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Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attention: Docket No. R-1203

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attention: RIN 3064-AC73

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

Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 1-5
Washington, DC 20219
Attention: Docket No. 04-16

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: No. 2004-31

19 May 2006

Re: Docket No. R-1250 (Federal Reserve Board)
Advanced Notice of Public Rulemaking
Section 312 of the Fair Credit Reporting Act
Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies.
Vol. 71 No. 5 *Federal Register* 14419

Ladies and Gentlemen:

The American Bankers Association ("ABA") is pleased to submit its response to the advanced notice of proposed rulemaking ("ANPR") and request for public comment issued by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision (collectively, the "Agencies"), and published in the *Federal Register* on March 22, 2006. The ANPR requests comment on Section 312 of the Fair and Accurate Credit Transactions Act ("FACT Act"), which amended the Fair Credit

Reporting Act ("FCRA"). Pursuant to that section, the Agencies must: 1) 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 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 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.

The ABA brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership – which includes community, regional, and money center banks and holding companies, as well as savings associations, trust companies, and savings banks – makes ABA the largest banking trade association in the country.

Overview

ABA believes that generally the credit reporting system works for everyone -- consumers, furnishers, users of consumer reports, and consumer reporting agencies. If tinkering with the system is necessary it should be achieved through industry initiatives rather than through regulatory intervention. Currently, furnishers, users, and agencies all have tremendous incentives to ensure an accurate, reliable, and efficient system that consumers trust. This approach ensures the necessary flexibility to respond as the credit and credit reporting environment evolves. Moreover, onerous regulations may discourage furnishers from reporting, triggering a chain reaction that in the end would hurt consumers. With less complete reports, a key ingredient that makes our credit market competitive and efficient, consumers will lose choices and pay more.

Furnishers have incentives to ensure the accuracy of information they provide to consumer reporting agencies and to respond to consumers' disputes about reported information. These matters involve their customers (and potential customers) whom they do not want to inconvenience or alienate by reporting inaccurate information. Basic customer service, especially in a highly competitive market as the financial services market, demands close attention to reporting accurate information. Additionally, furnishers are also users of credit reports and therefore have a clear interest in providing accurate information as they rely on the integrity of the consumer reports to make important credit decisions.

In considering any regulations, the Agencies should weigh the "benefits to consumers with the costs on furnishers and the credit reporting system," as Section 623(a)(8)(B) of the FCRA requires. All too often, when an industry practice becomes a regulatory requirement, the

result often becomes more expensive without being more effective. The consumer reporting industry relies on the voluntary submission of data to consumer reporting agencies. Over-burdensome requirements will convince some institutions to stop reporting altogether, diluting the value of consumer reports. Some small banks have reported that they have already discontinued reporting to credit bureaus due to the regulatory burdens and potential liability associated with FCRA. More institutions will migrate to this position in the face of additional compliance burdens and potential liability.

Below are our responses to the Agencies' specific questions.

A. Accuracy and Integrity Guidelines and Regulations.

The agencies have asked a number of questions related to furnisher practices and experiences with regard to reporting information to consumer reporting agencies. Most ABA members report both positive and negative information. A small percentage of small banks only report negative information and some do not report to any consumer reporting agencies. We have heard from several small depository institutions who in recent years have discontinued reporting because of compliance burdens and concerns about potential liability.

Most depository institutions use an automated system to send information to credit bureaus. At the end of each month (though some report more frequently), a tape containing account history and payment information is sent to the credit bureau using the format standardized by the credit reporting industry. The information reported varies depending on whether the report involves open-end or closed-end credit. As the ANPR notes, many report to all three of the nationwide credit reporting agencies, though some report to only one or two. Many small institutions rely on third-party processors to report the information.

The information reported to credit bureaus is derived from the depository institutions' own central files on which they rely for their own internal purposes. Policies and procedures for ensuring accurate reporting are subject to testing and audit review.

