

BEFORE THE

DEPARTMENT OF THE TREASURY

**Office of Comptroller of the Currency
Docket No. 06-04; RIN 1557-AC89**

**Office of Thrift Supervision
No. 2006-06; RIN 1550-AC01**

**FEDERAL RESERVE SYSTEM
Docket No. R-1250**

**FEDERAL DEPOSIT INSURANCE CORPORATION
RIN 3064-AC99**

NATIONAL CREDIT UNION ADMINISTRATION

**FEDERAL TRADE COMMISSION
PROJECT NO. R611017; 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.**

**COMMENTS SUBMITTED BY
THE OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC.**

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May 22, 2006

I. INTRODUCTION

A. PROCEDURAL STATEMENT

These comments are submitted by the Owner-Operator Independent Drivers Association, Inc. ("OOIDA" or "Association") in response to an Advanced Notice of Proposed Rulemaking and a Request for Comments pertaining to 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. The multi-agency notice of this request was published in the Federal Register on March 22, 2006.

B. THE INTEREST OF THE OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC.

OOIDA is a not-for-profit corporation incorporated in 1973 under the laws of the State of Missouri, with its principal place of business in Grain Valley, Missouri. OOIDA is the largest international trade association representing the interests of independent owner-operators and professional drivers on all issues that affect small business truckers. The more than 140,000 members of OOIDA are small-business men and women located in all 50 states and Canada who collectively own and operate more than 210,000 individual heavy-duty trucks. Many of OOIDA's members have their own DOT authority to operate in interstate commerce. The mailing address of the Association is:

Owner-Operator Independent Drivers Association, Inc.
P.O. Box 1000
1 NW OOIDA Drive
Grain Valley, Missouri 64029
www.ooida.com

The Association actively promotes the views of small business truckers and professional

drivers through its interaction with state and federal government agencies, legislatures, the courts, other trade associations, and private businesses to advance an equitable and safe environment for commercial drivers. OOIDA is active in all aspects of highway safety and transportation policy, and represents the positions of small business truckers in numerous committees and various forums on the local, state, national, and international levels. Many consumer reporting agencies trade in credit reports containing the employment histories of commercial motor vehicle drivers. The accuracy of consumer reports containing the employment history of a truck driver can have a substantial impact on the employment opportunities available to truck drivers, including members of OOIDA, and to the pool of prospective drivers available to motor carriers.

II. SUMMARY

The Fair Credit Reporting Act (“FCRA”) requires that consumer reporting agencies “follow reasonable procedures to maximize the possible accuracy of consumer reports.”¹ Accuracy is a concept that implies both truth and precision. “On its maiden voyage, the Titanic sailed close to an iceberg.” This statement is true, but it is not precise. Therefore, it is not “accurate.” “Maximizing possible accuracy” under the FCRA, therefore, is frequently an exercise of improving the precision of statements in a consumer report, especially employment histories. Often consumer reporting agencies provide the format used by previous employers and businesses to contribute the statements that populate the consumer reports purchased by prospective employers. This rulemaking, therefore necessarily implicates how the process and format for collecting statements affects the accuracy of consumer reports.

¹ 15 U.S.C. § 1681e(b)

Truck drivers are frequently the subject of consumer reports containing their employment histories at various motor carriers. Some statements regularly used in such reports are so imprecise that they, simultaneously, have both derogatory and neutral meanings. An example of a form used by former employers to submit statements about drivers and its guide is attached as Exhibit 1. For example, the term “cargo loss” on a driver’s report can mean either that cargo was lost due to the negligence or theft of the driver or that the cargo was stolen by others or subject to weather damage through no fault of the driver. Because all of these meanings are implied, the statement is inherently imprecise. Without precision, a consumer report containing that statement alone is far from accurate. Consumer reports are frequently used by motor carriers in the defense of negligent hiring actions. Motor carrier employers, therefore, refuse to hire a driver based solely on a consumer report that contains a derogatory statement whether its author meant it to have that meaning or not.

Consumer reporting systems with such high levels of inaccuracy fail to promote the goals of the Fair Credit Reporting Act to facilitate the efficient transfer of information and promote commerce. Good truck drivers with derogatory consumer reports are effectively blackballed from the industry. Prospective employers are discouraged from hiring a good driver because an employment history connotes a bad employee. Perhaps most importantly, truck drivers believe that companies make potentially derogatory statements in their employment histories as a way of retaliating against or disciplining them for engaging in such activities as demanding to be paid on-time, refusing to drive a defective truck, or refusing to drive more than the allotted time allowed under federal hours-of-service rules.

The claims that consumer reports are used to retaliate against drivers are extremely

difficult to prove and prosecute. Individual drivers have few resources to bring such actions. OOIDA believes that such uses would be greatly curtailed, however, if persons who provide employment history information to consumer reporting agencies were required to follow appropriate standards for “maximizing possible accuracy.” Being required to provide even moderately more specific statements would make employers more careful when contributing them and give consumers a greater ability to refute them.

