May 22, 2006

Department of the Treasury
Office of the Comptroller of the Currency
Attn: Public Information Room
250 E Street, S.W., Mail Stop 1-5
Washington, D.C. 20219
RE: Docket No. 06-04

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

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

Federal Trade Commission
Office of the Secretary
Room 159-H (Annex C)
600 Pennsylvania Ave., N.W.
Washington, D.C. 20850
RE: Project No. R611017

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552
Attention: 2006-06

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

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

Dear Sir or Madam:

The Consumer Bankers Association ("CBA") submits this comment letter to the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Trade Commission (collectively, "Agencies") in response to the Interagency Advance Notice of Proposed Rulemaking ("ANPR") published in the *Federal Register* on March 22, 2006 regarding the accuracy and integrity of information furnished to consumer reporting agencies ("CRAs").

The Consumer Bankers Association is the recognized voice on retail banking issues in the nation's capital. Member institutions are the leaders in consumer financial services, including auto finance, home equity lending, card products, education loans, small business services, community development, investments, deposits and delivery.

CBA was founded in 1919 and provides leadership, education, research and federal representation on retail banking issues such as privacy, fair lending, and consumer protection legislation/regulation. CBA members include most of the nation's largest bank holding companies as well as regional and super community banks that collectively hold two-thirds of the industry's total assets. The CBA appreciates the opportunity to provide comments on behalf of its members in response to the ANPR.

Background

Section 623(e) of the Fair Credit Reporting Act ("FCRA"), as amended by the Fair and Accurate Credit Transactions Act ("FACT Act"), requires the Agencies to establish and maintain guidelines for use by each person that furnishes information to a CRA ("furnisher") regarding the "accuracy and integrity" of the information furnished. The Agencies must also prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing those guidelines. Section 623(a)(8) of the FCRA, as amended by the FACT Act, requires the Agencies to identify the circumstances under which a furnisher must be required to reinvestigate a dispute of the accuracy of information contained in a consumer report on the consumer, based on a direct request of the consumer. Each directive to the Agencies also includes specific criteria to be considered.

In General

CBA urges the Agencies to proceed with caution with respect to this rulemaking. The consumer reporting system in the United States is the most robust in the world. Consumers and businesses both reap the benefits of our consumer reporting system. As the Agencies know, consumers are able to obtain more financial products and services at lower cost due to the reliability of our consumer reporting system.

The success of our consumer reporting system is no accident. Furnishers generally recognize the need to provide accurate information to CRAs, especially since virtually all furnishers are also users of consumer reports. Indeed, nothing demonstrates the fact that furnishers understand the benefits to providing accurate information to CRAs than the fact that they *voluntarily* engage in the practice of furnishing information to CRAs. Although furnishers incur costs to furnish information to CRAs, they do so because they recognize the value of the end product: robust and accurate consumer reports. It would seem incongruous that a furnisher would understand the value in furnishing, so much so that they incur expenses to do so with no revenue generated in return, but not make reasonable efforts to ensure that the information provided is accurate. After all, a furnisher (especially a larger one) is likely to be the user of the information it provides to CRAs when that furnisher becomes a user of consumer reports.

CRAs also recognize the obvious commercial need to provide high quality products to their consumers. Furthermore, the FCRA provides a framework to ensure that certain baseline requirements are met. The result of these private sector incentives and the requirements of the FCRA is a system that works, both for consumers and for industry. The proof of this is evident in the widespread reliance on consumer report information in the most advanced and mature credit system in the world.

Having said that, no system can be perfect. It is reasonable to contemplate improvements to any system, including the consumer reporting system. Indeed, Congress did so as part of the FACT Act. Congress also recognized that certain improvements to the consumer reporting system must be considered with an eye toward potential consequences of those changes, as well. With this in mind, Congress directed the Agencies to consider issues relating to the accuracy and integrity of information furnished to CRAs and the application of certain statutory requirements if consumers dispute information directly with furnishers. We applaud the Agencies for issuing the ANPR as the first step in its rulemaking process, as we believe it is important for the Agencies to understand fully the system as it operates today and the potential improvements or unintended consequences that could result from additional regulatory activity. In particular, CBA hopes that the Agencies understand that the benefits of the existing voluntary system could be jeopardized if furnishers must comply with additional regulatory requirements. There is a true risk that furnishers may decide to exit the consumer reporting system, or fundamentally alter their participation in it, if the compliance costs increase, even if only slightly. The result would mean a less robust system, hurting consumers and consumer report users alike. For those furnishers who continue to provide information to CRAs despite increased costs to do so, at least some of the additional compliance costs will be passed on to consumers.

