

**PROCEDURES TO ENHANCE THE ACCURACY AND INTEGRITY OF
INFORMATION FURNISHED TO CONSUMER REPORTING AGENCIES,
PROJECT NO. R611017**

**COMMENTS OF THE NATIONAL INDEPENDENT AUTOMOBILE DEALERS ASSOCIATION
DIRECTED TO THE FEDERAL TRADE COMMISSION, WASHINGTON, D.C. 20580**

SECTION A. BACKGROUND

On December 4, 2003, President Bush signed into law the Fair and Accurate Credit Transactions Act (FACT Act) in an attempt to reduce the risk of consumer fraud and related crimes, including identity theft, and to assist any victims. In general, the FACT Act amends the Fair Credit Reporting Act (FCRA) to enhance the ability of consumers to combat identity theft, increase the accuracy of consumer reports, and allow consumer to exercise greater control regarding the type and amount of solicitations they receive. To promote increasingly efficient national credit markets, the FACT Act also establishes uniform national standards in key areas of regulation regarding consumer report information and requires a number of studies be conducted on credit reporting and related issues.

Section 312 of the FACT Act amends Section 623 of the FCRA and generally requires the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision, Treasury National Credit Union Administration, and the Federal Trade Commission (the Agencies) to 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 and prescribe regulations that require furnishers to establish reasonable policies and procedures for implementing the guidelines. Section 312 also requires the Agencies to issue regulations identifying the circumstances under which a furnisher must reinvestigate disputes about the accuracy of information contained in consumer reports based on a direct request from a consumer.

The Agencies published an Advanced Notice of Proposed Rulemaking on March 22, 2006 seeking comments from the public relating to: (1) the criteria that the Agencies must consider in developing accuracy and integrity guidelines; (2) what constitutes reasonable policies and procedures for implementing the guidelines to ensure the accuracy and integrity of furnished information; and (3) considerations that the Agencies must weigh when promulgating rules that identify when furnishers must reinvestigate disputes raised directly by consumers. The deadline for submitting comments is May 22, 2006.

The National Independent Automobile Dealers Association (NIADA) has represented independent motor vehicle dealers for 60 years. The National Association and its State Affiliate Associations represent more than 19,000 independent motor vehicle dealers located across the United States. In 2005, over 30.6 million used motor vehicles were retailed by motor vehicle dealers generating more than \$311 billion in revenues. Because vehicles are lasting longer (the average vehicle on the road today is over 7.8 years old), projections of future used vehicle sales volumes suggest that the retail used vehicle market will maintain its 30-million-plus volume in the years to come.¹ In a recent survey of NIADA Members, 38.2% of the responding motor vehicle dealers indicated that they offer in-house or "buy here-pay here" financing (The Dealership itself finances the consumer's

¹The 2006 Used Car Market Report, Manheim Auctions, 1400 Lake Hearn Drive, NE, Atlanta, GA 30319 1464.

motor vehicle purchase).² Industry estimates place the total sales volume of buy here-pay here transactions between \$80 and \$110 billion per year, representing almost 8.5 to 10 million motor vehicle sales.³ Approximately 24 million consumers are driving buy here-pay here financed vehicles today.⁴

Because buy here-pay here dealerships furnish both positive and negative information about consumer accounts to consumer reporting agencies and use the reports to determine whether and on what terms consumers may be eligible for credit, the guidelines and rules established pursuant to Section 312 of the FACT Act may have a significant impact on the used retail motor vehicle industry. Therefore, NIADA hereby submits the following comments in response to the Agencies' request.

