May 22, 2006

John C. Dugan
Comptroller of the Currency
250 E Street, S.W.
Public Information Room
Mail Stop 1-5
Washington, D.C. 20219
Attention: Docket No. 06-04

Jennifer J. Johnson
Secretary
Board of Governors of the Federal
Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551
Attention: Docket No. R-1250

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

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429
Re: RIN 3064-AC99

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552
Attention: Docket No. 2006-06

Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428
Re: 12 CFR Part 717

Re: Interagency Advance 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 [71 Fed. Reg. 14419 (Mar. 22, 2006)]

Dear Sirs and Madams:

The Mortgage Bankers Association ("MBA")[1] appreciates the opportunity to comment on the joint Advance Notice of Proposed Rulemaking (the "ANPR") of the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance

[1] **The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 500,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 3,000 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.**

Corporation, Office of Thrift Supervision, National Credit Union Administration, and Federal Trade Commission (the "Agencies"), in which the Agencies are seeking information to assist them in developing the guidelines and regulations required by Section 312 of the Fair and Accurate Credit Transactions Act ("FACTA"). Section 312 requires the Agencies to:

- Issue guidelines "regarding the accuracy and integrity of the information relating to consumers" that furnishers of information ("furnishers") provide to consumer reporting agencies ("CRAs");

- Issue regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines; and

- Issue regulations that identify the circumstances under which a furnisher must reinvestigate a dispute over the accuracy of information contained in a consumer report based on a direct request of the consumer. (Currently, furnishers need not reinvestigate disputes unless the consumer first raises the dispute with the CRA.)

MBA commends the decision of the Agencies to seek public comment on a broad variety of issues in this ANPR before proposing specific guidance and regulations. The responses to this ANPR, together with the responses to the Board's previous request for comment on its study investigations of disputed consumer information reported to consumer reporting agencies,[2] should allow the Agencies to understand the challenges that the mortgage industry and other furnishers face in dealing with the accuracy of consumer credit histories. Mortgage lenders rely heavily on the information reported to the CRAs by others as the most important component in their evaluation of a borrower's risk of non-payment. Failure to have correct information results in credit being granted with terms not appropriately gauged to risk, inappropriate denials of credit, or the making of unsound loans.

With the advent of credit and mortgage scoring and the reliance on payment behavior in automated underwriting systems, accuracy is critical. Mortgage companies make every effort to provide accurate information to the CRAs and to comply with FCRA. Credit reporting agencies also play a significant role in ensuring accuracy by establishing communication procedures for transmitting information and for processing the information received from furnishers.

As described in more detail below, MBA believes that most problems with the accuracy or integrity of credit information furnished to CRAs do not occur when the furnisher provides the information, but when it is not properly reflected in the files of the CRA because of problems that occur in communicating information to the CRA or in how the CRA processes the data. These guidelines will be applicable only to furnishers, and, therefore, are unlikely to have a significant impact on the accuracy or integrity of the information in credit files without changes in how the information is processed once the CRA receives it. If the guidelines impose new obligations on furnishers without ensuring that the CRAs can and do accept the enhanced information, they will be of little value. Therefore, the guidelines should not attempt to correct problems that occur once information has left the furnisher's control.

The mortgage industry is not averse to responding to a dispute raised directly by a consumer rather than indirectly through a CRA, and, in fact, already does so informally in many instances.

---

[2] *See* 69 Fed. Reg. 48494 (Aug. 10, 2004).

But it is important to define the furnisher's responsibilities in such a procedure clearly. Consumers should not be allowed to raise the same dispute directly with both the CRA and the furnisher. The furnisher's obligations should be limited to matters within its knowledge and control and should not apply if the furnisher cannot identify the account being reported in the CRA's files. Finally, neither the accuracy and integrity guidelines nor the direct-dispute-resolution regulation should attempt to impose an alternative procedure for resolving substantive disputes between a consumer and a lender, such as a dispute over whether a payment has been posted properly.

Accuracy Guidelines and Regulations

A1. **Please describe, in detail, the types of errors, omissions, or other problems that may impair the accuracy and integrity of information furnished to consumer reporting agencies. Please specify whether any such problems result in credit file information that (1) is incorrect, including inaccurate account information, public record data, or collection account data; (2) is out of date or includes stale account information; (3) is associated with the wrong consumer; (4) omits potentially significant information about the consumer account or transaction, such as credit limits for or positive information about the account; (5) is duplicative; (6) may mislead users of consumer reports; or (7) otherwise adversely affects consumers, particular types of consumers, or the credit reporting system. Finally, please describe the significance of such problems for consumers, particular groups of consumers (*e.g.,* borrowers with poor or limited credit histories), users of consumer reports, and the credit reporting system.**

Although MBA will respond to each of the questions raised in the ANPR, MBA's answer to this question includes general background that explains the process by which mortgage companies report information to CRAs, respond to consumer disputes, and communicate corrections to CRAs. Many of our answers to later questions refer back to this response.

