



Appendix I

Defining Accuracy

Below is a discussion of the difficulty of defining what constitutes accurate information and ultimately what is consequential.

We all know what we mean by the term ‘accuracy.’ But when we apply this term to an industry that sells three billion consumer reports per year and in fact which loads three billion updates of information per month, there’s some context that can help us in our discussion. Consider the following points about the term ‘accuracy.’

Accuracy and Voluntary Reporting: Fundamental to understanding the flow of information to consumer reporting agencies from more than 18,000 data furnishers is the fact that these data are provided voluntarily. Thus, there is always a careful balance that has to be maintained in order to ensure that the law creates appropriate duties for ensuring accuracy and alternatively, does not create a legal regime that imposes a strong disincentive to report at all.

Accuracy, Consumer Reporting Agencies and the Law: The CDIA’s members are governed under the Fair Credit Reporting Act (15 U.S.C. Sec. 1681, *et seq.*), which establishes a duty that any consumer reporting agency must employ reasonable procedures to ensure the maximum possible accuracy of the information contained in the consumer report produced on a given consumer at a given point in time. Simply put, the law requires that the information contained in the report must be accurate as of the date reported. The Federal Trade Commission’s own Commentary on the FCRA provides the following comment:

The section does not require error free consumer reports. If a consumer reporting agency accurately transcribes, stores and communicates consumer information received from a source that it reasonably believes to be reputable and which is credible on its face, the agency does not violate this section simply by reporting an item of information that turns out to be inaccurate. However, when a consumer reporting agency learns or should reasonably be aware of errors in its reports that may indicate systematic problems (by virtue of information from consumers, report users, from periodic review of its reporting system, or otherwise) it can review its procedures for assuring accuracy.¹

Accuracy, Data Furnishers and the Law: In 1996, the FCRA was materially amended. Perhaps the most significant change was the addition of Section 623, which imposed for the first time an express duty on data furnishers to report accurate data to the consumer reporting agencies. In taking this step, the Congress acknowledged that consumer reporting agencies, on their own, could not fully ensure the accuracy of information absent the partnership with the data furnishers that voluntarily provide information to the databases of consumer reporting agencies.

¹ 16 C.F.R. Part 600 App. (2000).

Accuracy and the Absence of Information in All Files: Some have posited that consumer reports are inaccurate when there is data missing from the file. CDIA disagrees with this characterization. There is no doubt that while the vast majority of the nation's largest lenders report voluntarily to all of the nationwide consumer reporting agencies which produce what are commonly called 'credit reports', there are some smaller data furnishers which may choose to report only to one system. Some variance in product will always be evident in a competitive marketplace. However, while there are modest variances between nationwide consumer reporting agencies' databases, they all compete based on file quality and content and, thus, all are constantly seeking to ensure that their reports are complete and fully representative of the consumer about whom the report relates.

Note that credit repair can have a deleterious effect on the completeness of a consumer's credit report and, thus, where third-party file comparisons identify absences of data between files, this is in part attributable to credit repair. One of our members testified that more than 30 percent of all consumer disputes were generated by credit repair agencies, which commonly dispute accurate, derogatory information with the sole intention of having that information deleted from the file. In 1996, the Congress recognized the seriousness of the credit repair problems and enacted the Credit Services Organizations Act. That law prohibits the following with regard to credit repair activities and there is a continued need for even greater enforcement resources in order to ensure the effectiveness of the Act:

(a) *In General.*--No person may--

(1) make any statement, or counsel or advise any consumer to make any statement, which is untrue or misleading (or which, upon the exercise of reasonable care, should be known by the credit repair organization, officer, employee, agent, or other person to be untrue or misleading) with respect to any consumer's credit worthiness, credit standing, or credit capacity to--

(A) any consumer reporting agency * * *²

Accuracy and Data Furnishing/Data Reporting Timing Issues: Some have reviewed reports about the same consumer obtained from more than one nationwide consumer credit reporting system and have suggested that differences in the status of a particular account (e.g., 30- v. 60-days delinquent) is an inaccuracy. The data are in fact accurate as of the date reported. There are a number of reasons for differences in the status of the same account on different 'credit reports' produced by different credit reporting systems.

For example, if a lender's data center is on the west coast and it ships physical media of accounts receivable information to each nationwide credit reporting systems, then the physical media may arrive on different days. The result is one of the nationwide systems may receive and load its update of a particular account sooner than the others. Thus, the status of a particular account is shown as sixty days delinquent on one system as of June 1, and on another the same account may, until the update is loaded, display the same account as thirty days delinquent (pending the update to sixty days as of June 1).

