Comment #: 50

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BY ELECTRONIC MAIL

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

Re: The FACT Act Disposal Rule, R—411007
Proposed Rule, 16 CFR Part 682
Disposal of Consumer Report Information and Records

Ladies and Gentlemen:

The American Insurance Association ("AIA") appreciates the opportunity to comment on the Federal Trade Commission's ("FTC") proposed rule regarding the disposal of consumer report information and records ("proposed rule"), as set forth in the April 20, 2004 Federal Register. 69 Fed. Reg. 21388-21392. AIA is a national trade association of major property and casualty insurance companies, representing over 450 insurers that provide all lines of property and casualty insurance throughout the United States and wrote more than $109 billion in annual premiums in 2002. Because our members, in their business operations, use consumer reports, we have a stake in this rulemaking process.

As detailed below, AIA is concerned with two aspects of the proposed rule: (1) the scope of the "consumer information" definition; and (2) the potential for examples to serve as mandatory standards of conduct rather than as illustrations of compliance methods.

First, the definition of "consumer information" contained in the proposed rule is potentially so broad that it could lead insurers to conclude that every single informational record in its position must fall within the scope of the term. That definition, set forth in Subsection 682.1(b) reads as follows:

> "As used in this part, 'consumer information' means any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report." (Emphasis added)

While AIA understands what is included in a "consumer report," as that term is defined by the federal Fair Credit Reporting Act ("FCRA"), there seems to be no limits on what individual record is "derived" from a consumer report. Where the parameters of the term "consumer information" are open to debate, insurers are likely to default to compliance based on secure disposal of every individual record in their possession.

This problem is compounded by the insurance regulatory system, which requires insurer compliance with document retention requirements in all states in which they do business. Many of those states

have personal information definitions that vary from the one proposed by the FTC. For example, in 2000, California enacted Assembly Bill 2246, which introduced requirements regarding the disposal of hard copy documents containing personal information (as California defines that term). Additional states have introduced the California law for adoption in their own jurisdictions, thus emphasizing the need to harmonize the proposed rule with these state laws.

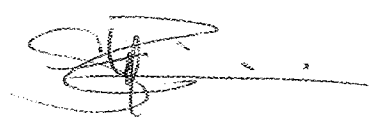
For national companies, the state regulatory system requires adherence to 51 different and sometimes inconsistent standards. Addition of an ambiguous "consumer information" definition at the federal level adds complexity and additional compliance burdens. Rather than focusing on the derivation of the individual record, the proposed rule should focus on the nature of the consumer information itself. The FTC can accomplish this objective by deleting the last clause of the "consumer information" definition ("derived from a consumer report....").

Second, AIA is concerned with the use of "examples" in Subsection 682.3(b) to illustrate the "reasonableness" standard outlined in Subsection 682.3(a) of the proposed rule.[1] The use of examples in a regulatory context – even where accompanied by explanatory text – creates the appearance of a standard that must be followed, rather than guidance that may be followed. Without doubt, rather than serving as guidance, AIA fears that the examples will be cited in future lawsuits as industry "best practices." Discovery will then focus on whether a company adhered to an example – and, if not, why not. AIA believes that the FTC would avoid these problems by deleting the examples from the proposed rule.

Finally, the proposed rule becomes effective a mere 3 months from publication as a final rule in the Federal Register. This is insufficient time for companies to implement the regulatory standards into a cohesive privacy and data security program, particularly if the company does business in more than one regulatory jurisdiction. We respectfully request that the regulatory effective date be modified to commence 12 months from the date of publication as a final rule.

Again, AIA appreciates the opportunity to comment on this regulation and asks the FTC to consider and implement our recommendations. We look forward to continuing to work with the FTC as it promulgates FACT Act-related rules.

Respectfully submitted,



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cc: Catherine I. Paolino (AIA)

[1] That subsection reads: "Any person who maintains or otherwise possesses consumer information, or any compilation of consumer information, for a business purpose must 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."