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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 41

Docket ID OCC-2008-0023

RIN 1557-AC89

FEDERAL RESERVE SYSTEM

12 CFR Part 222

Docket No. R-1300

RIN 7100-AD18

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-2008-0025

RIN 1550-AC01

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 717

FEDERAL TRADE COMMISSION

16 CFR Part 660

RIN 3084-AA94

**Final Rules: 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.**

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of
Governors of the Federal Reserve System (Board); Federal Deposit Insurance
Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS); National Credit
Union Administration (NCUA); and Federal Trade Commission (FTC).

ACTION: Final rules.

SUMMARY: The OCC, Board, FDIC, OTS, NCUA, and FTC (Agencies) are
publishing these final rules to implement the accuracy and integrity and direct dispute
provisions in section 312 of the Fair and Accurate Credit Transactions Act of 2003
(FACT Act) that amended section 623 of the Fair Credit Reporting Act (FCRA). The
final rules implement the requirement that the Agencies issue guidelines for use by
furnishers regarding the accuracy and integrity of the information about consumers that
they furnish to consumer reporting agencies (CRAs) and prescribe regulations requiring
furnishers to establish reasonable policies and procedures for implementing the
guidelines. These final rules also implement the requirement that the Agencies issue
regulations identifying the circumstances under which a furnisher must reinvestigate
disputes about the accuracy of information contained in a consumer report based on a
direct request from a consumer.

DATES: These rules are effective on [INSERT DATE THAT IS FIRST DAY OF FIRST CALENDAR QUARTER FOLLOWING ONE CALENDAR YEAR FROM DATE OF PUBLICATION].

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Introduction

The Fair Credit Reporting Act (FCRA), which was enacted in 1970, sets standards for the collection, communication, and use of information bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.¹ In 1996, the Consumer Credit Reporting Reform Act extensively amended the FCRA.² The FACT Act³ further amended the FCRA for various purposes, including improved accuracy of consumer reports.

Section 623 of the FCRA describes the responsibilities of persons that furnish information about consumers (furnishers) to CRAs.⁴ Section 312 of the FACT Act amended section 623 by requiring the Agencies to issue guidelines for use by furnishers regarding the accuracy and integrity of the information about consumers that they furnish to CRAs and to prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines (the accuracy and integrity regulations

¹ 15 U.S.C. 1681-1681x.

² Pub. L. 104-208, 110 Stat. 3009 (Sept. 20, 1996).

³ Pub. L. No. 108-159, 117 Stat. 1952 (Dec. 4, 2003).

⁴ Section 623 is codified at 15 U.S.C. 1681s-2.

and guidelines). Section 312 also requires the Agencies to issue regulations identifying the circumstances under which a furnisher must reinvestigate disputes concerning the accuracy of information contained in a consumer report based on a direct request from a consumer (the direct dispute regulations). The Agencies are issuing these final accuracy and integrity regulations and guidelines and final direct dispute regulations to satisfy the requirements of section 312 of the FACT Act.

The final rules include the accuracy and integrity regulations, which contain definitions of key terms such as "accuracy," "integrity," "direct dispute," and "furnisher" and require furnishers to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of consumer information provided to a CRA. The final rules also include guidelines concerning the accuracy and integrity of information furnished to CRAs that furnishers must consider in developing their policies and procedures. The Agencies believe that the final accuracy and integrity rules and guidelines strike an appropriate balance that affords furnishers the flexibility to establish policies and procedures that are appropriate to the nature, size, complexity, and scope of each furnisher's activities while enhancing the accuracy and integrity of consumer information provided to CRAs.

The final direct dispute regulations: set forth the circumstances under which a furnisher must reinvestigate a consumer's direct dispute; provide exceptions to the requirements imposed; detail the direct dispute address and dispute notice content requirements; specify furnishers' duties after receiving a direct dispute; and establish when a furnisher may deem a direct dispute to be frivolous or irrelevant. The final direct dispute rule is designed to permit direct disputes in virtually all circumstances involving

disputes about the accuracy of furnished information typically provided by a furnisher to a CRA. This approach enables consumers to submit a dispute directly to the furnisher (with certain exceptions) when the issue in dispute relates to information for which the furnisher is responsible.

II. Statutory Requirements

A. Accuracy and Integrity Regulations and Guidelines

Section 623(e)(1)(A) of the FCRA requires the Agencies to establish and maintain guidelines for use by each furnisher "regarding the accuracy and integrity of the information relating to consumers" that the furnisher provides to CRAs. In developing the guidelines, section 623(e)(3) directs the Agencies to:

- Identify patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of information furnished to CRAs;
- Review the methods (including technological means) used to furnish information relating to consumers to CRAs;
- Determine whether furnishers maintain and enforce policies to assure the accuracy and integrity of information furnished to CRAs; and
- Examine the policies and processes employed by furnishers to conduct reinvestigations and correct inaccurate information relating to consumers that has been furnished to CRAs.

The Agencies also are required to update the guidelines as often as necessary.

Section 623(e)(1)(B) of the FCRA requires the Agencies to prescribe regulations requiring furnishers to "establish reasonable policies and procedures for implementing the guidelines" established pursuant to section 623(e)(1)(A). Section 623(e)(2) of the

FCRA provides that the Agencies must consult and coordinate with one another so that, to the extent possible, the regulations prescribed by each Agency are consistent and comparable with the regulations prescribed by each other Agency. These consistent and comparable final rules are being issued following extensive consultation and coordination among the Agencies.

B. Direct Disputes

Section 623(a)(8) of the FCRA directs the Agencies jointly 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 the direct dispute regulations, section 623(a)(8) directs the Agencies to weigh the following specific factors:

- The benefits to consumers and the costs to furnishers and the credit reporting system;
- The impact on the overall accuracy and integrity of consumer reports of any direct dispute requirements;
- Whether direct contact by the consumer with the furnisher would likely result in the most expeditious resolution of any dispute; and
- The potential impact on the credit reporting process if credit repair organizations are able to circumvent the provisions in subparagraph G of section 623(a)(8), which generally states that the direct dispute rules shall not apply when credit repair organizations provide notices of dispute on behalf of consumers.

III. The Agencies' Consideration of the Statutory Accuracy and Integrity Criteria and Direct Dispute Factors

The Agencies published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** in March 2006⁵ in order to obtain information pertaining to the criteria that Congress directed the Agencies to consider in developing the accuracy and integrity guidelines and the factors that Congress directed the Agencies to weigh in prescribing the direct dispute regulations. The ANPR contained detailed requests for comment on ten issues related to the statutory criteria governing the development of the accuracy and integrity guidelines and on eight issues related to the statutory factors that the Agencies must weigh when promulgating the direct dispute regulations. The Agencies also specifically requested comment on how the issues presented by the ANPR might differ depending on the type of furnisher, the types of information furnished, the frequency with which a furnisher reports information about consumers to CRAs, or the type of CRA that receives the furnished information.

The Agencies collectively received a total of 197 comment letters on the ANPR, including multiple copies of the same letter sent by commenters to more than one Agency. Commenters included depository institutions, other financial services companies, trade associations, consumer reporting and credit scoring companies, a mortgage company, consumer organizations, and individual consumers.

IV. The Notice of Proposed Rulemaking

On December 13, 2007, the Agencies published a notice of proposed rulemaking (NPRM) in the **Federal Register** containing proposed rules to implement section 312 of

⁵ 71 FR 14,419 (March 22, 2006).

the FACT Act.⁶ The NPRM summarized key issues identified in the comment letters received on the ANPR concerning accuracy and integrity criteria and on the direct dispute factors.⁷ The proposal contained the section 312 statutory requirement that each furnisher must establish reasonable policies and procedures regarding the accuracy and integrity of the information about consumers that it furnishes to a CRA. The proposal stated that the policies and procedures must be written and be appropriate to the nature, size, complexity, and scope of the furnisher's activities. The proposal provided that each furnisher would have to consider the accuracy and integrity guidelines in developing its policies and procedures and review its policies and procedures periodically and update them as necessary to ensure their continued effectiveness.

The proposal included an appendix to each Agency's regulations containing accuracy and integrity guidelines that: (1) set forth the nature, scope, and objectives of a furnisher's policies and procedures; (2) enumerated the accuracy and integrity duties of furnishers under the FCRA; (3) identified the steps that furnishers should take when establishing accuracy and integrity policies and procedures; and (4) detailed specific components that should be addressed in a furnisher's policies and procedures.

The proposal included two approaches for defining the terms "accuracy" and "integrity," terms that are not defined by section 312:⁸ a "Regulatory Definition Approach" and a "Guidelines Definition Approach." The Regulatory Definition Approach included definitions for both terms in regulations. The Guidelines Definition

⁶ 72 FR 70,944 (December 13, 2007).

⁷ 72 FR 70,947 – 949 (December 13, 2007).

⁸ In addition, the Agencies noted in the NPRM that the legislative history of the FACT Act does not resolve how the terms "accuracy" and "integrity" should be defined. See 72 FR 70,949 – 950 (December 13, 2007).

Approach defined the terms in guidelines – rather than regulations – with reference to the objectives that a furnisher's policies and procedures should be designed to accomplish.

Both proposed approaches defined the term "accuracy" to mean 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 and other conduct with respect to the account or other relationship.

The proposed Regulatory Definition Approach provided that information furnished to a CRA could be technically "accurate" yet lack "integrity" if it presented a misleading picture of the consumer's creditworthiness by omitting critical information, such as a credit limit on a revolving credit account. In contrast, the proposed Guidelines Definition Approach provided that furnished information would have "integrity" if it: (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) is substantiated by the furnisher's own records.⁹ The objectives included in the Agencies' respective appendices also differed in a manner that reflected these alternative definitions.

Both approaches proposed consistent definitions for other key terms such as "furnisher" and "direct dispute."

Finally, the proposal included regulations that would implement section 623(a)(8) of the FCRA, which directs the Agencies jointly to prescribe regulations that identify the

⁹ Key components of the definition of "integrity" proposed under the Guidelines Definition Approach were incorporated into the Regulatory Definition Approach as objectives set forth in the proposed guidelines.

circumstances under which a furnisher is required to reinvestigate¹⁰ a dispute concerning the accuracy of information about a consumer contained in a consumer report, based on a direct request by the consumer. The proposal specified the circumstances under which a furnisher must investigate a direct dispute; included certain exceptions; set forth requirements regarding a furnisher's address for receiving direct dispute notices; specified the content requirements for direct dispute notices from consumers; and addressed frivolous and irrelevant disputes, which, pursuant to section 623(a)(8)(F) of the FCRA, furnishers are not required to investigate.

In addition, the NPRM requested specific comment on the following issues: the definitions of the terms "accuracy" and "integrity" and their placement in either the regulatory text or guidelines; whether the proposed definition of "accuracy" should include updating information as necessary to ensure that the information furnished is current; whether the proposed definition of "accuracy" is appropriate to the direct dispute rule; whether the proposed direct dispute rules appropriately reflect the relevant statutory considerations or whether a more targeted approach would be more appropriate; whether to permit furnishers to provide oral notice for a direct dispute address; whether certain types of business addresses should be excluded from receiving direct dispute notices; what mechanisms should be required, if any, for informing consumers of their direct dispute rights; how the proposed direct dispute requirements would affect furnishers to

¹⁰ Section 312 uses the term "reinvestigate" and "investigate" interchangeably to apply to direct disputes. Compare 15 U.S.C. 1681s-2(a)(8)(A) with 15 U.S.C. 1681s-2(a)(8)(E). The Agencies believe that, as applied to section 312, there is no difference in the meaning of these two terms, and, therefore, have used only the term "investigate" in the final regulations and guidelines for ease of comprehension, to provide clarity to consumers who file direct disputes, and to assist furnishers with the implementation of the regulations and guidelines.

smaller and specialty CRAs; and whether the guidelines should incorporate a specific record retention time period.

A more detailed discussion of the provisions of the NPRM is contained in the Section-by-Section Analysis.

V. Overview of the Comments Received in Response to the NPRM

Each agency received the following number of comment letters: OCC—23, Board—25, FDIC—19, OTS—16, NCUA—17, and FTC—27. Many commenters sent copies of the same letter to more than one Agency. The Agencies received comments from a variety of banks, thrifts, credit unions, credit card companies, mortgage lenders, other non-bank creditors, and trade associations. The Agencies also received comments from consumer organizations and individual consumers.

In general, consumer organizations supported the specificity of the Regulatory Definition Approach while industry commenters favored the flexibility provided by the Guidelines Definition Approach to permit a furnisher to adopt policies and procedures that are suitable to their specific circumstances. Consumer organization and industry commenters also differed in their opinions regarding the level of detail and applicability of the proposed guidelines. Consumer organizations generally supported more detailed guidelines that should apply to all furnishers while industry commenters generally supported less detailed guidelines that do not impose requirements on all furnishers. A number of industry commenters and most consumer organizations generally supported the proposed direct dispute regulations.

The Agencies have carefully considered all comments received and have decided to modify the proposal and adopt the final rules and guidelines as described below in the Section-by-Section Analysis.

VI. Section-by-Section Analysis¹¹

The following describes the three parts of these final rulemaking actions: the accuracy and integrity regulations, the accuracy and integrity guidelines, and the direct dispute regulations.

A. Accuracy and Integrity Regulations

Section .40 Scope

Section .40 of the proposal set forth the scope of each Agency's regulations. Each of the Agencies has tailored this section to describe the entities to which its respective subpart applies and have adopted this section in the final rules without change. The Agencies did not receive comments on this section.

Section .41 Definitions

Placement of Definitions

As described in section IV of this **Supplementary Information**, the Agencies proposed two alternative approaches in the NPRM for defining the terms "accuracy" and "integrity" – a Regulatory Definition Approach and a Guidelines Definition Approach. Although the proposed definition of "accuracy" was the same under both alternatives, the

¹¹ The OCC, Board, FDIC, OTS, and NCUA are placing the final regulations and guidelines implementing section 312 in the part of their regulations that implements the FCRA – 12 CFR parts 41, 222, 334, 571, and 717, respectively. For ease of reference, the discussion in the **Supplementary Information** section uses the shared numerical suffix of each of these agency's regulations. The FTC also is placing the final regulations and guidelines in the part of its regulations implementing the FCRA, specifically 16 CFR part 660. However, the FTC uses different numerical suffixes that equate to the numerical suffixes discussed in the **Supplementary Information** section as follows: suffix .40 = FTC suffix .1, suffix .41 = FTC suffix .2, suffix .42 = FTC suffix .3, and suffix .43 = FTC suffix .4. In addition, Appendix E referenced in the **Supplementary Information** section is the FTC's Appendix A.

two approaches differed with respect to the substance of the definition of "integrity" and the placement of the definitions. The substantive aspects of each approach, and the significant comments the Agencies received on each, are described in the discussion of the definitions later in this section. This portion of the discussion addresses the placement of the definitions which, in the final rules, appear in the regulation text.

Under the proposed Regulatory Definition Approach, the definitions for the terms "accuracy" and "integrity" appeared in the regulation text. In order to be accurate, furnished information would have to reflect without error the terms of and liability for the account or other relationship and the consumer's performance and other conduct with respect to the account or other relationship. Furnished information would have "integrity" if it did not omit any term, such as a credit limit or opening date, of that account or other relationship, the absence of which could reasonably be expected to contribute to an incorrect evaluation by a user of a consumer report about a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

Under the proposed Guidelines Definition Approach, the Agencies identified four objectives pertaining to the "accuracy" and "integrity" of information furnished and placed these objectives in the guidelines, rather than the text of the regulation. Definitions for the terms "accuracy" and "integrity" were incorporated into the first two objectives. The guidelines would have defined "accuracy" in substantially the same manner as under the Regulatory Definition Approach; however, the definition of "integrity" was different from that in the Regulatory Definition Approach. Under the proposed Guidelines Definition Approach, furnished information would have "integrity"

if it: (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) is substantiated by the furnisher's own records.

Generally, consumer organizations supported the Regulatory Definition Approach because they believed that locating the definitions in the regulations, rather than the guidelines, would enhance the substantive requirements applicable to furnishers. They believed this, in turn, would result in more accurate consumer reports and improved assessments of consumers' creditworthiness. One industry commenter also supported this approach, stating that it would ensure that important credit terms are provided by furnishers to CRAs and thus promote correct credit evaluations of consumers by users of consumer reports.

On the other hand, industry commenters generally favored the Guidelines Definition Approach. These commenters preferred a less prescriptive approach enabling furnishers' policies and procedures to reflect the nature, size, complexity, and scope of their respective business activities.

The Agencies have decided to place the definitions of the terms "accuracy" (§ 41(a)) and "integrity" (§ 41(e)) in the text of the final regulations. This approach more clearly establishes that these definitions apply for purposes not only of the guidelines, but also to the requirement in the regulations that furnishers must establish and implement reasonable written policies and procedures regarding the "accuracy" and "integrity" of furnished information. Furthermore, the Agencies note that section 623(a)(8) of the FCRA directs the Agencies jointly to prescribe regulations that identify the circumstances under which a furnisher is required to reinvestigate a dispute

concerning the accuracy of information about the consumer contained in a consumer report, based on a direct request by the consumer. In light of section 623(a)(8), the Agencies have determined that the term accuracy should be defined in the text of the regulation.

Some industry commenters expressed concern that placement of the definitions in the text of the regulations would increase the risk of litigation initiated by plaintiffs asserting that furnished information failed to meet the accuracy and integrity standards included in the proposal. To address these concerns, the Agencies have, as was proposed in the NPRM, limited the applicability of defined terms in § __.41, including "accuracy" and "integrity," to each Agency's regulations in subpart E – Duties of Furnishers of Information and the accompanying guidelines in Appendix E. The definitions do not impose stand-alone obligations on furnishers but guide and inform the duties otherwise imposed on furnishers under the regulations. The Agencies' promulgation of the definitions of the terms "accuracy" and "integrity" in § __.41 of the final regulations does not mean that they intend to use the same definitions in any other context. The Agencies further note that section 623(c) of the FCRA limits private rights of action for a furnisher's noncompliance with the rules issued pursuant to section 312 of the FACT Act, which include the definitions of "accuracy" and "integrity."

Accuracy

Both the proposed Regulatory Definition Approach and the proposed Guidelines Definition Approach defined "accuracy" to mean 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 and other conduct with respect to the account or other relationship.

In the final rules, the Agencies have revised the proposed definition of "accuracy." Under § 41(a) of the final rules, "accuracy" means that information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer correctly:

- Reflects the terms of and liability for the account or other relationship;
- Reflects the consumer's performance and other conduct with respect to the account or other relationship; and
- Identifies the appropriate consumer.

This definition differs from the proposed definition in two ways.

First, the phrase "without error" that was included in the proposal has been removed from the definition in the final rules. Industry commenters stated that, in general, the proposed definition of "accuracy" would create an unrealistic standard and that the "without error" standard, in particular, was unworkable. These commenters stated that adopting such a standard would effectively require providing information to a CRA with perfect precision, which the commenters asserted is not feasible and could subject furnishers to criticism and potential litigation risks even for honest mistakes that are promptly corrected.

The Agencies agree that the "without error" standard could be read to imply an expectation that information be reported according to unreasonably high standards. Such an unrealistic and potentially burdensome standard could lead some furnishers to cease or limit their furnishing of information to CRAs or act as an obstacle to entities becoming

furnishers. Accordingly, to address the concerns raised by the commenters, the standard has been modified to provide that accuracy means that information furnished "correctly reflects" the terms of and liability for an account or other relationship and other relevant factors. This standard reflects the goal of providing information with a high degree of precision, but provides greater flexibility than the proposed standard and should mitigate unforeseen litigation risk.

The second change from the proposed definition is the addition of a reference to the consumer's identity in the definition of "accuracy." In the final rules, "accuracy" means, among other things as noted above, that "information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer correctly ... identifies the appropriate consumer." This change makes the regulatory text consistent with section I.(b)(1)(i) of the final guidelines' objectives, which provides that "[a] furnisher's policies and procedures should be reasonably designed to ... furnish information about accounts or other relationships with a consumer that is accurate, such that the furnished information: (i) identifies the appropriate consumer" The Agencies expect that the addition of this "consumer identity" element to the definition of "accuracy" will reinforce the objectives' goal of decreasing the incidence of data matching or other errors in which information about one consumer is mistakenly linked to another consumer's file maintained by the CRAs.

