

**FEDERAL TRADE COMMISSION
OFFICE OF THE SECRETARY
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WASHINGTON DC, 20580**

**COMMENTS OF ACA INTERNATIONAL IN RESPONSE REQUEST FOR
COMMENTS ON ACCURACY PILOT STUDY: PAPERWORK COMMENT
(FTC FILE NO. P044804)**

**SUBMITTED TO THE OFFICE OF THE SECRETARY OF THE FEDERAL
TRADE COMMISSION AND THE OFFICE OF MANAGEMENT AND BUDGET
DESK OFFICER FOR THE FEDERAL TRADE COMMISSION**

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INTRODUCTION

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 notice to implement the requirement of a study of the accuracy and completeness of consumer report information pursuant to section 319 of the Fair and Accurate Credit Transactions Act of 2003 (“FACTA”). *See* 70 Fed. Reg. 24583 (May 10, 2005) (“Notice”).

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. 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

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("FDCPA"), the Fair Credit Reporting Act ("FCRA"), the Gramm-Leach-Bliley Act ("GLBA"), and other federal and state laws. In particular, many ACA members are "furnishers" of consumer information under the FCRA, as amended by the FACTA.

II. Summary of the Proposed Pilot Study

Section 216 of the FACTA requires the FTC to study the accuracy and completeness of information in consumers' credit reports and to consider methods for improving the accuracy and completeness of such information. As a precursor to a nationwide study, the FTC proposed to conduct a pilot study which will evaluate the feasibility and methodology of a nationwide survey on the accuracy and completeness of consumer reports.¹

The parameters of the pilot study are significant because the format of the small-scale pilot study will affect any subsequent national study of the accuracy and completeness of consumers' report information. Based on the Notice, the parameters are as follows:

1. The stated objective of the proposed pilot study is to evaluate the feasibility of directly involving consumers in a review of the accuracy and completeness of information in their credit reports.
2. The Notice does not define what is deemed accurate or complete information in a consumer report, or conversely, what is inaccurate or incomplete information.

¹ The FTC previously sought comment on the information collection requirements associated with its proposed pilot study in October 1994. *See* 69 Fed. Reg. 61675 (Oct. 20, 2004) (notice of pilot study and request for comment). The instant request for comment is made pursuant to the Office and Management and Budget's regulations implementing the

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3. The pilot study does not rely on the selection of a nationally representative sample of consumers.
4. A small group of approximately 35 consumers will be selected.
5. The FTC intends to skew the sampling of consumer participants to select consumers with comparatively lower credit scores.
6. The study participants will authorize contractors to review their credit reports.
7. The contractors, referred to as “expert coaches,” will help the participants to understand their reports and to discern inaccuracies or incompleteness in them.
8. The FTC describes the study as “primarily a tool to assess whether the collection of certain data pertinent to credit report accuracy can be performed in a way that is not unduly resource-intensive and would not be cost-prohibitive if extended to a nationwide survey.” 70 Fed. Reg. at 24584.
9. The FTC will not draw statistical conclusions from the study.
10. According to the FTC, the “pilot study is not intended to replicate normal circumstances under which consumers generally review their credit reports; nor is it intended to evaluate the adequacy or complexity of the dispute process. . . . The scrutiny applied to the reports of study participants, via the help of an expert coach, would not at all be indicative of a consumer’s normal experience in reviewing a credit report.” 70 Fed. Reg. at 24585.

11. The FTC staff does not intend that the pilot study resolve disputed credit report items. Nor will the study “be used to draw conclusions about credit report accuracy.” 70 Fed. Reg. at 24586. However, the [f]ollowing completion of the pilot study, the FTC staff plans to evaluate the number and potential seriousness of unresolved disagreements in an effort to determine whether there is an appropriate methodology to assess them in a nationwide study.” *Id.*

III. Comments on the Proposed Pilot Study

A. General Comment

ACA welcomes the opportunity to comment on the proposed pilot study. As a general proposition, ACA supports the FTC’s undertaking a trial study of the accuracy and completeness of consumer reports using methodologies that might translate to a subsequent, national survey. However, ACA believes that there are deficiencies in the proposed pilot study that threaten to compromise the utility of a later national study. As noted below, these deficiencies relate the basic parameters of the proposed pilot study, such as its lack of typicality with “normal” consumer transactions, and the lack of a common terminology or definitions of key study terms.

