

FEDERAL RESERVE SYSTEM

Request for Information for Study on Investigations of Disputed Consumer Information Reported to Consumer Reporting Agencies

Docket No. OP-1209

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of Study and Request for Information

SUMMARY: Pursuant to section 313(b) of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), the Board of Governors of the Federal Reserve System is conducting a study on investigations by furnishers of consumer information to consumer reporting agencies when that information is disputed. The FACT Act generally amends the Fair Credit Reporting Act. In preparing this study, the Board requests public comment on a number of issues relating to the prompt investigation, completeness, and correction or deletion of information reported to credit reporting agencies.

DATES: Comments must be received by September 17, 2004.

ADDRESSES: You may submit comments, identified by Docket No. OP-1209, by any of the following methods:

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

All public comments are available from the Board's web site at www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets, N.W.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Minh-Duc T. Le or Ky Tran-Trong, Senior Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or 452-2412; for users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Fair and Accurate Credit Transactions Act of 2003 (FACT Act) was signed into law on December 4, 2003. Pub. L. 108-159, 117 Stat. 1952. In general, the FACT Act amends the Fair Credit Reporting Act (FCRA) to enhance the ability of consumers to combat identity theft, to increase the accuracy of consumer reports, and to allow consumers to exercise greater control regarding the type and amount of marketing solicitations they receive. The FACT Act also restricts the use and disclosure of sensitive medical information. To bolster efforts to improve financial literacy among consumers, title V of the Act (entitled the “Financial Literacy and Education Improvement Act”) creates a new Financial Literacy and Education Commission empowered to take appropriate actions to improve the financial literacy and education programs, grants, and materials of the Federal government. Lastly, to promote increasingly efficient national credit markets, the FACT Act establishes uniform national standards in key areas of regulation regarding consumer report information.

As part of the effort to increase the accuracy of consumer reports, section 313(b) of the FACT Act requires the Board to conduct a joint study with the Federal Trade Commission (FTC) regarding the extent to which, and the manner in which, consumer reporting agencies and furnishers of consumer information to consumer reporting agencies are complying with the procedures, timelines, and requirements under the FCRA for (1) the prompt investigation of disputed information, (2) the completeness of information provided to consumer reporting agencies, and (3) the prompt correction or deletion of any inaccurate or incomplete information or information that cannot be verified. Furnishers of information to consumer reporting agencies may include banks, retailers, mortgage companies, medical establishments, and others.

The FTC and the Board must jointly submit a progress report to Congress on the results of this study no later than December 4, 2004, which is 12 months after the date of enactment of the FACT Act. The report also must contain recommendations for legislative or administrative actions as the Board and FTC jointly determine to be appropriate.

In this notice, the Board requests specific information about the current duties and practices of furnishers regarding the prompt investigation of information, the completeness of information, and the prompt correction or deletion of information. The Board also seeks comment on possible legislative and regulatory action to improve the dispute process.

II. The Fair Credit Reporting Act

The FCRA was amended in 1996 to impose duties on furnishers of consumer information. Consumer Credit Reporting Reform Act of 1996 (Pub.L. 105-347), 15 U.S.C. § 1681 *et seq.* With the passage of the FACT Act, certain duties were amended and additional duties were imposed. The first section below will discuss the furnishers’

duties imposed by the FCRA in effect prior to the FACT Act amendments, since the amendments have not, or have only recently become effective. The second section will discuss the new obligations arising from the FACT Act amendments.

The FCRA - Pre FACT Act

The 1996 amendments to the FCRA established duties for furnishers of consumer information. These duties, found in FCRA section 623, include the duties to report accurate information; to provide notice of a dispute; to provide notice of closed accounts; to provide notice involving delinquent accounts; and to investigate after receiving notice of a dispute from a consumer reporting agency.

Section 623(a)(1) of the FCRA prohibits a furnisher from reporting any information to a consumer reporting agency that it knows or consciously avoids knowing is inaccurate. This general prohibition, however, does not apply if a furnisher provides an address for consumers to use to notify the furnisher that specific information is inaccurate. If the furnisher provides such an address, the furnisher may not report information relating to a consumer to any consumer reporting agency if the consumer has notified the furnisher at the specified address that the information is inaccurate, and the information is in fact inaccurate.

