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June 15, 2004

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via electronic mail

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

RE: FACTA Identity Theft Rule, Matter No. R411011

Dear Mr. Secretary:

We, the undersigned Attorneys General, appreciate the opportunity to provide these comments to the proposed rules concerning identity theft. Given the rising number of identity theft-related complaints that we are seeing across the country, the provisions in the FACT Act, Public Law 108-159, 117 Stat. 1952, which provide identity theft victims with some relief, were welcome to the Attorneys General. Many of our offices field phone calls from and provide what assistance we can to victims of identity theft. We are grateful for the additional tools the FACTA provides to identity theft victims, many of whom spend countless hours attempting to correct the aggravating problems resulting from this crime.

As the FTC recognizes in the overview sections of its Notice of Proposed Rulemaking, many of the key benefits of the new FACTA provisions, including the following three, will be triggered by the filing of an "identity theft report:" (1) identity theft victims who file such a report may obtain an "extended fraud alert" – an alert placed in the victim's credit report for a period of seven (7) years which, among other things, requires users of the victim's credit report to ensure the correct identity of the person seeking credit before issuing new credit (§ 605A); (2) identity theft victims who file an identity theft report may "block" information resulting from the identity theft from their credit histories that might otherwise negatively affect their credit records (§ 605B); and (3) identity theft victims may provide identity theft reports directly to their

creditors in order to prevent these creditors from continuing to make adverse credit notations on the victims' credit reports (§ 623(a)(6)(B)).

Clearly, the definition of "identity theft report" is critical. The FACTA already provides a limited definition. Specifically, it provides that the term "identity theft report" has "the meaning given that term by rule of the Commission, and means, at a minimum, a report (A) that alleges an identity theft; (B) that is a copy of an official, valid report filed by a consumer with an appropriate Federal, State, or local law enforcement agency, including the United States Postal Inspection Service, or such other government agency deemed appropriate by the Commission; and (C) the filing of which subjects the person filing the report to criminal penalties relating to the filing of false information if, in fact, the information in the report is not true." (§ 603(q)(4)).

Rather than develop ways in which to make it easier for identity theft victims to develop and file an identity theft report with an appropriate law enforcement agency, the proposed rules make it more difficult for victims by adding two elements to the definition of identity theft report: (1) the proposed regulations would require victims to allege the incident "with as much specificity as the consumer can provide" (§ 603.3(a)(1)), and (2) the proposed regulations would also define an identity theft report as including "additional information or documentation that an information furnisher or consumer reporting agency reasonably requests for the purpose of determining the validity of the alleged identity theft. . . ." (§ 603.3(a)(3)).

We have concerns with these additional requirements. First, the requirement that identity theft victims provide additional information when requested to do so by an information furnisher or a consumer reporting agency is too open-ended. When will a consumer know whether she has supplied sufficient information or documentation? What is to limit a consumer reporting agency or information furnisher from requesting documentation or information that may be inappropriate to request?

Second, as written, the proposed regulations permit the situation where all information furnishers and credit reporting agencies can develop their own criteria for an identity theft report. It is possible to imagine that, in addition to filing a law enforcement identity theft report, consumers will be required to submit several, additional forms to each of the credit reporting agencies and information furnishers in order to establish that they have filed an "identity theft report." This cannot be what was intended by the FACTA. At the very least, the regulations should provide one form containing all information that identity theft victims are expected to provide, such as the FTC affidavit form which is already available on the FTC's website.

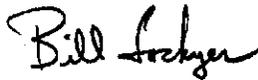
Third, that these additional requirements are contained within the definition of "identity theft report" means that identity theft victims may not benefit from those specific protections of the FACTA that first require the filing of an identity theft report.

Finally, the additional specificity requirement assumes that consumers will have more information about the identity theft incident than most victims of identity theft, in fact, possess, such as information about the perpetrator.

In addition to these new elements, we note that, while the FTC acknowledges in the commentary to the proposed rule that the FTC is an appropriate law enforcement office with which consumers may file identity theft reports, the FTC does not take the step of specifying this in its regulations. Many consumers may not know that a report filed with the FTC will qualify as an identity theft report, and we believe that the final regulations should so state.

In conclusion, we urge the FTC to create rules to make it easier for identity theft victims to develop and file identity theft reports with an appropriate law enforcement agency. If you have questions or comments regarding our views, please do not hesitate to contact either Dennis Cuevas, NAAG Consumer Protection Project Manager and Counsel, at (202) 326-6019, or Julie Brill, Vermont Assistant Attorney General, at (802) 828-3658. Thank you for considering our views.

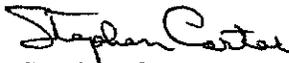
Very truly yours,



Bill Lockyer
Attorney General of California
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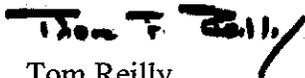
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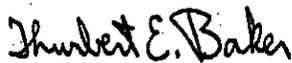
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