

**Comments  
of the  
Consumer Data Industry Association  
Concerning the Interagency Notice of Proposed Rulemaking  
on  
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  
72 Federal Register 70944 (Dec. 13, 2007)**



**Department of the Treasury, Office of the Comptroller of the Currency**

**Docket ID OCC-2007-0019**

**RIN 1557-AC89**

**Federal Reserve System**

**12 CFR Part 222**

**Docket No. R-1300**

**Federal Deposit Insurance Corporation**

**12 CFR Parts 334**

**RIN 3064-AC99**

**Department of the Treasury, Office of Thrift Supervision**

**12 CFR Part 571**

**Docket No. OTS-2007-0022**

**RIN 1550-AC01**

**National Credit Union Administration**

**12 CFR Part 717**

**Federal Trade Commission**

**16 CFR Part 660**

**RIN 3084-AA94**

The Consumer Data Industry Association (“CDIA”) is pleased to offer comments on the above captioned matter.<sup>1</sup>

Accuracy and integrity of data are key priorities for our members. While our comments will focus primarily on the furnishing of information to nationwide consumer reporting agencies as that term is defined in FCRA § 603(p), it is important to remember that there is a diversity of consumer reporting agencies producing data products regulated under the FCRA and other data furnisher communities may also be affected by the final regulations and guidelines.

## **I. Data Furnishing**

### **A. Recognition of the voluntary system of data furnishing**

The key to successful guidelines and regulations is that they must take into account the factual reality that no data furnisher is required to provide any data to any type of consumer reporting agency. We agree with the Agencies inclusion of encouragement to furnish data to CRAs and applaud the Agencies’ recognition of the fact that this voluntary system provides substantial benefit to consumers. However, we do not believe that the proposed regulations and guidelines sufficiently account for this factual reality.

To restate the context for the current process of issuing guidelines and regulations, in 1996 and again in 2003 substantial new obligations were placed on data furnishers by the Congress. Actions in the courts and federal banking agency examination practices have added to the statutory compliance burdens that are in place today. These proposed accuracy and integrity guidelines and rules will add yet again additional obligations to the substantial existing burdens and obligations. Thus, care and balance are critical in order to avoid a confusing, unnecessarily complex or overly rigid structure that could result not only in current data furnishers choosing not to supply data but also discourage future furnishers from providing data to CRAs. This result would harm consumers individually and the financial services system as a whole.

### **B. The proposed rule or guidelines could reduce data reported to consumer reporting agencies**

“[I]mposing additional legal liability penalties, may, in a system of voluntary reporting, lead to unintended consequences, including less information reporting and a less efficient and effective system.” *Credit Reporting Accuracy and Access to Credit*, Federal Reserve Bulletin, Summer 2004, 322 (“Federal Reserve Bulletin”). There are a number of components to the proposed rule and guidelines that could significantly reduce data reporting to CRAs. These include: the overbroad and unnecessary definitions of “accuracy”, “integrity”, and “furnisher”, the requirement that furnishers have written guidelines, a lack of protections from frivolous disputes for furnishers and the granularity of the direct dispute provisions.

There are over 18,000 furnishers to the nationwide consumer reporting agencies alone and not all of them are alike. The Notice of Proposed Rulemaking (“NPR”) appears to be drafted with the assumption that (a) all furnishers are large and report only to nationwide consumer reporting agencies, and (b) all consumer reporting agencies are operating on a nationwide basis. However, there are thousands of small and sometimes occasional furnishers that do not fit the assumed mold. There are many consumer reporting agencies that also do not fit the assumed role of a nationwide CRA. The value of a wide array

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<sup>1</sup> CDIA is the international trade association representing over 250 consumer data companies that provide fraud prevention and risk management products, credit and mortgage reports, tenant and employment screening services, check fraud and verification services, data for insurance underwriting and also collection services.

of data is well recognized in the Federal Reserve Bulletin, by lenders,<sup>2</sup> the Federal Financial Institutions Examination Council,<sup>3</sup> members of Congress,<sup>4</sup> and policy researchers.<sup>5</sup> Indeed, the FTC is conducting a study to determine ways to encourage the reporting of data from non-traditional sources because “many Americans may be missing out on the benefits associated with the consumer reporting system.”<sup>6</sup>

It seems incongruous for the FTC to study additional reporting while at the same time overly rigid requirements contained in the NPR could actually and significantly reduce reporting. The NPR’s lack of recognition of these furnishers could result in a reduction or elimination of data being reported from smaller or non-traditional furnishers and from all furnishers to all CRAs.

