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**FEDERAL TRADE COMMISSION**
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**RIN 3084-AA94**

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# IDENTITY THEFT RED FLAGS AND ADDRESS DISCREPENCIES UNDER THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003

## COMMENTS OF ACA INTERNATIONAL FILED WITH THE FEDERAL TRADE COMMISSION

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Rozanne M. Andersen, Esq.
ACA International
4040 W. 70th Street
Minneapolis, MN 55435
(952) 926-6547

*General Counsel and Senior Vice President of Legal and Governmental Affairs*

Andrew M. Beato, Esq.
Stein, Mitchell & Mezines, LLP
1100 Connecticut Avenue, N.W.
Suite 1100
Washington, DC 20036
(202) 737-7777

*ACA Retained Federal Regulatory Counsel*

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**ACA INTERNATIONAL COMMENT**
**THE RED FLAG RULE, PROJECT NO. R611019**

## I. Introduction.

The following comments are submitted on behalf of ACA International ("ACA") in response to the Joint Notice of Proposed Rulemaking: Identity Theft Red Flags and Address Discrepancies Under the Fair and Accurate Credit Transactions Act of 2003 ("Joint Notice").[1] Although filed only with the Federal Trade Commission ("Commission"), ACA's comments respond to requests from each of the administrative agencies jointly issuing the Joint Notice including the Federal Trade Commission (collectively, "Agencies").

The Fair Credit Reporting Act[2] was extensively amended in 2003 by the Fair and Accurate Credit Transactions Act ("FACT Act").[3] The new amendments incorporated several new provisions designed to detect and prevent identity theft, a crime which the Commission has defined as a fraud committed with the identifying information of another person.[4]

Identity theft increasingly has impacted consumers and businesses alike. It is a crime that undermines confidence in our financial systems. Every year many Americans fall victim to identity thieves costing individuals and businesses millions of dollars. We all pay the cost for the crime in the form of higher costs for goods and services businesses have to charge to cover losses and the

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1 71 Fed. Reg. 40785 *et seq.* (July 18, 2006).

2 15 U.S.C. § 1681-1681x.

3 Fair and Accurate Credit Transactions Act, Pub. L. 108-159, 117 Stat. 1952.

4 Identity theft is defined by statute as a "fraud committed using the identifying information of another person, subject to such definition as the Commission may prescribe, by regulation." 15 U.S.C. § 1681a(q)(3).

increased cost of obtaining credit.

In 2005, the Commission reported 255,565 identity theft records representing the largest percentage of complaint categories tracked by Consumer Sentinel (37%). Previous years witnessed similar numbers of complaint records. And yet, the type of conduct that victims experience is not always rooted in detached, impersonal mining of victims' identifying information. For example, in a survey prepared by ACA in conjunction with the Federal Reserve Board, the majority of identity theft frauds reported by survey participants actually traced to an account takeover by a family member or known acquaintance of the victim (45.7%). The data suggests not only an increase in the number of instances of identity theft, but also that the perpetrators of the crimes are much more personal and connected to the victims than typically thought.

In this setting, the Agencies have issued the Joint Notice to develop proposed regulations that would require financial institutions and creditors to develop and implement identity theft prevention programs consistent with sections 114 and 315 of the FACT Act. The programs that are contemplated by the proposed regulations include policies and procedures to detect, prevent, and mitigate identity theft for existing and new accounts. "Guidelines" also are proposed whereby patterns, practices, and particular conduct that raise a "red flag" are identified. The identity theft programs that are implemented by financial institutions and creditors must incorporate policies to detect the red flags of possible identity theft, and to implement a strategy to mitigate risk scalable to the particular institution or creditor. Finally, the Agencies have proposed detailed policies and

procedures under section 315 applicable to users of consumer reports with regard to notices of address discrepancies.

For the reasons set forth herein, ACA requests that the Commission clarify the applicability or inapplicability of the proposed regulations to the accounts receivable management industry – many of whose members are not creditors and do not participate in the decisions to extend credit.

