



Comptroller of the Currency  
Administration of National Banks  
US Department of the Treasury

# RESCINDED

OCC 2006-18

**Subject: Fair and Accurate Credit Transactions Act, Section 312**  
**Date: April 13, 2006**

**To: Chief Executive Officers and Compliance Officers of All National Banks, Department and Division Heads, and All Examining Personnel**

## Description: Advance Notice of Proposed Rulemaking

~~On May 1, 2006, the Office of the Comptroller of the Currency, the Federal Reserve, and the~~  
This rescission does not change the status of the transmitted document. To determine the current status of the transmitted document, refer to the Code of Federal Regulations, [www.occ.gov](http://www.occ.gov), or the original issuer of the document.

Pursuant to section 312, the agencies, acting in consultation and coordination, must: (1) establish guidelines for persons that furnish information to consumer reporting agencies (furnishers) regarding the accuracy and integrity of the consumer information that they furnish; and (2) prescribe regulations that require furnishers to establish reasonable policies and procedures for implementing the guidelines. Section 312 also requires the agencies jointly to prescribe regulations that identify the circumstances under which a furnisher will be required to reinvestigate a dispute concerning the accuracy of information contained in a consumer report based on a direct request of the consumer.

Comments on the ANPR must be submitted by May 22.

If you have questions about this ANPR, please contact Paul Utterback, national bank examiner, Compliance Policy, at (202) 874-4428; Stephen Van Meter, assistant director, Community and Consumer Law Division, at (202) 874-5750; or Patrick Tierney, senior attorney, Legislative and Regulatory Activities Division, at (202) 874-5090.

Julie L. Williams  
First Senior Deputy Comptroller and Chief Counsel

### Related Links

- [71 FR 14419](#)

# Proposed Rules

Federal Register

Vol. 71, No. 55

Wednesday, March 22, 2006

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Part 41

[Docket No. 06-04]

RIN 1557-AC89

## FEDERAL RESERVE SYSTEM

#### 12 CFR Part 222

[Docket No. R-1250]

## FEDERAL DEPOSIT INSURANCE CORPORATION

#### 12 CFR Part 334

RIN 3064-AC99

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

#### 12 CFR Part 571

[No. 2006-06]

RIN 1550-AC01

## NATIONAL CREDIT UNION ADMINISTRATION

#### 12 CFR Part 717

## FEDERAL TRADE COMMISSION

#### 16 CFR Parts 660 and 661

RIN 3084-AA94

### 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

**AGENCIES:** Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS);

National Credit Union Administration (NCUA); and Federal Trade Commission (FTC).

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The OCC, Board, FDIC, OTS, NCUA, and FTC (the Agencies) request comment to gather information useful for developing the guidelines and regulations required by section 312 of the Fair and Accurate Credit Transactions Act (FACT Act). Pursuant to section 312, the Agencies, acting in consultation and coordination, must: Establish guidelines for use by persons that furnish information to consumer reporting agencies (furnishers) regarding the accuracy and integrity of the consumer information that they furnish to those agencies; and prescribe regulations that require furnishers to establish reasonable policies and procedures for implementing the guidelines. Section 312 also requires the Agencies jointly to prescribe regulations that identify the circumstances under which a furnisher shall be required to reinvestigate a dispute concerning the accuracy of information contained in a consumer report on a consumer based on a direct request of the consumer.

**DATES:** Comments must be submitted by May 22, 2006.

**ADDRESSES:** Because paper mail in the Washington DC area and at the Agencies is subject to delay, please consider submitting your comments by e-mail. Commenters are encouraged to use the title "Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies" to facilitate the organization and distribution of the comments.

Comments submitted to one or more of the Agencies will be made available to all of the Agencies. Interested parties are invited to submit comments to:

OCC: You should include OCC and Docket Number 06-04 in your comment. You may submit comments by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- OCC Web Site: <http://www.occ.treas.gov>. Click on "Contact the OCC," scroll down and click on "Comments on proposed regulations."
- E-mail Address:

- [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov).
- Fax: (202) 874-4448.

- Mail: Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1-5, Washington, DC 20219.
- Hand Delivery/Courier: 250 E Street, SW., Attn: Public Information Room, Mail Stop 1-5, Washington, DC 20219.

