



August 31, 2009

Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551

Dear Ms. Johnson:

**Re: Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies, Comments in Response to the Joint Advanced Notice of Proposed Rulemaking - Guidelines for Furnishers of Information to Consumer Reporting Agencies, Federal Reserve System Docket No. R-1300**

The Mortgage Bankers Association<sup>1</sup> (MBA) appreciates the opportunity to comment on the subject Advance Notice of Proposed Rulemaking (ANPR)<sup>2</sup> issued by the Office of the Comptroller of the Currency (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 the Federal Trade Commission (FTC) (hereinafter the Agencies). The ANPR requests comments to gather information that would assist the Agencies in considering the development of possible additions to the furnisher accuracy and integrity guidelines (the guidelines) that apply to furnishers of information to consumer reporting agencies (CRAs).

On July 1, 2009, the same date the ANPR was published, the Agencies published: (1) the guidelines; (2) accuracy and integrity regulations requiring furnishers to establish reasonable policies and procedures to implement the guidelines; and (3) direct dispute regulations, all under section 312 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) that amended section 623 of the Fair Credit Reporting Act (FCRA).<sup>3</sup>

Specifically, in the ANPR, the Agencies request comment on whether the guidelines should be amended so furnishers of information to CRAs, in order to promote the integrity of data, also provide information regarding the account opening date to promote the integrity of the information or any other types of information to promote data integrity.

As explained in this comment, based on preliminary information, MBA does not believe additional amendments to the guidelines may be necessary. MBA has surveyed some of its

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<sup>1</sup> The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,400 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: [www.mortgagebankers.org](http://www.mortgagebankers.org).

<sup>2</sup> Advanced Notice of Proposed Rulemaking, 74 Federal Register 31529, July 1, 2009.

<sup>3</sup> Final Rules, 74 Federal Register 31484, July 1, 2009.

members who indicate that they believe information on or near the account opening date is routinely provided today in the mortgage industry in reports to CRAs, where available. In any event, however, MBA does not believe that the guidelines should be amended at this time. While MBA fully supports the purposes of FCRA and FACTA, and appreciates the Agencies work in this area, MBA believes that the efforts of the Agencies are now better spent assisting implementation of the new requirements, which must be implemented by furnishers, including certain mortgage lenders and servicers, by July 1, 2010, rather than proposing additional requirements on a piecemeal basis. Later, in the implementation process, MBA believes the Agencies should conduct due diligence concerning any additional information that may be needed from furnishers and then, if necessary, issue a request for additional information or a proposal.

MBA submits these comments to the Board on the understanding as provided in the Advanced Notice of Proposed Rulemaking (ANPR) that they will be made available to the Agencies.

### **Background**

The Fair Credit Reporting Act (FCRA), enacted in 1970, sets standards for the collection, communication, and use of information bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.<sup>4</sup> In 1996, the Consumer Credit Reporting Reform Act extensively amended FCRA and, in 2003, the Fair and Accurate Credit Transactions Act (FACTA)<sup>5</sup> further amended the FCRA for various purposes. Section 312 of FACTA amended section 623 of FCRA by requiring the Agencies to issue guidelines for use by furnishers regarding the accuracy and integrity of the information about consumers that they furnish to CRAs and to prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines.<sup>6</sup> It also requires the Agencies to issue regulations identifying the circumstances under which a furnisher must reinvestigate disputes concerning the accuracy of information contained in a consumer report based on a direct request from a consumer (the direct dispute regulations).

As indicated, on July 1, 2009, the Agencies promulgated final rules and guidelines to implement section 312 of the FACT Act. The final rules include the accuracy and integrity regulations which contain definitions of key terms require furnishers to reasonably design policies and procedures to promote the furnishing of information about accounts or other relationships with a consumer that is "accurate," including that it reflects the consumer's performance and other conduct with respect to the account or other relationship. The policies and procedures should also be reasonably designed to furnish information about accounts or other relationships with a consumer that has "integrity." "Integrity" is defined to mean that information that a furnisher provides to a CRA about an account or other relationship with the consumer; is substantiated by the furnisher's records at the time it is furnished and 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.

Section I.(b)(2)(ii) of the guidelines indicates that the furnished information should include appropriate identifying information, be furnished in a standardized and clearly understandable form and manner and with a date specifying the time period to which the information pertains.

