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By electronic delivery

Office of the Comptroller of the
Currency
250 E Street, SW
Mail Stop 1-5,
Washington, DC 20219
Docket No. ID-2008 0022

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-1300

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance
Corporation,
550 17th Street, NW
Washington, DC 20429
Attention: RIN 3064-AD40

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Docket No. OTS-2008-0026

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

Federal Trade Commission
Office of the Secretary
Room 159-H (Annex C),
600 Pennsylvania Avenue, NW
Washington, DC 20580
Project No. R611017

29 August 2009

Ladies and Gentlemen,

Re: Advance notice of proposed rulemaking
Section 312 of the Fair and Accurate Reporting Act
Guidelines for Furnishers of Information to Consumer Reporting Agencies
Vol. 74 No. 125 *Federal Register* 31529, 1 July 2009

The American Bankers Association (ABA)¹ appreciates the opportunity to provide our thoughts on the advance notice of proposed rulemaking (ANPR) released 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, the Office of Thrift Supervision, and the Federal Trade Commission (collectively, the Agencies). The Agencies

¹ The American Bankers Association brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members - the majority of which are banks with less than \$125 million in assets - represent over 95 percent of the industry's \$12.7 trillion and assets and employ over 2 million men and women.

are requesting the comment to gather information that would assist them in considering the development of a possible proposed addition to the furnisher accuracy and guidelines published in the *Federal Register* on 1 July 2009 implementing Section 312 of the Fair and Accurate Credit Transactions Act (FACT Act), which amended the Fair Credit Reporting Act (FCRA).

ABA applauds the Agencies for establishing a sensible foundation for information integrity in a voluntary reporting system by requiring that furnished information (1) be substantiated by the furnisher's records at the time it is furnished and (2) be in a form and manner designed to minimize the likelihood of the information being incorrectly reflected in a consumer report. However, ABA believes that the Agencies' adoption of the additional requirement that measures furnisher information integrity against a standard of material misleading impact is problematic. Having done so commits the Agencies to the quixotic search to identify and enumerate a list of information elements that characterize integrity. This ANPR is the beginning of such a search. In ABA's view, this endeavor illustrates the futility of applying a wholly subjective standard to the concept of integrity and trying to enforce it on a voluntary reporting system without undermining the utility of, or attractiveness of participating in, that system. Accordingly, ABA opposes expanding the list of information elements required to be included in a furnisher's report, since we believe that expanding that list will increase regulatory costs while not contributing to the "integrity" of the information that they voluntarily provide.

Background

Section 312 of the FACT Act requires the Agencies to issue guidelines for furnishers regarding the accuracy and integrity of the information they furnish to consumer reporting agencies. The Agencies have recently promulgated final rules and defined the term "integrity" to mean that information a furnisher provides to a consumer reporting agency—

- Is substantiated by the furnisher's records at the time it is furnished;
- Is furnished in a form and manner that is designed to minimize the likelihood that the information may be incorrectly reflected in a consumer report; and
- Includes the information in a furnisher's possession about the account or other relationship that the relevant Agency has—
 - Determined that the absence of which would likely be materially misleading in evaluating a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living; and
 - Listed in Section I(b)(2)(iii) of the guidelines.

Section I(b)(20)(iii) of the guidelines lists a "credit limit, if applicable and in the furnisher's possession." Thus, information furnished to a consumer reporting agency will not be deemed to have "integrity" if it does not include the credit limit of an account with a limit and the furnisher possesses that limit. The Agencies now seek information to determine if they should include the account opening date as another item to be included, and whether any other items should be included.

As we emphasized in our previous letters of 19 May 2006 and 8 February 2008 on this subject, we believe that the consumer reporting system generally works effectively and efficiently for both financial institutions and their customers to maximize the availability and affordability of credit and other bank products such as checking accounts. Given the predictive value and efficiency of the current system, final rules should minimize regulatory interference

that will threaten to inhibit innovation, evolution, and improvement, but which could discourage furnishers from reporting, making the system less effective and efficient.

We appreciate that the Agencies have rejected the proposal that would have defined “integrity” to mean any information provided to a consumer reporting agency “the absence of which can reasonably be expected to contribute to an incorrect evaluation by a user. . . .” Such a subjective and unpredictable standard dependant on furnishers guessing what information the myriad of users deem important or useful would have been unworkable. While the Agencies instead have decided to provide clarity by determining themselves what information is necessary to report for purposes of defining integrity, the standard of “materially misleading” impact continues to invite subjective judgment that second-guesses the adequacy of information voluntarily provided that already passes muster for accuracy and business record substantiation.

We do not believe that “account opening” meets the threshold established by the Agencies’ definition of integrity. Moreover, it sets a troubling precedent that will entail continual evaluation of a long list of constantly changing factors in order to ensure the list is not obsolete. Adding to the list may also promote a gradual attrition of accounts that are reported, making the reports less robust and useful. We believe that given the interests and incentives of all the involved industries, that is, the consumer reporting agencies, users, and furnishers, to have a robust and accurate consumer reporting systems that is useful and predictive will ensure the best, most dynamic, and up-to-date system.

