DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 41

[Docket ID OCC–2007–0019]

RIN 1557–AC89

FEDERAL RESERVE SYSTEM

12 CFR Part 222

[Docket No. R–1300]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 334

RIN 3064–AC99

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 571

[Docket No. OTS–2007–0022]

RIN 1550–AC01

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 717

FEDERAL TRADE COMMISSION

16 CFR Part 660

RIN 3084–AA94

Interagency Notice of Proposed Rulemaking: 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: Notice of proposed rulemaking.

SUMMARY: The OCC, Board, FDIC, OTS, NCUA, and FTC (Agencies) are publishing for comment proposed regulations and guidelines to implement the accuracy and integrity provisions in section 312 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act).[1] The proposed regulations and guidelines would 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 and prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines. The Agencies also are publishing for comment proposed regulations to implement the direct dispute provisions in section 312. The proposed regulations would 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.

[1] Pub. L. 108–159, 117 Stat. 1952 (Dec. 4, 2003).

DATES: Comments must be submitted by February 11, 2008.

ADDRESSES: Because paper mail in the Washington, DC area and at the Agencies is subject to delay, commenters are encouraged to submit comments by e-mail, if possible. Commenters are also encouraged to use the title ''Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies'' to facilitate the organization and distribution of the comments. Comments submitted to one or more of the Agencies will be made available to all of the Agencies. Interested parties are invited to submit comments to:

OCC: You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—''Regulations.gov''*: Go to *http://www.regulations.gov*, select ''Comptroller of the Currency'' from the agency drop-down menu, then click ''Submit.'' In the ''Docket ID'' column, select ''OCC–2007–0019'' to submit or view public comments and to view supporting and related materials for this notice of proposed rulemaking. The ''User Tips'' link at the top of the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219.
- *E-mail: regs.comments@occ.treas.gov*.
- *Fax:* (202) 874–4448.
- *Hand Delivery/Courier:* 250 E Street, SW., Attn: Public Information Room, Mail Stop 1–5, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket Number OCC–2007–0019'' in your comment. In general, OCC will enter all comments received into the docket and publish them on *Regulations.gov* without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials by any of the following methods:

- *Viewing Comments Electronically:* Go to *http://www.regulations.gov*, select the ''Search for All Documents (Open and Closed for Comment)'' option, select ''Comptroller of the Currency'' from the agency drop-down menu, then click ''Submit.'' In the ''Docket ID'' column, select ''OCC–2007–0019'' to view public comments for this notice of proposed rulemaking.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect comments by calling (202) 874–5043.
- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. R–1300, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov*. Include docket number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted,

unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, identified by the RIN for this rulemaking, by any of the following methods:

- *Agency Web site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency Web site.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-Mail: Comments@FDIC.gov.* Include the RIN number in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, *Attention*: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery/Courier*: Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html*, including any personal information provided. Comments may be inspected and photocopied at the FDIC Public Information Center, Room E–1002, 3501 North Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. (EST) on business days. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

OTS: You may submit comments, identified by OTS–2007–0022, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*, select ''Office of Thrift Supervision'' from the agency drop-down menu, then click submit. Select Docket ID ''OTS–2007–0022'' to submit or view public comments and to view supporting and related materials for this notice of proposed rulemaking. The ''User Tips'' link at the top of the page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: OTS–2007–0022.
- *Fax:* (202) 906–6518.
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: OTS–2007–0022.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be entered into the docket and posted on Regulations.gov without change, including any personal information provided. Comments, including attachments and other supporting materials received are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.
- *Viewing Comments Electronically:* Go to *http://www.regulations.gov*, select ''Office of Thrift Supervision'' from the agency drop-down menu, then click ''Submit.'' Select Docket ID ''OTS–2007–0022'' to view public comments for this notice of proposed rulemaking.
- *Viewing Comments On-Site:* You may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–6518. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

NCUA: You may submit comments by any of the following methods (please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Web Site: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Notice of Proposed Rulemaking Part 717, 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'' in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.
- *Hand Delivery/Courier:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration. Deliver to guard station in the lobby of 1775 Duke Street, Alexandria, VA 22314–3428, on business days between 8 a.m. and 5 p.m.

All public comments are available on the agency's Web site at *http://www.ncua.gov/RegulationsOpinionsLaws/comments* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library, at 1775 Duke Street, Alexandria, VA 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to *OGCMail@ncua.gov.*

FTC: Comments should refer to ''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, Project No. R611017,'' and may be submitted by any of the following methods. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c).[2]

- *E-mail: https://secure.commentworks.com/ftc-FACTAfurnishers.* To ensure that the Commission considers an electronic comment, you must file it on the Web-based form found at this Web link and follow the instructions on that form.
- *Federal eRulemaking Portal: http://www.regulations.gov.* You may visit this Web site to read this request for public comment and to file an electronic comment. The Commission will consider all comments that *regulations.gov* forwards to it.
- *Mail or Hand Delivery:* A comment filed in paper form should refer, both in the text and on the envelope, to the name and project number identified above, and should be mailed or delivered to the following address:

[2] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

Federal Trade Commission/Office of the Secretary, Room 159–H (Annex C), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov/os/publiccomments.htm.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT:

OCC: Stephen Van Meter, Assistant Director, Community and Consumer Law Division, (202) 874–5750; Patrick T. Tierney, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090; or Paul Utterback, National Bank Examiner, Compliance Policy, (202) 874–4428, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: David A. Stein, Counsel, Amy E. Burke, Attorney, or Jelena McWilliams, Attorney, Division of Consumer and Community Affairs, (202) 452–3667 or (202) 452–2412; or Anne B. Zorc, Senior Attorney, (202) 452–3876, or Kara L. Handzlik, Attorney, (202) 452–3852, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

FDIC: David P. Lafleur, Policy Analyst, (202) 898–6569, or John Jackwood, Senior Policy Analyst, (202) 898–3991, Division of Supervision and Consumer Protection; Richard M. Schwartz, Counsel, (202) 898–7424, or Richard B. Foley, Counsel, (202) 898–3784, Legal Division; 550 17th St., NW., Washington, DC 20429.

OTS: Suzanne McQueen, Consumer Regulations Analyst, Compliance and Consumer Protection Division, (202) 906–6459; or Richard Bennett, Senior Compliance Counsel, Regulations and Legislation Division, (202) 906–7409, at 1700 G Street, NW., Washington, DC 20552.

NCUA: Linda Dent or Regina Metz, Attorneys, Office of General Counsel, phone (703) 518–6540 or fax (703) 518–6569, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

FTC: Clarke W. Brinckerhoff and Pavneet Singh, Attorneys, (202) 326–2252, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

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.[3] In 1996, the Consumer Credit Reporting Reform Act extensively amended the FCRA.[4] The FACT Act further amended the FCRA for various purposes, including to increase the accuracy of consumer reports.

Section 623 of the FCRA describes the responsibilities of persons that furnish information about consumers (furnishers) to consumer reporting agencies (CRAs).[5] 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 consumer reporting agencies and to prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines (referred to in this proposal as the accuracy and integrity regulations 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 provided by a furnisher to a CRA and contained in a consumer report based on a direct request from a consumer (referred to in this proposal as the direct dispute regulations). The Agencies are proposing to adopt accuracy and integrity regulations and guidelines and direct dispute regulations to satisfy the requirements of section 312.[6]

[3] 15 U.S.C. 1681–1681x.

[4] Pub. L. 104–208, 110 Stat. 3009 (Sept. 20, 1996).

[5] Section 623 is codified at 15 U.S.C. 1681s–2.

[6] The FACT Act also directs the FTC to ''conduct an ongoing study of the accuracy and completeness of information contained in consumer reports prepared or maintained by consumer reporting agencies and methods for improving the accuracy and completeness of such information.'' *See* section 319 of the FACT Act. The FTC submitted its first interim report to Congress on this study on December 9, 2004, *http://www.ftc.gov/reports/facta/041209factarpt.pdf* (last visited Oct. 4, 2007). The FTC submitted its second interim report to Congress in December 2006, *http://www.ftc.gov/reports/FACTACT/FACT_Act_Report_2006.pdf* (last visited Oct. 4, 2007).

II. Statutory Requirements

Accuracy and Integrity Regulations and Guidelines

As added by section 312 of the FACT Act, 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 of the other Agencies.

Direct Disputes

As amended by section 312 of the FACT Act, 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' Advance Notice of Proposed Rulemaking

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 Agencies issued an advance notice of proposed rulemaking (ANPR) in March 2006.[7] 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 received a total of 197 comments. Commenters included depository institutions, other financial services companies, trade associations, a CRA, a credit score service provider, a mortgage company, consumer groups, and individual consumers. Key issues identified and comments received on the accuracy and integrity criteria and on the direct dispute factors are summarized separately in the next two sections.

Comments Pertaining to Accuracy and Integrity Regulations and Guidelines

Burden of accuracy and integrity regulations and guidelines. A consistent theme among industry commenters on the ANPR was that the proposed guidelines and regulations should be sensitive to the voluntary nature of the reporting of information about consumers by furnishers to CRAs and not create undue burdens on furnishers that would discourage reporting. These commenters asserted that imposing burden on furnishers may result in furnishers reporting less information than they do presently or ceasing to report at all, thereby decreasing the effectiveness of the current credit reporting system for both consumers and industry.

Types of errors, omissions, or other problems that may impair the accuracy and integrity of furnished information. Many commenters detailed the types of errors that may impair the accuracy of information furnished to CRAs. Industry commenters, consumer groups, and individuals stated that some furnishers do not report consumers' positive payment histories, a practice that can lead to lower credit scores than consumers may merit. Similarly, commenters also noted that some furnishers do not report credit limits, which may likewise lead to lower credit scores. Consumer groups reported that sales of consumer accounts to collection agencies also result in accounts being ''re-aged,'' meaning that a debt receives a new origination date when the collection account is opened, resulting in the debt being included on a consumer's credit file longer than legally permissible. In addition, a number of industry commenters mentioned that data entry errors by furnishers and different data processing procedures by the CRAs can result in ''mixed files''—files that include information from two or more consumers. Commenters noted that furnishing inaccurate information can adversely affect consumer credit scores and result in higher costs of credit for some consumers and increased credit risk for lenders.

Patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of furnished information. Industry commenters and consumer groups stated that a number of furnishers do not use the industry standard format for reporting information about consumers to CRAs, which results in the reporting of inaccurate information. In addition, industry and consumer groups mentioned that sales of debt to collection agencies or to other creditors results in inaccurate information reported to the CRAs (*e.g.*, duplicative reporting of accounts and re-aged accounts). Consumer groups and a trade association noted problems with inaccurate bankruptcy information being reported—some furnishers continue to report a debt as not included in bankruptcy, fail to record a debt as discharged, or continue to show a balance owed after bankruptcy discharge. Several industry commenters stated that some furnishers do not provide data to CRAs in a timely manner, which may result in delinquent debtors appearing as current on their loans.

Business, economic, or other reasons for the patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of furnished information. A few consumer groups and trade associations indicated that some creditors omit good payment history or credit limit information in order to protect their proprietary underwriting systems and prevent competitors from soliciting business from their customers. Some commenters also asserted that collection agencies have little economic incentive to report updated or accurate information because they typically do not use consumer report information to determine credit risk.

Recommendations and descriptions of policies and procedures that a furnisher should implement and maintain to identify, prevent, or mitigate patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of information furnished to a CRA. Some individual and industry commenters recommended that furnishers report all consumer account information to CRAs and not omit information. Consumer groups and some industry commenters recommended that furnishers should report using the Metro 2 format—a standard reporting format created by the credit reporting industry—or a similar standardized format. Some depository institutions and trade associations suggested that the accuracy and integrity guidelines should be flexible and take into consideration the diversity of furnishers with regard to size and business complexity.

Methods (including technological means) used to furnish information about consumers to CRAs. Industry commenters stated that most furnishers are reporting to the three nationwide CRAs electronically using the Metro 2 format, although some furnishers transmit information via magnetic tape, disks, or paper. Some trade associations commented that errors can be introduced into a consumer's credit file when a CRA translates the furnisher's raw data into the CRA's database.

[7] 71 FR 14,419 (March 22, 2006).

Maintenance and enforcement of policies and procedures to ensure the accuracy and integrity of information furnished to CRAs. Industry commenters stated that, in general, furnishers have policies and procedures in place to ensure the accuracy of information and perform internal audits to verify accuracy. Industry commenters also stated that furnishers have a business incentive to maintain and report accurate information in order to maintain good customer relations.

Methods (including any technological means) that a furnisher should use to ensure the accuracy and integrity of information about consumers furnished to CRAs. Industry commenters suggested that furnishers should use internal reports to verify the accuracy of information transmitted to the CRAs. Consumer groups recommended that furnishers take appropriate steps to ensure that they report bankruptcy discharge information accurately.

Descriptions of policies, procedures, and processes used by furnishers to conduct reinvestigations and to correct inaccurately furnished information and recommendations that furnishers should adopt. Industry commenters indicated that most furnishers use an electronic automated system (e-OSCAR) for receiving and transmitting consumer dispute information from and to the three nationwide CRAs. Although each furnisher has its own procedures for investigating disputes, furnishers generally review the information provided by the CRA and compare it to the information in the consumer's file at the furnisher. A few industry commenters stated that using the e-OSCAR system to conduct reinvestigations is adequate. One trade association stated that furnishers should establish better reinvestigation procedures and provide staff training for processing credit disputes.

Consumer groups commented that furnishers' reinvestigation procedures are inadequate in that they only verify that the reported information is consistent with the furnishers' records, not the underlying accuracy of such information. Consumer groups recommended that furnishers should perform in-depth investigations beyond verifying that information reported to CRAs matches furnishers' records, including contacting consumers to obtain additional information, if necessary. Consumer groups also noted that CRAs do not provide furnishers with documentation provided by consumers to support their claims.

Description of the policies and procedures of CRAs for ensuring the accuracy and integrity of furnished information and whether and to what extent those policies, procedures, or other requirements address particular problems that may affect information accuracy and integrity. A few industry commenters noted that CRAs have implemented policies to ensure the accuracy of information that they receive from furnishers. One industry commenter asserted that once CRAs incorporate data into their databases, furnishers do not know how CRAs actually apply the data to consumer credit files or whether the data is applied to the correct consumers.

Comments Pertaining to Direct Dispute Regulations

Circumstances under which a furnisher should be required to investigate a dispute. Industry commenters indicated that furnishers generally are voluntarily investigating disputes that are directly submitted to them using a process that is similar to the one furnishers use to investigate disputes that CRAs forward to the furnishers. Industry commenters, however, also stated that investigations of direct disputes should be required only in instances of fraud or identity theft that can be documented by the consumer, or where the consumer has provided a written detailed dispute to the furnisher. Other industry commenters believe that investigations of direct disputes should only be required if the consumer has already disputed the item with the CRA and received a response. Consumer groups favored a broad application of the direct dispute rule, noting that many furnishers already have an obligation to investigate other types of disputes for major product categories under other laws, such as the Truth in Lending Act, Real Estate Settlement Procedures Act, and Electronic Fund Transfer Act. Some individuals commented that furnishers should always be required to reinvestigate a consumer's account upon the consumer's request.

Benefits or costs to consumers that may result from a direct dispute right. Consumer groups commented that consumers would benefit from direct disputes because the dispute requirement would eliminate the problem of CRAs not forwarding disputes and supporting documentation to furnishers and would provide furnishers with necessary documentation to investigate errors or fraud. One individual noted that consumers would benefit by being able to deal with one entity, the furnisher, rather than the three nationwide CRAs. Some industry commenters noted that consumers would benefit from direct disputes in complex cases or where the consumer needs to provide the furnisher with supporting documentation.

