Office of Evan Hendricks

In Re: OCC and Docket Number 06–04 RIN 1557–AC89 12 CFR Part 41
"Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies"

The following comments are submitted on behalf of:

Sherwin Siy
Staff Counsel

Ken McEldowney, Executive Director
CONSUMER ACTION

Linda Ackerman, Staff Counsel
Privacy Activism

Robert Ellis Smith
Publisher
Privacy Journal

Evan Hendricks, Editor/Publisher
Privacy Times

Beth Givens, Director
Privacy Rights Clearinghouse

Most of the information in these comments is documented in Evan Hendricks' book, "Credit Scores and Credit Reports: How The System Really Works, What You Can Do." (2nd Edition, Privacy Times, 2005).

Routine practices of furnishers regularly contribute to credit report inaccuracy, and need to be changed systematically across industry. The inter-agency guidance should expedite such change by specifying the shortcomings in the current system.

The 'CDV Exchange' Often Does Not Constitute An Investigation

When a consumers disputes errors in their credit reports, the principle "reinvestigation" procedure followed by CRAs such as Equifax, Experian and Trans

Union, and by furnishers who receive notice of a consumer dispute from a CRA, essentially consists of an exchange of messages known as "Consumer Dispute Verifications" (CDVs). Instead of "investigating" in any normal sense of the word, the furnisher typically only compares the identifiers on the CDV to those in its system. If two or more identifiers match up, then the furnisher typically concludes that the disputed information is "verified as reported."

Thus, this process is better described as a ***comparison*** of each entity's existing data on the consumer, rather than an independent evaluation or investigation of the consumer's dispute.

As many cases illustrate, there can be several problems with the CDV-exchange serving as the principal means of responding to consumer disputes. First, a cursory exchange of messages does not amount to an investigation under any normal sense of the word. The Webster's New Collegiate Dictionary defines "investigate" as, "v. To observe or study by close examination and systematic inquiry. Systematic—adj. Marked by thoroughness and regularity." An exchange of messages is neither a "study by close examination" nor "marked by thoroughness and regularity," in my opinion.

Second, in cases involving the most damaging typed of inaccuracies, such as identity theft or "mixed files," it is the misuse and/or mis-application of the consumers' identifiers *are the cause* of the inaccuracy in the victim's credit report. Thus, the CDV- exchange is not reasonably calculated to successfully determine whether a consumer's dispute should be honored. Again, this is because in the CDV-exchange process, the CRAs and furnishers merely focus on and compare identifiers. Accordingly, I am aware of several cases like this one in which CRAs and furnishers told consumers they had "verified" information that was in fact false. This underscores a fundamental shortcoming of the current system: the so-called re-investigations conducted by CRAs and furnishers are often not concerned with determining the underlying truth or discovering objective inaccuracies.

Third, because furnishers principally rely on the CDV-Exchange, they do not consider taking other reasonable investigative steps that could have been more effective in resolving consumers' disputes. For example, furnishers often have or receive the contact information of disputing consumers, or if not, could obtain it with relative ease, given online lookup services. However, furnishers rarely attempt to contact disputing consumers to ask for additional information or to otherwise evaluate the genuineness of the consumer's dispute. Most consumers with whom I have had contact would be more than happy to explain to a furnisher in greater detail why an item is inaccurate and needs to be removed to avoid further damage. Yet, astoundingly, it is the *policy* of most furnishers that their credit report dispute handlers *do not pick up the telephone and call the consumer.* Similarly, furnisher dispute handlers often do not have access to the original credit applications so they can compare signatures between the person who actually applied for the credit, including identity thieves, and the disputing consumer. They also do not generally use readily available look-up services to check address discrepancies. In other words, by policy, many furnishers do not even consider taking

alternative investigative steps. Again, this is because of their over-reliance on the mindless CDV-exchange.

Deposition testimony has made it clear that this is a conscious choice of furnishers, in conjunction with the CRAs. The following passage is from Evan Hendricks' book "Credit Scores and Credit Reports: How The System Really Works, What You Can Do." Ian Lyngklip, an attorney representing a consumer who filed suit after her repeated disputes failed to remove inaccurate data, and Pamela Tuskey, of Capital One.