A voluntary system of consumer reporting that is fair and accurate must be balanced and flexible to meet a diverse group of furnishers providing data to a wide array of consumer reporting agencies. Overly rigid rules or guidelines layered on top of complex and unnecessary definitions could provide just enough disincentive for furnishers to stop reporting to consumer reporting agencies. A final rule should recognize the value the reporting of data to CRAs and be structured in a way that provides the robust data flows that Congress supports, banking agencies want, lenders need, and consumers have come to expect.

### **C. Data furnished today is very accurate**

The context for the issuance of guidelines and regulations is one of significant ongoing efforts, progress, innovation and success. To help set the context attached as Appendix I is testimony CDIA delivered before the House Committee on Financial Services. Significant strides have been made in the last few years to enhance the accuracy and integrity of information, including fraud and active duty alerts, tradeline blocking, red flag guidelines, and address discrepancy notices. These and other processes have and will continue to reduce inaccuracies and increase the integrity of information supplied to CRAs. We urge the Agencies to be cautious about imposing burdens that would harm the data furnishing systems that exist today. A cautious and deliberative approach makes sense initially while allowing for further review at a later date.

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<sup>2</sup> “One challenge facing lenders [considering lending to underserved markets] is finding borrowers with limited credit experience. Credit bureaus...often lack files on such people, or have only limited information about them \* \* \* [To solve this problem] the biggest players in the home lending and credit card businesses have asked [credit bureaus] to collect data from nontraditional sources like utility, phone, and cable companies, as well as from landlords.” Lisa Fickenscher, *Credit Bureaus Dig for Data on CRA Prospects*, *American Banker*, (March 24, 1995, at 20).

<sup>3</sup> “[W]here financial institutions rely on [scoring] in their underwriting and account management processes, their ability to make prudent credit decisions is enhanced by greater completeness of credit bureau files.” Federal Financial Institutions Examination Council Advisory Letter to Chief Executive Officers regarding Consumer Credit Reporting Practices. Jan. 18, 2000.

<sup>4</sup> See, *Hearing* entitled “Helping Consumers Obtain the Credit They Deserve,” before the House Financial Services Subcommittee on Financial Institutions and Consumer Credit, May 12, 2005 (*Statement of Chairman Michael G. Oxley*) (“As was conclusively demonstrated during the exhaustive hearings on the [FACT Act]...giving potential creditors access to detailed, continuously updated information about consumers...our national credit reporting system has vastly expanded the availability of credit to all segments of American society.”), Serial No. 109-29, 42.

<sup>5</sup> *Eg.*, *Giving Underserved Consumers Better Access to the Credit Systems, The Promise of Non-Traditional Data*, Information Policy Institute, July 2005.

<sup>6</sup> Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003, FTC (Dec. 2004), 78.

## **II. General - Scaleable and Flexible Structure**

We agree with the Agencies' decision to make clear "that a furnisher's policies and procedures must be appropriate to the nature, size, complexity, and scope of the furnishers' activities." Going forward, furnishers should take in to account the type and amount of information they provide to CRAs and how that information might be used in consumer reports. For example, educational and employment confirmation to an employment screening company, or tenancy confirmation to a residential screening company might be feel chilled from furnishing data. Providing sufficient regulatory flexibility is essential so that new burdens do not overwhelm data furnishers and operate as a disincentive for current data furnishers to continue to report and as an incentive for potential new data furnishers to choose not to begin reporting.

## **III. General - Recognition of A Data Reporting Standard for Furnishing Data to Nationwide Consumer Reporting Agencies**

The NPR acknowledges the value of using data standards for reporting information to consumer reporting agencies by including this practice in the outline of "specific components of policies and procedures" of a data furnisher. *See*, 72 Fed. Reg. 70944, 70953 (Dec. 13, 2007). We agree that the use of data reporting formats can enhance the precision of the data reported and agree that the nationwide credit reporting industry's Metro 2 format is an example of such a standard.