The following comments include two expert reports that describe the problems with a consumer report form frequently used in the trucking industry. These experts suggest methods for easily modifying this form to greatly improve its accuracy. OOIDA also endorses two prior efforts in the federal government for improving the accuracy and usefulness of information. The first is the Equal Employment Opportunity Commission’s Uniform Guidelines for Employee Selection Procedures.² The next is the Office of Management and Budget’s “Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies.”³ OOIDA’s focus in these comments is the trucking industry. But the principles of accuracy embraced by these resources are applicable to all consumer reports.

III. COMMENTS

When the accuracy of a credit report regarding financial transcripts is called into question, it is rare for its precision to be at issue. The use of dollars and dates to describe a debt provides a universally recognized level of precision. “The Titanic cost \$7.5 million to build and then sank

² 43 FR 38295 (August 25, 1978)

³ 67 FR 8452 (February 22, 2002)

on April 15, 1912.” Because these statements contain precise expressions of a cost and a date, an assessment of their accuracy would focus on their truth.

In consumer reports containing a person’s employment history, however, such precise terms are not always used. For example, “Captain White’s performance was less than satisfactory and he is ineligible for rehire by White Star Lines.” The reader may not know what makes the Captain satisfactory or not. (Not everyone may know who skippered the Titanic). The reader does not know why the Captain is not eligible for rehire - because of his unsatisfactory performance, or because he went down with the ship?

In consumer reports containing statements related to the quality of a person’s work, the units of measurement may not be as clear cut as financial or temporal data. How accurate is a statement that a person’s work was “satisfactory?” By what standard or scale? If a person was said to “violate company policy,” how would the user of such a consumer report know the seriousness of the violation or culpability of the employee labeled as such? Precision is not built into those phrases. Therefore, standards for the accuracy of statements provided to consumer reporting agencies must pertain to more than the transfer of data. It must also embrace both the truth and precision of its expression.

The precision problem is primarily one of definition. In the expert report attached as Exhibit 2, Dr. Ed Schiappa,⁴ a well regarded expert in definitions, examines the need for the terms used in consumer reports to have sufficient definition to convey meaning. Dr. Schiappa states that meaning is critical for a word or phrase to be used consistently by different people.

⁴ The identity of the subject consumer reporting agency has been redacted from the attached expert reports.

According to the U.S. Court of Appeals for the Tenth Circuit in its review of one credit reporting system, without sufficient meaning, a statement on an employment history form will not be used consistently by different employers and its accuracy will be in doubt.⁵

The task of assuring the accuracy of employment histories is not a difficult one. Social scientists have long embraced the concepts of validity and reliability for assessing the accuracy of a collection of information. The report of Dr. Glenn Beamer, attached as Exhibit 3, describes how collections of information, such as those routinely collected by consumer reports, can be evaluated for their reliability. The measurement of reliability is a concept that is embraced by scientists across many disciplines to evaluate the consistency of the data gathered. Furthermore, Dr. Beamer describes the need for employers to use valid forms to submit accurate employment information. Dr. Beamer's validity analysis refers to the structure and content of the questions asked on such forms. Dr. Beamer suggests several ways to improve the validity of the forms used to collect employment histories of truck drivers.

Drs. Schiappa and Beamer's analyses demonstrate how precision can be incorporated into statements about employment histories. As an example of an invalid collection of information, a box labeled satisfactory that may or may not be selected by an employer to describe an employee has little precision. If the box is not checked, the reader does not know whether the employer forgot to check the box or whether the driver was unsatisfactory. What level of performance makes a driver satisfactory to that employer? A five point scale from very unsatisfactory to very satisfactory, with each possible response defined, is more precise. The reader has more information on which to make a judgment and can better compare employee candidates measured

⁵ *Cassara v. DAC Services*, 276 F.3d 1210, 1219-20 (10th Cir. 2002)

with the same scale.

In support of these standards of reliability and validity, OOIDA submits, attached as Exhibit 4, a copy of the Office of Management and Budget's "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies." In these guidelines, OMB recognized the responsibility of the government, in its position of authority and public trust, to take certain care in the production of information produced to the public. Such responsibility is directly analogous to the grave responsibility required by the Fair Credit Reporting Act of those who trade in the personal information and reputation of American consumers.

Finally, attached as Exhibit 5, OOIDA submits a copy of the Equal Employment Opportunity Commissions' Uniform Guidelines for Employee Selection Procedures. These guidelines were created to help employers establish objective valid employee screening devices. OOIDA understands that the Fair Credit Reporting Act does not dictate what information must be contained in a consumer report. But whatever statements are included must be amenable to an accuracy analysis. The EEOC Guidelines provide employment-specific examples of how consumer reports containing employment histories can be written in a way that improve their precision, objectivity, utility, and, therefore, accuracy.

IV. CONCLUSION

OOIDA believes that a consumer reporting system that produces inaccurate employment histories fails to serve both drivers and employers. Under such a system, good drivers can be forced to leave the industry, and bad drivers are allowed to remain. The form and content of statements provided by employers to consumer reporting agencies is significantly determined by

the type of input device provided by the consumer reporting agency. This rulemaking should work to ensure that businesses only provide information or statements that are both truthful and sufficiently precise to achieve maximum possible accuracy, no matter what the subject area.

Thank you for your consideration of these comments.

Respectfully submitted,

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Commenter also submitted five exhibits that maybe reviewed in the Freedom of Information Office.