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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the
Currency

12 CFR Part 41

[Docket ID OCC-2008-0023]

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FEDERAL RESERVE SYSTEM

12 CFR Part 222

[Docket No. R-1300]

RIN 7100-AD18

FEDERAL DEPOSIT INSURANCE
CORPORATION

12 CFR Parts 334

RIN 3064-AC99

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 571

[Docket No. OTS-2008-0025]

RIN 1550-AC01

NATIONAL CREDIT UNION
ADMINISTRATION

12 CFR Part 717

FEDERAL TRADE COMMISSION

16 CFR Part 660

RIN 3084-AA94

Procedures To Enhance the Accuracy
and Integrity of Information Furnished
to Consumer Reporting Agencies
Under Section 312 of the Fair and
Accurate Credit Transactions Act

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

ACTION: Final rules.

SUMMARY: The OCC, Board, FDIC, OTS,
NCUA, and FTC (Agencies) are
publishing these final rules to
implement the accuracy and integrity
and direct dispute provisions in section
312 of the Fair and Accurate Credit

¹ 15 U.S.C. 1681-1681x.

² Public Law 104-208, 110 Stat. 3009 (Sept. 20, 1996).

³ Public Law 108-159, 117 Stat. 1952 (Dec. 4, 2003).

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

consider in developing their policies and procedures. The Agencies believe that the final accuracy and integrity rules and guidelines strike an appropriate balance that affords furnishers the flexibility to establish policies and procedures that are appropriate to the nature, size, complexity, and scope of each furnisher's activities while enhancing the accuracy and integrity of consumer information provided to CRAs.

The final direct dispute regulations: Set forth the circumstances under which a furnisher must reinvestigate a consumer's direct dispute; provide exceptions to the requirements imposed; detail the direct dispute address and dispute notice content requirements; specify furnishers' duties after receiving a direct dispute; and establish when a furnisher may deem a direct dispute to be frivolous or irrelevant. The final direct dispute rule is designed to permit direct disputes in virtually all circumstances involving disputes about the accuracy of furnished information typically provided by a furnisher to a CRA. This approach enables consumers to submit a dispute directly to the furnisher (with certain exceptions) when the issue in dispute relates to information for which the furnisher is responsible.

II. Statutory Requirements

A. Accuracy and Integrity Regulations and Guidelines

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

€ Identify patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of information furnished to CRAs;

€ Review the methods (including technological means) used to furnish information relating to consumers to CRAs;

€ Determine whether furnishers maintain and enforce policies to assure the accuracy and integrity of information furnished to CRAs; and

€ Examine the policies and processes employed by furnishers to conduct reinvestigations and correct inaccurate information relating to consumers that has been furnished to CRAs.

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

Section 623(e)(1)(B) of the FCRA requires the Agencies to prescribe

regulations requiring furnishers to

⁵ 71 FR 14419 (March 22, 2006).

⁶ 72 FR 70944 (December 13, 2007).

⁷ 72 FR 70947-949 (December 13, 2007).

should be addressed in a furnisher's policies and procedures.

The proposal included two approaches for defining the terms "accuracy" and "integrity," terms that

⁸ In addition, the Agencies noted in the NPRM that the legislative history of the FACT Act does not resolve how the terms "accuracy" and "integrity" should be defined. See 72 FR 70949-950 (December 13, 2007).

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

¹⁰ Section 312 uses the terms "reinvestigate" and "investigate" interchangeably to apply to direct

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

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

without change. The Agencies did not receive comments on this section.

Section I .41 Definitions

Placement of Definitions

As described in section IV of this SUPPLEMENTARY INFORMATION, the Agencies proposed two alternative approaches in the NPRM for defining the terms “accuracy” and “integrity”—a Regulatory Definition Approach and a Guidelines Definition Approach. Although the proposed definition of “accuracy” was the same under both alternatives, the two approaches differed with respect to the substance of the definition of “integrity” and the placement of the definitions. The substantive aspects of each approach, and the significant comments the Agencies received on each, are described in the discussion of the definitions later in this section. This portion of the discussion addresses the placement of the definitions which, in the final rules, appear in the regulation text.

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

Under the proposed Guidelines Definition Approach, the Agencies

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The Agencies agree that the “without error” standard could be read to imply an expectation that information be reported according to unreasonably high standards. Such an unrealistic and potentially burdensome standard could lead some furnishers to cease or limit their furnishing of information to CRAs or act as an obstacle to entities becoming furnishers. Accordingly, to address the concerns raised by the commenters, the standard has been modified to provide that accuracy means that information furnished “correctly reflects” the terms of and liability for an account or other relationship and other relevant factors. This standard reflects the goal of providing information with a high degree of precision, but provides greater flexibility than the proposed standard and should mitigate unforeseen litigation risk.

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

Consumer and public interest organizations advocated that the definition of “accuracy” include the concepts of “completeness” and “integrity.” These commenters noted that the direct dispute rules only require furnishers to investigate disputes regarding the accuracy—and not the integrity—of furnished information. Therefore, excluding the concepts of “completeness” and “integrity” from the term “accuracy” would preclude consumers from directly disputing issues with a furnisher for lack of completeness and integrity.

