

August 16, 2004

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

Re: FACTA Notices, Matter No. R411013

To Whom It May Concern:

The Coalition to Implement the FACT Act (“Coalition”) submits this comment letter in response to the proposed summaries of rights and notices of duties under the Fair Credit Reporting Act (“FCRA”) published by the Federal Trade Commission (“FTC”) (“Proposed Models”). 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. The Coalition appreciates the opportunity to comment on the Proposed Models.

### **In General**

The Coalition applauds the FTC for developing the Proposed Models in a manner that provides a great deal of information in an easy-to-understand format. We believe that the model form pertaining to the rights of identity theft victims (“ID Theft Model”) and the model form of consumer rights under the FCRA (“Consumer Rights Model”) will be particularly useful to consumers. Although we believe that the Proposed Models can be improved modestly, we urge the FTC to adopt the Proposed Models with only relatively minor changes.

### **ID Theft Model**

Section 609(d) requires the FTC to “prepare a model summary of the rights of consumers under [the FCRA] with respect to the procedures for remedying the effects of fraud or identity theft involving credit, an electronic fund transfer, or an account or transaction at or with a financial institution or other creditor.” If a consumer contacts a consumer reporting agency and expresses a belief that the consumer is a victim of fraud or identity theft involving any of the circumstances described above, the consumer reporting agency must provide the consumer with a summary of rights that contains all of the information required by the FTC in its model, and information on how to contact the FTC to obtain more detailed information.

### *Information Governed by the FCRA*

The ID Theft Model states that the FCRA “governs the collection and use of information about you, including how you pay your bills. Consumer reporting agencies, such as credit bureaus, collect this information and provide it to your creditors and other persons who have a right to the information.” The Coalition believes these sentences should be deleted. As a general matter, we do not believe that these sentences offer consumers useful information. Furthermore,

the sentences may give consumers false impressions with respect to the scope of the FCRA. For example, the FCRA does not necessarily govern the collection and use of all information about consumers. The FCRA, in fact, may not even govern in all instances information about how the consumer pays his or her bills. We also note that the FCRA does not provide creditors a “right” to obtain a consumer report. However, in order to clarify these sentences, the FTC would likely need to provide more detail than a consumer would find useful as part of a summary of identity theft victim’s rights. Therefore, we urge that the sentences be deleted, and that the relevant paragraph begin by stating “In 2003, Congress amended the Fair Credit Reporting Act (‘FCRA’) to give you specific rights...”

#### *Right to Free File Disclosures*

The FCRA grants consumers with the right to obtain a file disclosure from a consumer reporting agency once every 12 months if the consumer believes that there may be inaccurate information in the consumer’s file as a result of fraud. The ID Theft Model states that “You have the right to a free copy of your consumer report if you believe it has inaccurate information due to fraud or identity theft.” The Coalition requests that the FTC amend this sentence to state “You have the right to a free file disclosure once every 12 months if you believe it has inaccurate information due to fraud.” The amended provision notifies the consumer of his or her right to a free file disclosure once every 12 months. It also adheres to the statutory right consumers have with respect to inaccurate information due to fraud. On the other hand, there is no statutory right with respect to identity theft, *per se*. The amendment also refers to a “file disclosure” as opposed to a “consumer report” because the FCRA distinguishes between the two. (This last comment has general applicability throughout the ID Theft Summary and the Consumer Rights Summary.)

#### *Fraud Alert*

Section 605A allows consumers who meet certain criteria to insert various types of “alerts” in their files at “nationwide” consumer reporting agencies. The ID Theft Model describes this right for identity theft victims. We urge the FTC to clarify that the fraud alert and active duty alert provisions apply only to nationwide consumer reporting agencies. As drafted, some identity theft victims may assume that their rights with respect to these alerts apply with respect to all consumer reporting agencies.

#### *Rights under Section 609(e) of the FCRA*

The ID Theft Model states that “A creditor or other business must give you copies of applications and other business records relating to a transaction...” The Coalition urges the FTC to revise this provision to give identity theft victims a better understanding of their rights under Section 609(e) of the FCRA. In particular, we suggest specifying that the consumer must request the documents in writing and mail the request to an address specified by the business. We also suggest informing the victims that there may be circumstances in which the business is not required to provide the requested information.

#### *Blocking Information Relating to Identity Theft*

The ID Theft Summary gives a complete and concise summary of an identity theft victim’s rights to block a consumer reporting agency from reporting information relating to an

identity theft. We urge the FTC to provide a similar summary with respect to the blocking of information at a furnisher. Specifically, the ID Theft Summary should state that the consumer must identify the information to be blocked and provide an identity theft report. As drafted, the ID Theft Summary implies by omission that the consumer need not identify for the furnisher the information to be blocked. The ID Theft Summary should also clarify that the identity theft report is *required* to trigger these rights under the FCRA.

