January 31, 2020

Federal Trade Commission, Office of the Secretary
Constitution Center
400 7th St., S.W., 5th Floor, Suite 5610
Washington, D.C. 20024

Re: Accuracy in Consumer Reporting Workshop

To Whom It May Concern:

The American Financial Services Association (AFSA)[1] appreciates the opportunity to participate in the Federal Trade Commission (FTC) and Consumer Financial Protection Bureau (CFPB) Accuracy in Consumer Reporting Workshop ("Workshop") by offering comments.

AFSA member companies and their customers are directly affected by consumer reporting systems, and AFSA applauds efforts to achieve improvements in the accuracy of consumer reports. AFSA members are eager to share their perspectives on these issues and are grateful for the continued attention shown by the FTC, the CFPB, and other regulatory bodies. As the comments below show, there are several important concerns shared by creditors who furnish data to consumer reporting systems and use consumer report derived data for underwriting. These concerns are critically important to the effective functioning of consumer credit markets.

The purpose of the Workshop as articulated by the FTC and CFPB is to have a "wide-ranging public discussion on the many issues impacting the accuracy of consumer reports." One key observation on the nature of recent policymaking and proposed legislation is that accurate consumer reporting relies on having accurate data on positive events (e.g., timely payments) and negative events (e.g., delinquencies and defaults). Recent policy proposals seem preoccupied with eliminating negative information relating to delinquencies and defaults in order to cleanse the consumer report and elevate consumers' credit scores. However, no discussion about the accuracy of consumer reports should focus solely on negative information to the exclusion of accurate positive information. The consumer reporting systems can only function properly when all pertinent events, negative or positive, are accurately reported and consumer reports capture a complete record of consumer behavior.

AFSA member companies report that consumers are familiar with the benefits of achieving and maintaining higher credit scores. This awareness is positive in general, as lenders seek customers who will honor their commitments. Timely payments lead to higher credit scores, and that opens the door for more choices and less costly credit opportunities for consumers. Unfortunately, consumer interests in achieving higher credit scores have coupled with the actions of certain actors to undermine the routine operation of consumer reporting systems, threatening the accuracy of consumer reports.

[1] Founded in 1916, AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

AFSA member companies are inundated by disputes, frequently created with the involvement of third-party credit repair organizations, that the Fair Credit Reporting Act ("FCRA") defines as "frivolous or irrelevant." For example, one member company received thirty-one meritless identical disputes over a thirty-six month period from the same consumer. Another member reports that some individual consumers file dozens of disputes challenging accurate information without providing new pertinent information. Another member details how 33 separate credit disputes were filed with attached FTC Identity Theft Affidavits that were virtually identical, including the name and address information of the same law enforcement officer in a different state than each consumer. These are not unusual examples. Schemes like these are designed to overwhelm creditors with a high volume of baseless disputes. When creditors observe repeated disputes on the same accounts with no factual changes, creditors will delete otherwise accurate tradeline information as a means of decreasing the volume of disputes. This conduct demonstrates that some consumers and credit repair organizations are resorting to "any means necessary" in attempts to cleanse consumer reports of accurate information. Permitting this type of conduct without penalty threatens the stability of the consumer reporting system, and it certainly makes it less accurate.

Notably, in the scenarios described above, consumers frequently are paying third-party credit repair organizations to orchestrate the delivery of baseless credit disputes. AFSA members have identified instances in which consumers with perfect payment histories purchased credit repair services that filed repetitive disputes challenging the accuracy of consumer report information.

AFSA members also report that some consumers and third-party credit repair organizations submit false identity theft reports through consumer reporting agencies or the FTC's online portal as an additional means of hiding negative information on consumer reports. Creditors that receive identity theft reports are obliged under existing law to suppress furnishing information that a consumer claims is related to an instance of identity theft, unless the creditor can establish that the claim of identity theft is based on a material misrepresentation of fact or error. Given the high volume of identity theft reports, combined with other consumer credit disputes, creditors are hard pressed to refute false claims of identity theft and that results in blocking accurate consumer report data. Notices that filing false claims of identity theft can subject a person to prosecution for perjury are ineffective deterrents.

AFSA members rely on the accuracy of consumer reports to make appropriate underwriting decisions on credit applications. AFSA members would like to see credit reporting performed without consumers and third parties attempting to distort the system, so that everyone will be treated fairly. Under the Fair Credit Reporting Act, consumers must have the right to dispute inaccurate information that appears on their credit reports, but they should be accountable for submitting multiple frivolous and irrelevant disputes.

With these considerations in mind, AFSA members urge the FTC and CFPB to consider policies that will preserve the accuracy of consumer report information. Policy makers should act through rulemaking to strengthen the ability of data furnishers to disregard frivolous or irrelevant disputes that current law provides.[2] The FTC and CFPB should identify processes to combat false claims of identity theft including guidance to creditors clarifying when such claims can be disregarded for failure to include adequate information. The FTC and CFPB should explore allowing the assessment of civil penalties on individuals and organizations that make false credit disputes and identity theft claims. The FTC and CFPB should

[2] 15 U.S.C. § 1681s-2(a)(8)(F).

also hold credit repair organizations accountable for false claims they make when they offer credit repair services to consumers.

Creditors universally support a robust consumer reporting system and strive to fulfill their obligations as data furnishers in an accurate manner. Creditors welcome opportunities to serve their customers by addressing actual inaccuracies in their consumer reports, but the generation of bad faith frivolous and irrelevant disputes at industrial volumes threatens the integrity of the system, and increases the probability that creditors will resort to other sources of consumer credit information.[3] This cannot be allowed to continue.

Sincerely,

Bill Himpler
President and Chief Executive Officer
American Financial Services Association

[3] See Interagency Statement on the Use of Alternative Data in Credit Underwriting, December 13, 2019 accessed at https://www.fdic.gov/news/news/financial/2019/fil19082.pdf.