Section 623(a)(2) of the FCRA provides that when a furnisher who regularly and in the ordinary course of business reports information to one or more consumer reporting agencies determines that the information provided is not complete or accurate, the furnisher must promptly notify the consumer reporting agency. The furnisher must also provide the consumer reporting agency any corrections to that information, or any additional information necessary to make the information provided by the furnisher to the consumer reporting agency complete and accurate. Thereafter, the furnisher must not report to the consumer reporting agency any of the information that remains incomplete or inaccurate.

Section 623(a)(3) of the FCRA requires that if the completeness or accuracy of any information reported by the furnisher to a consumer reporting agency is disputed by a consumer directly to the furnisher, the furnisher may not report that information to any consumer reporting agency without notice that the information is disputed by the consumer.

Furnishers have a duty to provide notice of closed accounts and delinquent accounts. Under section 623(a)(4), a furnisher—who regularly and in the ordinary course of business reports information to a consumer reporting agency about a consumer who has a credit account with the furnisher—must notify the consumer reporting agency of the voluntary closure of the account by the consumer. This notice must be included with information regularly furnished for the period in which the account is closed. Under section 623(a)(5), a furnisher that reports to a consumer reporting agency that a delinquent account is being placed for collection, charged off, or subjected to any similar action must notify the consumer reporting agency of the month and year of the commencement of the delinquency that immediately preceded the collection, charge off, or similar action. The month and year must be reported within 90 days of the furnisher reporting the collection, charge off, or similar action.

A furnisher also has duties when a consumer disputes information with a consumer reporting agency. Section 611 of the FCRA requires that the consumer reporting agency notify the furnisher of the dispute received from the consumer and provide the furnisher with all the information relevant to the dispute. When the furnisher receives this notification, section 623(b) of the FCRA requires the furnisher to conduct an investigation with respect to the disputed information, review all the relevant information provided, and report the results to the consumer reporting agency generally within 30 days of the consumer reporting agency having received notice of the dispute from the consumer. If the furnisher's investigation establishes that the information was incomplete or inaccurate, the furnisher must report that result to all other nationwide consumer reporting agencies to whom the furnisher provided that information. The time period for investigation, review, and report may be extended for 15 days if the consumer reporting agency receives additional relevant information from the consumer.

The FCRA - Post FACT Act Amendments

The FACT Act amends the FCRA with respect to furnishers' duties in several ways. For example, section 312(b) of the FACT Act amends the FCRA's prohibition on knowingly reporting inaccurate information to prohibit reporting of information if the furnisher "knows or has reasonable cause to believe that the information is inaccurate." "Reasonable cause to believe that the information is inaccurate" means "having specific knowledge, other than solely allegations by the consumer, that would cause a reasonable person to have substantial doubts about the accuracy of the information."

Other provisions of the FACT Act add to a furnisher's duties. For example, section 312(c) of the FACT Act requires the Board, FTC, and other federal banking regulators to jointly prescribe regulations that would identify when a furnisher would be required to reinvestigate a dispute concerning the accuracy of information contained in a consumer report on the consumer, based on a direct request from a consumer. The furnisher, upon receiving this notice would generally have 30 days to investigate the disputed information, review all relevant information provided by the consumer, and report the results to the consumer. If the furnisher finds that the information reported was inaccurate, the furnisher also must promptly notify each consumer reporting agency to which the furnisher had reported the inaccurate information and provide any correction to that information that is necessary to make the information accurate. Section 314(b) of the FACT Act would further require furnishers that find an item disputed by a consumer to a consumer reporting agency to be inaccurate, incomplete, or unverifiable after any reinvestigation to promptly modify, delete, or permanently block the reporting of that item of information.

Since these provisions of the FACT Act generally have not become effective, the Board understands that information about a furnisher's practices with respect to reporting and dispute investigations will be mostly about practices as they exist under the FCRA prior to the FACT Act amendments.