Mr. Lyngklip: What kinds of information do your ACDV operators have available to them through the interface of the Odyssey system?

Ms. Tuskey: Name, address, ECOA, pay history, cycle date, last date paid, statements, action or activity on the account, late fees, past-due fees, membership fees, etc.

Mr. Lyngklip: What about original application information?

Ms. Tuskey: That, we cannot see in Unisys.

Mr. Lyngklip: All right. Is there a reason why it is that your ACDV operators do not have access to all of the other systems that I mentioned, being Tandem, CHIA, Retain One, Casper, Baltrax, Amdahl, Capstone, and Rocky?

Ms. Tuskey: Yeah, I'll give you the simplified answer first. Based on what my associates do, which is to verify the information, the -- some of the systems that you mentioned there are for in-depth research; my associates do not complete in-depth research.

Mr. Lyngklip: Okay, why is it that your associates do not complete in-depth research?

Ms. Tuskey: They do that because, when the -- ***we had a representative from each bureau actually come to Capital One*** in – I can verify this, I want to say it was like February of 2000. . . . ***A representative from each bureau came on three separate visits, so a Trans Union rep came, Experian rep, and then an Equifax rep. . . .And they came to explain to my team how to more properly and more accurately work accounts, the cases. One of the questions that I had for them, as a manager, was should we verify the accounts -- and I even explained to them what my definition of verify is -- which is, we pull up our system of record, in this case Unisys or Beast, we look at what the bureau has sent us on the ACDV. If there are any discrepancies, we make sure that what the bureau has mirrors exactly what we, as Capital One, have. That's verifying.***

Mr. Lyngklip: That was what you described to the representatives as verifying?

Ms. Tuskey: Yes.

Mr. Lyngklip: And what did they say in response to that?

Ms. Tuskey: Well, I actually followed that up with, ***'Do you want us to do that, or do you want us to do things such as pull statements, etc., actually do the research which would involve CHIA?' And in each case, the bureau rep said, No, we want you to verify it. We want you to make our system look like your system. So that's what we've been doing.***[1]

[1] Deposition of Pamela Tuskey, in Carol Fleischer v. Trans Union, et al. U.S. District Court for the Eastern District of Michigan (Southern Div); Case No. CV 02-71301, as quoted in "Credit Scores and Credit Reports: How The System Really Works, What You Can Do."

A second issue regarding accuracy was the volume of consumer disputes and the time available to process them. Ms. Tuskey testified that Capital One handled approximately 4,000 disputes per day, and her team members were expected to process 30 disputes per hour. This leaves about two minutes per each dispute. In my opinion, this sort of production quota, which is governed by the ratio the number of handlers to the number of disputes, makes it difficult, if not impossible, for Capital One dispute handlers to adequately investigate consumers' legitimate disputes over inaccurate data in their credit reports. In my opinion, such a system pressures Capital One personnel into prioritizing the ***quantity*** of data processed over ***data quality*** (e.g., accuracy, truthfulness and completeness).

One thing that was missing from this equation was concern for the truth. After all, shouldn't the purpose of an "investigation" be to get to the truth? In fact, both CRA officials and credit grantor personnel have testified that it's *not* their job to arbitrate the truth. Look at this exchange between Lyngklip and Tuskey:

> **Lyngklip**: For purposes of how you administer the FCRA, does the underlying truth of the matter enter into the decision? In other words, if the information in Cap One's system is not, in fact, true, is Cap One going to verify the data as accurate as long as it matches?
> **Tuskey**: Not -- if we -- if we do not -- I'm not quite sure if you're -- are you -- restate that question.
> **Lyngklip**: Sure, I can do that. Cap One, as a matter of how it administers to the FCRA . . . and looks at the accuracy requirements, does not equate accuracy with truthfulness, what it does is it measures accuracy in terms of whether or not the data matches between what's in the credit reporting system and what's in Cap One's computer; is that a fair statement? . . .
> **Tuskey**: So your, your -- the way the question is posed to me makes it sound like I have to choose between whether I'm saying what my associates do is accurate or truthful but not both.
> **Lyngklip**: Well, no, what I'm asking is this: Is it possible, is it possible that Cap One will verify information that is not, in fact, truthful?
> **Tuskey**: There's a possibility of that. It certainly would not be done intentionally.[2]

Lyngklip asked if Tuskey's department ever did anything but check it own computers. "What about picking up the phone and calling up the person who is disputing the credit report?" Lyngklip asked. "It would seem to me that that would be a pretty good source of information to deter-mine whether or not two individuals are the same person."

