

## Interagency Examination Procedures

### Section 623(a)(8) and Section 623(e) of the Fair Credit Reporting Act Duties of Furnishers of Information (12 CFR 222.40)

#### Background

Section 623 of the Fair Credit Reporting Act (FCRA) requires the federal banking agencies (Agencies) and the Federal Trade Commission (FTC) to:

1. Issue guidelines for use by furnishers regarding the accuracy and integrity of the information about consumers that they furnish to consumer reporting agencies;
2. Prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines; and
3. Issue regulations identifying the circumstances under which a furnisher must reinvestigate disputes concerning the accuracy of information contained in a consumer report based on a direct request from a consumer.

On July 1, 2009, the Agencies and the FTC published final rules in the *Federal Register* (74 FR 31484) implementing this section of FCRA.

#### Definitions (12 CFR 222.41).

The following definitions pertain to the rules governing the furnishers of information to a consumer reporting agency:

1. “Accuracy” means that the information a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer correctly:
  - a) Reflects the terms of and liability for the account or other relationship;
  - b) Reflects the consumer's performance and other conduct with respect to the account or other relationship; and
  - c) Identifies the appropriate consumer.
2. “Direct dispute” means a dispute submitted by a consumer directly to a furnisher (including a furnisher that is a debt collector) 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.
3. “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:
  - a) Provides information to a consumer reporting agency solely to obtain a consumer report in accordance with the permissible purposes outlined in sections 604(a) and (f) of the FCRA;
  - b) Is acting as a “consumer reporting agency” as defined in section 603(f) of the FCRA;
  - c) Is a consumer to whom the furnished information pertains; or

- d) 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.
4. "Identity theft" means a fraud committed or attempted using the identifying information of another person without authority. "Identifying information" means any name or number that may be used alone or in conjunction with any other information to identify a specific person (16 CFR 603.2).
5. "Integrity" means that the information a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer:
- a) Is substantiated by the furnisher's records at the time it is furnished;
  - b) 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
  - c) Includes:
    - i. the information in the furnisher's possession about the account or other relationship that the relevant Agency has 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. the credit limit, if applicable and in the furnisher's possession.

Reasonable policies and procedures concerning the accuracy and integrity of furnished information (12 CFR 222.42) and Interagency Guidelines (12 CFR 222, Appendix E)

Each furnisher must establish and implement reasonable written policies and procedures regarding the accuracy and integrity of consumer information 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. In developing its policies and procedures, a furnisher must consider the Interagency Guidelines and may include its existing policies and procedures that are relevant and appropriate. Each furnisher must also review its policies and procedures periodically and update them as necessary to ensure their continued effectiveness.

Direct disputes (12 CFR 222.43)

*General rule.* A furnisher must conduct a reasonable investigation of a direct dispute (unless exceptions, described later, apply) if the dispute 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 identify 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, payment date, the payment amount, 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.

*Exceptions.* The direct dispute requirements do not apply to a furnisher if the direct dispute relates to:

- 1) The consumer's identifying information such as name(s), date of birth, Social Security number, telephone number(s), or address(es);
- 2) The identity of past or present employers;
- 3) Inquiries or requests for a consumer report;
- 4) Information derived from public records, such as judgments, bankruptcies, liens, and other legal matters (unless the information was provided by a furnisher with an account or other relationship with the consumer);
- 5) Information related to fraud alerts or active duty alerts; or
- 6) Information provided to a consumer reporting agency by another furnisher.

The direct dispute requirements also do not apply if the furnisher has a reasonable belief that the direct dispute is:

- 1) submitted by a credit repair organization;
- 2) is prepared on behalf of the consumer by a credit repair organization; or
- 3) is submitted on a form supplied to the consumer by a credit repair organization.

*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 provided by a furnisher and listed on a consumer report relating to the consumer;
- 2) An address clearly and conspicuously specified by the furnisher 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 provided a specific address for submitting direct disputes.

*Direct Dispute Notice Contents.* A dispute notice from a consumer 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;
- 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.

*Duties of a Furnisher after Receiving a Direct Dispute Notice from a Consumer.* After receiving a dispute notice from a consumer, 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 FCRA (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 investigation findings and provide to the consumer reporting agency any correction to that information that is necessary to make the information provided by the furnisher accurate.

*Frivolous or Irrelevant Disputes.* 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:

- 1) The consumer did not provide sufficient information to investigate the disputed information;
- 2) The direct dispute is substantially the same as a dispute previously submitted by or on behalf of the consumer and the dispute is one with respect to which the furnisher has already complied with the statutory or regulatory requirements. However, a direct dispute would not be “substantially the same” as the one previously submitted if the dispute includes new information required by the regulation to be provided to the furnisher, but that had not previously been provided; or
- 3) The furnisher is not required to investigate the direct dispute because one or more of the exceptions listed in 12 CFR 222.43(b) applies.

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

## Examination Procedures

- 1) Determine whether the financial institution furnishes consumer information to a consumer reporting agency about an account or other relationship with a consumer. If so, the institution is subject to 12 CFR 222.40.
- 2) Determine whether the financial institution has established and implemented reasonable policies and procedures regarding the accuracy and integrity of information furnished to a consumer reporting agency (12 CFR 222.42(a)).
- 3) Determine whether the institution considered the Interagency Guidelines in Appendix E of the regulation when developing its policies and procedures, and incorporated the guidelines as appropriate (12 CFR 222.42(b)).
- 4) Determine whether the institution reviews its policies and procedures periodically and updates them as necessary to ensure their effectiveness (12 CFR 222.42(c)).
- 5) Determine whether the institution conducts reasonable investigations of direct disputes from consumers, including a review of all relevant information provided by the consumer (12 CFR 222.43(e)(1) and (2)).
- 6) Determine whether the institution completes the investigation and reports the results to the consumer within the required timeframe (12 CFR 222.43(e)(3)).
- 7) Determine whether the institution notifies and provides corrected information to the consumer reporting agencies when the results of its investigation find that inaccurate information was furnished to the consumer reporting agencies (12 CFR 222.43(e)(4)).
- 8) When the institution finds that a dispute is frivolous or irrelevant, determine whether the institution:
  - a. notifies the consumer within five days after finding the dispute frivolous or irrelevant (12 CFR 222.43(f)(2)), and
  - b. includes in the consumer notification the reasons for the findings and the information necessary to investigate the disputed information (12 CFR 222.43(f)(3)).