CDIA
CONSUMER DATA INDUSTRY ASSOCIATION
Empowering Economic Opportunity

September 9, 2008

Federal Trade Commission
Room H-135 (Annex J)
600 Pennsylvania Avenue., NW
Washington, DC 20580

Re: Consumer Experiences with CRAs Research: FTC File No. P065405

The Consumer Data Industry Association ("CDIA") is pleased to offer comments on the proposed survey of consumer experiences with consumer reporting agencies following an incident of identity theft.[1]

CDIA's Members and Identity Theft:

CDIA's members have been at the forefront of producing market-leading tools which reduce incidence of the crime and help consumers directly.

Regarding crime prevention, our members have built state-of-the-art products which empower lenders to identify potential fraud before it takes place, by properly identifying and authenticating consumers and transactions. We believe these products, which are being used more widely than ever, are at the core of positive trends in certain forms of identity theft, particularly those focused on credit. Consider the following:

[1] CDIA is the international trade association representing over 250 consumer data companies that provide fraud prevention and risk management products, credit and mortgage reports, tenant and employment screening services, check fraud and verification services, data for insurance underwriting and also collection services.

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- Javelin Strategy and Research data showed a 19.8% drop in total estimated victims between ’02 and ’07.
- As the FTC knows, its own survey of consumers showed a drop of 16.2% in total estimated victims between ’03 and ’05.
- U.S. Department of Justice data showed a drop of 11% in total estimated victims between ’04 and ’05.
- FTC complaint data shows that identity theft complaints as a percentage of all complaints received dropped 7% between ’04 and ’07.
- Both FTC and Javelin Strategy & Research data showed that new application fraud (often considered the most pernicious form of identity theft) dropped. In fact FTC polling data showed an estimated drop of 45% between ’03 and ’05.

A real-world business case shows how effectively our members’ products are working:

– Over 33 million in-store applications are processed by a single lender annually, or over 90,000 applications per day.
– Approximately 60% of all applications are approved, or 19.8 million annually.
– There is 1 fraudulent account opened per 1,613 approved applications.
– Total fraudulent applications is therefore 0.06% of an annual sample of 19.8 million approved applications.

When it comes to empowering and protecting consumers themselves, our members are also market leaders. They provide comprehensive suites of tools for consumers which ensure that they can take control and identify risks sooner, even if they become victims of identity theft. These products, such as credit file monitoring, are used by millions of consumers every year in much the same way that consumers buy security systems for their homes or OnStar systems for their cars. These monitoring products are so highly valued that they are the solution of choice for companies who want to offer a measure of protection to consumers who receive a security breach notice. Consider the following statements made by consumers who buy these products:

> *“I have been a member [of your service] for a couple of years. I have appreciated the weekly credit alert notices as [sic] protecting my credit is very important.”*

> *“With [your service] I am always updated on changes and informed about my credit. I am thankful for having [you] there for me.”*

FTC Survey – Scope:

We are surprised by the proposed scope of the FTC's survey. The FACT Act provided consumers with a range of new rights, many of them outside of the realm of a consumer's interaction with a Consumer Reporting Agency (CRA), and it is not clear to us why the FTC is choosing to focus exclusively on the consumer's interaction with consumer reporting agencies. In "Combating ID Theft – A Strategic Plan" the President's ID Theft Task Force recommended conducting an "…assessment of FACT Act remedies under FCRA, [Page 7]" but did not propose to limit that assessment to CRA-related issues.

Therefore, because of its narrow focus, this survey falls short of meeting the mandate proposed by the President's ID Theft plan. For example, the survey should explore a consumer's experiences with obtaining identity theft reports from law enforcement agencies, which is a critical step in enabling a consumer to exercise additional rights under the FACT Act. The FTC's 2006 Identity Theft Survey Report only attempted to measure consumers' general satisfaction with the process of obtaining police reports (see page 50), but the core questions about a consumer's knowledge of how to use the report and the experiences of a consumer who did use the report to take advantage of FACT Act rights created in 2003 was absent. Limiting a survey to just consumer reporting agency experiences will not yield results which help inform the FTC's thinking.

FTC Survey – Consumer Recollection:

CDIA has very strong concerns with the FTC's assumption that this approach to studying consumer experiences will yield useful, actionable information. Surveying consumers for their opinions is very different than surveying consumers to determine how an industry has complied with a law.

Consumer recollection degrades over time. The FTC will not be able to control for this nor to identify when it is happening. In fact during the FTC's own June 30, 2004 workshop on assessing methodologies for assessing the accuracy and completeness of credit reports FTC staff were cautioned to be careful in depending on the recollection of consumers. Professor Souleles from the University of Pennsylvania made a number of observations found in the roundtable transcript that are worth noting:

"*you would expect that the larger the stakes, the more likely people would get it right, but it's still the case that people get wrong even important things.*"

"Many of you know that a few years ago, they asked people -- they added a module about bankruptcy to the regular ongoing study, and these are retrospective questions asking people, have you filed for bankruptcy and when and so forth. And there are sampling weights assigned to the study. It's possible to try to aggregate up the study and get something that is nationally representative. Now, when you go and look at these retrospective answers of did you file and aggregate up and then compare them to numbers -- the number of aggregate bankruptcy filings that we know are out there, you only get about half the aggregate, okay? So, somewhere there's an error.

