



555 West Adams Street
Chicago, IL 60661
Tel 312 466 7730
Fax 312 466 7986
jblenke@transunion.com
www.transunion.com

John W. Blenke
Executive Vice President
General Counsel

June 15, 2004

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

Re: The FACT Act Disposal Rule, R-411007

To Whom It May Concern:

This comment letter is submitted on behalf of TransUnion LLC ("TransUnion") in response to the proposed rule issued by the Federal Trade Commission ("FTC") regarding the proper disposal of consumer information derived from consumer reports ("Proposed Rule"). TransUnion is a Delaware limited liability company that employs approximately 3,600 people with operations on five continents and in 24 countries. TransUnion is a consumer reporting agency as such term is defined in the federal Fair Credit Reporting Act ("FCRA"). We appreciate the opportunity to share our comments with the FTC as it prepares a final rule ("Final Rule").

Background

Section 216 of the Fair and Accurate Credit Transactions Act, or the FACT Act, directs the FTC and other agencies to "issue final regulations requiring any person that maintains or otherwise possesses consumer information, or any compilation of consumer information, derived from consumer reports for a business purpose to properly dispose of any such information or compilation." The FACT Act also clarifies that nothing in the regulations would require a person to maintain or destroy any record pertaining to a consumer that is not imposed under other law nor would they alter or affect any requirement imposed under any other provision of law to maintain or destroy such a record.

Definition of "Consumer Information"

The Proposed Rule imposes requirements on any person who maintains or possesses "consumer information," which is defined as "any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report." A "consumer report" has the same meaning as it is given in the FCRA. We believe that the FTC has provided a definition that properly implements the statutory directive. However, we are concerned that the FTC intends to apply its definition in a manner that is not consistent with the

language in the Proposed Rule. In particular, the Supplementary Information to the Proposed Rule suggests that the FTC believes that a consumer reporting agency possesses “consumer information.” We respectfully suggest that an analysis of the definition of “consumer information” indicates otherwise.

Under the Proposed Rule, “consumer information” is information derived from a “consumer report.” The FCRA defines a “consumer report” as, among other requirements, a “communication of any information by a consumer reporting agency.” In short, information cannot be a consumer report until it is communicated by a consumer reporting agency. Therefore, information merely in the possession of a consumer reporting agency does not meet the statutory definition of a “consumer report” and therefore falls outside the scope of Section 216 and the Proposed Rule.

We want to stress that TransUnion takes our obligation to protect the security of information seriously. We have in place a program that is designed to comply with the requirements imposed under the FTC’s Standards for Safeguarding Customer Information (“Safeguarding Rule”). According to the FTC’s Safeguarding Rule, a consumer reporting agency must protect any nonpublic personal information it receives from other financial institutions. The FTC has also indicated that such protection would include the proper disposal of nonpublic personal information. So, not only do we believe that the definition of “consumer information” excludes the information maintained by consumer reporting agencies, but that inclusion of such data would be redundant to existing requirements. Therefore we urge the FTC to clarify in the Supplementary Information to the Final Rule that “consumer information” does not include information held by consumer reporting agencies.

A key concept in the definition of “consumer information” is that the information be a “record about an individual.” The Supplementary Information indicates that “[i]nformation that does not identify particular consumers would not be covered, even if the information was originally ‘derived from consumer reports,’ since that information would no longer be” a record about an individual. TransUnion strongly agrees with the FTC’s interpretation of how the Final Rule would apply to anonymous or aggregate information. We ask the FTC to include this concept as an example in the Final Rule of a type of information that would not meet the definition of “consumer information.”

Definition of “Disposing” and “Disposal”

The Proposed Rule provides examples of what it means when the Proposed Rule uses the terms “disposing” and “disposal.” Specifically, “disposing or disposal includes” “the discarding or abandonment of consumer information” and “the sale, donation, or transfer of any medium, including computer equipment, upon which consumer information is stored.” The FTC also suggests in the Supplementary Information that “the sale, donation, or transfer of consumer information would not be considered ‘disposal’ under the” Proposed Rule.

TransUnion believes that the FTC has established by use of examples a reasonable definition of what it means to dispose of information. However, we are concerned that the FTC has not provided a firm definition of “disposing” and “disposal.” In this regard, we urge the FTC

to define the term by stating what it *means*, not just what it *includes*. We believe that it is important for the FTC to provide such a definition in light of the risks that may arise if covered entities do not know what activities are covered by the Final Rule. If a person does not have a clear understanding of what activities will be deemed to be “disposing” of consumer information, that person could conceivably, but unknowingly, violate the Final Rule. Therefore, persons simply must know the boundaries of the definition of “dispose” and any variation thereof. We urge the FTC to amend the Proposed Rule accordingly, and to include in the text of the Final Rule that the term does not include the sale, donation, or transfer of consumer information.

Scope of the Proposed Rule

The Proposed Rule “applies to any person over which the [FTC] has jurisdiction, that, for a business purpose, maintains or otherwise possesses consumer information or any compilation of consumer information.” The FCRA gives the FTC the authority to exempt any person or class of person from application of the Final Rule. The FTC, in the Supplementary Information, requests comment on whether there are any persons or classes of persons covered by the Proposed Rule that the FTC should consider exempting from the Final Rule’s application.

TransUnion believes that financial institutions subject to the Safeguarding Rule should be exempt from the Final Rule. As noted above, the Safeguarding Rule requires financial institutions subject to the FTC’s jurisdiction to protect not only the nonpublic personal information pertaining to their own customers, but also to the nonpublic personal information pertaining to other financial institutions’ customers in their possession. Therefore, it would appear that the Safeguarding Rule would apply to any “consumer information” maintained by a financial institution subject to the FTC’s jurisdiction. We urge the FTC to exclude such entities in order to avoid confusion with respect to compliance obligations, as well as to avoid unnecessary liability.

Proper Disposal of Consumer Information

The Proposed Rule states that “[a]ny person who maintains or otherwise possesses consumer information...for a business purpose must properly dispose of such information by taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.” The FTC states that the Proposed Rule “does not require covered persons to ensure perfect destruction of consumer information in every instance; rather, it requires covered entities to take reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.” Furthermore, the FTC “expects that entities covered by the [Proposed Rule] would consider the sensitivity of the consumer information, the nature and size of the entity’s operations, the costs and benefits of different disposal methods, and relevant technological changes.”

We applaud the FTC for developing a Proposed Rule that focuses on taking reasonable measures to protect the information. We also commend the FTC for avoiding a prescribed approach that may not be appropriate for all covered entities. TransUnion urges the FTC to retain the notion that entities should take several factors into consideration in developing their procedures with respect to the disposal of consumer information.

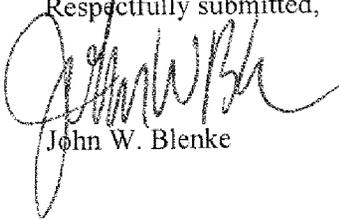
Effective Date

The FTC intends to make its Final Rule effective three months from the date on which it is published in the *Federal Register*. We believe that more time is necessary for covered entities to review the types of information they possess, how such information is disposed of, and what measures need to be taken to protect the information from unauthorized access or use in connection with its disposal. We urge the FTC to provide for at least six months before the Final Rule becomes effective.

* * * * *

Once again, TransUnion appreciates the opportunity to comment on the Proposed Rule. If you have any questions regarding our comments, or if we may be of further assistance in connection with this matter, please do not hesitate to contact me at the number indicated above.

Respectfully submitted,



John W. Blenke