Benefits to furnishers, consumer reporting agencies, or the credit reporting system that may result if furnishers are required to investigate direct disputes. Consumer groups stated that direct disputes will result in a more accurate credit reporting system and would afford industry the opportunity to standardize the dispute resolution process. A few industry commenters stated that direct disputes would yield faster dispute resolution for consumers. Some industry commenters mentioned that direct disputes may be beneficial for providing to furnishers additional documentation for complex disputes, noting that such information may not be forwarded by CRAs.

Costs to furnishers, consumer reporting agencies, or the credit reporting system of implementing a direct dispute requirement. Industry commenters believed that a direct dispute requirement would impose significant costs on furnishers resulting from an expected increase in the number of direct disputes. One depository institution reported that the costs of resolving a direct dispute are related to whether the disputed information contains derogatory information and the nature of the consumer's dispute. Some industry commenters noted that reviewing consumers' lengthy payment histories can be costly. One industry commenter noted that a direct dispute requirement would shift costs from CRAs to furnishers.

One consumer group commented that start-up costs should not be burdensome as many furnishers already have direct dispute responsibilities for their major products (such as credit cards). This commenter asserted that the cost for processing a direct dispute ranges from $25 to $200, and that this cost is exceeded by the harms to consumers who are adversely affected due to reporting errors.

Impact on the overall accuracy and integrity of consumer reports if furnishers are required to investigate direct disputes. Some industry commenters stated that they expect an adverse impact on overall accuracy and integrity of consumer reports as a result of an increase in duplicate disputes and costs, decreased efficiency in processing disputes, and the likelihood that some furnishers would stop reporting or report less information than they currently do.

Whether direct contact by the consumer with the furnisher would likely result in the most expeditious

resolution of a dispute. Industry commenters generally believed that direct contact by the consumer is most appropriate in instances of fraud, identity theft, or where detailed information is needed in order to resolve the consumer dispute. Some industry commenters also stated that direct contact by the consumer would not be appropriate where the error lies with the CRA or an aggregator rather than with the furnisher.

Potential impact on the credit reporting process if credit repair organizations are able to circumvent the FCRA's prohibition of their submission of direct disputes. Consumer groups and an individual commented that attorneys should be permitted to assist consumers with disputes and not be considered credit repair organizations. Industry commenters predicted an increase in costs resulting from a significant increase in the number of direct disputes that would be filed by credit repair organizations, which, these commenters contended, are often deliberately vague or overbroad.

Additional, specific comments are mentioned, as appropriate, in the section-by-section analysis.

The Agencies have carefully considered the comments received in response to the ANPR in developing the proposed accuracy and integrity regulations and guidelines and the proposed direct dispute regulations. The Agencies also reviewed a number of studies that have identified potential issues that may affect the accuracy of consumer report information. These studies indicate that consumer report accuracy may be affected by the presence of stale account information, the practice of furnishing only negative information about an account, inaccurate or incomplete public record data, inaccurate or incomplete collection account data, and unreported credit limits.[8]

IV. Section-by-Section Analysis[9]

The following describes the three components of this rulemaking: the proposed accuracy and integrity regulations, the proposed accuracy and integrity guidelines, and the proposed direct dispute regulations.

Proposed Accuracy and Integrity Regulations

Section _.40 Scope

Section _.40 sets forth the scope of each Agency's proposed regulations requiring furnishers to establish reasonable policies and procedures for implementing the accuracy and integrity guidelines. Each of the Agencies has tailored this section to describe those entities to which this subpart applies. The FDIC requests comment on whether it would be useful to include a cross-reference in its proposed regulation to the definition of ''subsidiary'' in the Federal Deposit Insurance Act.[10]

Section _.41 Definitions.

Two approaches to defining the terms ''accuracy'' and ''integrity.''

Section 623(e) of the FCRA requires the Agencies to establish and maintain guidelines for use by furnishers regarding the accuracy and integrity of the information about consumers that they furnish to CRAs. The statute does not define the terms ''accuracy'' or ''integrity.''

Consumer group and industry commenters on the ANPR provided suggestions for defining the terms ''accuracy'' and ''integrity.'' Consumer groups proposed that the Agencies define the term ''accuracy'' to mean ''conformity to fact,'' rather than conformity to data records. They said that an accuracy standard should rely not only upon a furnisher's data records, but also upon original documents such as credit agreements. Some consumer groups also said that information should not be considered ''accurate'' if it is overly general, incomplete, out-of-date, or misleading. Consumer groups also proposed that the Agencies make clear that information lacks ''integrity'' if it is technically accurate, but misleads users of consumer reports because it does not include critical information.

Industry commenters, citing the legislative history of the FACT Act, suggested that the term ''integrity'' does not mean completeness, but rather, that the information a furnisher provides to a CRA is factually correct.

In the Agencies' view, neither the text nor the legislative history of the FACT Act resolves how the terms ''accuracy'' and ''integrity'' should be defined. Although the terms used in section 623(e) differ from terms used in other provisions of the FCRA,[11] the text of section 623(e) provides no direction to the Agencies about the meaning or significance of that difference.[12] The Agencies have reviewed the legislative history, and note that the Congressional Record includes post-enrollment statements regarding section 623(e) made by the Chairman of the House Financial Services Committee and by the Ranking Member of the Senate Committee on Banking, Housing and Urban Affairs.[13] Those statements,

[8] *See* Robert B. Avery, Raphael W. Bostic, Paul S. Calem & Glenn B. Canner, *An Overview of Consumer Data and Credit Reporting*, Federal Reserve Bulletin, vol. 89, at 47–73 (Feb. 2003); Robert B. Avery, Paul S. Calem, Glenn B. Canner & Shannon C. Mok, *Credit Report Accuracy and Access to Credit*, Federal Reserve Bulletin, vol. 90, at 297–322 (Summer 2004); Consumer Federation of America & National Credit Reporting Association, *Credit Score Accuracy and Implications for Consumers* (Dec. 17, 2002), *http://www.consumerfed.org/pdfs/121702CFA_NCRA_Credit_Score_Report_Final.pdf* (last visited Oct. 4, 2007); Federal Trade Commission and Board of Governors of the Federal Reserve System, *Report to Congress on the Fair Credit Reporting Act Dispute Process* (Aug. 2006).

[9] The OCC, Board, FDIC, OTS and NCUA would place the proposed regulations and guidelines implementing section 312 in the part of their regulations that implement 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 would place the proposed 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.

[10] *See* 12 U.S.C. 1813(w)(4).

[11] *See* FCRA section 623(b)(1), 15 U.S.C. 1681s–2(b)(1) (requiring entities that furnish information to CRAs to conduct investigations in response to complaints regarding the ''completeness or accuracy'' of furnished information); sections FCRA 623(a)(2)(A)–(B), 15 U.S.C. 1681s–2(a)(2)(A)–(B) (requiring furnishers to correct and update information that the furnisher determines is ''not complete or accurate'' and to refrain from refurnishing information that remains ''not complete or accurate'').

[12] 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. This language also was contained in the bill passed by the Senate and referred to the Conference Committee. However, the bill reported by the Conference Committee used the phrase ''accuracy and integrity.'' *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).

[13] *See* 149 Cong. Rec. E2512, E2516 (Nov. 4, 2003) (extension of remarks of Chairman Michael Oxley, entered into the Congressional Record on Dec. 9, 2003) (''[a]ccuracy and integrity' was selected [by the Congress] as the relevant standard rather than 'accuracy and completeness' as used in Sections 313 and 319 [of the FACT Act], to focus on the quality of the information furnished rather than the completeness of the information furnished.''); 149 Cong. Rec. S15806–02 (Nov. 24, 2003) (statement of Ranking Member Paul Sarbanes) (''[A]ccuracy' relates to whether the information that is provided by data furnishers to credit reporting agencies is factually correct. The term 'integrity' relates to whether all relevant information that is used to assess credit risk and to grant credit is accurately provided. Integrity of information is not achieved when furnishers do not fully provide data that, by its absence, could have a positive or negative effect on a consumer's credit score, or on his or her ability to obtain credit under the most favorable terms for which he or she qualifies.'').

however, provide different views on the meaning of the terms.

In light of these considerations, the Agencies are proposing for comment two alternative approaches to defining the terms ''accuracy'' and ''integrity'' in the text of the regulations and guidelines. Although the definition of ''accuracy'' is the same under both alternatives, the two approaches differ in terms of both the substance of the definition of ''integrity'' and the placement of the definitions. Accordingly, the Agencies request comment on which definition of ''integrity'' should be adopted in the final rule, and on whether the definitions of ''accuracy'' and ''integrity'' should be placed in the regulations or in the guidelines.

A. Regulatory Definition Approach

Under the first approach, the Agencies would provide specific definitions for the terms ''accuracy'' and ''integrity'' in the regulations. This approach, labeled ''Regulatory Definition Approach,'' appears at §§ _.41(a) and _.41(b) in the text of the proposed regulations. Under proposed § _.41(a), the term ''accuracy'' means that any information that a furnisher provides to a CRA about an account or other relationship with the consumer reflects without error the terms of and liability for the account or other relationship and the consumer's performance or other conduct with respect to the account or other relationship. This proposed definition of ''accuracy'' is intended to require that furnishers have reasonable procedures in place to ensure that the information they provide to CRAs is factually correct. The Agencies solicit comment on whether the definition of accuracy should specifically provide that accuracy includes updating information as necessary to ensure that information furnished is current.

Under proposed § _.41(b), the term ''integrity'' means that any information that a furnisher provides to a CRA about an account or other relationship with the consumer does not omit any term, such as a credit limit or opening 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 of a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living. Thus, the Regulatory Definition Approach provides 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.[14]

Under the Regulatory Definition Approach—and as described in further detail in the section-by-section analysis of the guidelines—the Agencies would include in the guidelines six objectives that a furnisher's policies and procedures should be designed to achieve. The six objectives seek to ensure that: Information is furnished accurately; information is furnished with integrity; 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; information is reported in a form and manner designed to minimize the likelihood that it will be erroneously reflected in the consumer's report; information furnished is substantiated by the furnisher's records; and the furnisher updates information it furnishes as necessary to reflect the current status of the consumer's account or other relationship. The first two of these objectives would reflect the regulatory definitions of ''accuracy'' and ''integrity.''

Thus, under the Regulatory Definition Approach, the guidelines would provide 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; and
- Accurately reports the consumer's performance and other conduct with respect to the account or other relationship.

Further, the guidelines would provide that a furnisher should have policies and procedures reasonably designed to ensure that the information it furnishes about accounts or other relationships with a consumer avoids misleading users of consumer reports about the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

Consistent with the FCRA, under which the furnishing of information about consumers is voluntary, the proposed definitions would apply only to information that the furnisher elects to report to CRAs. The Agencies are aware that some furnishers may be subject to separate obligations to report all available information about an account or other relationship.[15] These proposed definitions, however, are not intended to require furnishers to do so.

B. Guidelines Definition Approach

The second approach contained in the proposal, labeled the ''Guidelines Definition Approach,'' would define the terms ''accuracy'' and ''integrity'' in the guidelines—rather than in the regulations—with reference to the objectives that a furnisher's policies and procedures should be designed to accomplish.

Under the Guidelines Definition Approach, the Agencies have identified four objectives that pertain to the accuracy and integrity of information furnished and related matters. Definitions for the terms ''accuracy'' and ''integrity'' would be incorporated into the first two of these objectives. Thus, the guidelines would provide 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 would define ''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 or other conduct with

[14] ''A key factor that credit evaluators consider when they assess the creditworthiness of an individual is credit utilization. If a creditor fails to report a credit limit for an account, credit evaluators must either ignore utilization or use a substitute measure such as the highest-balance level—that is, 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: the higher estimate leads, in turn, to a higher perceived level of credit risk for affected consumers.'' Robert B. Avery, Paul S. Calem, Glenn B. Canner, *Credit Report Accuracy and Access to Credit; Federal Reserve Bulletin*, Summer 2004, p. 306.

[15] Furnishers that report information about consumers to CRAs related to mortgage loans may be required by Freddie Mac, Fannie Mae, and the Federal Housing Administration to report full-file information. *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 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).

respect to the account or other relationship. This is the same definition of ''accuracy'' used in the Regulatory Definition Approach.

Additionally, the guidelines would provide that a furnisher's policies and procedures should ensure that the information it furnishes about accounts or other relationships with a consumer is furnished with integrity. The guidelines would define ''integrity'' to mean that any information that a furnisher provides to a CRA about an account or other relationship with the consumer: (1) Is reported in a form and manner that is designed to minimize the likelihood that the information, although accurate, may be erroneously reflected in a consumer report; and (2) should be substantiated by the furnisher's own records. In addition to being placed in a different location, this definition is substantively different from that used in the Regulatory Definition Approach.

Under the Guidelines Definition Approach, the definition of ''integrity'' does not address the omission of any term the absence of which could contribute to an incorrect evaluation by a user of a consumer's creditworthiness. Instead, the proposed definition of ''integrity'' addresses two potential issues with furnished information. First, accurate information may be attributed to the wrong consumer or the wrong account, or may be associated with an erroneous date. Second, if the accuracy of the furnished information is disputed, the furnisher should be able to substantiate, or verify, the information through its own records. The Regulatory Definition Approach also includes these two concepts in the guidelines as objectives that a furnisher's policies and procedures should be designed to achieve. The Guidelines Definition Approach, like the Regulatory Definition Approach, also includes as objectives: Ensuring 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; and ensuring that the furnisher updates information it furnishes as necessary to reflect the current status of the consumer's account or other relationship.

As noted above, the Agencies invite comment on these alternative definitions of ''integrity,'' and on whether the definitions of ''accuracy'' and ''integrity'' should be placed in the regulatory text or in the guidelines.

Furnisher

Proposed § _.41(c) would define the term ''furnisher'' to mean an entity other than an individual consumer that furnishes information relating to consumers to one or more CRAs. An entity is not a furnisher under the proposed definition when it provides information to a CRA solely to obtain a consumer report under sections 604(a) and (f) of the FCRA, which enumerate the circumstances under which a CRA may provide a consumer report and prohibit persons from obtaining or using consumer reports for impermissible purposes. Users of consumer reports may provide information about consumers to CRAs in order to obtain such reports, but they do not do so for the purpose of having such information included in consumer reports. Although the user's request for the report may be reflected in the consumer report as an inquiry, the Agencies do not believe it would be appropriate to subject such furnishing of information to the regulations and guidelines proposed here. In addition, by defining the term ''furnisher'' in terms of an entity other than an individual consumer, the proposal makes clear that consumers are not furnishers, even if they self-report information about themselves to a CRA.

Identity Theft

Proposed § _.41(d) provides that the term ''identity theft'' has 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,[16] defines the term ''identity theft'' to mean ''a fraud committed or attempted using the identifying information of another person without authority.'' This definition also is used in the interagency regulations implementing section 114 of the FACT Act (Red Flags).

Direct Dispute

Proposed § _.41(e) defines ''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. Although the definition of ''direct dispute'' uses the term accuracy, the proposed Regulatory Definition Approach provides a definition of accuracy for purposes of the definition of ''direct dispute,'' but the Guidelines Definition Approach does not.

The Agencies solicit comment on whether the definition of ''accuracy'' should be made applicable to direct disputes, if the Guidelines Definition Approach is adopted. The Agencies also solicit comment on whether the proposed definition of ''accuracy'' is appropriate for the direct dispute provision.[17]

Section _.42 Reasonable Policies and Procedures Concerning the Accuracy and Integrity of Furnished Information

Paragraph (a) of proposed § _.42 would require each furnisher to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information about consumers that it furnishes to a CRA. The policies and procedures must be appropriate to the nature, size, complexity, and scope of the furnisher's activities.