Consumer and public interest organizations advocated that the definition of "accuracy" include the concepts of "completeness" and "integrity." These commenters noted that the direct dispute rules only require furnishers to investigate disputes regarding the accuracy – and not the integrity – of furnished information. Therefore, excluding the

concepts of "completeness" and "integrity" from the term "accuracy" would preclude consumers from directly disputing issues with a furnisher for lack of completeness and integrity.

The Agencies believe that defining "accuracy" without incorporating concepts of "completeness" and "integrity" best comports with the text and structure of section 312 of the FACT Act and the FCRA.¹² The text of section 312 uses the terms "accuracy and integrity" as separate and distinct concepts. A similar observation applies with respect to the use of the term "completeness" in other provisions of the FCRA. The legislative history does not compel a different conclusion. Earlier versions of the legislation that became the FACT Act required the Agencies to prescribe regulations and guidelines regarding the "accuracy and completeness" of information relating to consumers. That language was also contained in the bill passed by the Senate and referred to the Conference Committee. However, the bill reported by the Conference Committee and enacted into law replaced the term "completeness" with "integrity."¹³

Two industry commenters stated that the final rules should not define "accuracy" at all. One of these commenters noted that neither the FCRA nor the FACT Act defines "accuracy," and that Congress did not direct the Agencies to do so. This commenter recommended that, instead of defining those terms in this rulemaking action, the Agencies advise furnishers to look to case law for guidance on the meaning of the term "accuracy."

¹² See 72 FR 70949-50.

¹³ Compare 149 Cong. Rec. S13990 (Nov. 5, 2003) (bill as passed by the Senate) with 149 Cong. Rec. H12198 (Nov. 21, 2003) (bill as reported by the Conference Committee).

The Agencies believe that a definition of "accuracy" is important to achieve the purposes of this rulemaking. As a threshold matter, no express statutory direction is needed to allow the Agencies to define terms important to the implementation of section 312 of the FACT Act. Moreover, defining the term "accuracy" will assist furnishers in establishing the required reasonable policies and procedures while reducing uncertainty about their appropriate scope and content. In addition, the definition provides clear direction to consumers and furnishers regarding which issues can be disputed directly with a furnisher under § 43 of the final rules. For these reasons the Agencies believe, and many commenters agreed, that the term "accuracy" should be defined for the purposes of the rules and guidelines implementing section 312 of the FACT Act. Using this definition in § 43 of the rules, however, does not cause it to apply for purposes of any other provision of the FCRA or other provisions of the Agencies' rules.

Consumer organizations and industry commenters raised other issues with the definition of "accuracy." For example, one industry commenter expressed concern that the scope of the proposed definition of "accuracy" was too broad, and suggested that the Agencies limit the application of this definition to credit reports (and similar reports of financial transactions) so that it would not apply to descriptions of the characteristics of individuals or their employment histories.

Neither the statutory language of section 312 of the FACT Act nor its legislative history supports limiting the scope of "accuracy" to credit reports (and similar reports of financial transactions) so that the definition would not apply to the descriptions of characteristics of individuals or their employment histories. However, to address the commenter's concern that the proposed definition of "accuracy" was too broad and

difficult to apply to an "investigative consumer report,"¹⁴ the Agencies in § .41(c)(4) have excluded from the definition of "furnisher" certain individuals (e.g., a neighbor, friend, or associate who may have knowledge about the consumer) who may provide information to a CRA in this context. The Agencies also note that, under § .43(b)(1)(ii), the direct dispute rules do not apply to a furnisher if the dispute relates to the identity of past or present employers.

In both proposed approaches, the Agencies included a guideline providing that furnishers should update information provided to CRAs as necessary to reflect the current status of the consumer's account or other relationship. In connection with the proposed definition of "accuracy," the Agencies asked for comment on whether the definition of "accuracy" should specifically provide that, in order to be "accurate," furnished information must be updated as necessary to ensure that it is current.

Most industry commenters opposed including any updating standards in the definition of "accuracy." They generally stated that if the final rules require updating, they should specify that updating should be consistent with standard business practices: that is, a furnisher should only be required to update information with its regular submission of data to a CRA. Several industry commenters expressed concern that the updating standard described in the Agencies' request for comment could be read to include a requirement to provide daily updates. These commenters stated that it would be impossible for some furnishers to do this and unnecessarily costly and burdensome for

¹⁴ Section 603(e) (codified at 15 U.S.C. 1681a(e)) defines an "investigative consumer report" to mean a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom the consumer is acquainted or who may have knowledge concerning any such items of information. However, this information does not include information on a consumer's credit record obtained directly from a consumer's creditor or from a CRA that obtained the information directly from a consumer's creditor or the consumer.

others. One industry commenter suggested that furnishers should be expected to "periodically update" the information, rather than to update information as necessary to ensure that the information is current.

Three commenters stated that the definition of "accuracy" should not include an updating requirement at all because it is implicit in the concept of "accuracy." Two of these commenters noted that an updating requirement already is encompassed within the FCRA and elsewhere in the guidelines.

Consumer organizations stated that the definition of "accuracy" should require that information is updated so that it is, and remains, current.

The Agencies recognize that the nature, size, complexity, and scope of a furnisher's activities affect the type of information it voluntarily provides to a CRA, as well as the frequency with which it updates the information. Given the voluntary nature of the reporting system, the diversity of furnishers, the differences in the types of information furnishers report to CRAs, and the disparities in the frequencies with which furnishers voluntarily update information, the Agencies believe it is more appropriate to follow a less prescriptive approach and address issues related to updating in the guidelines, rather than in the text of the regulations as an element of "accuracy." At the same time, the Agencies believe that the overall accuracy of information is improved when, for information that a furnisher elects to provide to a CRA, it is updated to reflect the current status of an account or relationship. Therefore, section I.(b)(4) of the final guidelines states that a furnisher's policies and procedures "should be reasonably designed ... to update the information it furnishes as necessary to reflect the current status of the consumer's account or other relationship, including ... any transfer of an

account ... and ... any cure of the consumer's failure to abide by the terms of the account or other relationship."

Integrity

The proposed Regulatory Definition Approach provided that information furnished to a CRA may be technically "accurate" yet lack "integrity" because it presents a misleading picture of the consumer's creditworthiness by omitting critical information, such as a credit limit on a revolving credit account. The proposed Regulatory Definition Approach defined the term "integrity" to mean 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 date, of that account or other relationship, the absence of which can reasonably be expected to contribute to an incorrect evaluation by a user of a consumer report about a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

Under the proposed Guidelines Definition Approach, the definition of "integrity" did not address the omission of any term the absence of which could contribute to an incorrect evaluation of a consumer's creditworthiness by a user of a credit report. Instead, the proposed definition of "integrity" addressed two specific issues pertaining to furnished information. The proposed Guidelines Definition Approach defined "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 (form and manner provision); and (2) should be substantiated by the furnisher's own records (substantiation provision). The form and

manner provision included the following three examples of methods furnishers could use to comply with that provision: reporting the furnished information with appropriate identifying information about the consumer; reporting the information in a "standardized and clearly understandable form and manner;" and including in the information a date specifying the time period to which it pertained. Thus, in addition to being placed in a different location, the guidelines definition was substantively different from that proposed in the Regulatory Definition Approach.

The final rules place the definition of "integrity" in the text of the regulations, at § 41(e), and define "integrity" to mean that information that a furnisher provides to a CRA about an account or other relationship with the consumer:

- Is substantiated by the furnisher's records at the time it is furnished;
- Is furnished in a form and manner that is designed to minimize the likelihood that the information may be incorrectly reflected in a consumer report; and
- Includes the information in the furnisher's possession about the account or other relationship that the relevant Agency has:
 - Determined that the absence of which would likely be materially misleading in evaluating a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living; and
 - Listed in section I.(b)(2)(iii) of the guidelines. Section I.(b)(2)(iii) provides one item on this list: the credit limit, if applicable and in the furnisher's possession.

Most industry commenters recommended that the Agencies adopt the definition of "integrity" in the Guidelines Definition Approach. Many of these commenters objected to the content of the definition proposed in the Regulatory Definition Approach. They said that the definition would create substantial uncertainty about what information must be furnished because furnishers may not know or be able to ascertain how other entities use credit report data. Some of these commenters said that the Regulatory Definition Approach, in effect, would impose on furnishers a burdensome "full-file" reporting requirement in order to satisfy the integrity standard. These commenters indicated that, because users of consumer reports are diverse and may evaluate consumer reports differently, defining the parameters of the information that must be furnished by reference to how third-party users of a consumer report might evaluate a consumer's creditworthiness is an unworkable, unclear, and burdensome standard that would discourage voluntary reporting under the FCRA. These commenters noted, among other things, that most credit scoring models are confidential, and that the wide variety of users of consumer reports exacerbates the difficulty of knowing what information users will consider material. One industry commenter suggested that if the Agencies choose to adopt the Regulatory Definition Approach, they should itemize the specific credit terms they believe must be reported to achieve "integrity." Several industry commenters also asserted that the Regulatory Definition Approach conflicted with the legislative history of section 312 of the FACT Act because it equated "integrity" with "completeness."

Consumer organizations generally supported the proposed Regulatory Definition Approach. As a general matter, consumer organizations believed that this approach essentially equated "integrity" with "completeness" and would enhance the requirements

applicable to furnishers, the effectiveness of the credit reporting system, and assessments of consumers' creditworthiness.¹⁵

Substantively, the final rules incorporate, in revised form, the elements of the definition of "integrity" that were included in both the proposed Regulatory Definition Approach and Guidelines Definition Approach. First, the definition of "integrity" in the final rules includes a substantiation provision. Some commenters requested that the regulations include a substantiation requirement, and the Agencies agree that the "integrity" of furnished information depends, in part, on its consistency with the furnisher's own records. A timing component has been added to the provision in the final rules requiring furnished information to be substantiated by the furnisher's records at the time it is furnished so that the information provided to a CRA reflects, and is supported by, the furnisher's records at that time.

Second, the Agencies are adopting the form and manner provision as part of the definition of "integrity" to address omissions and data transmission and similar errors that may lead to information being incorrectly reflected on a credit report. This provision contemplates, for example, that information will be furnished in a form and manner that would permit a CRA to accept data regarding a consumer and link it appropriately to the consumer.

Two industry commenters expressed concern about the phrase "standardized and clearly understandable form," as used in the examples provided in connection with the guidelines' definition. These commenters stated that the Agencies should recognize that not every furnisher provides information in the same manner or format. One of these

¹⁵ As discussed above, however, some of these commenters stated that the concept of "integrity" should be included in the definition of "accuracy."

commenters suggested the phrase instead be revised to encourage furnishers to achieve standardization to the extent reasonably possible. The Agencies have not included the phrase "standardized and clearly understandable form" in the definition of "integrity" but have included it in the objectives at section I.(b)(2)(ii)(B) of the guidelines.

Finally, the Agencies have modified the definition of "integrity" that was proposed under the Regulatory Definition Approach while retaining the key concept that the omission of certain information affects the integrity of that information. In light of the range and diversity of users of consumer reports, the information that such users may find relevant and material, and the use of various proprietary credit scoring models and underwriting methodologies, it could be difficult or impossible for furnishers to predict what information third parties would find relevant or material to make credit or other determinations based on consumer reports. Given these impediments, the Agencies conclude that the proposed regulatory definition of "integrity" would have created an unworkable standard because furnishers cannot be expected to identify all types of information that, if omitted, could reasonably be expected to contribute to an incorrect evaluation of a consumer's creditworthiness by a user of a consumer report. Accordingly, the Agencies have determined to retain the "material omission" concept that informed the Regulatory Definition Approach in a manner that does not place the burden of making that determination on furnishers.

Under the final rules, in order to satisfy the definition of "integrity," furnished information must include items in the furnisher's possession about the account or other relationship only if the relevant Agency has determined that its absence would likely be materially misleading in evaluating a consumer's creditworthiness, credit standing, credit

capacity, character, general reputation, personal characteristics, or mode of living; and has listed that item of information in the Agency's guidelines. Thus, each Agency, in consultation and coordination with the other Agencies, will determine, and list in its guidelines, the types of information in a furnisher's possession about a consumer's account or other relationship that the furnisher will be expected to provide to promote the integrity of the information. This list will be based on the Agency's determination that the absence of the information would likely be materially misleading in evaluating a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

Consistent with this approach, the Agencies have listed in the guidelines the consumer's credit limit, if applicable and in the furnisher's possession. A consumer's credit limit was one of the items used in the proposed regulatory text to illustrate the type of information covered by the standard contained in the definition of "integrity" as proposed.

As the Agencies noted in the NPRM, one key factor for evaluating the creditworthiness of an individual is credit utilization. If a creditor fails to furnish a credit limit for an account, credit evaluators must either ignore credit utilization data in the evaluation model or use a substitute measure for the credit limit, such as the highest balance (the largest amount ever owed on the account). Substituting the highest balance level for the credit limit generally results in a higher estimate of credit utilization because the highest-balance amount is typically lower than the credit limit. A higher credit

utilization estimate generally leads, in turn, to a higher perceived level of credit risk for some consumers.¹⁶

Therefore, the revised "integrity" provision requires that furnishers provide a credit limit to a CRA, if applicable and in the furnisher's possession, in order for the furnished information to have "integrity." The qualifying phrase reflects the Agencies' recognition that some credit products may not have a credit limit, in which case it is appropriate for the furnisher not to provide credit limit information because a credit limit would not be "applicable." However, if the furnisher subsequently establishes a credit limit for the consumer's account or other relationship, then the furnisher is expected to provide the information with its next regular data transmission to a CRA. Likewise, if a furnisher changes a credit limit for the consumer's account, then the furnisher also is expected to furnish that change with its next regular data transmission to a CRA. Additionally, a furnisher may have acquired a consumer account or relationship through a sale or transfer, and the credit limit data may not have been provided to the acquiring furnisher. In those instances, a furnisher also would not be expected to provide credit limit information since it is not in its possession. Consistent with the FCRA, under which the furnishing of information about consumers is voluntary, the definition of "integrity" applies only to information that the furnisher elects to provide to a CRA. Furnishers should note that they may be subject to separate obligations to furnish all available information about an account or other relationship.¹⁷

¹⁶ See Robert B. Avery, Paul S. Calem, Glenn B. Canner, Credit Report Accuracy and Access to Credit: Federal Reserve Bulletin, Summer 2004, p. 306.

¹⁷ Furnishers that provide information about consumers to CRAs related to mortgage loans also may be subject to requirements imposed by Freddie Mac, Fannie Mae, and the Federal Housing Administration. See Fannie Mae Servicing Guide, Part I, section 304.09 and Part VII, section 107, Freddie Mac Service Guide, section 55.4: Reports to credit repositories; and the Federal Housing Administration Servicing

The proposed definition of "integrity" that was included in the Regulatory Definition Approach also included the opening date of an account or other relationship as an example of a type of data that, if omitted, reasonably could be expected to contribute to an incorrect evaluation by a user of a consumer report of a consumer's creditworthiness. The Agencies do not have sufficient information to determine whether, and under what circumstances, the omission of an account opening date undermines the "integrity" of furnished information. Therefore, the Agencies have not incorporated any reference to account opening dates into the definition of "integrity" in the final rules and have not listed it in section I.(b)(2)(iii) of the guidelines. However, the Agencies are publishing an advance notice of proposed rulemaking in this same issue of the **Federal Register** for the purpose of obtaining information that would assist the Agencies in determining whether, and under what circumstances, it would be appropriate to propose any additions to the guidelines, including whether and under what circumstances the Agencies should include an account opening date as an item furnishers would be expected to provide to a CRA to promote the integrity of the information.

Direct dispute

Proposed § __.41(e) defined "direct dispute" to mean a dispute submitted directly to a furnisher by a consumer concerning the accuracy of any information contained in a consumer report relating to the consumer.

Handbook, section 4330.1(c) (Rev-5) (incorporating by reference the Fannie Mae Servicing Guide). Further, the Department of Housing and Urban Development has defined "Mortgages contrary to good lending practices" to include a mortgage or a group or category of mortgages entered into by a lender and purchased by Fannie Mae or Freddie Mac where it can be shown that a lender engaged in a practice of failing to report monthly on borrowers' repayment history to credit repositories on the status of each loan purchased by Fannie Mae or Freddie Mac that a lender is servicing. 24 CFR 81.2(b).

The Agencies have revised the definition of "direct dispute" to mean a dispute submitted directly to a furnisher (including a furnisher that is a debt collector) by a consumer concerning the accuracy of any information contained in a consumer report and pertaining to an account or other relationship that the furnisher has or had with the consumer. The definition in the final rules includes a parenthetical clause that clarifies that a "furnisher" also includes a debt collector that provides information to a CRA. This clarifying language has been added in response to a number of commenters that stated information furnished by a collection agency, which may be collecting a debt on behalf of another furnisher, should be covered by the direct dispute regulation.

Section 623(a)(8)(A) of the FCRA requires the Agencies to jointly prescribe regulations that identify the circumstances under which a furnisher shall be required to investigate a direct dispute. This is accomplished in part through the definition of "direct dispute." Under the final rules, a direct dispute includes only a dispute concerning the accuracy of information contained in a consumer report that pertains to an account or other relationship that the furnisher has or had with the consumer. This revision addresses comments made by several industry commenters that expressed concern that the scope of the proposed direct dispute definition was too broad. They suggested limiting the definition of "direct dispute" to include only those disputes about information in a consumer report that relate to information provided by the furnisher, rather than disputes about any information contained in the report.¹⁸

¹⁸ While the final definition of direct dispute pertains to information about an account or other relationship that the furnisher has or had with the consumer rather than whether the furnisher provided the information, in response to these comments, the Agencies also have added an exception to the circumstances under which a furnisher must investigate a direct dispute. Section __.43(b)(1)(vi) of the final rule states that the investigation requirements do not apply to a furnisher if the dispute relates to information provided to a CRA by another furnisher.

The Agencies note that the phrase "consumer report," as used in the definition of "direct dispute," includes a "file disclosure" from a CRA to a consumer.¹⁹

Furnisher

Proposed § .41(c) defined the term "furnisher" to mean an entity other than an individual consumer that furnishes information relating to consumers to one or more CRAs. The proposed definition of "furnisher" excluded entities that provide information to a CRA solely to obtain a consumer report under sections 604(a) and (f) of the FCRA, which, respectively, enumerate the circumstances under which a CRA may provide a consumer report and prohibit persons from obtaining or using consumer reports for impermissible purposes.

The final regulations at § .41(c) define "furnisher" to mean an entity that furnishes information relating to consumers to one or more CRAs for inclusion in a consumer report. The definition also provides that an entity is not a furnisher when it:

- Provides information to a CRA solely to obtain a consumer report in accordance with sections 604(a) and (f) of the FCRA;
- Is acting as a CRA as defined in section 603(f) of the FCRA;
- Is a consumer to whom the furnished information pertains; or
- Is a neighbor, friend, or associate of the consumer, or another individual with whom the consumer is acquainted or who may have knowledge about the consumer, and who provides information about the consumer's character, general reputation, personal characteristics, or mode of living in response to a specific request from a CRA.

¹⁹ Under section 609(a) of the FCRA, CRAs are required to provide certain information to consumers upon request. CRAs generally provide such disclosures in a different format than a consumer report they provide to a third party, and refer to them as "file disclosures," rather than consumer reports.

The final rules continue to exclude from the definition of "furnisher" entities that provide information to a CRA solely to obtain a consumer report in accordance with sections 604(a) and (f) of the FCRA. As discussed in the NPRM, users of consumer reports may provide information about consumers to CRAs to obtain such reports, but not for the purpose of having that information included in consumer reports. For this reason, although the user's request for the report may be reflected in the consumer report as an inquiry, furnishing information related to such an inquiry is not subject to the final regulations and guidelines. The final rules revise the wording of the definition to make clear that an entity is a "furnisher" only when it furnishes information for purposes of inclusion in a consumer report. The final rules are intended to avoid discouraging entities that use consumer reports from obtaining or using consumer reports for permissible purposes.

The Agencies also have added three other exclusions from the definition of "furnisher" in response to comments indicating that the proposed definition was too broad. For example, one industry commenter urged the Agencies to exempt resellers of consumer report information because those entities already are subject to dispute requirements under section 611(f) of the FCRA. The final rules include an exemption for entities acting in the capacity of a "consumer reporting agency" as defined in section 603(f) of the FCRA. This exemption covers "resellers" acting in that capacity because, under section 603(u) of the FCRA, resellers are a type of CRA.