FCRA does not mandate reporting of consumer information and thus, in theory, credit reporting is voluntary. Most mortgage companies, however, are required by investors and government entities, such as Fannie Mae, Freddie Mac, and HUD, to report "full file" credit information each month to the major CRAs. "Full-file" reporting means that the mortgage company must describe the exact status of each mortgage it is servicing as of the last business day of each month. *See, e.g.,* Fannie Mae Single Family Servicing Guide, § I.304.09 (Jan. 31, 2003). Statuses that must be reported for any given mortgage include: new origination, current, delinquent (30-, 60-, 90-days, etc.), foreclosed, and charged off. In sum, the "full file" concept requires that servicers report both positive and negative credit information on each loan.[3] The information is reported in a standard, industry-wide format; the current version is referred to as "Metro 2." Although the general format is standard, the major credit repositories do not always use the same codes to identify a particular status. *See id.* § VII.107.

Most mortgage companies' reporting to CRAs is integrated with their servicing platform. In other words, the status that the company reports to the CRA is the same as its internal record of

[3] There are situations, however, where servicers do not report negative information. For example, Fannie Mae and Freddie Mac require servicers to report forbearances as military indulgence if the borrower is a servicemember on active duty and eligible for benefits under the Servicemembers Civil Relief Act. *See* Fannie Mae Single Family Servicing Guide, § III.1 ex. 1 (Sept. 30, 2005).

the status. Problems in the accuracy or integrity of data occur when the furnisher provides the data to the CRA and it is not properly reflected in the CRA's files. Unfortunately, the data exchange between mortgage companies and CRAs has not always been smooth. While we believe great strides have been made to improve communications between servicers and CRAs in recent years, residual effects of past problems with information exchange and continued limitations to communication vehicles may contribute to accuracy problems. Moreover, "credit repair" schemes diminish the ability of servicers and CRAs to maintain the accuracy and integrity of the data.

We note the following specific issues that can affect the accuracy and integrity of information furnished to CRAs:

- **Meaning of "Accuracy" in FCRA.** A preliminary issue that the guidelines should address is the meaning of "accuracy" in the context of FCRA. A consumer may disagree with the mortgage company's assessment of the status of the account. For example, the consumer may claim to have made a payment that the mortgage company does not believe it received. If the mortgage company has concluded that the payment was not, in fact, received, then a report to that effect should not be regarded as inaccurate within the meaning of Section 312. As discussed below, the Real Estate Settlement Procedures Act ("RESPA") governs substantive disputes over the accuracy of account records for residential first mortgage loans and the Fair Credit Billing Act ("FCBA") governs them for home equity lines of credit ("HELOCs"). The Agencies' guidelines should define "accuracy" for purposes of Section 312 as accurate reporting of the status of the account as reflected in the furnisher's records (including a notation that the item is disputed, where required by FCRA or other applicable law).

- **Rejection of Records without Notice.** Lenders send monthly customer credit information to the CRAs by tape or computer-to-computer Electronic Data Interchange ("EDI"). As a result of internal audits, servicers have become aware that individual records were being rejected by the CRAs due to format or data errors. Unfortunately, servicers are not consistently notified of the rejections or provided with the loan-level detail necessary to identify which records are rejected and for what reasons. CRAs are able to offer summary reports on request, but these reports merely indicate how many records were received and how many were rejected. CRAs have made an effort to provide loan-level data when requested, but unfortunately the reports are extremely difficult to read. At least one CRA presents the data in an unreadable hexadecimal format. Accuracy would be improved if the credit repositories provided these reports as a standard business process, using the same format and data standards so that furnishers could understand them.

  According to our members, the most common reason for rejected data is the inclusion of hyphens and other punctuation. A hyphenated last name or street address will be rejected under the Metro 2 format. Other reasons for rejection include, among other things, lack of a trade line for the creditor, incorrect address format, and too many middle initials. While servicers make every attempt to convert the accurate information from their servicing systems to an acceptable format for the CRAs, errors do occur, as can be expected with any data conversion process. The CRAs – as data managers -- must have a consistent means to provide reconciliation/exemption reports to furnishers.