The Agencies have asked about factors that may affect the "accuracy" of consumer reports, including any problems that result in credit information that is duplicative or stale. Depository institutions using credit reports indicate that their credit analysts are adept at identifying credit information that is out-of-date, duplicative, or out-of-context with the report and factor these into the decision process.

The Agencies also ask whether other information, such as furnishing only negative information or not reporting credit limits, may affect the "accuracy" of reports. These factors clearly are unrelated to

"accuracy." Yet, Section 312 of the FACT Act only requires the Agencies to issue regulations related to the "accuracy and integrity" of information reported to consumer reporting agencies. Congress considered and did not adopt an "accurate and complete" standard. (149 Cong. Rec. S 13912 Nov. 4, 2003.) Moreover, Representative Oxley, Chairman of the House Financial Services Committee, explained, "'Accuracy and integrity' was selected as the relevant standard, rather than 'accuracy and completeness' as used in sections 313 and 319, to focus on the quality of information furnished rather than the completeness of the information furnished." (149 Cong. Rec. E2512, 2516.) Moreover, neither regulations nor guidelines should dictate the type of information to be submitted to consumer reporting agencies. First, the information reported varies vary depending on the product and, second and more importantly, what is valid and relevant today becomes obsolete tomorrow. The consumer reporting marketplace has proved to be flexible and responsive to changing products and evolving predictive analysis and should be allowed to continue without regulatory interference.

The Agencies have asked about dispute resolution policies and experiences. The disputes depository institutions receive either from the credit bureau or directly from consumers vary in type and volume, depending on the size of the institution and the type of product involved. Typically, open-end credit, by virtue of its nature and the greater number of variables, garners more requests for investigations. Typical consumer complaints are "late payment reported incorrectly" and "account not theirs." Depository institutions report that frequently consumers do not recognize an account or inquiry on their report because the debt was sold, they have forgotten about the account, or they have forgotten that they had applied and been denied. In disputes about the timeliness of payment, they are often not aware that a payment was received late.

Consumers today may be more likely to dispute information reported because of their greater access to free reports and because of more awareness of, sensitivity to, and access to their credit scores and the factors that determine them. While such access and review are beneficial to consumers and to ensuring accurate reports, sometimes the review prompts disputes based on a desire to improve a credit score by challenging accurate, but negative information.

Some depository institutions indicate that the sources for a large percentage of the disputes they receive are reports which aggregate those of the three nationwide credit bureaus. Aggregated credit reports are common because they are required by the secondary mortgage market. Handling those disputes can be a challenge because the credit bureau information is correct, but becomes incorrect when aggregated with the other reports. When consumers contact the furnisher directly, the furnisher can do little to correct it because the furnisher has no relationship with the aggregator.

The vast majority of credit report disputes are received through the credit bureaus' E-OSCAR-web™. Once received, disputes are directed to the appropriate area within the institution for resolution. The specific process and procedure depend on the size of the institution and the nature of the financial product. The financial institution reviews its system's loan files to verify the information. Generally, the verification is done quickly, though in cases where archives must be retrieved, the process is longer. Depository institutions submit corrections and confirmations through the E-OSCAR-web™ system, consistent with its timing and formatting requirements.

In addition to credit reports, many depository institutions report to a consumer reporting agency that collects information about checking account history. Only negative information is reported. Depository institutions report few disputes related to these checking account reports. In a common complaint, the consumer objects to the reporting of accurate but negative information, e.g. overdrafts related to an account "closed for cause" that were ultimately paid, but not in a timely fashion.

Even though FCRA regulations currently do not specifically require furnishers to respond within an established time frame to requests received from a consumer, depository institutions generally investigate these disputes. First, as noted earlier, basic customer service, especially in a market as highly competitive as the financial services market, dictates a timely and appropriate investigation and correction when necessary. Second, under Section 623(a) of FCRA, a furnisher may not report information if it "knows or has reasonable cause to believe that the information is inaccurate" or "if it is notified by the consumer that specific information is inaccurate."