Another reason may be that a data furnisher produced an incorrect set of data for one of the three systems and, via the credit reporting systems' audit controls, this physical media is sent back to the data furnisher for reprocessing and correction. Physical media are also, though infrequently, damaged in transit and have to be sent back to a data furnisher for reprocessing. Our members report success in migrating data furnishers from physical media reporting to electronic. One member reports that 90% of data is now reported electronically.

Accuracy and the Consumer – Perceptions and Realities: One of our members observed that items in a consumer's credit file may be accurate, but not in sync with the consumer's perspective. Consumers have

² 15 U.S.C. § 1679b(a).

a tendency to 'dispute' such items that are not in sync with their perspective, even when the data is accurate. Below are a few actual examples that have been drawn from the industry experts who lead consumer relations/assistance units for the nation's largest consumer reporting agencies which maintain files on the majority of credit active consumers.

(1) Maiden name – A married woman obtains a copy of her file and sees that her married name is not on file. She calls to dispute this and the representative asks her if she has applied for any credit in her married name. She replies in the negative and offers that she and her husband are now starting to apply for joint credit accounts. She is advised that information in her file is reported to us by the credit grantors with whom that she holds accounts. Since she does not have any credit accounts in her married name, we would have no way of knowing that she has changed her name unless she reported this directly to us.

(2) A consumer sees an old, dormant account on his file and indicates that he had long ago instructed the credit grantor to close the account. He might have confused that request with a similar request to another credit grantor. Or maybe he might have instructed the credit grantor to close the account and they never did. The point is that the information on file is 'accurate', because it is an open account.

(3) A consumer sees an account with General Electric Consumer Credit (GECC) on his file and swears that he never did business with GECC before. However, the account in question was with a retailer who subsequently outsourced their lending to GECC and the consumer never knew of that relationship or isn't aware that some retailers outsource their lending. In this case, the consumer will be adamant that the account is incorrect, but, in fact, it is accurate. Once they are made aware of the retailer's name (i.e. Home Depot for example), they acknowledge they do have a Home Depot account. The file was accurate.

(4) A consumer sees a previous address listed as the current address and vice versa. He cannot understand how the credit bureau could make that mistake. However, the consumer had failed to notify some of his credit grantors about the previous move, so some credit grantors are still reporting the old address as current. This hasn't been an issue for the consumer because the mail from those credit grantors is getting forwarded or the account is so inactive the credit grantors do not need to send him/her a billing statement very often.

(5) A consumer sees his or her name listed with an unrecognizable combination of personal initials they don't remember using. The consumer's inclination is to believe the credit bureau is responsible for this. However, the fact is that our members' systems are incapable of making up a name. That particular name was transmitted to us by the credit grantor. Either the consumer previously used that name with a credit grantor in the past or the credit grantor transmitted the erroneous name.

(6) Consumers also often find that employment data is not current on their file disclosures. This is due to the fact that many lenders do not report employment data any longer. Nonetheless, the FCRA requires that a consumer reporting agency disclose 'all information in the file at the time of the request' and this includes dated employment data.

The previous examples have no bearing on the lender's risk decision. Yet, the consumer has questions about this data and regards these as 'errors' by the credit reporting agency.

Accuracy and Divorce: One very significant challenge for CDIA's members is the problem lenders and consumer reporting agencies have with how credit obligations are handled incorrectly by divorce courts. A divorce decree does not supersede an original contract with a creditor and does not release a consumer from his or her legal responsibility on those accounts entered into jointly with the former spouse. A consumer will see an item on his or her report and call to dispute the accuracy of it because they feel the divorce court adjudicated it. Despite the explanation that the debt is still owed the consumer will argue

that her lawyer did not advise her at the time of her divorce that this would be the case. We explain to the consumer that it is ultimately his or her responsibility to contact creditors and seek a binding legal release of the debt obligations that have been incurred.

Accuracy and Expectations of Immediacy: Another very significant challenge is the perception by consumers that their credit reports should and can be updated nearly instantaneously. For example, consumers may review their credit reports and while data is accurate as of the date reported, they believe that recent payments should already be reflected showing a lower outstanding balance. A majority of data in the nationwide credit reporting systems is updated on a thirty-day cycle and this timing correlates with the thirty-day billing cycles for many types of contractually prescribed credit payments to creditors. A great many disputes are driven by a desire to update information, which is otherwise accurate.

Accuracy and Misunderstandings About the Law: Often enough our members report that consumers believe that when an account is delinquent and subsequently paid, that any negative information about the missed payments will be expunged from the record.

Similarly, consumers often believe that an item placed for collection should be expunged once paid. In fact, the law recognized that it is important for creditors to know when the account was paid and to also maintain a history of the timeliness of past payments for purposes of safety and soundness. Thus, the law permits adverse information to remain on the file, but for no more than seven years, although bankruptcies may stay on a credit report up to ten years.