Discussion

Account opening date does not meet the Agencies’ standard of its definition of “integrity” and adding it or any other factor will argue for creating a long, ever-changing list of required information.

The Agencies have determined that the standard for whether information must be provided is whether omitting the information “would likely be materially misleading in evaluating a consumer’s creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.” In their explanation, the Agencies note that today’s credit scoring models use various factors, including length of credit history (time since accounts opened and time since account activity), that an account opening date may be used to determine the length of a consumer’s credit history, and that a long-established credit history tends to affect positively a consumer’s credit score and other assessments of a consumer’s creditworthiness.

The Agencies do not indicate what weight the length of credit history is given in any particular scoring model or how that weight compares to the other numerous factors listed (payment history, credit utilization, number and types of credit accounts, types of credit used, and bankruptcy filings), which presumably will vary depending on the particular scoring model and will change over time. Indeed, the Agencies specifically recognize in the Supplementary Information that the account opening date may not be a significant factor in determining a credit score in certain credit scoring models and that some models may adjust or compensate for the missing data. Banks agree that the account opening date is often useful, but do not necessarily assign it greater importance than other factors. Given that there is no evidence that the account opening date is a leading factor among the many factors considered, it is difficult then, to reach a conclusion that omitting it “would likely be materially misleading.”

Even if the Agencies conclude that for some credit scoring models today the account opening date may impact a credit score or credit decision, the Agencies would then be in the position of having also to include in the list of required information the many other factors that may also impact a score, either positively or negatively, in any one of the various credit scoring models, regardless of their relative weight or frequency of use among credit scoring models. For example, the Agencies note that some furnishers that provide only negative information may not include account opening dates, resulting in a lower score. However, arguably, the negative fact that a debt has been settled for less than the agreed amount, for example, may be a far more important factor in determining whether to make a loan than how long an account has been open. Accordingly, there is a stronger argument that such negative information should be required than for the argument that the account opening date must be included.

Moreover, the Agencies would have to update and revise the list on a continual basis as new information and technology become available. To illustrate, at one time, it was thought that having a significant amount of unused credit available meant a greater credit risk. However, experience and statistics have demonstrated that people with low utilization rates are in fact often less risky – perhaps because they have demonstrated that they have the discipline and responsibility to use only the credit they are able to manage. And even that current assumption may be changing in today's economic environment. Absent compelling evidence that a particular item is a leading, controlling factor in a credit or other decision and that it is likely to be so for the long term, the Agencies should abstain from adding to the list of information that must be reported.

In any case, account opening date should not be required for deposit account reports. Our understanding is that banks report that a checking account has been closed for cause, but do not report the account-opening date. Nor do banks routinely consider the length of time a checking account at another institution has been opened when determining whether to open a checking account.

Requiring the account opening date may discourage reporting of some accounts, making the reports less robust and useful.

While we believe that most furnishers routinely include the account opening date for credit accounts, there are relevant exceptions. For example, older, legacy systems may not allow reporting of the account opening date. These older systems might be used to report non-core business products or products that may be sold. Because of the cost of upgrading or the risk that an older system might report inaccurately, the institution would choose to discontinue reporting altogether rather than invest in an upgrade. The result of any diminished reporting is that the consumer reports become less robust and less predictive.

The interests and incentives of all the involved industries to have a robust consumer reporting system that is useful and predictive will ensure the best, most dynamic, and up-to-date system.

Consumer reporting agencies have compelling incentives to provide the most predictive, useful information possible. That is what they are competing to sell to users and what users are looking to buy. Furnishers, who are also users, also have an incentive to provide information that is predictive and useful because they themselves rely on the information for important decisions. The most predictive information allows them to make the best decisions. In addition, credit scoring models and credit decision criteria are necessarily constantly changing and evolving as new information and technology become available. The industries involved are in the best

position to modify efficiently and quickly the systems to respond to those changes. If the Agencies establish a mandatory list, they will be in a constant state of trying to catch up. Setting criteria in regulatory stone by mandating reporting of certain information prolongs reporting of less valuable information and inhibits useful changes, dulling the consumer report product and diminishing its predictive value. For these reason, we believe that the Agencies should be judicious and cautious about creating a list of items that must be reported to consumer reporting agencies. At this time, we do not believe that the account opening date or any other suggested item merits mandatory reporting under regulation.

Conclusion.

ABA appreciates the opportunity to submit our comments regarding a possible proposed addition to the furnisher accuracy and integrity guidelines. We recommend that the Agencies not add to the list of items that must be reported to consumer reporting agencies, such as the account opening date or other such items. Neither the account opening date nor any other recommended item meets the Agencies' standard that the absence of the item would be "materially misleading" in evaluating the consumer. Moreover, developing a list would entail identifying and weighing the other many and changing items that may be relevant to users of consumer reports. Such a list may soon be obsolete by the constantly changing landscape. Finally, we believe that the Agencies should rely on the inherent interests and incentives of all those involved in creating and using consumer reports to ensure predictive, useful reports.

Sincerely,

A handwritten signature in black ink, reading "Nessa Feddis". The signature is written in a cursive, flowing style.

Nessa Eileen Feddis