

Furnisher Accuracy and Direct Dispute Rules

Credit Builders Alliance
August 3, 2010

New FACT Act Furnisher Rules

- Accuracy and Integrity Rule and Guidelines
- Furnisher Direct Dispute Rule
- Issued July 1, 2009, 74 Fed. Reg. 31484
- Effective July 1, 2010
- Located at
 - 12 CFR pt. 41 (OCC)
 - 12 CFR pt. 571 (OTS)
 - 12 CFR pt. 222 (FRB)
 - 12 CFR pt. 334 (FDIC)
 - 12 CFR pt. 717 (NCUA)
 - 16 CFR pt. 660 (FTC)

Evolution of FCRA Furnisher Requirements

- 1970: qualified immunity from state tort law
- 1996: first imposition of duties
 - Limited private liability and broad preemption of state laws
 - Accuracy duty; duty to correct and update
 - If you furnish, you must report certain information
 - Duty to investigate disputes received from credit bureaus
- 2003: expansion of responsibilities
 - Accuracy: “reasonable cause to believe” rather than “know”
 - Identity theft tradeline blocking
 - Negative information notice
 - Address Discrepancy Rule
 - “Medical” furnisher provisions
 - Must update file following reinvestigation
 - ***Accuracy and Integrity Rule***
 - ***Furnisher Direct Dispute Rule***

Accuracy and Integrity Rule

Accuracy Rule: Key Definitions

- **Furnisher**

- Furnishes information to CRAs for “inclusion in” consumer reports

- **Accuracy**

- Terms and liability for the account
- Consumer’s performance on the account
- The right consumer

Accuracy Rule: Key Definitions

• Integrity

- Must be substantiated by records when furnished
- Must be furnished in a form and manner to minimize the likelihood that information will be incorrectly reflected in a credit report
 - Should include appropriate identifying information
 - Should be furnished in a standardized and clearly understandable form and manner
 - Should include a date specifying the time period to which the information pertains
- Must include information that the furnisher's regulator has identified must be furnished
 - Only credit limit now
 - But see ANPR: should also include account-opening date?
 - Comments closed Aug. 31, 2009

Accuracy Rule Requirements

- Must develop reasonable policies and procedures regarding accuracy and integrity
 - In writing
 - Appropriate to nature, size, complexity and scope of the furnisher's activities
- Must consider the accuracy and integrity guidelines
 - Include those guidelines that are appropriate
- Must review policies and procedures periodically
 - Update as part of the review

Accuracy and Integrity Guidelines

Policies and procedures should be designed to promote

- Furnishing of information that
 - is *accurate* and
 - has *integrity*
- Conducting reasonable investigations of disputes
 - And taking appropriate actions in response to outcome
 - Not limited to “direct” disputes
- Updating information to reflect current status of account
 - Transfers of accounts to third parties
 - Cure of consumer’s nonperformance

Guidelines: Risk Assessment

- Should identify practices or activities that can compromise accuracy and integrity, by reviewing
 - current practices and technology,
 - historic records,
 - consumer, credit bureau and staff feedback
- Should evaluate the effectiveness of existing policies and procedures and current methods used to furnish
 - how do they affect accuracy and integrity?
 - should new or different methods used?
- Should consider whether
 - new or different policies and procedures are necessary, and
 - whether existing policies and procedures should be modified

Recommended Components of Policy

- In developing policies and procedures, each furnisher should address
 - Appropriateness of furnishing system to the nature, size, complexity and scope of its business;
 - The use of standard data reporting formats and standard procedures for compiling information;
 - Maintaining records for a “reasonable period of time” to substantiate accuracy in disputes;
 - Internal controls for accuracy and integrity;
 - Training staff;
 - Furnishing information following acquisitions or transfers of accounts to prevent re-aging;

Recommended Components of Policy

- In developing policies and procedures, each furnisher should address [cont'd]
 - “Appropriate and effective” oversight of service providers (such as debt collectors);
 - Deleting, updating and correcting information;
 - Conducting reasonable investigations of disputes;
 - Designing means of communication to prevent the compromise of the accuracy and integrity of furnished information;
 - Providing sufficient identifying information relating to consumers;
 - Periodically evaluating factors that may affect the accuracy and integrity of furnished information, including its own practices and credit bureau practices; and
 - Compliance with applicable requirements of the FCRA.