"No, my team does not have any direct contact with the cardholders," Tuskey replied. "Again, we're not a customer-contact center. That's not within the scope of our job."

[2] Deposition of Tuskey, op. cit.

Industry Cost-Benefit Analysis?

In my opinion, furnishers and CRAs prefer to confine their dispute handling as much as possible to the automated system of CDV-exchange because it lowers costs by reducing the amount of employee time and effort required to handle consumer disputes. CRAs and furnishers view consumer dispute handling as a "cost center;" the priority is to reduce costs, in my opinion.

The cost savings do not appear to be trivial. This is underscored by the fact that furnishers have fought hard and spent a lot of money in attorney's fees to defend the CDV-exchange system. In Linda Johnson v. MBNA America Bank, N.A, one of the few cases that has gone to trial, a jury awarded Ms. Johnson $90,300 after MBNA failed to remove her ex-husband's derogatory accounts, despite repeated disputes.

Judge Richard Williams affirmed the jury verdict. "According to [MBNA], the duty to investigate means that any investigation is sufficient, no matter how cursory. Such a construction is illogical. There would be no point in having the statute, and the requirement of an investigation, if there was no qualitative component to the investigation. The statute itself does impose a qualitative component to the [MBNA's] negligence" Judge Williams said.[3]

MBNA appealed Judge Williams' decision. But on February 11, 2004, a three-member panel of the U.S. Court of Appeals for the Fourth Circuit affirmed, finding that MBNA's standard response to consumer disputes did not amount to a true "reinvestigation" under the FCRA.

"MBNA argues that the language of § 1681s-2(b)(1)(A), requiring furnishers of credit information to 'conduct an investigation' regarding disputed information, imposes only a minimal duty on creditors to briefly review their records to determine whether the disputed information is correct," the panel wrote, in an opinion authored by Chief Judge William W. Wilkens. "Stated differently, MBNA contends that this provision does not contain any qualitative component that would allow courts or juries to assess whether the creditor's investigation was reasonable."[4]

"The key term at issue here, 'investigation,' is defined [by the dictionary] as 'a detailed inquiry or systematic examination.' Thus, the plain meaning of 'investigation' clearly requires some degree of careful inquiry by creditors," he wrote.

Further, he said, the statute "uses the term 'investigation' in the context of articulating a creditor's duties in the consumer dispute process outlined by the FCRA. It would make little sense to conclude that, in creating a system intended to give consumers a means to dispute – and, ultimately, correct – inaccurate information on their credit

---

[3] Johnson v. MBNA, op. cit., bench ruling February 24, 2003
[4] Linda Johnson v. MBNA Am. Bank, NA, 357 F.3d 426, 430 (4 Cir. 2004)

reports, Congress used the term 'investigation' to include superficial, *un*reasonable inquiries by creditors. We therefore hold that § 1681s-2(b)(1) requires creditors, after receiving notice of a consumer dispute from a credit reporting agency, to conduct a reasonable investigation of their records to determine whether the disputed information can be verified."

MBNA also tried to argue that its investigation in Johnson's case was reasonable. But the court pointed to the specific nature of Johnson's dispute, and the testimony of MBNA agents that their investigation was primarily limited to (1) confirming that the name and address listed on the ACDVs were the same as the name and address contained in the Customer Information System, and (2) noting that the CIS contained a code indicating that Johnson was the sole responsible party on the account.

"The MBNA agents also testified that, in investigating consumer disputes generally, they do not look beyond the information contained in the CIS and never consult underlying documents such as account applications. Based on this evidence, a jury could reasonably conclude that MBNA acted unreasonably in failing to verify the accuracy of the information contained in the CIS," he wrote.

