

United States Senate

WASHINGTON, DC 20510

May 5, 2004

The Honorable Timothy J. Muris
Federal Trade Commission
Office of the Secretary
Room 159-H (Annex C)
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Dear Chairman Muris:

Thank you for the Federal Trade Commission's work that went into publishing the March 19, 2004 proposed rule (FACTA Free File Disclosures Proposed Rule, Matter No. R411005) regarding requirements for a centralized source that would allow consumers to request a free annual file disclosure from each nationwide consumer reporting agency (CRA). We appreciate the tight deadline that you and your staff are under and thank you for your efforts in promulgating rules pursuant to the Fair and Accurate Credit Transactions Act of 2003 (FACTA).

During Senate consideration of FACTA, providing consumers with a free credit report each year was considered critical to passage of the bill. One of the most effective ways for consumers to prevent or curtail the impact of identity theft is to be vigilant in monitoring their credit reports, and the centralized source provisions in the FACTA are intended to ensure that all consumers can exercise this new right with relative ease. However, it is also important to ensure that the demands placed on CRAs in providing such disclosures are reasonable and do not impede the CRAs' ability to provide critical credit reporting services.

In order to implement the centralized source requirement successfully, the Commission should consider key elements, including: concisely defining required systems capacity for affected CRAs; providing protection against "spikes" in demand; and assuring that a safe harbor is established for CRAs to protect against events beyond their control.

The proposed rule requires nationwide CRAs to employ reasonable procedures to build and maintain a centralized source that will have the "adequate capacity" to meet consumer demand for free file disclosures. Congress provided a transitional period to allow for the establishment of an appropriate capacity standard. It is imperative that definitive guidance be provided to the nationwide CRAs on this issue. As you noted in the overview of the rule, the first few months of implementation will be the most difficult

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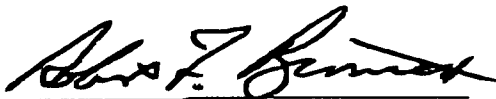
in terms of predicting the demand volume for free annual reports. We believe that available data could provide a helpful starting point. Specifically, as you recognized in your overview, the experience in the states with an existing free report requirement shows a demand increase of roughly 2 1/2 times that of the average for the rest of the nation. We encourage you to use this and any other available predictive data to establish a bright-line capacity rule that can be relied upon by the nationwide CRAs at least through the transition period. Additional flexibility may be appropriate after the transition period when more meaningful data will be available.

It is equally important for the CRAs to be protected in the event of high or extraordinary request volume. The proposed rule includes a 200 percent "trigger" for this protection. We are concerned that this trigger is too high to be of value to the centralized source participants. Once demand reaches 200 percent of normal levels, it may be too late to provide the intended protection. The increased capacity requirement in the proposed rule means that the CRAs will already have been forced to alter their business operations significantly. We would encourage the Commission to consider a more modest surge trigger to reflect this context.

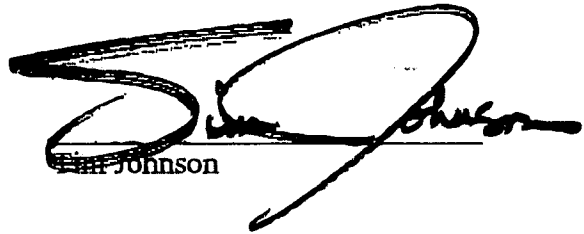
Finally, we note that the proposed rule requires that consumer reporting agencies establish "contingency plans" to address circumstances that may materially and adversely affect the operation of the nationwide consumer reporting agency, a centralized source request method, or the centralized source. It is not our intention for nationwide CRAs to be subject to liability for acts of God or other events beyond their control, such as terrorist acts. Rather, we would encourage the Commission to explore alternative approaches, such as establishing a separate safe harbor for such uncontrollable or unpredictable events.

We applaud your efforts to ensure the timeliness of this rule. We look forward to working with you to assure that final regulations reflect congressional intent on this important provision in the FACTA.

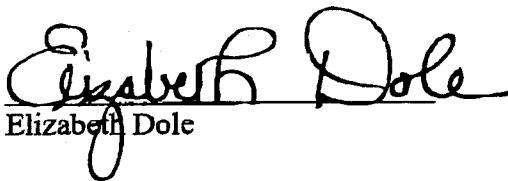
Sincerely,



Robert F. Bennett



Tim Johnson



Elizabeth Dole



Thomas R. Carper