In addition, the Agencies note that increasing numbers of consumers are self-reporting certain types of information, such as rent or utility payments, to alternative consumer reporting agencies. To address this development and encourage consumers to

provide information to CRAs, the final rules explicitly exempt from the "furnisher" definition in § 41(c)(3) a consumer who provides to a CRA information pertaining to himself or herself.

Finally, the Agencies have added an exception that excludes from the definition of "furnisher" a neighbor, friend, or associate of a consumer, or another individual with whom the consumer is acquainted or who may have knowledge about the consumer, and who provides information about the consumer's character, general reputation, personal characteristics, or mode of living in response to a specific request from a CRA (excepted persons). This new exception parallels the types of information that are collected in connection with an "investigative consumer report" as described in section 603(e) of the FCRA. The Agencies believe that this exception is necessary to avoid disrupting the information collection processes that have been established for creating investigative consumer reports. These excepted persons play a crucial role by providing information used in connection with matters such as insurance applications and employment-related background checks.

Identity theft

The Agencies proposed to define "identity theft" as having the same meaning as in the FTC's regulations at 16 CFR 603.2(a). Section 603.2(a), which was adopted pursuant to section 111 of the FACT Act,²⁰ defines the term "identity theft" to mean "a fraud committed or attempted using the identifying information of another person without authority."²¹ This definition also is used in the interagency regulations implementing

²⁰ Section 111 of the FACT Act provides for a definition of the term "identity theft," and authorizes the FTC to refine that definition. See section 603(q)(3) of the FCRA; 15 U.S.C. 1681a(q)(3).

²¹ In turn, 16 CFR 603.2(b) provides:

section 114 of the FACT Act, relating to identity theft prevention, detection, and mitigation programs. The Agencies received no comments on the definition of "identity theft" and adopt the definition without change in the final rules.

Section .42 Reasonable policies and procedures concerning the accuracy and integrity of furnished information

Policies and procedures

Proposed § .42(a) stated that each furnisher must establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information about consumers that it furnishes to a CRA. The proposal provided that the policies and procedures must be appropriate to the nature, size, complexity, and scope of the furnisher's activities. The final rules retain this provision without change.

Most industry commenters supported the Agencies' proposal to permit each furnisher the flexibility to adopt policies and procedures suited to their individual circumstances, but several industry commenters opposed the requirement that furnishers establish "written" policies and procedures. One industry commenter stated that not all community banks have written policies and procedures for reporting customer data. Three industry commenters suggested that some furnishers should be allowed to meet the "writing" requirement by simply acknowledging, where applicable, that the furnisher is reporting data in the Metro 2 format, the consumer data reporting industry's standard

(b) The term "identifying information" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any—

- (1) Name, social security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number;
- (2) Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
- (3) Unique electronic identification number, address, or routing code; or
- (4) Telecommunication identifying information or access device (as defined in 18 U.S.C. 1029(e)).

electronic format for submitting information to CRAs. One industry commenter stated that requiring written policies and procedures was reasonable and would not be unduly burdensome. Consumer organizations strongly supported the proposed requirement that policies and procedures be "written."

The final rules retain the requirement that furnishers' policies and procedures be written because the Agencies have concluded that it is necessary both to ensure effective implementation of the final rules and to enable the Agencies to assess furnishers' compliance with the rules. The Agencies do not expect that the requirement for written policies and procedures will be unduly burdensome, especially since, under the guidelines, a furnisher may incorporate any of its existing policies and procedures that are relevant and appropriate. In response to commenters' suggestions that a particular approach to the policies and procedures be deemed sufficient, the Agencies note that whether any particular set of policies and procedures are adequate to satisfy the rule, including the extent to which any particular guideline should be reflected in such policies and procedures, depends upon the nature, size, complexity, and scope of the furnisher's activities.

Guidelines

Proposed § .42(b) stated that each furnisher must consider the accuracy and integrity guidelines in developing its policies and procedures and incorporate those guidelines that are appropriate. Section .42(b) is adopted without change in the final rules. The Agencies note that furnishers should consider the guidelines in the context of the nature, size, complexity, and scope of their activities and incorporate the guidelines

that are appropriate to promote the accuracy and integrity of the information about consumers that they provide to CRAs.

A number of consumer organizations stated that furnishers should be required to implement all of the guidelines. As discussed in the NPRM, the Agencies recognize that there is substantial diversity among furnishers with respect to their structure, operations, and the types of business they conduct. The Agencies believe that a "one-size-fits-all" approach that requires all furnishers to implement all of the guidelines would not appropriately reflect these differences. For that reason, the final rules include, at § 42(a), a requirement that a furnisher's policies and procedures must be appropriate to the nature, size, complexity, and scope of the furnisher's activities, which permits furnishers to tailor their policies and procedures to their business activities. The Agencies expect, for example, that the written policies and procedures for a small retail entity will differ substantially from, and be significantly less complex than, those of a multi-billion dollar financial services company.

Reviewing and updating policies and procedures

Proposed § 42(c) stated that each furnisher must review its policies and procedures periodically and update them as necessary to ensure their continued effectiveness. Section 42(c) is adopted without change in the final rules.

Industry commenters expressed concern with the potential burden that could be imposed by the requirement to review policies and procedures periodically. One industry commenter recommended that annual reviews of policies and procedures be described as a best practice, rather than a requirement in the regulation. On the other hand, consumer organizations stated that the regulations should require all furnishers regularly to review

and update their policies and procedures. These commenters added that the Agencies should require large furnishers to conduct annual audits, furnish information in the standard reporting format, and update their technology on a regular basis.

The Agencies have concluded that the requirement for a furnisher to review policies and procedures periodically and to update them as necessary is essential to ensure their continued effectiveness. Section 1016.42(c) does not impose an audit requirement on a furnisher to conduct an official examination and verification of consumer accounts and records regarding its policies and procedures. However, the Agencies do expect a furnisher to be able to demonstrate to its regulator that it has established and implemented policies and procedures consistent with the final rules. The Agencies also expect that a furnisher would engage in a periodic review of its policies and procedures when there is a significant substantive change in its business plan or furnishing activities, or when it has identified significant deficiencies in the accuracy or integrity of the information it has provided to CRAs. A furnisher also may choose to review its policies and procedures periodically when it engages in a general review of FCRA compliance or general compliance with consumer protection laws and regulations.

B. Accuracy and Integrity Guidelines

The proposed accuracy and integrity guidelines appeared in the appendix to the appropriate part of each Agency's proposed regulations. In the introductory language to the proposed guidelines, the Agencies encouraged voluntary furnishing of information about consumers to CRAs, reflecting the recognition that the voluntary system of consumer reporting produces substantial benefits for consumers, users of consumer reports, and the economy as a whole. The introduction also reminded furnishers that

§ 101.42 of the proposed regulations would require each furnisher (1) to establish and implement reasonable written policies and procedures concerning the accuracy and integrity of the information about consumers that it furnishes to CRAs and (2) to consider the guidelines in developing those policies and procedures.

The introduction to the guidelines is adopted in the final rules substantially as proposed, with the addition of a sentence that reminds furnishers that § 101.42 also requires each furnisher to review its policies and procedures periodically and update them as necessary to ensure their continued effectiveness.

Several industry commenters objected to the use of the term "ensure" in the guidelines. These commenters asserted that, instead of expecting furnishers to "ensure" that reporting is free from errors or other defects, it would be more appropriate for the Agencies to promulgate regulations that require furnishers to have policies and procedures reasonably designed to maximize the accuracy of information furnished. The commenters argued that it would be sufficient that a furnisher's policies and procedures be reasonably designed to accomplish the objectives listed. In response to these comments, the Agencies have removed the "ensuring" language and substituted language indicating that furnishers should reasonably design their policies and procedures to achieve specified objectives.

Section I – Nature, Scope, and Objectives of Policies and Procedures

Nature and Scope

The proposed Nature and Scope section noted that § 101.42(a) of the proposed rule requires that a furnisher's policies and procedures must be appropriate to the nature, size, complexity, and scope of the furnisher's activities. In the final guidelines, this provision

is retained without change. Additionally, the proposed nature and scope section provided three examples of what a furnisher's policies and procedures should reflect: the types of business activities in which the furnisher engages; the nature and frequency of the information the furnisher provides to CRAs; and the technology used by the furnisher to furnish information to CRAs. This language has been revised in the final guidelines to make clear that while the examples of the nature and scope provisions are not mandatory, they are factors that a furnisher should consider when developing its policies and procedures.

Objectives

The proposed Objectives section of the guidelines provided that a furnisher should have written policies and procedures reasonably designed to accomplish the specified objectives. The proposal set forth alternative lists of specified objectives for the Regulatory Definition Approach and the Guidelines Definition Approach, and the wording of some of the proposed objectives in the guidelines was related to the alternative approaches for construing the term "integrity" that the Agencies proposed.

In connection with the proposed Regulatory Definition Approach, the first two objectives of the guidelines provided that a furnisher should have written policies and procedures reasonably designed to ensure that the information it furnishes about accounts or other relationships with a consumer accurately identifies the appropriate consumer; accurately reports the terms of those accounts or other relationships; accurately reports the consumer's performance and other conduct with respect to the account or other relationship; and is designed to ensure that the information it furnishes about accounts or other relationships with a consumer avoids misleading a consumer report user as to the

consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

Under the proposed Guidelines Definition Approach, definitions of "accuracy" and "integrity" were incorporated into the first two objectives. Thus, the proposed guidelines provided that a furnisher should have written policies and procedures reasonably designed to ensure that the information it furnishes about accounts or other relationships with a consumer is accurate. The guidelines defined "accuracy" to mean that any information that a furnisher provides about an account or other relationship with the consumer to a CRA reflects without error the terms of the account or other relationship and the consumer's performance and other conduct with respect to the account or other relationship.

Additionally, under the proposed Guidelines Definition Approach, the guidelines provided that a furnisher's written policies and procedures should be reasonably designed to ensure that the information it furnishes about accounts or other relationships with a consumer is furnished with integrity. The guidelines defined "integrity" to mean that any information that a furnisher provides to a CRA about an account or other relationship with the consumer 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, for example, by ensuring that the information is: (A) reported with appropriate identifying information about the consumer to which it pertains; (B) reported in a standardized and clearly understandable form and manner; and (C) reported with a date specifying the time period to which the information pertains; and

- Substantiated by the furnisher's own records.

The third proposed objective under both approaches stated that a furnisher's policies and procedures should ensure that the furnisher conducts reasonable investigations of consumer disputes about the accuracy or integrity of information in consumer reports and takes appropriate actions based on the outcome of such investigations.

The fourth proposed objective under both approaches stated that a furnisher should have written policies and procedures reasonably designed to ensure that the furnisher updates information it furnishes as necessary to reflect the current status of the consumer's account or other relationship, including: (a) any transfer of an account (e.g., by sale or assignment for collection) to a third party; and (b) any cure of the consumer's failure to abide by the terms of the account or other relationship.

The fifth proposed objective under the Regulatory Definition Approach stated that the information a furnisher provides about accounts or other relationships with a consumer should be 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, for example, by ensuring that the information is reported with appropriate identifying information about the consumer to which it pertains, in a standardized and clearly understandable form and manner, and with a date specifying the time period to which the information pertains.

The sixth proposed objective under the Regulatory Definition Approach stated that the information a furnisher provides about accounts or other relationships with a consumer should be substantiated by the furnisher's own records. The fifth and sixth

proposed objectives under the Regulatory Definition Approach incorporated the two-part definition of "integrity" used in the Guidelines Definition Approach.²²

The final guidelines have four objectives. The first two objectives address how information should be furnished with "accuracy" and "integrity," terms that are defined in the regulations at §§ 41(a) and (e), respectively, and described earlier in this Section-by-Section Analysis.

The first objective states that a furnisher's policies and procedures should be reasonably designed to promote the furnishing of information about accounts or other relationships with a consumer that is accurate, such that the information:

- Identifies the appropriate consumer;
- Reflects the terms of and liability for those accounts or other relationships; and
- Reflects the consumer's performance and other conduct with respect to the account or other relationship.

This first objective is substantially similar to what the Agencies proposed, but has been revised to conform to the definition of "accuracy" that has been adopted in § 41(a) of the regulations.

The second objective has been revised to conform to the final definition of "integrity" that has been adopted in § 41(e) of the regulations and incorporates language that was proposed in the fifth and sixth objectives of the Regulatory Definition Approach and the second objective of the Guidelines Definition Approach.

²² Comments received regarding the definitions of "accuracy" and "integrity" and their placement in either rules or guidelines and the Agencies' responses to the comments are discussed earlier in this **Supplementary Information**.

The third objective provides that a furnisher's policies and procedures should be reasonably designed to promote the conduct of reasonable investigations of consumer disputes and the taking of appropriate actions based on the outcome of such investigations. This objective is similar to an objective included in both the proposed Regulatory Definition Approach and the proposed Guidelines Definition Approach.

The fourth and final objective provides that a furnisher's policies and procedures should be reasonably designed to promote the updating of the information furnished as necessary to reflect the current status of the consumer's account or other relationship, including, for example:

- Any transfer of an account (e.g., by sale or assignment for collection) to a third party; and
- Any cure of the consumer's failure to abide by the terms of the account or other relationship.

The Agencies do not expect that furnishers should update information any more frequently than already is required by section 623(a)(2) of the FCRA.

The final objective related to updating is substantively the same as what the Agencies proposed.

One industry commenter expressed concern that, under the proposal, the obligations of an account seller with respect to updating account information are unclear. This commenter stated that once an account is sold, the seller has no ability to update the account to reflect its current status, beyond noting that the account has been transferred. This commenter stated that the obligation to prevent future problems with providing information to a CRA about an account that was sold must rest with the acquiring party,

not the selling party. The Agencies expect furnishers to provide information to a CRA prior to the transfer of an account to a third party consistent with the furnisher's policies and procedures regarding accuracy and integrity. However, the Agencies do not expect that after transferring an account to a third party a furnisher would update the current status of the account beyond providing information to a CRA that the account has been transferred.

Another industry commenter stated that the proposal could be viewed as requiring furnishers to update information regularly based on every type of event that may occur following a charge-off of an account. This commenter stated that furnishers typically cease to routinely furnish information about an account at the time of a charge-off. The commenter noted that although most furnishers will, as appropriate, update information provided to CRAs at the time a charge-off is paid in full or a settlement is reached after charge-off, many furnishers do not report interim changes based on a payment schedule agreed to as part of recovery efforts, nor do they report a revised status based on bankruptcy proceedings that take place after a charge-off. This commenter stated that the final rules should make clear that furnishers do not have a duty to report changes to account status once regular reporting ceases, provided that the data furnished was accurate at the time it was furnished.

The Agencies expect that, to the extent that a consumer cures a failure to abide by the terms of the account or relationship, a furnisher should, consistent with section I.(b)(4) of the guidelines, provide an update of the cured status to a CRA. For example, if a consumer pays off the full balance owed on a charged-off account, a furnisher should provide an update to the CRA with the furnisher's next regular reporting cycle that the

account has a zero balance. A furnisher would not, however, have to request that the CRA delete the information that the account was a charge-off.

Proposed Section II – Accuracy and Integrity Duties of Furnishers under the FCRA

Proposed section II of the guidelines reminded furnishers of their statutory duties relating to the accuracy and integrity of the information about consumers they provide to CRAs. It stated that a furnisher's policies and procedures should address compliance with all applicable requirements imposed on the furnisher under the FCRA and listed certain of those requirements, including the duty to investigate direct disputes as required by proposed § 43 and section 623(a)(8) of the FCRA. It also listed requirements such as the duty to provide to CRAs corrections or additional information necessary to make furnished information complete and accurate under the circumstances specified under section 623(a)(2) of the FCRA.

A number of commenters objected to proposed section II of the guidelines by stating that the summarized list of FCRA requirements would have created uncertainty regarding furnishers' obligations under the FCRA. The Agencies have removed proposed section II from the final guidelines in response to these comments and have renumbered subsequent sections accordingly. Additionally, in section III.(m) of the final guidelines, the Agencies have included, as a specific component that a furnisher's policies and procedures should address, "[c]omplying with applicable requirements under the Fair Credit Reporting Act and its implementing regulations."

Section II – Establishing and Implementing Policies and Procedures

The proposed guidelines identified three steps that furnishers should take when establishing and implementing accuracy and integrity policies and procedures. First, a

furnisher should identify its practices or activities that can compromise the accuracy and integrity of information about consumers furnished to CRAs. A furnisher could satisfy this step by, for example:

- Reviewing its existing practices and activities;
- Reviewing historical records relating to accuracy or integrity or to disputes, or other information relating to the accuracy and integrity of information provided by the furnisher to CRAs and the types of errors, omissions, or other problems that may have affected the accuracy and integrity of such information about consumers; and
- Obtaining feedback from CRAs, consumers, the furnisher's staff, or other appropriate parties.

As outlined above, the second clause of this proposed guideline encouraged furnishers, among other things, to "review historical records relating to accuracy or integrity of disputes." Some commenters noted that, for some accounts (e.g., purchased accounts), such historical records may not be available. In response to these comments, the Agencies have revised the second clause to clarify that it is referring only to a furnisher's review of historical records of its own account activities.

The third clause of the proposed guideline encouraged furnishers to obtain feedback from CRAs, consumers, the furnisher's staff, or other appropriate parties. A number of commenters objected to this element of the guideline on the grounds that it would cost furnishers a fee to obtain information from CRAs, and that the CRAs did not always provide information requested by furnishers. These commenters also were

concerned that furnishers would be required to survey consumers to obtain the relevant feedback, which, they stated, would be another costly undertaking.

With respect to this third clause, the Agencies have revised the final guidelines to encourage furnishers to consider any feedback it may receive from CRAs, consumers, or other appropriate parties. There is no requirement that furnishers affirmatively seek out such information, but the Agencies expect furnishers to review any such feedback in their possession, including reports or "score cards" that furnishers may receive from a CRA regarding dispute histories processed through communication channels such as e-OSCAR.²³

The fourth clause of the final guideline does recommend, however, that furnishers take affirmative action to obtain feedback from its staff in order to identify practices or activities of the furnisher that can compromise accuracy or integrity.

The final guideline also includes a fifth clause, which states that, when establishing and implementing policies and procedures, a furnisher should consider their potential impact on consumers. Consideration of these impacts should result in increasing the accuracy and integrity of consumers' information provided by furnishers to CRAs.

The Agencies proposed that the second step that a furnisher should take when establishing and implementing accuracy and integrity policies and procedures is to evaluate the effectiveness of its existing policies and procedures regarding the accuracy and integrity of information about consumers furnished to CRAs and consider whether

²³ e-OSCAR is a Web-based system that permits furnishers and CRAs to create and respond to consumer credit history disputes and to send "out-of-cycle" credit history updates to CRAs. See <http://www.e-oscar.org/about.htm> (last visited March 3, 2009).

additions or modifications to the policies and procedures or the implementation of such policies and procedures are necessary. Commenters raised no issues with respect to this provision, and it is adopted without change in the final guidelines.

The Agencies proposed that a furnisher's third step should be to evaluate the effectiveness of specific methods (including technological means) the furnisher uses to provide information about consumers to CRAs, and how those methods may affect accuracy and integrity, and determine whether changes to those methods should be made to enhance the accuracy and integrity of that information. Commenters raised no issues with respect to this provision, and it is adopted without change in the final guidelines.

Section III – Specific Components of Policies and Procedures

The proposed guidelines described specific components that should be addressed in a furnisher's policies and procedures. These components included:

- Establishing and implementing a system for furnishing information about consumers to CRAs that is appropriate to the nature, size, complexity, and scope of the furnisher's business operations.
- Using standard data reporting formats and standard procedures for compiling and furnishing data, where feasible, such as the electronic transmission of information about consumers to CRAs.
- Ensuring that the furnisher maintains its own records for a reasonable period of time, not less than any applicable recordkeeping requirement, in order to substantiate the accuracy of any information about consumers it furnishes that may be subject to a direct dispute.