- **Non-Reporting under RESPA.** There are two situations in which mortgage servicers do not report information to CRAs because of RESPA requirements:

- **Servicing Transfers.** Under HUD's RESPA servicing-transfer regulation, servicers may not report a borrower delinquent if the borrower sends his or her mortgage payment on time to the transferor (old servicer) within the first 60 days after the transfer date. In order to avoid non-compliance, most servicers simply suspend all delinquency reporting for 60 days after a servicing transfer. While technically the servicer could report delinquent borrowers who failed to meet the specific statutory conditions, few servicers do so. As a result, servicers under-report delinquencies when servicing transfers occur. *See* 12 U.S.C. § 2605; 24 C.F.R. § 3500.21. In some instances, operational problems also prevent reporting of positive information during the period immediately following a transfer.

- **Qualified Written Requests.** RESPA also includes a procedure under which a consumer can assert that an error has occurred or request more information about the account. That procedure is triggered when the consumer files a "Qualified Written Request" with the mortgage servicer. During the 60-day period after receipt of a Request, the servicer may not report adverse credit information on any payment that is the subject of the Qualified Written Request to a consumer reporting agency. The servicer must provide a written acknowledgement to the borrower within 20 days of receipt of the Qualified Written Request, unless the servicer takes the action requested by the borrower during that period. The servicer then has 60 days to investigate any dispute or provide any information that the borrower requested. If the servicer concludes that the account is correct, it must explain the reasons for its position; otherwise, it must correct the account (including any late charges or penalties) within the 60-day period. Many servicers suspend all reporting, including positive reporting, while a Qualified Written Request is pending. Most servicers apply the same procedures when the request does not meet the technical definition of a Qualified Written Request, such as when the consumer communicates with the servicer by telephone.

- **Non-Reporting under the FCBA.** Similarly, the FCBA, which applies to HELOCs and other open-end credit plans, prohibits any adverse credit reporting regarding the consumer's withholding of a disputed amount or related finance or other charges. Again, some lenders go beyond the specific prohibition and suppress reporting of disputed accounts until the dispute is resolved.

- **Non-Reporting for Other Reasons.** As further discussed below, lenders may decide not to report information for other reasons such as legal uncertainty as to whether it is proper to report payments once the borrower's personal obligation has been discharged in bankruptcy.

- **Effect of Rejected Data or Non-Reporting.** If the CRA does not accept the monthly "full file" report for a consumer or a furnisher suspends reporting while it is reinvestigating a dispute or for other reasons, then the consumer's credit file will not reflect the current status of the account. In the former case, the effect may be to freeze reporting at a time when the consumer was in the process of improving his or her record, for example when the consumer has just brought the loan current after a period of unemployment. Because the furnisher usually continues to report the information, only to see it rejected by the CRA month after month, it is difficult to see how a provision in the guidelines applicable only to furnishers would solve this problem. The latter issue – where the furnisher temporarily stops reporting – is usually rectified once the reinvestigation is completed. The Agencies should

move cautiously in addressing this issue because it is vital that furnishers continue to have the flexibility to suspend reporting to the CRAs while they are reinvestigating a dispute.

- **Lack of Uniform Means of Identification.** The CRAs rely on matching algorithms to connect information provided by furnishers, including corrections, to a particular consumer's file. The CRAs also use matching algorithms to provide credit information to users of consumer information. If the matching algorithm does not correctly identify a consumer, then the credit report will not accurately reflect the consumer's credit status, even if the furnisher has provided the correct information. The algorithms differ by CRA, so in some cases the information will match at one CRA, but not match at another.

- **Processing Monthly Submissions.** There are significant delays between the time that servicers report monthly credit information to the CRAs and the time the information appears on individual consumers' credit reports. MBA members indicate that the current delay is approximately 35 days. Although this processing time is much improved from the previous practice, delays do cause consumers to question the accuracy of their credit reports, and can be particularly frustrating when a prospective borrower is attempting to clear an inaccurate or incomplete item in order to qualify for a mortgage in time to meet a closing date. These delays contribute to repeated requests from consumers to correct the information.