The requirement that furnishers' policies and procedures be written facilitates effective implementation and enables the Agencies to assess furnishers' compliance with the rules. The Agencies do not believe that the requirement for written policies and procedures will be unduly burdensome, particularly since, under the guidelines, a furnisher may include any of its existing policies and procedures that are relevant and appropriate. As noted previously, industry commenters responding to the ANPR noted that, in general, furnishers have policies and procedures in place to ensure the accuracy of information furnished to CRAs. The Agencies invite comment on any burden and effects on furnishers, particularly small furnishers, regarding the requirement that the policies and procedures be written.

The Agencies recognize that there is substantial diversity among furnishers with respect to their structure, operations, and the types of business they conduct, such that a ''one-size-fit-all'' approach to the implementation of the guidelines is inappropriate. The requirement that the furnisher's policies and procedures must be appropriate to the nature, size, complexity, and scope of the furnisher's activities permits furnishers to tailor their policies and procedures to their business activities.

[16] Section 111 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).

[17] The Agencies note that section 623(a)(8) only requires a furnisher to handle direct disputes about ''accuracy.'' In contrast, section 611(a) requires a CRA to handle disputes about ''completeness or accuracy'' and section 623(b) requires furnishers to reinvestigate disputes about ''completeness or accuracy'' if the disputes come through a CRA. The Agencies particularly request comment on whether the definition of ''accuracy'' needs to be clarified in order to more clearly delineate those disputes that, while subject to the CRA dispute process, would not be subject to the direct disputes rule.

The Agencies expect, for example, that the policies and procedures for a small retail entity would differ from those of a multi-billion dollar financial services company.

Proposed § _.42(b) requires each furnisher to consider the accuracy and integrity guidelines in developing its policies and procedures and to incorporate those guidelines that are appropriate. 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 ensure the accuracy and integrity of the information about consumers that they provide to CRAs.

Some of the commenters on the ANPR specifically suggested that the Agencies require furnishers to review or audit their furnishing policies and procedures in order to ensure that the information about consumers continues to be furnished accurately and with integrity. Proposed § _.42(c) incorporates these commenters' suggestions and would require each furnisher to review its policies and procedures periodically and update them as necessary to ensure their continued effectiveness.

Proposed Accuracy and Integrity Guidelines

The accuracy and integrity guidelines appear as Appendix E to the appropriate part of each Agency's regulations. In the introductory language to the guidelines, the Agencies encourage voluntary furnishing of information about consumers to CRAs. This reflects 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 reminds furnishers that § _.42 of the proposed regulations would require each furnisher to establish and implement reasonable written policies and procedures concerning the accuracy and integrity of the information about consumers it furnishes to CRAs and to consider the guidelines in developing those policies and procedures.

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

The Nature and Scope section of the guidelines references the requirement, at proposed § _.42(a), that a furnisher's policies and procedures must be appropriate to the nature, size, complexity, and scope of the furnisher's activities and provides the following examples of aspects of a furnisher's business activities that its policies and procedures should reflect: The types of business activities in which the furnisher engages; the nature and frequency of the information about consumers the furnisher provides to CRAs; and the technology used by the furnisher to provide information to CRAs.

The Objectives section of the guidelines provides that a furnisher should have written policies and procedures reasonably designed to accomplish the specified objectives. As described earlier in the discussion of the terms ''accuracy'' and ''integrity,'' the wording of some of the objectives set out in the guidelines is related to the alternative approaches to construing the term ''integrity'' that the Agencies are proposing in the text.

In connection with the Regulatory Definition Approach, the first two objectives of the guidelines would provide 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 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 Guidelines Definition Approach, definitions of ''accuracy'' and ''integrity'' would be incorporated into the first two objectives. Thus, the guidelines would provide 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 would define ''accuracy'' to mean that with respect to any information that a furnisher provides about an account or other relationship with the consumer to a CRA 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.

Additionally, under the Guidelines Definition Approach, the guidelines would provide 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 would define ''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.

As indicated in the discussion of the proposed accuracy and integrity regulations, the Agencies invite comment on the alternative approaches to defining the term ''integrity'' and the appropriate placement of the definitions. When responding to these issues raised by the Agencies, commenters may wish to address, among other relevant factors, how the approaches would impact the quality of information in consumer reports, the burdens on furnishers, and the relative benefits to consumers, the credit reporting system, and users of consumer reports.

The third proposed objective under both approaches states 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. This objective addresses concerns raised by commenters that some furnishers perform perfunctory investigations of consumer disputes in cases where a proper investigation would require reviewing information beyond the account status listed in the furnisher's electronic records, and that some furnishers do not update their own records when errors are discovered, resulting in incorrect information being reported again to the CRAs.

The fourth proposed objective under both approaches states 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 states that the information a furnisher furnishes about accounts or other relationships with a 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 reported with appropriate identifying information about the consumer to which it pertains, in a standardized and clearly understandable form and manner, with a date specifying the time period to which the information pertains.

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

Section II—Accuracy and Integrity Duties of Furnishers Under the FCRA

This section reminds furnishers of their statutory duties that relate to the accuracy and integrity of the information about consumers they provide to CRAs. This section states that a furnisher's policies and procedures should address compliance with all applicable requirements imposed on the furnisher under the FCRA and lists certain of those requirements, including the duty to investigate direct disputes as required by proposed § _.43 and section 623(a)(8) of the FCRA. This section also lists 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.

Section III—Establishing and Implementing Policies and Procedures

This section identifies three steps that furnishers should take when establishing 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. Methods appropriate for this purpose include:

- Reviewing the furnisher's 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.

Second, a furnisher should evaluate the effectiveness of its existing policies and procedures regarding the accuracy and integrity of information about consumers furnished to CRAs and consider whether additions or modifications to the policies and procedures are necessary. As is specifically mentioned in the introduction to the guidelines, a furnisher may incorporate in its accuracy and integrity policies and procedures any of its existing policies and procedures that are relevant and appropriate.

Third, a furnisher should evaluate the effectiveness of specific methods (including technological means) the furnisher uses to provide information about consumers to CRAs and determine whether changes to those methods are appropriate to enhance the accuracy and integrity of that information.

Section IV—Specific Components of Policies and Procedures

This section serves to address specific problems raised by commenters on the ANPR, studies regarding the consumer reporting system, and other information gathered by the Agencies in the course of developing this proposal. The proposed guidelines detail specific components that should be addressed in a furnisher's policies and procedures. These include:

- 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. Thus, a furnisher's policies and procedures should incorporate any applicable recordkeeping requirements such as those contained in regulations implementing the Truth in Lending Act and the Equal Credit Opportunity Act,[18] or agency-specific requirements.[19] The Agencies note that section 611(a)(5) of the FCRA contains no time limit on the requirement that if a CRA reinvestigates a consumer dispute, it must modify or delete items that cannot be verified. The Agencies seek comment on whether a specific time period for recordkeeping should be incorporated in the final regulations.
- 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-aging 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) 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.
- 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

[18] *See* 12 CFR 226.25(a) and 12 CFR 202.11(b).

[19] *See, e.g.*, 12 CFR 561.2 (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).

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.

Proposed Regulations Concerning Direct Disputes

The third component of this notice of proposed rulemaking comprises the Agencies' proposed 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 about the consumer contained in a consumer report,[20] based on a direct request by the consumer. The statute sets forth procedural and other requirements applicable to any such reinvestigations.

We note that a number of industry commenters on the ANPR indicated that they are already voluntarily investigating direct disputes as a matter of good customer relations and sound business practices. The Agencies encourage furnishers to continue voluntary investigations of consumer disputes as one way to enhance the accuracy and integrity of the information about consumers they provide to CRAs.[21]

Section _.43(a) General Rule

The proposed general rule would require 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;
- 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.

The proposed rule is designed to permit direct disputes in virtually all circumstances involving disputes with respect to the types of information typically provided by the furnisher to a CRA, while excepting out certain types of information from the direct dispute process. The Agencies are proposing this approach in light of the considerations set forth in the statute to be weighed by the Agencies, including the benefits to consumers, the impact on the overall accuracy and integrity of consumer reports, and whether direct disputes would lead to the most expeditious resolutions of consumer disputes. The exceptions in the proposed rule relate to information where the disputes are more appropriately directed to the CRA, such as information derived from public records, which may be obtained directly from public sources,[22] and information about requests for consumer reports (''inquiries''). The Agencies specifically request comment on whether this approach appropriately weighs all of the relevant considerations.

In developing the proposed rule, the Agencies considered more targeted approaches based, for example, on commenters' suggestions that fraud and identity theft should be the only circumstances when a furnisher must investigate a direct dispute. The Agencies also considered other commenters' suggestions about when investigations of a direct dispute would be appropriate, such as for disputing account ownership and complex issues requiring analysis of supporting documentation. The Agencies are not proposing these approaches, however, as these approaches would likely present at least one disadvantage, namely, that it would be difficult for consumers and furnishers to know whether there is a direct dispute right in any particular circumstance.

In addition, the Agencies considered another commenter's suggestion to require investigation of direct disputes only where the consumer first raises the dispute with a CRA, but that process does not resolve the matter to the consumer's satisfaction. The Agencies are not proposing such an approach, however, because it could impose unnecessary barriers and delays for consumers wishing to avoid the CRA dispute process and bring disputes immediately to the furnisher.[23]

The Agencies believe that the approach adopted by the proposed rule more closely comports with consumer expectations that they be able 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. The Agencies request comment on whether a more targeted approach would represent a more appropriate balancing of relevant policy considerations.

The Agencies also specifically invite comment on how direct dispute requirements would affect furnishers to smaller and specialty CRAs, such as CRAs that report medical information,

[20] For purposes of the proposed § _.43(c) and (d) of the direct disputes provision, a ''consumer report'' means a disclosure a CRA provides to a consumer as referenced in section 609(a) of the FCRA. CRAs may provide such disclosures in a different format than a consumer report they provide to a third party and refer to them as ''file disclosures.''

[21] 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 their respective supervisory agencies. *See generally* FRB, ''How to File a Consumer Complaint Against a Bank,'' *http://www.federalreserveconsumerhelp.gov* (last visited October 26, 2007); FDIC, ''Consumer Affairs Brochure: Fostering Consumer Confidence in Banking, How to file a Written Complaint'' (October 2005), *http://www.fdic.gov/consumers/questions/consumer/complaint.html* (last visited November 1, 2007); OTS, ''How to Resolve a Consumer Complaint'' (February 2007), *http://www.ots.treas.gov/docs/4/480924.pdf* (last visited October 24, 2007); and OCC, ''Assistance for Customers of National Banks'' (April 2005), *http://www.occ.gov/customer.pdf* (last visited October 24, 2007).

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

[23] The Agencies note further that section 623(a)(8)(F) states that the obligation to reinvestigate direct disputes shall not apply if the dispute is ''frivolous or irrelevant'' because the consumer submitted a dispute that is substantially the same as a dispute previously submitted to a furnisher or through a CRA. The Agencies note that under the proposed rule, a direct dispute is not substantially the same if a consumer's dispute includes information listed in § _.43(d) that had not previously been provided to the furnisher.

check writing history, apartment rental history, or insurance claim filings.

Section _.43(b) Exceptions

A consumer report may include identifying information about a consumer (*e.g.*, names, addresses), 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 on a consumer report. A furnisher should only be responsible for investigating disputes about information regarding an account or other relationship between the furnisher and the consumer. Accordingly, the proposal requires a furnisher 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 direct dispute will be part of a furnisher's trade line entry or entries on a consumer report.

Proposed § _.43(b) excepts from the 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 in § _.43(a)(1)),[24] such as name(s), date of birth, Social Security number, telephone number(s), or address(es);
- The identity of past or present employers; [25]
- 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.

[24] 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).

[25] 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) also excepts 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 as defined in 15 U.S.C. 1679a(3),[26] or an entity that would be a credit repair organization but for 15 U.S.C. 1679a(3)(B)(i), which excludes tax-exempt section 501(c)(3) organizations.

Section _.43(c) Direct Dispute Address

As added by section 312 of the FACT Act, 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 statute and legislative history provide no guidance about how this address is to be specified by furnishers and effectively communicated to consumers. The Agencies believe that, in order for the direct dispute right to be implemented and to operate as Congress intended, it is necessary to clarify how a furnisher's direct dispute address is to be specified and communicated to consumers.

Proposed § _.43(c) would require a furnisher to investigate a direct dispute only if a consumer submits a 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 (*i.e.*, the disclosure 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 would always be able to submit a direct dispute to the appropriate address appearing on the consumer report. The consumer would also be able to submit a direct dispute to any other business address of the furnisher unless the furnisher has separately specified an address to the consumer in accordance with the regulation. A furnisher choosing to specify an address must 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 note that a furnisher that specifies such 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 Agencies believe that it will benefit consumers and be operationally feasible to allow consumers to submit a dispute notice to the address of the furnisher specified on the consumer report. The Agencies understand that in a large majority of cases, the consumer report includes an address supplied by the furnisher and the furnisher can control such address.[27] In addition, the Agencies believe that allowing consumers to submit dispute notices to the address of the furnisher set forth on the consumer report will increase the likelihood that the consumers will know where to send that dispute (because that address will be seen by consumers contemporaneous in time and location with the disputed information) and will encourage consumers to obtain and review their consumer reports prior to submitting a dispute to a furnisher. 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.

[26] Under this provision of the Credit Repair Organizations Act, the term ''credit repair organization''—

(A) 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).

[27] Allowing consumers to submit 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.'' 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 will automatically learn how to contact the furnisher about a dispute upon receipt of the consumer report without the need to request that information from the CRA.

The Agencies request comment on whether there are circumstances under which it would not be appropriate for a consumer to submit a dispute notice to the address of the furnisher set forth on the consumer report. The Agencies also invite comment on whether § _.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.

In addition, the Agencies request comment on whether § _.43(c)(2) should be amended to permit furnishers to notify consumers orally of the address for direct disputes. The agencies also request comment on whether and, if so, how an oral notice can be provided clearly and conspicuously.

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) would implement 623(a)(8)(D) 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.

Section 609(c)(2) of the FCRA requires the FTC to promulgate, and CRAs to disseminate with their provision of consumer reports to consumers, a ''General Summary of Consumer Rights.'' The FTC intends to update the existing General Summary of Consumer Rights to reflect additional rights provided to consumers by the FACT Act and the implementing rules, including consumers' direct dispute rights. The Agencies invite comment on what additional mechanisms should be required, if any, for informing consumers of their direct dispute rights.

Section _.43(e) 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. That statutory provision 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) implements these statutory provisions, including these two types of frivolous or irrelevant disputes. Under the statute, when a furnisher determines that a dispute is frivolous or irrelevant, it must send a notice of that determination (including the reasons for the determination) to the consumer. In cases involving insufficient information, furnishers should make a good faith attempt to obtain sufficient information from a consumer before sending such a notice to the consumer as noted in section IV(I) of the guidelines.

The Agencies note that the language of section 623(a)(8)(F) specifies two situations, but does not limit frivolous or irrelevant disputes solely to those two situations. The Agencies are proposing to specify a third situation involving a frivolous or irrelevant dispute. Under proposed § _.43(e)(1)(iii), a dispute would be frivolous or irrelevant if the furnisher is not otherwise required to investigate the direct dispute under the proposed regulation.[28] This provision is intended to provide clarity for furnishers regarding their duty to investigate direct disputes and their responsibilities when no such investigation is required. This provision also would ensure that consumers in this situation receive notice from the furnisher that their dispute was deemed frivolous or irrelevant, as required by the FCRA in sections 623(a)(8)(F)(ii) and (iii).[29]

Section _.43(e)(2) would incorporate the FCRA's section 623(a)(8)(F)(ii) requirement 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. Section _.43(e)(3) likewise would incorporate 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. Such notices are to include the reasons for the determination and identify any information required to investigate the disputed information.

