

Coalition to Implement the FACT Act

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Federal Trade Commission
Office of the Secretary
Room 159-H
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: FACTA Free File Disclosures Proposed Rule, Matter No. R411005

To Whom It May Concern:

This comment letter is submitted on behalf of The Coalition to Implement the FACT Act (“Coalition”) in response to the Proposed Rule (“Proposed Rule”) published by the Federal Trade Commission (“Commission”) to implement a centralized source through which consumers may request free annual file disclosures from nationwide consumer reporting agencies under Section 211(a) of the Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”). The Coalition represents a full range of trade associations and companies that furnish and use consumer information, as well as those who collect and disclose such information. We appreciate the opportunity to provide our comments on the Proposed Rule.

In General

The Coalition commends the Commission for developing a Proposed Rule that seeks to provide consumers with a workable centralized source through which they can obtain their free annual file disclosures from the nationwide consumer reporting agencies. Indeed, if consumers are to reap the benefits of the centralized source, it must be created in a practical manner that does not overwhelm the nationwide consumer reporting agencies. We offer the following comments with this goal in mind.

Capacity

In order to build the centralized source, and the infrastructure necessary to support it, the nationwide consumer reporting agencies must be told the level of demand for free file disclosures they will be expected to meet. Although nationwide consumer reporting agencies have historical data with respect to file disclosures under the Fair Credit Reporting Act (“FCRA”) prior to the FACT Act, the nationwide consumer reporting agencies cannot know for certain what the demand for file disclosures will be once the centralized source is established. The Proposed Rule attempts to address this issue by requiring the

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nationwide consumer reporting agencies “to anticipate, and respond to, the volume of consumers who will contact the centralized source.” As part of the Supplementary Information to the Proposed Rule, the Commission discusses some possible demand levels, but declines to provide the nationwide consumer reporting agencies with any specific guidance. We believe that the final rule implementing the centralized source (“Final Rule”) should provide nationwide consumer reporting agencies with a fixed capacity level during the transition period of the centralized source. In this regard, the nationwide consumer reporting agencies cannot be expected to know what the demand for file disclosures requested through the centralized source, at no cost, will be. We urge the Commission to work with the nationwide consumer reporting agencies to develop an initial capacity expectation that is based on historical data, existing legal and consumer obligations, and reasonable objectives. This initial capacity determination should serve as a safe harbor for the centralized source and the nationwide consumer reporting agencies during the transition period. We fear that without a fixed target, nationwide consumer reporting agencies could be overwhelmed by demands, which could jeopardize the consumer reporting process. Once the transition period for the centralized source has expired, we believe that the nationwide consumer reporting agencies will have sufficient historical data to develop ongoing capacity projections.

We applaud the Commission for recognizing that the nationwide consumer reporting agencies may experience periods of “high request volume” and “extraordinary request volume.” We urge the Commission to retain these concepts in the Final Rule. However, the Proposed Rule would provide the centralized source and the nationwide consumer reporting agencies with relief from certain obligations during periods of “high request volume” only during the transition period. We believe that the concept of “high request volume” is a good one, and we are not aware of any reason why the burdens associated with “high request volume” will dissipate after the transition period. Therefore, we urge the Commission to retain the provisions related to “high request volume” for the duration of the centralized source’s existence. We also request the Commission to revise the definition of “extraordinary request volume” to equal 125% of expected demand. In this regard, the Proposed Rule’s definition of 200% is likely to be too high to provide the nationwide consumer reporting agencies with relief when it is necessary (*i.e.*, when demand surges more than 25% of what is expected).

Regional Roll-Out

The FACT Act requires that the Commission’s Final Rule provide for an “orderly transition” for nationwide consumer reporting agencies to implement the centralized source. The Commission states that it has considered many different proposals for achieving this goal, and has determined that the

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centralized source should be “rolled out” on a regional basis during the transition period. We commend the Commission for attempting to provide for an “orderly transition,” as required under the FACT Act. We believe the Commission’s regional roll-out approach is reasonable, and should be retained in the Final Rule. However, we urge the Commission to ensure that the order in which the regions have access to the centralized source results in the smoothest transition possible.