- **Failure to Accept Overlays.** When first introduced, one of the touted benefits of the Metro 2 format was the 24-month overlay feature, which would allow furnishers to report a rolling 24-month history each month. This option was a welcomed enhancement because corrections could be made to historical information without having to make a separate correction by paper (at the time). Servicers could simply correct the information on their servicing systems and the corrections would travel to the CRAs as part of a regular monthly transmission. This option would simplify reporting and corrections and remove delays in getting the information reflected on credit reports. Unfortunately, the 24-month overlay is not a standard Metro 2 feature as originally marketed by the CRAs and many transmissions of the overlays were rejected by the CRAs without notice to the furnisher. We believe this problem contributed to accuracy problems in the past. Today, however, most servicers have been alerted of the separate contract requirements necessary to execute the 24-month overlay. Not all servicers use the overlay feature.

- **Bankruptcy.** Reporting bankruptcy and post discharge activities continues to be problematic for furnishers of information:

  Servicers are often advised by counsel not to report account activity if the borrower has filed for bankruptcy.

  Another common problem servicers face is whether and how to report the payment status of a borrower where the mortgage debt was discharged in bankruptcy and not reaffirmed, but the borrower remains current on the loan payments – the so-called "ride-through" situation in which the borrower is no longer personally liable on the obligation, but the lender still has the right to foreclose if the payments are not made. Most furnishers will not report payment or "balance" activities to the CRAs in these situations. This issue has recently become the subject of class-action litigation; *see, e.g., Hernandez v. Equifax Information Svcs.,* 2006 WL 1141338 (N.D. Cal. Apr. 28, 2006).

Also a common problem is how to report credit information of a borrower where the co-borrower has filed for bankruptcy. Because of litigation concerns, many servicers do not report any payment activity, including information on the non-filing co-borrower despite the fact that payments are made according to the mortgage.

Any guidelines the Agencies develop should clarify how these situations should be reported. Moreover, the Agencies should clarify that a report from a furnisher is not "inaccurate" within the meaning of Section 312 if it reports the status of a borrower's bankruptcy as understood by the furnisher, even if that status turns out to be incorrect. Courts and borrowers often fail to inform mortgage servicers of bankruptcy court actions, such as discharges. A borrower's or court's failure to notify the creditor of critical developments in a bankruptcy proceeding should not create liability for the furnisher.

- **Data Standards.** Software companies, along with the mortgage industry and other financial services companies, are moving to eXtensible Markup Language ("XML") formatting for reporting and transmitting data. XML allows for translatable information that can be easily read by most software programs and individuals (if necessary). Metro 2, however, is based on a character-delimited format, which is not easily read or audited and limits quality control efforts by servicers. Furthermore, character-delimited formats are more expensive to implement and maintain than XML because they require reprogramming any time a change is made in the data specification. We are concerned that, if data standards are not modernized, it may eventually become impossible to sustain the credit reporting system.

A2. **Please describe, in detail, the patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of information furnished to consumer reporting agencies. Relevant patterns, practices, and specific forms of activity may relate to any aspect of the information gathering and reporting process, such as the methods by which furnished information is collected, verified, edited, standardized, and transferred. They may be of general applicability or relate to specific types of furnishers, such as financial institutions, creditors, or collection agencies, or specific types of consumer reporting agencies, such as credit bureaus or tenant screening services. Examples of patterns, practices, and specific forms of activity that may cause these problems include, but are not limited to, the sale of consumer debts to and among collection agencies, the conversion or translation of furnished information into a standard form, and the frequency, timing, categories, and content of information that is furnished to consumer reporting agencies.**

See response to Question A1 above. Specifically, as noted above, the character-based format, the limitations in the error-correction process, the lost "overlay" problem, and the delays in processing information are all examples of "patterns, practices, and specific forms of activity that may cause [accuracy and integrity] problems."

A3. **Please describe, in detail, any business, economic, or other reasons for the patterns, practices, and specific forms of activity described in item *A2.***

See response to Question A1 above.

A4. **Please describe, in detail, the policies and procedures that a furnisher should implement and maintain to identify, prevent, or mitigate those patterns, practices, and**

specific forms of activity that can compromise the accuracy and integrity of information furnished to a consumer reporting agency.

As discussed in our response to Question A1 above, the problems are generally caused not by specific practices of furnishers, but by problems in the interface between furnishers and CRAs. Thus, changes in policies and procedures of furnishers would also have to involve changes by the CRAs. For example, as noted above, there is no uniform means to uniquely identify a consumer about whom a furnisher is providing information. Improvements in consumer identification would require CRAs, furnishers, and loan originators and other users (who initially obtain identifying information) to agree on better methods of uniquely identifying consumers. Therefore, MBA believes that rather than identify specific methods of dealing with specific problems, the guidelines should provide that furnishers should maintain adequate internal controls and training programs to ensure the accuracy and integrity of information furnished to a CRA, and should comply with any industry-wide standards for data format, data integrity, and internal controls.