V. Request for Comment

The Agencies invite comment on all aspects of the proposed accuracy and integrity regulations and guidelines and of the proposed direct dispute regulations, on the factors to be considered by the Agencies under sections 623(a)(8) and 623(e) of the FCRA, and on the specific issues on which comment is solicited elsewhere in the **SUPPLEMENTARY INFORMATION**, including the following:

- The alternative definitions of ''integrity'' and the alternative placement of the definitions of ''accuracy'' and ''integrity'' in regulatory text or in the guidelines;
- Whether the definition of accuracy should specifically provide that ''accuracy'' includes updating information as necessary to ensure that information furnished is current;
- Whether the definition of ''accuracy'' should be made applicable to direct disputes if the Guidelines Definition Approach is adopted;
- Whether the proposed definition of ''accuracy'' is appropriate for the direct dispute rule, and, in particular, whether the definition of ''accuracy'' needs to be clarified in order to more clearly delineate those disputes that, while subject to the CRA dispute process, would not be subject to the direct dispute rule;
- Whether the Agencies' approach to direct disputes appropriately reflects the relevant considerations, or whether a more targeted approach would represent a more appropriate balancing of relevant policy considerations;
- Whether proposed § _.43(c)(2) should be amended to permit furnishers to notify consumers orally of the

[28] 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).

[29] 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.

address for direct disputes and, if so, how an oral notice can be provided clearly and conspicuously;

• What additional mechanisms should be required, if any, for informing consumers of their direct dispute rights;

• How direct dispute requirements would affect furnishers to smaller and specialty CRAs, such as CRAs that report medical information, check writing history, apartment rental history, or insurance claim filings;

• Whether the guidelines should incorporate a specific time period for retaining records in order to provide for meaningful investigations of direct disputes, and, if so, what record retention time period would be appropriate; and

• Whether § _.42(c)(2) 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.

In addition, the Agencies specifically invite comment as follows:

The Agencies invite comment from individuals and public interest and consumer advocacy organizations on the effect this proposal may have on consumers and the credit reporting industry.

The Agencies recognize that small institutions operate with more limited resources than larger institutions. Thus, the Agencies specifically request comment on the impact of this proposal on small institutions' current resources, including personnel resources, and whether the goals of the proposal could be achieved for small institutions through an alternative approach.

The Agencies invite comment from businesses other than depository institutions that furnish information about consumers to CRAs, including non-depository institution mortgage lenders, debt collectors, consumer finance companies, and retailers. The Agencies also invite comment from persons who furnish information about consumers to specialized types of CRAs, such as CRAs that collect information for the purpose of making decisions regarding insurance, employment or tenant screening, or check verification. Similarly, the Agencies request comments from CRAs, including nontraditional CRAs that may only provide information to a limited class of businesses (*e.g.*, medical information providers and tenant screening services).

The Agencies also invite comment on ways to minimize the burden of the final rule.

VI. Regulatory Analysis

A. Paperwork Reduction Act

Request for Comment on Proposed Information Collection

In accordance with section 3512 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521 (''PRA''), the Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (''OMB'') control number. The information collection requirements contained in this joint notice of proposed rulemaking 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 proposed rule contains requirements subject to the PRA. The requirements are found in 12 CFR §§ _.42(a), _.43(e)(2), and _.43(e)(3) and 16 CFR §§ 660.3(a), 660.4(e)(2), and 660.4(e)(3).

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record.

Comments should be addressed to:

OCC: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–NEW, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Board: You may submit comments, identified by R–1300, by any of the following methods:

• *Agency Web Site: http://www.federalreserve.gov*. Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

• *E-mail: regs.comments@federalreserve.gov*. Include docket number in the subject line of the message.

• *Fax:* 202–452–3819 or 202–452–3102.

• *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit written comments, which should refer to 3064–AC99, by any of the following methods:

• *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/propose.html*. Follow the instructions for submitting comments on the FDIC Web site.

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

• *E-mail: Comments@FDIC.gov*.

• *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, FDIC, 550 17th Street, NW., Washington, DC 20429.

• *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose/html* including any

personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1007, 3501 North Fairfax Drive, Arlington, Virginia, between 9 a.m. and 4:30 p.m. on business days.

OTS: Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet site at *http://www.ots.treas.gov*. In addition, interested persons may inspect the comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

NCUA: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *NCUA Web Site: http://www.ncua.gov/RegulationsOpinionsLaws/proposedregs/proposedregs.html*. Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov*. Include ''[Your name] Comments on Notice of Proposed Rulemaking Part 717, 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'' in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Neil McNamara, Deputy Chief Information Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Additionally, you should send a copy of your comments to the OMB Desk Officer for the Agencies, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., 10235, Washington, DC 20503, or by fax to (202) 395–6974.

FTC: Comments should refer to ''Furnisher Rules, Project No. R611017,'' and may be submitted by any of the following methods. However, if the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled ''Confidential.'' [30]

- *E-mail:* Comments filed in electronic form should be submitted by clicking on the following Web link: *https://secure.commentworks.com/ftc-FACTAfurnishers* and following the instructions on the Web-based form. To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at *https://secure.commentworks.com/ftc-FACTAfurnishers*.
- *Federal eRulemaking Portal:* If this notice appears at *http://www.regulations.gov*, you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.
- *Mail or Hand Delivery:* A comment filed in paper form should include ''Furnisher Rules: Project No. R611017,'' both in the text and on the envelope and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission/Office of the Secretary, Room H–135 (Annex M), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Because paper mail in the Washington area and at the Commission is subject to delay, please consider submitting your comments in electronic form, as prescribed above. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should additionally be submitted to: Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–6974 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov/os/publiccomments.htm*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

Proposed Information Collection

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

Frequency of Response: On occasion.

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)).

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: Federally-chartered credit unions.

FTC: Businesses that furnish information to a consumer reporting agency, 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: Proposed section .42(a) [31] would require 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. Furnishers already have an ongoing responsibility under section 623 of the FCRA for accurate reporting, which has been in place for several years, long before the FACT Act. This proposed rule would require furnishers to put into writing policies and procedures that address their section 312 responsibilities regarding the accuracy and integrity of information. Furnishers' accuracy and integrity policies and

[30] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

[31] For purposes of the FTC regulations, this proposed section is 16 CFR 660.3(a).

procedures may include their existing policies and procedures that are reasonable and appropriate. The Agencies estimate it would take furnishers a total of 21 hours per institution to comply with this requirement.

Proposed section .43(a)[32] would allow consumers to initiate disputes directly with the furnishers, instead of using the existing FCRA process through the CRAs. This gives consumers a new way to dispute consumer report information; instead of having to go through a CRA, consumers would have the right to go directly to the furnisher in certain circumstances. 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 proposed rule, furnishers would have to follow a substantially similar process for disputes consumers submit directly to furnishers. Furnishers would need to amend their procedures to ensure that disputes received directly from consumers are handled the same way as complaints from CRAs. The Agencies estimate that furnishers would have to devote four hours per institution to amend their procedures in this manner. Proposed section _.43(e)(2)[33] 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. Proposed section _.43(e)(3)[34] incorporates the content requirements of such notices as specified by section 312. The Agencies estimate that furnishers would have to devote four hours per institution to implement this notice requirement, including the time necessary to develop policies and procedures regarding the provision of the notices to consumers and to initially prepare the notices.

With respect to estimating the potential burden associated with providing the notices to consumers, the Agencies received one comment on the ANPR from a financial institution stating that it is estimated that 50% of disputes received are frivolous or irrelevant. In contrast, one trade association commented that in only 25% of disputes is the information in the consumer report being challenged verified as correct; thus, even assuming that every time the information in the consumer report is verified as correct the underlying dispute was frivolous or irrelevant, a maximum of 25% of disputes could be frivolous or irrelevant. The Agencies are also aware that a significant number of furnishers are already providing consumers with a written notice in response to direct disputes. Further, commenters from both industry and consumer groups observed that disputes filed with CRAs from credit repair organizations have been particularly likely to be rejected, though they disagreed on the reasons. Considering all of these comments and information, and taking into account that direct disputes from credit repair organizations are prohibited by section 623(a)(8)(G) of the FCRA, the Agencies believe it is reasonable to estimate that the number of written notices that furnishers provide to consumers in response to direct disputes that are frivolous or irrelevant would increase by 10%. The Agencies estimate that furnishers would devote five minutes per notice to provide a notice to a consumer.

Estimated Burden:[35]

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

OCC

Number of respondents: 1,800.

Number of frivolous or irrelevant dispute notices: 312,335.

Estimated burden per notice: 5 minutes.

Estimated burden per respondent: 21 hours to implement written policies and procedures and training associated with the written policies and procedures, 4 hours to amend procedures for handling complaints received directly from consumers, 4 hours to implement the new dispute notice requirement.

Total estimated annual burden: 78,228 hours.

Board

In accordance with the PRA (44 U.S.C. 3506; 5 CFR part 1320, Appendix A.1), the Board has reviewed the proposed rule under its authority delegated by OMB. The proposed information collections associated with this rulemaking, if approved, 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 proposed rulemaking.

Number of respondents: 1,172.

Number of frivolous or irrelevant dispute notices: 116,582.

Estimated burden per respondent: 21 hours to implement written policies and procedures and training associated with the written policies and procedures, 4 hours to amend procedures for handling complaints received directly from consumers, 4 hours to implement the new dispute notice requirement, and 5 minutes per notice for distribution.

Total estimated annual burden: 43,703 hours.

FDIC

Number of respondents: 5,260.

Number of frivolous or irrelevant dispute notices: 24,198.

Estimated burden per respondent to implement written policies and procedures regarding accuracy and integrity and the frivolous or irrelevant dispute notice: 29 hours.

Estimated burden per frivolous or irrelevant dispute notice: 5 minutes.

Total estimated annual burden: 154,557 hours.

OTS

Number of respondents: 829.

Number of frivolous or irrelevant dispute notices: 15,001.

Estimated burden per respondent: 21 hours to implement written policies and procedures and training associated with the written policies and procedures, 4 hours to amend procedures for handling complaints received directly from consumers, 4 hours to implement the new dispute notice requirement, and 5 minutes per notice for distribution.

Total estimated annual burden: 25,286 hours.

NCUA

Number of respondents: 5,103.

Estimated burden per respondent: 29 hours.

Number of frivolous or irrelevant dispute notices: 3,044.

Estimated burden per notice: 5 minutes.

Total estimated annual burden: 148,241 hours.

FTC[36]

Section 660.3:

Estimated Hours Burden:

As discussed above, the proposed regulations would require furnishers to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of

[32] 16 CFR 660.4(a) in the FTC regulations.

[33] 16 CFR 660.4(e)(2) in the FTC regulations.

[34] CFR 660.4(e)(3) in the FTC regulations.

[35] The Estimated Burden section reflects the views of all of the Agencies except the FTC, which has prepared a separate analysis.

[36] 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.

the information relating to consumers that it furnishes to a CRA. The proposed regulations would define ''furnisher'' to mean an entity other than an individual consumer that furnishes information relating to consumers to one or more CRAs, except when it provides information to a CRA solely to obtain a consumer report for a permissible purpose under the FCRA.[37] 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 proposed regulations in section 660.3 will affect approximately 6,133 furnishers subject to the FTC's jurisdiction.[38] The Commission invites comment and information about the categories and number of furnishers subject to its 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 be 51,000 hours (rounded to the nearest thousand). The estimated annual labor cost associated with this burden is $1,985,000 (rounded to the nearest thousand).

The proposed regulations are 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 Commission believes that many entities have already implemented a significant portion of the policies and procedures required by the proposed rule. 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 written policies and procedures proposed in the rule would formalize the processes and controls necessary for accurate reporting. Accordingly, FTC staff estimates that entities will require 21 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.

FTC staff estimates that the proposed regulations implementing section 623(e) affect 6,133 furnishers subject to the FTC's jurisdiction at an average annual burden of 8.33 hours per entity [average annual burden over 3-year clearance period for establishment and implementation of written policies and procedures (25 hours/3)], for a cumulative total of 51,000 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 proposed regulations, as they entail varying compensation levels of management and/or 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, at an hourly rate of $38.93.[39]

Based on the above estimates and assumptions, the total annual labor costs for all categories of covered entities under the proposed regulations in section 660.3 are $1,985,000 (rounded to the nearest thousand) [(51,000 hours × $38.93)].

Section 660.4:

Estimated Hours Burden:

The proposed regulations would also require entities that furnish information about consumers to respond to direct disputes from consumers. FTC staff estimates that the proposed regulations in section 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 be 17,000 hours (rounded to the nearest thousand). The estimated annual labor cost associated with this burden is $641,000 (rounded to the nearest thousand).

FTC staff estimates that it will take furnishers four 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. FTC staff estimates that it will take furnishers four 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.

FTC staff further 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 five minutes per notice. FTC staff projects that furnishers under its jurisdiction would receive 5,430 frivolous or irrelevant disputes requiring a notice each year.[40] Accordingly, FTC staff estimates it will take furnishers 452 hours for each of the three years for which OMB clearance is sought. The estimated annual labor cost associated with this burden is $6,102.

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 proposed regulations, as they entail 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 $38.93.[41] Staff assumes that administrative support personnel will provide the required notices to consumers, at an hourly rate of $13.50.[42]

Based on the above estimates and assumptions, the total average annual labor costs for all categories of covered

[37] 15 U.S.C. 1681b(a).

[38] 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 by 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).

[39] This cost is derived from the median hourly wage from the 2006 National Occupational Employment and Wage Estimates by the Bureau of Labor Statistics for management occupations.

[40] This number is derived from an estimate of disputes per year that relate to information provided by an entity under the FTC's jurisdiction and the Agencies' estimated 10% increase of the number of written notices that furnishers will provide to consumers in response to direct disputes that are frivolous or irrelevant.

[41] This cost is derived from the median hourly wage from the 2006 National Occupational Employment and Wage Estimates by the Bureau of Labor Statistics for management occupations.

[42] This cost is derived from the median hourly wage from the 2006 National Occupational Employment and Wage Estimates by the Bureau of Labor Statistics for office and administrative support occupations.

entities under the proposed regulations in section 660.4 are $641,000 (rounded to the nearest thousand) [((1.33 + 1.33 hours) × 6,133 × $38.93) + $6102].

B. Regulatory Flexibility Act

OCC: The Regulatory Flexibility Act (5 U.S.C. 601—612) (RFA) requires an agency to either provide an Initial Regulatory Flexibility Analysis with a proposed rule or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA and OCC-regulated entities, a ''small entity'' is a national bank with assets of $165 million or less (small national bank). Based on its analysis and for the reason stated below, OCC certifies that this proposed rule 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 proposed rule (compliance costs as a percent of labor costs and compliance costs as a percent of non-interest expenses) the OCC estimates that the proposed rule would have a significant economic impact on 7 of 948 small national banks (.074 percent); the OCC does not consider this to be a substantial number of small entities.

1. Reasons for Proposed Rule

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. OCC is issuing this proposed rule to implement section 312 of the FACT Act.

