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COALITION TO IMPLEMENT THE FACT ACT



August 16, 2004

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



Re: FACT Act Affiliate Marketing Rule, Matter No. R411006

To Whom It May Concern:

The Coalition to Implement the FACT Act ("Coalition") submits this comment letter in response to the Proposed Rule ("Proposal") issued by the Federal Trade Commission ("Commission") regarding the affiliate marketing provisions included in Section 624 of Fair Credit Reporting Act ("FCRA") as amended by the Fair and Accurate Credit Transactions Act ("FACT Act"). 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 Proposal.

Background

The FACT Act added a new Section 624 to the FCRA. In general, any person that receives from an affiliate information that would be a "consumer report" but for the exceptions to that definition in Section 603(d)(2)(A) ("Eligibility Information"), may not use the information to make a solicitation for marketing purposes to a consumer about its products or services unless it is clearly and conspicuously disclosed to the consumer that the information may be shared for purposes of making solicitations and the consumer is provided an opportunity and simple method to opt out of receiving such solicitations. The FCRA states that a consumer's opt out must be effective for at least five years, although the consumer can extend the opt out in certain circumstances. Section 624 also provides several instances in which Section 624 will not apply. Congress provided that a notice required by Section 624 may be coordinated and consolidated with any other notice that must be provided to the consumer by law, such as the privacy notice required by the Gramm-Leach-Bliley Act ("GLBA").

Benefits of Affiliate Sharing

In a recent report to Congress titled "Security of Personal Financial Information," the Treasury Department concluded that "the sharing of information [including among affiliates]...has increased the access of more consumers to a wider variety of financial services, at lower costs, than ever before." This conclusion is not surprising. In fact, one of the primary drivers behind the enactment of the GLBA was that consumers would benefit from increased products at lower costs that result from the synergies of affiliate relation-

