



February 11, 2008

Office of the Comptroller of the Currency
250 E Street, SW., Mail Stop 1-5
Washington, DC 20219
regs.comments@occ.treas.gov
Docket ID OCC-2007-0019

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

Ms. Mary Rupp, Secretary of the Board
National Credit Union Administration
1775 Duke St
Alexandria, VA 22314-3428
regcomments@ncua.gov

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal
Reserve System
20th Street and Constitution Ave. NW.,
Washington, DC 20551
regs.comments@federalreserve.gov
Docket No. R-1300

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

Federal Trade Commission
Office of the Secretary
Room 159-H (Annex C)
600 Pennsylvania Avenue NW.,
Washington, DC 20580
secure.commentworks.com/ftc-FACTAfurnishers
Attention: RIN 3084-AA94

RE: Proposed Rulemaking Regarding Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies Under Section 312 of the Fair and Accurate Credit Transaction Act (FACT Act); Docket ID: OCC-2007-0019; Docket No. R-1300; RIN 3064-AC99; OTS-2007-0022; and RIN 3084-AA94.

Dear Sirs and Madams:

The Wisconsin Bankers Association (WBA) is the largest financial trade association in Wisconsin, representing approximately 300 state and nationally chartered banks, savings and loan associations, and savings banks located in communities throughout the state. WBA appreciates the opportunity to comment on the proposed rule regarding furnishers of information to consumer reporting agencies.

The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), Office of Thrift Supervision (OTS), National Credit Union Administration (NCUA), and Federal Trade

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Commission (FTC) (collectively, the Agencies) have issued a joint proposed rule regarding procedures to enhance the accuracy and integrity of information furnished to consumer reporting agencies (CRAs) under Section 312 of the Fair and Accurate Credit Transaction Act (FACT Act). To assist the Agencies in promulgating the final rules, WBA offers the following comment.

Background

The Fair Credit Reporting Act (FCRA) sets forth standards for the collection, communication, and use of information bearing on a consumer's creditworthiness, credit standing, credit capacity and other credit characteristics. Section 623 of the FCRA describes the responsibilities of persons that furnish information about consumers (furnishers) to CRAs. Section 312 of the FACT Act amended Section 623 by requiring the Agencies to issue guidelines for use by furnishers regarding the accuracy and integrity of the information about consumers that they furnish to CRAs and to prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines.

Section 312 also requires the Agencies to issue regulations identifying the circumstances under which a furnisher must investigate a dispute concerning the accuracy of information provided by a furnisher to a CRA and information contained in a consumer report based on a direct request from the consumer. The proposed rule is meant to satisfy these requirements.

The Agencies have, therefore, issued a proposed rule which contains (1) accuracy and integrity regulations and guidelines; and (2) direct dispute regulations. With respect to the first noted item, the Agencies specifically ask whether the terms "accuracy" and "integrity" should be defined in regulations or in guidelines. The following provides background on this question, as well as the proposed direct dispute regulations.

Accuracy and Integrity Regulatory Approach

Under the regulatory approach "accuracy" would be defined to mean:

[t]hat any information that a furnisher provides to a CRA about an account or other relationship with the consumer reflects without error the terms and liability for the account or other relationship and the consumer's performance or other conduct with respect to the account or other relationship.

Under this definition, "accuracy" is intended to require that furnishers have reasonable procedures in place to ensure that the information they provide to CRAs is factually correct.

Furthermore, the Agencies propose the term "integrity" to mean:

[t]hat any information that a furnisher provides to a CRA about an account or other relationship with the consumer does not omit any term, such as a credit limit or opening date, of that account or other relationship, the absence of which can reasonably be expected to contribute to an incorrect evaluation by a user of a consumer report of a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

In addition to the two key defined terms, the Agencies have also proposed that the

regulatory approach would include guidelines with six objectives that a furnisher's policies and procedures should be designed to achieve. As stated in the proposed rule, the six objectives seek to ensure that: (1) information is furnished accurately; (2) information is furnished with integrity; (3) the furnisher conducts reasonable investigations of consumer disputes about the accuracy and integrity of information in consumer reports and takes appropriate actions based on the outcome of such investigations; (4) information is reported in a form and manner designed to minimize the likelihood that it will be erroneously reflected in the consumer report; (5) information furnished is substantiated by the furnisher's records; and (6) the furnisher updates information it furnishes as necessary to reflect the current status of the consumer's account or other relationship.

Accuracy and Integrity Guideline Approach

As noted earlier, the Agencies have included in the proposed rule an alternative approach which would define the terms "accuracy" and "integrity" in the guidelines—rather than in the regulations. The guidelines would provide that a furnisher should have written policies and procedures reasonably designed to ensure that the information it furnishes about an account or other relationships is accurate. Under the guidelines approach, the definition of "accuracy" is defined the same as proposed in the Regulatory approach.

Under the guideline approach, furnishers would also be required to ensure that the information they furnish about accounts or other relationships with a consumer is furnished with integrity. Under the guideline approach the Agencies have proposed to define "integrity" differently than how the term is defined under the Regulatory approach. The guideline approach would define "integrity" to mean:

[t]hat any information that a furnisher provides to a CRA about an account or other relationship with a consumer: (1) is reported in a form and manner that is designed to minimize the likelihood that the information, although accurate, may be erroneously reflected in a consumer report; and (2) should be substantiated by the furnisher's own records.

Direct Disputes Regulation

The proposed rule also contains provisions which would implement the requirement under Section 623(a)(8) of the FCRA to identify the circumstances under which a furnisher is required to investigate a dispute concerning the accuracy of information about a consumer contained in a consumer report, based on a direct request by the consumer.

