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Department of the Treasury
Office of Thrift Supervision
Regulation Comments, Chief Counsel's Office
1700 G Street, NW
Washington, DC 20552
Attention: OTS-2007-0022

January 14, 2007

To the Office of Thrift Supervision:

Thank you for the opportunity to respond to the notice of proposed rulemaking, OTS-2007-0022, "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." These comments are provided on behalf of FDS Bank, a Federal Savings Bank located in Mason, Ohio and an issuer of proprietary retail credit cards for Macy's and Bloomingdale's, prepaid debit cards and mortgage loans.

While we understand that the Fair and Accurate Credit Card Transactions Act is the impetus for this proposed rulemaking, we encourage the regulatory agencies to take this opportunity to alleviate some of the tremendous burden that these procedures in the Fair Credit Reporting Act have become to financial institutions in a manner that is fair

and balanced to both consumers and lending institutions. As we intend to elaborate in this comment letter, we believe that can be achieved with less subjective language added to the Regulation as well as a disincentive for consumers to file spurious and repetitive credit bureau disputes. As a lender, we certainly appreciate the value of the credit reporting system to our industry. Thorough and accurate credit reports enable us to make educated decisions on credit applications and manage risk on existing credit accounts. They also allow many consumers to obtain credit at the best available price due to the information in their credit reports. While FACTA acknowledges that both consumers and financial institutions are harmed when financial institutions report incorrect information to a credit reporting agency, it must also be acknowledged that the system is at risk due to the ever burgeoning onslaught of credit bureau disputes and lawsuits with claims based on the Fair Credit Reporting Act.

Credit repair organizations and others disseminate schemes to the public which claim success at removing derogatory information from a credit report through the use of serial credit bureau disputes. Since the consumer has no fear of reprisal for submitting fraudulent credit bureau disputes, they are willing to make the effort given the enormity of the reward; a good, yet undeserved, credit rating. The subjective language in the FCRA has also created a cottage industry for lawyers who unceasingly challenge every lender's credit reporting practices. The diversity of decisions on these matters has created a minefield for financial institutions that is impossible to navigate.

When evaluating all the procedures imposed on a furnisher of credit data, as well as the risk associated with transmitting confidential data to the credit reporting agencies, one finds a process of rapidly increasing cost, complexity, risk and aggravation. We

encourage the regulatory agencies to be creative with this revision to the Fair Credit Report Act (the "Act") and implement some policies that will strengthen the credit reporting system while reducing the amount of risk assumed by furnishers of credit data as well as credit reporting agencies.

In the interagency notice there are several references to furnishers using "the industry standard format" to report information to consumer reporting agencies ("CRAs"). For the sake of argument, we will assume these references are to the Metro 2 reporting format. Keep in mind that these formats can be created and revised at the whim of the CRAs and there is no requirement that every CRA accept any particular reporting format. It can be very expensive for a data furnisher to reformat their data processing system every time a new reporting format is created by the CRAs. Since data furnishers are running a business, they have to consider the financial benefit to their organization of investing in the programming necessary to deliver data in the latest format, particularly when the CRAs continue to accept earlier "industry standard" reporting formats. If the regulatory agencies mandate a subjective standard such as providing data in an "industry standard format" are they also going to specifically detail that format? Otherwise, they subject all data furnishers and their data processing systems to the whims of the CRAs. And will it be left to the Courts to determine what qualifies as an "industry standard format?" We would suggest that the regulatory agencies and the Courts do not want to get into the business of managing credit reporting formats.

There is also a specific reference to how bankruptcy information is reported to the CRAs. We have personally experienced some of the confusion and disagreement on this topic. We recommend that standards be developed which lay out in precise terms how a

CRA should report a credit account that was included in bankruptcy. We encourage the regulatory agencies to work closely with the CRAs to identify all the variables associated with this topic and describe with specificity how these accounts should appear on a credit report. This includes rules for the account balance, minimum payment due and credit line. Why must the account balance be reported as zero? If the account is coded as included in bankruptcy, future lenders evaluating that report know that the balance is not collectible but they also deserve to see how much debt the applicant amassed prior to filing bankruptcy. This could be important information for risk managers in setting lending standards.