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

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

The Agencies believe that a definition of “accuracy” is important to achieve the purposes of this rulemaking. As a threshold matter, no express statutory direction is needed to allow the Agencies to define terms important to the implementation of section 312 of the FACT Act. Moreover, defining the term “accuracy” will assist furnishers in establishing the required reasonable policies and procedures while reducing uncertainty about their appropriate scope and content. In addition, the definition provides clear direction to consumers and furnishers regarding which issues can be disputed directly with a furnisher under § 1 .43 of the final rules. For these reasons the Agencies believe, and many commenters agreed, that the term “accuracy” should be defined for the purposes of the rules and guidelines implementing section 312 of the FACT Act. Using this definition in § 1 .43 of the rules, however, does not cause it to

apply for purposes of any other provision of the FCRA or other provisions of the Agencies’ rules.

Consumer organizations and industry commenters raised other issues with the definition of “accuracy.” For exa* (c 1 Tf 13.8639 0 TD

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¹² See 72 FR 70949–50.

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

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

definition of "accuracy." They generally stated that if the final rules require updating, they should specify that updating should be consistent with standard business practices: That is, a furnisher should only be required to update information with its regular submission of data to a CRA. Several

asserted that the Regulatory Definition Approach conflicted with the legislative history of section 312 of the FACT Act because it equated "integrity" with "completeness."

Consumer organizations generally supported the proposed Regulatory Definition Approach. As a general matter, consumer organizations believed that this approach essentially equated "integrity" with "completeness" and would enhance the requirements applicable to furnishers, the effectiveness of the credit reporting system, and assessments of consumers' creditworthiness.¹⁵

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

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

Two industry commenters expressed concern about the phrase "standardized and clearly understandable form," as used in the examples provided in connection with the guidelines' definition. These commenters stated that the Agencies should recognize that not every furnisher provides information in the same manner or format. One of these commenters suggested the phrase instead be revised to encourage furnishers to achieve standardization to the extent reasonably possible. The Agencies have not included the phrase "standardized and

clearly understandable form" in the definition of "integrity" but have included it in the objectives at section I.(b)(2)(ii)(B) of the guidelines.

Finally, the Agencies have modified the definition of "integrity" that was proposed under the Regulatory Definition Approach while retaining the key concept that the omission of certain information affects the integrity of that information. In light of the range and diversity of users of consumer reports, the information that such users may find relevant and material, and the use of various proprietary credit scoring models and underwriting

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

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



industry commenter urged the Agencies to exempt resellers of consumer report information because those entities already are subject to dispute requirements under section 611(f) of the FCRA. The final rules include an exemption for entities acting in the capacity of a "consumer reporting agency" as defined in section 603(f) of the FCRA. This exemption covers "resellers" acting in that capacity because, under section 603(u) of the FCRA, resellers are a type of CRA.

In addition, the Agencies note that increasing numbers of consumers are self-reporting certain types of information, such as rent or utility payments, to alternative consumer reporting agencies. To address this development and encourage consumers to provide information to CRAs, the final rules explicitly exempt from the "furnisher" definition in § 1.41(c)(3) a consumer who provides to a CRA information pertaining to himself or herself.

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

Identity Theft

The Agencies proposed to define "identity theft" as having the same meaning as in the FTC's regulations at 16 CFR 603.2(a). Section 603.2(a), which was adopted pursuant to section 111 of the FACT Act,²⁰ defines the term "identity theft" to mean "a fraud committed or attempted using the identifying information of another

person without authority."²¹ This definition also is used in the interagency regulations implementing section 114 of the FACT Act, relating to identity theft prevention, detection, and mitigation programs. The Agencies received no comments on the definition of "identity theft" and adopt the definition without change in the final rules.

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

Policies and Procedures

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

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

²¹ See 16 CFR 603.2(b) for the FTC's definition of "identifying information." The FTC's definition of "identifying information" includes any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any: Name, social security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number; unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation; unique electronic identification number, address, or routing code; or telecommunication identifying information or access device (as defined in 18 U.S.C. 1029(e)).

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

Guidelines

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

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

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

a multi-billion dollar financial services company.

Reviewing and Updating Policies and Procedures

Proposed § 1.42(c) stated that each furnisher must review its policies and procedures periodically and update them as necessary to ensure their continued effectiveness. Section 1.42(c) is adopted without change in the final rules.

Industry commenters expressed concern with the potential burden that could be imposed by the requirement to review policies and procedures periodically. One industry commenter recommended that annual reviews of policies and procedures be described as a best practice, rather than a requirement in the regulation. On the other hand, consumer organizations stated that the regulations should require all furnishers regularly to review and update their policies and procedures. These commenters added that the Agencies should require large furnishers to conduct annual audits, furnish information in the standard reporting format, and update their technology on a regular basis.

The Agencies have concluded that the requirement for a furnisher to review policies and procedures periodically and to update them as necessary is essential to ensure their continued effectiveness. Section 1.42(c) does not impose an audit requirement on a furnisher to conduct an official examination and verification of consumer accounts and records regarding its policies and procedures. However, the Agencies do expect a furnisher to be able to demonstrate to its regulator that it has established and implemented policies and procedures consistent with the final rules. The Agencies also expect that a furnisher would engage in a periodic review of its policies and procedures when there is a significant substantive change in its business plan or furnishing activities, or when it has identified significant deficiencies in the accuracy or integrity of the information it has provided to CRAs. A furnisher also may choose to review its policies and procedures periodically when it engages in a general review of FCRA compliance or general compliance with consumer protection laws and regulations.