Richard Rubin, a Sante Fe, New Mexico attorney who argued the case for Johnson before the Fourth Circuit, noted that the panel adopted his position that had MBNA simply told the truth and stated that its investigation was inconclusive, the CRAs would have deleted the tradeline as required by the FCRA, and the litigation never would have occurred.

Despite this holding, furnishers continue to rely principally on the CDV-exchange and defend it in court. In fact, Anne Fortney, a former FTC staffer and currently an attorney with Hudson and Cook, whose written contributions are included in the manuals of the Consumer Data Industry Association, in serving as an expert witness for furnishers, has opined:

> "Lawsuits, like [plaintiff's], confuse (1) the requirement that the furnisher ***report accurately the results*** of its investigation to the CRA with (2) the requirement that the furnisher ***report accurately the information*** investigated." [Emphasis in original]

This sort of sophistry was rejected in Johnson v. MBNA by the U.S. Court of Appeals for the Fourth Circuit.[5] Under Ms. Fortney's view, MBNA would never be liable whenever it *accurately reported* that *the result* of its 'investigation' was that it erroneously "verified" false information – regardless of the adequacy of the investigation itself. In my opinion, such a result does not square with the FCRA's goals of accuracy and fairness. Yet the fact that a major furnisher like MBNA would underwrite such opinions underscores its determination to defend the CDV-exchange system.

[5] Op. Cit

Continued Inaccurate Reporting Post-Dispute/Deletion

If a consumer disputes inaccurate information, and the furnisher or CRA agrees to delete it, then consumers generally believe that will be the end of the matter. Unfortunately, this is not true in too many cases.

Furnishers can instruct CRAs to delete or modify inaccurate data through their CDV responses (or non-response). They can also instruct CRAs to delete or modify data with what's known as a "Universal Data Form." Either method will result in a relatively prompt correction of the consumer's credit report.

However, a continuing problem arises when despite the acknowledgment that the information is inaccurate and the instruction to delete or modify, the credit grantor continues to furnish the inaccurate data in the course of its routine monthly reporting. In other words, it is not uncommon for the furnisher to fail to delete the inaccurate information from its system that routinely reports it to the CRAs. ***Thus, it is imperative that the guidance instructs furnishers that for their re-investigations to be adequate, they must ensure that their routine systems do not continue to report erroneous information after it is deleted or modified.***

The CRAs recognized that this was a problem, as the issue of improper "reinsertion" of previously deleted data was highlighted in their consent agreements with the FTC and State Attorneys General, and in the 1996 Amendments to the FCRA.

Thus, they developed a mechanism for preventing previously deleted data from being wrongly reinserted into credit reports. It is my understanding that Experian refers to this mechanism as a "soft delete;" Equifax refers to it as "suppression;" and Trans Union refers to it as "cloaking." Trans Union's "cloaking" mechanism was discussed in Cousin v. Trans Union 246 F.3d 359, 5th Circ. 2001). The Fifth Circuit concluded that one aspect of Trans Union's cloaking procedure – its decision to cloak accounts for only one year – was "not reasonable as a matter of law and the issue of reasonableness was properly before the jury to consider."

Typically, CRAs use a very stringent matching function for suppressing previously deleted information from re-reporting to its system. That is, CRAs have previously testified that they essentially require an exact match of several data fields in order for the CRA's system to prevent it from re-reporting to the consumer's credit report. Some of the fields typically include the account number of the consumer's "tradeline," and the furnisher's subscriber number. However, past testimony also indicated that some furnishers have more than one subscriber number. Thus, if the furnisher is reporting under a different subscriber number than that which was noted in the original suppression function, than that could be sufficient to permit the previously deleted tradeline to re-report to the CRA's system. The same would apply to other discrepancies in the account number, possibly caused by transposition or some other form

of human or systems error. Accordingly, the problem of reinsertion continues to harm some consumers

Fraud Disputes

After receiving an ACDV in which the consumer disputes a tradeline as fraud or the result of identity theft, many creditors will only check to see if their fraud department or some other department already had flagged the account as "fraud." But if no department had done so, the furnisher's ACDV dispute handler will as a matter of policy instruct the CRA to keep the disputed tradeline on the consumer's credit report. In other words, the furnisher's ACDV dispute operator will not conduct any kind of independent investigation.