A5. **Please describe, in detail, the methods (including technological means) used to furnish consumer information to consumer reporting agencies. Please describe, in detail, how the use of these methods can either enhance or compromise the accuracy and integrity of consumer information that is furnished to consumer reporting agencies.**

See response to Question A1 above.

A6. **Please describe, in detail, whether and to what extent furnishers maintain and enforce policies and procedures to ensure the accuracy and integrity of information furnished to consumer reporting agencies, including a description of any policies and procedures that are maintained and enforced, such as policies and procedures relating to data controls, points of failure, account termination, the re-reporting of deleted consumer information, the reporting of the deferral or suspension of payment obligations in unusual circumstances, such as natural disasters, or the frequency, timing, categories, and content of information furnished to consumer reporting agencies. Please assess the effectiveness of these policies and procedures and provide suggestions on how their effectiveness might be improved or enhanced. Please describe whether particular policies or procedures are especially necessary or relevant to particular methods of furnishing information. Please also describe how such policies and procedures are monitored and evaluated to ensure their effectiveness.**

As noted above in our response to Question A1, mortgage companies' reporting of information to CRAs is generally closely integrated with their internal servicing systems. Servicers report information to CRAs as it is represented on those systems. Those systems reflect actual payment histories of borrowers. Sophisticated technology at lock-box facilities processes payments and posts them to individual borrowers' accounts. Audits are performed on this function on a regular basis and some servicers audit when mail is postmarked. Thus as a primary tool, servicers rely on their internal servicing platforms to ensure the accuracy of the information reported to CRAs. For example, if the servicer has implemented a forbearance program in areas impacted by natural disasters, that forbearance will be reflected on the servicing system, and generally reporting of the delinquency to the CRA is suspended.

Also helpful is the system of late-payment notices. Late-payment notices trigger reviews and responses by consumers. If the borrower disputes a late notice, the servicer will conduct an

investigation as required by RESPA or FCBA, as applicable. Credit information will be corrected if inaccurately represented on the servicing system. It is important to note that the fact that a credit report does not reflect corrected information does not mean that the servicer continued to report inaccurate information after resolution, but often represents delays in processing the information by CRAs. A servicer is often forced to send multiple corrections to the CRAs.

Servicers are also subject to regular internal and external (investor, insurer) audits, including audits of the adequacy of their systems and controls for furnishing information to CRAs and accuracy of the information submitted.

The dispute-resolution process under FCRA provides another method for case-by-case audits and investigations.

Finally, MBA notes that in recent years, servicers have encountered abuses by borrowers and credit repair companies. These individuals and entities send multiple disputes that hamper the ability of the CRAs to relay the disputes to furnishers in 5 days. These schemes also overwhelm servicers' ability to investigate and resolve complaints within the statutory timelines. The end result is the removal of accurate, but negative credit information, or even the permanent removal of the entire trade-line.

A7. **Please describe, in detail, any methods (including any technological means) that a furnisher should use to ensure the accuracy and integrity of consumer information furnished to a consumer reporting agency.**

Servicers conduct regular reviews of the quality of information they are furnishing to CRAs. Such reviews encompass such items as considering why a particular item was rejected, particularly when it was accepted by one CRA and rejected by another. It is through such reviews, for example, that the industry learned of problems such as entries being rejected because of issues such as hyphenated street names or other punctuation. Unfortunately, as noted in the response to Question A1, not all of the major credit bureaus provide sufficient information to allow a furnisher to identify and correct problems in the data provided.

A8. **Please describe, in detail, the policies, procedures, and processes used by furnishers to conduct reinvestigations and to correct inaccurate consumer information that has been furnished to consumer reporting agencies. Please include a description of the policies and procedures that furnishers use to comply with the requirement that they "review all relevant information provided by the consumer reporting agency" as stated in section 623(b)(1)(B) of the FCRA.**

Mortgage companies' procedures to investigate disputes involving the furnishing of credit information to CRAs are generally integrated with their procedures for investigating other consumer disputes and inquiries under RESPA and the FCBA.

A9. **Please describe, in detail, the policies, processes, and procedures that furnishers should use to conduct reinvestigations and to correct inaccurate consumer information that has been furnished to consumer reporting agencies.**

As discussed in our response to Question A4 above, accuracy problems are generally caused not by specific practices of furnishers, but by difficulties in the interface between furnishers and

CRAs. Therefore, we believe that rather than identify specific methods of dealing with specific problems, the guidelines should provide that furnishers should maintain adequate internal controls and training programs to ensure that they conduct proper reinvestigations and properly correct inaccurate information that has been furnished to CRAs. They should comply with any industry-wide standards for data format, data integrity, and internal controls.