We strongly believe that this context is essential. Anecdotes can be based on problems that are not real and in some cases are driven by perceptions or misconceptions about how the system does or should work and even how other laws work. Finally we caution against making the term ‘accuracy’ synonymous with ‘consequential.’ Some inaccuracies are inconsequential to the consumer, such as a missing middle initial, and some inaccuracies may be very consequential, such as a lender incorrectly reporting a consumer as 30 days late on an account.’



Appendix II

Summary of Consumer Protections and Requirements on Consumer Reporting Agencies and Data Furnishers Contained in the Federal Fair and Accurate Credit Transactions Act of 2003 (FACTA), Pub. L.108-159 Amending the Federal Fair Credit Reporting Act (FCRA), 15 U.S.C. Sec. 1681 *et seq.*

- *Free Credit Reports.* Consumers are entitled to one free credit report per year. Pub. L. 108-159, Sec. 211. This is in addition to the free reports consumers are entitled to receive if they are on public assistance, victims of fraud, or they have been denied credit or insurance on the basis of a consumer report. 15 U.S.C. Sec. 1681j.
- *Tradeline Blocking.* Consumers with an identity theft report, as that term is defined by law, can block from appearing on a credit report, any item that was compromised by fraud that appears on the identity theft report. Pub. L. 108-159, Sec. 152.
- *Fraud Alerts and Active Duty Alerts.* Consumers who believe they are identity fraud victims can request that a fraud alert be placed on their credit reports to signal to prospective users of that report that the consumer may be a fraud victim. Pub. L. 108-159, Secs. 112(a), (b). Consumers who are on active military duty away from their duty station may request that an active military duty alert be placed on their credit reports to signal to prospective users of that report that the consumer may be not be the actual applicant for credit. Pub. L. 108-159, Secs. 112(c).
- *Social Security Number Truncation.* Consumers may request that consumer reporting agencies truncate their SSNs on credit reports. Pub. L. 108-159, Sec. 115.
- *Credit and Debit Card Number Truncation.* Merchants must truncate debit and credit card account numbers on receipts. Pub. L. 108-159, Sec. 113.
- *Establishment of Red Flag Guidelines.* Federal banking agencies and users of consumer reports (i.e. lenders) must establish red flag guidelines to better identify fraud patterns. Pub. L. 108-159, Sec. 114.
- *Summary of Rights.* Consumer reporting agencies must provide to consumers a summary of their rights if they become identity fraud victims. Pub. L. 108-159, Sec. 151.
- *Complaint Coordination.* The FTC and national consumer reporting agencies must develop a system to coordinate consumer complaints. Pub. L. 108-159, Sec. 153.
- *Prevention of Reappearance of Fraudulent Information.* Companies that furnish data to consumer reporting agencies must develop procedures to prevent the reappearance of data that was subject to fraud. Pub. L. 108-159, Sec. 154.
- *Debt Collection.* Debt collectors collecting for a third party must, when notified by a consumer that the collection item is the subject of fraud, inform the company for whom the collector is collecting of the alleged fraud. In addition and upon request, the collector must share with the consumer information relative to the debt. Pub. L. 108-159, Sec. 155.

- *Statute of Limitations Extension.* The statute of limitations against consumer reporting agencies, and users of information from and furnishers of information to consumer reporting agencies is extended to two years from the date of the discovery of the violation or five years from the date the cause of action arises. Pub. L. 108-159, Sec. 156.
- *Studies on Identity Fraud.* The Treasury Department is required to conduct an identity fraud study. Pub. L. 108-159., Sec. 157.
- *Enhanced Opt-Out from Pre-approved Credit or Insurance Offers.* New easier and simpler method lenders inform consumers of their right to remove their names from pre-approved credit or insurance offer lists. In addition, the timeframe for opt-out is extended from two to five years. Pub. L. 108-159, Sec. 213
- *Disposal of Records.* FTC and federal banking agencies to develop rules concerning the disposal of credit records. Pub. L. 108-159, Sec. 216.
- *Reporting of Negative Information to Consumer Reporting Agency.* Lenders must inform consumers that negative information may be reported to consumer reporting agencies. Pub. L. 108-159, Sec. 217.
- *Enhanced Obligations on Furnishers to Report Accurate Information.* Pub. L. 108-159, Sec. 314.
- *Address Reconciliation.* Consumer reporting agencies must notify users of consumer reports about a substantially different address between an address on an application and an address on the credit report. Users must have policies to handle this situation under regulations from federal banking agencies. Pub. L. 108-159, Sec. 315.