practices, investigations of disputed information, correction of inaccurate information, means of communication and other factors that may affect the accuracy and integrity of information furnished to consumer reporting agencies." AFSA's members understand the importance of furnisher self-evaluation and keeping up with information available to the general public or those involved in furnishing information to CRAs. However, this proposed guideline could be interpreted to suggest that furnishers are responsible not only for this type of self-evaluation and monitoring, but also for evaluating CRAs practices and the investigation/correction practices of other furnishers. This would impose substantial burdens on furnishers; furthermore there is no practical assurance that a furnisher would have access to such information from CRAs or other furnishers. This provision should be rewritten to make it clear that a furnisher should periodically review its own practices of furnishing, investigating disputes and correcting information and should also periodically review information available to furnishers generally that affects the accuracy and integrity of information the furnisher furnishes.

Direct Dispute

AFSA member companies have several concerns regarding the proposed regulations that would implement the direct dispute provisions in section 312.

First, consumers have an easy existing method of indicating on their credit reports that an item is in dispute and consumers may even include a narrative explaining the dispute pursuant to section 611 of the FCRA. The proposed section would make furnishers responsible for failing to

respond to disputes directed to erroneous addresses, depriving furnishers of the protections they have under section 623 (a) (1) (B) (i) of the FCRA and section 623 (a) (8) (D) of the FCRA.

Second, AFSA commends the Agencies for requiring a furnisher to investigate a direct dispute only if a consumer submits a dispute notice to the furnisher at the address provided on a consumer report or to an address specified by the furnisher specifically for disputes. If consumers were able to submit a direct dispute to any furnisher address, it would be impossible for the disputes to be resolved in a timely manner. However, AFSA urges the Agencies to adopt an additional requirement that direct disputes submitted to furnishers by consumers be clearly identified as such, in order to avoid ambiguity as to furnisher obligations. AFSA also urges the Agencies to revise proposed §334.43 (c) to clarify that if a consumer report contains an address for the furnisher other than the address provided by the furnisher, the furnisher is not liable for failing to respond to a consumer's dispute made to that other address.

Third, furnishers should not be held responsible for information that is outside their own experience with consumers. A prime example of this problem is the reporting of the status of a consumer's bankruptcy case. CRAs do not, and should not, obtain information such as the status of a consumer's bankruptcy case from the consumer's creditors. The furnisher's sole responsibility is to furnish CRAs with the fact that the specific account on which information is being furnished is involved in a bankruptcy case. Many, if not most, furnishers do not monitor, or even have a significant interest in, the ever changing status of the consumer's bankruptcy case beyond the fact that it was filed. To the extent that bankruptcy proceedings are reflected in a consumer's file, that information comes from the bankruptcy court or vendors with whom CRAs contract to furnish such information.

Fourth, the original creditor is currently not responsible for responding to a dispute on an account once that account has been sold or transferred. AFSA commends the Agencies for not changing this rule. It would be nearly, if not totally, impossible for creditors to track, and then request that changes be made to, accounts that have been sold or transferred.

Fifth, the proposed rules require that the furnisher go beyond reviewing the current account information and check the original application, which would be very burdensome and costly. Whether information needs to be confirmed or not is a judgment that should be left with the furnisher on a case by case basis, depending on the type of dispute presented.

Sixth, proposed section IV H of the Guidelines states that a furnisher's policies and procedures should address "attempting to obtain the information listed in § ___.43(d) of this part from a consumer before determining that the consumer's dispute is frivolous or irrelevant." This is circular reasoning and substantively changes a furnisher's obligations under §623 (a) (8) (F). Under the FCRA a furnisher has no duty to investigate if the consumer's dispute is frivolous or irrelevant because of, for example, a "failure of a consumer to provide sufficient information to investigate the disputed information." The FCRA acknowledges that it is reasonable to expect a consumer to provide the furnisher with information substantiating the dispute, to allow the furnisher to investigate. This structure adequately protects the consumer because §623 (a) (8) (F) (ii) & (iii) require furnishers to provide consumers a notice that their dispute has been deemed frivolous and the reasons for that determination. It is in such a notice that a furnisher would

identify for a consumer the information necessary for the furnisher to investigate the dispute. The FCRA does not require that the furnisher do more than identify the information for the consumer. If the guidelines require furnishers to attempt to obtain this information before determining that a dispute is irrelevant, that would impose a huge burdens furnishers that exceed the requirements under the FCRA. This would only play into the hands of the numerous unscrupulous "credit repair" companies that are already undermining the integrity of the credit reporting system.