The point Professor Souleles makes is very critical. If a highly experienced team of academics with core experience in survey instrument design can find significant problems with consumers who do not recall filing for bankruptcies, then the FTC is likely to have the same profound problems. However, the compensating factor which Professor Souleles was able to employ to identify the problem: cross comparing survey respondents' answers with bankruptcy filings, is not available to the FTC. The FTC is designing a survey methodology which is wholly dependent on consumer recollection (regardless of the use of focus groups, telephonic outreach or paper surveys). The GAO 2005 report entitled "Credit Reporting Literacy: Consumers Understood the Basics but Could Benefit from Targeted Educational Efforts" acknowledged problems where questions were dependent on recollection and stated the following on page 56:

> "In addition, behaviors such as ordering a credit report or seeing a credit score may be overreported because respondents wish to appear diligent to interviewers or have mistaken one type of information for another. However, others may tend to underreport these behaviors because of a failure to recall distant events, or similarly because they mistake one type of information for another. We have no additional information on the extent or direction of this kind of error."

The dependence on consumer recollections is a core methodological problem on which the FTC needs to provide additional input before proceeding with any survey, particularly one the they state is going to "inform and guide the FTC's future enforcement…efforts."

FTC Survey – Sampling Methodology

CDIA disagrees in the strongest terms with a methodology which focuses on consumers who have reported data to the FTC. This skews sampling results since it is very likely that consumers which contact the FTC are different than the population of millions of consumers who chose not to report. The FTC has no proposal for measuring the broader population of perhaps 8 million consumers and thus their approach vastly undercounts those consumers who may have had their issues dealt with quickly by the CRA, lender or other party, and therefore did not file a complaint and ultimately had positive experiences.

By way of example, the FTC's 2005 consumer survey indicates that 58.9% of identity theft victims were existing account frauds, while 38.1% were new account fraud victims. However, the FTC's Sentinel Report indicates that identity theft complaints skew the other way – 15.2% of complaints are new account fraud, and only 10.7% comprise existing account fraud. In other words, the sample is likely to over-count victims of new account fraud and under count existing account fraud victims.

Here again, this is a core methodological problem and the FTC should not proceed with this survey absent developing a proper population selection process that is representative and not merely a derivative of self-reporters.

Further, the survey may be even further skewed by the type of respondent to the survey. Specifically, CDIA believes that it is likely that the preponderance of consumers who respond are likely to be consumers who have had a negative experience, as opposed to those who's complaints and problems may have been quickly addressed. The FTC needs to study that issue and determine a way to address that potential shortcoming.

FTC Survey – Measuring Legitimate Consumer Experiences vs. Perceptions:

The FTC limits its proposed questions to direct experiences with consumer reporting agencies, but ignores the fact that much of that experience may have been shaped by experiences with other parties. For instance, if a consumer had difficulty obtaining a police report, they may consequently have had difficulty having a trade line blocked, but that is not addressed in these questions.

Further, the FTC will not be able to control or compensate for consumer perceptions and how these perceptions influence the way a consumer responds to a survey. For example, consumers may believe that an action by a consumer reporting agency was a violation of law when in fact it was not. FTC itself acknowledges this point well when it states on page 3 in its "Annual Report 2008: Fair Debt Collection Practices Act"

"On the other hand, the Commission acknowledges that not all of the debt collection practices about which consumers complain are law violations. Certainly, many consumers do complain of conduct that, if accurately described, violates the Act. The FTC, however, does not verify that the information consumers provide is accurate unless it undertakes such an inquiry in connection with its law enforcement activities."

Specific questions raised by the Commission:

<u>Q.1 Is the proposed collection of information necessary for the proper performance of the functions of the agency, including whether the information has practical utility.</u>

Surveying consumers to understand what they think or perceive is helpful. CDIA believes however, that surveying consumers to measure recollections is highly suspect and is likely to yield little utility. Because of this concerns, our members do not believe that any such data could be used for law enforcement purposes and we are very concerned with the FTC suggesting that such a methodology is appropriate in guiding a law enforcement agency's priorities.

Further, as noted above, such a survey is likely to yield responses from skewed samples, as discussed above. (I.E. a higher percentage of new account fraud and more consumers who have had negative experiences.) This will significantly limit the utility of this survey.

<u>Q.2 Is the agency's estimate of the burden of the proposed collections of information accurate?</u>

CDIA does not have the expertise to address this issue.

<u>Q.3 Are there ways to enhance the quality, utility, and clarity of the information to be collected:</u>

CDIA's members believe that focusing solely on CRA-related activity will not yield a useful result. We also do not believe that conducting a survey of consumer recollections for purposes of law enforcement is appropriate. If the goal is to inform the FTC's thinking with regard to consumer experiences then the FTC should redesign the survey to avoid depending on consumer recollection.

Until the FTC can overcome core methodological problems including a self-selected population, a sole dependence on consumer recollection and the inability to control for consumer perceptions of lawfulness, the survey should not be conducted

<u>Q. 4 Are there ways to minimize the burden of the collections of information on those who</u>

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

CDIA does not have the expertise to address this issue.

Again, thank you for this opportunity to respond.

Sincerely,

Stuart K. Pratt,
President and CEO