## II. Background On ACA International

ACA International is an international trade organization of credit and collection companies that provide a wide variety of accounts receivable management services. Headquartered in Minneapolis, Minnesota, ACA represents approximately 6,500 company members ranging from credit grantors, third-party collection agencies, attorneys, and vendor affiliates. ACA has numerous divisions or sections accommodating the specific compliance and regulatory issues of its members' business practices.[5]

The company-members of ACA are subject to applicable federal and state laws and regulations regarding debt collection, as well as ethical standards and guidelines established by ACA. Specifically, the collection activity of ACA members is regulated primarily by the Federal Trade Commission under the Federal Trade Commission Act,[6] the Fair Debt Collection Practices

5 *See* www.acainternational.org. These divisions or sections of ACA include Creditors International, Asset Buyers Division, Members Attorney Program, Government Services Program, Healthcare Services Program, and Internet and Check Services Program.

6 15 U.S.C. § 45 *et seq.*

Act ("FDCPA"),[7] the FCRA, and the Gramm-Leach-Bliley Act,;[8] in addition to numerous other federal and state laws. Indeed, the accounts receivable management industry is unique if only because it is one of the few industries in which Congress enacted a specific statute governing all manner of communications with consumers when recovering payments. In so doing, Congress committed the Federal regulation of the recovery of debts to the jurisdiction of the Commission.

ACA members range in size from small businesses with a few employees to large, publicly held corporations. Together, ACA members employ in excess of 100,000 workers. These members include the very smallest of businesses that operate within a limited geographic range of a single town, city or state, and the very largest of national corporations doing business in every state. The majority of ACA members, however, are small businesses. Approximately 2,000 of the company members maintain fewer than 10 employees, and more than 2,500 of the members employ fewer than 20 persons. Many of the companies are wholly or partially owned or operated by minorities or women.

Whether creditors, asset buyers or sellers, or third-party debt collectors, ACA members regularly furnish and use consumer information to effectuate collections by and on behalf of their credit-grantor clients. In this regard, ACA members play a role in the process of identifying discrepancies or irregularities in consumers' credit files that may signal the existence of identity theft. This fact is reflected in the FACT Act, which requires third party collectors to take

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7 15 U.S.C. § 1692 *et seq.*

affirmative steps to investigate consumers' accounts upon notice of a dispute.[9] Other FACT Act components require collectors to have in place reasonable procedures to respond to identity theft notifications received from consumer reporting agencies in order to prevent more false information from being reported.

ACA members have implemented these requirement using procedures scaled to the size and operations of their respective businesses. For example, a consumer claiming that reported information is the result of identity theft is advised of the information necessary to conduct the investigation, including account details and all supporting documentation required to substantiate the claim. Many collectors have implemented the Commission's Identity Theft Affidavit[10] as part of their normal identity theft dispute procedure, or as a template to customize a similar form.

### III. ACA Members Are A Critical Part Of The Economy.

ACA members play a crucial role in safeguarding the health of the economy. Uncollected consumer debt threatens the economy. According to a 2006 economic impact study of the collections industry conducted by PricewaterhouseCoopers LLP, third party collection agencies

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8 15 U.S.C. § 6801 *et seq.*

9 When a collector receives valid notice of a dispute directly from a consumer, the collector must take these four steps: (1) conduct a reasonable investigation with respect to the disputed information; (2) review all the information provided by the consumer with the notice of dispute; (3) complete the investigation and respond to the consumer within thirty days of receipt of the dispute; and (4) if the investigation determines that the disputed item of information is inaccurate, the data furnisher must correct the inaccuracy with each CRA to which the data furnisher has provided the inaccurate information.

10 http://www.ftc.gov/bcp/conline/pubs/credit/affidavit.pdf.

returned $39.3 billion of debt to creditors measured on a commission basis in 2005.[11] This represents a savings of $351 per household each year, which equates to 155 gallons of gasoline or 129 days of electricity payments attributed to households.[12]

By itself, outstanding credit card debt has doubled in the past decade and now approaches three quarters of one trillion dollars.[13] Total consumer debt, including home mortgages, exceeds $9 trillion.[14] Moreover, the greatest increases in consumer debt are traced to consumers with the least amount of disposable income to repay their obligations.