SECTION B. COMMENTS ON PROPOSED ISSUANCE OF RULES AND REGULATIONS

Section (A)-Accuracy and Integrity Guidelines and Regulations

Section 312(a) of the FACT Act adds a new subsection (e) to section 623 of the FCRA. Pursuant to the provisions in subsection (e), the FCRA requires the Agencies to: (1) establish and maintain guidelines for use by each furnisher regarding the accuracy and integrity of the consumer information that the furnisher provides to consumer reporting agencies; (2) prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines established; and (3) evaluate the criteria set forth in section 623(e)(3) in developing the accuracy and integrity guidelines. In Section II (A) of the Advance Notice, the Agencies requested comments on the types of errors, omissions or other problems that may impair the accuracy and integrity of information furnished to consumer reporting agencies; the patterns, practices and forms of activity that can compromise such information; the methods that are used and that should be used to furnish consumer information to consumer reporting agencies; and the types of policies, processes and procedures that furnishers and consumer reporting agencies have implemented and/or should implement to assure the accuracy and integrity of consumer information and to conduct reinvestigations and correct inaccurate consumer information.

NIADA will defer to the studies regarding accuracy and integrity of consumer report information cited in footnote 2 on page 14421 of the Advance Notice and to the responses of other commenters regarding specific details pertaining to these issues. With respect to the types of policies, processes and procedures that furnishers of consumer information have implemented and should implement to assure the accuracy and integrity of consumer information and conduct reinvestigations and correct inaccurate consumer information, NIADA maintains that they will vary from one furnisher to the next.

A person is prohibited from furnishing information relating to a consumer to any consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate⁵ and must correct and update information furnished about a consumer to a consumer

² 2004 NIADA Independent Used Car Industry Report, National Independent Automobile Dealers Association, 2521 Brown Blvd., Arlington, TX 76006, and Leedom, and Associates, LLC, 40 Sarasota Center Blvd., Suite E, Sarasota, FL 34277.

³ Analysis of the Buy Here-Pay Here Capitalization Market, December 2003, Leedom and Associates, LLC, 40 Sarasota Center Blvd., Suite E, Sarasota, FL 34277.

⁴ Industry Overview Keynote Remarks, Chris Leedom, October 2003 National Special Finance/Buy Here-Pay Here Conference.

⁵ 15 U.S.C. §1681s-2(a)(1)(A).

reporting agency in certain circumstances.⁶ It must also, among other things, provide consumer reporting agencies with notice of certain consumer disputes and of accounts closed voluntarily by consumers; provide credit reporting agencies with information regarding certain delinquent accounts, and have in place reasonable procedures to prevent the refurnishing of information that has been locked as a result of identity theft.

A furnisher that is notified by a consumer reporting agency that information it furnished has been disputed by a consumer pursuant to Section 611 of the FCRA must also investigate the dispute; review all relevant information provided by the reporting agency and report its findings to the reporting agency; provide corrected information to all nationwide consumer reporting agencies that received the information; and modify, delete or permanently block the reporting of an item of information disputed by a consumer that is found to be inaccurate, incomplete or cannot be verified after an investigation.⁷ The furnisher must also ensure that it corrects internal computer tapes and records so that when future records are submitted to the reporting agencies the inaccurate information is not furnished again.

Given the requirements imposed upon furnishers under the FCRA, NIADA supports the adoption of guidelines and regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines. Furnishers of information should be required to make a “reasonable” and “good faith” determination as to the accuracy and completeness of information that they provide to credit reporting agencies, whether they furnish information to reporting agencies on a regular basis and in the ordinary course of their business, or just occasionally. Likewise, in the case of a reinvestigation, furnishers of consumer information should be required to make a “reasonable” and “good faith” inquiry into the consumer’s dispute, including a review of the information maintained in the original records, as well as information communicated with the notice of dispute and any other information that is otherwise reasonably available.

NIADA further submits, however, that the reasonableness of the furnisher’s policies, processes and procedures will depend upon the specific facts of a given situation, the size of the furnisher, the types of consumer information gathered and reported to the credit reporting agencies, the number of consumer accounts maintained, the documentation and information available to the furnisher, and the costs and benefits of various policies and procedures. Therefore, the Agencies’ guidelines and implementing regulations should be flexible enough to allow covered entities to make decisions taking into consideration these factors. Adopting flexible rules and including guidelines regarding appropriate policies, processes and procedures that would be deemed reasonable under the rule is consistent with standards applicable to other state and federal consumer protection statutes. It should reduce the costs and burdens for furnishers who have already implemented policies, processes and procedures to comply with the existing requirements under the FCRA.