Lastly, AFSA members ask the Agencies to reiterate that currently a consumer does not have a private cause of action against a furnisher under the FCRA if the furnisher fails to update information that is the cause of the direct dispute with the furnisher.

Answers to Specific Questions

1. The alternative definitions of ''integrity'' and the alternative placement of the definitions of ''accuracy'' and ''integrity'' in regulatory text or in the guidelines.

AFSA recommends that the Agencies use the GDA to define "integrity" because the RDA approach to "integrity" is overly burdensome. The RDA approach to "integrity" does not reflect the fact many of the purposes for which a user might evaluate a credit report involve subjective, judgmental attempts to ascertain a consumer's present characteristics as a predictor of future behavior. To put it simply, "Different users use different information differently." The RDA approach to "integrity" is also inconsistent with the voluntary nature of credit reporting. Creditors are not required to furnish any information, so requiring furnishers who choose to furnish certain information would be contradictory.

2. Whether the definition of accuracy should specifically provide that ''accuracy'' includes updating information as necessary to ensure that information furnished is current.

AFSA does not support including a reference to "current" in the definition of "accuracy." AFSA's member companies note that even if they furnish information to CRAs, those agencies may choose not to report that information. AFSA's members can only control what they furnish. If the Agencies choose to define accuracy with reference to information being "current," AFSA urges the Agencies to specifically define "current." Member companies note that it may take 30 or more days for updated information furnished to a CRA to appear in a consumer's credit report. Additionally, most AFSA members do not furnish daily but on a regular recurring cycle, such as 30 days. Any definition of "current" should allow furnishers to continue such a reasonable cycle rather than require immediate updated furnishing with any change to a customer's account. AFSA suggests that information furnished to a CRA be considered "current" if, as of when furnished in accordance with a furnisher's ordinary course of business furnishing cycle, it is consistent information reflected in the furnisher's internal records.

The definition of "accuracy" should be that the information furnished was accurate at the time it was furnished. Every credit report tradeline includes the date that the last information was furnished. There should be no duty to update information that was accurate as of the date it was furnished. To require otherwise would undermine the voluntary nature of the reporting system.

3. Whether the definition of ''accuracy,'' should be made applicable to direct disputes if the Guidelines Definition Approach is adopted.

The definition of "accuracy," as modified above, should be made applicable to direct disputes, but the definition of "integrity" should not.

4. Whether the proposed definition of ''accuracy,'' as modified above,'' is appropriate for the direct dispute rule, and, in particular, whether the definition of ''accuracy'' needs to be clarified in order to more clearly delineate those disputes that, while subject to the CRA dispute process, would not be subject to the direct dispute rule.

The definition of "accuracy," as modified, is appropriate for the direct dispute rule. It does not need to be clarified in order to more clearly delineate those disputes that, while subject to the CRA dispute process, would not be subject to the direct dispute rule.

5. Whether the Agencies' approach to direct disputes appropriately reflects the relevant considerations, or whether a more targeted approach would represent a more appropriate balancing of relevant policy considerations.

A more targeted approach would be detrimental to the credit reporting system. AFSA members realize that they need to furnish accurate information to CRAs, which they do. Mandating exactly what information furnishers should furnish takes control from the furnisher and consequently destroys the fabric of the voluntary credit reporting system.

The Federal Reserve's recent study[1] provides further evidence that the current system is working because the accuracy of information furnished by creditors results in credit scores which are, in fact, predictive of performance.

6. Whether proposed § _.43(c)(2) should be amended to permit furnishers to notify consumers orally of the address for direct disputes and, if so, how an oral notice can be provided clearly and conspicuously.

The proposed § _.43(c)(2) should not be amended to permit furnishers to notify consumers orally.

