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VIA HAND DELIVERY

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

Re: *Credit Report Freezes – Comment*
Project No. P075420

Dear Mr. Secretary:

The following comments are submitted on behalf of ACA International (“ACA”) in response to the Federal Trade Commission’s request for comments on the impact and effectiveness of credit report freezes to combat identity theft.

The President’s Identity Theft Task Force aims to evaluate the need for a federal credit freeze law. This evaluation is based in part on the efficacy of current state laws. As discussed herein, ACA believes that current state laws are effective to deter identity theft. However, if the Task Force recommends federal action, ACA believes that the law should preempt state credit freeze laws and exempt users of consumer reports who have a permissible purpose under the Fair Credit Reporting Act to obtain a report. These permissible purposes include reviewing/collecting on an account and reviewing an account to determine whether the consumer continues to meet the terms of the account. Without this exemption (as is currently reflected in state credit freeze laws), the credit freeze might function as a block to legitimate efforts to recover past due obligations owed creditors.

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I. Background On ACA International.

ACA International is an international trade organization 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 6,000 members based in more than 55 countries and ranging from credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates. ACA has numerous divisions or sections accommodating the specific compliance and regulatory issues of its members' business practices.

The company-members of ACA are subject to applicable Federal and state laws and regulations regarding debt collection, as well as ethical standards and guidelines established by ACA. Specifically, the collection activity of ACA members is regulated primarily by the Commission under the Federal Trade Commission Act, 15 U.S.C. § 45 et seq., the FDCPA, the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., and 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 payments. In so doing, Congress primarily committed the Federal enforcement of the recovery of debts to Commission.

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.

Whether creditors, asset buyers or sellers, or third-party debt collectors, ACA members regularly furnish and use consumer information to effectuate collections by and on behalf of their credit-grantor clients. In this regard, ACA members play a role in the process of identifying discrepancies or irregularities in consumers' credit files that may signal the existence of identity theft. This fact is reflected in the Fair and Accurate Credit Transactions Act (FACT Act), which requires third party collectors to take affirmative steps to investigate consumers' accounts upon notice of a dispute.¹ Other FACT Act components require

¹ When a collector receives valid notice of a dispute directly from a consumer, the collector must take these four steps: (1) conduct a reasonable investigation with respect to the

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collectors to have in place reasonable procedures to respond to identity theft notifications received from consumer reporting agencies in order to prevent more false information from being reported.

ACA members have implemented these requirements using procedures scaled to the size and operations of their respective businesses. For example, a consumer claiming that reported information is the result of identity theft is advised of the information necessary to conduct the investigation, including account details and all supporting documentation required to substantiate the claim. Many collectors have implemented the Commission's Identity Theft Affidavit² as part of their normal identity theft dispute procedure, or as a template to customize a similar form.

II. ACA Members Are A Critical Part Of The Economy.

The credit and collections industry in general, and ACA members in specific, play a crucial role in safeguarding the health of the economy. Uncollected consumer debt threatens an already vulnerable domestic economy. According to a 2006 economic impact study of the collections industry conducted by PricewaterhouseCoopers LLP, third party collection agencies returned \$39.3 billion to creditors measured on a commission basis in 2005. This represents a savings of \$351 per household each year, which equates to 155 gallons of gasoline or 129 days of electricity payments attributed to households.

By itself, outstanding credit card debt has doubled in the past decade and now exceeds one trillion dollars. Total consumer debt, including home mortgages, exceeds \$9 trillion. Moreover, the greatest increases in consumer debt are traced to consumers with the least amount of disposable income to repay their obligations.

disputed information; (2) review all the information provided by the consumer with the notice of dispute; (3) complete the investigation and respond to the consumer within thirty days of receipt of the dispute; and (4) if the investigation determines that the disputed item of information is inaccurate, the data furnisher must correct the inaccuracy with each CRA to which the data furnisher has provided the inaccurate information.

2 <http://www.ftc.gov/bcp/online/pubs/credit/affidavit.pdf>.

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As part of the process of attempting to recover outstanding payments, ACA members are an extension of practically every community's businesses. For example, ACA members represent the local hardware store, the retailer down the street, and the local physician. The collection industry works with these businesses, large and small, to obtain payment for the goods and services received by consumers.