- Establishing and implementing appropriate internal controls regarding the accuracy and integrity of information about consumers furnished to CRAs, such as by implementing standard procedures, verifying random samples, and conducting regular reviews of information provided to CRAs.
- Training staff that participates in activities related to the furnishing of information about consumers to CRAs to implement the policies and procedures.
- Providing for appropriate and effective oversight of relevant service providers whose activities may affect the accuracy and integrity of information about consumers furnished to CRAs to ensure compliance with the policies and procedures.
- Furnishing information about consumers to CRAs following mergers, portfolio acquisitions or sales, or other acquisitions or transfers of accounts or other debts, in a manner that prevents re-aging²⁴ of information, duplicative reporting, or other problems affecting the accuracy or integrity of the information furnished.
- Attempting to obtain the information listed in §_43(d) (direct dispute notice content requirements) from a consumer before determining that the consumer's dispute is frivolous or irrelevant.
- Ensuring that deletions, updates, and corrections furnished to CRAs are reflected in business systems to avoid furnishing erroneous information.

²⁴ Re-aging of an account occurs when an account is sold or transferred to a third party that resets the account opening date to the date the account was received by the third party. Re-aged accounts may result in adverse credit information staying on a consumer's credit report longer than what is permissible by the FCRA, which for accounts that are placed in collection or charged off is typically no more than seven years. See section 605 of the FCRA.

- Conducting investigations of direct disputes in a manner that promotes the efficient resolution of such disputes.
- Ensuring that technological and other means of communication with CRAs are designed to prevent duplicative reporting of accounts, erroneous association of information with the wrong consumer(s), and other occurrences that may compromise the accuracy and integrity of information contained in consumer reports.
- Providing CRAs with sufficient identifying information in the furnisher's possession about each consumer about whom information is furnished to enable the CRA properly to identify the consumer.
- Conducting a periodic evaluation of its own practices, CRA practices of which the furnisher is aware, investigations of disputed information, corrections of inaccurate information, means of communication, and other factors that may affect the accuracy and integrity of information furnished to CRAs.

Commenters raised few issues about the content of the proposed components, and most are adopted without change in the final guidelines. However, the Agencies have adopted some technical and other changes to the proposed components, as described below.²⁵

Most significantly, the Agencies have removed from the final guidelines the component encouraging a furnisher to obtain the information listed in proposed § 43(d) of the regulations (direct dispute notice content requirements) from a consumer before

²⁵ For the reasons discussed above, and in response to commenters' suggestions, the Agencies have removed the language recommending that a commenter "ensure" a particular result where it appeared in the specific components. The Agencies agree that this terminology is less appropriate for guidelines than language focused on the matters that furnishers' policies and procedures should address.

determining that the consumer's dispute is frivolous or irrelevant. The Agencies have determined that adoption of this component is inconsistent with section 623(a)(8) of the FCRA, which, among other things, provides that a furnisher must notify the consumer of a determination that a dispute is frivolous or irrelevant, and that a dispute would be considered frivolous or irrelevant when a consumer does not provide sufficient information to investigate the disputed information.

Some commenters suggested that the proposed component relating to furnishing information after mergers and other transactions should more specifically direct furnishers to (1) instruct CRAs to delete accounts after sale or transfer to decrease the incidence of duplicate accounts and (2) follow industry standard reporting guidelines not to change account numbers, ID numbers, portfolio types, or account opening dates. Some commenters noted that the problems of duplicative reporting and re-aging of account information are common for accounts that have been sold or placed with debt collectors. Section III.(g) of the final guidelines encourages furnishers to provide information about consumers to CRAs following acquisitions or transfers of accounts or other obligations in a manner that prevents re-aging of information, duplicative reporting, or other problems similarly affecting the accuracy or integrity of the information furnished. The final rules use the broader term "obligations" rather than "debts," as was proposed, because acquired or transferred information may relate to not only debts that arise from agreements, but also other obligations such as court-ordered judgments. The Agencies believe that it is sufficient for a furnisher to address these issues in its policies and procedures, as applicable, in a manner it determines will be effective and appropriate to the nature, size, complexity, and scope of its activities.

With respect to the third proposed component, which focused on maintaining relevant records, the Agencies requested comment on whether a specific time period for recordkeeping should be incorporated in the final regulations.

Most industry commenters opposed any new recordkeeping requirements. However, two industry commenters stated that they would not oppose guidelines governing the length of time furnishers should retain records in truncated formats, so long as the standard did not apply to original documents. One industry commenter requested that the Agencies clarify in the final rules that any recordkeeping requirement would not require a furnisher to maintain data other than data it would maintain in the normal course of business. This commenter stated that the final rules should require only that record retention practices be reasonable (and not require a furnisher to maintain records indefinitely).

Consumer organizations supported the addition of a recordkeeping requirement. These commenters generally recommended that the Agencies require records to be kept, at a minimum, as long as information about an account or other relationship with a consumer is furnished to a CRA. These commenters stated that if furnishers fail to keep records to substantiate furnished information, they should report the results of a dispute as unverifiable and instruct the CRA to delete the information.

The Agencies have addressed the recordkeeping issue by evaluating both the need for additional recordkeeping requirements and the potential adverse consequences of imposing such requirements. First, in their experience assisting consumers with disputes, the Agencies have found that the vast majority of consumer disputes involve recent transactions with furnishers and that furnishers generally have records available to

perform reasonable investigations of the disputes. Because of this, the Agencies believe that any benefits from adopting the extended recordkeeping requirement proposed by consumer organizations would likely be outweighed by the significant administrative and cost burdens such a requirement would impose on furnishers. Such a recordkeeping requirement also might create an incentive for furnishers to cease reporting information to CRAs, which would adversely affect the quality of the credit reporting system.

The final rules do not impose any additional recordkeeping requirements on furnishers, and the final guidelines at section III.(c) pertaining to the maintenance of records has been adopted without substantive change. As noted in the NPRM, and adopted in section III.(c) of the guidelines, a furnisher's policies and procedures should address maintaining records for a reasonable period of time, not less than any applicable recordkeeping requirements, for example, recordkeeping requirements contained in regulations implementing the Truth in Lending Act, the Equal Credit Opportunity Act,²⁶ or any other agency-specific requirement.²⁷

C. Final Regulations Concerning Direct Disputes

Section .43 Direct disputes

The third component of this rulemaking comprises the Agencies' final regulations implementing section 623(a)(8) of the FCRA, which directs the Agencies jointly 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

²⁶ See 12 CFR 226.25(a) and 12 CFR 202.12(b).

²⁷ See, e.g., 12 CFR 563.170(c) (savings associations must retain accurate and complete records of all business transactions) and OTS Examination Handbook § 310 (savings associations should retain original business transaction records until the savings association has two regular examinations and has resolved any supervisory matters raised in the examinations).

report on a consumer, based on a direct request of a consumer. The statute sets forth procedural and other requirements applicable to such reinvestigation.

As noted in the NPRM, a number of furnishers have indicated that they already voluntarily investigate direct disputes as a matter of good customer relations and sound business practices. The Agencies encourage all furnishers, as a best practice, to conduct voluntary investigations of consumer disputes and enhance the accuracy and integrity of the information about consumers they provide to CRAs.²⁸ As noted above, the accuracy and integrity guidelines adopted by the Agencies contemplate that furnishers' policies and procedures will address the reasonable investigation of all consumer disputes, whether or not legally required. The guidelines state that conducting such investigations (and taking any appropriate remedial actions) should be an objective of furnishers' accuracy and integrity policies and procedures.

Section .43(a) General rule

The proposed general rule required a furnisher to investigate a direct dispute if it relates to:

- The consumer's liability for a credit account or other debt with the furnisher, such as direct disputes relating to whether there is or has been identity theft or fraud against the consumer, whether there is individual or joint liability on an account, or whether the consumer is an authorized user of a credit account;

²⁸ The Agencies note that many entities, including depository institutions and their affiliates, also investigate disputes about information they furnish to CRAs that consumers raise through the consumer complaint processes established by the Agencies. See generally Board, "How do I file a Complaint?," <http://www.federalreserveconsumerhelp.gov/complaintinfo.cfm?info=1> (last visited March 3, 2009); FDIC, "How to file a Written Complaint," <http://www.fdic.gov/consumers/questions/consumer/complaint.html> (last visited March 3, 2009); OTS, "How to Resolve a Consumer Complaint" (May 2008), <http://www.ots.treas.gov/docs/4/480924.pdf> (last visited March 3, 2009); and OCC, "Assistance for Customers of National Banks" (April 2005), <http://www.occ.gov/customer.pdf> (last visited March 3, 2009).

- The terms of a credit account or other debt with the furnisher, such as direct disputes relating to the type of account, principal balance, scheduled payment amount on an account, or the amount of the reported credit limit on an open-end account;
- The consumer's performance or other conduct concerning a credit account or other debt with the furnisher, such as direct disputes relating to the current payment status, high balance, date a payment was made, the amount of a payment made, or the date an account was opened or closed; or
- Any other information contained in a consumer report regarding an account or other relationship with the furnisher that bears on the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living attributed to the furnisher on the consumer report.

Section .43(a) of the final rules differs from the proposal in two respects. First, the Agencies have revised the introductory language of the provision to state that a furnisher must conduct a "reasonable investigation" of a direct dispute if it relates to one of the enumerated circumstances. The Agencies have added the term "reasonable" because it is consistent with courts' interpretation of a similar duty imposed on furnishers that receive a notice of dispute from a CRA.²⁹ In the Agencies' view, a furnisher's investigation resulting from a direct dispute would be required to meet the same standard of reasonableness as it would if the notice of dispute were received through a CRA. Accordingly, this revision clarifies the nature of furnishers' direct dispute reinvestigation duties, consistent with suggestions made by some commenters.

²⁹ See Johnson v. MBNA America Bank, N.A., 357 F.3d 426 (4th Cir. 2004); Schaffhausen v. Bank of America, N.A., 393 F.Supp.2d 853 (D. Minn. 2005).

Second, the final direct dispute rule clarifies, in response to commenters' suggestions, that debt collectors that are furnishers are subject to the rules. The final rules add a parenthetical clause to the definition of "direct dispute" to explicitly cover debt collectors.³⁰

The final direct dispute rules are designed to permit direct disputes in virtually all circumstances involving disputes about the accuracy of furnished information typically provided by a furnisher to a CRA. The Agencies believe that the approach adopted by the final rules enables consumers to submit a dispute directly to the furnisher (with certain exceptions) when the issue in dispute relates to information pertaining to the consumer's account or other relationship with that furnisher.

A number of industry commenters supported the general approach of the direct dispute proposal. A few industry commenters suggested that the direct dispute provision should be narrower than the proposed rule, such as by limiting the direct dispute right to disputes related to identity theft. The final rules do not narrow the types of disputes that a furnisher must investigate. The Agencies have concluded that the broader approach of

³⁰ An industry commenter representing debt collectors raised concerns about a potential conflict between the Fair Debt Collection Practices Act (FDCPA) and the § 43 direct dispute rule as it applies to debt collectors. The direct dispute rule requires furnishers of information to CRAs to report the results of a direct dispute to the consumer (§ 43(e)(3)) or notify the consumer if the furnisher determines the dispute is frivolous or irrelevant (§ 43(f)(2)). Section 805(c) of the FDCPA provides that if a consumer has notified a debt collector in writing that "the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate with the consumer with respect to such debt" (with some exceptions not applicable to the § 43 direct dispute rule). The concern raised by the commenter is that if a consumer has written the debt collector to cease communication, but at some future time, or at the same time, submits a direct dispute about information the debt collector has provided to a CRA, the debt collector may risk violating the FDCPA prohibition on contacting the consumer when it provides the notices required by the § 43 direct dispute rule. The purpose of the notices required by the direct dispute rule is either to report the results of a direct dispute to the consumer or to notify the consumer if the furnisher determines the dispute is frivolous or irrelevant. Contemporaneously with the publication of this final rule, the FTC is publishing an advisory opinion stating that a notice provided to the consumer solely for the purpose of complying with the § 43 direct dispute rule (the FTC rule is 16 CFR 660.4), without conveying any other message, does not violate section 805(c) of the FDCPA. In addition, the Agencies will enforce section 805(c) of the FDCPA consistent with such advisory opinion.

the proposal and final rules is more consistent with the statutory considerations that the Agencies must weigh pursuant to section 623(a)(8)(B) of the FCRA, including whether direct contact with a furnisher would likely result in the most expeditious resolution of direct disputes. The Agencies believe that the expeditious dispute resolutions likely to be afforded by a direct dispute right should not be limited to a narrow class or limited types of disputes. Also, it may be impossible for a consumer to tell whether an error is the result of identity theft or some other cause.

Consumer organizations urged the Agencies to require furnishers to communicate to consumers the process for filing a direct dispute with the furnisher and to provide such information on their Web sites. The direct dispute rule-writing authority, at section 623(a)(8)(A) of the FCRA, does not include establishing a requirement for furnishers to notify consumers about the process for filing a direct dispute. However, the Agencies encourage furnishers, as a best practice, to provide consumers with appropriate information regarding the process for filing a direct dispute, for example by posting such information on their Web sites, as applicable. In addition, the Agencies note that section 609(c)(2) of the FCRA requires the FTC to promulgate, and CRAs to disseminate with their provision of file disclosures to consumers, a "General Summary of Consumer Rights." When the FTC next updates the General Summary of Consumer Rights to reflect the additional rights provided to consumers by the FACT Act and its implementing rules,³¹ it will include consumers' direct dispute rights in the summary.

Section .43(b) Exceptions

³¹ The first update of that Summary (16 CFR 698, Appendix F) was published on November 30, 2004 (69 FR 69788 - 789).

The proposed exceptions related primarily to information with respect to which any consumer dispute would be more appropriately directed to the CRA, such as information derived from public records, which may be obtained directly from public sources,³² and information about requests for consumer reports ("inquiries").

A consumer report may include identifying information about a consumer (e.g., name, address), trade line information (e.g., name of creditor, payment history, loan amount), past and present employer information, and public record information (e.g., information received from courts or other governmental authorities that are related to bankruptcies, judgments, or liens). Any given furnisher is the source of some, but not all, of the information included in a consumer report. The Agencies believe that a furnisher should be responsible for investigating disputes only about information regarding an account or other relationship between the furnisher and the consumer. The standard appropriately balances the benefits to consumers with the costs of furnishers as required by section 623(a)(8)(B)(i) of the FCRA. Accordingly, the proposal stated that a furnisher would have to investigate direct disputes only with respect to the types of information that it typically provides to CRAs. In most cases, the information subject to the proposed direct dispute rule would be a part of a furnisher's trade line entry or entries on a consumer report.

Proposed § 43(b)(1) excepted from the general investigation requirement any direct dispute that relates to:

- The consumer's identifying information (other than a direct dispute relating to a consumer's liability for a credit account or other debt with the furnisher, as provided

³² The public records exception applies only to information "derived" by the CRA from public records. It would not exempt a consumer's dispute concerning the accuracy of a furnisher's reference to a particular account being included in bankruptcy, for example.

in § 43(a)(1),³³ such as name(s), date of birth, Social Security number, telephone number(s), or address(es);

- The identity of past or present employers;³⁴
- Inquiries or requests for a consumer report;
- Information derived from public records, such as judgments, bankruptcies, liens, and other legal matters (unless provided by a furnisher having a relationship with the consumer); or
- Information related to fraud alerts or active duty alerts.

Commenters generally supported these exceptions and the final regulation adopts these exceptions without substantive change.

In response to comments, the Agencies are including one additional exception. A number of commenters suggested that a furnisher should have to investigate only information that it provides to a CRA and not information provided by third parties that may be compiled and reported by a CRA. In this regard, the Agencies note that a furnisher would not likely have access to third party information that would be necessary to perform the reinvestigation. Accordingly, the Agencies have added a new exception at § 43(b)(1)(vi), which states that the general direct dispute investigation requirement does not apply to information provided to a CRA by another furnisher.

³³ A direct dispute that relates both to identifying information and a consumer's liability for a credit account or other debt with the furnisher, such as in cases of identity theft, must be investigated by a furnisher pursuant to § 43(a)(1).

³⁴ For this category of information concerning the identity of past or present employers, the Agencies believe that direct contact by the consumer would be unlikely to result in the most expeditious resolution of an employer identity-related dispute. For example, consumer reports sometimes contain certain "employment history" information, which is typically obtained from sources other than employers (such as credit applications). In those cases, an identified employer would be unable to correct disputed information because it was provided by another source.

Proposed § .43(b)(2) also excepted from the investigation requirement any direct dispute if the notice of dispute is submitted by, is prepared on behalf of the consumer by, or is submitted on a form supplied to the consumer by, a credit repair organization (CRO) as defined in 15 U.S.C. 1679a(3),³⁵ or an entity that would be a CRO but for 15 U.S.C. 1679a(3)(B)(i), which excludes tax-exempt section 501(c)(3) organizations. This proposed exception was derived directly from an exception set forth in the statute.³⁶

Many industry commenters noted that it is very difficult to determine with certainty whether a dispute is prepared or otherwise assisted by a CRO. These commenters also noted that the narrow scope of the proposed CRO exception would subject the furnishers to litigation risks. To remedy this problem, these commenters requested that the CRO exception be modified to apply whenever a furnisher reasonably believes the dispute has been submitted by, prepared on behalf of the consumer by, or submitted on a form supplied to the consumer by, a CRO.

The Agencies agree that it would be unnecessarily restrictive to require furnishers to determine with certainty that a CRO participated in the preparation or submission of a dispute. Such a standard would not accomplish the purpose of the statutory exception. Thus, the § .43(b)(2) CRO exception has been revised to incorporate a "reasonable belief" standard.

Section .43(c) Direct dispute address

³⁵ Under this provision of the Credit Repair Organizations Act, the term "credit repair organization" – means any person who uses any instrumentality of interstate commerce or the mails to sell, provide, or perform (or represent that such person can or will sell, provide, or perform) any service, in return for the payment of money or other valuable consideration, for the express or implied purpose of –
(i) improving any consumer's credit record, credit history, or credit rating; or
(ii) providing advice or assistance to any consumer with regard to any activity or service described in clause (i).

³⁶ See 15 U.S.C. 1681s-2(a)(8)(G).

Section 623(a)(8)(D) of the FCRA requires a consumer to provide a direct dispute notice "at the address specified" by the furnisher. The Agencies proposed to provide guidance about how this address should be specified by furnishers and effectively communicated to consumers.

Accordingly, proposed § .43(c) stated that a furnisher must investigate a direct dispute only if a consumer submits a direct dispute notice to the furnisher at:

- The address of the furnisher provided by a furnisher and set forth on a consumer report relating to the consumer (e.g., on the consumer file disclosures CRAs are required to provide to consumers under section 609(a) of the FCRA);
- An address clearly and conspicuously specified by the furnisher for submitting direct disputes that is provided in writing or electronically (if the consumer has agreed to the electronic delivery of information from the furnisher); or
- Any business address of the furnisher, if the furnisher has not so specified and provided an address for submitting direct disputes.

Thus, a consumer always would be able to submit a direct dispute to the appropriate address of the furnisher appearing on the consumer report. The consumer also would be able to submit a direct dispute to any other business address of the furnisher but only if the furnisher has not separately specified an address for receiving notices of direct disputes on a consumer report or by other written or electronic communication. A furnisher choosing to specify an address for direct dispute notices would have to do so in a manner that is both reasonably understandable and designed to call the consumer's attention to the fact that the address is the one to use for submitting direct disputes about the accuracy of information in a consumer report. The Agencies also noted in the

proposal that a furnisher that specifies an address for this purpose will not be deemed to have specified an address for purposes of section 623(a)(1)(B) of the FCRA, relating to the general duty to provide accurate information to the CRAs. The final rules adopt the proposed direct dispute address provision at § 43(c).

Section 43(c)(3) of the NPRM would have required a furnisher to investigate a direct dispute submitted by a consumer at any business address of the furnisher if it had not specified and provided an address pursuant to proposed § 43(c)(2). Some commenters stated that this obligation would be burdensome and may delay efficient resolution of the consumer's dispute. In response to these comments, the final rules only require a furnisher to investigate a direct dispute submitted by a consumer to any of its business addresses if the furnisher did not either (1) provide a direct dispute address that is set forth on a consumer report relating to the consumer or (2) clearly and conspicuously specify a direct dispute address and provide it to the consumer either in writing or electronically (if the consumer has agreed to the electronic delivery of information from the furnisher).

The Agencies specifically requested comment on whether there are circumstances under which it would not be appropriate for a consumer to submit a direct dispute notice to the address of the furnisher set forth on the consumer report, and on whether proposed § 43(c)(3) should exclude certain types of business addresses, such as a business address that is used for reasons other than for receiving correspondence from consumers or business locations where business is not conducted with consumers.

