



August 31, 2009

Federal Trade Commission  
Office of the Secretary  
Attention: Project R611017  
Room H-135 (Annex C)  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

RE: Procedures to Enhance the Accuracy and Integrity of Information Furnished to  
Consumer Reporting Agencies under Section 312 of the Fair and Accurate  
Transactions Act, Project No. R611017

Dear Sir/Madam:

The National Association of Mutual Insurance Companies ("NAMIC") is pleased to offer comments on furnisher accuracy and integrity guidelines implementing section 312 of the Fair and Accurate Transactions Act of 2003 (FACT Act).<sup>1</sup>

NAMIC is the largest full-service national trade association serving the property/casualty insurance industry with more than 1,400 member companies that underwrite more than 40 percent of the property/casualty insurance premium in the United States. NAMIC members are small farm mutual companies, state and regional insurance companies, risk retention groups, national writers, reinsurance companies, and international insurance giants.

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<sup>1</sup> P.L. 108-159, 117 Stat. 1952, December 4, 2003.

## **Background**

Section 312 of the FACT Act requires the agencies to (1) establish guidelines regarding the accuracy and integrity of information furnished to consumer reporting agencies (“CRAs”); and (2) prescribe regulations that require the entities that furnish such information to establish reasonable policies and procedures for implementing the guidelines. Section 312 also requires the agencies to prescribe regulations that identify the circumstances under which an entity that furnishes information to a CRA will be required to reinvestigate a dispute concerning the accuracy of information contained in a consumer credit report based on a consumer's direct request.

The Secretary issued guidance and requested comment on July 1, 2009.<sup>2</sup> The guidance requires entities furnishing information to CRAs to adopt and implement written policies and procedures and to conduct investigations of consumer disputes. Policies and procedures must be appropriate to the nature, size, complexity and scope of the furnisher's activities and ensure the accuracy and integrity of the information furnished. Furnishers' policies must be designed to properly identify the consumer and reflect the current status of the account. Policies must require (1) the use of standard data formats and procedures for computing and furnishing data; (2) proper maintenance of records to ensure accuracy; (3) record retention for a reasonable period of time; and (4) appropriate employee training. Furnishers must periodically review and update policies and procedures. As part of the review furnishers must evaluate the effectiveness of existing policies and procedures and consider any feedback received from consumer reporting agencies and consumers.

## **Insurance Industry**

Insurance is a highly complex, unique, and personal product that fundamentally differs from other financial services, such as banking and securities. Insurers provide financial protection against loss or damage by specified contingent events or perils. Unlike other institutions, insurers generally do not extend credit to consumers, nor do they process financial transactions from other institutions. As such the information provided to credit reporting agencies by insurers differs significantly from that of banks or credit issuers.

The terms and definitions adopted by the agency in the recent final regulations implementing the duties of furnishers of information reflect an emphasis on financial services transactions, such as banking or credit. As example, the regulations apply to

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<sup>2</sup> 74 Fed. Reg. 31484-31528 and 31529-31533.

disputes related to a consumer's performance or other conduct concerning an account or other relationship with the furnisher. However, the examples used are clearly directed at credit or loan accounts, including high balance, payment history and date the account was opened or closed. Such information is significant in the context of financial services products, but has little relevance in the insurance context.

The significant differences in the products and business practices between the insurance industry and other financial services industries lead to conflicts and confusion in applying one-size-fits all approaches to regulation.

### **Disputes**

Regulations promulgated by the joint federal agencies on July 1 requiring furnishers to respond to direct disputes from consumers is another example of the differences between insurers and other financial service providers. Under new rules furnishers are required to conduct a reasonable investigation of a direct dispute if it relates to (1) a consumer's liability for a credit account or other debt with the furnisher; (2) the terms of a credit account or other debt with the furnisher; (3) the consumer's performance or other conduct concerning an account or relationship with the furnisher; or (4) other information contained in a consumer report regarding an account or relationship with the furnisher that bears on the consumer's creditworthiness, credit standing, character, general reputation, personal characteristics or mode or living. Furnishers are required to complete investigation and report to the consumer within 30 days of receipt of the dispute. If the investigation finds that the information reported was inaccurate, promptly notify each CRA to which the furnisher provided inaccurate information of that determination and provide to the CRA any correction to that information that is necessary to make the information provided by the furnisher accurate.

A furnisher is not required to investigate a dispute if the furnisher has reasonably determined that the dispute is frivolous or irrelevant. A dispute qualifies as frivolous or irrelevant if (i) the consumer did not provide sufficient information to investigate the dispute; (ii) the dispute is substantially the same as a dispute previously submitted unless such dispute involves new information; or (iii) the dispute directly relates to one or more exceptions, including information derived from public records, the customer's identifying information, or information related to fraud alerts. Upon making a determination that a dispute is frivolous or irrelevant, the furnisher must notify the consumer of the determination not later than five business days after making the determination. A notice of determination that a dispute is frivolous or irrelevant must include the reasons for such determination.

Information may be furnished by insurers to CRAs related to claims, which are also subject to state unfair claims practices and other consumer protections. Stringent timelines for investigation and notification of frivolous disputes are problematic in the insurance context. It is essential that insurers are afforded the time and flexibility necessary to fully comply with existing regulatory requirements and address the complex issues and disputes raised in the claims process.

### **Opening Date**

The agency requests comment on whether furnishers should be required to provide the account opening date. NAMIC believes that the inclusion of an account opening date would be confusing and unnecessary in the context of insurance related transactions. In the individual market consumer policies are renewed, terms are revised to reflect risk differences and covered assets are changed over time.

A requirement for an opening date in the context of insurance would raise a number of definitional and operational issues, while doing little to add to the integrity of the information furnished to consumer reporting agencies. NAMIC urges the agency to exempt insurance from any requirement to provide account opening dates.

### **Conclusion**

Our nation's property/casualty industry is fully committed to protecting policyholder and claimant privacy and maintaining the security, accuracy and integrity of their personal information. NAMIC urges the agency to exempt insurance products from any requirement to furnish account opening dates. Furthermore, NAMIC urges the agency to recognize the fundamental differences between insurance and other financial services and to provide appropriate flexibility in responding to consumer disputes.

Sincerely,

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