III. Request for Specific Information

As described above, section 313(b) of the FACT Act requires the Board and the FTC to jointly study the extent to which, and the manner in which, consumer reporting agencies and furnishers of consumer information to consumer reporting agencies are complying with the procedures, timelines, and requirements under the FCRA for the prompt investigation of the disputed accuracy of any consumer information. The agencies also must study the completeness of the information provided to consumer reporting agencies and the prompt correction or deletion of any inaccurate or incomplete information or information that cannot be verified. In conducting the study, the Board is requesting public comment from furnishers, consumers, and other persons on the following issues:

General information

- What type of entity reports negative and/or positive information to a consumer reporting agency and what type of entity does not report negative and/or positive information to a consumer reporting agency? If an entity does not report information to a consumer reporting agency, why not?
- Of all disputes received by the furnisher, what percentage of the disputes or complaints comes through a consumer reporting agency? What percentage comes directly from consumers? What percentage comes from other sources (e.g., credit repair entities)?
- Do the answers to the questions below vary based on industry, size of entity, type of credit, or other characteristics? Are there any generalizations that can be made based on industry, size of entity, type of credit, or other characteristics?

Disputes communicated by consumers directly to furnishers

- Does the furnisher provide an address for consumers to use if they want to dispute information directly with the furnisher? If not, why? If an address is provided, how is the consumer informed about this address?
- Regardless of whether an address is provided, what is the furnisher's process and timeline in handling disputes and complaints that come directly from consumers? Under what circumstances do furnishers currently investigate disputes regarding information in a consumer file, based on a direct request of the consumer?
- Is sufficient relevant information provided to the furnisher by the consumer? If not, what relevant information is often missing, and why? If relevant information is lacking, how does the furnisher resolve the dispute?
- What are consumers' experiences in resolving a dispute where the furnisher provided an address? What are their experiences locating and using this address to resolve their dispute?
- What are consumers' experiences in resolving disputes where the furnisher does not provide an address? How were the disputes resolved and what entity or person (e.g., furnisher, consumer reporting agency, credit repair entity, legal representative, etc.) was instrumental in resolving the dispute?

Other furnisher duties

- How does the furnisher ensure that it complies with the applicable statutory requirements regarding the accuracy and completeness of information it reports to the consumer reporting agency?
- What are the furnisher's procedures and timelines if it finds the information is not complete or accurate?
- What are the furnisher's procedures and timelines for reporting information that has been directly disputed by a consumer?
- What are the furnisher's procedures and timelines for reporting when a delinquency began on an account that has been placed for collection, charged off, or subjected to similar action?
- What are the furnisher's procedures and timelines for notifying a consumer reporting agency that a consumer has voluntarily closed a credit account with the furnisher?
- What are consumers' experience with communicating with furnishers, with the timing of the notice of dispute appearing on the credit report, or any other matter related to having the notice of dispute placed on the credit report when disputed information continues to be reported but with a notice of the dispute?
- What are consumers' experiences with furnishers reporting that credit accounts with the furnishers have been voluntarily closed? What is the time span between the consumer closing the account and information about the closure appearing on the credit report?

Disputes communicated by consumers to consumer reporting agencies

- When a consumer reporting agency receives notice of consumer disputes and forwards the information to the furnisher, how does the consumer reporting agency provide the furnisher with the notices and relevant information? What information does the consumer reporting agency transmit to the furnisher? Describe any guidelines or procedures, voluntary or otherwise, that apply to this process.
- How does a consumer reporting agency ensure that furnishers comply with the requirements and timelines established under the FCRA for disputes communicated to a consumer reporting agency?
- What are the furnisher's procedures and timelines for investigating the disputes and reviewing the information provided?
- Is sufficient relevant information provided to the furnisher by the consumer through the consumer reporting agency? Is all relevant information from a consumer provided to the furnisher through the consumer reporting agency? If not, what relevant information is often missing, and why? If relevant information is lacking, how does the furnisher resolve the dispute?
- If the furnisher finds that the information it reported to the consumer reporting agency was incomplete or inaccurate, what steps does the furnisher take?

- If the furnisher does not find the information reported to the consumer reporting agency to be incomplete or inaccurate, what steps does the furnisher take?
- Describe any guidelines or procedures that may apply to the treatment of information that continues to be disputed by the consumer after the formal dispute process has been concluded. How often do the furnisher and consumer fail to reach an agreement after the conclusion of the formal dispute process, for example, where the consumer maintains that the disputed information is inaccurate and the furnisher maintains that it is accurate?

Recommendations

- What, if any, legislative or regulatory changes do you recommend besides changes made by the FACT Act and its implementing rules? How would these recommendations improve the system? What benefits or burdens should be considered?

By order of the Board of Governors of the Federal Reserve System, August 5, 2004.

Jennifer J. Johnson (signed)

Jennifer J. Johnson,
Secretary of the Board