B. Accuracy and Integrity Guidelines

The proposed accuracy and integrity guidelines appeared in the appendix to the appropriate part of each Agency's proposed regulations. In the introductory language to the proposed guidelines, the Agencies encouraged

voluntary furnishing of information about consumers to CRAs, reflecting the recognition that the voluntary system of consumer reporting produces substantial benefits for consumers, users of consumer reports, and the economy as a whole. The introduction also reminded furnishers that § 1.42 of the proposed regulations would require each furnisher (1) to establish and implement reasonable written policies and procedures concerning the accuracy and integrity of the information about consumers that it furnishes to CRAs and (2) to consider the guidelines in developing those policies and procedures.

The introduction to the guidelines is adopted in the final rules substantially as proposed, with the addition of a sentence that reminds furnishers that § 1.42 also requires each furnisher to review its policies and procedures periodically and update them as necessary to ensure their continued effectiveness.

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

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

The proposed Nature and Scope section noted that § 1.42(a) of the proposed rule requires that a furnisher's policies and procedures must be appropriate to the nature, size, complexity, and scope of the furnisher's activities. In the final guidelines, this provision is retained without change. Additionally, the proposed nature and scope section provided three examples of what a furnisher's policies and procedures should reflect: The types of business activities in which the furnisher engages; the nature and frequency of the information the furnisher provides to CRAs; and the

technology used by the furnisher to furnish information to CRAs. This language has been revised in the final guidelines to make clear that while the examples of the nature and scope provisions are not mandat.42passbF1 1

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Additionally, under the proposed Guidelines Definition Approach, the guidelines provided that a furnisher's written policies and procedures should be reasonably designed to ensure that the information it furnishes about accounts or other relationships with a consumer is furnished with integrity. The guidelines defined "integrity" to mean that any information that a furnisher provides to a CRA about an account or other relationship with the consumer is:

€ Reported in a form and manner that is designed to minimize the likelihood that the information, although accurate, may be erroneously reflected in a consumer report, for example, by ensuring that the information is: (a) Reported with appropriate identifying information about the consumer to which it pertains; (b) reported in a standardized and clearly understandable form and manner; and (c) reported with a date specifying the time period to which the information pertains; and

€ Substantiated by the furnisher's own records.

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

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

The fifth proposed objective under the Regulatory Definition Approach stated that the information a furnisher provides about accounts or other relationships with a T* (take/er)Tj T* (provides about accounts or other)Tj T* (r* (po) to a third)Tj T* iT third provides abxcout accoe,ted ry Definothat th13if.0ent for cssaith a

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

consumers to CRAs that is appropriate to the nature, size, complexity, and scope of the furnisher's business operations.

€ Using standard data reporting formats and standard procedures for compiling and furnishing data, where feasible, such as the electronic transmission of information about consumers to CRAs.

€ Ensuring that the furnisher maintains its own records for a reasonable period of time, not less than any applicable recordkeeping requirement, in order to substantiate the accuracy of any information about consumers it furnishes that may be subject to a direct dispute.

€ Establishing and implementing appropriate internal controls regarding the accuracy and integrity of information about consumers furnished to CRAs, such as by implementing standard procedures, verifying random samples, and conducting regular reviews of information provided to CRAs.

€ Training staff that participates in activities related to the furnishing of information about consumers to CRAs to implement the policies and procedures.

€ Providing for appropriate and effective oversight of relevant service providers whose activities may affect the accuracy and integrity of information about consumers furnished to CRAs to ensure compliance with the policies and procedures.

€ Furnishing information about consumers to CRAs following mergers, portfolio acquisitions or sales, or other acquisitions or transfers of accounts or other debts, in a manner that prevents re-aging²⁴ of information, duplicative reporting, or other problems affecting the accuracy or integrity of the information furnished.

€ Attempting to obtain the information listed in § 1.43(d) (direct dispute notice content requirements) from a consumer before determining that the consumer's dispute is frivolous or irrelevant.

€ Ensuring that deletions, updates, and corrections furnished to CRAs are reflected in business systems to avoid furnishing erroneous information.

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

€ Ensuring that technological and other means of communication with CRAs are designed to prevent duplicative reporting of accounts, erroneous association of information with the wrong consumer(s), and other occurrences that may compromise the accuracy and integrity of information contained in consumer reports.

€ Providing CRAs with sufficient identifying information in the furnisher's possession about each consumer about whom information is furnished to enable the CRA properly to identify the consumer.

€ Conducting a periodic evaluation of its own practices, CRA practices of which the furnisher is aware, investigations of disputed information, corrections of inaccurate information, means of communication, and other factors that may affect the accuracy and integrity of information furnished to CRAs.

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

Most significantly, the Agencies have removed from the final guidelines the component encouraging a furnisher to obtain the information listed in proposed § 1.43(d) of the regulations (direct dispute notice content requirements) from a consumer before determining that the consumer's dispute is frivolous or irrelevant. The Agencies have determined that adoption of this component is inconsistent with section 623(a)(8) of the FCRA, which, among other things, provides that a furnisher must notify the consumer of a determination that a dispute is frivolous or irrelevant, and that a dispute would be considered frivolous or irrelevant when a consumer does not provide sufficient information to investigate the disputed information.

