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**VIA ELECTRONIC SUBMISSION**

Federal Trade Commission  
Office of the Secretary  
Room H-159 (Annex Q)  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

***Re: FACTA Notices, Matter No. R411013***

The following comments are submitted on behalf of ACA International (“ACA”) in response to the request by the Federal Trade Commission (“FTC” or “Commission”) for comments on the summaries of rights and notices of duties under the Fair Credit Reporting Act (“FCRA”) as required by Sections 607 and 609. *See* 69 Fed. Reg. 42,616 (July 16, 2004). The FTC seeks public comment on (1) a summary of rights of identity theft victims; (2) a general summary of consumer rights; (3) a notice of furnisher responsibilities; and (4) a notice user responsibilities. The proposed summaries and notices are to be delivered by consumer reporting agencies.

**I. Statement on ACA**

ACA International is an association of credit and collection professionals who provide a wide variety of accounts receivable management services. Founded in 1939 and headquartered in Minneapolis, ACA represents approximately 5,300 third party collection agencies, attorneys, credit grantors, and vendor affiliates. ACA members include sole proprietorships, partnerships, and corporations ranging from small businesses to firms employing thousands of workers.

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ACA's mission is to help its members serve their communities and meet the challenges created by changing markets through leadership, education, and service. ACA members comply with all applicable federal and state laws and regulations regarding debt collection, as well as ethical standards and guidelines established by ACA. ACA members are regulated by the Commission under the Fair Debt Collection Practices Act ("FDCPA"), the Fair Credit Reporting Act ("FCRA"), the Gramm-Leach-Bliley Act ("GLBA"), and other federal and state laws. Many ACA members are "furnishers" of consumer information to consumer reporting agencies.

ACA has the following comments concerning the proposed furnisher notice:

1. The paragraph entitled "Notice to Furnishers of Information: Obligations of Furnishers Under the FCRA" contains a statement that "[s]tate law may impose additional requirements." ACA believes that this statement is inconsistent with section 625(b)(1)(F) of the FCRA, which generally preempts state law.

2. The paragraph entitled "Duties After Notice of Dispute From Consumer" presents a potential conflict for furnishers regarding state licensing requirements. Many furnishers report negative tradeline information regarding consumers to consumer reporting agencies. The new investigation requirements of section 623(a)(8)(E)(iii) present a serious problem in at least two instances.

The first involves reporting by a furnisher that is a collection agency licensed to collect debts in the state in which the consumer resides. If the consumer subsequently moves to a state in which the furnisher/collection agency is not licensed, the furnisher confronts a conflict between the FACTA and the state statutory/licensing laws. The conflict arises because FACTA requires the furnisher to complete an investigation and report the results to the consumer, but a collection agency may be wrongfully accused of violating state licensing laws by attempting to collect a debt in the state when it does so.

The second involves reporting by a furnisher that only reports information to consumer reporting agencies and has no direct contact with consumers, thereby not triggering state collection licensing requirements.<sup>1</sup> Here, again, based on the interplay of the FACTA

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<sup>1</sup> ACA is unaware of any judicial decision which has held that furnishing consumer information to a consumer reporting agency, standing alone, is an attempt to collect a debt under the FDCPA.

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investigation requirement and state licensing laws, the furnisher that reports the information might be wrongly accused of violating state law when it fulfills the FACTA requirement of conveying the investigation results to the disputing consumer.

In either instance, the basic problem is that a furnisher that complies with the FACTA section 623(a)(8) by investigating a dispute and reporting the results to the consumer might be alleged to have engaged in a communication or attempt to collect a debt. ACA believes that the FTC's notice to furnishers should clarify that *compliance with section 623(a)(8) is not a communication or attempt to collect a debt under the FDCPA*.

3. The paragraph entitled "Duties After Notice of Dispute From Consumer" states that "furnishers must comply [with the regulations] and complete an investigation within 30 days (or 45 days, if the consumer later provides relevant additional information) unless the dispute is frivolous or irrelevant or comes from a 'credit repair' organization." However, the FCRA permits the furnisher to conduct the investigation based on the same time period afforded a CRA in instances where the error stems from a consumer report. CRAs are given 45 days by statute. The proposed notice's allocation of a shorter period of time for furnishers therefore is inconsistent with the statute.

4. Finally, ACA believes that the paragraph entitled "Duties When ID Theft Occurs" does not accurately reflect the provisions of FACTA. The last sentence of that paragraph states that a furnisher may not sell, transfer, or place for collection a debt after it has received notice that the debt resulted from identity theft under section 615(f). There are, however, exceptions to section 615(f), as specified by Congress in subsection 615(f)(3)(C). We realize that the FTC has attempted to balance brevity with the benefits of full disclosure. ACA believes that the exceptions identified by Congress are significant for furnishers to receive in the context of the proposed notice.

ACA appreciates the opportunity to comment on the Commission's proposed Disposal Rule. If you any questions, please contact Rozanne Andersen, ACA International General Counsel and Senior Vice President of Legal and Governmental Affairs, at (952) 928-8000 ext. 132, or Andrew M. Beato at (202) 737-7777.

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Sincerely,

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