*Instructions:* All submissions received must include the agency name (OCC) and docket number or Regulatory Information Number (RIN) for this rulemaking. In general, the OCC will enter all comments received into the docket without change, including any business or personal information that you provide. You may review comments and other related materials by any of the following methods:

- Viewing Comments Personally: You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect comments by calling (202) 874-5043.
- Viewing Comments Electronically: You may request e-mail or CD-ROM copies of comments that the OCC has received by contacting the OCC's Public Information Room at [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov).
- Docket: You may also request available background documents and project summaries using the methods described above.

*Board:* You may submit comments, identified by Docket No. R-1250, by any of the following methods:

- Agency Web site: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include docket number in the subject line of the message.
- FAX: (202) 452-3819 or (202) 452-3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, except as necessary for technical

reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

**FDIC:** You may submit comments, identified by RIN number by any of the following methods:

- Agency Web site: <http://www.fdic.gov/regulations/laws/federal/propose.html>. Follow instructions for submitting comments on the Agency Web site.

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- E-mail: [Comments@FDIC.gov](mailto:Comments@FDIC.gov).

Include the RIN number in the subject line of the message.

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

- Hand Delivery/Courier: Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

- Instructions: All submissions received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal/propose.html> including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E-1002, 3502 North Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

**OTS:** You may submit comments, identified by number 2006-06, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- E-mail address:

[regs.comments@ots.treas.gov](mailto:regs.comments@ots.treas.gov). Please include number 2006-06 in the subject line of the message and include your name and telephone number in the message.

- Fax: (202) 906-6518.

- Mail: Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2006-06.

- Hand Delivery/Courier: Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2006-06.

**Instructions:** All submissions received must include the agency name and docket number or Regulatory

Information Number (RIN) for this rulemaking. All comments received will be posted without change to the OTS Internet site at <http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1>, including any personal information provided.

**Docket:** For access to the docket to read background documents or comments received, go to <http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1>. In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906-5922, send an e-mail to [public.info@ots.treas.gov](mailto:public.info@ots.treas.gov), or send a facsimile transmission to (202) 906-7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

**NCUA:** You may submit comments by any of the following methods (please send comments by one method only):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- NCUA Web Site: [http://www.ncua.gov/RegulationsOpinionsLaws/proposed\\_regs/proposed\\_regs.html](http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html).

Follow the instructions for submitting comments.

- E-mail: Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include "[Your name] Comments on Advanced Notice of Proposed Rulemaking Part 717, Fair Credit Reporting—Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies" in the e-mail subject line.

- Fax: (703) 518-6319. Use the subject line described above for e-mail.

- Mail: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428.

- Hand Delivery/Courier: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration. Deliver to guard station in the lobby of 1775 Duke Street, Alexandria, VA 22314-3428, on business days between 8 a.m. and 5 p.m.

All public comments are available on the agency's Web site at <http://www.ncua.gov/RegulationsOpinionsLaws/comments> as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information.

Paper copies of comments may be inspected in NCUA's law library, at 1775 Duke Street, Alexandria, VA 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518-6546 or send an e-mail to [OGCMail@ncua.gov](mailto:OGCMail@ncua.gov).

**FTC:** Comments should refer to "Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies, Project No. R611017," and may be submitted by any of the following methods. Comments containing confidential material must be filed in paper form, must be clearly labeled "Confidential," and must comply with Commission Rule 4.9(c).<sup>1</sup>

- E-mail: <https://secure.commentworks.com/ftc-FACTA/furnishers>. To ensure that the Commission considers an electronic comment, you must file it on the Web-based form found at this Web link and follow the instructions on that form.

- Federal eRulemaking Portal: <http://www.regulations.gov>. You may visit this Web site to read this request for public comment and to file an electronic comment. The Commission will consider all comments that [regulations.gov](http://www.regulations.gov) forwards to it.

- Mail or Hand Delivery: A comment filed in paper form should refer, both in the text and on the envelope, to the name and project number identified above, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 159-H (Annex C), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at <http://www.ftc.gov/os/publiccomments.htm>. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the

<sup>1</sup> The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

Privacy Act, may be found in the FTC's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

**FOR FURTHER INFORMATION CONTACT:**

OCC: Stephen Van Meter, Assistant Director, Community and Consumer Law Division, (202) 874-5750; Patrick T. Tierney, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874-5090; or Pamela Mount, National Bank Examiner, Compliance Department, (202) 874-4428, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: David A. Stein, Counsel; Ky Tran-Trong, Senior Attorney, Division of Consumer and Community Affairs, (202) 452-3667 or (202) 452-2412; or Andrew Miller, Counsel, Legal Division, (202) 452-3428, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

FDIC: David P. Lafleur, Policy Analyst, (202) 898-6569, or John Jackwood, Senior Policy Analyst, (202) 898-3991, Division of Supervision and Consumer Protection; Richard M. Schwartz, Counsel, (202) 898-7424, or Richard B. Foley, Counsel, (202) 898-3784, Legal Division; 550 17th St., NW., Washington, DC 20429.