One can see why this results in a consumer's genuine fraud dispute being "verified as reported" by furnishers and CRAs. If a consumer is a victim of identity theft, it is quite possible that the consumer never had a relationship with the creditor who was defrauded by the identity thief. Since it would be unlikely that the identity thief would self-report his crime to the creditor's fraud department, it would be illogical to think that the creditor would know that the account was fraudulent – until the credit received a direct dispute from the consumer or an ACDV from a CRA.

Thus, **it is imperative that the guidance instruct creditors to independently investigate ACDV fraud disputes and not restrict their response to checking whether another department had flagged it as a fraud.**

Another troubling policy among many creditors is that they will not investigate accounts disputed as fraud *unless* the consumer provides a fraud affidavit. There is nothing wrong with a credit asking a consumer if he or she would sign a fraud affidavit or provide any information he or she might have to help investigate a fraud. But it is not appropriate for creditors to *condition their duty to investigate upon the consumer first providing a fraud affidavit that names the perpetrator.*

In many circumstances, the consumer does not know or might not be sure who committed the fraud. In such cases, it would not be appropriate for the consumer to provide an affidavit that named the perpetrator, because that portion of the affidavit requires the consumer to with certainty who the perpetrator is. If a consumer wrongly accused another person in such an affidavit it would open up a new set of problems for that consumer. In some circumstances, the consumer can only state with certainty that he or she did not open, authorize or use an account.

Thus, **it is imperative that the guidance instruct creditors not to unfairly condition their duty to investigate upon a consumer's naming of a perpetrator when the consumer might not be sure who the perpetrator is.**

Post-Bankruptcy Reporting

A disturbing phenomenon that has generated an untoward number of consumer disputes is the tendency of credit grantors to report as both delinquent and still owed accounts that previously were discharged in bankruptcy (and therefore not delinquent and still owed).

This appears to happen because of the lack of care on the part of some furnishers when it comes to ensuring that their credit reporting is fair and accurate. When a consumer's debts are discharged in bankruptcy, each creditor is notified by the U.S. Bankruptcy Court. At that point, it is incumbent upon the creditor to ensure that the discharged account is "flagged" accordingly in the creditor's systems, and thus, no longer reported as delinquent and still owed. Unfortunately, too many creditors fail to flag accounts correctly. If you speak to bankruptcy attorneys, the overwhelming majority will tell you that after bankruptcy, their clients regularly find that discharged accounts are appearing on their credit reports as delinquent and still owed.

This can be highly damaging to consumers who are trying to recover from bankruptcy. Some have managed their post-bankrupt finances well, and are prepared to reenter the "credit mainstream," only to be ambushed by erroneous data on their credit reports. It is important to understand that by adhering to good credit practices, a bankrupt consumer can restore his or her credit score to good levels within one- to two years.

This practice appears to be profitable for companies. When consumers applying for mortgages, refinancing or other major credit have unpaid "charge offs" on their credit reports, lenders often require them to resolve them as a condition for granting credit. By "parking" derogatory data on a consumer's credit report, the creditor greatly enhances its ability to collect without taking direct, traditional collection action. In one case, a major bank testified that a significant percentage of consumers were paying on discharged debts that they were not legally obligated to pay. The bank said it could not explain why this was happening, but it clearly appeared to related to its post-bankruptcy erroneous reporting to CRAs, in my opinion.

Re-Aging

Debt collection companies and creditors view the credit reporting system as a tool for debt collection. Often, debtors will pay or settle an account to avoid negative information appearing on their credit reports. For this reason, credit reporting is a "powerful tool designed, in part, to wrench compliance with payment terms."[6]

While it is appropriate for companies to inform consumers that unless they take care of a valid debt by a certain deadline, accurate derogatory data will be reported to credit reporting agencies (CRAs), it is highly improper to threaten to report—and to

---

[6] Rivera v. Bank One, 145 F.R.D. 64, 623 (D.P.R. 1993)

report—inaccurate data as a tactic to pressure a consumer to pay an amount that is in dispute.

