

**Supporting Statement for  
OMB Control Number 3064-0161 [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**

A. Justification

1. Circumstances that make the collection necessary:

The Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision (OTS), the National Credit Union Administration, and the Federal Trade Commission, (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 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 334.42(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). This rule requires furnishers to put into writing policies and procedures that address their section 312 responsibilities regarding the accuracy and integrity of information. Furnishers' accuracy and integrity policies and procedures may include their existing policies and procedures that are reasonable and appropriate.

Section 334.43(a) permits consumers to initiate disputes directly with the furnishers. 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 would have the right to go directly to the furnisher in certain circumstances. Under the rule, furnishers would have to follow a process substantially similar to what they currently use for handling disputes submitted through a CRA. Furnishers would need to amend their procedures to ensure that disputes received directly from consumers are handled in a substantially similar manner to the CRA dispute process.

Section 334.43(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 334.43(f)(3) incorporates the statute's content requirements for the notices.

3. Consideration of the use of improved information technology:

Financial institutions 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 financial institutions, 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 in the Federal Register (72 FR 70944) requesting public comment on the proposed rule and proposed information collection.

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. Responses to public comments on the ICR (per OMB Comment on Proposed Rule)

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 the number of disputes received from consumers would likely increase significantly. They observed that changes the FTC will make to the Summary of Rights under the FCRA<sup>1</sup> (currently provided to consumers) to include information about consumer section 312 rights to direct disputes will increase the number of direct disputes furnishers will receive. In response, the Agencies believe it is reasonable to assume that such changes to the Summary of Rights will likely increase the number of disputes furnishers receive directly from consumers.

One industry commenter stated that until furnishers begin implementing the proposal, it will be impossible to determine whether the Agencies' estimates of burden are understated. The commenter was also of the opinion that it is "probably" unreasonable to estimate that it will take only 5 minutes to prepare and send the notice required under section .43(f)(2) and (3) to consumers that a direct dispute is frivolous or irrelevant since it is likely to take much longer to review and investigate a dispute. In response, the Agencies acknowledged that furnishers are likely to spend more than 5 minutes reviewing and investigating disputes received directly from consumers. The estimated PRA disclosure burden per notice published in the NPRM represented strictly the 5 minutes it would take a furnisher to prepare and distribute each notice; but it did not include the time required to review and investigate a dispute. However, given that each notice will be consumer-specific, and that the amount of automation used to send each notice will vary based on each dispute, the Agencies re-estimated the average time furnishers will devote to preparing and sending notices. The Agencies have increased the estimated burden for preparing and sending each notice from 5 minutes to an average of 14 minutes per dispute to prepare and send a notice to a consumer. The revised estimate of 14 minutes per dispute notice is based upon an estimate of the average time required to respond to three different types or categories of frivolous or irrelevant disputes. For purposes of estimating paperwork burden, we assume that disputes based on form letters from credit repair organizations will make up 25 percent of all frivolous or irrelevant disputes and, on average, furnishers will devote 8 minutes to each notice. It is assumed that duplicate credit reporting agency disputes will make up 60 percent of frivolous or irrelevant disputes, and we estimate this category will require an average of 15 minutes for each notice. Disputes that are frivolous or irrelevant for other reasons are assumed to make up 15 percent of frivolous or irrelevant disputes, and we estimate these other categories of disputes will require an average of 20 minutes each. Based upon the comments, the Agencies increased their respective estimates for the number of notices of determination that a dispute is frivolous or irrelevant (which also includes incomplete and duplicate disputes) that will be provided, recognizing, however, the difficulties in doing so, since industry estimates of the percentage of current CRA disputes that are frivolous or irrelevant ranged from 25 to 94 percent of disputes.