Today, even in the absence of finalizing the details of this NPR, the nationwide consumer reporting agencies receive more than 81% of all data via the Metro 2 format. The Metro 2 format works because it is based on market needs, rather than legal requirements. Market forces have driven nearly all of the 18,000 data furnishers supplying data to nationwide consumer reporting agencies to use Metro or Metro 2. The broad adoption of this standard demonstrates the effectiveness of the marketplace in addressing data furnishing practices.

## **IV. General - Guidelines are Preferable to Regulations**

By their nature, guidelines are more flexible than regulations and more adaptable to evolving technologies and marketplace changes. The Agencies should strive towards balanced guidance that will assure the flexibility and adaptability the credit marketplace needs to function today and in the future. Under a guidance approach, the Agencies would still retain the ability to make appropriate adjustments to address marketplace changes and new technologies. Thus CDIA urges use of guidance to provide the flexibility and ultimately the preservation of the current voluntary system of data reporting as well as the expansion of it to new data sources which otherwise might be dissuaded from participating. Further, guidance will help with the flexibility needed to consider how it applies to different data furnishing practices in the context of different types of consumer reporting agencies. Rules should simply require data furnishers to implement the guidance as appropriate to their respective circumstances.

## **V. Technical Problems with Specific Wording of the Regulations**

While CDIA encourages the Agencies to adopt guidelines rather than regulations, there are a number of specific technical differences between the FACT Act and the proposed regulations. These differences could result in compliance difficulties and unnecessary legal jeopardy for CRAs and furnishers.

Proposed Secs. 660.3(a) and (c) all use standards for compliance that are significantly different from the statutory requirements.<sup>7</sup> Proposed Sec. 660.3(a) requires furnishers to “establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to a [CRA].” However, the FACT Act requires a different standard. Specifically, the FACT Act requires regulations for furnishers that “establish reasonable policies and procedures for implementing the guidelines...” 15 U.S.C. Sec. 1681s-2(e)(1)(B).

Proposed Sec. 660.3(c) requires each furnisher to “review its policies and procedures...and update them as necessary to ensure their continued effectiveness.” However, the FACT Act requires a different standard. Specifically, a furnisher is not required to review its policies and procedures to ensure continued effectiveness, but rather, the obligation for review is to ensure that the policy is reasonable. 15 U.S.C. Sec. 1681s-2(e)(1)(B).

Overly prescriptive and sometimes conflicting requirements like those found in Proposed Sec. 660.3 are just part of the burdens that might reduce the furnishing of data to CRAs, especially from occasional or small furnishers to nationwide and non-nationwide CRAs alike.

## **VI. Specific - Definitions**

CDIA members have a general concern with the inclusion of new definitions for terms which in some cases have been used in the FCRA for decades. We do not believe that definitions are necessary to issuing appropriate guidance or that they can be drafted to account for the variety of data furnishers and consumer reporting agencies regulated under the Act.

We believe that the Agencies should simply forego definitions and issue general guidance. Below we discuss in more detail our concerns with various definitional approaches whether they are included in a guideline or a regulation.

### **A. Defining “accuracy” is problematic**

Regulatory and Guidelines Definition Approach: *“Accuracy means that any information that a furnisher provides to a CRA about an account or other relationship with the consumer reflects without error the terms of and liability for the account or other relationship and the consumer’s performance or other conduct with respect to the account or other relationship.”*

As the NPR itself points out the Fair Credit Reporting Act does not define the term “accuracy”, nor did Congress choose to do so when it enacted the FACT Act in 2003. Congress limited the definition of accuracy to that which a furnisher knows or has reasonable cause to believe is inaccurate. 15 U.S.C. Sec. 1681s-2(a). Further, Congress did not require the Agencies to formulate a definition in establishing the duty to issue guidelines and regulations regarding accuracy and integrity. Congress rightly so has not determined that a definition of this term is necessary or helpful to the operation of the FCRA. We would urge the Agencies to reach the same conclusion.