The regulatory agencies should also consider that once the furnisher reports the account as included in bankruptcy, whether the furnisher has an additional reporting requirement when the bankruptcy is discharged? Is there a duty to report the date the account was closed by a creditor due to bankruptcy? After a bankruptcy status is reported on a credit account, how should the CRAs report the "payment status" on the account? For example, today, if a revolving credit account were 60 days delinquent when it is reported by the lender as included in bankruptcy, some CRAs would leave the payment status of "60 days delinquent" and report the account as included in bankruptcy. Other CRAs would eliminate the information from the payment status field. We believe the credit reporting system would benefit if there were well defined regulations around this topic.

The CRAs mandated that furnishers use the e-OSCAR system for receiving and transmitting consumer dispute information and other report modification requests from and to the three nationwide CRAs, effectively shutting out other vendors such as GE

Information Systems. The interagency notice indicates that consumer groups recommend furnishers perform in-depth investigation beyond verifying that the information reported by the CRA matches the furnisher's records, including contacting consumers to obtain additional information, if necessary. The impracticality of such a suggestion is overwhelming. As a credit card lender, the records that might be involved in such "in-depth" research include applications, monthly statements, payment instruments and purchase receipts. The sheer volume of these records is staggering and access to such records if often manual, such as through microfiche retrieval. The resources necessary to retrieve these records, going back to the opening of an account, would be prohibitive.

In practice, consumers regularly submit their credit bureau dispute to each of the three nationwide credit reporting agencies as well as in writing to the lender. Thus, we typically receive the same credit bureau dispute four times with no way to consolidate the requests. Since previous modifications of the Act required the CRAs to create a single access point for consumers to call and opt-out of being considered for pre-screening offers, it would be beneficial if there were also a single access point for disputing information on a credit report through the CRAs. In addition, the CRAs have limited "canned" language in e-OSCAR to describe the consumer's dispute. This canned language, such as, "Not his/hers. Provide or confirm complete ID," does not provide specific comments from the consumer's letter. It would be beneficial if the CRAs were required to provide more specific information from the correspondence they receive since the consumer ultimately chastises the furnisher for their response to the dispute even though the furnisher never saw the dispute letter and only received an extremely generic description of the dispute.

The interagency notice includes a section that discusses the benefits or costs to consumers that may result from a direct dispute. The section goes on to discuss only benefits to consumers from a direct dispute, which we find inequitable. As we previously indicated, consumers regularly file false credit bureau disputes with the goal of having negative information removed from their credit report. By overwhelming the system, they hope that the lender will eventually get frustrated with their disputes and delete the information just to dispense with the relentless assault or perhaps the lender will not respond within the statutory time period and the disputed information will be permanently removed by law. While the consumer obviously has the right to dispute incorrect information appearing in their credit report, they do not have the right to abuse the credit reporting system. We believe there needs to be a deterrent to prevent ongoing abuses of the system. The proposal that a furnisher may ignore disputes submitted by credit repair organizations is insufficient because these organizations will simply modify the appearance of their disputes so a furnisher cannot identify the source of a dispute. What is needed is a penalty enforced against a consumer who submits invalid and/or repetitious credit bureau disputes. Perhaps a fee that could be enforced against a consumer if they submit the same credit bureau dispute on the same account within a certain period of time and the disputes result in no modifications from the furnisher. Consumers must be discouraged from attempting to abuse the credit reporting system in the same way a speeding ticket is meant to deter them from driving faster than the posted speed limit.

In the section-by-section analysis, the regulatory agencies discuss the definitions of accuracy and integrity as related to the furnishing of credit information. The Agencies

request comment on whether accuracy should specifically include updating information as necessary to ensure that information furnished is current. We believe that this must be included in any definition of accuracy. Obviously, mistakes happen with credit reporting or a dispute process would not be necessary. To hold furnishers to an unrealistic standard of accuracy will not improve the stability of the credit reporting system. The proposed definition of integrity includes subjective language about not omitting any "term," the absence of which can reasonably be expected to contribute to an incorrect evaluation by the user of a consumer report. This language would be enthusiastically appreciated by the plaintiff's bar as they anticipate filing lawsuits against furnishers to determine what is reasonable. We implore you to specify the information that the furnisher MUST provide to the CRAs. The furnisher would always have the opportunity to provide more information than required by regulation, but these subjective standards will result in even more FCRA lawsuits in our overburdened judicial system.