Some commenters suggested that the proposed component relating to furnishing information after mergers and other transactions should more specifically direct furnishers to (1) instruct CRAs to delete accounts after sale or transfer to decrease the incidence of duplicate accounts and (2) follow

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

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

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

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

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

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

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

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

entity that would be a CRO but for 15 U.S.C. 1679a(3)(B)(i), which excludes tax-exempt section 501(c)(3) organizations. This proposed exception was derived directly from an exception set forth in the statute.³⁶

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

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providing advice or assistance to any consumer with regard to any activity or service described in clause (i).

³⁶ See 15 U.S.C. 1681s-2(a)(8)(G).

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

consumer reports prior to submitting a notice to a furnisher. As the Agencies noted in the proposal, a furnisher will not be in violation of this provision for failure to investigate a dispute submitted to the address set forth on the consumer report if that address is incorrect due to an error by the CRA and does not reflect any business address of the furnisher.

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

The Agencies also requested comment on whether § 1016.43(c)(2) should be amended to permit furnishers to notify consumers orally of the address for direct disputes, and on whether, and, if so, how an oral notice can be provided clearly and conspicuously. A majority of industry commenters and consumer organizations stated that oral notice of a direct dispute address should not be permitted. These commenters noted that written notices of an address provide more certainty that the direct disputes process will work appropriately for furnishers and consumers. In response to these comments, the final rules require written notifications to consumers of a direct dispute address.

Section 1016.43(d) Direct Dispute Notice Contents

Section 623(a)(8)(D) of the FCRA provides

³⁸ Furnishers also are encouraged to provide consumers with the Summary of Rights under the Fair Credit Reporting Act issued by the FTC pursuant to section 609(c) of the FCRA, although this is not required by the FCRA or these final rules. This step would be particularly helpful to

Number of frivolous or irrelevant dispute notices: 21,720.

Estimated burden per respondent: 24 hours in the first year of the rule's existence to implement written policies and procedures and training associated with the written policies and procedures, another 8 hours in the first year to amend procedures for handling complaints received directly from consumers, and 8 hours to implement the new dispute notice requirement, and 14 minutes per notice for preparation and distribution. Recurring burden, if any, in subsequent years are further detailed below.

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

Section 660.3:

Estimated Hours Burden:

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

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

Burden section reflects only the view of the FTC. The banking regulatory agencies have jointly prepared a separate analysis.

⁵⁵ 15 U.S.C. 1681b(a).

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

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

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

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

Estimated Cost Burden:

The FTC staff derived labor costs by applying appropriate estimated hourly cost figures to the burden hours described above. It is difficult to calculate with precision the labor costs associated with the final regulations, as they entail varying compensation levels of management and/or professional technical staff among companies of different sizes. In calculating the cost figures, staff assumes that managerial and/or professional technical personnel will draft the written policies and procedures and train staff. In the NPRM analysis, FTC staff estimated labor cost for such employees to be \$38.93, based on 2006 BLS data for management occupations. However, based on more current available BLS data, the FTC is revising upward this prior estimate to \$41.⁵⁷

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

Based on the above estimates and assumptions, the total annual labor costs for all categories of covered entities under the final regulations in to th3y6344

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workers," mean and median hourly wages) for management occupations.

⁵⁸This number is derived from an estimate of disputes per year that relate to information provided by an entity under the FTC's jurisdiction 58

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

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

4. Recordkeeping, Reporting and Other Compliance Requirements.

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

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

The Board believes the rule will not have a significant economic impact on a substantial number of small entities. The Board and the other Agencies have sought to minimize the economic impact on small entities by adopting

consistent rules; affording furnishers the flexibility to establish policies and procedures that are appropriate to the nature, size, complexity, and scope of each furnisher's activities; permitting furnishers to include in their accuracy and integrity policies and procedures any of their existing policies and procedures that are relevant and appropriate; and affording furnishers the flexibility not to investigate disputes they reasonably believe have been submitted by a credit repair organization.

The Board believes that many institutions' existing policies and procedures already address significant portions of the requirements related to furnishing information to CRAs. Similarly, the Board believes that many furnishers are already investigating direct disputes as good business practice. Furthermore, the Board notes that furnishers investigate disputes brought directly to a consumer reporting agency, which then directs the disputes to the furnisher, as appropriate, pursuant to existing FCRA law.

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

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

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

accuracy of the information contained in a consumer report on the consumer based on a direct request by a consumer, rather than requiring consumers to initiate a dispute through a consumer reporting agency. The SUPPLEMENTARY INFORMATION above contains information on the objectives of the final rules.

The final rules apply to most FDIC-insured state nonmember banks, approximately 3,400 of which are small entities. Under the rule, financial institutions that furnish information about consumers to one or more consumer reporting agencies must have written policies and procedures

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6. Discussion of Significant Alternatives.

As required by the FACT Act, the final rules and guidelines apply to all covered institutions, regardless of the size of the institution. One approach to minimizing the burden on small entities would have been to provide a specific exemption for small institutions. However, OTS has no authority under section 312 of the FACT Act to grant an exception that would remove small institutions from the scope of the rule.