2. Statement of Objectives and Legal Basis

The objectives of the proposed rule 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 legal bases for the proposed rule are the National Bank Act found at 12 U.S.C. 1 *et seq.*, 24 (Seventh), 481, and 484; the Depository Institutions Deregulation and Monetary Control Act of 1980 found at 12 U.S.C. 93a; the Federal Deposit Insurance Act found at 12 U.S.C. 1818; and 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 Rule

The proposed rule would apply to national banks, Federal branches and agencies of foreign banks, and any of their 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)) (national banks).

OCC estimates that its proposed rule would apply to 948 small national banks with assets of $165 million or less.

4. Projected Recordkeeping, Reporting, and Other Compliance Requirements

The compliance requirements of the proposed rules are described in the **SUPPLEMENTARY INFORMATION** above.

In general, the proposal would 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 would be 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 Agencies have sought to reduce the burden associated with these proposed accuracy and integrity regulations and guidelines in several ways. First, the proposed guidelines provide that a furnisher may include in its policies and procedures concerning the accuracy and integrity of information it furnishes to consumer reporting agencies any of its existing policies and procedures that are relevant and appropriate. Furnishers have a preexisting obligation under Section 623 of the FCRA to provide accurate information when they furnish data to consumer reporting agencies. The OCC 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 proposed rule.

Furnishers subject to the proposed rule also would 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 would require new procedural requirements, the OCC believes that investigating direct disputes will not create significant additional burdens on small institutions, for a number of reasons.

First, most 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 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 under other consumer protection laws. National banks also investigate disputes referred to them by the OCC's Customer Assistance Group as well as other state and Federal regulators.

Finally, the proposed rule does not require investigation of direct disputes when such disputes are frivolous or irrelevant.

The OCC seeks information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule to small national banks.

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

The OCC is unable to identify any statutes or rules, which would overlap or conflict with the proposed regulation. The OCC seeks comment and information about any such statutes or rules, as well as any other state, local, or industry rules or policies that require a covered institution to implement business practices that would comply with the requirements of the proposed rule.

6. Discussion of Significant Alternatives

As required by the FACT Act, the proposed 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 be to provide a specific exemption for small institutions. The OCC 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 proposed rule does, however, provide substantial flexibility so that any national bank, regardless of size, may tailor its practices to its individual needs. For example, to minimize burden the proposal would permit institutions to include in their accuracy and integrity policies and procedures their existing policies and procedures that are relevant and appropriate. Furthermore, OCC and the other Agencies have attempted to minimize burden by: Adopting consistent rules; proposing and soliciting comment on two approaches for defining the terms ''accuracy'' and ''integrity''; incorporating into the proposed rule at § 41.42(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 proposed § 41.43(c).

The OCC welcomes comments on any significant alternatives that are consistent with section 312 of the FACT Act.

Board: The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule or certify that the proposed 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 $165 million or less in assets). The Board requests public comment in the following areas.

1. Reasons for the Proposed Rule

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 consumer reporting agencies for the purpose of enhancing the accuracy and integrity of the information furnished. Specifically, the Agencies must: (i) Establish and maintain guidelines for use by furnishers regarding the accuracy and integrity of the information relating to consumers that they furnish to consumer reporting agencies, and update those guidelines as often as necessary; and (ii) prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines. 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.

2. Statement of Objectives and Legal Basis

The **SUPPLEMENTARY INFORMATION** above contains this information. The legal basis for the proposed rule is section 312 of the FACT Act.

3. Description of Small Entities to Which the Rule Applies

The proposed regulations would 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 proposed regulations would apply to the following institutions (numbers approximate): State member banks (881), operating subsidiaries that are not functionally regulated with in 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 $165 million or less.

All small entities covered by the Board's rule potentially could be subject to the proposed rule. However, the proposed rule would not impose any requirements on small entities that do not furnish information about consumers to consumer reporting agencies.

4. Projected Reporting, Recordkeeping and Other Compliance Requirements

The compliance requirements of the proposed rules are described in the **SUPPLEMENTARY INFORMATION** above.

In general, the proposal would 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. Such furnishers would be 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 Agencies have sought to reduce the burden associated with these proposed accuracy and integrity regulations and guidelines in several ways. First, the proposed guidelines provide that a furnisher may include in its policies and procedures concerning the accuracy and integrity of information it furnishes to consumer reporting agencies any of its existing policies and procedures that are relevant and appropriate. Furnishers have a preexisting obligation under Section 623 of the FCRA to provide accurate information when they furnish data to consumer reporting agencies. The Board 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 proposed rule.

Furnishers subject to the proposed rule also would be required, under the circumstances described in the proposed rule, 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 would require new procedural requirements, the Board believes that investigating direct disputes will not create significant additional burdens on small institutions, for a number of reasons. First, most furnishers already investigate similar disputes upon receipt from the relevant consumer reporting agency pursuant to the existing dispute provisions contained in section 611 of the FCRA. Second, commenters on the ANPR noted that many furnishers already investigate direct disputes as a matter of good customer relations and sound business practices or because they are required to under other consumer protection laws. Finally, the proposed rule does not

require investigation of direct disputes when such disputes are frivolous or irrelevant.

The Board seeks information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule to small institutions.

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

The Board has not identified any federal statutes or regulations that would duplicate, overlap, or conflict with the proposed rule. The Board seeks comment regarding any statutes or regulations, including state or local statutes or regulations, that would duplicate, overlap, or conflict with the proposed rule.

6. Discussion of Significant Alternatives

The proposed rule provides substantial flexibility so that each institution, regardless of its size, may tailor its practices to its individual needs. For example, as discussed above, in order to minimize burden the proposal would permit institutions to include in their accuracy and integrity policies and procedures any of their existing policies and procedures that are relevant and appropriate.

The Board welcomes comments on any significant alternatives, consistent with the requirements of section 312 of the FACT Act, that would minimize the impact of the proposed rule on small entities.

FDIC: In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA), an agency must publish an initial regulatory flexibility analysis with its proposed rule, unless the agency certifies 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 banks with less than $165 million in assets). The FDIC hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

The proposed rule would apply to most FDIC-insured state nonmember banks, approximately 3,400 of which are small entities. Under the proposed 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 proposed in the rule would formalize the processes and controls necessary for accurate reporting. Similarly, the proposed guidelines in Section II of Appendix E of the Regulation contain requirements that were already in the FCRA. 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 proposed rule, whether under the definition of ''integrity'' proposed in the Regulatory Definition Approach or the definition in the Guidelines Definition Approach, as discussed in the Supplementary Information above. The process of furnishing information to consumer reporting agencies is largely automated. With regard to the two alternatives concerning the ''integrity'' of information, the automated furnishing systems already support for the type of information that a furnisher would provide under either approach.

Nonetheless, the FDIC specifically requests comment and specific data on the size of the incremental burden on small banks in formalizing the policies and procedures not currently included, given the banks' current practices and compliance with existing requirements.

The proposed rule would 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 rule 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 proposed rule does not require investigation in cases that are frivolous or irrelevant. Nonetheless, the FDIC again specifically requests comment and specific data on the size of the incremental burden creating a program would have on small banks, given their current practices and compliance with existing requirements.

OTS: The Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA) requires an agency to either provide an Initial Regulatory Flexibility Analysis with a proposed rule or certify that the proposed 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 assets of $165 million or less (small savings association). Based on its analysis and for the reason stated below, OTS certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

1. Reasons for Proposed Rule

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

this proposed rule to implement section 312 of the FACT Act.

2. Statement of Objectives and Legal Basis

The objectives of the proposed rule 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 proposed rule 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 Rule

The proposed rule would 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 proposed rule would apply to 412 small savings associations with assets of $165 million or less.

4. Projected Recordkeeping, Reporting, and Other Compliance Requirements

Under the proposed 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 proposed in the rule would formalize the processes and controls necessary for accurate reporting. Similarly, the proposed guidelines in Section II of Appendix E of the Regulation contain requirements that were already in the FCRA. 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, OTS believes that many of these institutions have already implemented a significant portion of the policies and procedures required by the proposed rule, whether under the definition of ''integrity'' proposed in the Regulatory Definition Approach or the definition in the Guidelines Definition Approach, as discussed in the Supplementary Information above. The process of furnishing information to consumer reporting agencies is largely automated. With regard to the two alternatives concerning the ''integrity'' of information, the automated furnishing systems already support the type of information that a furnisher would provide under either approach.

Nonetheless, OTS specifically requests comment and specific data on the size of the incremental burden on small savings associations in formalizing the policies and procedures not currently included, given the associations' current practices and compliance with existing requirements.

The proposed rule would 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 rule would require new procedural requirements, including direct dispute notices, OTS believes that investigating direct disputes will not create significant additional burdens on small savings associations, 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. Many are also investigating disputes brought to the institution through OTS's customer complaint system.

Third, the proposed rule does not require investigation for disputes that 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.

Nonetheless, OTS specifically requests comment and specific data on the size of the incremental burden creating a program would have on small savings associations, given their current practices and compliance with existing requirements.

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 proposed regulation. OTS seeks comment and information about any such statutes or rules, as well as any other state, local, or industry rules or policies that require a covered institution to implement business practices that would comply with the requirements of the proposed rule.

6. Discussion of Significant Alternatives

As required by the FACT Act, the proposed 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 be to provide a specific exemption for small institutions. 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 proposed rule does, however, provide substantial flexibility so that any savings association, regardless of size, may tailor its practices to its individual needs. For example, to minimize burden the proposal would 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 the other Agencies have attempted to minimize burden by: Adopting consistent rules; proposing and soliciting comment on two approaches for defining the terms ''accuracy'' and ''integrity''; incorporating into the proposed rule at § _.42(a) a statement that policies and procedures must be appropriate to the nature, size, complexity, and scope of a furnisher's activities; and providing furnishers with a three options for providing their direct disputes address to consumers under proposed § _.43(c).

OTS welcomes comments on any significant alternatives that are consistent with section 312.

NCUA: Under the RFA, NCUA must publish an initial regulatory flexibility analysis with its proposed rule, unless NCUA certifies the rule will not have a significant economic impact on a substantial number of small entities. For NCUA, these are federal credit unions with less than $10 million in assets. NCUA certifies this proposed rule would not have a significant economic impact on a substantial number of small entities.

Under the proposed rule, federal credit unions furnishing information about consumers to consumer reporting agencies (CRAs) must have a written program on the information's accuracy and integrity. The program must be appropriate to the nature, size, complexity and scope of the furnishing activities. The federal credit union can include its existing policies and procedures in its program under the proposed rule. Federal credit unions already are required under FCRA section 623 to provide accurate information when they furnish data to CRAs. The proposed rule would formalize the processes and controls for accurate reporting. Likewise, the proposed guidelines contain requirements already in the FCRA section 623.

Accordingly, NCUA requests comment and specific data on any additional burden on small federal credit unions in making their current accuracy and integrity programs consistent with existing requirements.

The proposed rule would also require federal credit unions that furnish consumer information to CRAs to respond to consumers' direct dispute requests to correct credit report inaccuracies. The rule would require new procedural requirements, including direct dispute notices, but the NCUA believes that investigating direct disputes will not create significant additional burdens on small federal credit unions, for the following reasons.

First, most furnishers already investigate consumer dispute requests, even if under the current law, the consumers complain directly to the relevant CRA, which then contacts the federal credit union to investigate. Currently, furnishers must review all relevant information the CRA provides with the notice; report the investigation results to the CRA; if the disputed information is determined to be incomplete or inaccurate, report this to all nationwide CRAs to which the federal credit union previously provided the information; and if the disputed information is incomplete, inaccurate, or not verifiable by the federal credit union, promptly, for purposes of reporting to the CRA, modify the item of information, delete the item of information, or permanently block the reporting of that item of information.

Second, many federal credit unions already investigate direct disputes as part of good member relations and sound business practices or under other consumer protection laws.

Third, the proposed rule does not require investigation in cases that are frivolous or irrelevant. Nonetheless, NCUA specifically requests comment and specific data on the size of the incremental burden creating a program would have on small federal credit unions, given their current practices and compliance with existing requirements.

FTC: The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (''IRFA'') with a proposed rule and a Final Regulatory Flexibility Analysis (''FRFA'') with the final rule, unless the Commission 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.

Based on its analysis and for the reasons stated below, the Commission does not anticipate that the proposed regulations will have a significant economic impact on a substantial number of small entities. This document serves as notice to the Small Business Administration of the FTC's certification of no effect. To ensure the accuracy of this certification, however, the Commission requests comments on whether the proposed regulations will have a significant impact on a substantial number of small entities, including specific information on the number of entities that would be covered by the proposed regulations, the number of these companies that are ''small entities,'' and the average annual burden for each entity. Although the Commission certifies under the RFA that the regulations proposed in this notice would not, if promulgated, have a significant economic impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an IRFA in order to inquire into the impact of the proposed regulations on small entities. Therefore, the Commission has prepared the following analysis:

1. Description of the Reasons That Action by the Agency Is Being Taken

The Federal Trade Commission 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)), which require the agency to issue these proposed regulations.

2. Statement of the Objectives of, and Legal Basis for, the Proposed Regulations

The objectives of the proposed rule 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 legal basis for the proposed regulations is 15 U.S.C. 1681a–2(a)(8) and 1681a–2(e).

3. Small Entities To Which the Proposed Rule Will Apply

The proposed rule would apply to ''an entity other than an individual consumer that furnishes information relating to consumers to one or more consumer reporting agencies,'' except when it ''provides information to a consumer reporting agency solely to obtain a consumer report in accordance with sections 604(a) and (f) of the FCRA.'' 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 proposed 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 available data is not sufficient for the Commission to realistically estimate the number of entities the Commission regulates that would be subject to the proposed rule and that are small as defined by the Small Business Administration.[43] The Commission invites comment and information on the number and type of small entities affected by the proposed rule.

4. Projected Reporting, Recordkeeping and Other Compliance Requirements

Under the proposed rule, entities 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. 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 written policies and procedures proposed in the rule would formalize the processes and controls necessary for accurate reporting. Similarly, the proposed guidelines in Section II of Appendix A of the Regulation contain requirements that are already included in the FCRA.

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

The Commission believes that many entities have already implemented a significant portion of the policies and procedures required by the proposed rule, whether under the definition of ''integrity'' proposed in the Regulatory Definition Approach or the definition in the Guidelines Definition Approach, as discussed in the **SUPPLEMENTARY INFORMATION** above. The process of furnishing information to consumer reporting agencies is often automated. With regard to the two alternatives concerning the ''integrity'' of information, the automated furnishing systems already support the type of information that a furnisher would provide under either approach.

Nonetheless, the Commission specifically requests comment and specific data on the size of the incremental burden on small entities in formalizing the policies and procedures not currently included, given the entities' current practices and compliance with existing requirements.

The proposed rule would also require entities that furnish information about consumers to respond to direct disputes from consumers. The rule would require new procedural requirements, including direct dispute notices.

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 administrative support personnel will provide any required notices to consumers.

The Commission 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 proposed rule does 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 Commission believes that many of these mechanisms and processes can be readily adapted to handle consumer disputes about their consumer reports.

Nonetheless, the Commission specifically requests comment and specific data on the size of the incremental burden that creating a program would have on small entities, given their current practices and compliance with existing requirements.

5. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed Rule. As noted in Section 4, however, compliance with some provisions of other federal statutes will facilitate compliance with the proposed rule by furnishers of information to consumer reporting agencies. The Commission invites comment and information about any statutes or rules that may duplicate, overlap, or conflict with the proposed Rule.

6. Significant Alternatives to the Proposed Rule

The standards in the proposed Rule 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 proposal would permit entities to include in their accuracy and integrity

[43] 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.*

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 proposed rule 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 proposed § 660.4. Nevertheless, the Commission seeks comment and information on the need, if any, for alternative compliance methods that, consistent with the statutory requirement, would reduce the economic impact of the rule on small entities.