The proposed rule would require a furnisher to investigate a direct dispute if it relates to: (1) the consumer's liability for a credit account or other debt with the furnisher; (2) the consumer's performance or other conduct concerning a credit account or other debt; (3) the consumer's performance or other conduct concerning a credit account or other debt with the furnisher; and (4) any other information contained in a consumer report regarding an account or other relationship with the furnisher on the consumer report. The proposed rule is designed to permit direct disputes in virtually all circumstances involving disputes with respect to the types of information typically provided by the furnisher to a CRA.

The Agencies have also proposed exceptions to the requirements that a furnisher must investigate a direct dispute. The exceptions relate to information where the disputes are more appropriately directed to the CRA, such as information derived from public records. Additionally, a furnisher would not be required to investigate a direct dispute if the dispute is submitted by, prepared by or on behalf of a consumer, or is submitted on a form supplied

to a consumer, by a credit repair organization. Furthermore, the proposed rule would require the furnisher to investigate a direct dispute only if a consumer submits a dispute notice to a furnisher at a specific address of the furnisher, provided by the furnisher, or any business address of the furnisher, if the furnisher has not so specified and provided an address for submitting direct disputes.

A furnisher would only be required to investigate a direct dispute if the consumer provides the furnisher with a direct dispute notice that: (1) identifies the specific information that is being disputed; (2) explains the basis for the dispute; (3) includes all supporting documentation required by the furnisher to substantiate the basis for the dispute; (4) includes name, address and phone number of the consumer; (5) includes sufficient information to identify the account or other relationship that is in dispute; (6) includes the specific information that the consumer is disputing and an explanation of the dispute; and (7) includes all supporting documentation or other information reasonably required by a furnisher to substantiate the dispute, such as a copy of the consumer credit report that contains the allegedly inaccurate information.

The proposed rule also addresses the concern of frivolous or irrelevant disputes. Under the proposed rule, the Agencies have identified that a dispute would be frivolous or irrelevant if the furnisher is not otherwise required to investigate a direct dispute under the proposed rule. Furnishers would be required to notify a consumer of its determination that a dispute is frivolous or irrelevant not later than five days after making that determination.

Analysis

WBA commends the Agencies' efforts to implement a rule which meets the requirements of Section 312 of the FACT Act while providing the flexibility necessary so as to not deter the willingness of furnishers to voluntarily report consumer credit information to a CRA; however, WBA does not believe the current process for which furnishers furnish consumer credit information to a CRA has been abused or is erroneous in nature. Furnishers rely on consumer credit reports for many of their key consumer creditworthy decisions. As such, WBA believes furnishers already have a built-in incentive to continue accurate reporting and resolve disputes in a timely manner. WBA is concerned that the imposition of further burdensome regulatory requirements would have a chilling effect on the willingness of furnishers to report consumer credit information to CRAs on a voluntary basis; a result WBA fears would weaken the effectiveness of consumer credit information contained in a consumer report.

WBA believes the most effective approach to defining "accuracy" and "integrity" is through the guideline approach. This approach will provide furnishers with a structure to assist them in the creation of policy and procedures, including effective and efficient monitoring and audit procedures. WBA believes the guideline approach will still provide the flexibility necessary for furnishers to create policies and procedures which appropriately reflect their own nature, size and scope of their respective business activities.

Additionally, WBA believes the proposed direct dispute requirements to be fair. While WBA anticipates the number of direct dispute inquires to increase, thus causing additional costs and resources to furnishers, we acknowledge that many furnishers already actively research and directly respond to consumers' direct inquires. As such, WBA believes the proposed rule provides further structure and direction on direct dispute procedures for furnishers while imposing limited regulatory burden.

WBA also supports the American Bankers Association's (ABA) concerns that the proposed guidelines be flexible enough so that furnishers are not duplicating costs and efforts as a result of multiple disputes filed by credit repair organizations on behalf of consumers in an effort to overwhelm furnishers. As acknowledged by ABA, this type of activity many times will result in a furnisher removing negative, but accurate, credit information from a consumer report. WBA believes such activities harm the very accuracy and integrity of consumer information the Agencies are trying to protect. WBA agrees with ABA's suggestion that the exception relating to credit report organizations be broadened so that furnishers would not be required to investigate a direct dispute if the furnisher reasonably believes a credit repair organization is involved.

WBA also supports ABA's position that the guidelines need to be flexible enough so furnishers are not required to delete accurate but negative consumer credit information. WBA believes such information, while negative, to be an accurate reflection of a particular consumer's credit history. WBA believes the removal of such negative information jeopardizes the effectiveness of consumer reports and will weaken the system.

Conclusion

WBA believes the current process by which furnishers report consumer credit information to be effective and is concerned that further regulatory requirements will have a chilling effect on the willingness of furnishers to voluntarily report necessary, accurate consumer credit information. WBA recommends the Agencies adopt the proposed accuracy and integrity guideline approach as a means to provide the flexibility furnishers need in order to tailor their policy and procedures around their own business activities. WBA recognizes the Agencies attempts to limit additional regulatory burden when creating its direct dispute regulations and, subject to our comments concerning credit repair organizations and frivolous disputes, generally supports the proposed direct dispute investigations and exceptions; direct dispute notice and the notice contents; and the Agencies' definition of frivolous or irrelevant direct disputes.

Once again, WBA appreciates the opportunity to comment on the proposed rule.

Sincerely,

Kristine Cleven
Assistant Vice President - Legal