A10. Please describe, in detail, the policies and procedures of consumer reporting agencies for ensuring the accuracy and integrity of information received from furnishers, including any policies, procedures, or other requirements imposed on furnishers (by contract or otherwise) to ensure the accuracy and integrity of information furnished to consumer reporting agencies. Please describe specifically whether and to what extent those policies, procedures, or other requirements address particular problems that may affect information accuracy and integrity such as the accuracy of a consumer address and other identifying information, updating records to link the correct consumer(s) to account information, the impact of different reporting formats, and duplicate reporting by collection agencies. Please also describe whether particular policies or procedures are especially necessary or relevant to particular types of furnishers.

The contractual responsibilities of furnishers in providing information to CRAs are usually fairly general. The main policies and procedures of CRAs are expressed in the Metro-2 format for regular reporting and the structure of the "e-OSCAR" system for error correction.

The Consumer Data Industry Association ("CDIA"), in cooperation with Equifax, Experian, Innovis and TransUnion, developed the Online Solution for Complete and Accurate Reporting ("e-OSCAR"), a very useful Internet-based tool for electronically submitting corrections or changes to consumer credit information. e-OSCARr is a fee-based subscription service paid for by the furnisher and is now the primary method for communicating with the CRAs regarding consumer disputes and corrections. Prior to the development and implementation of e-OSCAR, corrections were submitted via fax or mail. Use of the mail used up much of the time permitted by FCRA to reinvestigate disputes, resulting in shortened compliance timelines for both CRAs and servicers. While faxes were faster, there was no way to confirm that the CRAs received the information. Failure to get confirmation could result in the disputed item or even the entire trade-line being deleted, which in turn, caused the continued rejection of monthly information.

The industry welcomed the e-OSCAR system because it allows: (1) the transmittal of consumer disputes to servicers in a very timely manner; (2) the expeditious receipt and processing of corrections by the CRA; and (3) an electronic log of disputes and responses. One of the most positive impacts of e-OSCAR is the much faster period for processing corrections. What previously required months, now takes on average 3-7 days. While e-OSCAR is an excellent communication vehicle, there are some limitations to the system:

- Unfortunately, if a trade line is deleted in error, it cannot be added back through e-OSCAR. A request to reinstate the trade line must be filed by paper. Creditors often struggle to find contacts at the CRAs to help them ensure their trade lines are added back to the consumers' reports.

- While e-OSCAR provides a "control number" that confirms receipt of the information from the furnisher, the furnisher does not receive confirmation that the correction has been processed.

- e-OSCAR is not designed to accept batch file corrections. Individual corrections must be manually input one screen at a time, increasing the risk of error. Some batch processing is permitted for *dispute resolution,* but only for extremely large portfolios of disputes.

- Finally, e-OSCAR does not provide the ability to send narrative comments back to the CRAs explaining the furnisher's final resolution to a disputed item. The former paper dispute form *did* provide this feature. MBA believes that the removal of the comments section has contributed to an increase in the number of reinvestigations furnishers are being asked to perform by consumers. This trend will increase under FACTA if there continues to be no way to communicate the reason for the furnisher's final resolution back to the CRA and some controls are not instituted to prohibit consumers from filing the same dispute repeatedly with both the furnisher and the CRAs. (See comments to B5(f))

***B1*. Please identify the circumstances under which a furnisher should (or alternatively, should not) be required to investigate a dispute concerning the accuracy of information furnished to a consumer reporting agency based upon a direct request from the consumer, and explain why.**

As discussed above, mortgage companies routinely handle many disputes directly pursuant to their obligations under RESPA and the FCBA. Furnishers have no difficulty with investigating disputes raised directly by the consumer, to the extent that the dispute involves areas within their knowledge and control.

In order for a system of direct dispute resolution to function effectively:

- The consumer should be required to identify the item in the credit report that he or she is disputing. The Agencies should make clear that the CRA has a permissible purpose to provide that information to the furnisher and must furnish that portion of the report, together with sufficient information to tie the item to an account with the furnisher, to the furnisher on reasonable request. If the dispute cannot be linked to a specific account with the furnisher, the furnisher should have no further obligations under the regulation. Although we believe that the Agencies have the authority to determine that the CRA has a permissible purpose to provide the information to the furnisher, if they conclude that they do not have that authority, then, at a minimum, the regulation should provide that the furnisher has no obligation if the consumer will not provide written instructions authorizing the CRA to release the information to the furnisher.