In the context of data furnishers, the FCRA properly structures the responsibilities of furnishers of information to consumer reporting agencies around the concept of “knows or has reasonable cause to believe the information is inaccurate.” Any Agency guidance, even without establishing a definition, should hew to what the law itself says and should not unintentionally alter case law as it has evolved over time relative to what is considered accurate in the context of a particular pattern of facts.

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<sup>7</sup> This provision is similar to other provisions in the NPR. For the sake of convenience, citations to the other provisions are not cited here, but the comment applies equally to the other provisions.

To expand on this point, we noted in our ANPR comment (attached as Appendix I), defining accuracy is problematic at best, and the examples we provided are still valid. Further, the Agencies are proposing an accuracy definition in the context of FACTA § 312 when the FTC is still “evaluating ways to study the accuracy and completeness of consumer report” under FACTA § 319.<sup>8</sup> For more than three years, the FTC has been engaged in a study to “determine the accuracy of information in credit reports”. The “pilot study” of this research is ongoing.<sup>9</sup> It is incongruous to develop an accuracy definition for furnishers while the FTC has not resolved how to determine accuracy for consumer reports.

To the extent that agencies determine that a definition of the term “accuracy” is necessary, it should be placed in a guideline and not in a regulation regardless of the particulars of the definition. A guideline definition offers the flexibility the marketplace needs while still allowing the Agencies to adopt necessary changes as may be appropriate later.

### **B. Defining “integrity” is problematic**

*Regulatory Definition Approach: “the term ‘integrity’ means that any information that a furnisher provides to a CRA about an account or other relationship with the consumer does not omit any term such as a credit limit or opening data, of that account or other relationship, the absence of which can be reasonably be expected to contribute to an incorrect evaluation by a user of a consumer report or a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mod of living.”*

*Guidelines Definition Approach: “The guidelines would define ‘integrity’ to mean that any information that a furnisher provides to a CRA about an account or other relationship with the consumer: (1) Is reported in a form and manner that is designed to minimize the likelihood that the information although accurate, may be erroneously reflected in a consumer report; and (2) should be substantiated by the furnisher’s own records.*

The NPR rightly points out that the FCRA does not define the term “integrity.” Further, it cites a lack of statutory guidance on a definition of “integrity” and points to conflicting statements of Representative Oxley and Senator Sarbanes. Representative Oxley correctly noted that “[a]ccuracy and integrity’ was selected [by the Congress] as the relevant standard rather than ‘accuracy and completeness’ ...to focus on the quality of the information furnished rather than the completeness of the information furnished.” By contrast, Sen. Sarbanes suggested that “[t]he term ‘integrity’ relates to whether all relevant information that is used to assess credit risk and to grant credit is accurately provided.”<sup>10</sup>

Establishing a definition may not contribute to the overall objective that is to issue guidance that encourages the reporting of data which is both accurate and that has integrity. To the extent that the Agencies determine that there must be a definition of the term “integrity” it should be in a guideline rather than a rule. Further, regarding the question of an approach to the definition of integrity, that which is proposed in the guidelines is preferred over the regulatory approach.

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<sup>8</sup> 69 Fed. Reg. 61675 (Oct. 20, 2004).

<sup>9</sup> Processes for Determining Accuracy of Credit Bureau Information, Pilot Study Performed for the Federal Trade Commission Under Contract FTC04H0173, Sept. 12, 2006 <[http://ftc.gov/reports/FACTACT/FACT\\_Act\\_Report\\_2006\\_Exhibits\\_1-12.pdf](http://ftc.gov/reports/FACTACT/FACT_Act_Report_2006_Exhibits_1-12.pdf)> (“Contractor’s Report”), 5.

<sup>10</sup> 72 Fed. Reg. 70949 (citations omitted).

## **C. Furnishers**

### **i. Defining a furnisher is unnecessary and could reduce reporting to consumer reporting agencies**

Since 1970, the term “furnisher” has appeared in the FCRA and in the intervening 37 years a substantial amount of judicial history has developed around the FCRA, including the meaning the term “furnisher”. It is unnecessary and inappropriate that the NPR would propose to define a term that has stood successfully without a definition for over a generation. CDIA is concerned that any definition now would unnecessarily alter the meaning of the term.