If the comments filed in response to this notice identify small entities that are affected by the rule, as well as alternative methods of compliance that would reduce the economic impact of the rule on such entities, the Commission will consider the feasibility of such alternatives and determine whether they should be incorporated into the final rule.

C. OCC and OTS Executive Order 12866 Determinations

The OCC and OTS each determined that its portion of the proposed rulemaking 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 proposed rulemaking 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 proposed 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 proposed 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 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act 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 this proposed rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more. Accordingly, neither the OCC nor the 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 this proposed rule would 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).

VII. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Pub. L. 106–102, sec. 722, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the OCC, Board, FDIC, and OTS to use plain language in all proposed and final rules published after January 1, 2000. Therefore, these agencies specifically invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulations and guidelines clearly stated? If not, how could the regulations and guidelines be more clearly stated?
- Do the proposed regulations and guidelines contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulations and guidelines easier to understand? If so, what changes to the format would make them easier to understand?
- What else could we do to make the regulations and guidelines easier to understand?

VIII. Communications by Outside Parties to FTC Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any FTC Commissioner or FTC Commissioner's advisor will be placed on the public record. *See* 16 CFR 1.26(b)(5).

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, 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

Consumer reports, Consumer reporting agencies, Fair credit reporting, Information furnishers, Identity theft, Trade practices.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons discussed in the joint preamble, the Office of the Comptroller of the Currency proposes to amend chapter I of title 12 of the Code of Federal Regulations by amending 12 CFR part 41 as follows:

PART 41—FAIR CREDIT REPORTING

1. Revise the authority citation for part 41 to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24 (Seventh), 93a, 481, 484, and 1818; 15 U.S.C. 1681a, 1681b, 1681c, 1681m, 1681s, 1681s–2, 1681s–3, 1681t, and 1681w; Sec. 214, Pub. L. 108–159, 117 Stat. 1952.

2. Add a new subpart E to part 41 to read as follows:

Subpart E—Duties of Furnishers of Information

Subpart E—Duties of Furnishers of Information

§ 41.40 Scope.

This subpart applies to a national bank, Federal branch and agency of a foreign bank, 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)).

§ 41.41 Definitions.

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

Regulatory Definition Approach for Defining ''Accuracy'' and ''Integrity'' Follows

(a) *Accuracy* means that any information that a furnisher provides to a consumer reporting agency 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.

(b) *Integrity* means that any information that a furnisher provides to a consumer reporting agency 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 of a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

(c) *Furnisher* means an entity other than an individual consumer that furnishes information relating to consumers to one or more consumer reporting agencies. An entity is not a furnisher when it provides information to a consumer reporting agency solely to obtain a consumer report in accordance with sections 604(a) and (f) of the FCRA.

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

(e) *Direct dispute* means 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.

§ 41.42 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.

§ 41.43 Direct disputes.

(a) *General rule.* Except as otherwise provided in this section, a furnisher must investigate 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 reported 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); or

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

(2) 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 paragraph (c)(2) of this section.

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

(1) The name, address, and telephone number of the consumer;

(2) Sufficient information to identify the account or other relationship that is in dispute, such as an account number;

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

(4) 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 consumer report that contains the allegedly inaccurate information; a police report; a fraud or identity theft affidavit; a court order; or account statements.

(e) *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 may be 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 under this section.

(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 read as follows:

Appendix E to Part 41—Interagency Guidelines Concerning the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies

The OCC encourages voluntary furnishing of information to consumer reporting agencies. Section 41.42 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 § 41.42(b), the furnisher must consider the guidelines set forth below in developing these 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.

I. Nature, Scope, and Objectives of Policies and Procedures

A. *Nature and Scope.* Section 41.42(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. The furnisher's policies and procedures should reflect, 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.

Regulatory Definition Approach for Paragraph B Follows

B. *Objectives.* A furnisher should have written policies and procedures reasonably designed to accomplish the following objectives:

1. Ensure that the information it furnishes about accounts or other relationships with a consumer:

(a) Accurately identifies the appropriate consumer;

(b) Accurately reports the terms of those accounts or other relationships; and

(c) Accurately reports the consumer's performance and other conduct with respect to the account or other relationship with the consumer;

2. 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;

3. Ensure that it 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;

4. Ensure that it 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;

5. Ensure that the information it furnishes about accounts or other relationships with a 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 reported with appropriate identifying information about the consumer to whom it pertains, in a standardized and clearly understandable form and manner, and with a date specifying the time period to which the information pertains; and

6. Ensure that the information it furnishes about accounts or other relationships with a consumer is substantiated by the furnisher's own records.

Guidelines Definition Approach for Paragraph B Follows

B. *Objectives.* A furnisher should have written policies and procedures reasonably designed to accomplish the following objectives:

1. Ensure that the information it furnishes about accounts or other relationships with a consumer is accurate. *Accuracy* means that any information that a furnisher provides to a consumer reporting agency 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;

2. Ensure that the information it furnishes about accounts or other relationships with a consumer is furnished with integrity. *Integrity* means that any information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer is:

(i) 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 whom 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

(ii) Substantiated by the furnisher's own records;

3. Ensure that it 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; and

4. Ensure that it 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.

II. Accuracy and Integrity Duties of Furnishers Under the FCRA

A furnisher's policies and procedures should address compliance with all applicable requirements imposed on the furnisher under the FCRA, including the duties to:[1]

[1] This is not a complete listing of furnisher duties relating to accuracy and integrity. Furnishers should consult the FCRA to determine what additional duties may apply.

A. Promptly notify the consumer reporting agency of the furnisher's determination that furnished information is not complete or accurate, for a furnisher that regularly and in the ordinary course of business furnishes information; provide any corrections, or any additional information, that is necessary to make the furnished information complete and accurate; and not thereafter furnish information that remains incomplete or inaccurate. 15 U.S.C. 1681s–2(a)(2).

B. Provide notice of a dispute by a consumer about the accuracy or completeness of information furnished to a consumer reporting agency. 15 U.S.C. 1681s–2(a)(3).

C. Report voluntary closure of a credit account by the consumer in information regularly furnished for the period in which the credit account is closed, for a furnisher that regularly and in the ordinary course of business furnishes information about consumer credit accounts. 15 U.S.C. 1681s–2(a)(4).

D. Notify the consumer reporting agency of the date of delinquency on an account not later than 90 days after the furnisher furnishes information to the consumer reporting agency regarding action taken on the delinquent account (including placement for collection, charge to profit or loss, or any similar action). Date of delinquency means the month and year of the commencement of the delinquency on the account that immediately preceded the action. 15 U.S.C. 1681s–2(a)(5).

E. Have in place reasonable procedures to respond to any notification that the furnisher receives from a consumer reporting agency under section 605B of the FCRA, relating to the blocking of information resulting from identity theft and to prevent the refurnishing of such blocked information. 15 U.S.C. 1681s–2(a)(6)(A).

F. Not furnish to a consumer reporting agency information that purports to relate to the consumer if the consumer submits an identity theft report to the furnisher (at the address specified by that furnisher for receiving such reports) stating that such information maintained by that furnisher resulted from identity theft. (This restriction does not apply if the furnisher subsequently knows or is informed by the consumer that the information is correct.) 15 U.S.C. 1681s–2(a)(6)(B).

G. After receiving a notice of dispute from a consumer reporting agency, in a timely manner: Conduct an investigation; review all relevant information the consumer reporting agency provides; report the results of the investigation to the consumer reporting agency; report incomplete or inaccurate information to all nationwide consumer reporting agencies to which it reported the information; and modify, delete, or permanently block incomplete or inaccurate information or information that cannot be verified. 15 U.S.C. 1681s–2(b).

H. Investigate direct disputes as required by 12 CFR 41.43 and 15 U.S.C. 1681s–2(a)(8).

III. 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 and 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, such as through an audit;

2. 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 consumer reporting agencies and the types of errors, omissions, or other problems that may have affected the accuracy and integrity of information it has furnished about consumers to consumer reporting agencies; and

3. Obtaining feedback from consumer reporting agencies, consumers, the furnisher's staff, or other appropriate parties.

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.

IV. Specific Components of Policies and Procedures

A furnisher's policies and procedures should address the following:

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. 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 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, verifying random samples, and conducting regular reviews 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 and 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 debts in a manner that prevents re-aging of information, duplicative reporting, or other problems affecting the accuracy or integrity of the information furnished.

H. Attempting to obtain the information listed in § 41.43(d) from a consumer before determining that the consumer's dispute is frivolous or irrelevant.

I. Ensuring that deletions, updates, and corrections furnished to consumer reporting agencies are reflected in business systems to avoid furnishing erroneous information.

J. Conducting investigations of direct disputes in a manner that promotes the efficient resolution of such disputes.

K. Ensuring that technological and other means of communication with consumer reporting agencies 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.

L. 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.

M. 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 and integrity of information furnished to consumer reporting agencies.

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the joint preamble, part 222 of title 12, chapter II, of the Code of Federal Regulations is proposed to be amended as follows:

PART 222—FAIR CREDIT REPORTING (REGULATION V)

1. The authority citation for part 222 continues to read as follows:

Authority: 15 U.S.C. 1681a, 1681b, 1681c, 1681m, 1681s, 1681s–2, 1681s–3, 1681t, and

1681w; Secs. 3 and 214, Pub. L. 108–159, 117 Stat. 1952.

2. A new Subpart E is added to part 222 to read as follows:

Subpart E—Duties of Furnishers of Information

Subpart E—Duties of Furnishers of Information

§ 222.40 Scope.

Subpart E of this part applies to member banks of the Federal Reserve System (other than national 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, as amended (12 U.S.C. 1844(c)(5)), 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.*).

§ 222.41 Definitions.

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

Regulatory Definition Approach for Defining ''Accuracy'' and ''Integrity'' Follows:

(a) *Accuracy* means that any information that a furnisher provides to a consumer reporting agency 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.

(b) *Integrity* means that any information that a furnisher provides to a consumer reporting agency 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 of a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

(c) *Furnisher* means an entity other than an individual consumer that furnishes information relating to consumers to one or more consumer reporting agencies. An entity is not a furnisher when it provides information to a consumer reporting agency solely to obtain a consumer report in accordance with sections 604(a) and (f) of the FCRA.

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

(e) *Direct dispute* means 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.

§ 222.42 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.

§ 222.43 Direct disputes.

(a) *General rule.* Except as otherwise provided in this section, a furnisher must investigate 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 reported 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); or

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

(2) 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 paragraph (c)(2) of this section.

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

(1) The name, address, and telephone number of the consumer;

(2) Sufficient information to identify the account or other relationship that is in dispute, such as an account number;

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

(4) 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 consumer report that contains the allegedly inaccurate information; a police report; a fraud or identity theft affidavit; a court order; or account statements.

(e) *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 may be 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 under this section.

(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 may notice consist of a standardized form describing the general nature of such information.

3. A new Appendix E is added to part 222 to read as follows:

Appendix E to Part 222—Interagency Guidelines Concerning the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies

The Board encourages voluntary furnishing of information to consumer reporting agencies. Section 222.42 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 § 222.42(b), the furnisher must consider the guidelines set forth below in developing these 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.

I. Nature, Scope, and Objectives of Policies and Procedures

A. *Nature and Scope.* Section 222.42(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. The furnisher's policies and procedures should reflect, 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.

Regulatory Definition Approach for Paragraph B Follows:

B. *Objectives.* A furnisher should have written policies and procedures reasonably designed to accomplish the following objectives:

1. Ensure that the information it furnishes about accounts or other relationships with a consumer:

(a) Accurately identifies the appropriate consumer;

(b) Accurately reports the terms of those accounts or other relationships; and

(c) Accurately reports the consumer's performance and other conduct with respect to the account or other relationship with the consumer;

2. 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;

3. Ensure that it 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;

4. Ensure that it 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;

5. Ensure that the information it furnishes about accounts or other relationships with a 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 reported with appropriate identifying information about the consumer to whom it pertains, in a standardized and clearly understandable form and manner, and with a date specifying the time period to which the information pertains; and

6. Ensure that the information it furnishes about accounts or other relationships with a consumer is substantiated by the furnisher's own records.

Guidelines Definition Approach for Paragraph B Follows:

B. *Objectives.* A furnisher should have written policies and procedures reasonably designed to accomplish the following objectives:

1. Ensure that the information it furnishes about accounts or other relationships with a consumer is accurate. *Accuracy* means that any information that a furnisher provides to a consumer reporting agency 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;

2. Ensure that the information it furnishes about accounts or other relationships with a consumer is furnished with integrity. *Integrity* means that any information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer is:

(i) 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 whom 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

(ii) Substantiated by the furnisher's own records;

3. Ensure that it 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; and

4. Ensure that it 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.

II. Accuracy and Integrity Duties of Furnishers Under the FCRA

A furnisher's policies and procedures should address compliance with all applicable requirements imposed on the furnisher under the FCRA, including the duties to: [1]

A. Promptly notify the consumer reporting agency of the furnisher's determination that furnished information is not complete or accurate, for a furnisher that regularly and in the ordinary course of business furnishes information; provide any corrections, or any additional information, that is necessary to make the furnished information complete and accurate; and not thereafter furnish information that remains incomplete or inaccurate. 15 U.S.C. 1681s–2(a)(2).

B. Provide notice of a dispute by a consumer about the accuracy or completeness of information furnished to a consumer reporting agency. 15 U.S.C. 1681s–2(a)(3).

C. Report voluntary closure of a credit account by the consumer in information regularly furnished for the period in which the credit account is closed, for a furnisher that regularly and in the ordinary course of business furnishes information about consumer credit accounts. 15 U.S.C. 1681s–2(a)(4).

D. Notify the consumer reporting agency of the date of delinquency on an account not later than 90 days after the furnisher furnishes information to the consumer reporting agency regarding action taken on the delinquent account (including placement for collection, charge to profit or loss, or any similar action). Date of delinquency means the month and year of the commencement of the delinquency on the account that immediately preceded the action. 15 U.S.C. 1681s–2(a)(5).

E. Have in place reasonable procedures to respond to any notification that the furnisher receives from a consumer reporting agency under section 605B of the FCRA, relating to the blocking of information resulting from identity theft and to prevent the refurnishing of such blocked information. 15 U.S.C. 1681s–2(a)(6)(A).

F. Not furnish to a consumer reporting agency information that purports to relate to the consumer if the consumer submits an identity theft report to the furnisher (at the address specified by that furnisher for receiving such reports) stating that such information maintained by that furnisher resulted from identity theft. (This restriction does not apply if the furnisher subsequently knows or is informed by the consumer that the information is correct.) 15 U.S.C. 1681s–2(a)(6)(B).

G. After receiving a notice of dispute from a consumer reporting agency, in a timely manner: Conduct an investigation; review all relevant information the consumer reporting agency provides; report the results of the investigation to the consumer reporting agency; report incomplete or inaccurate information to all nationwide consumer reporting agencies to which it reported the information; and modify, delete, or permanently block incomplete or inaccurate information or information that cannot be verified. 15 U.S.C. 1681s–2(b).

H. Investigate direct disputes as required by 12 CFR 222.43 and 15 U.S.C. 1681s–2(a)(8).

III. 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 and 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, such as through an audit;

2. 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 consumer reporting agencies and the types of errors, omissions, or other problems that may have affected the accuracy and integrity of information it has furnished about consumers to consumer reporting agencies; and

3. Obtaining feedback from consumer reporting agencies, consumers, the furnisher's staff, or other appropriate parties.

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.