Consumer organizations generally recommended that a direct dispute should be accepted at any business address of a furnisher in all circumstances. The Agencies note

that the language of section 623(a)(8)(D) states that a consumer ". . . shall provide a dispute notice directly to [a furnisher] at the address specified by the [furnisher] for such notices. . . ." Permitting consumers to use any business address of a furnisher would not be consistent with this statutory provision.

Most industry commenters stated that it would be appropriate only to receive direct disputes at the address a furnisher specifies for that purpose. Some of these commenters also stated that, at a minimum, a furnisher should not have to respond to direct disputes if the CRA supplies the wrong address on the consumer report. Industry commenters opposed the idea that direct disputes should be accepted "at any business address" of the furnisher, noting that such a requirement would be extremely difficult to implement, produce inefficient resolutions of consumer disputes, and be costly.

The Agencies believe that it will benefit consumers and be operationally feasible to allow consumers to submit a direct dispute notice to the address of the furnisher specified on the consumer report (or otherwise specified by the furnisher). The Agencies understand that in a large majority of cases, the consumer report includes an address supplied by the furnisher.³⁷ In addition, the Agencies believe that allowing consumers to submit direct dispute notices to the address of the furnisher set forth on the consumer

³⁷ As noted in the proposal, allowing consumers to submit direct dispute notices to the address of the furnisher set forth on the consumer report is consistent with existing Federal and some state laws because these laws already impose related obligations. Section 611(a)(6)(B)(iii) of the FCRA requires the CRA to provide, upon the consumer's request, the business name and address, and phone number if reasonably available, of any furnisher the CRA contacts in connection with information reinvestigated in response to a consumer complaint filed with the CRA. California law requires that, upon request of the consumer, the CRA must provide the consumer with the "names, addresses and, if provided by the sources of information, the telephone numbers identified for customer service for the sources of information" (emphasis added). Cal. Civil Code § 1785.10(c). It is the Agencies' understanding that CRAs commonly include the furnisher's business name, address, and telephone number on the consumer report (where the furnisher provides it) so that consumers know how to contact the furnisher about a dispute upon receipt of the consumer report without the need to request that information from the CRA.

report will increase the likelihood that the consumers will know where to send that notice (because it will appear on the same document containing the disputed information) and will encourage consumers to obtain and review their consumer reports prior to submitting a notice to a furnisher. As the Agencies noted in the proposal, a furnisher will not be in violation of this provision for failure to investigate a dispute submitted to the address set forth on the consumer report if that address is incorrect due to an error by the CRA and does not reflect any business address of the furnisher.

The final rules also permit a consumer to submit a direct dispute notice to any business address of the furnisher, but only if the furnisher has not specified an address for receiving notices of direct disputes on a consumer report or by other written or electronic notice to the consumer. Thus, furnishers can avoid the burden of having to accept notices of disputes at any business address simply by specifying a direct dispute address for such purpose to be provided to consumers on a consumer report or by other written or electronic notice to the consumer.

The Agencies also requested comment on whether § 43(c)(2) should be amended to permit furnishers to notify consumers orally of the address for direct disputes, and on whether, and, if so, how an oral notice can be provided clearly and conspicuously. A majority of industry commenters and consumer organizations stated that oral notice of a direct dispute address should not be permitted. These commenters noted that written notices of an address provide more certainty that the direct disputes process will work appropriately for furnishers and consumers. In response to these comments, the final rules require written notifications to consumers of a direct dispute address.

Section .43(d) Direct dispute notice contents

Section 623(a)(8)(D) of the FCRA provides that a furnisher is not required to investigate a dispute unless a consumer provides the furnisher with a notice of dispute that:

- Identifies the specific information that is being disputed;
- Explains the basis for the dispute; and
- Includes all supporting documentation required by the furnisher to substantiate the basis of the dispute.

Proposed § .43(d) implemented section 623(a)(8)(D) of the statute by requiring that a notice of dispute include:

- The name, address, and telephone number of the consumer;
- Sufficient information to identify the account or other relationship that is in dispute, such as an account number;
- The specific information that the consumer is disputing and an explanation of the basis for the dispute; and
- All supporting documentation or other information reasonably required by the furnisher to substantiate the basis of the dispute, such as a copy of the consumer report that contains the allegedly inaccurate information, a police report, a fraud or identity theft affidavit, a court order, or account statements.

The final direct dispute notice content requirement is adopted as proposed with two substantive changes. First, the final rules merge the proposed provisions requiring that the notice include the name, address, and telephone number of the consumer and sufficient information to identify the account or other relationship in dispute. Revised

§ 43(d)(1) now provides that a dispute notice must include "[s]ufficient information to identify the account or other relationship that is in dispute, such as an account number and the name, address, and telephone number of the consumer, if applicable." The Agencies note that, in most circumstances, address and telephone number information will be readily available to the furnisher, and to require a consumer to provide it again before the furnisher will begin its investigation will result in unnecessary delay. The Agencies also note that some consumers may not have an address or telephone number. For these reasons, consumer identifying information must be provided only if applicable and to the extent necessary to identify the account or relationship that is the subject of the dispute. Consumers will have to provide information sufficient for furnishers to inform them of the results of an investigation.

The second substantive change occurs in one of the examples in § 43(d)(3) of supporting documentation or other information reasonably required by the furnisher to substantiate the basis of the dispute. The proposal stated that such documentation may include a copy of the consumer report that contains the allegedly inaccurate information. Upon further review, the Agencies determined that the example should be revised to recommend that the dispute include "a copy of the relevant portion" of such a consumer report because the provision of an entire consumer report may raise privacy concerns for consumers.

Although commenters generally supported § 43(d) as proposed, several industry commenters said that the Agencies should require consumers to indicate that a dispute is a "direct dispute" submitted under the FCRA. Some industry commenters also suggested that the Agencies issue a model direct dispute complaint form, with some advocating that

consumers be required to use the model complaint form. The Agencies decline to adopt these suggestions because such requirements would cause otherwise valid disputes to be rejected as frivolous or irrelevant due solely to the consumer's failure to meet a technical requirement that probably would be unknown to the consumer.

Section __.43(e) Duty of furnisher after receiving a direct dispute notice

As an implementation aid for furnishers and consumers, the final rules add a new provision at § __.43(e) that incorporates the FCRA's section 623(a)(8)(E) statutory duties required of furnishers after receiving a direct dispute notice. With one clarification discussed below, the addition of this section tracks the statutory language of section 623(a)(8)(E). Pursuant to § __.43(e) of the final rules, after receiving a valid dispute notice from a consumer, the furnisher must:

- Conduct a reasonable investigation with respect to the disputed information;
- Review all relevant information provided by the consumer with the dispute notice;
- Complete its investigation of the dispute and report the results of the investigation to the consumer before the expiration of the period under section 611(a)(1) of the FCRA (15 U.S.C. 1681i(a)(1)) within which a CRA would be required to complete its action if the consumer had elected to dispute the information under that section; and
- 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.

Section 623(a)(8)(E)(i) of the FCRA requires a furnisher to conduct an investigation with respect to the disputed information. The final rules at § 43(e)(1) require that the furnisher must conduct a reasonable investigation. As discussed above in connection with § 43(a), the inclusion of this reasonableness standard is consistent with how courts have interpreted the nature of a furnisher's duty to conduct other investigations of disputes under the FCRA.

Section 43(e)(3), among other things, states that a furnisher must report the results of the direct dispute investigation to the consumer. The Agencies deem that it is permissible to report the results of the investigation to the consumer by mail, or electronically if the consumer consents, in accordance with the identifying information supplied by the consumer.

Pursuant to § 43(e)(4), if a furnisher's investigation finds that information it provided to a CRA was inaccurate, the furnisher must promptly notify each CRA to which the furnisher provided the inaccurate information. Additionally, the furnisher must provide to such CRAs any correction necessary to make the information accurate. Therefore, if the furnisher provided incorrect information to one or more CRAs, the furnisher would comply with this provision of the final rules by indicating to the CRA that the prior information was inaccurate, and by providing the corrected information. A furnisher's investigation may reveal that, despite being furnished accurately, information in dispute was not properly reflected on a consumer report. After reaching such a conclusion, a furnisher should notify the consumer that the results of its investigation confirm that the information is not properly reflected on the consumer report obtained from the consumer; it would not be adequate in these circumstances for a furnisher

simply to notify a consumer that its investigation indicates that it provided accurate information to a CRA. In this situation, the Agencies strongly encourage furnishers, as a best practice, to suggest that the consumer contact the relevant CRA to obtain a correction.³⁸

Section __.43(f) Frivolous or irrelevant disputes

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.

The statute states that a frivolous or irrelevant dispute includes situations involving:

- The failure of a consumer to provide sufficient information to investigate the disputed information; or
- The submission by a consumer of a dispute that is substantially the same as a dispute previously submitted by or on behalf of the consumer, either directly to the furnisher or through a CRA under section 623(b) of the FCRA, with respect to which the furnisher already completed its investigation duties.

Proposed § __.43(e) incorporated the statutory provisions, including identifying these two types of frivolous or irrelevant disputes, using wording consistent with the statute. The final rules adopt these provisions as proposed at §§ __.43(f)(1)(i) and (ii).

Section 623(a)(8)(F) specifies the two situations described above, but does not limit frivolous or irrelevant disputes solely to those two situations. The Agencies proposed to include a third situation when a furnisher could deem a dispute to be

³⁸ Furnishers also are encouraged to provide consumers with the Summary of Rights under the Fair Credit Reporting Act issued by the FTC pursuant to section 609(c) of the FCRA, although this is not required by the FCRA or these final rules. This step would be particularly helpful to consumers in circumstances in which a consumer received the inaccurate consumer report information from a source other than a CRA, such as from a potential lender. In such cases, the consumer may not have received the Summary of Rights in connection with the consumer's review of that information.

frivolous or irrelevant. Under proposed § 43(e)(1)(iii), a dispute would be considered frivolous or irrelevant if the furnisher is otherwise not required to investigate it under the regulation.³⁹ This provision was intended to clarify furnishers' duty to investigate direct disputes and their responsibilities when no such investigation is required. Under the proposed provision, consumers in this situation would receive notice from the furnisher that their dispute was deemed frivolous or irrelevant, including the reasons for such determination, as required by the FCRA in sections 623(a)(8)(F)(ii) and (iii).⁴⁰

After additional consideration, the Agencies in the final rules revised this third situation in which a direct dispute may be deemed to be frivolous or irrelevant. Section 43(f)(1)(iii) of the final rules provides that a dispute qualifies as frivolous or irrelevant where "the furnisher is not required to investigate the direct dispute because one or more of the exceptions [to the direct dispute investigation duty] applies." This provision is intended to clarify that consumers will receive notice that their dispute will not be investigated because one of the exceptions applies, without requiring furnishers to provide such notices for consumer disputes that either (1) do not meet the definition of "direct dispute" or (2) do not relate to the matters described in § 43(a) that would trigger a direct dispute investigation.⁴¹

³⁹ For example, under proposed § 43(b)(2), a furnisher would not be required to investigate a direct dispute that is submitted by, is prepared on behalf of the consumer by, or is submitted on a form supplied to the consumer by, a credit repair organization. Thus, such a dispute would be frivolous or irrelevant under proposed § 43(e)(1)(iii).

⁴⁰ 15 U.S.C. 1681s-2(a)(8)(F)(ii) and (iii). Those provisions of the FCRA generally set out a furnisher's responsibilities regarding the notice it must provide to a consumer once it determines that a dispute is frivolous or irrelevant.

⁴¹ For example, a furnisher that reasonably believes a dispute was submitted by a credit repair organization would need to provide a notice to the consumer that the dispute is frivolous or irrelevant. In contrast, a furnisher would not have to provide a notice to the consumer if the consumer submits a dispute about information pertaining to an account with a different furnisher that was provided to a consumer reporting agency by that other furnisher, since such a dispute would not meet the definition of "direct dispute."

Proposed § 43(e)(2) incorporated the FCRA's requirement, at section 623(a)(8)(F)(ii) of the statute, that a furnisher must notify a consumer of its determination that a dispute is frivolous or irrelevant not later than five business days after making the determination. Proposed § 43(e)(3) likewise incorporated from section 623(a)(8)(F)(iii) of the FCRA the content requirements for a notice of determination that a dispute is frivolous or irrelevant. The proposal required such notices to include the reasons for the determination and identify any information required to investigate the disputed information. These two provisions are adopted in the final rules without change at §§ 43(f)(2) and (3) respectively.

One industry commenter recommended that the Agencies make clear that the frivolous or irrelevant dispute provision includes a list of non-exclusive examples and that there may be other reasons why a dispute could be frivolous or irrelevant. An industry commenter recommended revising the rule text regarding the two examples of frivolous or irrelevant disputes that are provided for by statute to track the language of the statute and make clear that those examples are unconditional exceptions to the direct dispute investigation requirement. The Agencies agree with these commenters and have revised the regulation to provide that § 43(f)(1) is a non-exclusive list of three types of frivolous or irrelevant disputes. The Agencies acknowledge that a furnisher is not required to investigate a direct dispute if the furnisher reasonably determines that the dispute is frivolous or irrelevant for other reasons.

One industry commenter suggested that limits should be placed on how far back in time a furnisher should be required to investigate a dispute (for example, a limit based on a record retention period). The Agencies decline to deem a dispute frivolous or

irrelevant because it involves older records that, for instance, a furnisher may no longer have readily available or be required to retain. The Agencies believe that the age of records underlying a dispute should not be the sole factor used by a furnisher to reasonably determine that a dispute is frivolous or irrelevant.

One industry commenter believed that the addition of the proposed third example to § 43(e)(1)(iii), that would have deemed a dispute to be frivolous or irrelevant if the furnisher is not required to investigate the direct dispute, would create confusion and unnecessary compliance burdens. As discussed above, the Agencies have revised § 43(f)(1)(iii) and other provisions in a manner that relieves furnishers from having to provide frivolous or irrelevant dispute determination notices for disputes that do not meet the definition of "direct dispute" or do not relate to matters that would trigger a direct dispute investigation duty.

Another industry commenter recommended that the Agencies clarify that, unless a consumer identifies an additional problem with an account or provides additional information regarding an existing dispute, the furnisher should not be required to send another frivolous or irrelevant dispute determination notice to the consumer. Similarly, another commenter stated that the Agencies should permit furnishers to refuse to investigate disputes from consumers who have "abused the process." The Agencies note that section 623(a)(8)(F)(i) of the FCRA deems disputes to be frivolous or irrelevant if they lack sufficient information or are duplicative. As required by section 623(a)(8)(F)(ii) of the FCRA, a furnisher must provide a consumer with a notice that the furnisher has determined that a dispute is frivolous or irrelevant.

VII. Regulatory Analysis

A. Paperwork Reduction Act

Notice of Action on NPRM

In conjunction with the NPRM, the OCC, FDIC, OTS, NCUA, and FTC submitted the information collection requirements contained therein to OMB for review under the PRA. In response, OMB filed comments with each of these Agencies in accordance with 5 CFR 1320.11(c). The comments indicated that OMB was withholding approval at that time. These Agencies were directed to examine public comment in response to the NPRM and describe in the preamble to the final rule how these Agencies have maximized the practical utility of the collection and minimized the burden. An explanation of how these Agencies have responded to OMB and the public's comments has been provided elsewhere in the preamble to this final rule.

Comment Summary

Of the comments received in response to the NPRM, four industry commenters specifically addressed PRA burden and an additional five industry commenters generally addressed burden issues. Some commenters noted that if the final rule would require furnishers to engage in certain activities in response to a direct consumer dispute, the number of disputes received from consumers would likely increase significantly. Commenters also noted that the Summary of Rights under the FCRA⁴² (currently provided to consumers) instructs consumers to direct their disputes to the CRA that provided them with a copy of their file, which may explain why most disputes are directed to CRAs.⁴³ It is reasonable to assume that changes to the disclosures made by CRAs to consumers (due to the changes the FTC will make to the Summary of Rights to include

⁴² See section 609(c) of the FCRA (15 U.S.C. 1681g(c)).

⁴³ Commenters' reporting of the extent to which furnishers currently receive direct disputes varied, and in the case of financial institutions, the size of the institution may be a factor. One industry commenter noted that a small portion of disputes currently come directly from consumers. However, another industry commenter indicated that community bankers report that, on average, 40 percent of disputes are received directly from consumers.

information about consumers' section 312 direct dispute rights) will likely increase the number of disputes furnishers receive directly from consumers.

Accuracy of Estimates:

One industry commenter questioned the Agencies' estimates. The commenter stated that, until furnishers begin implementing the proposal, it will be impossible to determine whether the Agencies' estimates to implement the final rule are understated. In addition, the commenter stated that, until a final rule is published, it is impossible to estimate the time required to comply with its requirements. The commenter further stated that it is "probably" unreasonable to estimate that it will take only 5 minutes to prepare and send a notice since it is likely to take much longer to review and investigate a dispute. The Agencies acknowledge that furnishers are likely to spend more than 5 minutes reviewing and investigating disputes received directly from consumers. The estimated PRA disclosure burden per notice published in the NPRM represented strictly the 5 minutes it would take a furnisher to prepare and distribute each notice; but it did not include the time required to review and investigate a dispute. However, given that each notice will be consumer-specific, and that the amount of automation used to send each notice will vary based on each dispute, the Agencies have decided to re-estimate the average time furnishers will devote to preparing and sending notices. The Agencies have increased the estimated burden for preparing and sending each notice from 5 minutes to an average of 14 minutes per dispute to prepare and send a notice to a consumer. Our estimate of 14 minutes per dispute is based upon an estimate of the average time required to respond to three different types or categories of frivolous or irrelevant disputes. For purposes of estimating paperwork burden, we assume that disputes based on form letters from credit repair organizations will make up 25 percent of all frivolous or irrelevant disputes and, on average, furnishers will devote 8 minutes to each notice. We assume that

duplicate credit reporting agency disputes will make up 60 percent of frivolous or irrelevant disputes, and we estimate this category will require an average of 15 minutes for each notice. Disputes that are frivolous or irrelevant for other reasons are assumed to make up 15 percent of frivolous or irrelevant disputes, and we estimate these other categories of disputes will require an average of 20 minutes each.

Another commenter stated that, while most furnishers would only make minor modifications, if any, to their existing practices to develop and implement the accuracy and integrity program, even these minor modifications will require significantly more than 21 hours, especially for furnishers of significant amounts of data from a wide range of business lines.

Review of Furnishing Practices:

Two commenters expressed concern that furnishers would be required to audit their furnishing practice. One of them stated that it could take several days for furnishers to design an audit of their furnishing practices and additional time to perform it and provide an audit report. The commenter urged the Agencies to consider the impact of the requirements, keeping in mind accumulating burden and cost. The commenter stated that it is critical that the Agencies regulating financial institutions convey clearly and publicly to their respective examiners their expectations of the implementation process, given the Agencies' stated view that the final rule will not impose significant burden or cost upon furnishers.

Another commenter opined that the suggested actions a furnisher should take to establish and maintain a compliance program should be reduced or eliminated. The commenter stated it was unclear how the suggested actions could be considered and documented, let alone designed and implemented, in 21 hours, even for small furnishers. The commenter expressed the concern that examiners of financial institutions will treat suggestions – such as the one that furnishers audit

their existing furnishing activities – as requirements, and added that it is unclear whether any furnisher needs to audit its existing program to comply with the final rules. The commenter additionally observed that the Agencies' burden estimate of 21 hours to comply with the final rule would be inconsistent with additionally having to conduct such audits. The commenter asserted that it would require more than 21 hours simply to conduct an audit of a mid-sized furnisher, and additional time beyond that to evaluate the audit results before drafting a compliance program. Finally, the commenter predicted that the costs of an audit may lead some institutions not to furnish information. Based on the comments received, the Agencies have decided to increase the burden associated with this requirement from 21 hours to 24 hours (three business days). In doing so, however, we note that, as stated earlier in the **Supplementary Information** section, the requirement for a furnisher to periodically review policies and procedures and update them as necessary is not an audit requirement. The final rule does not impose an audit requirement on a furnisher to conduct an official examination and verification of consumer accounts and records regarding its policies and procedures. In fact, the Agencies believe that an audit would impose undue burden on furnishers, especially small furnishers, and result in less information being provided into the credit reporting system.