OTS: Glenn S. Gimble, Senior Project Manager, Operation Risk, (202) 906-7158; or Richard Bennett, Counsel, Regulations and Legislation Division, (202) 906-7409, at 1700 G Street, NW., Washington, DC 20552.

NCUA: Regina Marie Metz, Esq., (703) 518-6561, fax (703) 837-2785, e-mail [rmetz@ncua.gov](mailto:rmetz@ncua.gov), 1775 Duke St., Alexandria, VA 22314.

FTC: Ronald G. Isaac, or Clarke W. Brinckerhoff, Attorneys, (202) 326-3224, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*Consumer Reporting in the United States*

The consumer reporting system in the United States is based largely on the submission of information by creditors and others to nationwide consumer reporting agencies that collect and maintain consumer information. There are also a number of smaller consumer reporting agencies that operate on a regional or local basis. These smaller agencies typically contract for the right to house some or all of the consumer data that they own on the computer systems of one or more of the major consumer reporting agencies. Consumer reporting agencies sell the information in their files to creditors and other

subscribers who may be the users of the information, or who may be resellers that buy consumer reports to sell to other users.

Consumer reporting agencies maintain databases that contain detailed information about consumers' transactions. This information is widely used to determine consumers' eligibility for credit, employment, insurance, rental housing, and other products and services, as well as the terms on which credit, insurance, and other products and services may be offered. In addition to these general purpose consumer reporting agencies, there are consumer reporting agencies that collect and maintain data pertaining only to certain specialized activities, such as employment history, residential or tenant history, medical records or payments, check writing histories, or insurance claims.

Most of the information that consumer reporting agencies collect and maintain is provided voluntarily by furnishers. Furnishers may include such entities as banks, credit unions, finance companies, employers, insurance companies, doctors and hospitals, debt collectors, and landlords. Not all furnishers regularly provide information about consumers to consumer reporting agencies. Some furnishers provide only negative information, such as information about delinquent payments or loan defaults. Some may provide information to one or two of the nationwide consumer reporting agencies but not to all of them. Others may report only to one of the specialized consumer reporting agencies (such as a repository of check writing histories).

Because consumer reports are used to determine whether, and in some cases on what terms, consumers may be eligible for credit, insurance, employment, rental housing, and other important products, services, or benefits, the accuracy of the information in those reports is important. A number of studies have examined the accuracy of consumer report information.<sup>2</sup> While

<sup>2</sup> The Agencies are familiar with the details of these studies and, as discussed below, invite commenters to provide information in addition to the studies regarding the accuracy and integrity of consumer report information. See Robert B. Avery, Raphael W. Bostic, Paul S. Calem & Glenn B. Canner, *An Overview of Consumer Data and Credit Reporting*, Federal Reserve Bulletin, vol. 89, at 47-73 (February 2003); Robert B. Avery, Paul S. Calem, Glenn B. Canner & Shannon C. Mok, *Credit Report Accuracy and Access to Credit*, Federal Reserve Bulletin, vol. 90, at 297-322 (Summer 2004); Consumer Federation of America & National Credit Reporting Association, *Credit Score Accuracy and Implications for Consumers* (December 17, 2002), at [http://www.consumerfed.org/pdfs/121702CFA\\_NCRA\\_Credit\\_Score\\_Report\\_Final.pdf](http://www.consumerfed.org/pdfs/121702CFA_NCRA_Credit_Score_Report_Final.pdf) (last visited February 13, 2006). See also footnote

not purporting to be exhaustive or conclusive, these studies have identified a number of potential issues that may affect the accuracy of consumer report information, including stale account information, furnishing only negative information about an account, inaccurate or incomplete public record data, inaccurate or incomplete collection account data, and unreported credit limits.<sup>3</sup> These potential credit file issues may lower a consumer's credit score, decrease credit availability, and increase the cost of credit for certain consumers, particularly those who are new to the credit system, have very little credit, or have relatively low credit scores.

