DBA INTERNATIONAL

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September 5, 2007

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex K)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: SSNs In the Private Sector – Comment, Project No. P075414

I. INTRODUCTION

DBA International ("DBA") is pleased to submit to the Federal Trade Commission ("FTC") these comments on private sector uses of social security numbers ("SSNs"). Pursuant to the FTC's request, these comments will focus on specific areas identified by the FTC as topics of interest. DBA hopes that the information provided will assist the FTC in furthering the strategic plan set forth by the Identity Theft Task Force to protect consumers.

DBA understands and supports efforts to protect SSNs through comprehensive government action. Entities that collect, maintain, sell, transfer or dispose of SSNs to the general public should be required to have safeguards in place. Limits on the sale and display of SSNs are necessary to protect such sensitive personal information from unauthorized access or use. However, SSNs perform legitimate and essential functions in the private sector. The collection, use, maintenance, and disclosure of SSNs for key business purposes are necessary for the continued ability of entities, such as debt buyers, to function. Critical business uses of SSNs need not be impeded by government regulations appropriately crafted to protect personal privacy or to counter illegal abuses.

The debt buying industry purchases charged-off accounts from originating creditors for less than the face value of the debt. By creating this secondary market, the debt buying industry provides important benefits to consumers and to the U.S. economy. The industry encourages consumer lending; provides lenders with a return on what might otherwise be a lost asset; helps to lower the cost of credit for all consumer borrowers; and promotes access to credit, particularly for low income consumers. Debt buying is a $100 billion industry (and growing) which supports the financial services industry.

DBA International, founded in 1997, is the trade association and self-regulatory body for the debt buying industry. DBA currently has 484 professional debt buyer member companies and 120 vendor and affiliate member companies. Debt buying and collecting is a closely and comprehensively regulated industry, and, in general, is subject to federal, state and local laws. Importantly, DBA has adopted a code of ethics which, among other things, provides that its members must comply with the Fair Debt Collection Practices Act ("FDCPA"), the Fair Credit Reporting Act ("FCRA") and any additional state laws which may be more stringent. DBA provides networking and educational opportunities for its members and facilitates the sharing of information among debt buyers with regard to the actions of Congress and state legislatures. Further, DBA provides a forum for debt buyers to exchange ideas and information. DBA offers guidance to its members on legal issues, including the FDCPA and other consumer-related and privacy related statutes through an annual convention, an executive conference, newsletters and a web site.

II. COMMENTS

These comments will focus on debt buyer collection and use of SSNs. SSNs are used at virtually every stage of the debt buying process: from locating consumer debtors to evaluating a consumer's ability to repay through consumer reports to destroying records maintained after the debt is discharged. Throughout this process, SSNs are necessary and essential to perform legitimate business purposes, and no suitable alternative is available to the debt buying industry. Restrictions on the use of SSNs by debt buyers would significantly disrupt current industry practices and procedures; adversely impact the credit economy; and disadvantage consumers.

A. Buying the Debt

Although debt buying began over forty-five (45) years ago, the practice has become more prevalent during the last ten (10) years as more consumer credit originators, especially federal and state chartered banking institutions, sell increasing amounts of charged-off receivables. Debt sales of accounts other than those originated by banks also have become commonplace and are as accepted a practice as the sale of mortgages. Examples of the wide variety of charged-off receivables sold to debt buyers include accounts from credit card originators, telecom providers, retail merchants, and utilities. Many of the larger portfolios, including large credit card portfolios, are purchased directly from the originators. SSNs are the only common identifier used by industries nationwide to engage in consumer transactions that result in the debts purchased by the debt buying industry.

A purchase agreement customarily contains the seller's binding representations and warranties as to the debts that are being sold. Typical warranties and representations include provisions about the integrity of the data transmitted in each individual account contained in the portfolio. On any portfolio being considering for purchase, various technological tools are utilized prior to the purchase in connection with the debt buyer's due diligence activities to obtain and collect information only on valid accounts. Debt buyers use some of the most sophisticated data encryption available in today's market to ensure that consumer data contained within each portfolio, including debtor SSNs, is protected from inadvertent release.

Debt buyers are financial institutions subject to regulation by the Gramm-Leach-Bliley Act ("GLB"). The GLB, of course, imposes statutory obligations on financial institutions, including the GLB Safeguards Rule. That Rule places comprehensive information security requirements on debt buyers, including measures to protect the use, storage, and transfer of information such as SSNs. At least one debt buyer employee coordinates the information security program that assesses risks to consumer information; designs and implements safeguards to address those risks, which are adjusted over time to address technological developments; and oversees any service providers that maintain their own information safeguards. Debt buyers diligently maintain these security measures throughout the subsequent debt collection process.

B. Collecting the Debt

After accounts are purchased, the debt buyer will receive information about the debtor and the debt from the seller, which the debt buyer will then enter into the debt buyer's protected and proprietary database. These databases are subject to additional security protections for consumer privacy. The initial data provided by the seller often includes the debtors' SSNs; the date of delinquency; the date of last payment; last known address; balance due; and the history of the account. Using this information, and specifically the SSNs, the debt buyer will further review the accounts for individuals who have entered into bankruptcy or for any deceased debtors. SSNs are used during this initial stage to reference court documents and the Death Master File.[1]

However, due to the nature of the debt being purchased, a debt buyer may not receive all of the information on a particular debt at the time of the purchase. The debt buyer may use various address update and location services, such as skip tracing, to obtain missing information from individual files. The use of SSNs is often a required element for each of these methods. Similar or even identical names and the frequency of address changes make identifying individual debtors increasingly difficult, a difficulty that would be nearly insurmountable without a unique identifier, such as SSNs.