7. What additional mechanisms should be required, if any, for informing consumers of their direct dispute rights.

Additional mechanisms for informing consumers of their direct dispute rights should not be required. However, it might be helpful if the Federal Trade Commission added a note on its identity theft Web site saying, in effect, "If you would like to dispute something on your credit report, please use the address of the company provided **FOR THAT PURPOSE** on the credit report," and further, if the Federal Trade Commission were to make available a generic dispute form, clearly labeled as such, that could be use for purposes of submitting such disputes.

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[1] *Report to the Congress on Credit Scoring and Its Effects on the Availability and Affordability of Credit.* Board of Governors of the Federal Reserve System. March 2007.

8. How direct dispute requirements would affect furnishers to smaller and specialty CRAs, such as CRAs that report medical information, check writing history, apartment rental history, or insurance claim filings.

This question is not applicable to AFSA members.

9. Whether the guidelines should incorporate a specific time period for retaining records in order to provide for meaningful investigations of direct disputes, and, if so, what record retention time period would be appropriate.

Consumer finance companies are required to comply with several federal and state record retention laws and regulations. AFSA member companies have developed complicated record retention rules to comply with existing legal requirements. Further rules are unnecessary. They would be extraordinarily burdensome and completely counterproductive.

10. Whether § _.42(c)(2) should exclude certain types of business addresses, such as a business address that is used for reasons other than for receiving correspondence from consumers or business locations where business is not conducted with consumers.

Many AFSA members have hundreds or even thousands of discrete business locations. It would be neither feasible nor possible under these circumstances for a furnisher to effectively monitor and respond to consumer direct disputes if the dispute could be sent to any location other than the location specifically designated for that purpose. The only addresses that should be permissible are those addresses that specifically comply with the either (1) and (2) – or both – under (c) *Direct Dispute Address* under § 660.4 *Direct Disputes*. **No other address should be permissible for use in filing a dispute.**

11. The Agencies specifically request comment on the impact of this proposal on small institutions' current resources, including personnel resources, and whether the goals of the proposal could be achieved for small institutions through an alternative approach.

The impact of the proposal on small institutions' current resources would be severe. Companies would have to use significant monetary and personnel resources to comply with the appendix. It is impossible to estimate the full impact. AFSA companies typically spend about an hour verifying each dispute. We expect that there will be a serious increase in direct disputes once this proposal in accepted. We expect that consumers will choose to use direct disputes over contacting CRAs. We believe that the "Estimated Hours Burden" and the "Estimated Cost Burden" are extremely low.

The Agencies' estimates appear to assume that the bulk of the disputes received will be handled by a low level clerical person. Furnishers recognize the importance of maintaining the accuracy of the credit reporting system and the potential liability that they face if the information being furnished is not accurate and, therefore, the function of investigating and responding to legitimate direct disputes will be handled by a much higher level employee than a clerk.

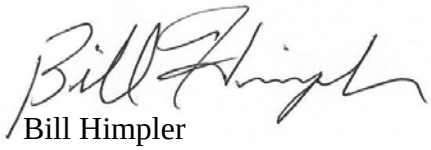
12. The Agencies also invite comment on ways to minimize the burden of the final rule.

AFSA recommends that the Agencies: (1) Eliminate the requirement for written policies and procedures since the furnisher's self interest compels it to strive to furnish accurate information. Furthermore, often furnishing of information is done on an automatic basis, with the logic as to how and when it is reported, being incorporated into extremely complex computer systems and program; (2) Ensure adequate time for implementation because of the size, complexity and diversity of the industry that will have to implement whatever is ultimately adopted; (3) More clearly distinguish the responsibilities of the furnishers from the responsibilities of CRAs. (4) Eliminate liability from "accuracy" and "integrity;" (5) Remove any obligation to update information that was accurate when furnished because the system in voluntary and a furnisher always has the option to stop furnishing; and (6) Clarify that there is no need for a furnisher to continue reporting on the debt once the debt is sold because the furnisher no longer has information on the debt.

Conclusion

AFSA appreciates the opportunity to comment on these proposed rules. Please feel free to contact me with any questions at 202-296-5544, ext. 616 or bhimpler@afsamail.org.

Respectfully submitted,



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