III. Comments on Topics.

Today no fewer than thirty-nine states and the District of Columbia have enacted laws enabling consumers to implement a credit freeze.³ In addition, the three nationwide consumer reporting agencies ("CRAs") offer credit freeze options. The primary focus of credit freezes is to prevent identity theft – a crime that negatively impacts consumers and businesses alike. Identity theft undermines confidence in our financial systems. Every year many Americans fall victim to identity thieves costing individuals and businesses millions of dollars. We all pay for the crime in the form of higher costs for goods and services businesses have to charge to cover losses and the increased cost of obtaining credit. Indeed, ACA members are on the front lines of the battle against identity theft in terms of detecting the crime and assisting consumers with information and documentation such as the identify theft affidavit.

In 2005, the Commission reported 255,565 identity theft records representing the largest percentage of complaint categories tracked by Consumer Sentinel (37%). Previous years witnessed similar numbers of complaint records. And yet, the type of conduct that victims experience is not always rooted in detached, impersonal mining of victims' identifying information. For example, in a survey prepared by ACA in conjunction with the Federal Reserve Board, the majority of identity theft frauds reported by survey participants actually traced to an account takeover by a family member or known acquaintance of the victim (45.7%). The data suggests not only an increase in the number of instances of identity theft, but also that the perpetrators of the crimes are much more personal and connected to the victims.

3 Thirty nine states and the District of Columbia have passed security freeze laws: Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Indiana, Illinois, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, New York, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

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Credit freezes are an important tool in consumers' arsenal to combat the crime. The freeze prevents CRAs from releasing a consumer report unless the consumer temporarily lifts or permanently removes the freeze. Credit freezes also help prevent identity thieves from opening new accounts. Businesses typically will not open new credit without first viewing the consumer's credit report.

The Commission requests comment on the extent to which credit freezes are effective in preventing identity theft. ACA has no empirical research to establish whether credit freezes are more effective than other measures at preventing identity theft. However, ACA believes that there is evidence that credit freezes function as a strong barrier to further account fraud once implemented by consumers.

A potential weakness of the patchwork of state laws and CRA-based freeze protections is the variation in protections. The scope of state credit freeze laws is not uniform. Some laws are limited to only identity theft victims, whereas other states permit consumers to impose freezes prospectively. Some states permit charges to be imposed on consumers, whereas others do not. Although in aggregate these laws deliver meaningful relief to victims of identity theft, consumers and creditors might benefit from a uniform law provided that it preempts all state laws.

Moreover, if the Commission concludes that there is a need for a federal credit freeze law, ACA emphasizes that any such law should include an exemption for the users of consumer reports that access information with a permissible purpose. Consumer report information is essential to the recovery of debts and the assessment of credit worthiness. Without safeguarding this legitimate access to consumer report information, credit freezes might inadvertently act as a barrier to the recovery of consumer accounts. Clearly this is not the intent of the freeze, and numerous states have specifically included in state laws an exception for users with permissible purposes in various categories. For example, California's credit freeze law states as follows:

(l) The provisions of this section do not apply to the use of a consumer credit report by any of the following:

(1) A person or entity, or a subsidiary, affiliate, or agent of that person or entity, or an assignee of a financial obligation owing by the consumer to that person or entity, or a prospective assignee of a financial obligation owing by the consumer to that person or entity in conjunction with the proposed purchase of the financial obligation, with which the consumer has or had prior to assignment an account or contract, including a demand deposit

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account, or to whom the consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or negotiable instrument. For purposes of this paragraph, "reviewing the account" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

(2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under subdivision (d) of Section 1785.11.2 for purposes of facilitating the extension of credit or other permissible use.

(3) Any state or local agency, law enforcement agency, trial court, or private collection agency acting pursuant to a court order, warrant, or subpoena.

(4) A child support agency acting pursuant to Chapter 2 of Division 17 of the Family Code or Title IV-D of the Social Security Act (42 U.S.C. et seq.).

(5) The State Department of Health Services or its agents or assigns acting to investigate Medi-Cal fraud.

(6) The Franchise Tax Board or its agents or assigns acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities.

(7) The use of credit information for the purposes of prescreening as provided for by the federal Fair Credit Reporting Act.

(8) Any person or entity administering a credit file monitoring subscription service to which the consumer has subscribed.

(9) Any person or entity for the purpose of providing a consumer with a copy of his or her credit report upon the consumer's request.

Ca. Civil Code Sec. 1785.11-2(1)(1-9). Consequently, ACA encourages the Commission to make sure that any proposed federal legislation except the categories of conduct and permissible uses reflected in California and other state laws.

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ACA appreciates the opportunity to comment on the effectiveness of existing credit freeze laws. We welcome the opportunity to meet with you to discuss ACA's comments. If you have any questions, please contact Andrew Beato at 202-737-7777.

Sincerely yours,

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