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September 10, 2004

By Electronic Delivery

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attn: Docket No. OP1209

Re: Request for Information for Study on Investigations of Disputes Regarding
Information Reported to Consumer Reporting Agencies

Dear Ms. Johnson:

This comment letter is submitted on behalf of Visa U.S.A. Inc. in response to the notice of study and request for information ("Notice") by the Federal Reserve Board ("FRB"), published in the Federal Register on August 10, 2004. The Notice requests information, pursuant to section 313(b) of the Fair and Accurate Credit Transactions Act of 2003 ("FACT Act"), concerning investigations by furnishers of information reported to consumer reporting agencies ("CRAs") when that information is disputed by the consumers to whom the information relates. In particular, the Notice solicits comment on issues relating to the prompt investigation, completeness, and correction or deletion of information reported to CRAs. Visa appreciates the opportunity to comment on this important matter.

The Visa Payment System, of which Visa U.S.A.¹ is a part, is the largest consumer payment system, and the leading consumer e-commerce payment system, in the world, with more volume than all other major payment cards combined. Visa plays a pivotal role in advancing new payment products and technologies, including technology initiatives for protecting personal information and preventing identity theft and other fraud, for the benefit of its member financial institutions and their hundreds of millions of cardholders.

¹ Visa U.S.A. is a membership organization comprised of U.S. financial institutions licensed to use the Visa service marks in connection with payment systems.

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Importance of Furnishing Information

While Visa itself does not furnish information to CRAs, Visa member financial institutions report information regarding hundreds of millions of accounts to CRAs every month. As a result, Visa recognizes the importance of furnishing information to CRAs, as well as the need for accurate consumer report information. In particular, the continued furnishing of accurate information to CRAs is important for the continued effectiveness and growth of our nationwide credit reporting and credit granting systems. The national credit reporting and credit granting systems rely on the availability and accuracy of information. Financial institutions provide information to CRAs so that it will be available to create the credit history that consumers need to qualify for loans from other lenders and for additional beneficial purposes, such as obtaining insurance and qualifying for employment. It is important to recognize that financial institutions that furnish credit information are not compensated for the information they provide to CRAs. Therefore, those who benefit from the information that is furnished to CRAs are the consumers to whom the information relates, the CRAs that receive the information and the competitors of the financial institutions that provide the information.

Existing Laws Require Furnishers to Provide Accurate Information

Existing federal laws, including the Fair Credit Billing Act ("FCBA") and the Electronic Fund Transfer Act ("EFTA"), already impose requirements on credit card and debit card issuers with respect to the information they report to CRAs. Specifically, the FCBA requires prompt written acknowledgement of customer billing complaints and investigation of billing errors by the issuers of credit cards,² and the EFTA establishes responsibilities of participants in the electronic fund transfer systems, such as requiring that certain steps be taken to resolve errors in connection with debit cards.³ The FCBA and EFTA also establish specific time frames for responding to disputes regarding the accuracy of the information in credit card and debit card accounts (much of which is the same information that the card issuers report to CRAs),⁴ and impose liability on those lenders who violate the provisions of the law.⁵

In addition, the Fair Credit Reporting Act ("FCRA"), as well as the amendments established under the FACT Act, contain adequate safeguards to ensure that any disputes regarding the accuracy of information included in consumer reports is promptly investigated and corrected where necessary. More specifically, the FCRA requires CRAs to give consumers access to information in their consumer reports, and to reinvestigate and correct inaccuracies alleged by consumers within the brief time frames specified in the statute.⁶ The FCRA also requires furnishers to have procedures in place for responding to a notice of a consumer dispute

² 15 U.S.C. § 1666.

³ 15 U.S.C. § 1693f.

⁴ 15 U.S.C. §§ 1666(a)(3), 1693f(c); 12 C.F.R. § 205.11(c)(3).

⁵ 15 U.S.C. §§ 1666(e), 1693f(e).

⁶ 15 U.S.C. §§ 1681g(a), 1681i(a).

received from a CRA,⁷ and the FCRA subjects furnishers to civil liability with respect to these specific reinvestigation requirements.⁸

Furnishers and CRAs have worked diligently to enhance their ability to promptly and effectively respond to any disputes they receive with respect to the accuracy of information in consumer reports. Nevertheless, the existing time frame for correcting consumer reports under the FCRA is very short—30 days “all in” for both the CRA and the furnisher to reexamine information in consumer reports in situations where consumers submit disputes through the CRA. Where consumers later submit additional information to be considered in resolving disputes, an additional 15 days is permitted. Typically, the CRA uses the majority of this time, leaving the furnisher with as little time as five to ten days to investigate and respond to the dispute. In contrast, the FCBA permits up to 90 days for the creditor alone to respond to a billing error notice, and the EFTA permits up to 45 days (or up to 90 days in the context of a point-of-sale debit card transaction) for a financial institution alone to investigate an error after receiving a notice of dispute.⁹ Shorter periods to investigate and correct consumer report information would only benefit credit repair clinics, forcing deletion of correct, but unfavorable, information that cannot be verified in a shorter period; the result would be less accurate consumer report files and greater risk for financial institutions that rely on consumer reports to underwrite credit requests.