- Once a dispute has been raised with either the furnisher or the CRA, the consumer should not be allowed to raise the same dispute with the other entity, except that if the furnisher cannot resolve the dispute, then the consumer should be able to raise the dispute with the CRA. In that event, the deadlines for completing the reinvestigation should be the same as if the consumer had originally raised the dispute with the CRA.

- As with the accuracy and integrity guidelines, the consumer should not be allowed under the FCRA provision to raise a substantive dispute not related to reporting information to CRAs, such as a claim that a payment was misapplied.

- As provided in the statute, the furnisher's obligation should be limited to notifying the CRA of any corrections and should not extend to ensuring that the CRA properly made the corrections to the consumer's file.

- The regulations should allow furnishers to require that disputes be filed in writing (including electronically, at the furnisher's option) and that the furnisher be allowed to specify an address for filing disputes. At the furnisher's option, that address should be the same as the address for filing disputes under RESPA or the FCBA or for filing notices of inaccurate information under Section 623(a)(1)(B)(i) of FCRA.

- The regulations should recognize that furnishers are not in the best position to unwind commingled account information caused by data matching problems at the CRAs. Occasionally consumers with identical or similar names (juniors and seniors) or similar addresses find information on their credit reports that do not belong to them. In most cases, this problem is due to operational error not identity theft or fraud. We presume that information gets jumbled due to the CRAs use of algorithms for assigning credit information to consumers that may not function as intended. The furnisher must not be the first contact made in connection with such disputes. Furnishers are simply not in the best position to know why another person's information showed up on a credit report because furnishers are not privy to the CRAs' algorithms. Moreover, furnishers may be of limited assistance in correcting the accounts of persons who are not their customers. Conversely, the CRAs can investigate why credit information was merged, identify the parties to whom the information pertains, and unwind the errors for all parties.

***B2*. Please describe any benefits or costs to consumers from having the right to dispute information directly with the furnisher, rather than through a consumer reporting agency, in some or all circumstances. Please address the circumstances under which direct disputes with furnishers would yield more, fewer, or the same benefits or costs for consumers as disputes that are first received and processed through the consumer reporting agencies and then routed to furnishers for investigation. Please quantify any benefits or costs, if possible.**

Assuming that disputes are limited to those that the furnisher can resolve – *i.e.,* situations that clearly involve an account of the consumer with the furnisher – direct filing of disputes will often benefit the consumer, because the furnisher will be able to identify the account and quickly correct any problems. Filing a dispute with the furnisher is likely to be less efficient than filing a dispute with the CRA where the CRA has misfiled information and the furnisher cannot link it to a specific account, because then the furnisher will not be able to correct the problem.

***B3*. Please describe any benefits to furnishers, consumer reporting agencies, or the credit reporting system that may result if furnishers were required to investigate disputes based on direct requests from consumers in some or all circumstances. Please quantify any benefits, if possible.**

A direct dispute system will benefit both furnishers and CRAs when the furnisher is able to identify the account because the furnisher will then have more time to resolve the problem within the deadlines provided by FCRA. On the other hand, furnishers and CRAs will not benefit if the furnisher does not have enough information to resolve the dispute and the consumer must raise the dispute with the CRA.

***B4*. Please describe any costs, including start-up costs, to furnishers and any costs to consumer reporting agencies or the credit reporting system, of requiring a furnisher to investigate a dispute based on a direct request by a consumer in some or all circumstances. Please address the circumstances under which direct disputes with**

furnishers would cost more, less, or the same to process, excluding start-up costs, as compared to disputes that are first received and processed through the consumer reporting agencies and then routed to furnishers for investigation. Please quantify any costs, if possible. To the extent applicable, please discuss the percentage of disputes processed through consumer reporting agencies that (1) involve an error by the consumer reporting agency (rather than a problem with the information provided by the furnisher), (2) are determined to be frivolous or irrelevant, or (3) result in changes to consumer credit files. Does the FCRA's section 623(a)(8)(F)(ii) timing requirement for a Notice of Determination that a consumer dispute is frivolous or irrelevant impose additional costs? If so, please provide quantitative data about such costs.

See response to Question B3 above. The timing requirement can impose significant costs if delays in obtaining information cause the deadline to expire before the furnisher can determine in good faith that a dispute is frivolous or irrelevant. In that situation, the furnisher may be forced to stop reporting valid information simply because it could not meet the deadlines, and a "credit repair" scheme has succeeded.