Impact on Small Institutions:

One commenter stated that the impact of the proposal on small institutions' current resources would be severe and that they would have to use significant resources to comply with the proposed requirements. The commenter added that its member companies spend about one hour verifying each dispute, and it expects a substantial increase in direct disputes once the rule is implemented. The commenter anticipates that consumers will choose to use direct disputes over contacting CRAs.

As discussed earlier in the **Supplementary Information** section, the Agencies recognize that a "one-size-fits-all" approach for implementing the guidelines is inappropriate. The final rule specifies that a furnisher's policies and procedures must be appropriate to the nature, size, complexity, and scope of the furnisher's activities. The Agencies expect that the written policies and procedures for a small retail entity will differ substantially from, and be significantly less complex than, those of a multi-billion dollar financial services company. The Agencies have also addressed furnishers' implementation burden for § __.43⁴⁴ of the final rule by permitting furnishers to specify a direct dispute address for receiving such disputes. The address may be provided to consumers either by a CRA setting forth the address, which is provided by the furnisher, on a consumer report or by other means to consumers in writing or electronically (if the consumer has agreed to the electronic delivery of information from the furnisher).

PRA Submission to OMB for Final Rule

The information collection requirements contained in this joint final rule have been submitted by the OCC, FDIC, OTS, NCUA, and FTC to OMB for review and approval under section 3506 of the PRA and § 1320.11 of OMB's implementing regulations (5 CFR part 1320). The review and authorization information for the Board is provided later in this section along with the Board's burden estimates. The Agencies may not conduct or sponsor, and an organization is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The final rule requirements subject to the PRA are found in 12 CFR __.42(a), __.43(a), __.43(f)(2), and __.43(f)(3) and 16 CFR 660.3(a), 660.4(a), 660.4(f)(2), and 660.4(f)(3).

Proposed Information Collection

Title of Information Collection: Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies.

⁴⁴ 16 CFR 660.3 in the FTC regulations.

Frequency of Response: On occasion; frequent for large entities.

Affected Public:

OCC: National banks, Federal branches and agencies of foreign banks, and their respective operating subsidiaries that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5)) that furnish or have furnished information to CRAs.

Board: State member banks, uninsured state agencies and branches of foreign banks, commercial lending companies owned or controlled by foreign banks, and Edge and agreement corporations.

FDIC: Insured nonmember banks, insured state branches of foreign banks, and certain subsidiaries of these entities.

OTS: Savings associations and certain of their subsidiaries.

NCUA: Federal credit unions.

FTC: Businesses that furnish information to a CRA, and are subject to administrative enforcement by the FTC pursuant to section 621(a)(1) of the FCRA (15 U.S.C. 1681s(a)(1)).

Abstract: Section .42(a)⁴⁵ of the final regulations requires a furnisher to implement reasonable written policies and procedures regarding the accuracy and integrity of information relating to consumers that it provides to a CRA. The policies and procedures must be appropriate to the nature, size, complexity, and scope of each furnisher's activities. Furnishers already have an ongoing responsibility under section 623 of the FCRA for accurate reporting, which has been in place long before enactment of the FACT Act. This final rule would require furnishers to draft policies and procedures that address their section 312 responsibilities regarding the accuracy and

⁴⁵ 16 CFR 660.3(a) in the FTC's regulations.

integrity of information. Furnishers' accuracy and integrity policies and procedures may include their existing policies and procedures that are reasonable and appropriate. As mentioned earlier, the Agencies have reassessed the burden for section .42(a) and increased their estimate from 21 hours to 24 hours.

Section .43(a)⁴⁶ allows consumers, in certain circumstances, to initiate disputes directly with furnishers, instead of using the existing FCRA process through CRAs. Furnishers already have affirmative responsibilities to research and respond and, if necessary, make any corrections when a dispute is initiated by consumers through a CRA. Under this final rule, furnishers would have to follow a substantially similar process for disputes consumers submit directly to them. Furnishers would need to amend their procedures to ensure that disputes received directly from consumers are processed in a substantially similar manner as complaints received from CRAs. In the NPRM, the Agencies estimated that furnishers would devote four hours to amend their procedures. Based on comments received, the Agencies have increased the burden estimate to eight hours (one business day).

Section .43(f)(2)⁴⁷ incorporates the section 312 requirement that a furnisher must notify a consumer by mail or other means (if authorized by the consumer) within five business days after making a determination that a dispute is frivolous or irrelevant.

Section .43(f)(3)⁴⁸ incorporates the content requirements from section 312 for a notice of determination that a dispute is frivolous or irrelevant. In the NPRM, the Agencies estimated that

⁴⁶ 16 CFR 660.4(a) in the FTC's regulations.

⁴⁷ 16 CFR 660.4(f)(2) in the FTC's regulations.

⁴⁸ 16 CFR 660.4(f)(3) in the FTC's regulations.

furnishers would devote four hours to implement this notice requirement. Based on comments received, the Agencies have increased the burden estimate to eight hours (one business day).

Regarding estimated potential burden for providing the notices to consumers for frivolous or irrelevant disputes,⁴⁹ the Agencies received an industry comment that estimated 50 percent of disputes received are frivolous or irrelevant. A second industry commenter stated that CRAs have estimated that as many as one third of the disputes they received are illegitimate efforts at credit repair. In contrast, another industry commenter stated that in only 25 percent of disputes is the challenged information in the consumer report verified as correct. However, a fourth industry commenter reported that some of its members suggested that only six to seven percent of disputes regarding their trade lines prove to be valid and result in information being blocked from appearing on subsequent credit reports. Thus, based on these various commenters' estimates, and assuming that all disputes are frivolous or irrelevant when information in the consumer report is verified as correct, the percentage of frivolous or irrelevant disputes could range from 25 percent to 94 percent of all disputes. At this time the Agencies know neither the number nor rate of frivolous or irrelevant disputes currently being received by CRAs, nor the extent to which furnishers currently receive and provide notices in response to frivolous or irrelevant disputes. The Agencies have considered all of the comments and available information and have increased their estimates for the number of written notices that furnishers will provide to consumers in response to

⁴⁹ Frivolous or irrelevant disputes also include incomplete and duplicate disputes. See § 43(f)(1).

direct disputes that are frivolous or irrelevant.⁵⁰ The Agencies estimate that furnishers would devote an average of 14 minutes per dispute to prepare and send a notice to a consumer.⁵¹

Estimated Burden:⁵²

Thus, the burden associated with this collection of information may be summarized as follows.

OCC

Number of respondents: 1,508

Number of frivolous or irrelevant disputes: 2.8 million

Number of additional non-frivolous or irrelevant disputes: 1,874,010 million⁵³

Estimated annual burden associated with direct disputes: 1,094,892 hours

Estimated burden per respondent: 24 hours to implement written policies and procedures and training associated with the written policies and procedures, 8 hours to amend procedures for handling complaints received directly from consumers, 8 hours to implement the new dispute notice requirement, and 14 minutes per notice for distribution.

Total estimated annual burden: 1,147,447 hours

⁵⁰ Frivolous or irrelevant disputes will generally fall into one of three categories: (i) disputes based on, or influenced by, form letters from credit repair organizations, (ii) duplicate or serial disputes, and (iii) disputes that are incomplete or classified as frivolous or irrelevant for other reasons.

⁵¹ Fourteen minutes is the estimated time required to send a notice to a consumer as required by the final rule and, when appropriate, for a furnisher to transmit information to CRAs through e-OSCAR. The estimated burden per notice does not include the time a company's staff may spend locating or evaluating original documents or resolving the dispute.

⁵² Based upon comments received and upon consideration of data regarding current numbers of disputes, the agencies have increased their burden estimates from those provided in the NPRM.

⁵³ A dispute related to one trade line may require more than one notice. For example, a notice may be sent by a furnisher for the same trade line to a consumer in response to a frivolous or irrelevant dispute, and after the dispute is re-submitted with additional information another notice would be required in response to the non-frivolous dispute. Absent input to further inform the estimated time to prepare and distribute non-frivolous or irrelevant dispute notices, the OCC will assume the same time estimates as applied to frivolous or irrelevant dispute notices.

Board

In accordance with the PRA (44 U.S.C. 3506; 5 CFR part 1320, Appendix A.1), the Board, under its delegated authority from OMB, has approved the implementation of this information collection. The information collection associated with this rulemaking will be incorporated into the Recordkeeping and Disclosure Requirements Associated with Regulation V (Fair Credit Reporting) and will be assigned OMB No. 7100-0308. The burden estimates provided below pertain only to the information collections associated with this final rule.

Number of respondents: 1,172

Number of frivolous or irrelevant dispute notices: 611,966

Estimated burden per respondent: 24 hours to implement written policies and procedures and training associated with the written policies and procedures, 8 hours to amend procedures for handling complaints received directly from consumers, 8 hours to implement the new dispute notice requirement, and 14 minutes per notice for distribution.

Total estimated annual burden: 189,672 hours

FDIC

Number of respondents: 5,104

Number of frivolous or irrelevant dispute notices: 100,100

Estimated burden per respondent: 24 hours to implement written policies and procedures and training associated with the written policies and procedures, 8 hours to amend procedures for handling complaints received directly from consumers, 8 hours to implement the new dispute notice requirement, and 14 minutes per notice for distribution.

Total estimated annual burden: 227,517 hours

OTS

Number of respondents: 804

Number of frivolous or irrelevant dispute notices: 15,001

Estimated burden per respondent: 24 hours to implement written policies and procedures and training associated with the written policies and procedures, 8 hours to amend procedures for handling complaints received directly from consumers, 8 hours to implement the new dispute notice requirement, and 14 minutes per notice for distribution.

Total estimated annual burden: 35,610 hours

NCUA

Number of respondents: 4,909

Estimated burden per respondent: 24 hours to implement written policies and procedures and training associated with the written policies and procedures, 8 hours to amend procedures for handling complaints received directly from consumers, 8 hours to implement the new dispute notice requirement, and 14 minutes per notice for distribution.

Number of frivolous or irrelevant dispute notices: 153,072

Total estimated annual burden: 232,076 hours

FTC⁵⁴

Number of respondents: 6,133

Number of frivolous or irrelevant dispute notices: 21,720

Estimated burden per respondent: 24 hours in the first year of the rule's existence to implement written policies and procedures and training associated with the written policies and procedures, another 8 hours in the first year to amend procedures for handling complaints received

⁵⁴ Due to the varied nature of the entities subject to the jurisdiction of the FTC, this Estimated Burden section reflects only the view of the FTC. The banking regulatory agencies have jointly prepared a separate analysis.

directly from consumers, and 8 hours to implement the new dispute notice requirement, and 14 minutes per notice for preparation and distribution. Recurring burden, if any, in subsequent years are further detailed below.

Total estimated annual burden: 95,000 hours (rounded to the nearest thousand)

Section 660.3:

Estimated Hours Burden:

As discussed above, the final rule 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. The final rule defines "furnisher" to mean an entity that furnishes information relating to consumers to one or more CRAs for inclusion in a consumer report, but provides that an entity is not a furnisher when it: provides information to a CRA solely to obtain a consumer report for a permissible purpose under the FCRA;⁵⁵ is acting as a CRA as defined in section 603(f) of the FCRA; is an individual consumer to whom the furnished information pertains; or is a neighbor, friend, or associate of the consumer, or another individual with whom the consumer is acquainted or who may have knowledge about the consumer's character, general reputation, personal characteristics, or mode of living in response to a specific request from a CRA.

Given the broad scope of furnishers, it is difficult to determine precisely the number of furnishers that are subject to the FTC's jurisdiction. Nonetheless, FTC staff estimates that the final regulations in § 660.3 will affect approximately 6,133 furnishers subject to the FTC's jurisdiction.⁵⁶

⁵⁵ 15 U.S.C. 1681b(a).

⁵⁶ This estimate is derived from the number of furnishers reporting to the three nationwide CRAs (approximately 18,000), minus the number of entities subject to jurisdiction of the federal financial agencies and the NCUA (14,167 combined), and adding the number of furnishers to medical information bureaus (approximately 500) and the number of insurance companies furnishing information to other types of CRAs (approximately 1,800).

As detailed below, FTC staff estimates that the average annual information collection burden during the three-year period for which OMB clearance is sought will be 57,000 hours (rounded to the nearest thousand).

The final rule is drafted in a flexible manner that allows entities to establish and implement different types of written policies and procedures based upon the nature, size, complexity, and scope of their activities. A furnisher may include any of its existing policies and procedures in place to ensure the accuracy of information. The FTC believes that many entities have already implemented a significant portion of the policies and procedures required by the final rule. Entities have had an ongoing requirement under section 623 of the FCRA to provide accurate information when they choose to furnish data to CRAs. The written policies and procedures in the rule formalize the processes and controls necessary for accurate reporting. Accordingly, FTC staff estimates that entities will require 24 hours to establish and implement written policies and procedures, including the incremental time to train staff to implement these policies and procedures, with an annual recurring burden of 2 hours; thus, as annualized over a 3-year clearance period, 9.33 hours (28 hours ÷ 3).

Accordingly, cumulative annualized burden for 6,133 furnishers subject to the FTC's jurisdiction to establish and implement written policies and procedures is 57,000 hours (rounded to the nearest thousand).

Estimated Cost Burden:

The FTC staff derived labor costs by applying appropriate estimated hourly cost figures to the burden hours described above. It is difficult to calculate with precision the labor costs associated with the final regulations, as they entail varying compensation levels of management and/or professional technical staff among companies of different sizes. In calculating the cost

figures, staff assumes that managerial and/or professional technical personnel will draft the written policies and procedures and train staff. In the NPRM analysis, FTC staff estimated labor cost for such employees to be \$38.93, based on 2006 BLS data for management occupations. However, based on more current available BLS data, the FTC is revising upward this prior estimate to \$41.⁵⁷

Based on the above estimates and assumptions, the total annual labor costs for all categories of covered entities under the final regulations in § 660.3 are \$2,337,000 (rounded to the nearest thousand) [(57,000 hours x \$41)].

Section 660.4:

Estimated Hours Burden:

The final regulations would also require entities that furnish information about consumers to respond to direct disputes from consumers. FTC staff estimates that the final regulations in § 660.4 will also affect approximately 6,133 furnishers subject to the FTC's jurisdiction. As detailed below, FTC staff estimates that the average annual information collection burden during the three-year period for which OMB clearance is sought will cumulatively be 38,000 hours (rounded to the nearest thousand).

In response to public comments and in concurrence with the Agencies' modified estimate noted above, the FTC staff estimates that it will take furnishers eight hours to amend their procedures to ensure that disputes received directly from consumers are handled the same way as complaints from CRAs. FTC staff believes that furnishers of information to CRAs will have automated the process of responding to direct disputes in the first year of the clearance, therefore, there will be no annual recurring burden. Accordingly, the associated annualized burden hours

⁵⁷ This revised hourly wage rate is based on <http://www.bls.gov/ncs/ncswage2007.htm> (last visited March 3, 2009) (National Compensation Survey: Occupational Earnings in the United States 2007, US Department of Labor released August 2008, Bulletin 2704, Table 3 ("Full-time civilian workers," mean and median hourly wages) for management occupations).

over a projected three-year OMB clearance would be approximately 2.67 hours. Similarly, FTC staff also estimates that it will take furnishers eight hours in the first year to implement the requirement to notify a consumer by mail or other means (if authorized by the consumer) within five business days after making a determination that a dispute is frivolous or irrelevant. FTC staff believes that furnishers will also automate this process in the first year of clearance, so there will be no annual recurring burden. Likewise, annualized burden hours would be approximately 2.67 hours.

In response to public comments and in concurrence with the Agencies' modified estimate noted above, the FTC staff now estimates that to prepare and distribute a notice to a consumer after a furnisher determines that a dispute is frivolous or irrelevant will require approximately 14 minutes per notice. FTC staff does not know the current extent to which furnishers are already directly receiving disputes and sending related notices to consumers. Nevertheless, FTC staff assumes that 50 percent of all disputes will be filed directly with the furnisher after the rule is in effect. As a result of these factors, FTC staff projects that furnishers under its jurisdiction would directly receive 21,720 frivolous or irrelevant disputes requiring a notice each year.⁵⁸ Thus, FTC staff estimates it will take furnishers 5,068 hours, cumulatively, for each of the three years for which OMB clearance is sought to prepare and distribute these notices.

Estimated Cost Burden:

As with its PRA analysis for § 660.3, the FTC staff derived labor costs by applying appropriate estimated hourly cost figures to the burden hours described above. Again, it is difficult to calculate with precision the labor costs associated with the final regulations, as they entail

⁵⁸ This number is derived from an estimate of disputes per year that relate to information provided by an entity under the FTC's jurisdiction (108,600), an estimated 50% of which will be received directly by furnishers, and the Agencies' estimated 40% increase of the number of written notices that furnishers will provide to consumers in response to direct disputes that are frivolous or irrelevant.

varying compensation levels of different types of support staff among companies of different sizes. Nonetheless, in calculating the cost figures, staff assumes managerial and/or professional technical personnel will amend procedures to ensure that disputes received directly from consumers are handled the same way as complaints from CRAs and will implement the requirement to notify a consumer by mail or other means, after making a determination that a dispute is frivolous or irrelevant, at an hourly rate of \$41.⁵⁹ Staff now assumes that skilled administrative support personnel will provide the required notices to consumers, and has revised upward the estimated hourly rate from \$13.50 to \$18.50.⁶⁰

Based on the above estimates and assumptions, the total average annual labor costs for all categories of covered entities under the final regulations in section 660.4 are \$1,437,000 (rounded to the nearest thousand) $(((2.67 \text{ hours}) \times 6,133 \times \$41) + ((2.67 \text{ hours}) \times 6,133 \times \$41) + (5,073 \text{ hours} \times \$18.50))$ (for preparing and distributing frivolous or irrelevant dispute notices)].

B. Regulatory Flexibility Act

OCC: The Regulatory Flexibility Act (RFA) generally requires an agency that is issuing a final rule to prepare and make available a final regulatory flexibility analysis that describes the impact of the final rule on small entities, 5 U.S.C.604. However, the RFA provides that an agency is not required to prepare and make available a final regulatory flexibility analysis if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). For purposes of the RFA and OCC-regulated entities, a "small entity" is a national bank with

⁵⁹ See supra note 57 regarding FTC costing under § 660.3 for management occupations.

⁶⁰ See <http://www.bls.gov/ncs/ncswage2007.htm> (last visited March 3, 2009) (National Compensation Survey: Occupational Earnings in the United States 2007, US Department of Labor released August 2008, Bulletin 2704, Table 3 ("Full-time civilian workers," mean and median hourly wages). This estimate is based on rates appearing therein for a combination of potentially analogous employee types (e.g., first-line supervisors of office support, accounting and auditing clerks, brokerage clerks, eligibility reviewers of government programs).

assets of \$175 million or less (small national bank). Based on its analysis and for the reason stated below, OCC certifies that these final rules will not have a significant economic impact on a substantial number of small entities. Based on two tests used to evaluate the impact of the final rules (compliance costs as a percentage of labor costs and compliance costs as a percentage of non-interest expenses) the OCC estimates that the final rules would have a significant economic impact on 16 of 676 small national banks (approximately two percent of small national banks); the OCC does not consider this to be a substantial number of small entities.

Board: The Board prepared an initial regulatory flexibility analysis as required by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) in connection with the proposed rule. The Board received three comment letters addressing its initial regulatory flexibility analysis.

Under section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include commercial banks and other depository institutions with \$175 million or less in assets). Based on its analysis and for the reasons stated below, the Board certifies that these final rules will not have a significant economic impact on a substantial number of small entities.

1. Statement of the Need for, and Objectives of, the Final Rules.

Section 312 of the FACT Act (which amends section 623 of the FCRA) requires the Agencies to issue regulations and guidelines relating to the responsibilities of

furnishers of information about consumers to CRAs for the purpose of enhancing the accuracy and integrity of the information furnished. In addition, the Agencies must prescribe joint regulations that identify the circumstances, if any, under which furnishers must investigate disputes about the accuracy of the information contained in a consumer report on the consumer based on a direct request by a consumer, rather than requiring consumers to initiate a dispute through a consumer reporting agency.

The **Supplementary Information** above contains information on the objectives of the final rules.

