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Federal Trade Commission

Office of the Secretary

Room 159-H (Annex H)

600 Pennsylvania Avenue, N.W.

Washington, D.C. 20580

RE: The Fact Act Disposal Rule, R-411007

To the Commission:

The National Association for Information Destruction, Inc. ("NAID") submits these comments on the Federal Trade Commission's ("FTC") *Supplemental Initial Regulatory Flexibility Analysis for Notice of Proposed Rulemaking*,¹ which addresses the small business impact of its proposed disposal rule implementing Section 216 of the Fair and Accurate Credit Transactions Act of 2003 ("FACT Act"). In NAID's view, the FTC's proposed reasonableness standard provides ample flexibility for all covered entities, large and small. This standard will not place undue burdens on small businesses because the practice of shredding confidential documents is a simple, low-cost means to comply with the rule.

NAID concurs with the FTC's conclusion that "the statute's purpose of protecting consumers against identity theft could be undermined by the granting of a broad exemption to small entities."² Since the risk of identity theft exists regardless of whether large or small businesses receive records containing consumer information, the standards should be the same for all entities who make use of such information. In fact, it may be even more important to require strict compliance from smaller businesses that handle consumer information that may not have faced the need in the past to develop disposal policies. Accordingly, the FTC would allow serious gaps in coverage if it carved out an exemption for small businesses, or indeed, for any entities. Also, because buying a shredder is a quick, easy, and inexpensive undertaking, it is unnecessary to extend the effective date of the rule for small businesses.

Moreover, the FTC should not create an exemption for small businesses or, indeed, for any entities, simply because these entities are covered by the Gramm-Leach-Bliley Act ("GLB"). By enacting the FACT Act, Congress addressed the need for further

¹ 69 Fed. Reg. 41219 (July 8, 2004) (to be codified at 16 C.F.R. pt. 682).

² *Id.* at 41221.

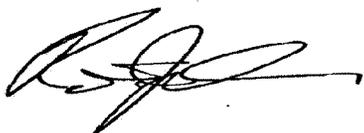
regulation that extends beyond the scope of GLB. The FTC's proposed rule should not create carve-outs that undercut this intent. Further, to the extent that the scope of the GLB and the FACT Act overlap, as NAID noted in its earlier comments in this rulemaking, "since GLB and the FACT Act set forth complimentary provisions to achieve the same goals, the guidance appropriate under GLB should apply to the FACT Act, and vice versa. Accordingly, the final rule should expressly state that, to the extent that GLB requires proper disposal of information, the Disposal Rule sets forth the requisite standards under GLB." This suggested approach would reconcile any potential differences between GLB and the FACT Act and thus avoid any need to grant exemptions, including for small businesses.

Again, we commend the proposed regulations, as they provide substantial new protections against identity theft and further Congress' purpose in enacting the FACT Act. We respectfully request that the FTC promulgate a rule that will apply equally to all entities that use consumer information. By avoiding gaps in the coverage of the new regulations, the FTC can ensure that the rule most effectively promotes the congressional intent of minimizing identity theft.

Respectfully submitted,



John Bauknight IV, President



Robert Johnson, Executive Director