*Existing FCRA Responsibilities of Furnishers*

The Fair Credit Reporting Act (FCRA)<sup>4</sup> contains a number of provisions designed to enhance the accuracy and integrity of data in consumer reports, including the provisions to be implemented through the guidelines and regulations that are the subject of this Advance Notice of Proposed Rulemaking.

The FCRA contains standards for the collection, communication, and use of information bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living. Section 623 of the FCRA describes the responsibilities of persons that furnish information to consumer reporting agencies.<sup>5</sup> A person is prohibited from furnishing information relating to a consumer to any consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate.<sup>6</sup> Section 623

<sup>11</sup> in this notice describing the FTC's ongoing study of the accuracy and completeness of information contained in consumer reports prepared or maintained by consumer reporting agencies and the methods for improving the accuracy and completeness of such information and its first interim report to Congress. In addition, the Board issued a Request for Information in August 2004 in connection with a study on investigations of disputed consumer information reported to consumer reporting agencies. 69 FR 48494 (August 10, 2004). The Agencies have considered the responses to the Request for Information in developing this advance notice of proposed rulemaking.

<sup>3</sup> *Id.*

<sup>4</sup> 15 U.S.C. 1681-1681x.

<sup>5</sup> 15 U.S.C. 1681s-2.

<sup>6</sup> 15 U.S.C. 1681s-2(a)(1). A furnisher that clearly and conspicuously provides consumers with an address for submitting notices of dispute is subject to a different accuracy standard. If a consumer writes to that address to challenge the accuracy of any furnished information, and the information is, in fact, inaccurate, the furnisher must report only the correct information to consumer reporting agencies in the future.

also requires furnishers, among other things, to correct and update information furnished about a consumer to any consumer reporting agency in certain circumstances, to provide consumer reporting agencies with notice of certain consumer disputes and of accounts closed voluntarily by consumers, to provide credit reporting agencies with information regarding certain delinquent accounts, and to have in place reasonable procedures to prevent the furnishing of information that has been blocked as a result of identity theft.<sup>7</sup>

A furnisher that is notified by a consumer reporting agency that information it furnished has been disputed by a consumer pursuant to section 611<sup>8</sup> of the FCRA must:

- Investigate the dispute;
- Review all relevant information provided by the consumer reporting agency about the dispute;
- Report its findings to the consumer reporting agency;
- Provide corrected information to all nationwide consumer reporting agencies that received the information, if the investigation shows the information to be incomplete or inaccurate; and
- Promptly modify, delete, or permanently block the reporting to a consumer reporting agency of an item of information disputed by a consumer that is found to be inaccurate, incomplete, or cannot be verified after an investigation.<sup>9</sup>

#### *FACT Act Provisions To Be Implemented Through This Rulemaking*

The FACT Act, enacted on December 4, 2003,<sup>10</sup> amended the FCRA to enhance the ability of consumers to combat identity theft, increase the accuracy of consumer reports, restrict

the use of medical information in credit eligibility determinations, and allow consumers to exercise greater control regarding the type and amount of solicitations they receive.

Section 312 of the FACT Act amends section 623 of the FCRA and generally requires the Agencies to issue guidelines for use by furnishers regarding the accuracy and integrity of the information that they furnish to consumer reporting agencies and 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 reinvestigate disputes about the accuracy of information contained in consumer reports based on a direct request from a consumer.

#### *Guidelines and Regulations Concerning the Accuracy and Integrity of Information That Furnishers Provide to Consumer Reporting Agencies*

Section 312(a) of the FACT Act adds a new subsection (e) to section 623 of the FCRA. Section 623(e)(1)(A) of the FCRA requires the Agencies to establish and maintain guidelines for use by each furnisher regarding the accuracy and integrity of the consumer information that the furnisher provides to consumer reporting agencies.<sup>11</sup> The Agencies are required to update these guidelines as often as necessary. Section 623(e)(1)(B) of the FCRA requires each Agency to prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines established pursuant to section 623(e)(1)(A). The Agencies must consult and coordinate with one another so that, to the extent possible, the regulations published by each Agency are consistent and comparable.

Section 623(e)(3) of the FCRA sets forth criteria to be used by the Agencies in developing the accuracy and integrity guidelines. This provision directs the Agencies to:

- Identify patterns, practices, and specific forms of activity that can compromise the accuracy and integrity

of information furnished to consumer reporting agencies;

- Review the methods (including technological means) used to furnish consumer information to consumer reporting agencies;
- Determine whether furnishers maintain and enforce policies to assure the accuracy and integrity of information furnished to consumer reporting agencies; and
- Examine the policies and processes employed by furnishers to conduct reinvestigations and correct inaccurate consumer information that has been furnished to consumer reporting agencies.