2. Summaries of Issues Raised by Comments in Response to the Initial Regulatory Flexibility Analysis.

In accordance with section 3(a) of the RFA, the Board conducted an initial regulatory flexibility analysis in connection with the proposed rule. The Agencies estimated in the proposed rule that it would take furnishers approximately 21 hours on average to implement the written policies and procedures regarding accuracy and integrity, including appropriate staff training. One commenter, Independent Community Bankers of America (ICBA), questioned the Agencies' estimate, noting that the compliance burdens will be significantly more than the 21 hours estimated by the Agencies. Another commenter, MasterCard Worldwide, also questioned the Agencies' 21 hours estimate, but this comment did not apply uniquely to small entities. Another commenter, The American Financial Services Association (AFSA), predicted that the impact on small institutions current resources would be severe. AFSA stated that it anticipated that direct disputes would increase significantly and thus believed that the "Estimated Hours Burden" and "Estimated Cost Burden" are extremely low.

The Agencies estimated that it would take furnishers approximately four hours to adjust procedures for handling disputes received directly from consumers, another four hours to implement the new dispute process, and approximately another five minutes to send each notice of direct dispute. ICBA noted that it is probably unreasonable to believe that it will take only five minutes to prepare and send a notice of direct dispute since it will likely take much longer than that merely to review and investigate a dispute.

3. Description and Estimate of Small Entities Affected by the Final Rules.

The final rules apply to all banks that are members of the Federal Reserve System (other than national banks) and their respective operating subsidiaries, branches and Agencies of foreign banks (other than Federal branches, Federal Agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 *et seq.*, and 611 *et seq.*). The Board's final rules will apply to the following institutions (numbers approximate): State member banks (881), operating subsidiaries that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (877), U.S. branches and agencies of foreign banks (219), commercial lending companies owned or controlled by foreign banks (3), and Edge and agreement corporations (64), for a total of approximately 2,044 institutions. The Board estimates that more than 1,448 of these institutions could be considered small entities with assets of \$175 million or less.

All small entities covered by the Board's rule potentially will be subject to the final rules. However, the final rules will not impose any requirements on small entities that do not furnish information about consumers to CRAs.

4. Recordkeeping, reporting and other compliance requirements.

The final rules require small entities that are furnishers subject to the rule to establish and implement reasonable policies and procedures regarding the accuracy and integrity of the information relating to consumers that they furnish to a CRA. Such furnishers are required to consider the guidelines in Appendix E to the proposed rule in developing these policies and procedures, and to incorporate those guidelines that are appropriate. The final rules also require small entities that are furnishers to investigate direct disputes received from a consumer that relates to an account or other relationship that the furnisher has with the consumer. The final rules require small entities to notify consumers who submit direct disputes of the results of the investigation or of the determination that the dispute is frivolous or irrelevant.

5. Steps Taken to Minimize the Economic Impact on Small Entities.

The Board believes the rule will not have a significant economic impact on a substantial number of small entities. The Board and the other Agencies have sought to minimize the economic impact on small entities by adopting consistent rules; affording furnishers the flexibility to establish policies and procedures that are appropriate to the nature, size, complexity, and scope of each furnisher's activities; permitting furnishers to include in their accuracy and integrity policies and procedures any of their existing policies and procedures that are relevant and appropriate; and affording furnishers the flexibility not to investigate disputes they reasonably believe have been submitted by a credit repair organization.

The Board believes that many institutions' existing policies and procedures already address significant portions of the requirements related to furnishing information

to CRAs. Similarly, the Board believes that many furnishers are already investigating direct disputes as good business practice. Furthermore, the Board notes that furnishers investigate disputes brought directly to a consumer reporting agency, which then directs the disputes to the furnisher, as appropriate, pursuant to existing FCRA law.

FDIC: The FDIC prepared an initial regulatory flexibility analysis as required by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) in connection with the December 13, 2007 proposed rule. The FDIC received three comment letters addressing its initial regulatory flexibility analysis.

Under section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include commercial banks and other depository institutions with \$175 million or less in assets). Based on its analysis and for the reasons stated below, the FDIC certifies that these final rules will not have a significant economic impact on a substantial number of small entities.

Under the final rules, which implement section 312 of the FACT Act (which amends section 623 of the FCRA), the FDIC has issued regulations and guidelines relating to the responsibilities of furnishers of information about consumers to consumer reporting agencies for the purpose of enhancing the accuracy and integrity of the information furnished. In addition, the FDIC has prescribed joint regulations (with the other Agencies) that identify the circumstances under which furnishers must investigate disputes about the accuracy of the information contained in a consumer report on the

consumer based on a direct request by a consumer, rather than requiring consumers to initiate a dispute through a consumer reporting agency. The **Supplementary Information** above contains information on the objectives of the final rules.

The final rules apply to most FDIC-insured state nonmember banks, approximately 3,400 of which are small entities. Under the rule, financial institutions that furnish information about consumers to one or more consumer reporting agencies must have written policies and procedures regarding the accuracy and integrity of that information. The program must be appropriate to the nature, size, complexity, and scope of the furnishing activities. A furnisher may include any of its existing policies and procedures in place to ensure the accuracy of information. Institutions have had an ongoing requirement under section 623 of the FCRA to provide accurate information when they choose to furnish data to consumer reporting agencies. The written policies and procedures in the rule would formalize the processes and controls necessary for accurate reporting. Federal Financial Institutions Examination Council examination procedures exist and have been used for years to evaluate compliance with the aspects of section 623 of the FCRA. Based on our examination of the financial institutions we supervise, the FDIC believes that many of these institutions have already implemented a significant portion of the policies and procedures required by the rule. The process of furnishing information to consumer reporting agencies is largely automated.

The final rules also require financial institutions that furnish information about consumers to respond to direct dispute requests from consumers with regard to certain perceived inaccuracies. While the final rules would require new procedural requirements, including direct dispute notices, the FDIC believes that investigating direct

disputes will not create significant additional burdens on small banks, for a number of reasons.

First, most furnishers are already investigating similar disputes, which under the current law are brought directly to the relevant consumer reporting agency, which then contacts the furnisher for an investigation. Under this procedure, furnishers are already required to review all relevant information provided by the consumer reporting agency along with the notice; report the results of the investigation to the consumer reporting agency; if the disputed information is found to be incomplete or inaccurate, report those results to all nationwide consumer reporting agencies to which the financial institution previously provided the information; and if the disputed information is incomplete, inaccurate, or not verifiable by the financial institution, promptly, for purposes of reporting to the consumer reporting agency modify the item of information, delete the item of information, or permanently block the reporting of that item of information.

Second, many of these furnishers are already investigating direct disputes as a matter of good customer relations and sound business practices or under other consumer protection laws.

Third, the final rules do not require investigation in cases that are frivolous or irrelevant.

OTS: The Regulatory Flexibility Act (RFA) generally requires an agency that is issuing a final rule to prepare and make available a final regulatory flexibility analysis that describes the impact of the final rule on small entities. 5 U.S.C. 604. However, the RFA provides that an agency is not required to prepare and make available a final regulatory flexibility analysis if the agency certifies, along with a statement providing the factual

basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA and OTS-regulated entities, a "small entity" is a savings association with \$175 million or less in assets (small savings association). Based on its analysis and for the reasons stated below, OTS certifies that these final rules will not have a significant economic impact on a substantial number of small entities.

1. Reasons for Final Rules

The FACT Act amends the FCRA and was enacted, in part, for the purpose of enhancing the accuracy and integrity of information furnished to CRAs. Section 312 of the FACT Act generally requires the Agencies to issue guidelines for use by furnishers regarding the accuracy and integrity of the information about consumers that they furnish to consumer reporting agencies and prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines. Section 312 also requires the Agencies to prescribe regulations identifying the circumstances under which a furnisher must reinvestigate disputes about the accuracy of information contained in a consumer report based on a direct request from a consumer. OTS is issuing these final rules to implement section 312 of the FACT Act.

2. Statement of Objectives and Legal Basis

The objectives of the final rules are described in the **Supplementary Information** section. In sum, the objectives are: (1) to implement the general statutory provision that requires the Agencies to issue guidelines for use by furnishers regarding the accuracy and integrity of the information about consumers that they furnish to consumer reporting agencies and prescribe regulations requiring furnishers to establish

reasonable policies and procedures for implementing the guidelines and (2) to fulfill the statutory mandate requiring the Agencies to prescribe regulations identifying the circumstances under which a furnisher must reinvestigate disputes about the accuracy of information contained in a consumer report based on a direct request from a consumer. The primary legal basis for the final rules is the Fair Credit Reporting Act found at 15 U.S.C. 1681 et seq.

3. Description and estimate of small entities affected by the final rules.

The final rules apply to savings associations and operating subsidiaries of federal savings associations that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5)).

OTS estimates that its final rules will apply to 391 small savings associations with assets of \$175 million or less.

4. Projected Recordkeeping, reporting, and other compliance requirements.

The compliance requirements of the final rules are described in the **Supplementary Information** above.

In general, the final rules require each furnisher subject to the rule to establish and implement reasonable policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to a consumer reporting agency. Furnishers will be required to consider the guidelines in Appendix E to the final rules in developing these policies and procedures and to incorporate those guidelines that are appropriate.

In response to comments about potential burden, the Agencies have sought to reduce the burden associated with these accuracy and integrity regulations and guidelines in several ways.

First, the Agencies have adopted consistent rules.

Second, the final rules provide substantial flexibility and minimize burden to allow any thrift, regardless of size, to tailor its practices to its individual needs. The program must be appropriate to the nature, size, complexity, and scope of the furnishing activities.

Third, a furnisher may include any of its existing policies and procedures in place to ensure the accuracy of information. Furnishers have a preexisting obligation under section 623 of the FCRA to provide accurate information when they furnish data to consumer reporting agencies. OTS believes that many furnishers are likely to have existing policies and procedures regarding accurate reporting in order to satisfy their obligations under section 623, and that these policies and procedures could be incorporated in the policies and procedures required by the final rules.

Furnishers subject to the final rules also will be required, under certain circumstances, to investigate disputes concerning the accuracy of information about the consumer contained in a consumer report based on a direct request of a consumer. While the rule requires new procedural requirements, OTS believes that investigating direct disputes will not create significant additional burdens on small institutions, for a number of reasons.

First, most savings association furnishers already investigate similar disputes that are provided to them by a consumer reporting agency pursuant to the existing dispute provisions contained in section 611 of the FCRA.

Second, commenters on the ANPR and NPRM noted that many furnishers already investigate direct disputes as a matter of good customer relations, sound business practices, or because they are required to do so by other consumer protection laws. Savings associations also investigate disputes brought to the institution through OTS's customer complaint system.

Third, the final rules do not require investigation of direct disputes when such disputes are frivolous or irrelevant.

Fourth, savings associations already have mechanisms and processes in place to handle consumer complaints brought under other laws such as the Truth in Lending Act, Real Estate Settlement Procedures Act, and Electronic Funds Transfer Act. OTS believes many of these mechanisms and processes can be readily adapted to handle consumer disputes about their consumer reports.

5. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

OTS is unable to identify any statutes or rules, which would overlap or conflict with the final rules.

6. Discussion of Significant Alternatives

As required by the FACT Act, the final rules and guidelines apply to all covered institutions, regardless of the size of the institution. One approach to minimizing the burden on small entities would have been to provide a specific exemption for small

institutions. However, OTS has no authority under section 312 of the FACT Act to grant an exception that would remove small institutions from the scope of the rule.

The final rules do, however, provide substantial flexibility so that any savings associations, regardless of size, may tailor its practices to its individual needs. For example, to minimize burden the final rules permit institutions to include in their accuracy and integrity policies and procedures their existing policies and procedures that are relevant and appropriate. Furthermore, OTS and other Agencies have attempted to minimize burden by: adopting consistent rules; incorporating into the final rules at § 571.42(a) a statement that policies and procedures should be appropriate to the nature, size, complexity, and scope of a furnisher's activities; and providing furnishers with three options for providing their direct disputes address to consumers under § 571.43(c).

NCUA: The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact a proposed regulation may have on a substantial number of small entities. 5 U.S.C. 601-612. NCUA considers credit unions having less than ten million dollars in assets to be small for purposes of RFA. NCUA Interpretive Ruling and Policy Statement (IRPS) 87-2 as amended by IRPS 03-2. In connection with the December 13, 2007 proposed rule, NCUA certified that the proposed rule would not have a significant economic impact on a substantial number of small credit unions and therefore, a regulatory flexibility analysis was not required. Upon further review, the NCUA now certifies that the final rules also will not have a significant economic impact on a substantial number of small credit unions. The final rules will apply to all federal credit unions regardless of asset size.

FTC: The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601-612, requires that the FTC provide an Initial Regulatory Flexibility Analysis ("IRFA") with a proposed rule and a Final Regulatory Flexibility Analysis ("FRFA"), if any, with the final rule, unless the FTC certifies that the rule will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 603-605.

The FTC hereby certifies that the final regulations will not have a significant economic impact on a substantial number of small business entities. The FTC continues to believe that a precise estimate of the number of small entities that fall under the final regulations is not currently feasible. Based on changes made to the final regulations in response to comments received, and the FTC's own experience and knowledge of industry practices, the FTC continues to believe that the cost and burden of complying with the final regulations are minimal. Accordingly, this document serves as notice to the Small Business Administration of the agency's certification of no effect. Nonetheless, the FTC has decided to publish a FRFA with these final regulations. Therefore, the FTC has prepared the following analysis:

1. Need for and Objectives of the Rule.

The FTC is charged with enforcing the requirements of section 312 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) (15 U.S.C. 1681a-2(a)(8) and 1681a-2(e)). Section 312 of the FACT Act generally requires the Agencies to issue guidelines for use by furnishers regarding the accuracy and integrity of the information about consumers that they furnish to consumer reporting agencies and prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines. Section 312 also requires the Agencies to prescribe

regulations identifying the circumstances under which a furnisher must reinvestigate disputes about accuracy of information contained in a consumer report based on a direct request from a consumer. In this action, the FTC promulgates final rules that would implement these requirements of the FACT Act.

2. Significant Issues Received by Public Comment.

The FTC received a number of comments on the effect of the proposed regulations. Some of the comments addressed the effect of the proposed regulations on businesses generally, and did not identify small businesses as a particular category. The FTC staff, therefore, has included all comments in this FRFA that raised potential compliance issues for small businesses, regardless of whether the commenter identified small businesses as being an affected category.

The FTC estimated in the proposed rule that it would take furnishers approximately 21 hours on average to establish and implement the written policies and procedures regarding accuracy and integrity, including the incremental time to train staff. The FTC also estimated that it would take furnishers approximately four hours to adjust procedures for handling disputes received directly from consumers, another four hours to implement the new dispute process, and approximately five minutes to send each notice of direct dispute.

One commenter questioned these estimates, stating it is impossible to verify whether it will take more time to implement the final rules. This commenter also stated that it is unreasonable to believe it will take only five minutes to prepare and send a notice since it is likely to take longer simply to review and investigate a dispute. Another commenter stated that the compliance burdens will be significantly more than 21 hours,

but this comment did not apply uniquely to small entities. The FTC also received a comment predicting that the impact of the proposed rules on small institutions would be severe, but noting that it is impossible to estimate the full impact. This comment noted that they expect that direct disputes would increase significantly and thus believed that the "Estimated Hours Burden" and "Estimated Cost Burden" are extremely low. The commenter also disputed that the bulk of disputes received would be handled by a clerical level employee.

As noted in the PRA analysis, the Agencies have revised the estimate of 21 hours on average to establish and implement the written policies and procedures regarding accuracy and integrity to 24 hours. The Agencies have also revised the estimates of four hours to adjust procedures for handling direct disputes and another four hours to implement the new dispute process to eight hours in both instances. Moreover, the estimated burden per notice represents the time it will take a furnisher to prepare notices as required by the final rules, and does not include the time required to review and investigate a dispute. However, the Agencies have revised the estimate of time to provide a notice to a consumer from five minutes to fourteen minutes.

In addition, one commenter noted that smaller entities may not have established policies and procedures, and requested that the final rules permit furnishers to adapt or rely on the instructions of CRAs or service providers in lieu of establishing policies and procedures. Another commenter also requested that the Agencies eliminate the requirement for written policies and procedures to minimize the burden of the final rules. As discussed in the **Supplementary Information**, the final rules specify that a furnisher's policies and procedures must be appropriate to the nature, size, complexity, and scope of

the furnisher's activities. The Agencies expect that the written policies and procedures for a small retail entity will differ substantially from, and be significantly less complex, than those of a multi-billion dollar financial services company.

The FTC received additional comments suggesting that the agencies minimize the burden of the final rules by: ensuring adequate time for implementation; more clearly distinguishing the responsibilities of furnishers from the responsibilities of CRAs; "[e]liminat[ing] liability from 'accuracy' and 'integrity'"; removing any obligation to update information that was accurate when furnished; and clarifying that there is no need for a furnisher to continue reporting on a debt once the debt is sold. The Agencies have set a mandatory compliance deadline of [INSERT DATE THAT IS THE FIRST DAY OF THE FIRST CALENDAR QUARTER FOLLOWING ONE CALENDAR YEAR FROM DATE OF PUBLICATION], thereby providing all entities with at least one year within which to implement the final regulations. As discussed in the **Supplementary Information**, the definitions of "accuracy" and "integrity" do not impose stand-alone obligations on furnishers but guide and inform the duties otherwise imposed on furnishers under the regulations. The Agencies further note that section 623(c) of the FCRA limits private rights of actions for a furnisher's noncompliance with the rules issued pursuant to section 312 of the FACT Act, which include the definitions of "accuracy" and "integrity." Finally, with respect to debt that is sold, as discussed in the **Supplementary Information**, the Agencies do not expect that after transferring an account to a third party a furnisher would update the current status of the account beyond providing information to a CRA that the account has been transferred.

3. Small Entities to Which the Final Rules Will Apply.

The FTC's final rules will apply to "an entity that furnishes information relating to consumers to one or more consumer reporting agencies for inclusion in a consumer report," except when it "(1) Provides information to a consumer reporting agency solely to obtain a consumer report in accordance with sections 604(a) and (f) of the Fair Credit Reporting Act; (2) Is acting as a "consumer reporting agency" as defined in section 603(f) of the Fair Credit Reporting Act; (3) Is a consumer to whom the furnished information pertains; or (4) Is a neighbor, friend, or associate of the consumer, or another individual with whom the consumer is acquainted or who may have knowledge about the consumer, and who provides information about the consumer's character, general reputation, personal characteristics, or mode of living in response to a specific request from a consumer reporting agency." In short, the rule would apply to any entity that (1) is under the FTC's jurisdiction pursuant to the FCRA and (2) furnishes information relating to consumers to one or more consumer reporting agencies.

Generally, the final regulations would apply to financial institutions, creditors, and other entities that furnish information relating to consumers to consumer reporting agencies. In particular, entities under FTC's jurisdiction covered by section 312 include state-chartered credit unions, non-bank lenders, insurers, debt collectors, and any other entity other than an individual consumer that furnishes information relating to consumers to one or more consumer reporting agencies. The FTC requested but did not receive any comments on its IRFA relating to the number and type of small entities affected by the proposed rule. The FTC continues to believe that the available data is not sufficient for it

to realistically estimate the number of entities the FTC regulates that would be subject to the final rules and that are small as defined by the Small Business Administration.⁶¹

4. Projected Reporting, Recordkeeping, and Other Compliance Requirements.

The final rules require each furnisher subject to the rule 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 consumer reporting agency. Furnishers will be required to consider the guidelines in Appendix A to the final rules in developing these policies and procedures and to incorporate those guidelines that are appropriate. The policies and procedures must be appropriate to the nature, size, complexity, and scope of the furnishing activities. A furnisher may include any of its existing policies and procedures in place to ensure the accuracy of information. Entities have had an ongoing requirement under section 623 of the FCRA to provide accurate information when they choose to furnish data to consumer reporting agencies. The FTC believes that many furnishers are likely to have existing policies and procedures regarding accurate reporting in order to satisfy their obligations under section 623, and that these policies and procedures could be incorporated in the policies and procedures required by the final rules.