Unfortunately, some debt collectors and creditors have been accused of crossing this line.

"Re-aging" involves the debt collector reporting an account with a more recent date, like the date it began trying to collect on it, as opposed to the actual date the debt became delinquent, which is what is supposed to be reported. This can negatively impact the consumer in at least two ways. First, the more recent a major derogatory, the more damaging it is to the consumer's credit score. Second, derogatory tradelines are supposed to drop off the credit report in seven years.

The Federal Trade Commission already has brought two cases against debt collectors over re-aging, as well as other alleged violations of the Fair Credit Reporting Act and Fair Debt Collections Practices Act. There are also several private lawsuits pending.

Re-aging is an industry-wide phenomenon that directly reduces the accuracy and integrity of credit report data, to the benefit of furnishers who engage in the practice.

Not Reporting Credit Limits

(The following section on "Missing Credit Limits" is excerpted from Chapter 22 of the Second Edition of "Credit Scores and Credit Reports.")

In 2004, three staff economists at the Federal Reserve Board studied a nationally representative, random sample of 301,000 individuals' credit files, and found that nearly half -- 46 percent -- of the consumers had files where at least one credit limit had been withheld by a creditor.[7]

The balance-to-credit limit factor, known as the "credit utilization ratio," has a major impact on a credit score. It is part of "Factor 2" of the FICO scoring model, which accounts for 30 percent of the score (see Chapters 1 and 2).

For example, if you had a $2,400 balance against your $2,500 limit, you'd have a very high (96 percent) utilization ratio, which would significantly lower your score for nearly being maxed out. On the other hand, your $250 balance against your $2,500 limit produces a low (10 percent) ratio -- and usually raises your score.

If there is no credit limit reported, then it becomes difficult, if not impossible, to properly calculate the ratio – usually to the detriment of the consumer's credit score.

Federal Reserve Board researchers learned that when credit limits were not reported, most scoring systems "substitute the consumer's highest balance ever for the

[7] Robert B. Avery, Paul S. Calem, and Glenn B. Canner, "Credit Report Accuracy and Access To Credit;" *Federal Reserve Bulletin* (Summer 2004)

missing credit limit." This is because Equifax, Experian and Trans Union keep track of the highest balance in a separate field on the credit report.

The 2004 Federal Reserve study's finding that 46 percent of the consumers' files were missing at least one credit limit indicated the problem had worsened for consumers. A 2002 Federal Reserve Board review found that credit card limits were missing from 13 percent of accounts examined; in 1999, 33 percent of the revolving accounts lacked credit limits, the Fed found.

Internal industry research from a source that asked not to be named, found that while some credit card issuers consistently reported credit limits, several major issuers often did not.

The research indicated that Capital One was the worst offender. Based on a sampling of at least 150 credit reports from Equifax, Experian and Trans Union from 2002-2004, the review showed that the credit limit was missing from 100 percent of the 453 Capital One accounts that were identified.

Although some consumers were shocked to learn of this practice, it was no big surprise to industry insiders. After all, in 2003, company spokeswoman Diana Don told the *American Banker*, "Capital One has never reported credit limits, for proprietary reasons …We feel that it is part of our business strategy and provides competitive advantage."[8]

American Express did not report credit limits in a majority of cases between 2002-2003, the research found. Specifically, in those two years, it did not report limits to Equifax and Experian in about 80 percent of the cases, and did not report to Trans Union about 65 percent of the time. (Some types of American Express cards don't have credit limits like other revolving accounts.) In 2004, Amex credit limits were missing from 28 percent of the Trans Union accounts and 38 percent of the Experian accounts. But they were absent from 91 percent of the Equifax accounts, the research found.

Another offender was Citibank, although there were important differences among its subsidiaries. The credit card giant was found to report limits for its gas cards and for its CitiFinancial personal finance subsidiary.

"CITI does not report credit limits in its Citibank NA and Citibank South Dakota NA subsidiaries, but almost always does for its other subsidiaries," researchers wrote.

The statistics for Citibank underscores how difficult it is for consumers to "know the score." These numbers reflect the percentage of cases that Citibank did not report credit limits.

---

[8] Id.