Accuracy Rule Highlights

- Must develop **written** policy for furnishing
- Should conduct risk assessment
 - Inventory current practices, and review feedback
 - Determine risks to accuracy and integrity of information and practices that can compromise accuracy and integrity
 - Periodically revisit risk assessment
- Special attention should be paid to
 - Providing enough customer ID to avoid mixed and split files
 - Duplicative reporting and re-aging, especially following sale/acquisition
 - Overseeing service providers
 - Timely updating of account information
 - Use of standardized reporting formats
 - Conducting reasonable investigations of disputes

Direct Dispute Rule

Key Definitions

- **Direct Dispute**
 - A dispute submitted directly to a furnisher
 - By a consumer
 - Concerning the **accuracy** of any information contained in a consumer report; and
 - pertaining to an account or other relationship that the furnisher has with the consumer
- **Accuracy – the information correctly:**
 - reflects the terms of and liability for the account or other relationship;
 - reflects the consumer's performance and other conduct with respect to the account or other relationship; and
 - identifies the appropriate consumer.

Requirements

- Conduct a “reasonable” investigation;
- Review all relevant information provided by the consumer;
- Complete the investigation and report the results of the investigation to the consumer generally within 30 days; and
- “Promptly” notify each credit bureau of any error and provide corrections.

Not Required to Investigate

If the dispute does not relate to:

- the consumer's liability for debt with the furnisher;
- the terms of that debt;
- the consumer's performance or conduct concerning an account or relationship with the furnisher; or
- any other information regarding an account that bears on the seven characteristics listed in the definition of "consumer report."

Not Required to Investigate

If consumer does not submit direct dispute notice to:

- An address provided by the furnisher that is included on a consumer report;
- An address “clearly and conspicuously” specified by the furnisher for submitting direct disputes that is provided to the consumer in writing or electronically; or
- Any business address of the furnisher if the furnisher has not provided an address by one of the other two methods.

Not Required to Investigate: “Frivolous or Irrelevant”

- If the furnisher “reasonably” determines the dispute to be ***“frivolous or irrelevant:”***
- “Substantially the same” as a prior dispute
 - Submitted by the consumer directly or through a credit bureau
 - A dispute with additional information is not substantially the same
- The consumer’s dispute notice does not contain the required content
- A specific exception applies
- If furnisher determines dispute is frivolous or irrelevant, must send special notice to consumer

“Frivolous or Irrelevant:” Notice Contents

Consumer’s dispute notice must include:

- sufficient information to identify the account in dispute;
- the specific information that is disputed;
- an explanation of the basis for the dispute; and
- all supporting information that the furnisher reasonably requires to substantiate the basis of the dispute.

“Frivolous or Irrelevant:” Specific Exceptions

- The dispute relates to:
 - Identifying information (*e.g.*, name or SSN);
 - Past or present employers;
 - Inquiries or requests for consumer reports;
 - Information from public records (*e.g.*, bankruptcies);
 - Information related to fraud or active duty alerts; or
 - Information provided by another furnisher.
- The furnisher has a “reasonable belief” that the dispute comes from a “credit repair organization.”

“Frivolous or Irrelevant:” Notice Required

- Furnisher must notify a consumer if it determines that a direct dispute is frivolous or irrelevant
- Within five business days
- By mail (or another method authorized by the consumer)
- The notice must include:
 - the reasons for the determination; and
 - any information required to investigate the dispute.
- May be provided in a “standardized form”

Direct Dispute Rule Highlights

- Must investigate information disputed by a consumer and respond within 30 days
- Not required to investigate if the dispute is
 - Not a “direct dispute” (not about accuracy, not about an account)
 - Not submitted to the appropriate address
 - Not concerning liability, terms, performance, 7 characteristics
- Not required to investigate if frivolous or irrelevant
 - Insufficient information
 - Relates to ID, fraud alerts, inquiries, public record
 - Already investigated and no new information submitted
 - Reasonably believe submitted by credit repair
- Must notify of frivolous or irrelevant determination within five business days

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