The FACT Act amended the FCRA to include additional obligations for furnishers of information. For example, the FACT Act amended the FCRA to permit consumers to dispute inaccurate information directly with furnishers, to supplement the existing FCRA provision enabling consumers to dispute inaccuracies only through CRAs.¹⁰ Effective December 1, 2004, when a furnisher receives a consumer’s notice of dispute submitted in a manner consistent with the statute, the FCRA will require that the furnisher: conduct an investigation of the disputed information; review all relevant information provided by the consumer with the notice of dispute; and complete the investigation and report the results to the consumer before the expiration of a 30-day period (or 45 days if the alleged error appears on a consumer report obtained through the new central source for obtaining free reports established under the FACT Act), the same time period in which a CRA would be required to complete its investigation if the consumer had chosen to dispute the information directly through the CRA.¹¹ And, if the consumer subsequently provides additional information to be considered in resolving the dispute, the furnisher will have 15 additional days to review the new information, just as a CRA would have 15 additional days to review the new information under the FCRA.¹² Thereafter, if the investigation finds that the information reported was inaccurate, the furnisher must promptly notify each CRA to which that information was previously furnished and provide each agency

⁷ 15 U.S.C. § 1681s-2(b).

⁸ 15 U.S.C. § 1681s-2(c).

⁹ 15 U.S.C. §§ 1666(a)(3), 1693f(c); 12 C.F.R. § 205.11(c)(3)(ii)(B).

¹⁰ 15 U.S.C. § 1681s-2(a)(8).

¹¹ 15 U.S.C. § 1681s-2(a)(8)(E).

¹² 15 U.S.C. § 1681i(a)(1)(B).

with the correction necessary to make the information accurate.¹³ Violations of the new furnisher requirements under the FCRA are subject to administrative enforcement.¹⁴

Furnishers Are Prepared to Comply with New FCRA Obligations

Although the FACT Act includes new obligations for furnishers of information, particularly the obligations for responding to direct disputes from consumers regarding the accuracy of information furnished to CRAs, these are not new challenges for furnishers, and particularly financial institutions. Rather, credit card and debit card issuers have long responded to customer disputes because of the dispute resolution requirements established under the FCBA and EFTA, as well as the business practices established by financial institutions to enhance customer relations. In this regard, it also is important to recognize that in most instances, the account information furnished by financial institutions to CRAs is the same information that those financial institutions use for making reports to their federal and state bank regulatory agencies and, where applicable, their securities filings, so it is critical to those institutions, as well as to consumers, that the information be accurate.

Thus, financial institutions have sufficient motivation to ensure that information they provide to CRAs is accurate. In providing information to CRAs, financial institutions typically report the status of each loan or account, including the outstanding balance and the payment status, as it appears that month in the institutions' own records. This same information is essential for the institution's own collection activities and for its other essential business purposes, such as the institution's reports to its auditors; so, it is important to financial institutions that they maintain accurate records. In addition, financial institutions have strong incentives to respond to requests to reinvestigate disputed information in order to maintain good relationships with their customers.

Accordingly, financial institutions already have adequate incentive to ensure that the information furnished to CRAs is accurate. When a financial institution is contacted by a CRA and notified that information supplied by that institution has been disputed by a consumer, the institution not only is obligated, but it is independently motivated, to take the appropriate steps to investigate and, if necessary, correct the information. Similarly, when a consumer notifies the financial institution directly of a dispute, the financial institution is motivated to investigate and, if necessary, correct the information.

Additional Requirements and Liability for Furnishers Would Negatively Impact the National Credit Reporting and Credit Granting Systems

Additional requirements and liability for furnishers would have a negative impact on our nationwide credit reporting and credit granting systems. For example, imposing liability on furnishers could dramatically increase litigation against furnishers who are not compensated for providing this information. This, in turn, could reduce the availability of essential credit

¹³ 15 U.S.C. § 1681s-2(a)(8)(E)(iv).

¹⁴ 15 U.S.C. § 1681s-2(d).

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information as furnishers attempt to avoid liability by restricting the information they furnish to CRAs. Similarly, the more requirements imposed on, and the more liability risks incurred by, furnishers, the less likely it is that they will continue to furnish information to CRAs and, as a result, the entire nationwide credit system will suffer. In particular, a reduction in the supply of credit information would increase the risks associated with extending credit because financial institutions would be required to make credit decisions based on less complete information. The increased risk would be reflected in an increase in the costs consumers must pay for credit. This also would have an anti-competitive impact on financial institutions. For example, larger lenders with a sizeable customer base would be better able to absorb the cost of this increased risk than would smaller lenders with more limited customer bases. Smaller lenders could, therefore, find it difficult to price their products to compete with larger lenders.

A shortage of consumer report information also would decrease competition by making it difficult for financial institutions to serve consumers across the country through national credit programs. In this regard, without access to the extensive consumer report information currently available from CRAs, it simply would not be possible for a lender located in a single geographic area to extend credit to consumers throughout the nation. In addition, the types and amounts of credit available to consumers could be restricted. Therefore, additional requirements and liability for furnishers of information could have significant detrimental effects on our nationwide credit granting system, and on the consumers who have benefited greatly from this credit granting system.

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Visa appreciates the opportunity to comment on this important matter. If you have any questions concerning these comments, or if we may otherwise be of assistance in connection with this matter, please do not hesitate to contact me, at (415) 932-2178.

Sincerely,

Russell W. Schrader
Senior Vice President and
Assistant General Counsel