In discussing the Guidelines Approach to accuracy and integrity, the interagency notice indicates that the definition of "integrity" addresses two potential issues with furnished information, the second of which is that if the accuracy of the furnished information is disputed, the furnisher should be able to substantiate, or verify, the information through its own records. We request additional clarification on this point. Furnisher records are maintained electronically and those records are used to create the regular report to the CRAs. Are the Agencies suggesting that the furnisher must be able to substantiate electronic records with paper documents? Are the Agencies referring to customer identification information (name, address, social security number) or specific account information (open date, balance, payment history, etc.)? With respect to

customer identification information, data entry errors certainly occur within the furnisher's records and consumers fail to notify furnishers with changes to their name or address. Also, particularly old account records may not have included a social security number and a lender may have partnered with a CRA to populate their records with this information in order to improve their credit reporting. Such practices resulted in a small percentage of errors in furnisher records. The Agencies should be careful not to create a standard that, if imposed, might create a loophole to release debtors from their financial obligations.

A rarely discussed aspect of the credit reporting dynamic is how the national CRAs independently interpret the same data provided by the same furnisher in the same format. For example, if a credit limit on a credit card account is reported every month and that credit limit is reduced (for whatever reason) to zero, two of the major CRAs will not recognize a zero credit limit so they continue to report the last credit limit in excess of zero reported for the account. The third major CRA will report the zero credit line. Are regulations being developed to create a uniform interpretation of reported data? How are consumers expected to determine whether a credit report is inaccurate because the furnisher is providing incorrect information or because the CRA is incorrectly interpreting and reporting the data provided? We believe that, today, the consumer's blame consistently falls on the furnisher.

We encourage the Agencies to consider the impact "conducting a reasonable investigation" could have on the credit reporting system. In the credit card industry, most data processing systems maintain an online account history of approximately two years. If a customer disputes reported information that is older than two years, it may be easier

for the furnisher to just remove the disputed data rather than attempt to search archived records to validate the disputed information. This could artificially improve a consumer's credit report and defeat the intricacies of risk management incorporated into scorecards and other risk management tools. That could result in loans to unqualified consumers which could further damage an already strained credit system.

Consumers have been given unprecedented access to review their credit reports. Under the Fair Credit Reporting Act, a consumer may obtain a free copy of their credit report from each of the three national CRAs every year. Consumers should bear some responsibility for monitoring the accuracy of their credit report. To avoid the difficulties of researching credit information furnished years earlier, we believe the Agencies should consider placing a two year time limitation on how long a consumer has to dispute furnished information. The two year limitation makes sense because if a consumer requested a free annual copy of their credit report in January of year one and then some piece of incorrect information were reported in February of year one, even if the consumer didn't request their next free annual credit report until December of year two, they would still have sufficient time to dispute the incorrect information. This would also resolve concerns about establishing a specific time period for recordkeeping in the regulations. Existing regulations (such as Regulation B and Z) already incorporate sufficient recordkeeping standards so additional standards would not be necessary in this proposal.

The interagency notice also suggests that the furnisher have written policies and procedures in place to ensure that the furnisher updated information to reflect the current status of consumer's relationship, including any transfer of an account by sale. This is

another example of how the subjective approach to these regulations does a disservice to all the parties involved. The Agencies need to provide specific guidance on how a sold account should appear on a credit report. For example, Bank A's credit card accounts are purchased by Bank B. On the credit report, should Bank A's reporting of the account simply be overlaid with Bank B's account number and identification information and the account continue reporting as normal? Should Bank A's reporting of the account be flagged as "sold to Bank B" and a new/additional account entry reported for Bank B? Should the new entry contain an open date and payment history only from the date of the sale or should the entire history of the account be transferred to Bank B's entry? If a consumer sees just an entry for Bank B on their report they may believe they are the victim of "identity theft" because they do not understand that their account was sold to Bank B. In addition, consumers have differing opinions on the impact of such a transaction on their "credit score" since the media constantly broadcasts inaccurate, inconsistent or incomplete information about credit reporting in general. The Agencies could remove inconsistency in this area of credit reporting by regulating how this information will be displayed. We also request additional guidance on the recommended policy a furnisher should have in place regarding the furnishing of information on sold accounts, ". . .[I]n a manner that prevents re-aging of information, duplicative reporting, or other problems affecting the accuracy or integrity of the information furnished."

