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September 21, 2010

VIA ELECTRONIC SUBMISSION

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex M)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

***Re: FACTA Notices, Project No. P105408
RIN 3084-AA94***

Dear Mr. Secretary:

The following comments are submitted on behalf of ACA International (“ACA”) in response to the Federal Trade Commission’s proposed rule and request for comment on the Summary of Rights and Notices of Duties under the Fair Credit Reporting Act, 75 Fed. Reg. 52655 *et seq.* (August 27, 2010).

The Fair Credit Reporting Act, 15 U.S.C. § 1681-1681x, requires the Commission to prepare a model summary of rights under the FCRA, including the content of notices that consumer reporting agencies must provide to entities that obtain and use consumer report information (“User Notice”). 15 U.S.C. § 1681e(d). As discussed below, ACA believes that the User Notice promulgated by the Commission contains content that is different than the statutory language in that the User Notice refers to a “customer’s credit account.” For reasons explained herein, restricting the permissible purpose to “credit” accounts is inconsistent with the statutory text and the Commission’s Official Staff Commentary, which expressly contemplates a permissible purpose to use consumer reports to review and collect consumers’ accounts regardless whether it is a credit account or non-credit account.

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I. Background on ACA International.

ACA International is an international trade association originally formed in 1939 and composed of credit and collection companies that provide a wide variety of accounts receivable management services. Headquartered in Minneapolis, Minnesota, ACA represents approximately 5,500 company members, including credit grantors, collection agencies, attorneys, asset buyers and vendor affiliates. Whether creditors, asset buyers or sellers, or third-party debt collectors, ACA members regularly furnish and use consumer information under the FCRA to effectuate collections of consumer accounts.

The company-members of ACA comply with applicable federal and state laws and regulations regarding debt collection, as well as ethical standards and guidelines established by ACA. Specifically, the collection activities of ACA members are regulated primarily by the FTC under the Federal Trade Commission Act, 15 U.S.C. § 45 *et seq.*, the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 *et seq.*; the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* (as amended by the Fair and Accurate Credit Transactions Act); the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 *et seq.*; in addition to numerous other federal and state laws. Indeed, the accounts receivable management industry is unique if only because it is one of the few industries in which Congress enacted a specific statute governing all manner of communications with consumers when recovering debts, including those created in the context of healthcare operations. In so doing, Congress committed the primary regulation of the recovery of debts to the jurisdiction of the Federal Trade Commission. 15 U.S.C. § 1692i.

ACA members range in size from small businesses with a few employees to large, publicly held corporations. Together, ACA members employ in excess of 150,000 workers. These members include the very smallest of businesses that operate within a limited geographic range of a single town, city or state, and the very largest of national corporations doing business in every state. The majority of ACA members, however, are small businesses. Approximately 2,000 of the company members maintain fewer than ten employees, and more than 2,500 of the members employ fewer than twenty persons.

ACA members are a crucial component in safeguarding the health of the economy. Uncollected consumer debt threatens America's economy. According to the Federal Reserve Board and United States Census Bureau, total consumer bad debt costs every adult in the United States \$683 every year. This translates into a cost for the average non-supervisory worker of nearly 54 hours (before taxes) in annual salary that pays for the bad debt of other consumers. By itself, outstanding credit card debt has doubled in the past decade and now approaches three quarters of one trillion dollars.

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As part of the process of attempting to recover outstanding payments, ACA members are an extension of every community's businesses. They represent the local family doctor, hospital, or nursing home. ACA members work with these businesses, large and small, to obtain payment for the goods and services received by consumers. In years past, the combined effort of ACA members have resulted in the recovery of billions of dollars annually that are returned to business and reinvested. For example, ACA members recovered and returned over \$40 billion in 2007 alone, a massive infusion of money into the national economy.¹ Without an effective collection process, the economic viability of these businesses, and by extension, the American economy in general, is threatened. At the very least, Americans are forced to pay higher prices to compensate for uncollected debt.

II. Response to Request for Comment.

ACA's comments relate to the User Notice, Appendix H. The Commission asks for comment on whether the proposed User Notice is clear. ACA submits that the proposed notice lacks clarity in that it is inconsistent with the language used in 15 U.S.C. § 1681b. Specifically, the FCRA states as follows:

(a) In general. Subject to subsection (c), any consumer reporting agency may furnish a consumer report under the following circumstances and no other: . . .

(3) To a person which it has reason to believe

(A) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer;

15 U.S.C. § 1681b(a)(3)(A). The proposed User Notice translates this provision using the following description:

You can obtain a consumer report only if you have a "permissible purpose." Under the FCRA, permissible purposes are:

- To extend credit in response to an application or to review or collect on a customer's credit account

¹ PricewaterhouseCoopers, Value Of Third-Party Debt Collection To The U.S. Economy in 2007: Survey and Analysis, *available at* <http://www.acainternational.org/files.aspx?p=/images/12546/pwc2007-final.pdf>.

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The statute does not reference a “credit account.” It does not restrict the permissible purpose to a “credit account.” Instead, the plain language of the statute is “review or collection of an account” of a consumer. As presently drafted, the proposed User Notice incorrectly informs users that there is no permissible purpose unless the account is based on the extension of credit, as opposed to other consumer accounts.

The Commission has previously addressed the availability of a permissible purpose under the specific language in 15 U.S.C. § 1681b(a)(3)(A). In the Commission’s Official Staff Commentary, the staff made clear that users, such as collection agencies, have a permissible purpose to obtain a consumer report in connection with the recovery of debts:

1. Reports Sought in Connection with the “Review or Collection of an Account”

A. *Reports for collection.* A collection agency has a permissible purpose under this section to receive a consumer report on a consumer for use in attempting to collect that consumer’s debt, regardless of whether that debt is assigned or referred for collection

Official Staff Commentary to Section 604(3)(A). This is the proper interpretation for specific statutory provision, as it does not restrict the permissible purpose to only “credit accounts” of consumers.

Consistent with the Commission’s request for comments on the content of the notices, ACA respectfully submits that the proper characterization of 15 U.S.C. § 1681b(a)(3)(A) in the User Notice requires the removal of the word “credit” before “account so as to read “To extend credit in response to an application or to review or collect on a customer’s account.”

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ACA appreciates the opportunity to comment on the proposed amendments. If you have any questions, please contact Andrew Beato at 202-737-7777.

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