In sum, CBA believes that the potential for improvement to the consumer reporting system as a result of this rulemaking is marginal, at best. There is a significant risk, however, that any rulemaking could have significant unintended consequences, causing significant harm to consumers. Therefore, the CBA strongly urges the Agencies to err on the side of restraint with respect to this rulemaking. The perfect should not be the enemy of the good.

Accuracy and Integrity Guidelines

Accuracy of Information Furnished (Questions A1. through A7.)

In general, CBA members who furnish information to CRAs tend to provide CRAs a “snapshot” of their consumer files. In other words, the furnisher simply provides the CRA with information as it appears in the furnisher’s own files at a specific time. This information is generally the same information the furnisher uses to manage its customer accounts and/or credit portfolio. The information furnished to the CRA is as accurate as the information upon which the furnisher relies to manage its own relationship with the consumer.

The Agencies have several questions that focus on the types of errors that can occur when furnishing information, and how those errors can occur. Based on the fact that the CRA is generally receiving the same information used by the furnisher, it would appear that issues relating to the accuracy of information furnished also relate to the accuracy of the furnisher's underlying files. Although a bank has obvious economic incentives to maintain accurate account records, absolute perfection in this regard is an unrealistic goal. Indeed, even with the statutory or regulatory rights provided to consumers to dispute the accuracy of account information (*e.g.*, pursuant to the billing error provisions in the Truth in Lending Act), account information will not always be accurate. Given those strong existing incentives to maintain accurate account records, it would appear that little could be done to systematically improve the quality of the information furnished to CRAs by CBA's members.

As for the process of furnishing information to CRAs, much of the information is initially provided via a tape or other "hard" medium on a monthly basis. Regardless of whether the information is provided in hard copy or electronically, CBA has no reason to believe that the method of furnishing information to CRAs, or the frequency with which it is furnished, affects the quality of information transmitted to CRAs. Our members report that they generally furnish information using the standardized Metro 2 format.

Reinvestigation Process (Questions A8. and A9.)

CBA can provide a general description of what its members do in connection with a reinvestigation request received from a CRA. Obviously, these practices will vary depending on the facts and on the individual furnisher. However, in general it appears that our members review the information provided by the CRA (almost invariably through the automated system developed by the major CRAs, E-OSCAR) and conduct a reasonable investigation to assess the accuracy of the information disputed by the consumer. For example, the furnisher will review its files to ensure that the information disputed by the consumer is, in fact, the information in its files. If the information in its files is different from the information disputed (*e.g.*, because it has been updated since last reported), the furnisher will provide the correction to the CRA through E-OSCAR. If the information in dispute is an accurate reflection of the information in the furnisher's files, circumstances may dictate that the furnisher investigate the underlying accuracy of the furnisher's files. For example, if the consumer is challenging the accuracy of a reported account delinquency, and the furnisher's files suggest that the information is accurate, the furnisher may review the payment information associated with the account to determine whether the consumer is, in fact, delinquent.

Our members report that E-OSCAR is generally an efficient and user-friendly system. It is a system that has evolved and developed well over time. Not surprisingly, our members believe that E-OSCAR should continue to evolve based on technological improvements and the evolving needs of furnishers, CRAs, and consumers. CBA is confident that this process can be managed by the participants in the E-OSCAR system on an on-going basis. Although various users of E-OSCAR may have their thoughts with respect to improvements on the E-OSCAR system, we caution the Agencies against

intervention in the E-OSCAR system. We believe that the participants in the system are sophisticated enough to understand the needs of furnishers, CRAs, and consumers and to make adjustments accordingly. We are most concerned that any additional regulatory intervention may have the unintended consequence of stifling the growth and development of E-OSCAR because industry's needs and practices, not to mention technology, will likely evolve much quicker and more subtlely than any regulatory amendment process.

It is important to note that a furnisher's efforts with respect to a reinvestigation may vary depending on the circumstances. For example, if a consumer is providing repeated disputes with respect to the same information, a furnisher may suspect that the consumer is attempting to engage in fraudulent credit repair. On the other hand, the furnisher may believe that additional investigation is necessary—including even contacting the consumer directly to understand better the consumer's concerns. It is impossible to generalize how a furnisher will respond in such circumstances, since a discussion would be dependent on a variety of facts. Regardless, it is clear that some consumers attempt to abuse the reinvestigation process provided under the FCRA in order to eliminate negative, but accurate, information in the consumer's file at the CRA.