#### *Regulations Concerning the Ability of a Consumer to Dispute Information Directly With a Furnisher*

Section 312(c) of the FACT Act adds a new sub-paragraph (8) to section 623(a) of the FCRA. Section 623(a)(8) directs the Agencies jointly to prescribe regulations that identify the circumstances under which a furnisher is required to reinvestigate a dispute concerning the accuracy of information contained in a consumer report on the consumer, based on a direct request by the consumer. In prescribing these regulations, the Agencies are directed to weigh:

- The regulations' benefits to consumers with the costs on furnishers and the credit reporting system;
- The impact on the overall accuracy and integrity of consumer reports of any such requirements;
- Whether direct contact by the consumer with the furnisher would likely result in the most expeditious resolution of any dispute; and
- The potential impact on the credit reporting process if credit repair organizations are able to circumvent the provisions in subparagraph G of section 623(a)(8), which state that the direct dispute rules shall not apply when credit repair organizations provide notices of dispute on behalf of consumers.

## **II. Request for Comments**

The Agencies believe that, in advance of proposing guidelines and rules implementing section 312 of the FACT Act, it is appropriate to solicit public comment on issues relating to: (1) The criteria in section 623(e)(3) of the FCRA that the Agencies must consider when developing accuracy and integrity guidelines; (2) what constitutes reasonable policies and procedures for implementing the guidelines to ensure the accuracy and integrity of information that is furnished; and (3) the considerations in section

<sup>7</sup> 15 U.S.C. 1681s-2(a)(2)-(6).

<sup>8</sup> Section 611 of the FCRA generally permits a consumer to dispute the completeness or accuracy of any item in the consumer's credit file directly with a consumer reporting agency. Within five business days after the consumer reporting agency receives a notice of dispute from a consumer, the consumer reporting agency is required to provide notification of the dispute to any person who provided any item of disputed information. This notification of dispute must include all relevant information received from the consumer. Consumer reporting agencies must, free of charge, conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate and record the current status of the disputed information, or delete the item from the consumer's credit file before the end of the 30-day period beginning on the date that the consumer reporting agency receives the notice of dispute from the consumer. 15 U.S.C. 1681i.

<sup>9</sup> 15 U.S.C. 1681s-2(b). The furnisher must complete these steps within the time period that Section 611 of the FCRA sets out for the consumer reporting agency to resolve the dispute, which is, ordinarily, 30 days after receipt of a notice of dispute from the consumer.

<sup>10</sup> Public Law No. 108-159, 117 Stat. 1952.

<sup>11</sup> The FACT Act also directs the FTC to "conduct an ongoing study of the accuracy and completeness of information contained in consumer reports prepared or maintained by consumer reporting agencies and methods for improving the accuracy and completeness of such information." See section 319 of the FACT Act. The FTC submitted its first interim report to Congress on this study on December 9, 2004; available at <http://www.ftc.gov/reports/facta/041209factrpt.pdf> (last visited February 13, 2006).

623(a)(8)(B) that the Agencies must weigh when promulgating rules that identify circumstances when furnishers must reinvestigate disputes raised directly by consumers.

In particular, the Agencies invite comment, together with supporting documentation, on any or all of the issues presented below. Because these guidelines and regulations could affect any and all persons furnishing information to consumer reporting agencies, regardless of the type of furnisher or consumer reporting agency, the frequency of reporting, or the type of information being provided, we request that commenters explain, to the extent possible, how their comments might differ depending on the type of furnisher providing the information, the type of information being provided, the frequency of the reporting, or the type of consumer reporting agency to which the information is provided.

*(A) Accuracy and Integrity 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.

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.

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

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.

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.

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.

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.

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.

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.

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 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.

*(B) Direct Dispute Regulations*

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.

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.

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.

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.

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;

B5(b). The furnisher's experience with receiving and identifying direct disputes submitted by 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);

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);

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

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.

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.

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.

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).

#### Small Institution Comment Request

The Agencies invite comment on the impact on small institutions of procedures that would enhance the accuracy and integrity of information furnished to consumer reporting agencies. The Agencies recognize that small institutions operate with more limited resources than larger institutions and may present a different risk profile. Thus, the Agencies

specifically request comment on the impact of a future proposal on small institutions' current resources and available personnel with the requisite expertise, and whether the goals of any proposal could be achieved, for small institutions, through an alternative approach.