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

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

FTC: The Regulatory Flexibility Act (“RFA”), 5 U.S.C. 601–612, requires that the FTC provide an Initial Regulatory Flexibility Analysis (“IRFA”) with a proposed rule and a Final Regulatory Flexibility Analysis (“FRFA”), if any, with the final rule, unless the FTC certifies that the rule will not have a significant economic impact on a

substantial number of small entities. See 5 U.S.C. 603–605.

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

1. Need for and Objectives of the Rule.

The FTC is charged with enforcing the requirements of section 312 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) (15 U.S.C. 1681a–2(a)(8) and 1681a–2(e)). Section 312 of the FACT Act generally requires the Agencies to issue guidelines for use by furnishers regarding the accuracy and integrity of the information about consumers that they furnish to consumer reporting agencies and prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines. Section 312 also requires the Agencies to prescribe regulations identifying the circumstances under which a furnisher must reinvestigate disputes about accuracy of information contained in a consumer report based on a direct request from a consumer. In this action, the FTC promulgates final rules that would implement these requirements of the FACT Act.

2. Significant Issues Received by Public Comment.

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

The FTC estimated in the proposed rule that it would take furnishers approximately 21 hours on average to establish and implement the written

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

One commenter questioned these estimates, stating it is impossible to verify whether it will take more time to implement the final rules. This commenter also stated that it is unreasonable to believe it will take only five minutes to prepare and send a notice since it is likely to take longer simply to review and investigate a dispute. Another commenter stated that the compliance burdens will be significantly more than 21 hours, but this comment did not apply uniquely to small entities. The FTC also received a comment predicting that the impact of the proposed rules on small institutions would be severe, but noting that it is impossible to estimate the full impact. This comment noted that they expect that direct disputes would increase significantly and thus believed that the “Estimated Hours Burden” and “Estimated Cost Burden” are extremely low. The commenter also disputed that the bulk of disputes received would be handled by a clerical level employee.

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

In addition, one commenter noted that smaller entities may not have established policies and procedures, and requested that the final rules permit furnishers to adapt or rely on the instructions of CRAs or service providers in lieu of establishing policies and procedures. Another commenter also requested that the Agencies eliminate the requirement for written policies and procedures to minimize the burden of the final rules. As discussed



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

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

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

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

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

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

The FTC considered whether any significant alternatives, consistent with the purposes of the FACT Act, could further minimize the final rules' impact on small entities. The FTC asked for comment on this issue. The standards in the final rules are flexible so that a covered entity, regardless of size, may tailor its practices to its individual needs. For example, to minimize the burden the final rules would permit entities to include in their accuracy and integrity policies and procedures their existing policies and procedures that are relevant and appropriate. Furthermore, the FTC and other Agencies have attempted to minimize the burden by:

Adopting consistent rules; incorporating into the final rules at § 660.3 a statement that policies and procedures should be appropriate to the nature, size, complexity, and scope of a furnisher's activities; and providing furnishers with three options for providing their direct disputes address to consumers under § 660.4.

C. OCC and OTS Executive Order 12866 Determinations

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

D. OCC and OTS Executive Order 13132 Determinations

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

E. NCUA Executive Order 13132 Determination

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on State and local interests. In adherence to fundamental Federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5) voluntarily complies with the Executive Order. The final rules and guidelines apply only to Federally chartered credit unions and would not have substantial direct effects on the States, on the connection between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that these final rules and guidelines do not constitute a policy that has Federalism implications for purposes of the Executive Order.

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

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (UMRA) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more (adjusted annually for inflation) in any one year. (The inflation adjusted threshold is \$133 million or more.) If a budgetary impact statement is required, section 205 of the UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC and OTS

each determined that its final rules will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$133 million or more in any one year. Accordingly, neither OCC nor OTS has prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

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

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

List of Subjects

12 CFR Part 41

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

12 CFR Part 222

Banks, Banking, Holding companies, state member banks.

12 CFR Part 334

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

12 CFR Part 571

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

12 CFR Part 717

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

16 CFR Part 660

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

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 amends 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, 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

Sec.

41.40 Scope.

41.41 Definitions.

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

41.43 Direct disputes.

§ 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:

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

(1) Reflects the terms of and liability for the account or other relationship;

(2) Reflects the consumer's performance and other conduct with respect to the account or other relationship; and

(3) Identifies the appropriate consumer.

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

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

(1) Provides information to a consumer reporting agency solely to obtain a consumer report in accordance with sections 604(a) and (f) of the Fair Credit Reporting Act;

(2) Is acting as a "consumer reporting agency" as defined in section 603(f) of the Fair Credit Reporting Act;

(3) Is a consumer to whom the furnished information pertains; or

(4) Is a neighbor, friend, or associate of the consumer, or another individual with whom the consumer is acquainted or who may have knowledge about the consumer, and who provides information about the consumer's character, general reputation, personal characteristics, or mode of living in response to a specific request from a consumer reporting agency.