Entities under the FTC's jurisdiction covered by this rule include state-chartered credit unions, non-bank lenders, insurers, debt collectors, and any other entity other than an individual consumer that furnishes information relating to consumers to one or more consumer reporting agencies. In calculating costs, FTC staff assumes that for all entities,

⁶¹ The size standard to be considered a small business for the majority of the non-bank creditors, insurers, and debt collectors that are subject to the Commission's jurisdiction is to have average annual receipts that are \$6.5 million or less. A list of the SBA's size standards for all industries can be found at http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf (last visited March 3, 2009).

managerial and/or professional technical personnel will draft the written policies and procedures regarding the accuracy and integrity of furnished information.

The FTC believes that many entities have already implemented a significant portion of the policies and procedures required by the final rules, as discussed above. Accordingly, the impact of the final rules would be merely incremental and not significant.

Furnishers subject to the final rules will also be required, under certain circumstances, to investigate disputes concerning the accuracy of information about the consumer contained in a consumer report based on a direct request of a consumer. While the rule requires new procedural requirements, including direct dispute notices, the FTC believes that investigating direct disputes will not create significant additional burdens on small entities.

Entities under the FTC's jurisdiction covered by this rule include state-chartered credit unions, non-bank lenders, insurers, debt collectors, and any other entity other than an individual consumer that furnishes information relating to consumers to one or more consumer reporting agencies. In calculating costs, FTC staff assumes that managerial and/or professional technical personnel will adapt mechanisms and processes to handle consumer disputes about their consumer reports and now assumes that skilled administrative support personnel will provide any required notices to consumers.

The FTC believes that investigating direct disputes will not create significant additional burdens on covered entities for a number of reasons.

First, most furnishers are already investigating similar disputes, which under the current law are brought directly to the relevant consumer reporting agency, which then

contacts the furnisher for an investigation. Under this procedure, furnishers are already required to review all relevant information provided by the consumer reporting agency along with the notice of dispute; report the results of the investigation to the consumer reporting agency; if the disputed information is found to be incomplete or inaccurate, report those results to all nationwide consumer reporting agencies to which the furnisher previously provided the information; and if the disputed information is incomplete, inaccurate, or not verifiable by the financial institution, promptly, for the purposes of reporting to the consumer reporting agency to modify the item of information, delete the item of information, or permanently block the reporting of that item of information.

Second, many of these furnishers are already investigating direct disputes as a matter of good customer relations and sound business practices.

Third, the final rules do not require investigation for disputes that are frivolous or irrelevant.

Fourth, many furnishers already have mechanisms and processes in place to handle consumer disputes brought under other laws such as the Fair Debt Collection Practices Act (15 U.S.C. 1692-1692p), Truth in Lending Act (15 U.S.C. 1601-1665b), Fair Credit Billing Act (15 U.S.C. 1666-1666j), Real Estate Settlement Procedures Act (12 U.S.C. 2601-2627), and Electronic Funds Transfer Act (15 U.S.C. 1693-1693r). The FTC believes that many of these mechanisms and processes can be readily adapted to handle consumer disputes about their consumer reports.

The final rules contain no requirement to report information to the FTC.

5. Steps Taken to Minimize Significant Economic Impact of the Rule on Small Entities.

The FTC considered whether any significant alternatives, consistent with the purposes of the FACT Act, could further minimize the final rules' impact on small entities. The FTC asked for comment on this issue. The standards in the final rules are flexible so that a covered entity, regardless of size, may tailor its practices to its individual needs. For example, to minimize the burden the final rules would permit entities to include in their accuracy and integrity policies and procedures their existing policies and procedures that are relevant and appropriate. Furthermore, the FTC and other Agencies have attempted to minimize the burden by: adopting consistent rules; incorporating into the final rules at § 660.3 a statement that policies and procedures should be appropriate to the nature, size, complexity, and scope of a furnisher's activities; and providing furnishers with three options for providing their direct disputes address to consumers under § 660.4.

C. OCC and OTS Executive Order 12866 Determinations

The OCC and OTS each determined that its portion of the final rules is not a significant regulatory action under Executive Order 12866.

D. OCC and OTS Executive Order 13132 Determinations

The OCC and the OTS each determined that its portion of the final rules does not have any federalism implications for purposes of Executive Order 13132.

E. NCUA Executive Order 13132 Determination

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on State and local interests. In adherence to fundamental federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5) voluntarily complies with the Executive Order. The final rules and

guidelines apply only to federally chartered credit unions and would not have substantial direct effects on the States, on the connection between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that these final rules and guidelines do not constitute a policy that has federalism implications for purposes of the Executive Order.

F. OCC and OTS Unfunded Mandates Reform Act of 1995 Determinations

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104 - 4 (UMRA) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more (adjusted annually for inflation) in any one year. (The inflation adjusted threshold is \$133 million or more.) If a budgetary impact statement is required, section 205 of the UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC and OTS each determined that its final rules will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$133 million or more in any one year. Accordingly, neither OCC nor OTS has prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

G. NCUA: The Treasury and General Government Appropriations Act, 1999- Assessment of Federal Regulations and Policies on Families

The NCUA has determined that these final rules do not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

List of Subjects

12 CFR Part 41

Banks, banking, Consumer protection, National Banks, Reporting and recordkeeping requirements.

12 CFR Part 222

Banks, banking, Holding companies, state member banks.

12 CFR Part 334

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Safety and soundness.

12 CFR Part 571

Consumer protection, Credit, Fair Credit Reporting Act, Privacy, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 717

Consumer protection, Credit unions, Fair credit reporting, Privacy, Reporting and recordkeeping requirements.

16 CFR Part 660

Fair Credit Reporting Act, Consumer reports, Consumer reporting agencies, Information furnishers, Identity theft, Trade practices.

National Credit Union Administration

12 CFR Chapter VII

Authority and Issuance

For the reasons discussed in the joint preamble, the National Credit Union Administration amends chapter VII of title 12 of the Code of Federal Regulations by amending 12 CFR part 717 as follows:

PART 717 – FAIR CREDIT REPORTING

1. Revise the authority citation for part 717 to read as follows:

Authority: 12 U.S.C. 1751 et seq.; 15 U.S.C. 1681a, 1681b, 1681c, 1681m, 1681s, 1681s-1, 1681t, 1681w, 6801 and 6805, Pub. L. 108-159, 117 Stat. 1952.

2. Add a new subpart E to part 717 to read as follows:

Subpart E—Duties of Furnishers of Information

Sec.

717.40 Scope.

717.41 Definitions.

717.42 Reasonable policies and procedures concerning the accuracy and integrity of furnished information.

717.43 Direct disputes.

Subpart E—Duties of Furnishers of Information

§ 717.40 Scope.

This subpart applies to a federal credit union that furnishes information to a consumer reporting agency.

§ 717.41 Definitions.

For purposes of this subpart and Appendix E of this part, the following definitions apply:

(a) Accuracy means that information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer correctly:

- (1) Reflects the terms of and liability for the account or other relationship;
- (2) Reflects the consumer's performance and other conduct with respect to the account or other relationship; and
- (3) Identifies the appropriate consumer.

(b) Direct dispute means a dispute submitted directly to a furnisher (including a furnisher that is a debt collector) by a consumer concerning the accuracy of any information contained in a consumer report and pertaining to an account or other relationship that the furnisher has or had with the consumer.

(c) Furnisher means an entity that furnishes information relating to consumers to one or more consumer reporting agencies for inclusion in a consumer report. An entity is not a furnisher when it:

- (1) Provides information to a consumer reporting agency solely to obtain a consumer report in accordance with sections 604(a) and (f) of the Fair Credit Reporting Act;
- (2) Is acting as a "consumer reporting agency" as defined in section 603(f) of the Fair Credit Reporting Act;
- (3) Is a consumer to whom the furnished information pertains; or
- (4) Is a neighbor, friend, or associate of the consumer, or another individual with whom the consumer is acquainted or who may have knowledge about the consumer, and

who provides information about the consumer's character, general reputation, personal characteristics, or mode of living in response to a specific request from a consumer reporting agency.

(d) Identity theft has the same meaning as in 16 CFR 603.2(a).

(e) Integrity means that information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer:

(1) Is substantiated by the furnisher's records at the time it is furnished;

(2) Is furnished in a form and manner that is designed to minimize the likelihood that the information may be incorrectly reflected in a consumer report; and

(3) Includes the information in the furnisher's possession about the account or other relationship that the NCUA has:

(i) Determined that the absence of which would likely be materially misleading in evaluating a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living; and

(ii) Listed in section I.(b)(2)(iii) of Appendix E of this part.

§ 717.42 Reasonable policies and procedures concerning the accuracy and integrity of furnished information.

(a) Policies and procedures. Each furnisher must establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to a consumer reporting agency. The policies and procedures must be appropriate to the nature, size, complexity, and scope of each furnisher's activities.

(b) Guidelines. Each furnisher must consider the guidelines in Appendix E of this part in developing its policies and procedures required by this section, and incorporate those guidelines that are appropriate.

(c) Reviewing and updating policies and procedures. Each furnisher must review its policies and procedures required by this section periodically and update them as necessary to ensure their continued effectiveness.

§ 717.43 Direct disputes.

(a) General rule. Except as otherwise provided in this section, a furnisher must conduct a reasonable investigation of a direct dispute if it relates to:

(1) The consumer's liability for a credit account or other debt with the furnisher, such as direct disputes relating to whether there is or has been identity theft or fraud against the consumer, whether there is individual or joint liability on an account, or whether the consumer is an authorized user of a credit account;

(2) The terms of a credit account or other debt with the furnisher, such as direct disputes relating to the type of account, principal balance, scheduled payment amount on an account, or the amount of the credit limit on an open-end account;

(3) The consumer's performance or other conduct concerning an account or other relationship with the furnisher, such as direct disputes relating to the current payment status, high balance, date a payment was made, the amount of a payment made, or the date an account was opened or closed; or

(4) Any other information contained in a consumer report regarding an account or other relationship with the furnisher that bears on the consumer's creditworthiness, credit

standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

(b) Exceptions. The requirements of paragraph (a) of this section do not apply to a furnisher if:

(1) The direct dispute relates to:

(i) The consumer's identifying information (other than a direct dispute relating to a consumer's liability for a credit account or other debt with the furnisher, as provided in paragraph (a)(1) of this section) such as name(s), date of birth, Social Security number, telephone number(s), or address(es);

(ii) The identity of past or present employers;

(iii) Inquiries or requests for a consumer report;

(iv) Information derived from public records, such as judgments, bankruptcies, liens, and other legal matters (unless provided by a furnisher with an account or other relationship with the consumer);

(v) Information related to fraud alerts or active duty alerts; or

(vi) Information provided to a consumer reporting agency by another furnisher; or

(2) The furnisher has a reasonable belief that the direct dispute is submitted by, is prepared on behalf of the consumer by, or is submitted on a form supplied to the consumer by, a credit repair organization, as defined in 15 U.S.C. 1679a(3), or an entity that would be a credit repair organization, but for 15 U.S.C. 1679a(3)(B)(i).

(c) Direct dispute address. A furnisher is required to investigate a direct dispute only if a consumer submits a dispute notice to the furnisher at:

(1) The address of a furnisher provided by a furnisher and set forth on a consumer report relating to the consumer;

(2) An address clearly and conspicuously specified by the furnisher for submitting direct disputes that is provided to the consumer in writing or electronically (if the consumer has agreed to the electronic delivery of information from the furnisher); or

(3) Any business address of the furnisher if the furnisher has not so specified and provided an address for submitting direct disputes under subparagraphs (c)(1) or (2) of this section.

(d) Direct dispute notice contents. A dispute notice must include:

(1) Sufficient information to identify the account or other relationship that is in dispute, such as an account number and the name, address, and telephone number of the consumer, if applicable;

(2) The specific information that the consumer is disputing and an explanation of the basis for the dispute; and

(3) All supporting documentation or other information reasonably required by the furnisher to substantiate the basis of the dispute. This documentation may include, for example: a copy of the relevant portion of the consumer report that contains the allegedly inaccurate information; a police report; a fraud or identity theft affidavit; a court order; or account statements.

(e) Duty of furnisher after receiving a direct dispute notice. After receiving a dispute notice from a consumer pursuant to paragraphs (c) and (d) of this section, the furnisher must:

(1) Conduct a reasonable investigation with respect to the disputed information;

(2) Review all relevant information provided by the consumer with the dispute notice;

(3) Complete its investigation of the dispute and report the results of the investigation to the consumer before the expiration of the period under section 611(a)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681i(a)(1)) within which a consumer reporting agency would be required to complete its action if the consumer had elected to dispute the information under that section; and

(4) If the investigation finds that the information reported was inaccurate, promptly notify each consumer reporting agency to which the furnisher provided inaccurate information of that determination and provide to the consumer reporting agency any correction to that information that is necessary to make the information provided by the furnisher accurate.

(f) Frivolous or irrelevant disputes. (1) A furnisher is not required to investigate a direct 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 disputed information as required by paragraph (d) of this section;

(ii) The direct dispute is substantially the same as a dispute previously submitted by or on behalf of the consumer, either directly to the furnisher or through a consumer reporting agency, with respect to which the furnisher has already satisfied the applicable requirements of the Act or this section; provided, however, that a direct dispute is not substantially the same as a dispute previously submitted if the dispute includes

information listed in paragraph (d) of this section that had not previously been provided to the furnisher; or

(iii) The furnisher is not required to investigate the direct dispute because one or more of the exceptions listed in paragraph (b) of this section applies.

(2) Notice of determination. 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, by mail or, if authorized by the consumer for that purpose, by any other means available to the furnisher.

(3) Contents of notice of determination that a dispute is frivolous or irrelevant. A notice of determination that a dispute is frivolous or irrelevant must include the reasons for such determination and identify any information required to investigate the disputed information, which notice may consist of a standardized form describing the general nature of such information.

3. Add a new appendix E to part 717 to read as follows:

APPENDIX E TO PART 717—INTERAGENCY GUIDELINES CONCERNING THE ACCURACY AND INTEGRITY OF INFORMATION FURNISHED TO CONSUMER REPORTING AGENCIES

The NCUA encourages voluntary furnishing of information to consumer reporting agencies. Section 717.42 of this part requires each furnisher to establish and implement reasonable written policies and procedures concerning the accuracy and integrity of the information it furnishes to consumer reporting agencies. Under § 717.42(b), a furnisher must consider the guidelines set forth below in developing its policies and procedures. In establishing these policies and procedures, a furnisher may include any of its existing

policies and procedures that are relevant and appropriate. Section 717.42(c) requires each furnisher to review its policies and procedures periodically and update them as necessary to ensure their continued effectiveness.

I. NATURE, SCOPE, AND OBJECTIVES OF POLICIES AND PROCEDURES

(a) Nature and Scope. Section 717.42(a) of this part requires that a furnisher's policies and procedures be appropriate to the nature, size, complexity, and scope of the furnisher's activities. In developing its policies and procedures, a furnisher should consider, for example:

- (1) The types of business activities in which the furnisher engages;
- (2) The nature and frequency of the information the furnisher provides to consumer reporting agencies; and
- (3) The technology used by the furnisher to furnish information to consumer reporting agencies.

(b) Objectives. A furnisher's policies and procedures should be reasonably designed to promote the following objectives:

- (1) To furnish information about accounts or other relationships with a consumer that is accurate, such that the furnished information:
 - (i) Identifies the appropriate consumer;
 - (ii) Reflects the terms of and liability for those accounts or other relationships;and
 - (iii) Reflects the consumer's performance and other conduct with respect to the account or other relationship;

(2) To furnish information about accounts or other relationships with a consumer that has integrity, such that the furnished information:

(i) Is substantiated by the furnisher's records at the time it is furnished;

(ii) Is furnished in a form and manner that is designed to minimize the likelihood that the information may be incorrectly reflected in a consumer report; thus, the furnished information should:

(A) Include appropriate identifying information about the consumer to whom it pertains; and

(B) Be furnished in a standardized and clearly understandable form and manner and with a date specifying the time period to which the information pertains; and

(iii) Includes the credit limit, if applicable and in the furnisher's possession;

(3) To conduct reasonable investigations of consumer disputes and take appropriate actions based on the outcome of such investigations; and

(4) To update the information it furnishes as necessary to reflect the current status of the consumer's account or other relationship, including, for example:

(i) Any transfer of an account (e.g., by sale or assignment for collection) to a third party; and

(ii) Any cure of the consumer's failure to abide by the terms of the account or other relationship.

II. ESTABLISHING AND IMPLEMENTING POLICIES AND PROCEDURES

In establishing and implementing its policies and procedures, a furnisher should:

(a) Identify practices or activities of the furnisher that can compromise the accuracy or integrity of information furnished to consumer reporting agencies, such as by:

(1) Reviewing its existing practices and activities, including the technological means and other methods it uses to furnish information to consumer reporting agencies and the frequency and timing of its furnishing of information;

(2) Reviewing its historical records relating to accuracy or integrity or to disputes; reviewing other information relating to the accuracy or integrity of information provided by the furnisher to consumer reporting agencies; and considering the types of errors, omissions, or other problems that may have affected the accuracy or integrity of information it has furnished about consumers to consumer reporting agencies;

(3) Considering any feedback received from consumer reporting agencies, consumers, or other appropriate parties;

(4) Obtaining feedback from the furnisher's staff; and

(5) Considering the potential impact of the furnisher's policies and procedures on consumers.

(b) Evaluate the effectiveness of existing policies and procedures of the furnisher regarding the accuracy and integrity of information furnished to consumer reporting agencies; consider whether new, additional, or different policies and procedures are necessary; and consider whether implementation of existing policies and procedures should be modified to enhance the accuracy and integrity of information about consumers furnished to consumer reporting agencies.

(c) Evaluate the effectiveness of specific methods (including technological means) the furnisher uses to provide information to consumer reporting agencies; how those methods may affect the accuracy and integrity of the information it provides to consumer reporting agencies; and whether new, additional, or different methods (including technological means) should be used to provide information to consumer reporting agencies to enhance the accuracy and integrity of that information.

III. SPECIFIC COMPONENTS OF POLICIES AND PROCEDURES

In developing its policies and procedures, a furnisher should address the following, as appropriate:

(a) Establishing and implementing a system for furnishing information about consumers to consumer reporting agencies that is appropriate to the nature, size, complexity, and scope of the furnisher's business operations.

(b) Using standard data reporting formats and standard procedures for compiling and furnishing data, where feasible, such as the electronic transmission of information about consumers to consumer reporting agencies.

(c) Maintaining records for a reasonable period of time, not less than any applicable recordkeeping requirement, in order to substantiate the accuracy of any information about consumers it furnishes that is subject to a direct dispute.

(d) Establishing and implementing appropriate internal controls regarding the accuracy and integrity of information about consumers furnished to consumer reporting agencies, such as by implementing standard procedures and verifying random samples of information provided to consumer reporting agencies.

(e) Training staff that participates in activities related to the furnishing of information about consumers to consumer reporting agencies to implement the policies and procedures.

(f) Providing for appropriate and effective oversight of relevant service providers whose activities may affect the accuracy or integrity of information about consumers furnished to consumer reporting agencies to ensure compliance with the policies and procedures.

(g) Furnishing information about consumers to consumer reporting agencies following mergers, portfolio acquisitions or sales, or other acquisitions or transfers of accounts or other obligations in a manner that prevents re-aging of information, duplicative reporting, or other problems that may similarly affect the accuracy or integrity of the information furnished.

(h) Deleting, updating, and correcting information in the furnisher's records, as appropriate, to avoid furnishing inaccurate information.

(i) Conducting reasonable investigations of disputes.

(j) Designing technological and other means of communication with consumer reporting agencies to prevent duplicative reporting of accounts, erroneous association of information with the wrong consumer(s), and other occurrences that may compromise the accuracy or integrity of information provided to consumer reporting agencies.

(k) Providing 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 properly to identify the consumer.

(l) Conducting a periodic evaluation of its own practices, consumer reporting agency practices of which the furnisher is aware, investigations of disputed information, corrections of inaccurate information, means of communication, and other factors that may affect the accuracy or integrity of information furnished to consumer reporting agencies.

(m) Complying with applicable requirements under the Fair Credit Reporting Act and its implementing regulations.

Federal Trade Commission

16 CFR Chapter I

Authority and Issuance

For the reasons discussed in the joint preamble, the Federal Trade Commission adds a new to part 660 to title 16 of the Code of Federal Regulations as follows:

[THIS SIGNATURE PAGE RELATES TO THE FINAL RULES TITLED
"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."]

By the National Credit Union Administration Board on May 21, 2009.

Mary Rupp,

Secretary of the Board.