Commenters expressed concern that furnishers would be required to audit their furnishing practice, which could take several days to design and additional time to perform and provide an audit report, all well in excess of the 21 hours estimated in the NPRM – even for a mid-size furnisher. The Agencies were urged to consider the impact of the requirements, keeping in mind accumulating burden and cost. The commenter further observed 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. It was predicted that the costs of an audit may lead some institutions not to furnish information. Along the same lines, another commenter stated that, while most furnishers would only make minor modifications, if

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<sup>1</sup> See section 609(c) of the FCRA (15 U.S.C. 1681g(c)).

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.

In response to the concerns about the auditing furnishing practices, the Agencies stated that 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. Further, in response to the comments, the Agencies increased the burden estimate associated with the section 312 requirements for implementing policies and procedures for accuracy and integrity and responding to direct consumer disputes that are determined to be frivolous or irrelevant from a total of 29 hours, as proposed in the NPRM, to a total of 40 hours, as follows: the burden for the section .42(a) requirement to implement policies and procedures for accuracy and integrity- from 21 hours to 24 hours (3 business days); the burden for the section .43(a) requirement to insure that disputes received directly from consumers are processed in a substantially similar manner as those from CRAs are currently processed - from 4 hours to 8 hours (one business day); and an increase in burden from 4 hours to 8 hours to implement the section .43(f)(2) and (3) requirement for a notice of determination that a dispute is frivolous or irrelevant.

One commenter added that the impact on small institutions' current resources would be severe and that they would have to use significant resources to comply with the proposed requirements. The commenter added that its member companies spend about one hour verifying each dispute, and it expects a substantial increase in direct disputes once the rule is implemented. The commenter anticipates that consumers will choose to use direct disputes over contacting CRAs. In response, the Agencies observed that while a furnisher is required to implement reasonable written policies and procedures regarding the accuracy and integrity of information relating to consumers that it provides to a CRA, the policies and procedures must be appropriate to the nature, size, complexity, and scope of each furnisher's activities; not "one size fits all," and thus it is expected 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. Moreover, furnishers already have an ongoing responsibility under section 623 of the FCRA for accurate reporting, which has been in place long before enactment of the FACT Act. Furnishers' accuracy and integrity policies and procedures required under the final rule may include their existing policies and procedures that are reasonable and appropriate. To lessen furnishers' burden associated with receipt of direct disputes, the final rule permits furnishers to specify a direct dispute address. The address is to be provided to consumers in the consumer report or by other written or electronically means (if the consumer has agreed to the electronic delivery of information from the furnisher).

13. Burden estimate:

Number of respondents: 5,104

Number of frivolous or irrelevant dispute notices: 100,100

Estimated burden per respondent: 24 hours to implement written policies and procedures and

training associated with the written policies and procedures, 8 hours to amend procedures for handling complaints received directly from consumers, 8 hours to implement the new dispute notice requirement.

Estimated burden per frivolous or irrelevant dispute notice: 14 minutes.

Total estimated annual burden: 227,517 hours.

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

Frivolous or Irrelevant Dispute Notices:

100,100 notices x \$8.00 per notice = \$800,800

Implement written policies and procedures regarding accuracy and integrity and the frivolous or irrelevant dispute notice:

Compliance Admin/Analyst Staff:	30% x 227,517 @\$ 25 =	\$1,706,378	
Mgmt/IT and Technical:	45% x 227,517 @ 55 =	5,631,046	
Senior Management:	15% x 227,517 @100 =	3,412,755.	
Legal Counsel:	10% x 227,517 @144=	<u>3,276,245</u>	
Total:			\$14,026,424.
Frivolous or Irrelevant Dispute Notices			<u>800,800</u>
<b>Grand Total:</b>			<b>\$14,827,224</b>

14. Estimates of annualized costs to respondents:

Not applicable.

15. Estimate of annualized costs to the government:

Not applicable.

16. Change in burden:

FDIC is citing an increase in burden of 227,517 hours as a program change due to the fact this is a new collection.

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

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

18. Display of expiration date:

Not applicable.

19. Exceptions to certification statement:

None.

B. Collections of Information Employing Statistical Methods

Not applicable.