Missing Citi Credit Limits[9]

	Trans Union	Experian	Equifax
2002	24%	39%	30%
2003	22%	44%	75%
2004	16%	42%	66%

Calling CITI

This author noticed on all three of his credit reports that credit limits were not being reported for his Citi AAdvantage MasterCard (American Airlines mileage card), even though the credit limit was $7,440.

When told of this, a very polite Citi customer service representative said she did not understand how this could be, since “all credit cards have credit limits and they’re always reported to the (credit) bureaus.”

She suggested that the omission might be a simple mistake by the credit bureaus. But I informed her that some credit card companies intentionally do not report credit limits. She admitted that she did not know her company’s policy, but referred me to Citi’s “Credit Bureau Dispute Unit,” P.O. Box 6241, Sioux Falls, S.D., 57117. She said that I needed to include the credit report with a dispute letter that identified the account number in question. She said the dispute unit did not take phone calls.

Household & Discover

Household Bank’s pattern was somewhat similar to Citibank’s, according to the researchers.

Missing Household Credit Limits[10]

	Trans Union	Experian	Equifax
2002	22%	42%	72%
2003	50%	31%	88%
2004	23%	21%	87%

[9] Based on review of 357 Citi tradelines by researchers who asked to remain anonymous
[10] Based on a review of 270 Household tradelines by researchers who asked to remain anonymous

Over the same three-year period, Discover tradelines were missing credit limits on Experian reports less than 20 percent of the time. For Trans Union reports, 36 percent of Discover tradelines lacked credit limits in 2002, while 15 percent lacked them in 2004, according to the researchers.

However, in Equifax reports, Discover tradelines were missing credit limits 100 percent of the time.

After signing up for a credit monitoring service, Ann Schleifley, a Seattle-area resident noticed that her FICO score seemed lower than it should have been. Why? Her monitoring service advised her she was using over 50% of her available credit.

Then Schleifley saw why. Neither Capital One nor Discover were reporting her credit limits. She tried disputing with all three parties by mail and by phone.

"It was the most ridiculous run-around I'd ever seen," Schleifley recalled. "Capital One would blame Equifax; Equifax would blame Capital One and Discover. It went on for months. It was very frustrating. I just wanted it fixed!"

Schleifley finally contacted the Washington State Attorney General's office. She said she was fortunate enough to find two experienced consumer attorneys who, in April 2004, filed a federal lawsuit in Seattle, charging that Capital One, Discover and Equifax failed their reinvestigation duties under the Fair Credit Reporting Act. The case was pending when this book went to print.[11]

(End of Excerpt)

The failure to report credit limits is an unfair practice that often disadvantages consumers. Thus, it is **imperative that the guidance instructs credit card companies, beginning with Capital One, to accurately report credit limits**.

Moreover, it is **imperative that the guidance instruct credit card companies that if a credit limit is missing and is disputed by the consumer, the credit card company will facilitate its prompt correction**.

Enforcement

In cases in which consumers are victimized by chronic inaccuracy in their credit reports due to furnishers' and CRAs' unwillingness to correct disputed data, what is often striking is the callous, uncaring attitude on the part of either furnishers or CRAs or both.

In my opinion, however, this is to be expected, given the lack of enforcement of FCRA Section S2-a, requiring accurate credit reporting, but the federal agencies charged

[11] Schleifley was represented by Christopher Green of Seattle, and O. Randolph Bragg, of Horwitz & Associates, Chicago.

with its enforcement. It is unclear how many – if any – enforcement actions that federal banking agencies have taken in the past eight years to promote accurate credit reporting by furnishers. If there have been any, they have not been publicized. This lack of enforcement sends a message to creditors that the federal banking agencies do not care about protecting consumers from unfair and inaccurate credit reporting. It logically follows then that many creditors believe that they do not need to care either.

Due to their organizational set-ups and relationships with certain sectors of the financial services industry, there might be conflicts of interest that prevent some federal banking agencies from acting to protect consumers from unfair and inaccurate credit reporting.

Thus, it is imperative that the guidance address potential conflicts and the seeming inability of some federal banking agencies to take enforcement actions to protect consumers from unfair and inaccurate credit reporting.