The Agencies sought comment on whether the direct dispute rules should be more "targeted" and only permit a consumer to directly dispute reporting with a furnisher under certain circumstances. We fail to see how narrowing the consumer's rights to directly dispute information with a furnisher would be beneficial to the furnisher. If a

targeted approach was adopted and a consumer sent an inappropriate dispute to a furnisher, the furnisher would first have to read the dispute to determine that the consumer should have submitted the dispute to a CRA. Would the furnisher then send a letter to the consumer indicating that their dispute must be submitted to the CRA? In that case, the consumer then sends the dispute to the CRA who enters it into E-oscar and the dispute is again forwarded to the furnisher. The furnisher must then attempt to interpret the consumers' dispute from the generic codes used in E-oscar. This seems like an inefficient way to process a dispute.

The interagency notice also proposes that the furnisher provide an address where the consumer may send a direct dispute to the furnisher. The proposal indicates that the consumer may send the notice to the address the furnisher provides to the CRAs and which appears in the credit report, to an address clearly and conspicuously specified by the furnisher or to any business address of the furnisher when the furnisher has not provided a specific address. First, we note that the Agencies have not included an "or" between the first two options. Does that mean that the Agencies intend that even if the furnisher provides an address to the CRAs and that address appears on the credit report, the furnisher must also clearly and conspicuously specify an address to the consumer? Is it also the intention of the proposal not to mandate that an address be provided to the CRAs? Should an "or" appear between the first two options?

Second, at what point-in-time must the address be clearly and conspicuous specified to the consumer? Should it be on the credit application that is already crowded with mandatory disclosures, even though the application may not be approved and credit reporting will never occur for that applicant? Should it appear on the account statement,

although a statement may not be sent on an open-end credit account until the account has a balance? Should it appear in the initial disclosure statement, although there is a question as to whether the consumer retains these disclosures?

Third, if the furnisher provides the CRAs with a dispute address which will appear on the credit report, will it be labeled as such and will a customer service address also be printed on the report? Our experience indicates that a customer will use the most accessible address for all their needs. If only a dispute address were provided on the credit report, the creditor would soon find payments, billing error notices and customer service requests clogging their credit bureau dispute P.O. Box.

Comment was also requested on whether the furnisher needs the flexibility to provide the address disclosure orally? If additional guidance and a safe harbor are provided on how the furnisher should clearly and conspicuously provide this disclosure to the consumer in writing, we do not believe that oral disclosure would be necessary. We also question the value of orally disclosing this information since the customer would need to write down the information for future reference.

The Agencies have also lumped identity theft and fraud situations into this proposal. Regulations have already been promulgated from the FACT Act regarding identity theft and we do not believe it is advisable to incorporate identity theft concepts into this proposal. When a consumer is a victim of identity theft or fraud, the issues facing them are more significant than just their credit bureau report. The Agencies may do a disservice to these consumers if they are led to believe that disputing the accuracy of their credit bureau reporting is sufficient to resolve their problem. Our experience is that

claims of identity theft and fraud are sent to a fraud department for investigation, not to a credit bureau dispute department.

The Agencies should understand the futility associated with determining that a dispute is "frivolous or irrelevant." If a furnisher receives a direct dispute, they must read the entire dispute before they can determine that it does not contain fundamental information necessary to investigate the dispute. If fundamental information is absent from the correspondence, the furnisher then has a responsibility to let the consumer know what information they need in order to investigate their dispute. When the furnisher receives substantially the same dispute, for the fifth time, how has anything changed in their process because the dispute was "frivolous or irrelevant?" The furnisher must still read the dispute and send the letter. It is unlikely that a furnisher would allow a customer communication to go unanswered.

When discussing supporting documentation that the consumer must provide to the furnisher, we would recommend that the consumer submit a copy of a credit report from one or more of the three national CRAs showing how the account is being reported. Our experience indicates that tri-merge credit reports and other consolidated credit reports often contain errors that possibly occurred when the reports were reformatted. Consumers should not be permitted to rely on these types of records when filing a credit bureau dispute.

Finally, in Section IV - L of the proposed guidelines, the Agencies indicate that a furnisher should have procedures that provide consumer reporting agencies with sufficient identifying information in the furnisher's possession about each consumer about whom information is furnished to enable the consumer reporting agency to

properly identify the consumer. Again in the context of credit card products, lenders typically have one address associated with a credit account and no knowledge of whether all the cardholders on the account reside at that address. We recommend that the Agencies consider what constitutes "sufficient identifying information" and then investigate whether this is information typically maintained separately for each individual on an account.

We thank you again for the opportunity to comment on this proposal and we hope that our comments will be useful as you finalize these rules associated with credit bureau reporting.

Sincerely,

Steven L. Franks

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