

**Supporting Statement for
OMB Control Number 1557-NEW
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 of 2003**

In conjunction with the Notice of Proposed Rulemaking (NPRM),¹ the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Federal Trade Commission, and the National Credit Union Administration (Agencies) submitted the information collection requirements contained therein to OMB for review under the Paperwork Reduction Act. In response, OMB filed comments with each of the Agencies in accordance with 5 CFR 1320.11(c). The comments indicated that OMB was withholding approval at that time. The Agencies were directed to examine public comment in response to the NPRM and describe in the preamble to the final rule how the Agencies have maximized the practical utility of the collection and minimized the burden. The required explanation has been provided in the preamble to the final rule.

A. Justification

1. Circumstances that make the collection necessary:

The Agencies are required by section 312 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) to issue guidelines for use by furnishers regarding the accuracy and integrity of the information about consumers that they furnish to consumer reporting agencies and to prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines. Section 312 also requires the Agencies to issue regulations identifying the circumstances under which a furnisher must reinvestigate disputes about the accuracy of information contained in a consumer report based on a direct request from a consumer.

2. Use of the information:

Section 41.42(a) requires furnishers to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of information relating to consumers that they provide to a consumer reporting agency (CRA). Furnishers' accuracy and integrity policies and procedures may include their existing policies and procedures that are reasonable and appropriate.

Section 41.43(a) permits consumers to initiate disputes directly with the furnishers in certain circumstances. This gives consumers a new way to dispute consumer report information; instead of having to go through a CRA as permitted by the Fair Credit Reporting Act, consumers will have the right to go directly to the furnisher in certain circumstances. Under the final rule,

¹ 72 FR 70944 (December 13, 2007).

furnishers will have to follow a process substantially similar to the current one for handling disputes submitted through a CRA. Furnishers will need to amend their procedures to ensure that disputes received directly from consumers are handled in a substantially similar manner to those complaints received through CRAs.

Section 41.43(f)(2) incorporates the statutory requirement that a furnisher must notify a consumer by mail or other means (if authorized by the consumer) not later than five business days after making a determination that a dispute is frivolous or irrelevant. Section 41.43(f)(3) incorporates the statute's content requirements for the notices.

3. Consideration of the use of improved information technology:

National banks may adopt any existing technology relevant to producing or delivering the information.

4. Efforts to identify duplication:

There is no duplication. The information is not available from any other source.

5. Methods used to minimize burden if the collection has a significant impact on substantial number of small entities:

This collection of information imposes on banks, regardless of size, only the minimum burden necessary to accomplish the program objectives discussed in Items 1 and 2. The collection does not have a significant impact on a substantial number of small entities.

6. Consequences to the Federal program if the collection were conducted less frequently:

The Agencies would be unable to meet the requirements of the statute.

7. Special circumstances necessitating collection inconsistent with 5 CFR Part 1320:

Not applicable. This collection will be conducted consistent with the guidelines in 5 CFR 1320.6.

8. Efforts to consult with persons outside the agency:

On December 13, 2007, the Agencies published a notice of proposed rulemaking (NPRM) in the Federal Register (72 FR 70944) requesting public comment on the proposed rule and proposed information collection.

Comment Summary

Of the comments received in response to the NPRM, four industry commenters specifically addressed PRA burden and an additional five industry commenters generally addressed burden issues. Some commenters noted that if the final rule would require furnishers

to engage in certain activities in response to a direct consumer dispute, the number of disputes received from consumers would likely increase significantly. Commenters also noted that the Summary of Rights under the FCRA² (currently provided to consumers) instructs consumers to direct their disputes to the CRA that provided them with a copy of their file, which may explain why most disputes are directed to CRAs.³ It is reasonable to assume that changes to the disclosures made by CRAs to consumers will likely increase the number of disputes furnishers receive directly from consumers. The FTC will be revising the Summary of Rights accordingly.

Accuracy of Estimates:

One industry commenter questioned the Agencies' estimates, stating that, until furnishers begin implementing the proposal, it will be impossible to determine whether the Agencies' estimates of the costs to implement the final rule are understated. In addition, the commenter stated that, until a final rule is published, it is impossible to estimate amount of time required to comply with its requirements. The commenter further stated that it is "probably" unreasonable to estimate that it will take only five minutes to prepare and send a notice since it is likely to take much longer to review and investigate a dispute. The Agencies acknowledge that furnishers are likely to spend more than five minutes reviewing and investigating disputes received directly from consumers. The estimated PRA disclosure burden per notice published in the NPRM represented strictly the five minutes it would take a furnisher to prepare and distribute each notice; but it did not include the time required to review and investigate a dispute. However, given that each notice will be consumer-specific, and that the amount of automation used to send each notice will vary based on each dispute, the Agencies have decided to re-estimate the average time furnishers will devote to preparing and sending notices. The Agencies have increased the estimated burden for preparing and sending each notice from five minutes to an average of 14 minutes per dispute to prepare and send a notice to a consumer. Our estimate of 14 minutes per dispute is based upon an estimate of the average time required to respond to three different types or categories of frivolous or irrelevant disputes (F&I disputes). For purposes of estimating paperwork burden, we assume that disputes based on form letters from credit repair organizations will make up 25% of all F&I disputes and, on average, furnishers will devote eight minutes to each notice. We assume that duplicate credit reporting agency disputes will make up 60% of F&I disputes and we estimate this category will require an average of 15 minutes for each notice. Disputes that are frivolous or irrelevant for other reasons are assumed to make up 15% of F&I disputes, and we estimate these other categories of disputes will require an average of 20 minutes each.