⁶ 15 U.S.C. §1681s-2(b)(1).

⁷ 15 U.S.C. §1681s-2(a) (2)-(6) and 2(b).

Section (B)-Direct Dispute Regulations:

Section 312(c) of the FACT Act adds a new sub-paragraph (8) to section 623(a) of the FCRA that Directs the Agencies to prescribe regulations that identify the circumstances under which a furnisher is required to reinvestigate a dispute concerning the accuracy of information contained in a consumer report on the consumer, based on a direct request by the consumer. In prescribing these regulations, the Agencies were directed to weigh, and sought comments on, the following (1) the circumstances under which a furnisher should be required to investigate a dispute regarding the accuracy of information upon a direct request from the consumer; (2) any benefits or costs to consumers in doing so; (3) any benefits to furnishers, consumer reporting agencies, or the credit reporting system; (4) any costs, including start up costs, to furnishers and consumer reporting agencies or the credit reporting system; (5) whether it is the current practice of furnishers to investigate such disputes based on direct requests by consumers; (6) the impact on the overall accuracy and integrity of consumer reports; and (7) the circumstances in which direct contact by the consumer with the furnisher would likely result in the most expeditious resolution of any dispute.

Currently, the formal method for disputing the accuracy and completeness of information under the FCRA is to initiate a reinvestigation with the consumer reporting agency, not the furnisher of the information.⁸ In fact, a consumer who fails to initiate a dispute with a consumer reporting agency and elects instead to deal directly with the furnisher cannot invoke the remedies under section 1681s-2(b). NIADA believes that consumers, furnishers of information, credit reporting agencies and the credit reporting system would benefit if furnishers were required to investigate a dispute regarding the accuracy of information upon a direct request from a consumer. NIADA is not proposing that consumers send notice of a dispute only to the furnisher, but rather that they have the option to send the initial notice of a dispute to both the furnisher and the reporting agency. If the consumer elected to notify a furnisher directly of a dispute, however, the furnisher should be required to forward the notice to the applicable reporting agencies ensure that they received notice of the dispute as well. None of the other processes and procedures need change.⁹

A reinvestigation usually already involves both the consumer reporting agency and the person who furnished the information. Upon being notified that a consumer has disputed the accuracy or completeness of information with a reporting agency, the furnisher must conduct the investigation and report back to the reporting agency so that it can respond to the consumer, in most cases within thirty days.¹⁰ If the reinvestigation is not completed in time, the disputed information must be deleted. Therefore, furnishers of the information have to act quickly enough to permit the reporting agency to meet its deadline. The furnisher has to research the information, respond to the dispute, and give the reporting agency time to respond to the consumer within thirty days, which means they usually have to complete their investigation within fifteen to twenty-three days.

⁸ 15 U.S.C. §1681i.

⁹ The same time limits would apply and the reporting agency, not the furnisher, should remain obligated to provide notice to the consumer of the results of the reinvestigation, together with a copy of any corrected report; for deleting from reports information that is not verified within the time permitted; and for ensuring that information found by the agency or furnisher to be inaccurate or incomplete is corrected and updated. A reinvestigation must be a good faith effort on the part of both the furnisher and the reporting agency to determine the accuracy of the disputed item; the agency could not rely solely on the furnisher to resolve a dispute. See FTC Official Staff Commentary § 611, Item 2. The reporting agency would still have to make sure that it accurately recorded the information furnished and that the information provided by the furnisher is accurate given the information submitted by the consumer and maintain reasonable procedures designed to prevent the reappearance of information in the consumer report.

¹⁰ 15 U.S.C. §1681(a)(1).

Direct communication between the consumer and the reporting agency will help to ensure an expeditious and final resolution of a dispute. A consumer dispute may be categorized differently by the various reporting agencies, the reporting agencies may not enter the information properly in the consumer's file and, in some instances, the reporting agency may fail to forward all of the information provided to it by the consumer pertaining to a dispute. Therefore, it would be beneficial for the furnisher and consumer to communicate directly in many cases to ensure that the furnisher understands the issue raised by the consumer as to the accuracy or completeness of the information contained in a report and that the furnisher has all of the pertinent information from the consumer.