Verifying the Consumer’s Identity

Under the Proposed Rule, the centralized source may collect “only as much information as is reasonably necessary to properly identify the consumer...and to process the transaction(s) requested by the consumer.” In the Supplementary Information, the Commission states that it “is concerned that a centralized source that collects too much information may discourage some consumers from requesting their annual file disclosures.” The Commission also notes that it is critical that nationwide consumer reporting agencies are able to verify the identity of those who request annual file disclosures in order to ensure the disclosure is provided to the correct person and to mitigate the risk of identity theft being facilitated through the centralized source. We believe that the Commission has correctly identified the need to ensure that nationwide consumer reporting agencies have sufficient information to reduce the risk of identity theft. Therefore, we urge the Commission to delete the notion that the centralized source may collect only the information “reasonably necessary” to properly identify the consumer. A legal limitation on the collection of information that is “reasonably necessary” is likely to result in disagreements as to what is “reasonably necessary,” and could serve to limit the amount of information collected to thwart identity theft. We do not believe this was the Commission’s intent. Therefore, the Final Rule should permit the nationwide consumer reporting agencies to collect personally identifiable information in order to identify the consumer and process the consumer’s transactions. We do not believe that the collection of such information would discourage use of the centralized source.

Requiring Disclosures of Files That Are Not the Nationwide Consumer Reporting Agency’s

The Proposed Rule states that a nationwide consumer reporting agency must provide a consumer with a file disclosure if it “has the ability to provide a consumer report to a third party relating to [the] consumer.” In other words, the Proposed Rule would require a nationwide consumer reporting agency to provide a file disclosure to a consumer, even if the data was not the nationwide consumer reporting agency’s data, but that the nationwide consumer reporting agency could somehow obtain the file. We do not believe such an

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approach is appropriate, and it likely lies outside the scope of the Final Rule. We also do not believe that Congress intended to force nationwide consumer reporting agencies to purchase data from other consumer reporting agencies in order to comply with the statutory requirements. We respectfully request the Commission to delete this requirement.

Information Security

Under the Proposed Rule, the Commission would require each nationwide consumer reporting agency to comply with the Standards for Safeguarding Customer Information (“Safeguards”) for all information collected or disclosed by the nationwide consumer reporting agency or the centralized source. We believe that the nationwide consumer reporting agencies should protect the security of consumer information. Indeed, each one of them is already subject to the Safeguards. However, we are concerned that the Commission has taken a position which unilaterally amends the enforcement provisions in the Gramm-Leach-Bliley Act (“GLBA”). When enacting the GLBA, Congress required the Commission to develop the Safeguards. Congress also stated that the Safeguards were to be enforced solely through administrative procedures by federal regulators. However, by including a requirement to comply with the Safeguards as a requirement of the FCRA (through the Proposed Rule), the Commission would create an entirely new enforcement regime, including private rights of action, for the Safeguards as they apply to nationwide consumer reporting agencies. We do not believe this was the congressional intent. In light of the fact that the consumer information collected through the centralized source will receive the protections of the Safeguards through existing regulatory requirements, we urge the Commission to delete this requirement in the Final Rule.

Section 311 of the FACT Act

The Commission suggests in footnote 7 of the Supplementary Information that a consumer would have a right to a free file disclosure, independent of other rights to free file disclosures, if the consumer receives a risk-based pricing notice pursuant to Section 311 of the FACT Act. We do not agree with the Commission’s assumption. However, we also do not believe that it would be appropriate to discuss the issue in connection with the centralized source. Therefore, we respectfully request the Commission to eliminate any reference to Section 311 of the FACT Act in the Final Rule and its Supplementary Information, and to reserve the issue for later discussion.

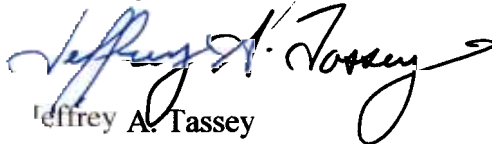
Conclusion

Again, we thank the Commission for allowing us to provide our comments on the Proposed Rule. We believe the Proposed Rule reflects the hard

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work of the Commission and presents a workable framework for a Final Rule. If you have any questions about our comments, or if we may provide additional information, please do not hesitate to contact me at (202) 464-8815.

Sincerely,



Jeffrey A. Tasse

Executive Director