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August 12, 2004

 MERITAS LAW FIRMS WORLDWIDE

**VIA FEDERAL EXPRESS**

Federal Trade Commission  
Office of the Secretary  
Room H159(Annex S)  
600 Pennsylvania Ave. N.W.  
Washington, D.C. 20580



RE: FACTA Notices: Matter No. R411013

Dear Sirs:

This firm represents USIS Commercial Services, Inc. ("USIS") and we have been requested to submit comments on its behalf to the Commission in regard to the proposed Notices provided in the NPRM of July 16, 2004. USIS is a nationwide specialty consumer reporting agency as defined by §603(w). The comments are grouped in regard to each Form.

A. Summary of Consumer Rights.

The proposed form, as with the current notice of rights, contains, in the section entitled: "Your consent is required for reports that are provided to employers", a statement that a consumer report cannot be obtained without the consumer's "written consent". This language does not recognize the exception provided in Sub-Sections 604(b)(B) and (C).

USIS is a major supplier of background screening services to the motor carrier industry which is governed by the United States Department of Transportation. Sub-Sections 604(b)(B) and (C) were added in 1998 to relieve the hardship created by 1996 amendments to the FCRA that required, for the first time, written consent of consumer for a consumer report to be obtained in conjunction with employment. The problem created by the 1996 amendment was that many if not most truck drivers did not apply with motor carriers in person and it was not reasonably possible to obtain the written

consent of the driver to obtain the consumer report in a timely manner. As a result, Congress amended Section 604 to allow oral consent for these consumers.

The current notice of consumer rights does not reflect the 1998 amendments. USIS has been providing an addendum to the notice of rights to reflect the changes that were made to the FCRA in 1998, not only regarding consent but also the reporting of criminal convictions because its reports were directly affected by those changes.

On behalf of USIS, I request that the Notice to Consumers reflect the exceptions set forth in Sub-Sections 604(b)(B) and (C). If the Notice is not changed, consumers will be misled and may dispute the process with a consumer reporting agency, such as USIS and, even threaten or actually bring lawsuits because they did not provide written consent to the report, when written consent was not required under the FCRA. The use of a consumer reporting agency created "addendum" can give the appearance to a consumer that the agency is contradicting the official listing of rights. This is not desirable.

Another issue is created by the newly enacted Sub-Section 603(x). I understand the reason behind this new provision is to deal with the Commission's informal opinion in the Vail letter. Currently, an attorney conducting an investigation for employee misconduct such as sexual harassment and providing a report to the employer is not covered by the FCRA due to this amendment. A further issue is created by the language of Section 603(x) because it seems to be broader than the scenario described above. Section 603(x)(1)(B) provides that it covers communications made to an employer in connection with an investigation. This language is not limited to an attorneys, accountants, or other professionals conducting an investigation, but it also seems to cover any information obtained by an employer from any source including a consumer reporting agency is that is gathered in conjunction with the purposes set forth in the new section. I can understand that an employer may desire a credit report as part of an investigation of possible embezzlement or that a criminal report may be helpful in certain other investigations. Thus, traditional consumer reports may be desired. The question is: Are these now exempt if provided as part of an investigation?

The proposed Notice does not reference these types of reports. This may be because the Commission believes that these are excluded from "consumer reports" by the FACTA amendments. Would it be appropriate to add to the Notice that such reports do not need the consumers' consent?

**B. Notice of Obligations of Furnishers Under the FCRA.**

These comments are directed to the section in the Notice form entitled: "Duties of Financial Institutions in Reporting Negative Information". This section relates to the furnisher's obligation set forth in Section 623(a)(7)(A)(i). The discussion states that this applies to a financial institution furnishing negative information to a consumer reporting agency. The discussion fails to limit the covered negative information to information

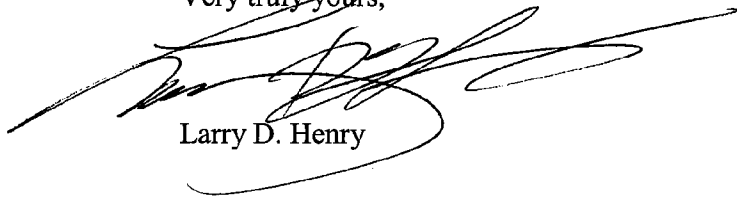
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“regarding credit extended to a customer”. As written, the section would imply that the notice provisions would also cover a financial institution providing negative employment information to a consumer reporting agency. This is not in accord with the language of the section.

Secondly, the language of this section indicates that the furnisher is obligated to provide notice to the consumer when furnishing information to a consumer reporting agency. However, Section 623(a)(7)(A)(i) limits the application of this section to reporting to consumer reporting agencies as defined in Section 603(p). The FCRA limits this obligation to reports to nationwide consumer reporting agencies. Currently the Notice is misleading and refers to reports to any and all consumer reporting agencies.

USIS respectfully requests the Commission consider these comments and modify the proposed Notices accordingly.

Very truly yours,

A handwritten signature in black ink, appearing to read "Larry D. Henry", with a large, sweeping flourish underneath.

Larry D. Henry

LDH:jav