As with the general reporting of information to consumer reporting agencies, policies and procedures for handling disputes are tested and audited to ensure that information is corrected or confirmed in a timely and accurate fashion.

B. Direct Dispute Regulations.

The Agencies in part B ask for information about how institutions handle disputes received directly from consumers as well as about the disadvantages, benefits, and costs of handling disputes received directly from consumers. As discussed in our response to part A, depository institutions generally respond to investigation requests received directly from consumers about information they have reported, regardless of the nature of the dispute, to ensure accurate reporting and good customer service. The investigation request received directly from the consumer is handled the same way a dispute received from a consumer reporting

agency is: the account and payment history are reviewed and any changes are reported to the consumer reporting agency.

There are some situations in which making a request to investigate directly with the furnisher may have some advantages. For example, some depository institutions offering open-end credit products find that with requests received directly from consumers, they may receive additional information useful to the investigation that is not necessarily relayed by E-OSCAR-web™.

There are advantages for consumers to request a consumer reporting agency, rather than a furnisher, to investigate a dispute. For example, investigation requests initiated by the consumer reporting agencies tend to be handled more quickly and are less prone to error because it is not necessary for the depository institution itself to key-in identification and account information. That is already handled more efficiently by the trained and dedicated staff of each of the nationwide credit reporting agencies which use E-OSCAR-web™ on a specialized format. In addition, consumers who find multiple errors on their report, as is often the case with identity theft, may dispute the information with a single letter to a single point of contact at the credit bureau. Consumer complaints made directly to the furnisher will also not be solved in instances where the aggregator is the source of the problem: the credit bureau to whom furnisher provides information is already reporting accurately and the furnisher has no relationship with the aggregator. In those cases, only the aggregator can correct the report.

Creating a separate, duplicate system to allow consumers to request furnishers to investigate will be costly with little added value. While depository institutions already investigate complaints received from consumers, far to often, once an industry practice becomes a regulatory requirement, the process becomes more expensive, less effective, and of little benefit to consumers. Incremental costs include those for the initial installation, testing, and training related to the system and the continuing costs associated with system maintenance, training, monitoring, and auditing. Added costs and potential liability may cause some depository institutions, especially small ones, to choose not to report, making the reports less reliable. Given that the current system works well, we believe these additional costs are not justified.

If the Agencies determine that a regulation should specifically permit consumers to submit to furnishers directly a request to investigate, they might consider doing so only for those instances where the dispute involves an account opened fraudulently as a result of identity theft. Investigation of complaints involving fraudulently opened accounts often may require more information than other types of disputes. The additional information available directly from consumers not conveyed through E-OSCAR-web™ may be valuable and helpful in the investigation.

Accordingly, a direct request about the dispute to the furnisher in these instances may be appropriate.

Summary.

ABA applauds the Agencies efforts to obtain information in order to develop guidelines and regulations regarding the accuracy and integrity of information furnished to consumer reporting agencies and a possible regulation allowing consumers to dispute consumer report information directly with furnishers. We believe that the consumer reporting system works well for everyone -- consumers, furnishers, users of consumer reports, and consumer reporting agencies and that any regulatory intervention should be minimal. All participants in the consumer reporting industry have compelling interests in ensuring that reports are as accurate as possible. Financial institutions have incentives to ensure that they report accurate information because, in the competitive financial services market, customer service demands it, and because, as users of reports, they rely on the information to make important credit decisions. In addition, any regulations should be no more than necessary because overburdensome regulations may cause some depository institutions to choose not to reports, as some have already done, ultimately rendering the reports less useful and predictive.

Depository institutions already voluntarily handle requests to investigate brought directly by consumers. However, adding a duplicative process to the existing one will increase costs, with little benefit to consumers. If the agencies decide to require furnishers to investigate based on a consumer's direct request, they should consider allowing it only for instances where the dispute involves an account opened fraudulently as a result of identity theft.

We are happy to provide any additional information.

Sincerely,

Nessa Eileen Feddis