MBNA America Bank, N.A.
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June 15, 2004

Federal Trade Commission
Office of the Secretary
Room 159-H (Annex H)
600 Pennsylvania Ave., NW
Washington, DC 20580

Re: FACT Act Disposal Rule, R-411007

Ladies and Gentlemen:

This comment letter is submitted on behalf of MBNA America Bank, N.A. ("MBNA") in response to the notice of proposed rulemaking ("Proposed Rule") and request for public comment by the Federal Trade Commission ("FTC"), published in the Federal Register on April 20, 2004. The Proposed Rule would require entities under FTC jurisdiction to take reasonable measures to protect against unauthorized access to, or use of, consumer information in connection with its disposal. MBNA supports the FTC's Proposed Rule and appreciates the opportunity to comment on this important matter.

Background

Section 216 of the Fair and Accurate Credit Transactions Act of 2003 ("FACT Act"), requires the FTC, the federal banking agencies, the National Credit Union Administration and the Securities and Exchange Commission to prescribe regulations requiring "any person that maintains or otherwise possesses consumer information, or any compilation of consumer information, derived from consumer reports for a business purpose" to properly dispose of the information or compilation. Section 628 also directs the agencies to ensure that these regulations are consistent with the requirements and regulations issued under the Gramm-Leach Bliley Act ("GLBA") and other federal law. The Proposed Rule clarifies that the purpose of the disposal requirement is "to reduce the risk of consumer fraud and related harms, including identity theft, created by improper disposal of consumer information."

"Consumer Information" Should Identify a Particular Consumer

The Proposed Rule would define "consumer information" as "any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report." The Supplementary Information to the Proposed Rule ("Supplementary Information") states that information "derived from consumer reports" would include any "information about a consumer that is taken from a consumer report" and that a record that does not identify a particular consumer would not qualify as "consumer information" because it would not be a "record about an individual." We support the FTC's proposed, broad definition of "consumer information", as it will allow financial institutions and their service providers to apply consistent disposal procedures and, therefore, a consistent level of protection for all consumer information nationwide.

However, we are concerned that the proposed definition of "consumer information" itself provides little guidance as to the scope of information that may identify a particular consumer. We believe the final rule ("Final Rule") should state expressly that information that does not identify a particular consumer would not qualify as "consumer information." This express statement would promote clarity and would eliminate any ambiguity surrounding the phrase "any record about an individual", since information that does not identify a particular consumer poses little or no risk of consumer fraud or identity theft

"Reasonable Measures" is the Appropriate Disposal Standard

The Proposed Rule would require any entity under FTC jurisdiction "who maintains or otherwise possesses consumer information, or any compilation of consumer information, for a business purpose [to] properly dispose of such information by taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal." We support the FTC's determination that "reasonable measures" is the appropriate disposal standard, as it would allow covered entities to employ different standards based on an individual entity's risk assessment and circumstances in order to ensure appropriate disposal of consumer information. This flexible standard would allow financial institutions to avoid disrupting existing practices, except where necessary to do so, under their information security programs, as required by FTC regulations promulgated pursuant to section 501(b) of the GLBA ("Safeguards Rule"). As a result, this approach would respond to the statutory directive that the regulations issued be consistent with those issued under the GLBA.

The Supplementary Information indicates the FTC expects covered entities, in determining what measures are "reasonable," to consider the sensitivity of the consumer information, the nature and size of the entity's operations, the costs and benefits of different disposal methods, and relevant technological changes. We believe these factors are appropriate. Financial institutions are familiar with this risk-based approach as a result of the analyses that they use currently in developing their information security programs under the Safeguards Rule. Moreover, we believe that harmonizing the Final Rule with the Safeguards Rule is essential because inconsistent requirements would be confusing and lead to uneven results. We recommend that the Final Rule expressly state that, for an entity covered by both rules, the disposal requirement would be part of the entity's larger information security program.

Examples of "Reasonable Measures"

The Proposed Rule includes examples of policies and procedures that would qualify as "reasonable measures." including implementing and monitoring compliance with policies and procedures that require consumer information be shredded or burned, or that electronic media be destroyed or erased, so that this information cannot practicably be read or reconstructed. In addition, for covered entities that will hire another party to perform their record destruction, reasonable measures would include entering into, and monitoring compliance with, a written contract that requires the other party to dispose of consumer information in a manner consistent with the disposal standard. We recommend that the Final Rule clarify that a written contract would not be required in all instances in which a covered entity hires another party to dispose of consumer information, provided that the policies of the party doing the destruction meet the requirements of the disposal standard.

MBNA appreciates the opportunity to comment on this important matter. If you have any questions concerning these comments or if we may otherwise be of assistance in connection with this matter, please do not hesitate to contact the undersigned.

Very truly yours,

MBNA America Bank, N.A.

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