#### Request for Comment From Furnishers Other Than Depository Institutions and From Consumer Reporting Agencies Other Than Credit Bureaus

The Agencies invite comments from businesses other than depository institutions that furnish information to credit bureaus. These may include certain mortgage lenders, debt collectors, consumer finance companies, and retailers. The Agencies also invite comments from persons who furnish information to other types of consumer reporting agencies, such as consumer reporting agencies that collect information for the purpose of making decisions regarding insurance, employment or tenant screening, or check verification. Similarly, the Agencies request comments from consumer reporting agencies, including nontraditional consumer reporting agencies that may only provide information to a limited class of businesses (e.g., medical information providers and tenant screening services).

#### Request for Comment From Individuals and Public Interest and Consumer Advocacy Organizations

The Agencies invite comments from individuals and public interest and consumer advocacy organizations on the effect that any procedures to enhance the accuracy and integrity of information furnished to consumer reporting agencies may have on consumers and the credit reporting industry.

#### Economic Growth and Regulatory Paperwork Reduction Act of 1996 Comment Request

Section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) requires the Federal banking agencies and NCUA, not less frequently than once every 10 years, to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions. Consistent with the goal of section 2222 of the EGRPRA, the Federal banking agencies and NCUA invite comment on how they might best achieve the goals of section 312 while minimizing any possible regulatory burden on furnishers. Specifically, the Federal banking agencies and NCUA

request comment on how to apply the criteria they must consider when developing the accuracy and integrity guidelines (*see* section 623(e)(3) of the FCRA) so as not to create unnecessary or unduly burdensome requirements. Also, the Federal banking agencies and NCUA request comment on how to weigh the considerations relating to when furnishers must reinvestigate disputes raised directly by consumers (*see* section 623(a)(8)(B) of the FCRA) so as not to create unnecessary or unduly burdensome requirements for furnishers.

#### **Executive Order 12866**

*OCC and OTS:* The OCC and OTS do not know whether the guidelines and regulations they will propose will constitute a significant regulatory action under the Executive Order 12866. Executive Order 12866 requires preparation of an analysis for agency actions that are “significant regulatory actions.” “Significant regulatory actions” are actions that may result in regulations that are likely to:

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.<sup>12</sup>

This ANPR neither establishes nor proposes any regulatory requirements. Because this ANPR does not contain a specific proposal, information is not available with which to prepare a regulatory analysis. The OCC and OTS will each prepare a regulatory analysis if they proceed with a proposed rule that constitutes a significant regulatory action.

Accordingly, the OCC and OTS solicit comment, information, and data on the

potential effects on the economy of any guidelines and regulations that commenters may recommend. The OCC and OTS encourage commenters to provide information about estimates of costs, benefits, other effects, or any other information, particularly costs to implement the statutory requirements if institutions are already meeting any of those requirements (*e.g.*, documenting policies and procedures, monitoring, and training). In addition, the OCC and OTS ask commenters to identify or estimate start-up or non-recurring costs separately from costs or effects they believe would be ongoing. Also, the OCC and OTS ask commenters to provide data on the total number of consumer disputes reported annually and the per-unit cost to resolve each dispute. Quantitative information would be the most useful. The OCC and OTS will carefully consider the costs and benefits associated with this regulatory action.

Dated: March 15, 2006.

#### **John C. Dugan,**

*Comptroller of the Currency.*

By order of the Board of Governors of the Federal Reserve System, March 13, 2006.

#### **Jennifer J. Johnson,**

*Secretary of the Board.*

By order of the Board of Directors.

Dated at Washington, DC, the 10th day of February, 2006. Federal Deposit Insurance Corporation.

#### **Robert E. Feldman,**

*Executive Secretary.*

Dated: February 6, 2006.

By the Office of Thrift Supervision.

#### **John M. Reich,**

*Director.*

By the National Credit Union Administration Board on March 13, 2006.

#### **Mary Rupp,**

*Secretary of the Board.*

By direction of the Commission.

#### **Donald S. Clark,**

*Secretary.*

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<sup>12</sup> Executive Order 12866 (September 30, 1993), 58 FR 51735 (October 4, 1993), as amended by Executive Order 13258 (February 26, 2002), 67 FR 9385 (February 28, 2002). A “regulatory action” is “any substantive action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking.” Executive Order 12866, section 3(e).