B. Sampling of Skewed Consumer Participants

As proposed, the FTC intends to skew the study participants toward those consumers with lower credit scores. The FTC explains the reason for a stratified sampling of low credit scoring consumers as “such people are likely to experience greater harm if their credit reports

have errors contributing to the low score.” 70 Fed. Reg. at 24586.

There is no basis in the Notice, nor in the record of this proceeding, for the FTC to reach a conclusion that consumer injury is at its zenith when there are alleged inaccurate or incomplete tradeline information on reports that otherwise have accurate and complete negative tradeline information also contributing to the low score. To the extent there is injury or harm to a consumer as a consequence of inaccurate or incomplete data, a consumer with good credit may be harmed in a comparative or greater extent, for example, an inability to qualify for the lowest interest rate on a loan. Proceeding under the skewed sampling especially is suspect in light of the possibility that a national study might index errors based on type, seriousness and level of consumer harm.

C. Use of an “Expert Coach”

ACA is concerned with the proposed role of the expert coaches that would be available for the consumer participants. The coaches have expertise in credit reporting far superior than a typical consumer. They will help the participants understand their reports and discern inaccuracies or incompleteness in them. The Notice indicates that the contractors that have been selected include Fair Issac Corporation, the Credit Research Center from Georgetown University, and the Center for Business and Industrial Studies at the University of Missouri. Thus, in addition to two academic entities, a leading credit score company is part of the coaching staff.

The Notice is devoid of any criteria that will be used by these coaches when interacting

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with consumers. The coaches will be charged with guiding consumers to identify alleged inaccuracies or incomplete data, determining disputes, communicating “unresolved” disputes to the FTC staff, and otherwise providing unbiased advice to consumers. As such, they are critical to the study as the direct interface with consumers. ACA has the highest regard for the contractors selected by the FTC, however the Notice affords no opportunity to evaluate the role of the contractors or their suitability to fulfill the significant role as an “expert coach.” In part, this is reflected in the absence of any specific definitions to guide the coaches, that is, what is to be construed as “accurate” or “complete” information, or what is a “dispute.” *See infra* Part III.D.

Finally, ACA also notes that the selection of contractors would benefit if it were to include representatives from the credit and collection industry, for example, a creditor or its agent as a data furnisher.

D. Lack of Definition

Another concern is that the proposed pilot study does not define even the most basic of terms at the core of the FTC’s charge under section 319 of the FACTA to undertake a study of the accuracy and completeness of information in consumer reports. The terms “accuracy” and “completeness” nowhere are defined as used in the context of the proposed pilot study. Simply stated, what criteria will the expert coaches apply in evaluating the accuracy and completeness of tradeline data?

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As data furnishers, ACA members also are concerned that the proposed pilot study does not define the type of conduct will be deemed a “dispute” in the context of the study. The concept of a “dispute” is integral to the utility of the study as it is a term used in four of the six possible outcomes of the items reviewed on the consumer reports. *See* 70 Fed. Reg. at 24585.

As the Commission is well aware, a “dispute” is a loaded term for the accounts receivable management industry and data furnishers under the FACTA’s “know or should know” standard. The term is not defined by FACTA, even though it is used throughout the statute to trigger duties of data furnishers. For example, is it a legitimate “dispute” under FACTA for debtor to hang up on when called by a debt collector to attempt collection of a debt? The courts that have looked what constitutes a consumer’s “dispute” have not added clarity. In *Brady v. The Credit Recovery Co., Inc.*, 160 F.3d 64 (1st cir. 1998), the court concluded that a dispute requires no notification by the consumer, written or oral, but instead depends solely on the furnisher’s knowledge of the debt irrespective of what the consumer has communicated. Such a standard is ethereal. Moreover, a clear understanding what in the study will be deemed a “dispute” is especially significant because of the stated intention of the FTC to “evaluate the number and potential seriousness of the unresolved disagreements [disputes] in an effort to determine whether there is an appropriate methodology to assess in a nationwide survey.” 70 Fed. Reg. at 24586. At a minimum, the pilot study should identify the criteria that the expert coaches will be asked to consider or utilize when flagging disputes.

CONCLUSION

ACA appreciates the opportunity to comment on the proposed pilot study. 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.