Direct Dispute Requirements

Current Practices (Question B5.)

CBA members are focused on customer service. Therefore, if a consumer contacts a financial institution about allegedly erroneous information maintained or provided by that institution, it will generally attempt to resolve the alleged discrepancy. In many instances, this is not required by law, and in no circumstance is it required by the FCRA.[1] Rather, it is simply the result of a competitive marketplace where financial institutions compete with one another based on a variety of factors, including customer service. As is explained below, the fact that many financial institutions provide certain services to consumers as a matter of customer service should not be construed to mean that the Agencies could "simply codify" current practices as part of this rulemaking without significant adverse repercussions.

In general, our members receive the vast majority of allegations of inaccurate furnishing from CRAs pursuant to section 611 of the FCRA. Based on anecdotal feedback from our members, it appears reasonable to conclude that about 90% of allegations of inaccuracy are generated from CRAs under section 611 of the FCRA, while about 10% are generated through direct contact with the consumer. Of these 10% initiated directly by consumers, a large percentage are redundant because they are also communicated to the furnisher by the CRA as a result of the consumer disputing information with both the furnisher and the CRA. Therefore, it is safe to say that the vast

[1] Even if the financial institution is a furnisher, the requirements of section 623(a) of the FCRA do not require a furnisher to reinvestigate or correct information furnished to a CRA. For example, upon receiving a notice of dispute, the furnisher could simply stop furnishing such information and comply with the FCRA without investigating the allegation.

majority of disputes currently arrive through E-OSCAR, and even many of those coming directly from the consumer are redundant.

Our members also report frustration with respect to disputes that are clearly generated by "credit repair" organizations or web sites. Of the disputes initiated directly by consumers, many of them are obviously form letters making dubious allegations. For example, the letter may request that the furnisher affirm the existence of the debt or challenge the legal obligation to repay any loan. These types of letters can be found on the Internet, among other places. It is clear that the allegations made in the letters are frivolous, but many furnishers will review the consumer's account in an attempt to make sure that a consumer did not fall for a ruse when all the consumer wanted to do was challenge a legitimate error. Sorting out fact from fiction can take time and resources, however. Other disputes filed by consumers can be "serial disputes" where the consumer changes the allegation of the dispute *just enough* to force a well-intentioned creditor to review the account a second time. It is likely that most of these "serial disputes" are not legitimate, and the consumer is hoping that the furnisher will finally surrender, or let the dispute slip through the cracks. In fact, we believe that most of our members have a "one bite at the apple" rule in order to avoid dedicating resources to individuals who want only to abuse the system.

Costs and Benefits to Furnishers (Question B3.)[2]

Our members generally prefer to receive disputes from CRAs instead of consumers. Although there are obvious benefits to hearing a dispute "first hand" from a consumer, and some furnishers prefer to handle disputes directly with the consumer, most furnishers prefer to receive disputes through the CRA.[3] The existing system is efficient and less expensive for furnishers to use compared to accepting disputes directly. Acting as the coordinator of disputes, CRAs receive the disputes, extract the necessary information from the dispute, and forward the relevant information to the furnishers. This is obviously of some considerable expense to the CRAs, and furnishers certainly absorb some of this cost as purchasers of CRAs' products. However, it is a much more efficient arrangement than requiring every furnisher in the country to establish the infrastructure to accept disputes from consumers. For example, at some member companies, the nature of some business lines is not as extensively oriented toward direct communications with consumers as others. It would be disproportionately more expensive for these business lines to expand their customer communications infrastructure in order to receive direct disputes from consumers.

CBA believes the Agencies must recognize that furnishers would incur significant costs to build out the necessary infrastructure if they are required by regulation to expand their handling of disputes to handle direct disputes under the FCRA. One of the refrains

[2] Question B3 in the ANPR requests a description for the benefits to furnishers of requiring a direct reinvestigation. CBA assumes that the Agencies intended to request a description of the costs, as well.
[3] These benefits relate to understanding nuances of a dispute or complex fact patterns associated with a dispute. Many times these issues relate to identity theft, an issue which is addressed more effectively in other portions of the FCRA, as is explained below.