The Agencies propose to define furnisher in order to exclude consumer report users when they provide information to consumer reporting agencies in order to obtain consumer reports and also to make clear that consumers are not furnishers when they self-report information to consumer reporting agencies. The Agencies can accomplish that end simply by providing that consumer report users and consumers are not furnishers subject to the guidelines and regulations under these circumstances.

The proposed definition of a furnisher is so broad it could include occasional furnishers which would then be required to have written policies and procedures and accept direct disputes. These burdens, without additional regard to the diversity of furnishers and CRAs, could significantly reduce the number of furnishers to CRAs and limit the data that is reported to CRAs.

There is no indication that the Congress intended to alter the customary understanding of what constitutes a furnisher. The NPR definition might be read to cover many entities not considered to be furnishers (like public record repositories, court runners, and employers verifying employment status). Any guideline or final rule should recognize the diversity of data furnishers.

### **ii. Resellers are not data furnishers**

Should the final rule contain a definition of a furnisher, that definition should also specifically exclude resellers. The proposed definition of a furnisher may inadvertently include resellers, even though there is no indication that Congress or the Agencies intended to do so.

A reseller is –

a consumer reporting agency that—

- (1) assembles and merges information contained in the database of another consumer reporting agency or multiple consumer reporting agencies concerning any consumer for purposes of furnishing such information to any third party, to the extent of such activities; and
- (2) does not maintain a database of the assembled or merged information from which new consumer reports are produced.

15 U.S.C. § 1681a(u). Under the FCRA, resellers have an obligation to reinvestigate disputes and, under certain circumstances, convey the notice of dispute “to each consumer reporting agency that provided the reseller with the information that is the subject of the dispute”. *Id.*, §§ 1681i(f), (f)(2)(B). Thus, the nature and duties of furnishers are very different from those of resellers, and any definition of furnishers, should specifically exclude resellers and those CRAs that provide information to resellers.

### **iii. The proposed definition of a “furnisher” unnecessarily alters the FCRA definition of “person”.**

Under the FCRA, a “person” means “any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.” 15 U.S.C. Sec. 1681a(b). The FACT Act amendment to the FCRA that gave rise to the NPR requires the Agencies to “establish and maintain guidelines for use by each *person* that furnishes information to a [CRA]”. *Id.*, Sec. 1621s-2(e) (emphasis added). There seems to be disharmony between Sections 1681a(b) and 1621s-2(e) on the one hand, and the NPR’s proposed definition of a “furnisher” on the other, which defines a “furnisher” to be an “entity”. This possible change in legal effect can be easily rectified by elimination of the proposed furnisher definition.

### **D. The definition of a direct dispute presents a technical problem**

The NPR takes the position that a direct dispute occurs when a consumer is disputing any information contained in the consumer’s “consumer report”. See, Proposed Sec. 660.2(e).<sup>11</sup> However, under the FCRA the consumer does not dispute information contained in a consumer report, the consumer disputes information contained in the “file”. 15 U.S.C. Sec. 1681i(a)(1)(A). A consumer is not likely to have seen or ever see the “consumer report”. However, consumers can readily receive disclosures of the information in their file from a consumer reporting agency. To comport with existing law and marketplace standards, any direct dispute should apply to either information contained in the consumers file or information contained in the disclosure provided to a consumer from a CRA under Sec. 1681h.

## **VII. The Interagency Guidelines Must Be Flexible and Acknowledge the Diversity of Furnishers and CRAs**

We applaud the Agencies’ comment in the introduction that “a furnisher may incorporate in its accuracy and integrity policies and procedures any of its existing policies and procedures that are relevant and appropriate.” This concept should be carried forward into final guidelines. However, rigid guidelines or rules, or a requirement that all furnishers must have written policies and procedures could discourage data reporting.