As part of the process of attempting to recover outstanding payments, ACA members are an extension of practically every community's businesses. For example, ACA members represent the local hardware store, the retailer down the street, and the local physician. The collection industry works with these businesses, large and small, to obtain payment for the goods and services received by consumers.

ACA members also partner with federal, state, and local governments to assist in the recovery of public debts, such as educational loans. Each year, federal agencies refer billions of non-

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11 *See* PricewaterhouseCoopers, LLP, *Value of Third-Party Debt Collection to the U.S. Economy: Survey and Analysis* (June 27, 2006), *available at* http://www.acainternational.org/images/8652/finalecomomicimpactstudy.pdf#search=%22%22Value%20of%20Third-Party%20Debt%22%22. The $39.3 billion returned to creditors in 2005 amounts to a 22 percent reduction in non-public debt. *Id.* It equates to 11.4 percent of the before tax profits of all U.S. domestic financial corporations. *Id.*

12 *Id*.

13 Eileen Alt Powell, *Consumer Debt More Than Doubles in a Decade*, Associated Press, Jan. 6, 2004.

14 William Branigan, *U.S. Consumer Debt Grows at an Alarming Rate*, Wash. Post, Jan. 12, 2004.

tax debts to the Department of Treasury's Financial Management Service ("FMS") pursuant to the Debt Collection Improvement Act of 1996. FMS is responsible for "improv[ing] the quality of the federal government's financial management by increasing the collection of delinquent debt owed to the government, by providing debt management services to all federal agencies, and by protecting the financial interests of the American taxpayer."[15] According to FMS, "the FMS debt collection program is a central tool for sound financial management at the federal level. Since 1996, FMS has collected more than $24.4 billion in delinquent debt. In fiscal year 2005, collections of federal delinquent debt remained at a constant $3 billion."[16] FMS contracts with trained, professional businesses to assist in the recovery of the Federal government's obligations. The Budget of the United States Government for 2004 specifically recognized the benefits conferred on the treasury as a consequence of these businesses: "Many states and other federal agencies already use private collectors, with encouraging results."[17]

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15 *See* http://www.fms.treas.gov/debt/index.html. The debts include (1) loans made, insured or guaranteed by the government, including deficiency amounts due after foreclosure or sale of collateral; (2) expenditures of non-appropriated funds; (3) overpayments, including payments disallowed by Inspector General audits; (4) any amount the U.S. Government is authorized by statute to collect for the benefit of any person, e.g., consumer redress; (5) the unpaid share of any non-Federal partner in a program involving a federal payment and a matching or cost-sharing payment by the non-Federal partner; and (6) fines or penalties assessed by an agency. *See* http://fms.treas.gov/debt/questions.html#Debts%20Included.

16 *See* http://fms.treas.gov/news/factsheets/delinquent_debtcollection_2005.html.

17 The Budget for FY 2004, at 239 (http://w3.access.gpo.gov/usbudget/fy2004/pdf/).

Without an effective collection process, the economic viability of these businesses, as well as public debt recovery programs, is threatened. At the very least, Americans are forced to pay higher prices to compensate for uncollected debt.

## IV. General Comments.

### A. The Commission Should Clarify That Third Party Debt Collectors Are Exempt From Section 114.

Section 114, which amends section 615 of the FCRA, requires the Agencies to issue regulations for financial institutions and creditors regarding identity theft with respect to their account holders and customers. In so doing, the Agencies must identify patterns, practices, and specific forms of activity that indicate the possible existence of identity theft.

ACA requests that the final rule clarify that third party debt collectors are not subject to section 114. We believe this conclusion is implicit from the Joint Notice, but it also is reflected in the fact that the proposed regulations apply to "covered institutions," that is, creditors and financial institutions.

In the Joint Notice, the Commission identified the following entities affected by section 114: "state-chartered credit unions, non-bank lenders, mortgage brokers, motor vehicle dealers, utility companies, telecommunications companies, and any other person that regularly participates in a credit decision, including setting the terms of credit."[18] Third party debt collectors do not satisfy any

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18 71 Fed. Reg. at 40798 col. 3. & 71 Fed. Reg. at 40805 col. 3. In contrast, the Commission identified the following as affected by the section 315 proposed regulations: "State-chartered credit unions, non-bank lenders, insurers, landlords, employers, mortgage brokers, motor vehicle dealers, collection agencies, and any other person who requests a

of the status-based categories enumerated by the Commission, nor do they "regularly participate[] in a credit decision, including setting the terms of credit."

