

June 15, 2004

Ellen Finn, Attorney  
Bureau of Consumer Protection  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

RE: The FACT Act Disposal Rule, R-411007

Dear Ms. Finn,

The Michigan Credit Union League (MCUL) appreciates the opportunity to provide comments to the Federal Trade Commission (FTC) concerning the proposed FACT Act disposal rule. The MCUL is a trade association representing over 90% of state and federally chartered credit unions in the state of Michigan. This comment letter was drafted in consultation with the MCUL Government Affairs Committee, which is comprised of Michigan credit union staff and officials.

The MCUL supports the FTC's proposal to implement standard consumer information disposal standards as mandated by the FACT Act. We believe that the proposal balances the concerns of consumers and the industry, however we request clarification on some issues.

### Summary of Comments

- MCUL supports the proposed definitions of "consumer information" and "disposal," though we request additional guidance on what constitutes consumer information.
- MCUL believes the standards for disposal are flexible, however we ask for further clarification with regards to the destruction of information on computers.
- MCUL feels the examples of reasonable record disposal measures are fine, as most are currently used by credit unions.
- MCUL requests consistency with regards to both the FTC's rule, which applies to state chartered credit unions (SCUs), and the NCUA's rule, which will apply to federally chartered credit unions (FCUs).

### Discussion

**Consumer Information and Disposal.** The FTC has requested comment on whether the definitions of "consumer information" and "disposal" are clear. The proposed rule defines "consumer information" as any record of an individual in any form, paper or electronic, that is a consumer report or derived from a consumer report. The definition of "consumer report" is the same as currently used under the Fair Credit Reporting Act (FCRA), which generally means credit, reputation, personal, or mode of living information used to establish eligibility for credit, employment, and for certain other purposes. Information that is derived from consumer reports, but does not identify any specific consumers, would not be covered under the proposed rule.

**Consumer Reports.** Since the definition of "consumer report" is already incorporated within the FCRA, MCUL believes the definition of "consumer information" will be familiar to the standards that credit unions already use for disposing of information. Perhaps, the FTC could use existing guidance from the FCRA to provide additional guidance for their rule. One question the MCUL has is, according to the FCRA, a consumer report includes "credit, reputation, personal, or mode of living information used to establish

eligibility for credit, employment, and for certain other purposes.” The proposal also states that information that is derived from consumer reports but does not identify any specific consumers would not be covered under the proposed rule. Technically a member’s name could be something that is derived from a credit report, however if there is no other identifying information tied to that name (i.e. social security number, date of birth, account number) would that, in itself, be something that would have to be destroyed? In this sense we ask for additional clarification, as well as any further guidance that the FTC could provide.

**Electronic Media Destruction.** The term “disposal” means the discarding or abandonment of consumer information, as well as the sale, donation, or transfer of any medium, including computers, upon which consumer information is stored. One stipulation requires “Destruction or erasure of electronic media containing consumer information so it cannot be read or reconstructed.” With regards to electronic information there is some concern as to what would be considered proper disposal. With the ability for greater means of data retrieval, people with the proper knowledge of how to do so can access information considered completely deleted. Credit unions using electronic media also understand that recoverable data often remains on computers after erasure, and additional disposal efforts may be necessary in these situations. However, we would like clarification on what would be considered adequate data removal from computerized systems. We feel the definition is reasonably clear, but would welcome additional guidance.

**Flexible Standards.** The FTC has also specifically requested comment as to whether the standards for disposal are flexible enough and whether they minimize burdens for smaller entities, such as credit unions. We believe the standards are flexible in that they acknowledge that perfect destruction of records may not be reasonable in all situations. Factors including the sensitivity of the information, the size of the entity, the costs and benefits of different disposal methods, all impact the chosen method of disposal, which is largely left to the credit union’s discretion. We also believe that the examples of reasonable record disposal measures included in the proposed rule are appropriate as they contemplate methods already used by credit unions, including shredding of paper documents and destroying or erasing electronic media containing consumer information to the extent it cannot be read or reconstructed.

**Maintain Consistency with NCUA.** We would like to encourage the FTC to try to maintain as much consistency as possible between their rule and the NCUA’s rule for federal credit unions. We believe that FCUs and SCUs should be treated as similarly as possible so as not to create any discrepancies. We recognize that the FTC’s rule applies to more than just credit union’s, however we believe that the NCUA has a solid rule with regards to information disposal. We also encourage the FTC to follow CUNA’s suggestion to require a compliance date that will be three months after the final rule is issued, consistent with the rule issued by NCUA.

We thank you for the opportunity to comment.

Sincerely,



Matthew Beard  
Regulatory Specialist  
Michigan Credit Union League

cc: Credit Union National Association, Inc.