### **A. Reasonable written procedures may be unnecessarily burdensome**

The NPR “would require each furnisher to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information about consumers that it furnishes to a CRA.” NPR § 660.3(a). While CDIA strongly supports the premise that “[t]he policies and procedures must be appropriate to the nature, size, complexity, and scope of the furnisher’s activities”, *id.*, the Agencies may be able to do more to reduce the burdens that a written policies and procedures requirement might impose on furnishers. There may be situations where policies need not be written as this may be too onerous for some small or occasional furnishers. For example, in the case of companies that report to CRAs in the Metro 2 format, the final rule could permit a furnisher’s written policy to do no more than acknowledge, where applicable that the furnisher is reporting data in the Metro 2 format in the case of data furnished to nationwide consumer reporting agencies. The Agencies acknowledges as much in the supplementary information. *Eg.*, 72 Fed. Reg. 70954, 70951, 70969 (Dec. 13, 2007), and Appendix E to Part 41 IV.B.

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<sup>11</sup> This provision is similar to other provisions in the NPR. For the sake of convenience, citations to the other provisions are not cited here, but the comment applies equally to the other provisions.

Similarly, the final rule should provide for alternative means of compliance for merchants that furnish to check verification companies, employers furnishing to employment screening companies and other small businesses that do not regularly furnish credit information to consumer reporting agencies and that may not be well positioned to develop their own written policies and procedures or to review and update the Agencies' guidelines. For example, it is not reasonable or realistic to expect a small merchant to comply with the proposed formal requirements in order to participate in a check verification program. The final rule could provide that these kinds of furnishers would satisfy the rule's requirements for reasonable policies and procedures concerning the accuracy and integrity of furnished information under NPR § 660.3 by agreeing to adhere to the contractual requirements and procedures for furnishers established by the consumer reporting agencies to which they furnish information. By following these requirements and procedures, a furnisher's policies and procedures would be "appropriate to the nature, size, complexity, and scope of the furnishers' activities."

### **B. A specific time limit for FCRA § 611(a)(5) is not necessary**

In Section IV, which outlines specific components of policies and procedures, the NPR notes that "section 611(a)(5) of the FCRA "contains no time limit on the requirement that if a CRA reinvestigates a consumer dispute, it must modify or delete items that cannot be verified" and inquires "whether a specific time period for recordkeeping should be incorporated in the final regulations." *Id.*, 70944, 70953.<sup>12</sup>

In undertaking its § 611(a)(5) responsibilities, a CRA must "promptly delete" or modify the item in question. The FCRA already requires a 30-day period for the entire reinvestigation process. 15 U.S.C. Sec. 1681i(A)(1)(B). In connection with a time period for recordkeeping, there is no evidence that a problem exists to warrant inclusion in the final rule and thus no timeframe in connection with recordkeeping is necessary. Moreover, because there is no evidence of a problem, there is no empirical data on which to base any required time period.

### **C. Additional flexibility in the guidelines is necessary to encourage data reporting**

Since furnishers are encouraged to "include any of its existing policies and procedures that are relevant and appropriate", Appendix A to Part \_\_\_\_, the nature and scope of the policies and procedures should "consider", rather than "reflect" the attributes enumerated in Appendix \_\_ to Part \_\_\_\_ I.A. The same concerns apply to rigidity of requirements in III and IV. Rather than require something to be done, the guidelines should require actions and situations to be considered. In that same vein, it is inappropriate for policies and procedures to require a furnisher to obtain feedback from CRAs. *Id.*, III.A.3, but better placed for such action to be a suggestion.

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<sup>12</sup> FCRA § 611(a)(5) requires that

[i]f, after any reinvestigation under...of any information disputed by a consumer, an item of the information is found to be inaccurate or incomplete or cannot be verified, the consumer reporting agency shall—

(i) promptly delete that item of information from the file of the consumer, or modify that item of information, as appropriate, based on the results of the reinvestigation; and

\* \* \*

15 U.S.C. § 1681i(a)(5).

In keeping with the need for flexibility, the guidelines should not require a furnisher's policies and procedures "ensure" that information about a consumer meets certain standards, Appendix A to Part \_\_\_\_ I.B., but rather, the furnisher should have "reasonable policies and procedures for implementing the guidelines." 15 U.S.C. Sec. 1681s-2(e)(1)(B).