IV. Specific Components of Policies and Procedures

A furnisher's policies and procedures should address the following:

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. 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 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, verifying random samples, and conducting regular reviews 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 and 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 debts in a manner that prevents re-aging of information, duplicative reporting, or other problems affecting the accuracy or integrity of the information furnished.

H. Attempting to obtain the information listed in § 222.43(d) of this part from a consumer before determining that the consumer's dispute is frivolous or irrelevant.

I. Ensuring that deletions, updates, and corrections furnished to consumer reporting agencies are reflected in business systems to avoid furnishing erroneous information.

J. Conducting investigations of direct disputes in a manner that promotes the efficient resolution of such disputes.

K. Ensuring that technological and other means of communication with consumer reporting agencies 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.

L. 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.

M. 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 and integrity of information furnished to consumer reporting agencies.

[1] This is not a complete listing of furnisher duties relating to accuracy and integrity. Furnishers should consult the FCRA to determine what additional duties may apply.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons discussed in the joint preamble, the Federal Deposit Insurance

Corporation proposes to amend chapter III of title 12 of the Code of Federal Regulations by amending 12 CFR part 334 as follows:

PART 334—FAIR CREDIT REPORTING

1. The authority citation for part 334 is revised to read as follows:

Authority: 12 U.S.C. 1818, 1819 (Tenth), and 1831p–1; 15 U.S.C. 1681a, 1681b, 1681c, 1681m, 1681s, 1681s–2, 1681s–3, 1681t, 1681w, and 6801 *et seq.*; Pub. L. 108–159, 117 Stat. 1952.

2. Add subpart E to part 334 to read as follows:

Subpart E—Duties of Furnishers of Information

Subpart E—Duties of Furnishers of Information

§ 334.40 Scope.

This subpart applies to a financial institution or creditor that is an insured state nonmember bank, insured state licensed branch of a foreign bank, or a subsidiary of such entities (except dealers, persons providing insurance, investment companies, and investment advisers).

§ 334.41 Definitions.

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

Regulatory Definition Approach for Defining ''Accuracy'' and ''Integrity'' Follows:

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

(b) *Integrity* means that any information that a furnisher provides to a consumer reporting agency 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 of a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

(c) *Furnisher* means an entity that furnishes information relating to consumers to one or more consumer reporting agencies. An entity is not a furnisher when it provides information to a consumer reporting agency solely to obtain a consumer report in accordance with sections 604(a) and (f) of the FCRA.

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

(e) *Direct dispute* means 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.

§ 334.42 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.

§ 334.43 Direct disputes.

(a) *General rule.* Except as otherwise provided in this section, a furnisher must investigate 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 reported 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 credit worthiness, 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; or

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

(2) 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 paragraph (c)(2) of this section.

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

(1) The name, address, and telephone number of the consumer;

(2) Sufficient information to identify the account or other relationship that is in dispute, such as an account number;

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

(4) 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 consumer report that contains the allegedly inaccurate information; a police report; a fraud or identity theft affidavit; a court order; or account statements.

(e) *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 may be 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 under this section.

(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 may consist of a standardized form describing the general nature of such information.

3. Add Appendix E to part 334 to read as follows:

Appendix E to Part 334—Interagency Guidelines Concerning the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies

The FDIC encourages voluntary furnishing of information to consumer reporting agencies. Section 334.42 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 § 334.42(b), the furnisher must consider the guidelines set forth below in developing these 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.

I. Nature, Scope, and Objectives of Policies and Procedures

A. *Nature and Scope.* Section 334.42(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. The furnisher's policies and procedures should reflect, 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.

Regulatory Definition Approach for Paragraph B Follows:

B. *Objectives.* A furnisher should have written policies and procedures reasonably designed to accomplish the following objectives:

1. Ensure that the information it furnishes about accounts or other relationships with a consumer:

(a) Accurately identifies the appropriate consumer;

(b) Accurately reports the terms of those accounts or other relationships;

(c) Accurately reports the consumer's performance and other conduct with respect to the account or other relationship with the consumer;

2. 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;

3. Ensure that it 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;

4. Ensure that it 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;

5. Ensure that the information it furnishes about accounts or other relationships with a 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 reported with appropriate identifying information about the consumer to which it pertains, in a standardized and clearly understandable form and manner, with a date specifying the time period to which the information pertains; and

6. Ensure that the information it furnishes about accounts or other relationships with a furnisher is substantiated by the furnisher's own records.

Guidelines Definition Approach for Paragraph B Follows:

B. *Objectives.* A furnisher should have written policies and procedures reasonably designed to accomplish the following objectives:

1. Ensure that the information it furnishes about accounts or other relationships with a consumer is accurate. *Accuracy* means that any information that a furnisher provides to a consumer reporting agency 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;

2. Ensure that the information it furnishes about accounts or other relationships with a consumer is furnished with integrity. *Integrity* means that any information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer is:

(i) 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 whom 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

(ii) Substantiated by the furnisher's own records;

3. Ensure that it 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; and

4. Ensure that it 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.

II. Accuracy and Integrity Duties of Furnishers Under the FCRA

A furnisher's policies and procedures should address compliance with all applicable requirements imposed on the furnisher under the FCRA, including the duties to: [1]

A. Promptly notify the consumer reporting agency of the furnisher's determination that furnished information is not complete or accurate, for a furnisher that regularly and in the ordinary course of business furnishes information; provide any corrections, or any additional information, that is necessary to make the furnished information complete and accurate; and not thereafter furnish information that remains incomplete or inaccurate. 15 U.S.C. 1681s–2(a)(2).

B. Provide notice of a dispute by a consumer about the accuracy or completeness of information furnished to a consumer reporting agency. 15 U.S.C. 1681s–2(a)(3).

C. Report voluntary closure of a credit account by the consumer in information regularly furnished for the period in which the credit account is closed, for a furnisher that regularly and in the ordinary course of business furnishes information about consumer credit accounts. 15 U.S.C. 1681s–2(a)(4).

D. Notify the consumer reporting agency of the date of delinquency on an account not later than 90 days after the furnisher furnishes information to the consumer reporting agency regarding action taken on the delinquent account (including placement for collection, charge to profit or loss, or any similar action). Date of delinquency means the month and year of the commencement of the delinquency on the account that immediately preceded the action. 15 U.S.C. 1681s–2(a)(5).

E. Have in place reasonable procedures to respond to any notification that the furnisher receives from a consumer reporting agency under section 605B of the FCRA, relating to the blocking of information resulting from identity theft and to prevent the refurnishing of such blocked information. 15 U.S.C. 1681s–2(a)(6)(A).

F. Not furnish to a consumer reporting agency information that purports to relate to the consumer if the consumer submits an identity theft report to the furnisher (at the address specified by that furnisher for receiving such reports) stating that such information maintained by that furnisher resulted from identity theft. (This restriction does not apply if the furnisher subsequently knows or is informed by the consumer that the information is correct.) 15 U.S.C. 1681s–2(a)(6)(B).

G. After receiving a notice of dispute from a consumer reporting agency, in a timely manner: Conduct an investigation; review all relevant information the consumer reporting agency provides; report the results of the investigation to the consumer reporting agency; report incomplete or inaccurate information to all nationwide consumer reporting agencies to which it reported the information; and modify, delete, or permanently block incomplete or inaccurate information or information that cannot be verified. 15 U.S.C. 1681s–2(b).

H. Investigate direct disputes as required by 12 CFR 334.43 and 15 U.S.C. 1681s–2(a)(8).

III. 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 and 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, such as through an audit;

2. 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 consumer reporting agencies and the types of errors, omissions, or other problems that may have affected the accuracy and integrity of information it has furnished about consumers to consumer reporting agencies; and

3. Obtaining feedback from consumer reporting agencies, consumers, the furnisher's staff, or other appropriate parties.

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.

IV. Specific Components of Policies and Procedures

A furnisher's policies and procedures should address the following:

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. 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 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, verifying random samples, and conducting regular reviews 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 and 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 debts in a manner that prevents re-aging of information, duplicative reporting, or other problems affecting the accuracy or integrity of the information furnished.

H. Attempting to obtain the information listed in § _.43(d) from a consumer before determining that the consumer's dispute is frivolous or irrelevant.

I. Ensuring that deletions, updates, and corrections furnished to consumer reporting agencies are reflected in business systems to avoid furnishing erroneous information.

J. Conducting investigations of direct disputes in a manner that promotes the efficient resolution of such disputes.

K. Ensuring that technological and other means of communication with consumer reporting agencies 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.

L. 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.

M. Conducting a periodic evaluation of its own practices, consumer reporting agency practices, 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 consumer reporting agencies.

Department of the Treasury

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

For the reasons discussed in the joint preamble, the Office of Thrift

[1] This is not a complete listing of furnisher duties relating to accuracy and integrity. Furnishers should consult the FCRA to determine what additional duties may apply.

Supervision proposes to amend chapter V of title 12 of the Code of Federal Regulations by amending 12 CFR part 571 as follows:

PART 571—FAIR CREDIT REPORTING

1. The authority citation for part 571 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1828, 1831p–1, and 1881–1884; 15 U.S.C. 1681b, 1681c, 1681m, 1681s, 1681s–2, 1681s–3, 1681t, and 1681w; 15 U.S.C. 6801 and 6805; Sec. 214 Pub. L. 108–159, 117 Stat. 1952.

Subpart A—General Provisions

2. Amend § 571.1 by adding a new paragraph (b)(5) to read as follows:

§ 571.1 Purpose and scope.

* * * * *

(b) * * *

(5) The scope of subpart E of this part is stated in § 571.40 of this part.

* * * * *

3. Add a new Subpart E to part 571 to read as follows:

Subpart E—Duties of Furnishers of Information

Sec.

Subpart E—Duties of Furnishers of Information

§ 571.40 Scope.

Subpart C of this part applies to savings associations whose deposits are insured by the Federal Deposit Insurance Corporation or, in accordance with § 559.3(h)(1) of this chapter, federal savings association 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).

§ 571.41 Definitions.

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

Regulatory Definition Approach for Defining ''Accuracy'' and ''Integrity'' Follows:

(a) *Accuracy* means that any information that a furnisher provides to a consumer reporting agency 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.

(b) *Integrity* means that any information that a furnisher provides to a consumer reporting agency 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 of a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

(c) *Furnisher* means an entity other than an individual consumer that furnishes information relating to consumers to one or more consumer reporting agencies. An entity is not a furnisher when it provides information to a consumer reporting agency solely to obtain a consumer report in accordance with sections 604(a) and (f) of the FCRA.

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

(e) *Direct dispute* means 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.

§ 571.42 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.

§ 571.43 Direct disputes.

(a) *General rule.* Except as otherwise provided in this section, a furnisher must investigate 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 credit limit on an open-end account, type of account, principal balance, scheduled payment amount on an account, or the amount of the reported 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); or

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

(2) 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 paragraph (c)(2) of this section.

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

(1) The name, address, and telephone number of the consumer;

(2) Sufficient information to identify the account or other relationship that is in dispute, such as an account number;

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

(4) 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 consumer report that contains the allegedly inaccurate information; a police report; a fraud or identity theft affidavit; a court order; or account statements.

(e) *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 may be 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 under this section.

(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 may consist of a standardized form describing the general nature of such information.

4. Add a new Appendix E to part 571 to read as follows:

Appendix E to Part 571—Interagency Guidelines Concerning the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies

OTS encourages voluntary furnishing of information to consumer reporting agencies. Section 571.42 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 § 571.42(b) of this part, the furnisher must consider the guidelines set forth below in developing these 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.

I. Nature, Scope, and Objectives of Policies and Procedures

A. *Nature and Scope.* Section 571.42(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. The furnisher's policies and procedures should reflect, 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.

Regulatory Definition Approach for Paragraph B Follows:

B. *Objectives.* A furnisher should have written policies and procedures reasonably designed to accomplish the following objectives:

1. Ensure that the information it furnishes about accounts or other relationships with a consumer:

(a) Accurately identifies the appropriate consumer;

(b) Accurately reports the terms of those accounts or other relationships; and

(c) Accurately reports the consumer's performance and other conduct with respect to the account or other relationship with the consumer;

2. 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;

3. Ensure that it 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;

4. Ensure that it 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;

5. Ensure that the information it furnishes about accounts or other relationships with a 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 reported with appropriate identifying information about the consumer to whom it pertains, in a standardized and clearly understandable form and manner, and with a date specifying the time period to which the information pertains; and

6. Ensure that the information it furnishes about accounts or other relationships with a consumer is substantiated by the furnisher's own records.

Guidelines Definition Approach for Paragraph B Follows:

B. *Objectives.* A furnisher should have written policies and procedures reasonably designed to accomplish the following objectives:

1. Ensure that the information it furnishes about accounts or other relationships with a consumer is accurate. *Accuracy* means that any information that a furnisher provides to a consumer reporting agency 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;

2. Ensure that the information it furnishes about accounts or other relationships with a consumer is furnished with integrity. *Integrity* means that any information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer is:

(i) 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 whom 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

(ii) Substantiated by the furnisher's own records;

3. Ensure that it 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; and

4. Ensure that it 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.

II. Accuracy and Integrity Duties of Furnishers Under the FCRA

A furnisher's policies and procedures should address compliance with all applicable requirements imposed on the furnisher under the FCRA, including the duties to: [1]

A. Promptly notify the consumer reporting agency of the furnisher's determination that furnished information is not complete or accurate, for a furnisher that regularly and in the ordinary course of business furnishes information; provide any corrections, or any additional information, that is necessary to make the furnished information complete and accurate; and not thereafter furnish information that remains incomplete or inaccurate. 15 U.S.C. 1681s–2(a)(2).

B. Provide notice of a dispute by a consumer about the accuracy or completeness of information furnished to a consumer reporting agency. 15 U.S.C. 1681s–2(a)(3).

C. Report voluntary closure of a credit account by the consumer in information regularly furnished for the period in which the credit account is closed, for a furnisher that regularly and in the ordinary course of business furnishes information about consumer credit accounts. 15 U.S.C. 1681s–2(a)(4).

D. Notify the consumer reporting agency of the date of delinquency on an account not later than 90 days after the furnisher furnishes information to the consumer reporting agency regarding action taken on the delinquent account (including placement for collection, charge to profit or loss, or any similar action). Date of delinquency means the month and year of the commencement of the delinquency on the account that immediately preceded the action. 15 U.S.C. 1681s–2(a)(5).

E. Have in place reasonable procedures to respond to any notification that the furnisher receives from a consumer reporting agency under section 605B of the FCRA, relating to the blocking of information resulting from identity theft and to prevent the refurnishing of such blocked information. 15 U.S.C. 1681s–2(a)(6)(A).

F. Not furnish to a consumer reporting agency information that purports to relate to the consumer if the consumer submits an identity theft report to the furnisher (at the address specified by that furnisher for receiving such reports) stating that such information maintained by that furnisher resulted from identity theft. (This restriction does not apply if the furnisher subsequently knows or is informed by the consumer that the information is correct.) 15 U.S.C. 1681s–2(a)(6)(B).

G. After receiving a notice of dispute from a consumer reporting agency, in a timely manner: Conduct an investigation; review all relevant information the consumer reporting agency provides; report the results of the investigation to the consumer reporting agency; report incomplete or inaccurate information to all nationwide consumer reporting agencies to which it reported the information; and modify, delete, or permanently block incomplete or inaccurate information or information that cannot be verified. 15 U.S.C. 1681s–2(b).

H. Investigate direct disputes as required by § 571.43 of this part and 15 U.S.C. 1681s–2(a)(8).

III. 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 and 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, such as through an audit;

2. 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 consumer reporting agencies and the types of errors, omissions, or other problems that may have affected the accuracy and integrity of information it has furnished about consumers to consumer reporting agencies; and

3. Obtaining feedback from consumer reporting agencies, consumers, the furnisher's staff, or other appropriate parties.

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.