### *Other Rights*

The last two paragraphs of the ID Theft Summary describe rights that do not pertain to remedying the effects of identity theft. Because Congress limited the scope of the ID Theft Summary to only those rights relating to remedies for identity theft, we request the FTC to delete the last two paragraphs. Not only do these paragraphs exceed the scope of the congressional mandate to provide a summary of rights with respect to remedying identity theft, but we believe that the description of the rights is so brief and cursory as not to provide meaningful information to identity theft victims. If the FTC retains these provisions, it should clarify that the consumer has a right to obtain “a” credit score for a fee. The ID Theft Summary, by referring to “you[r] score,” implies that there is a single score assigned to each consumer. Of course, there may be a variety of credit scores pertaining to a consumer depending on who is “scoring” the consumer.

## **Consumer Rights Model**

### *Right to Free File Disclosures*

The Consumer Rights Model notes the instances in which a consumer may request a file disclosure from a consumer reporting agency free of charge. However, the Consumer Rights Model does not indicate that the rights to free file disclosures are available only once every 12 months. We believe this is an important fact for consumers to know, and should be included in the Consumer Rights Model. The FTC also states that the consumer may obtain a free file disclosure “if you are the victim of identity theft; [or] if you are the victim of fraud...” There is no right to a free file disclosure for consumers who are victims of identity theft. Furthermore, victims of fraud are entitled to free disclosures *only* if they suspect that there may be inaccurate information in their files as a result of the fraud. We urge the FTC to clarify the Consumer Rights Model accordingly.

### *Credit Scores*

The Consumer Rights Model states that “You have a right to know your credit score.” As noted above, there may be a variety of credit scores that are used with respect to a consumer at any given time, depending on the scoring model used. We believe the reference to “your” credit score suggests to the consumer that there is a single score applicable to the consumer. Therefore, the Coalition requests that the Consumer Rights Model refer to “a” credit score.

The Consumer Rights Model also informs consumers that they will receive credit score information without charge in connection with some mortgage transactions. We request that the document clarify for consumers that the credit score information will be provided by the mortgage lender, not necessarily by a consumer reporting agency.

### *Inaccurate Information*

According to the Consumer Rights Model, “A consumer reporting agency or furnisher must remove or correct information verified as inaccurate...” We believe this statement may be confusing for consumers. As a general matter, consumers will not necessarily understand the term “furnisher.” The statement also implies that the furnisher removes or corrects information in the consumer’s file at a consumer reporting agency. Although the furnisher plays an important role in determining whether the information is corrected or removed, the consumer reporting agency itself corrects or removes the information. A more appropriate approach may be that “Information verified as inaccurate must be corrected or removed...”

### **Furnisher Model**

#### *Rulemakings*

The Notice of Furnisher Responsibilities in the Proposed Models (“Furnisher Model”) makes several references to future rulemakings by the FTC and other federal agencies. The Coalition is concerned that the Furnisher Model may confuse less sophisticated furnishers by stating that the agencies “will promulgate guidelines and regulations” when, in reality, such guidelines and regulations may be issued by the time the furnisher is provided the notice. The language also suggests that the furnisher should review the FTC’s regulations with respect to furnisher obligations, even though many furnishers will not be subject to the FTC’s regulations. The Furnisher Model could state, instead, that the agencies are required to issue regulations with respect to the relevant obligations, and that any regulations issued can be found at the agencies’ web sites. Alternatively, the FTC could refer to its own web site and provide links at that web site to the other agencies’ regulations. (This comment is also applicable with respect to provisions in the User Model discussed below.)

#### *State Law*

The Furnisher Model implies that “State law may impose additional requirements” on furnishers other than those described in the Furnisher Model. In general, Section 623 of the FCRA imposes obligations on furnishers. Section 625 of the FCRA then provides that states may not impose additional obligations on furnishers. Two provisions of state law in Massachusetts and California were grandfathered. Therefore, in effect, the FCRA establishes a uniform national standard with respect to furnisher obligations and the reference to state law in the Furnisher Model should be deleted. Alternatively, the Furnisher Model should refer only to limited differences in state law with respect to furnishers in Massachusetts and California.

#### *Reporting Inaccurate Information*

The Furnisher Model includes provisions pertaining to obligations to report accurate information. However, the FTC has deleted the reference to the obligation of a furnisher to stop furnishing information under Section 624(a)(1)(B). We believe the Furnisher Model should reference this obligation in the same manner as it is referenced in the existing model notice of furnisher obligations.

#### *Reinvestigation Obligations*

Under Section 623(b)(1)(E) of the FCRA, if a furnisher finds a disputed item of information to be inaccurate or incomplete, or if the information cannot be verified, after a reinvestigation, the furnisher must modify or delete that item of information or permanently block the reporting of that item of information. The Furnisher Model suggests that this must be done within 30 (or, in some cases, 45) days from the date the consumer reporting agency receives the dispute from the consumer. We do not believe this is the correct interpretation of the statute. Section 623(b)(2) states that the furnisher “shall complete all investigations, reviews, and reports” within that timeframe. The modification, deletion, or blocking of such information is not covered under this requirement. We urge the FTC to amend the Furnisher Model accordingly.