Since furnishers are already required to comply with the FCRA it seems at best redundant to require in the guideline a statement that it does so. Appendix A to Part \_\_\_\_ II. At worst, this provision creates an additional path to liability for furnishers and an additional roadblock on the way to furnishing data.

The proposed guideline presents additional potential obstacles to data reporting. The proposed guideline under the regulatory definition approach would require a furnisher to ensure that information furnished about account or other relationships with a consumer "avoids misleading a consumer report user". Appendix \_\_ to Part \_\_\_\_ I.B.2. The guideline offers no guidance to furnishers concerning the meaning of "misleading" and the net result of the lack of guidance in the guideline could be the further reduction in data being reported to CRAs. It is inappropriate to require a furnisher to intuit from users whether information a furnisher provides to a CRA might mislead a user. These concerns also apply to Appendix \_\_ to Part \_\_ IV.I.

The proposed guideline requires furnishers to ensure that information furnished is updated to reflect the "current status of the consumer's account or other relationship." *Id.*, I.B.4. This provision provides little guidance and encourages guesswork about the timeframes surrounding the update and we suggest that the Agencies incorporate language so that the updates are done consistent with the normal course of business in which the furnisher transacts business with the CRA.

#### **D. Additional record retention requirements are unnecessary and could limit data reporting**

Under state and federal statutes, common law, and insurance agreements, data furnishers are most likely under multiple obligations to retain records. Additional recordkeeping requirements are unnecessary and will stand as yet another excuse to not furnish data to CRAs.

#### **E. Several specific components of the proposed policies and procedures present potential compliance problems and could reduce data furnishing to CRAs.**

Part IV of the proposed Appendix provide for 13 specific components for proposed policies and procedures. One of these components requires, in part, that each furnisher conduct a periodic evaluation of "consumer reporting agency practices of which it is aware." It is unclear what such an evaluation would encompass and whether furnishers would then be expected to question the practices of a consumer reporting agency to which it furnishes data if it were to conclude that such practices were in some way lacking. This uncertainty represents a breeding ground for unnecessary new areas of litigation.

### **VIII. Specific - Direct disputes**

The NPR sets out proposed "regulations identifying the circumstances under which a furnisher must reinvestigate disputes concerning the accuracy of information provided by a furnisher to a CRA and contained in a consumer report based on a direct request from a consumer..." *Id.*, 70946.

While our members believe that it can be appropriate for data furnishers to handle consumer disputes directly, the direct dispute proposal poses some challenges to furnishers. Section 623(a)(8)(F) of the FCRA provides that a furnisher is not required to investigate a dispute that a furnisher reasonably determines to be frivolous or irrelevant. However, the NPR's provisions concerning frivolous or irrelevant dispute determinations weaken the meaning and intent of the FACT Act making it harder for

furnishers to lawfully make such determinations. Credit clinics continue to generate about one-third of all consumer contacts with CRAs. We are concerned that a similar rate will be experienced with furnishers and that a weakened frivolous or irrelevant determination standard could increase fraud and ultimately the deletion of accurate, predictive data which contributes to safety and soundness.

The proposed guideline requires furnishers to “promptly notify” CRAs of a determination that the furnished information is not complete or accurate and provides different obligations for a furnisher that furnishes information in the regular course of business. Appendix \_\_ to Part \_\_II.A. . CDIA suggests that “prompt[] notif[ication]” within the meaning of this provision should be harmonized to conform to long-standing understandings of promptly elsewhere in the FCRA. Similar to other provisions, any reporting of a determination that information furnished is not complete or accurate should be done by all furnishers in their regular course of business.

## **IX. Conclusion**

Through the ANPR, the Agencies fostered a thorough and productive dialogue on this subject. We hope that these comments are helpful to the Agencies as they consider proposed guidance and regulations with far reaching consequences .

CDIA firmly believes that the key to a successful credit reporting system is its voluntary nature. CDIA is concerned that new furnisher obligations that are significant, complex, or confusing will reduce the amount of data being provided to consumer reporting agencies. A reduction in data provided to consumer reporting agencies will ultimately harm consumers.

Respectfully submitted,

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Enclosure