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

<sup>5</sup> Public Law 108-159, 117 Stat. 1952 (Dec. 4, 2003).

<sup>6</sup> Section 623 is codified at 15 U.S.C. 1681s-2.

Under the final rule, information relating to a consumer that is furnished to a CRA will not be deemed to have “integrity” if it does not include a credit limit, if the account or relationship with the consumer has a credit limit, and the credit limit is in the possession of the furnisher.

### **The Agencies’ Questions**

The Agencies ask numerous specific questions to determine whether they should also include the account opening date as another item in section I.(b)(2)(iii) of the guidelines. These include the extent and circumstances furnishers provide account opening dates to CRAs; whether the absence of an account opening date or any other specific item in the information a furnisher provides to a CRA likely will be materially misleading in evaluating a consumer’s creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living; whether the omission of an account opening date or other items of information otherwise compromises the integrity of information provided by furnishers to CRAs; and whether certain types of credit or other products or services should be exempt from any proposed guideline for furnishing an account opening date or other items of information, for example, should any such new rules or guidelines be applicable only to mortgage or credit card products.

The questions also include whether there should be exemptions from the rule, the costs and benefits of a requirement, the impact on small institutions and how it would affect the furnishing of information to specialized types of CRAs.

### **MBA Comment**

MBA has surveyed some of its members who indicate that they believe information on or close to the account opening date is routinely provided today in the mortgage industry in reports to CRAs, where available. MBA will continue to gather information on this and other information as it works with our members on implementation of the guidelines in the months ahead. We hope to share information with you going forward. In that process, we expect to gain information “on the ground” on the impact of the new rules and guidelines and what areas may necessitate further guidance and the costs and benefits of such changes. We look forward to working with the Agencies as concerns arise.

As indicated, while MBA fully supports the purposes of FCRA and FACTA, and appreciates the Agencies’ implementation efforts, MBA believes that additional rules should not be added at this time. MBA believes the rules are better reconsidered further into the implementation process after experience is developed and that they should not be revised on a piecemeal basis.

The mortgage financing system today is beset by a raft of regulatory changes which are necessitating very substantial costs in time, staffing and infrastructure changes. These costs are ultimately borne by consumers. While MBA believes smart, carefully crafted, uniform regulatory improvements can help restore investor and consumer confidence in the nation’s lending and financial markets, it also strongly believes that if regulatory solutions are not well-conceived and well executed, they risk unnecessarily increasing costs and exacerbating a credit crisis that trillions of public dollars have still not fully resolved.

Considering that servicers specifically are likely to be most impacted by these requirements, making them subject to piecemeal requirements will unnecessarily divert resources from their

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crucial work today – reaching and assisting millions of borrowers experiencing payment difficulties. Such a result would run counter to the administration’s Making Home Affordable Plan, which is committing an unprecedented amount of government resources to provide loan modifications and refinance opportunities for millions of mortgage borrowers. Servicers and the industry will meet these challenges, but layering on additional requirements on a piecemeal basis will only make their work more difficult.

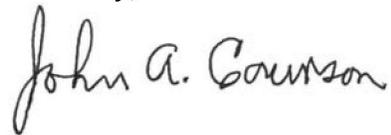
MBA believes a better approach at this time is for the Agencies to facilitate the implementation work of furnishers. As the implementation process moves forward, the Agencies should conduct due diligence concerning any additional information that may be needed. Armed with information and experience, later in the process, a comprehensive request for additional information or a proposal would be the best and most economical means to address any concerns.

### **III. Conclusion**

While MBA appreciates the Agencies’ efforts, it is particularly concerned about unnecessarily increasing the regulatory burden on furnishers in the wake of the new requirements in this area and as a result of the raft of regulatory efforts facing the industry. Nonetheless, we look forward to working with the Agencies on these issues going forward to ensure the accuracy and integrity of information submitted to CRAs and to protect consumers.

For questions or further information, please do not hesitate to contact Ken Markison, MBA Associate Vice President and Regulatory Counsel at [kmarkison@mortgagebankers.org](mailto:kmarkison@mortgagebankers.org) or at (202) 557-2930.

Sincerely,



John A. Courson  
President and Chief Executive Officer  
Mortgage Bankers Association