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

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

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

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

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

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

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

§ 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 conduct a reasonable investigation of a direct dispute if it relates to:

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

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

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

(4) Any other information contained in a consumer report regarding an account or other relationship with the furnisher that bears on the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

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

(1) The direct dispute relates to:

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

(ii) The identity of past or present employers;

(iii) Inquiries or requests for a consumer report;

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

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

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

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

would be a credit repair organization, but for 15 U.S.C. 1679a(3)(B)(i).

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

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

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

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

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

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

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

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

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

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

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

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

(4) If the investigation finds that the information reported was inaccurate, promptly notify each consumer reporting agency to which the furnisher

provided inaccurate information of that determination and provide to the consumer reporting agency any correction to that information that is necessary to make the information provided by the furnisher accurate.

(f) Frivolous or irrelevant disputes. (1)

A furnisher is not required to investigate a direct dispute if the furnisher has reasonably determined that the dispute is frivolous or irrelevant. A dispute qualifies as frivolous or irrelevant if:

(i) The consumer did not provide sufficient information to investigate the disputed information as required by paragraph (d) of this section;

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

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

(2) Notice of determination. Upon making a determination that a dispute is frivolous or irrelevant, the furnisher must notify the consumer of the determination not later than five business days after making the determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the furnisher.

consumers to one or more consumer reporting agencies for inclusion in a consumer report. An entity is not a furnisher when it:

(1) Provides information to a consumer reporting agency solely to obtain a consumer report in accordance with sections 604(a) and (f) of the Fair Credit Reporting Act;

(2) Is acting as a "consumer reporting agency" as defined in section 603(f) of the Fair Credit Reporting Act;

(3) Is a consumer to whom the furnished information pertains; or

(4) Is a neighbor, friend, or associate of the consumer, or another individual with whom the consumer is acquainted or who may have knowledge about the consumer, and who provides information about the consumer's character, general reputation, personal characteristics, or mode of living in response to a specific request from a consumer reporting agency.

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

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

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

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

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

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

(f) Frivolous or irrelevant disputes. (1) A furnisher is not required to investigate a direct dispute if the furnisher has reasonably determined that the dispute is frivolous or irrelevant. A dispute qualifies as frivolous or irrelevant if:

(i) The consumer did not provide sufficient information to investigate the disputed information as required by paragraph (d) of this section;

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

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

(2) Notice of determination. Upon making a determination that a dispute is frivolous or irrelevant, the furnisher must notify the consumer of the determination not later than five business days after making the determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the furnisher.

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

3. A new appendix E to part 222 is added 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) of this part, a furnisher must consider the guidelines set forth below in developing its policies and procedures. In establishing these policies and procedures, a furnisher may include any of its existing policies and procedures that are relevant and appropriate. Section 222.42(c) requires each furnisher to review its policies and procedures periodically and update them as necessary to ensure their continued effectiveness.

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

(a) Nature and Scope. Section 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. In developing its policies and procedures, a furnisher should consider, for example:

(1) The types of business activities in which the furnisher engages;

(2) The nature and frequency of the information the furnisher provides to consumer reporting agencies; and

(3) The technology used by the furnisher to furnish information to consumer reporting agencies.

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

(1) To furnish information about accounts or other relationships with a consumer that is accurate, such that the furnished information:

(i) Identifies the appropriate consumer;

(ii) Reflects the terms of and liability for those accounts or other relationships; and

(iii) Reflects the consumer's performance and other conduct with respect to the account or other relationship;

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

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

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

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

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

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

(3) To conduct reasonable investigations of consumer disputes and take appropriate

actions based on the outcome of such investigations; and

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

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

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

II. Establishing and Implementing Policies and Procedures

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

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

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

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

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

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

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

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

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

III. Specific Components of Policies and Procedures

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

(a) Establishing and implementing a system for furnishing information about consumers

to consumer reporting agencies that is appropriate to the nature, size, complexity, and scope of the furnisher's business operations.

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

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

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

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

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

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

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

(i) Conducting reasonable investigations of disputes.

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

(k) Providing consumer reporting agencies with sufficient identifying information in the furnisher's possession about each consumer about whom information is furnished to enable the consumer reporting agency properly to identify the consumer.

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

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

Federal Deposit Insurance Corporation
12 CFR Chapter III
Authority and Issuance

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

Sec.

334.40 Scope.

334.41 Definitions.

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

334.43 Direct disputes.

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:

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

(1) Reflects the terms of and liability for the account or other relationship;

(2) Reflects the consumer's performance and other conduct with respect to the account or other relationship; and

(3) Identifies the appropriate consumer.

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

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

(1) Provides information to a consumer reporting agency solely to obtain a consumer report in accordance with sections 604(a) and (f) of the Fair Credit Reporting Act;

(2) Is acting as a "consumer reporting agency" as defined in section 603(f) of the Fair Credit Reporting Act;

(3) Is a consumer to whom the furnished information pertains; or

(4) Is a neighbor, friend, or associate of the consumer, or another individual with whom the consumer is acquainted or who may have knowledge about the consumer, and who provides information about the consumer's character, general reputation, personal characteristics, or mode of living in response to a specific request from a consumer reporting agency.

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

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

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

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

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

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

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

§ 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,

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), a furnisher must consider the guidelines set forth below in developing its policies and procedures. In establishing these policies and procedures, a furnisher may include any of its existing policies and procedures that are relevant and appropriate. Section 334.42(c) requires each furnisher to review its policies and procedures periodically and update them as necessary to ensure their continued effectiveness.