SSNs allow businesses accurately to connect financial information with a specific individual. SSNs allow the debt buyers to perform identity verification on individuals seeking information on a debt or a debt-related matter. The debt buying industry would be seriously impeded without the use of SSNs as a unique personal identifier that ensures debt collection practices are implemented in a way that spares consumers the burden of resolving problems that would arise from misinformation or misidentification.

Additionally, the most efficient way for debt buyers to distinguish individual files purchased within large portfolios is through the use of a SSN. Creditors primarily use SSNs to organize debtor files; SSNs which the creditor received through either the credit application process or through basic administration of the credit file. Debt buyers receive such information when purchasing the debt, requiring the continued use of SSNs to ensure accurate credit information is associated with a particular debtor. Further, access to the SSNs, provided by the creditors, allows debt buyers to verify the identity of the debtor as well as transmit information on disputes, resolutions, and other account status information to the credit bureaus and other consumer reporting agencies ("CRAs").

[1] The Death Master File (DMF) was created because of a 1980 consent judgment, which specifically requires that identifying information on deaths reported to the Social Security Administration (SSA), including SSNs, be divulged to the public. SSA maintains the national file of death information and authorizes the use of this database as an identity verification tool, but SSA acknowledges that the DMF may contain inaccuracies.

Debt buyers use SSNs to obtain credit reports from the credit bureaus and CRAs in order to analyze a consumer's ability to repay the outstanding debt. Debt buyers also furnish information for the credit files maintained on individual consumers. The use of full SSNs by debt buyers is necessary to communicate with the CRAs. When debt buyers exchange information with the credit bureaus and other CRAs, they must be able to assure the authenticity of the information and the identity of the individual debtor. This information process would be slower, more expensive and less reliable if the full SSN was not available. Other forms of identification or identification numbers are not universal and certainly not reliable.

When furnishing information, debt buyers are required to report accurate information. Under the Fair and Accurate Credit Transactions Act of 2003, which amends the FCRA, debt buyers must have reasonable policies and procedures in place to ensure the accuracy of the information being provided to the CRAs. Without the ability to use SSNs to increase information accuracy, debt buyers would face a significant risk of reporting incorrect information that would ultimately be placed on a consumer's credit report.

For example, a debt buyer may purchase a debt belonging to a victim of identity theft. It is not the intent of debt buyers to collect on accounts obtained fraudulently using the personal identifying information of others. A consumer may submit an identity theft report to the debt buyer, who will cease collection of the account. The identity theft report is an official, valid report filed by a consumer with an appropriate federal, state, or local law enforcement agency, which will subject the consumer to penalties in the event a false report is filed. Importantly, the FTC recommends that consumers make use of the FTC Identity Theft Complaint form, which requests that the consumer input a SSN, in order to obtain an identity theft report.[2] To fully assist consumers to resolve the negative consequences of identity theft, debt buyers need access to SSNs in order to ensure that full and accurate information is being reported about a consumer.

Once the identity of the debtor has been verified, the debt buyer may communicate with the consumer directly or may choose to retain a debt collection firm. The associated collection needs of debt collectors for SSNs have been expressed in comments filed in this proceeding by ACA International. DBA shares in the concerns expressed by the ACA on behalf of the debt collection industry and endorses those comments.

C. Discharging the Debt

Debt buyers customarily purchase debts for less than the amount owed by the consumer. This helps debt buyers to offer consumers attractive repayment options. If the repayment plan negotiated with the consumer involves forgiveness of a portion of the principal amount of the debt exceeding $600.00, current law requires debt buyers to issue the consumer a 1099-C.

On October 22, 2004, the Internal Revenue Service ("IRS") adopted the Dash 2 Regulation (26 CFR § 1.6050P-2). The Dash 2 Regulation requires that financial entities, including debt buyers, discharge any debt owed by a consumer if there has been no payment on the debt and no significant activity attempting to collect the debt for three years. If the amount of the consumer debt to be discharged exceeds $600.00, the Dash 2 Regulation requires the

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[2] https://rn.ftc.gov/pls/dod/widtpubl$.startup?Z_ORG_CODE=PU03 (last visited Sept. 4, 2007)

financial entity to file a 1099-C statement with the IRS (with a copy to the consumer debtor), memorializing the discharge of this debt and effectively triggering recognition by the IRS that the consumer debtor has realized taxable "income" in the amount of the discharged debt. To complete the 1099-C statement, the debt buyer must provide the debtor SSNs.

As a legal mandate, until the underlying legal requirement to submit the discharged debt to the IRS using SSNs changes, no practical alternative exists for debt buyers to comply with these mandatory legal requirements.

D. Miscellaneous Needs for SSNs in Connection with Debt Buying

As financial institutions, debt buyers are subject to a host of additional legal obligations under the FDCPA, the FCRA, and the GLB. Other federal statutes that require the use of SSNs by debt buyers in order to be in full compliance include the Fair and Accurate Credit Transactions Act, which modifies and amends the FCRA, the Health Insurance Portability and Accountability Act, and the U.S. PATRIOT Act. For example, the PATRIOT Act requires financial institutions to verify the identity of customers through methods that specifically require SSNs.

Debt buyers also have internal needs for SSNs, similar to every other employer in the country. To satisfy tax withholding obligations, employment eligibility verification requirements, and unemployment and workers' compensation responsibilities, employers must be able to make use of SSNs. Debt buyers would be forced to share in the administrative costs and burdens associated with a change from these employment practices and procedures.

III. CONCLUSION

Debt buying is becoming a beneficial and important part of the credit and collection process. Members of DBA work hard to insure compliance with the FDCPA, the FCRA, and related consumer laws. Restricting the use of SSNs for debt buying purposes, inevitably, would result in significant economic costs, disruptions, and widespread confusion on the part of both consumer debtors and debt buyers.

Respectfully submitted this 5th day of September, 2007.

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