The language employed by Congress in the amendments to section 615 substantiates the conclusion that third party debt collectors are not subject to the Red Flag Rules. Section 615 of the FCRA, as amended by section 114 of the FACT Act, gave authority to the Agencies to prescribe regulations and establish guidelines applicable to credit card issuers, creditors, and certain financial institutions.[19] Third party debt collectors do not issue credit cards. They are not creditors. The Joint Notice states that the definition of "creditor" used in the Equal Credit Opportunity Act ("ECOA")[20] because the FCRA defines "creditor" to have the same meaning as the term is used in section 702 of ECOA.[21] Under ECOA, a creditor means a person who regularly participates in a credit decision, including setting the terms of credit. As noted, *supra*, collectors do not participate in credit decisions. Finally, as the Joint Notice states, "Under the FCRA, the only financial institutions over which the FTC has jurisdiction are state-chartered credit unions."[22] For these reasons, ACA respectfully requests that the final rule clarify that third party debt collectors are not subject to the section 114 requirements because they are not one of the status-based entities identified in the

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consumer report from a nationwide consumer reporting agency as described in section 603(p) of the FCRA. 71 Fed. Reg. at 40798 col. 3. & 71 Fed. Reg. at 40806 col. 1.

19 15 U.S.C. § 1681m(e)(1)(A-C).

20 71 Fed. Reg. at 40800 col. 1.

21 *Id.*

statute.

### B. Asset Buyers Do Not Participate In Credit Decisions And Should Not Be Subject To Section 114 Requirements.

For reasons similar to those identified for third party collectors, the final rule should clarify that asset buyers also are not subject to the section 114 requirements because they are not creditors, they do not issue credit, and they are not the type of financial institutions sought to be regulated.

Some third-party debt collectors engage in asset sales transactions in which account portfolios are sold by originating creditors. The sale of assets by creditors to collection agencies and/or among collectors poses special challenges to maintain the accuracy of the consumer information. Some creditors/asset sellers do not provide all account information, including payment histories and transactional data, as a part of the sale transactions. The reasons for this are not clear. It may be because of the expense associated with collecting the information. It may be a form of risk management in the event that the transactional data developed by the seller is not accurate but nonetheless is provided to the asset buyer. In some instances, the data may not be available either in part or whole, or it only may be available at an additional cost. Regardless of the rationale, the independent ability of asset buyers to assess accounts for possible identity theft is impacted because the buyer did not create the credit relationship and it does not function as the creditor.

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22 71 Fed. Reg. at 40800 fn. 44 (citing 15 U.S.C. § 1681s).

A third party collector that acquires debt portfolios from creditors does not become a "creditor" merely by reason of the fact of the acquisition. Indeed, the Commission previously has noted as much in informal staff opinion letters defining the term "creditor" under the FDCPA where defaulted accounts are involved. For example, in response to a question whether a "debt collector is covered by the Fair Debt Collection Practices Act when it purchases defaulted accounts from the original creditor," the Commission responded that "[w]e consider the purchase of a defaulted account '. . . an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.' As such, we do not believe that such a purchase removes the debt collector from Act coverage with respect to that account because it does not make the debt collector a creditor under Section 803(4)."[23] Federal courts also have concluded that a collection agency that purchases or is assigned debts by a creditor is not a "creditor" under federal law.[24] ACA additionally notes that the Commission already has concluded that, under the FCRA, "the only financial institutions over which the FTC has jurisdiction are state-chartered credit unions."[25]

Consequently, because asset buyers do not satisfy the status-based categories identified by Congress in the statute, the Commission should act to clarify in the final rule that the section 114 requirements do not apply to third party collection agencies that acquire account portfolios from

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23 LeFevre, FTC Informal Staff Opinion Letter (Sept. 16, 1993) (emphasis added).