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

(a) **Nature and Scope.** Section 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. In developing its policies and procedures, a furnisher should consider, for example:

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

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

(1) To furnish information about accounts or other relationships with a consumer that is accurate, such that the furnished information:

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

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

- (i) Is substantiated by the furnisher's records at the time it is furnished;
- (ii) Is furnished in a form and manner that is designed to minimize the likelihood that the information may be incorrectly reflected in a consumer report; thus, the furnished information should:

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

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

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

(3) To conduct reasonable investigations of consumer disputes and take appropriate

actions based on the outcome of such investigations; and

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

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

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

II. Establishing and Implementing Policies and Procedures

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

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

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

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

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

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

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

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

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

III. Specific Components of Policies and Procedures

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

(a) Establishing and implementing a system for furnishing information about consumers

to consumer reporting agencies that is appropriate to the nature, size, complexity, and scope of the furnisher's business operations.

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

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

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

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

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

(g) Furnishing information about consumers to consumer reporting agencies following mergers, portfolio acquisitions or

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Department of the Treasury

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

(ii) The identity of past or present employers;

(iii) Inquiries or requests for a consumer report;

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

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

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

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

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

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

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

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

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

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

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

(3) All supporting documentation or other information reasonably required by the furnisher to substantiate the basis of the dispute. This documentation may include, for example: A copy of the relevant portion of the consumer report that contains the allegedly inaccurate

information; a police report; a fraud or identity theft affidavit; a court order; or account statements.

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

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

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

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

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

(f) Frivolous or irrelevant disputes. (1) A furnisher is not required to investigate a direct dispute if the furnisher has reasonably determined that the dispute is frivolous or irrelevant. A dispute qualifies as frivolous or irrelevant if:

(i) The consumer did not provide sufficient information to investigate the disputed information as required by paragraph (d) of this section;

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

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

(2) Notice of determination. Upon making a determination that a dispute is frivolous or irrelevant, the furnisher must notify the consumer of the determination not later than five business days after making the

determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the furnisher.

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

3. Add a new Appendix E to part 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), a furnisher must consider the guidelines set forth below in developing its policies and procedures. In establishing these policies and procedures, a furnisher may include any of its existing policies and procedures that are relevant and appropriate. Section 571.42(c) requires each furnisher to review its policies and procedures periodically and update them as necessary to ensure their continued effectiveness.

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

(a) Nature and Scope. Section 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. In developing its policies and procedures, a furnisher should consider, for example:

(1) The types of business activities in which the furnisher engages;

(2) The nature and frequency of the information the furnisher provides to consumer reporting agencies; and

(3) The technology used by the furnisher to furnish information to consumer reporting agencies.

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

(1) To furnish information about accounts or other relationships with a consumer that is accurate, such that the furnished information:

(i) Identifies the appropriate consumer;

(ii) Reflects the terms of and liability for those accounts or other relationships; and

(iii) Reflects the consumer's performance and other conduct with respect to the account or other relationship;

(2) To furnish information about accounts or other relationships with a consumer that

has integrity, such that the furnished information:

- (i) Is substantiated by the furnisher's records at the time it is furnished;
- (ii) Is furnished in a form and manner that is designed to minimize the likelihood that the information may be incorrectly reflected in a consumer report; thus, the furnished information should:
 - (A) Include appropriate identifying information about the consumer to whom it pertains; and
 - (B) Be furnished in a standardized and clearly understandable form and manner and with a date specifying the time period to which the information pertains; and
 - (iii) Includes the credit limit, if applicable and in the furnisher's possession;
- (3) To conduct reasonable investigations of consumer disputes and take appropriate actions based on the outcome of such investigations; and
- (4) To update the information it furnishes as necessary to reflect the current status of the consumer's account or other relationship, including, for example:
 - (i) Any transfer of an account (e.g., by sale or assignment for collection) to a third party; and
 - (ii) Any cure of the consumer's failure to abide by the terms of the account or other relationship.

II. Establishing and Implementing Policies and Procedures

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

- (a) Identify practices or activities of the furnisher that can compromise the accuracy or integrity of information furnished to consumer reporting agencies, such as by:
 - (1) Reviewing its existing practices and activities, including the technological means and other methods it uses to furnish information to consumer reporting agencies and the frequency and timing of its furnishing of information;
 - (2) Reviewing its historical records relating to accuracy or integrity or to disputes; reviewing other information relating to the accuracy or integrity of information provided by the furnisher to consumer reporting agencies; and considering the types of errors, omissions, or other problems that may have affected the accuracy or integrity of information it has furnished about consumers to consumer reporting agencies;
 - (3) Considering any feedback received from consumer reporting agencies, consumers, or other appropriate parties;
 - (4) Obtaining feedback from the furnisher's staff; and
 - (5) Considering the potential impact of the furnisher's policies and procedures on consumers.
- (b) Evaluate the effectiveness of existing policies and procedures of the furnisher regarding the accuracy and integrity of information furnished to consumer reporting agencies; consider whether new, additional, or different policies and procedures are necessary; and consider whether implementation of existing policies and procedures should be modified to enhance the accuracy and integrity of information about consumers furnished to consumer reporting agencies.