that we heard throughout the legislative process was that direct disputes from consumers should not be an issue because many furnishers handle direct disputes informally already. Therefore, the logic went, altering the obligations on furnishers with respect to direct disputes should not result in additional costs to furnishers. While it is true that furnishers handle customer service calls today, the volume and nature of these calls/disputes would likely change dramatically if furnishers were required under the FCRA to investigate all disputes directly. As noted above, a small portion of disputes come directly from consumers today. We surmise that this is because the disclosure provided to consumers pursuant to section 609(c) of the FCRA informs consumers to direct their disputes to the CRA that provided them with a copy of their file. We suspect that the volume of disputes received by furnishers would increase significantly if government-mandated disclosures suggested that they should contact the furnisher. CBA also believes that the volume of disputes would increase significantly because credit repair operations would view furnishers as a legitimate target for their nefarious activities. Although furnishers report receiving disputes that are obviously credit repair, the volume is likely affected by credit repair organizations' knowledge that furnishers are under no legal obligation to investigate obviously frivolous claims. However, if furnishers are obligated to at least respond to frivolous requests,[4] credit repair organizations may target furnishers just as they target CRAs. Indeed, such organizations may view any requirement for furnishers to accept disputes as a gift from the Agencies, since credit repair would then have another entity to target in hopes that at least some furnishers will prove to be a weak link in the reinvestigation chain.

In an effort to address concerns about the impact of credit repair on furnishers, Congress drafted section 623(a)(8)(G) of the FCRA. CBA believes that section 623(a)(8)(G) of the FCRA will have little or no impact on reducing the disputes to furnishers connected to credit repair organizations, however. As a practical matter, an entity will not be able to determine whether a dispute was prepared by a credit repair organization. Even if the Agencies permitted furnishers to ignore disputes that appeared to be form letters, credit repair organizations will simply continue to develop new letters, or urge consumers to take the bogus credit repair concepts provided but to put them into the consumers' "own words". Regardless, furnishers would still need to receive and review the dispute before a determination could be made under section 623(a)(8)(G). Even if the investigation is not initiated as a result of the dispute sent to the furnisher, the dispute will also likely come from the CRA, which has no ability to dismiss credit repair disputes out of hand under section 611. In short, we fear that section 623(a)(8)(G) is little more than an expression of congressional concern with no real mitigation to the costs associated with credit repair.

The increase in disputes received by consumers will necessarily require that furnishers expend additional resources to handle these communications. This will disproportionately affect smaller furnishers and those which do not have sufficient infrastructure to handle an increase in customer calls or letters. The furnishers' increase in disputes from consumers will also not necessarily be offset by a reduction in disputes received from CRAs. Although the number of direct disputes would certainly increase if

[4] Section 623(a)(8)(F)(ii) requires that furnishers respond to frivolous disputes.

consumers could invoke the FCRA in all cases when disputing information directly with furnishers, it is not clear whether this would result in a corresponding decrease in dispute volume from CRAs. There is at least some percentage of consumers who will dispute the information with both the CRA and the furnisher with the hope that "more is better".

Appropriate Circumstances (Questions B1., B2., B4., and B7.)

When a consumer receives information from a CRA, it is only appropriate that the consumer begin the dispute process with the entity that maintains the information in dispute. For example, the error may be the result of an action or omission by the CRA.[5] Regardless, a consumer report is the product of a CRA and any investigation of the information contained in a consumer report should begin with the entity that compiled the information and provided it to the consumer.

Beginning the investigation with the CRA benefits consumers in several ways. For example, by contacting the CRA, the consumer needs to make only one inquiry to one party. Two examples illustrate this point. First, if the consumer alleges multiple errors on the report, the consumer need only contact the CRA and the CRA will coordinate the investigation among multiple furnishers as necessary. Once the investigation is complete, the CRA will inform the consumer of the results. In this way the consumer does not need to draft several different letters and monitor the progress of several different furnishers' investigations. Second, if the consumer contacts the furnisher, and the information provided by the furnisher was accurate, the consumer would most likely need to make a second inquiry to the CRA to determine whether the error was the CRA's.[6] In both of these examples, beginning the reinvestigation with the CRA would have been more efficient for the consumer.