### *Reporting Date of Delinquencies*

Section 623(a)(5)(B) of the FCRA provides alternatives with respect to furnishing the date of delinquency if the furnisher is not the creditor to whom the debt was owed when the debt became delinquent. The statute appears to apply to all circumstances when this could occur. However, the Furnisher Model implies that it applies only to debt collectors. We urge the FTC to amend the Furnisher Model to reflect the broader scope of Section 623(a)(5)(B) of the FCRA.

### *Financial Institutions and Reporting Negative Information*

The Furnisher Model states that “Furnishers who are financial institutions must notify consumers in writing if they furnish negative information to a CRA.” The Coalition requests that the FTC amend this provision to give furnishers a more complete understanding of their obligations under Section 623(a)(7). We suggest: “Financial institution furnishers that extend credit and regularly and in the ordinary course of business furnish information to a nationwide consumer reporting agency must provide a consumer a written notice with respect to any furnishing of negative information regarding credit extended to the consumer. The notice may be provided to the consumer any time prior to furnishing the information (although it may not be included in certain disclosures under the Truth In Lending Act), or within 30 days of furnishing the information.”

### *Duties When Identity Theft Occurs*

Section 623(a)(6) of the FCRA provides that if a consumer submits an identity theft report to a furnisher at the address specified by the furnisher for receiving such information, and the identity theft report states that information maintained by the furnisher relates to identity theft, the furnisher may not furnish such information to a consumer reporting agency except in limited circumstances. The Furnisher Notice states only that “Furnishers must also establish procedures so that information reported directly to the furnisher by consumers about accounts that are linked to identity theft will not be furnished to any CRA” except in the limited circumstances. We request that the Furnisher Model make reference to the fact that the consumer must file an identity theft report with the furnisher at the specified address, and that the identity theft report must specify the information to be blocked, before the obligations are imposed on the furnisher.

### **User Model**

### *Adverse Action*

The Notice of User Responsibilities (“User Model”) states that an “adverse action” under the FCRA includes “offering credit on less favorable terms than requested.” In fact, it is not adverse action unless the consumer does not accept the counteroffer. We request the User Model be amended to reflect the definition of adverse action more accurately.

### *Fraud Alerts*

Section 605A(h) of the FCRA imposes certain obligations on users of consumer reports (“users”) if the user obtains a consumer report that includes a fraud alert or active duty alert. The statutory language pertaining to these obligations is complex, and the obligations apply in only limited circumstances. However, the User Model suggests that in all instances a user must take certain steps if there is a fraud alert or active duty alert in the consumer’s consumer report. This is not the case, and the Coalition requests that the User Model be amended to provide a more complete description of users’ obligations with respect to fraud and active duty alerts.

### *Address Discrepancies*

The User Model states that a consumer reporting agency will notify users when the address of the consumer as provided by the user is “different from the address in the consumer’s file.” However, Section 605(h) requires the notice when the user’s request “includes an address for the consumer that substantially differs from the addresses in the file of the consumer.” The statutory language recognizes that the consumer’s file may have many addresses, and we believe the User Model should do the same.

### *Risk-Based Pricing Notices*

Section 615(h) of the FCRA requires users to provide consumers with risk-based pricing notices in certain circumstances. The notice must include certain information described in Section 615(h)(5). However, the User Model suggests that the risk-based pricing notice must inform the consumer that the consumer received credit on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers. The statute does not require such information to be provided in the risk-based pricing notice. The User Model should be amended accordingly.

The User Model also states that “Consumers who receive a [risk-based pricing] notice will be entitled to a free copy of their consumer report.” The Coalition strongly disagrees with this assertion as a matter of law. At the very least, whether or not the receipt of a risk-based pricing notice creates a right to a free file disclosure is an open question. Given that the assertion is not necessary, as it does not reflect any obligation on a user, we do not believe that the Proposed Models are the appropriate forum to discuss the legal issues involved or to unveil a substantive and controversial interpretation of the law. The Coalition requests that the FTC delete this statement from the User Model.

### *Affiliate Marketing*

Although the User Model is intended to inform users of their duties under the FCRA, it includes provisions relating to Section 624 of the FCRA. Section 624 imposes obligations and limitations on affiliates who receive certain information other than consumer reports. Given that Section 624 of the FCRA does not apply to users, we do not believe that the User Model should reference Section 624.

Thank you again for allowing the Coalition to comment on this issue. Please do not hesitate to contact me at 202 464 8815 if the Coalition can be of further assistance.

Sincerely,

Jeffrey A. Tasse  
Executive Director