***B5*. Please discuss whether it is the current practice of furnishers to investigate disputes about the accuracy of information furnished to a consumer reporting agency based on direct requests by consumers. For those furnishers that currently investigate such direct disputes, please identify and discuss the following:**

> ***B5(a)*.The circumstances under which the furnisher will and will not investigate such a direct dispute;**

As noted above, mortgage companies already investigate a significant number of disputes directly. Many mortgage companies refer consumers to the CRA to investigate "identity theft and fraud" complaints that appear on the surface to be a problem of commingling of account information at the CRA-level for the reasons stated in response to Question B1.

> ***B5(b)*.The furnisher's experience with receiving and identifying direct disputes submitted by credit repair organizations;**

As noted in response to Question A6 above, credit repair organizations create major problems for the entire consumer reporting system. Many mortgage companies will not knowingly deal with credit repair organizations.

> ***B5(c)*.The differences between the furnisher's existing procedures for resolving direct disputes (including time frames and communications with the consumer) and the procedures set forth in section 623(a)(8) of the FCRA, and the costs and other implications of modifying those procedures to conform to section 623(a)(8);**

Direct-dispute resolution procedures could be integrated relatively easily into our existing voluntary programs, provided that our obligations are defined as recommended in response to Question B1 above.

> ***B5(d)*.Whether the percentage of direct disputes for a portfolio of accounts varies for different lines of business (e.g., mortgage, auto lending, unsecured credit);**

We do not have sufficient information to respond to this question.

***B5(e)*. Whether the costs of resolving direct disputes varies for different lines of business; and**

We do not have sufficient information to respond to this question.

***B5(f)*.The percentage of disputes received directly from consumers and from the consumer reporting agencies, the percentage of duplicate disputes that are received both directly from consumers and the consumer reporting agencies, and any practices designed to detect and process such duplicate disputes.**

Currently, approximately 80% of disputes involving credit information come through the CRAs; 15% come directly from the borrower and approximately 5% come from other sources (credit repair agencies, attorneys, parents/other family members). We do not have information on the number of duplicate disputes. However, we believe that duplicate disputes will increase in the future if:

- The CRAs do not provide consistent and standard reports on rejected data submitted by furnishers;
- Trade lines cannot be reinstated electronically;
- Furnishers cannot provide narrative comments to CRAs as to why they reached a particular resolution on a disputed item;
- Credit repair agencies and consumers are not restricted from filing duplicate disputes when they do not like the response or as part of a scam to eliminate the trade line or negative data.

***B6*. Please describe the impact on the overall accuracy and integrity of consumer reports if furnishers were required, under some or all circumstances, to investigate disputes concerning the accuracy of information furnished to consumer reporting agencies based on the direct request of a consumer.**

Except as noted previously, we believe that direct dispute resolution would have a generally beneficial impact on the accuracy of information furnished to CRAs, to the same extent that it would be helpful in expediting reinvestigations.

***B7*. Please describe the circumstances in which direct contact by the consumer with the furnisher would likely result, or alternatively, would likely not result, in the most expeditious resolution of any dispute concerning the accuracy of information furnished to a consumer reporting agency.**

See responses to Questions B2, B3 and B5 above.

***B8*. Section 623(a)(8)(G) of the FCRA provides that any direct dispute requirement would not apply to any notice of dispute submitted by, prepared on behalf of the consumer by, or submitted on a form supplied by, a credit repair organization. In prescribing the regulations mandated under section 623(a)(8), section 623(a)(8)(b)(iv) requires the Agencies to weigh the "potential impact on the credit reporting process if credit repair organizations * * * are able to circumvent the prohibition in subparagraph (G) of that**

section." Please describe the potential impact on the credit reporting process if a person that meets the definition of a credit repair organization is able to circumvent section 623(a)(8)(G).

Circumvention of the prohibition on the raising of direct disputes by a credit repair organization could have a devastating impact on the functioning of not only the credit reporting process, but a mortgage company's entire servicing system. In that regard, the regulation should permit a furnisher to treat a direct dispute as frivolous if it believes in good faith that it originated from a credit repair organization. Particularly in the current era of internet scams, it is essential to have a liberal standard to prevent destructive attacks on the system by unscrupulous credit-repair organizations.

We appreciate the opportunity to offer these comments. Please contact Mary Jo Sullivan, Director, Government Affairs, at 202/557-2859 if you have any questions or wish to discuss this matter further.

Most sincerely,

Jonathan L. Kempner
President and Chief Executive Officer