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

² See section 609(c) of the FCRA (15 U.S.C. 1681g(c)).

³ Commenters' reporting of the extent to which furnishers currently receive direct disputes varied, and in the case of financial institutions, the size of the institution may be a factor. One industry commenter noted that a small portion of disputes currently come directly from consumers. However, another industry commenter indicated that community bankers report that, on average, 40 percent of disputes are received directly from consumers.

Review of Furnishing Practices:

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

Another commenter opined that the suggested actions a furnisher should take to establish and maintain a compliance program should be reduced or eliminated. The commenter stated that it was unclear how the suggested actions could be considered and documented, let alone designed and implemented, in 21 hours, even for small furnishers. The commenter expressed the concern that examiners of financial institutions will treat suggestions -- such as the one that furnishers audit their existing furnishing activities -- as requirements, and added that it is unclear whether any furnisher needs to audit its existing program to comply with the final rules. The commenter additionally observed that the Agencies' burden estimate of 21 hours to comply with the final rule would be inconsistent with additionally having to conduct such audits. The commenter asserted that it would require more than 21 hours simply to conduct an audit of a mid-sized furnisher, and additional time beyond that to evaluate the audit results before drafting a compliance program. Finally, the commenter predicted that the costs of an audit may lead some institutions not to furnish information. Based on the comments received, the Agencies have decided to increase the burden associated with this requirement from 21 hours to 24 hours (three business days). In doing so, however, we note that the requirement for a furnisher to periodically review policies and procedures and update them as necessary is not an audit requirement. The final rule does not impose an audit requirement on a furnisher to conduct an official examination and verification of consumer accounts and records regarding its policies and procedures. In fact, the Agencies believe that an audit would impose undue burden on furnishers, especially small furnishers, and result in less information being provided into the credit reporting system.

Impact on Small Institutions:

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

The Agencies recognize that a "one-size-fits-all" approach for implementing the guidelines is inappropriate. The final rule specifies that a furnisher's policies and procedures must be appropriate to the nature, size, complexity, and scope of the furnisher's activities. The

Agencies expect that the written policies and procedures for a small retail entity will differ substantially from, and be significantly less complex than, those of a multi-billion dollar financial services company. The Agencies have also addressed furnishers' implementation burden for § 43 of the final rule by permitting furnishers to specify a direct dispute address for receiving such disputes. The address may be provided to consumers either by a CRA setting forth the address, which is provided by the furnisher, on a consumer report or by other means to consumers in writing or electronically (if the consumer has agreed to the electronic delivery of information from the furnisher).

9. Payment to respondents:

None.

10. Any assurance of confidentiality:

No assurance of confidentiality is made.

11. Justification for questions of a sensitive nature:

There are no questions of a sensitive nature.

12. Burden estimates:

Number of respondents: 1,508.

Estimated reporting burden per respondent: 40 hours. (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; 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.)

Total estimated annual reporting burden: 60,320 hours.

Number of frivolous or irrelevant disputes: 2.8 million.

Number of additional non-frivolous or irrelevant disputes: 1,874,010 (rounded to 1.9 million in final rule).

Estimated burden per notice: 14.055064 minutes (rounded to 14 minutes in final rule).

Total estimated annual burden associated with direct disputes (third party reporting): 1,087,127 hours (average of 1,094,892 hours used in final rule).

Total estimated annual burden: 1,147,447 hours.

The OCC estimates the cost of the hour burden to respondents as follows:

Dispute Notices:

4.7 million notices x \$8.00 per notice = \$37,600,000

Written Policies and Procedures; Training; Amendment of Procedures for Handling Direct Complaints; Implementation of New Dispute Notice Requirement:

Compliance Staff	33.33% x 60,320	= 20,105 @ \$107 = \$	2,151,235
Senior Management	33.33% x 60,320	= 20,105 @ \$134 =	2,694,070
Legal Counsel	33.33% x 60,320	= 20,105 @ \$161 =	<u>3,236,905</u>
Total:			= \$ 8,082,210

Frivolous or Irrelevant Dispute Notices **\$37,600,000**
\$45,682,210

13. Estimates of annualized costs to respondents:

Not applicable.

14. Estimate of annualized costs to the government:

Not applicable.

15. Change in burden:

+ 1,508 respondents + 1,147,447 burden hours.

The increase in burden is due to the fact that this is a new collection.

16. Information regarding collections whose results are planned to be published for statistical use:

The OCC has no plans to publish the data for statistical purposes.

17. Display of expiration date:

Not applicable.

18. Exceptions to certification statement:

None.

B. Collections of Information Employing Statistical Methods

Not applicable.