24 *See Kimber v. Federal Fin. Corp.*, 668 F.Supp. 1480 (M.D. Ala. 1987); *see also Cirkot v. Diversified Fin. Sys., Inc.*, 839 F.Supp. 941 (D. Conn. 1993).

25 71 Fed. Reg. at 40800 fn. 44 (citing 15 U.S.C. § 1681s).

creditors.

Conversely, if the Commission is inclined to conclude that asset buyers are covered institutions notwithstanding the reasons articulated herein, ACA believes that the application of the final rules to asset buyers should be modeled after the GLB Act. The GLB Act regulations promulgated by the Commission limit the applicability to asset buyers until such time as they create a "customer relationship" by purchasing an account and successfully locating an individual for collection purposes.[26] This approach reflects the understanding that many individual debtors within large account portfolios acquired by asset buyers never actually become "customers" of the asset buyer because they cannot be located or do not respond to collection efforts.

### C. The Service Provider Provisions Should Be Clarified To State The Type Of Conduct Triggering A Compliance Obligation.

The proposed rule requires a financial institution or creditor to take steps to ensure that service providers comply with the final rule when performing activities on behalf of the financial institution or creditor. The proposed rule does not define the type of activities that trigger a compliance obligation by a third party service provider except to state that the requirements of the financial institution's or creditor's red flag program otherwise would apply to the activity.

Third party debt collectors perform contracted services for financial institutions and creditors by recovering debts. ACA believes that the final rule should clarify that this function is not one that

26 *See* 16 C.F.R. § 313.4(c)(3)(i); see also 16 C.F.R. § 313.3(h)(i) (defining "customer relationship" as a continuing relationship between a consumer and you under which you provide one or more financial products or services to the consumer that are to be used primarily for personal, family, or household purposes).

creates an independent obligation in the third party collector to comply with the rule. The proposed rule provides an illustration of the type of conduct that would create a compliance obligation in a service provider, that is, opening consumer accounts on behalf of a creditor.[27]

ACA believes that it is unnecessary for the Commission to address in the rule the issue of service provider arrangements. This will be an issue resolved in business-to-business transactions. Moreover, the proposed rule makes clear that there is an affirmative obligation on the financial institution or creditor to make sure that its service providers comply when engaging in activities such as opening consumer accounts.

Nevertheless, if the Commission concludes that a third party collection agency that attempts to recover debts on behalf of a creditor also must comply, ACA respectfully submits that the Commission should recognize that collectors can and must rely on the accuracy of the information provided to them for collecting and reporting purposes. Numerous courts have concluded that "a debt collector has the right to rely on information provided by the client-creditor, and [it] has no obligation to undertake an independent debt validity investigation."[28] The consumer dispute process of the FCRA (either directly with data furnishers or to consumer reporting agencies) already is positioned to identify and rectify incomplete or inaccurate information. Additionally, the

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27 71 Fed. Reg. at 40793 col. 2.

28 *Jenkins v. Union Corp.*, 999 F. Supp. 1120, 1140-41 (N.D. Ill. 1998). *See also Ducrest v. Alco Collections, Inc.*, 931 F. Supp. 459, 462 (M.D. La. 1996) ("debt collector should be able to rely on the representation and implied warranty from its client that the amount was due under either the lease or the law"); *Schmitt v. FMA Alliance*, 398 F.3d 995,

Commission should give service providers latitude to implement its own red flag policies, particularly where a single service provider may work with multiple financial institutions and creditors.

### D. Board of Directors Or Senior Management Involvement Is Neither Required Nor Statutorily Prescribed.

ACA disagrees with the proposal in promulgation regulations implementing section 114 that the board of directors or delegate of the board must approve a written program and must be involved in the development and implementation of the program. There is no support in the FACT Act for implementing such a regulation, and its ultra vires for the Commission to propose allocating responsibility for identity theft programs to board members of companies. Apart from the fact that this proposal is impractical and demonstrably inflexible, the reality is that charging company boards with direct responsibility and oversight may result in programs that are not capable of quickly responding to changing needs to combat identity theft. The policies and procedures adopted by regulated entities must be dynamic, not simply static programs that are reviewed annually at board meetings.