Initiating the investigation with the CRA is also more efficient for the consumer reporting system. CBA notes that only the CRA can determine whether the alleged error was its own or another party's. If the error was the CRA's, the error can be corrected without any communication between the CRA and the furnisher(s). However, if the investigation begins with the furnisher, no matter what the outcome, the furnisher will most likely need to communicate with the CRA. If the furnisher's information was inaccurate, it will obviously make the correction and report it to the CRA. If the furnisher's information was accurate, however, the furnisher would likely rereport the accurate information to the CRA in an attempt to have the problem fixed at the CRA. This may or may not be successful in solving the problem—and the consumer would

[5] Just as it is unreasonable to hold furnishers to an absolute accuracy standard, so too is it unreasonable to hold CRAs to one. In its effort to process billions of pieces of information, it is likely that a CRA will make some errors. Given the unparalleled reliability of consumer reports in general, we believe CRAs do an admirable job in maintaining the accuracy of information in their files.

[6] We note that the FCRA does not establish a system whereby furnishers and CRAs have interchangeable reinvestigation roles. In other words, the FCRA does not import the obligations from section 611 to section 623(a)(8) and require furnishers to coordinate investigations with CRAs. For example, section 623(a)(8)(E) requires only that the furnisher investigate and report to the bureau its results. There is no requirement for the furnisher to provide information to the CRA for the CRA to investigate its files, similar to the requirement for the CRA to provide such information to the furnisher under section 611(a)(2).

need to contact the CRA anyway to verify the accuracy of the consumer's updated file at the CRA.

Furthermore, we do not believe it is appropriate to require furnishers to accept direct disputes under the FCRA, including for the reasons discussed in response to question B3 above. Not only does it not streamline the dispute process for consumers, but it will result in additional costs to furnishers. CBA cannot provide an estimate of these costs, nor can we suggest a percentage of furnishers who will be unable to absorb these costs. We can say, however, that costs will increase and at least some furnishers may reconsider their participation in the consumer reporting system. Perhaps some will provide information less frequently to consumers, or simply not reinvestigate disputes and accept the consumer's version of facts. Some may decide to stop furnishing altogether. None of these outcomes is desirable, and each would degrade the quality of information in consumer reports.

CBA does not dispute that there may be some benefit of communicating a dispute directly to the source of the alleged error. It is possible that more complicated situations are not translated effectively from the CRA to furnishers. In fact, these situations would tend to involve allegations of identity theft, which, by their very nature, can be complicated situations to sort out. However, given the ability of consumers to contact furnishers directly with respect to the reporting of information relating to identity theft and account fraud under section 623(a)(6) of the FCRA, we do not believe that additional reinvestigation obligations are necessary under section 623(a)(8) for identity theft purposes. To the extent that the consumer would benefit from a reinvestigation resulting from an identity theft situation documented by an identity theft report, we believe it would be appropriate to consider allowing the consumer to initiate the dispute directly with the furnisher. The consumer already has the opportunity to contact the furnisher directly to block the information from being reported to the CRA, and additional contact in such circumstances may be warranted. Further, as noted already, identity theft cases can be complicated and may require one or more direct exchanges between the furnisher and the CRA.

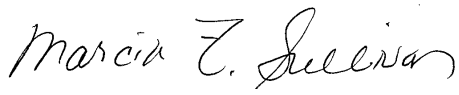
Having made these points, our members generally prefer to be viewed as the solution to any problem arising from an account relationship. They also seek to demonstrate their commitment to consumers as often as possible. It is also true that, regardless of how effective E-OSCAR is now or in the future, there are at least a few circumstances when there is no substitute to hearing the dispute directly from the consumer. For these reasons, our members generally do not find the existing level of direct consumer disputes to be troubling. In fact, for these reasons, some of our members would prefer to receive more disputes directly from consumers as opposed to receiving them from a CRA. CBA believes, however, that those who prefer direct disputes have a mechanism to encourage them, such as through their regular communications with their customers. In light of the arguments we have made throughout this letter, any effort to steer consumers toward furnishers when disputing information in the consumer's file at a CRA should be voluntary or limited to situations in which there is a clear benefit to consumers and limited additional costs to furnishers.

Conclusion

CBA respectfully submits that the risks associated with allowing consumers to contact furnishers directly with respect to reinvestigating allegedly erroneous information on a CRA's file, as opposed to the status quo, far outweigh any potential benefits. We believe it would be unwise to jeopardize the quality and quantity of information furnished to CRAs by placing additional compliance and regulatory burdens on furnishers. Indeed, there is a certain irony to such a result when the goal is to improve the accuracy and integrity of such information.

We thank the Agencies again for issuing the ANPR and allowing CBA to comment. Please do not hesitate to contact me at msullivan@cbaanet.org or Joe Crouse jcrouse@cbanet.org if we may be of further assistance.

Sincerely,



Marcia Z. Sullivan
Director, Government Relations