IV. Specific Components of Policies and Procedures

A furnisher's policies and procedures should address the following:

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. 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 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, verifying random samples, and conducting regular reviews 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 and 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 debts in a manner that prevents re-aging of information, duplicative reporting, or other problems affecting the accuracy or integrity of the information furnished.

H. Attempting to obtain the information listed in § 571.43(d) of this part from a consumer before determining that the consumer's dispute is frivolous or irrelevant.

I. Ensuring that deletions, updates, and corrections furnished to consumer reporting agencies are reflected in business systems to avoid furnishing erroneous information.

J. Conducting investigations of direct disputes in a manner that promotes the efficient resolution of such disputes.

K. Ensuring that technological and other means of communication with consumer reporting agencies 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.

L. 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.

M. Conducting a periodic evaluation of its own practices, consumer reporting agency

[1] This is not a complete listing of furnisher duties relating to accuracy and integrity. Furnishers should consult the FCRA to determine what additional duties may apply.

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 consumer reporting agencies.

National Credit Union Administration

12 CFR Chapter VII

Authority and Issuance

For the reasons discussed in the joint preamble, the National Credit Union Administration proposes to amend 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; Public Law 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.

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:

Regulatory Definition Approach for Defining ''Accuracy'' and ''Integrity'' Follows:

(a) *Accuracy* means that any information that a furnisher provides to a consumer reporting agency 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.

(b) *Integrity* means that any information that a furnisher provides to a consumer reporting agency 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 of a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

(c) *Furnisher* means an entity other than an individual consumer that furnishes information relating to consumers to one or more consumer reporting agencies. An entity is not a furnisher when it provides information to a consumer reporting agency solely to obtain a consumer report in accordance with sections 604(a) and (f) of the FCRA.

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

(e) *Direct dispute* means 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.

§ 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 investigate 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 reported 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); or

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

(2) 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 paragraph (c)(2) of this section.

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

(1) The name, address, and telephone number of the consumer;

(2) Sufficient information to identify the account or other relationship that is in dispute, such as an account number;

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

(4) 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 consumer report that contains the allegedly inaccurate information; a police report; a fraud or identity theft affidavit; a court order; or account statements.

(e) *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 may be 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 under this section.

(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 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), the furnisher must consider the guidelines set forth below in developing these 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.

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. The furnisher's policies and procedures should reflect, 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.

Regulatory Definition Approach for Paragraph B Follows:

B. *Objectives.* A furnisher should have written policies and procedures reasonably designed to accomplish the following objectives:

1. Ensure that the information it furnishes about accounts or other relationships with a consumer:

(a) Accurately identifies the appropriate consumer;

(b) Accurately reports the terms of those accounts or other relationships; and

(c) Accurately reports the consumer's performance and other conduct with respect to the account or other relationship with the consumer;

2. 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;

3. Ensure that it 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;

4. Ensure that it 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;

5. Ensure that the information it furnishes about accounts or other relationships with a 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 reported with appropriate identifying information about the consumer to whom it pertains, in a standardized and clearly understandable form and manner, and with a date specifying the time period to which the information pertains; and

6. Ensure that the information it furnishes about accounts or other relationships with a consumer is substantiated by the furnisher's own records.

Guidelines Definition Approach for Paragraph B Follows:

B. *Objectives.* A furnisher should have written policies and procedures reasonably designed to accomplish the following objectives:

1. Ensure that the information it furnishes about accounts or other relationships with a consumer is accurate. *Accuracy* means that any information that a furnisher provides to a consumer reporting agency 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;

2. Ensure that the information it furnishes about accounts or other relationships with a consumer is furnished with integrity. *Integrity* means that any information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer is:

(i) 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 whom 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

(ii) Substantiated by the furnisher's own records;

3. Ensure that it 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; and

4. Ensure that it 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.

II. Accuracy and Integrity Duties of Furnishers Under the FCRA

A furnisher's policies and procedures should address compliance with all applicable requirements imposed on the furnisher under the FCRA, including the duties to: [1]

A. Promptly notify the consumer reporting agency of the furnisher's determination that furnished information is not complete or accurate, for a furnisher that regularly and in the ordinary course of business furnishes information; provide any corrections, or any additional information, that is necessary to make the furnished information complete and accurate; and not thereafter furnish information that remains incomplete or inaccurate. 15 U.S.C. 1681s–2(a)(2).

B. Provide notice of a dispute by a consumer about the accuracy or completeness of information furnished to a consumer reporting agency. 15 U.S.C. 1681s–2(a)(3).

C. Report voluntary closure of a credit account by the consumer in information regularly furnished for the period in which the credit account is closed, for a furnisher that regularly and in the ordinary course of business furnishes information about consumer credit accounts. 15 U.S.C. 1681s–2(a)(4).

D. Notify the consumer reporting agency of the date of delinquency on an account not later than 90 days after the furnisher furnishes information to the consumer reporting agency regarding action taken on the delinquent account (including placement for collection, charge to profit or loss, or any similar action). Date of delinquency means the month and year of the commencement of the delinquency on the account that immediately preceded the action. 15 U.S.C. 1681s–2(a)(5).

E. Have in place reasonable procedures to respond to any notification that the furnisher receives from a consumer reporting agency under section 605B of the FCRA, relating to the blocking of information resulting from identity theft and to prevent the refurnishing of such blocked information. 15 U.S.C. 1681s–2(a)(6)(A).

F. Not furnish to a consumer reporting agency information that purports to relate to the consumer if the consumer submits an identity theft report to the furnisher (at the address specified by that furnisher for receiving such reports) stating that such information maintained by that furnisher resulted from identity theft. (This restriction does not apply if the furnisher subsequently knows or is informed by the consumer that the information is correct.) 15 U.S.C. 1681s–2(a)(6)(B).

G. After receiving a notice of dispute from a consumer reporting agency, in a timely manner: Conduct an investigation; review all relevant information the consumer reporting agency provides; report the results of the investigation to the consumer reporting agency; report incomplete or inaccurate information to all nationwide consumer reporting agencies to which it reported the information; and modify, delete, or permanently block incomplete or inaccurate information or information that cannot be verified. 15 U.S.C. 1681s–2(b).

H. Investigate direct disputes as required by 12 CFR 717.43 and 15 U.S.C. 1681s–2(a)(8).

III. 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 and 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, such as through an audit;

2. 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 consumer reporting agencies and the types of errors, omissions, or other problems that may have affected the accuracy and integrity of information it has furnished about consumers to consumer reporting agencies; and

3. Obtaining feedback from consumer reporting agencies, consumers, the furnisher's staff, or other appropriate parties.

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.

IV. Specific Components of Policies and Procedures

A furnisher's policies and procedures should address the following:

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. 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 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, verifying random samples, and conducting regular reviews 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 and 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 debts in a manner that prevents re-aging of information, duplicative reporting, or other problems affecting the accuracy or integrity of the information furnished.

H. Attempting to obtain the information listed in § 717.43(d) from a consumer before determining that the consumer's dispute is frivolous or irrelevant.

I. Ensuring that deletions, updates, and corrections furnished to consumer reporting agencies are reflected in business systems to avoid furnishing erroneous information.

J. Conducting investigations of direct disputes in a manner that promotes the efficient resolution of such disputes.

K. Ensuring that technological and other means of communication with consumer reporting agencies 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.

L. 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.

M. 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 and integrity of information furnished to consumer reporting agencies.

[1] This is not a complete listing of furnisher duties relating to accuracy and integrity. Furnishers should consult the FCRA to determine what additional duties may apply.

Federal Trade Commission

16 CFR Chapter I

Authority and Issuance

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

PART 660—DUTIES OF FURNISHERS OF INFORMATION TO CONSUMER REPORTING AGENCIES

Sec.

Authority: 15 U.S.C. 1681s–2(a)(8) and 1681s–2(e); Sec. 312, Pub. L. 108–159, 117 Stat. 1989.

§ 660.1 Scope.

This part applies to furnishers of information to consumer reporting agencies that are subject to administrative enforcement of the FCRA by the Federal Trade Commission pursuant to 15 U.S.C. 1681s(a)(1)(referred to as ''furnishers'').

§ 660.2 Definitions.

For purposes of this part and Appendix A of this part, the following definitions apply: *Regulatory Definition Approach for Defining ''Accuracy'' and ''Integrity'' Follows:*

(a) *Accuracy* means that any information that a furnisher provides to a consumer reporting agency 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.

(b) *Integrity* means that any information that a furnisher provides to a consumer reporting agency 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 of a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

(c) *Furnisher* means an entity other than an individual consumer that furnishes information relating to consumers to one or more consumer reporting agencies. An entity is not a furnisher when it provides information to a consumer reporting agency solely to obtain a consumer report in accordance with sections 604(a) and (f) of the FCRA.

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

(e) *Direct dispute* means 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.

§ 660.3 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 A 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.

§ 660.4 Direct disputes.

(a) *General rule.* Except as otherwise provided in this section, a furnisher must investigate 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 credit limit on an open-end account, type of account, principal balance, scheduled payment amount on an account, or the amount of the reported 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); or

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

(2) 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 paragraph (c)(2) of this section.

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

(1) The name, address, and telephone number of the consumer;

(2) Sufficient information to identify the account or other relationship that is in dispute, such as an account number;

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

(4) 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 consumer report that contains the allegedly inaccurate information; a police report; a fraud or identity theft affidavit; a court order; or account statements.

(e) *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 may be 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 under this section.

(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 may consist of a standardized form describing the general nature of such information.

Appendix A to Part 660—Interagency Guidelines Concerning the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies

The Commission encourages voluntary furnishing of information to consumer reporting agencies. Section 660.3 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 § 660.3(b) of this part, the furnisher must consider the guidelines set forth below in developing these 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.

I. Nature, Scope, and Objectives of Policies and Procedures

A. *Nature and Scope.* Section 660.3(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. The furnisher's policies and procedures should reflect, 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.

Regulatory Definition Approach for Paragraph B Follows:

B. *Objectives.* A furnisher should have written policies and procedures reasonably designed to accomplish the following objectives:

1. Ensure that the information it furnishes about accounts or other relationships with a consumer:

(a) Accurately identifies the appropriate consumer;

(b) Accurately reports the terms of those accounts or other relationships; and

(c) Accurately reports the consumer's performance and other conduct with respect to the account or other relationship with the consumer;

2. 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;

3. Ensure that it 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;

4. Ensure that it 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;

5. Ensure that the information it furnishes about accounts or other relationships with a 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 reported with appropriate identifying information about the consumer to whom it pertains, in a standardized and clearly understandable form and manner, and with a date specifying the time period to which the information pertains; and

6. Ensure that the information it furnishes about accounts or other relationships with a consumer is substantiated by the furnisher's own records.

Guidelines Definition Approach for Paragraph B Follows:

B. *Objectives.* A furnisher should have written policies and procedures reasonably designed to accomplish the following objectives:

1. Ensure that the information it furnishes about accounts or other relationships with a consumer is accurate. *Accuracy* means that any information that a furnisher provides to a consumer reporting agency 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;

2. Ensure that the information it furnishes about accounts or other relationships with a consumer is furnished with integrity. *Integrity* means that any information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer is:

(i) 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 whom 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

(ii) Substantiated by the furnisher's own records;

3. Ensure that it 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; and

4. Ensure that it 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.

II. Accuracy and Integrity Duties of Furnishers Under the FCRA

A furnisher's policies and procedures should address compliance with all applicable requirements imposed on the furnisher under the FCRA, including the duties to: [1]

A. Promptly notify the consumer reporting agency of the furnisher's determination that furnished information is not complete or accurate, for a furnisher that regularly and in the ordinary course of business furnishes information; provide any corrections, or any additional information, that is necessary to make the furnished information complete and accurate; and not thereafter furnish information that remains incomplete or inaccurate. 15 U.S.C. 1681s–2(a)(2).

B. Provide notice of a dispute by a consumer about the accuracy or completeness of information furnished to a consumer reporting agency. 15 U.S.C. 1681s–2(a)(3).

C. Report voluntary closure of a credit account by the consumer in information regularly furnished for the period in which the credit account is closed, for a furnisher that regularly and in the ordinary course of business furnishes information about consumer credit accounts. 15 U.S.C. 1681s–2(a)(4).

D. Notify the consumer reporting agency of the date of delinquency on an account not later than 90 days after the furnisher furnishes information to the consumer reporting agency regarding action taken on the delinquent account (including placement for collection, charge to profit or loss, or any similar action). Date of delinquency means the month and year of the commencement of the delinquency on the account that immediately preceded the action. 15 U.S.C. 1681s–2(a)(5).

E. Have in place reasonable procedures to respond to any notification that the furnisher receives from a consumer reporting agency under section 605B of the FCRA, relating to the blocking of information resulting from identity theft and to prevent the refurnishing of such blocked information. 15 U.S.C. 1681s–2(a)(6)(A).

F. Not furnish to a consumer reporting agency information that purports to relate to the consumer if the consumer submits an identity theft report to the furnisher (at the address specified by that furnisher for receiving such reports) stating that such information maintained by that furnisher resulted from identity theft. (This restriction does not apply if the furnisher subsequently knows or is informed by the consumer that the information is correct.) 15 U.S.C. 1681s–2(a)(6)(B).

G. After receiving a notice of dispute from a consumer reporting agency, in a timely manner: Conduct an investigation; review all relevant information the consumer reporting agency provides; report the results of the investigation to the consumer reporting agency; report incomplete or inaccurate information to all nationwide consumer reporting agencies to which it reported the information; and modify, delete, or permanently block incomplete or inaccurate information or information that cannot be verified. 15 U.S.C. 1681s–2(b).

H. Investigate direct disputes as required by section 660.4 of this part and 15 U.S.C. 1681s–2(a)(8).

III. 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 and 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, such as through an audit;

2. 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 consumer reporting agencies and the types of errors, omissions, or other problems that may have affected the accuracy and integrity of information it has furnished about consumers to consumer reporting agencies; and

3. Obtaining feedback from consumer reporting agencies, consumers, the furnisher's staff, or other appropriate parties.

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.

IV. Specific Components of Policies and Procedures

A furnisher's policies and procedures should address the following:

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. 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 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, verifying random samples, and conducting regular reviews 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 and 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 debts in a manner that prevents re-aging of information, duplicative reporting, or other problems affecting the accuracy or integrity of the information furnished.

H. Attempting to obtain the information listed in § 660.4(d) of this part from a consumer before determining that the consumer's dispute is frivolous or irrelevant.

I. Ensuring that deletions, updates, and corrections furnished to consumer reporting agencies are reflected in business systems to avoid furnishing erroneous information.

J. Conducting investigations of direct disputes in a manner that promotes the efficient resolution of such disputes.

K. Ensuring that technological and other means of communication with consumer reporting agencies 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.

L. 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.

M. 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 and integrity of information furnished to consumer reporting agencies.

[1] This is not a complete listing of furnisher duties relating to accuracy and integrity. Furnishers should consult the FCRA to determine what additional duties may apply.

Dated: November 2, 2007.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, November 28th, 2007.

Jennifer J. Johnson,

Secretary of the Board.

By order of the Board of Directors.

Dated at Washington, DC, the 5th day of November, 2007.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

Dated: November 2, 2007.

By the Office of Thrift Supervision.

John M. Reich,

Director.

By the National Credit Union Administration Board on November 5, 2007.

Mary Rupp,

Secretary of the Board.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E7–23549 Filed 12–12–07; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–10–P; 6720–01–P; 7535–01–P; 6750–01–P