997 (8th Cir. 2005) (debt collector is not liable for actions taken in reliance on the creditor's provided information).

### E. A User's Obligation To Reasonably Confirm Address Information Should Acknowledge Collectors' Reasonable Reliance On Creditors' Data.

Section 315, which amends section 605 of the FCRA, requires consumer reporting agencies to provide a notice of address discrepancy to a user if the address provided by the user "substantially differs" from the address in the consumer reporting agency's files. Section 315 further requires regulations applicable to users for implementing reasonable polices and procedures they should employ upon receipt of a notice of address discrepancy. The procedures must (1) enable them to form a reasonable belief that the user knows the identity of the person for whom it has obtained a consumer report, and (2) reconcile the address with the consumer reporting agency *if* the user establishes a continuing relationship or maintains such a relationship.

The term "substantially differs" is not defined in the statute. The Joint Notice gives latitude to consumer reporting agencies to determine what amounts to a substantial difference in a consumer report address versus an address provided by a user. ACA notes that a substantial difference cannot reasonably include typographical errors, deleted information (for example, "Avenue" versus "Ave."), or even abbreviations (for example, "J. Smith" versus "John Smith"). There must be a significant variation or missing information that reasonably reveals a discrepancy in the address. Although the Joint Notice commits this to the consumer reporting agencies to resolve, the Commission should provide guidance as to what it believes to be substantial differences.

Users also are required to develop polices and procedures to allow them to form a reasonable belief as to the identity of a person when the user receives a notice of address discrepancy from a consumer reporting agency. The Joint Notice states that this requirement to form a reasonable belief applies irrespective of whether the user has a "continuing relationship" with the person. In some instances, the user will be a third party collector, and in others, it will be an asset buyer that acquired the account from a seller without having created a continuing relationship. For the reasons expressed already, ACA believes that users, particularly asset buyers, should be able to rely on the accuracy of the information provided to them by financial institutions, creditors, and asset sellers, when forming their reasonable belief as to the identity of the person. As noted, courts have concluded that "a debt collector has the right to rely on information provided by the client-creditor, and has no obligation to undertake an independent debt validity investigation."[29] Consequently, the final rule should recognize that a collector or asset buyer can base its reasonable belief of the identity of the person on the information provided by the creditor or asset seller.[30]

Section 315 also imposes a requirement on users to reconcile an address where the user has established a continuing relationship with the consumer, and the Joint Notice proposes to extend that

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29 *Jenkins v. Union Corp.*, 999 F. Supp. 1120, 1140-41 (N.D. Ill. 1998). *See also Ducrest v. Alco Collections, Inc.*, 931 F. Supp. 459, 462 (M.D. La. 1996) ("debt collector should be able to rely on the representation and implied warranty from its client that the amount was due under either the lease or the law"); *Schmitt v. FMA Alliance*, 398 F.3d 995, 997 (8th Cir. 2005) (debt collector is not liable for actions taken in reliance on the creditor's provided information).

30 The Commission should give consideration that, when selling account portfolios, asset buyers are notified of accounts that previously experienced a "red flag" event or claimed to be subject to identity theft.

obligation when the user "maintains" a continuing relationship. ACA has several comments on this aspect of the proposed rule. First, broadening the obligation on users beyond the "establishing" of the relationship is not authorized by the statute and exceeds the scope of delegated authority to the Agencies. Although the Joint Notice asserts "broad authority" from Congress, there is no basis in the FACT Act to support the construction now advanced by the Agencies. Congress used the words "establishes" and "established" in enacting section 605(h)(2)(B) which obviously refers to the creation of the account. It did not use the term "maintains", and it is not warranted for the Commission to unreasonably expand the scope of the regulation to include it.