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

III. Specific Components of Policies and Procedures

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

- (a) Establishing and implementing a system for furnishing information about consumers to consumer reporting agencies that is appropriate to the nature, size, complexity, and scope of the furnisher's business operations.
 - (b) Using standard data reporting formats and standard procedures for compiling and furnishing data, where feasible, such as the electronic transmission of information about consumers to consumer reporting agencies.
 - (c) Maintaining records for a reasonable period of time, not less than any applicable recordkeeping requirement, in order to substantiate the accuracy of any information about consumers it furnishes that is subject to a direct dispute.
 - (d) Establishing and implementing appropriate internal controls regarding the accuracy and integrity of information about consumers furnished to consumer reporting agencies, such as by implementing standard procedures and verifying random samples of information provided to consumer reporting agencies.
 - (e) Training staff that participates in activities related to the furnishing of information about consumers to consumer reporting agencies to implement the policies and procedures.
 - (f) Providing for appropriate and effective oversight of relevant service providers whose activities may affect the accuracy or integrity of information about consumers furnished to consumer reporting agencies to ensure compliance with the policies and procedures.
 - (g) Furnishing information about consumers to consumer reporting agencies following mergers, portfolio acquisitions or sales, or other acquisitions or transfers of accounts or other obligations in a manner that prevents re-aging of information, duplicative reporting, or other problems that may similarly affect the accuracy or integrity of the information furnished.
 - (h) Deleting, updating, and correcting information in the furnisher's records, as appropriate, to avoid furnishing inaccurate information.
 - (i) Conducting reasonable investigations of disputes.
 - (j) Designing technological and other means of communication with consumer reporting agencies to prevent duplicative reporting of accounts, erroneous association of information with the wrong consumer(s), and other occurrences that may compromise the accuracy or integrity of information provided to consumer reporting agencies.

(k) Providing consumer reporting agencies

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pursuant to paragraphs (c) and (d) of this section, the furnisher must:

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

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

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

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

(f) Frivolous or irrelevant disputes. (1)

A furnisher is not required to investigate a direct dispute if the furnisher has reasonably determined that the dispute is frivolous or irrelevant. A dispute qualifies as frivolous or irrelevant if:

(i) The consumer did not provide sufficient information to investigate the disputed information as required by paragraph (d) of this section;

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

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

(2) Notice of determination. Upon making a determination that a dispute is frivolous or irrelevant, the furnisher must notify the consumer of the determination not later than five business days after making the determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the furnisher.

(3) Contents of notice of determination that a dispute is frivolous

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

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

Appendix E to Part 717—Interagency Guidelines Concerning the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies

The NCUA encourages voluntary furnishing of information to consumer reporting agencies. Section 717.42 of this part requires each furnisher to establish and implement reasonable written policies and procedures concerning the accuracy and integrity of the information it furnishes to consumer reporting agencies. Under § 717.42(b), a furnisher must consider the guidelines set forth below in developing its policies and procedures. In establishing these policies and procedures, a furnisher may include any of its existing policies and procedures that are relevant and appropriate. Section 717.42(c) requires each furnisher to review its policies and procedures periodically and update them as necessary to ensure their continued effectiveness.

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

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

(1) The types of business activities in which the furnisher engages;

(2) The nature and frequency of the information the furnisher provides to consumer reporting agencies; and

(3) The technology used by the furnisher to furnish information to consumer reporting agencies.

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

(1) To furnish information about accounts or other relationships with a consumer that is accurate, such that the furnished information:

(i) Identifies the appropriate consumer;

(ii) Reflects the terms of and liability for those accounts or other relationships; and

(iii) Reflects the consumer's performance and other conduct with respect to the account or other relationship;

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

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

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

in a consumer report; thus, the furnished information should:

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

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

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

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

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

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

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

II. Establishing and Implementing Policies and Procedures

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

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

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

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

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

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

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

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

(c) Evaluate the effectiveness of specific methods (including technological means) the furnisher uses to provide information to consumer reporting agencies; how those methods may affect the accuracy and integrity of the information it provides to

consumer reporting agencies; and whether new, additional, or different methods (including technological means) should be used to provide information to consumer reporting agencies to enhance the accuracy and integrity of that information.

III. Specific Components of Policies and Procedures

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

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

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

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

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

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

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

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

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

(i) Conducting reasonable investigations of disputes.

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

(k) Providing consumer reporting agencies with sufficient identifying information in the furnisher's possession about each consumer about whom information is furnished to enable the consumer reporting agency properly to identify the consumer.

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

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

Dated: May 15, 2009.
John C. Dugan,
Comptroller of the Currency.

By order of the Board of Governors of the
Federal Reserve System June 4, 2009.

Jennifer J. Johnson,
Secretary of the Board.

By order of the Board of Directors.

Dated at Washington, DC, the 29th day of
May 2009.
Federal Deposit Insurance Corporation.

Robert E. Feldman,
Executive Secretary.

Dated: April 2, 2009.

By the Office of Thrift Supervision,
John E. Bowman,
Acting Director.

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

Mary Rupp,
Secretary of the Board.

By Direction of the Commission.

Donald S. Clark,
Secretary.

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6720-01-P, 7535-01-P, 6750-01-P