Furnishers should also have records going back to the original transaction more readily available, can report corrections to all of the agencies to which it originally furnished the information (even if the furnisher is no longer a customer of an agency), and can take immediate steps to ensure that the same inaccurate information is not reported to any of the reporting agencies in the future by updating computer tapes and other formats used to update information with the reporting agency. Whereas reporting agencies do not have an obligation to report corrections to other reporting agencies, the furnishers of the information do. For example, if a reporting agency resolves a dispute by deleting the disputed information within three business days, the agency is free from other requirements of reinvestigation, including the obligation to notify the party who furnished the disputed information of the dispute.¹¹ While this may help the consumer with respect to the information in that agency's report, if the furnisher is never advised of the dispute, the consumer still must notify all of the other reporting agencies of the dispute and ensure that the information is corrected. Moreover, if a reporting agency deletes or corrects information and the furnisher does not correct its information, the inaccurate information could be added back to the consumers file again inadvertently.

NIADA believes that the costs for consumers to dispute information directly with a furnisher as well as a consumer reporting agency would be minimal. They could do so by calling a toll free or local telephone number or by sending a written notice to an address for the furnisher of the information that is provided by the furnisher or a credit reporting agency. Many furnishers of information already maintain an address where consumers can direct inquiries regarding the accuracy of information. Furnishers could also be required to provide an address and/or telephone number to reporting agencies to be included in a consumer's credit report should the consumer need to contact the furnisher to discuss the information reported by the furnisher. Consumers now have the right to obtain a free credit report from each of the national reporting agencies on an annual basis. This would not be overly burdensome for the reporting agency as it is required to include the business name and address, and if reasonably available, the telephone number of any furnisher contacted during the reinvestigation in the written notice advising the consumer of the investigation results.¹²

The costs for furnishers and consumer reporting agencies, including start-up costs, would likewise be minimal for those entities that regularly and in the ordinary course of business furnish information to one or more credit reporting agencies. They are already required to have processes in place to promptly notify a consumer reporting agency if they determine that any of the information they furnish to the reporting agency is incomplete or inaccurate.¹³ They are also required, upon notice from a consumer reporting agency of a dispute, to conduct an investigation with respect to the disputed information and to report the results of any investigation to the

¹¹ 15 U.S.C. §1681i(a).

¹² 15 U.S.C. §1681i(a)(6).

¹³ 15 U.S.C. §1681s-2(a)(2).

consumer agency.¹⁴ Furnishers of consumer information who maintain a relationship with their customers and look to them for repeat business, like buy-here pay-here dealers, have an incentive to maintain good customer relations and, therefore, it is already their current practice to investigate disputes based on direct requests by consumers.

SECTION C. CONCLUSION

NIADA agrees with and supports the efforts of the Agencies to establish guidelines for furnishers of consumer information so that the accuracy and integrity of the consumer information is protected. Should the agencies undertake to establish specific procedures that furnishers must follow, the procedures should be flexible enough to allow covered entities to make decisions taking into consideration the amount and type of consumer information collected, the nature and size of their operations, and the costs and benefits of different practices. NIADA also supports the proposition that under certain circumstances, furnishers should be required to investigate a dispute that is directly reported to the furnisher. The cost of doing so would be minimal since furnishers are already required to investigate disputes upon notice from a reporting agency under FCRA and consumers, furnishers, and credit reporting agencies would benefit from such a policy.

NIADA would like to thank the FTC for the opportunity to comment with respect to the FACT Act Scores Study. Any questions the FTC has regarding NIADA's comments and the position taken herein may be directed to NIADA's Legal Counsel, Keith E. Whann or Deanna L. Stockamp, of the Law Firm Whann & Associates located at 6300 Frantz Road, Dublin, Ohio 43017, (614) 764-7440 or via e-mail to whannassoc@rroho.com.

¹⁴ 15 U.S.C. §1681s-2(b)(1).