Second, the term "continuing relationship" is not a defined term, but some guidance as to its meaning can be derived from the definition of "account". That guidance underscores the fact that third party debt collectors do not have "continuing relationships" with consumers.[31] The term "account" means "a *continuing* relationship established to provide a financial product or service. . . such as an extension of credit . . . or demand deposit. . . ." Thus, the terms "account" and "continuing relationship" are used similarly, and, in fact, an "account" is defined by the existence of a continuing relationship. From this, it stands to reason that Congress had in mind instances where a

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31 ACA notes that, in the context of the GLB Act, the Commission already has concluded that collectors do not have "customer relationships" with debtors. The Commission's rule defines "customer relationship" as "a continuing relationship between a consumer and you under which you provide one or more financial products or services to the consumer that are to be used primarily for personal, family, or household purposes." 16 C.F.R. § 313.3(h)(i)(1). The Final Rule states that "[a] consumer has a 'customer relationship' with a debt collector that purchases an account from the original creditor (because he or she would have a credit account with the collector), but not with a debt collector that simply attempts to collect amounts owed to the creditor." Final Rule, 65 FED. REG. at 33653 n.18 (citation omitted).

consumer has an "account" with the user. Collectors do not fall into this category.

Lastly, the proposed rule correctly notes that reconciliation of the address by the user may include the user reviewing its own records of the address, verifying the address with third parties such as original creditors, or other reasonable means. This latitude is appropriate for third party debt collectors who have had no role in the formation of the account and typically have limited information for verification of account data.

The Commission also must be careful to avoid unreasonably duplicating the obligations of furnishers of consumer information when the furnisher also is a user of consumer report data. Many third party collectors furnish and use consumer reports. In addition to this rulemaking, the Agencies have begun the process of formulating guidelines for furnishers under FCRA.[32] The FACT Act created new standards applicable to furnishers for identifying inaccurate data,[33] and prescribed the development of regulations establishing guidelines for furnishers to follow when reporting consumer data.[34] As a precursor to promulgating the guidelines in the form of a proposed rulemaking, the Agencies have requested comments on three specific areas: (1) the four-part criteria to be followed to develop the accuracy and integrity guidelines, (2) the articulation of reasonable policies and

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32 *See* Comment of ACA International, *available at* http://www.ftc.gov/os/comments/FACTA-furnishers/522110-00076.pdf (filed May 22, 2006).

33 Section 623(a)(1)(A); 15 U.S.C. § 1681s-2(a)(1)(A) (deleting conscious avoidance standard and adopting "reasonable cause to believe" standard).

34 Section 623(e); 15 U.S.C. § 1681s-2(e).

procedures for implementing the guidelines, and (3) the four-part criteria to be weighed to determine when a furnisher is required to reinvestigate disputes concerning the accuracy of information in a consumer report.[35] ACA respectfully submits that, when acting also as a "user" of consumer information, the Commission not impose significant and cumulative burdens on furnishers who already have comprehensive account updating obligations triggered by the inaccuracy or incompleteness of consumer data.

### F. Adequate Time Must Be Allocated To Implement The Final Rule.

The Commission requests comment on the need to delay the effective date of the final rule to accommodate small businesses. The majority of ACA members are small businesses. Approximately 2,000 of the company members maintain fewer than 10 employees, and more than 2,500 of the members employ fewer than 20 persons. Many of the companies are wholly or partially owned or operated by minorities or women.

These businesses report that the complexity of the rule requirements will impose significant financial, technological, and administrative burdens on them. These burdens, and the overall complexity of the regulatory requirements, lead ACA to request that the Commission provide sufficient time to come into compliance. In light of the fact that the Commission has proposed such far-reaching requirements such as requiring board of director approval for the procedures adopted, ACA believes that a minimum of twelve months will be needed to implement the final rule.

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35 71 Fed. Reg. at 14422 col. 3.

## V. Conclusion.

ACA appreciates the opportunity to comment on the issues raised in the Joint Notice. If you have any questions, please contact Andrew M. Beato at (202) 737-7777 or abeato@steinmitchell.com.

Dated: September 18, 2006

Respectfully submitted,

**STEIN, MITCHELL & MEZINES, LLP**

/S/

Andrew M. Beato, Esq.
1100 Connecticut Avenue, N.W.
Suite 1100
Washington, DC 20036

**ACA INTERNATIONAL**

/S/

Rozanne M. Andersen, Esq.
4040 W. 70th Street
Minneapolis, MN 55435