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Federal Trade Commission
Office of the Secretary, Room H-113 (Annex W)
600 Pennsylvania Avenue, NW
Washington, DC 20580

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I. Introduction

DBA International ("DBA") is pleased to submit the following comments in response to the Federal Trade Commission's (FTC) staff report, "*Protecting Consumer Privacy in an Era of Rapid Change: A Proposed Framework for Businesses and Policymakers*", (FTC Report). DBA applauds the FTC's leadership in addressing the privacy implications of new technology and for inviting public comments on this important issue. DBA hopes that the information provided herein will assist the FTC in its efforts to develop a national privacy policy framework that is consistent with the information needs of commercial entities. DBA requests a meeting with the appropriate FTC staff to discuss the unique information needs of our industry.

DBA's comments will focus on an overview of debt buying and highlight the commercial data involved in the process. DBA will also respond to some of the questions posed by the FTC Report. DBA urges the FTC to adopt the following recommendations:

- Scope: Because the debt buying industry is fully regulated under the Fair Debt Collection Practices Act (FDCPA), the FTC's proposed privacy framework should not be seen as applicable.
- Commonly Accepted Practices: Debt buying and debt collection should be accepted as a commonly accepted practices under any proposed privacy framework.
- Scalable Access / Control: Due to the inherently negative nature of debt information, consumer access and control over this information should be appropriately limited.
- Data Retention: A reasonable data retention period for debt information should be set at seven years, to reflect the seven year reporting period under the Fair Credit Reporting Act (FCRA). This retention period could be adjusted accordingly to accommodate existing state laws that set the state statute of limitations at a period longer than seven years.

- Industry Self-Regulation: Different industries should have the flexibility to develop unique privacy solutions that address the specific needs of a particular industry.
- Secondary Uses: Secondary uses of non-personally identifiable information (PII) should be subject to a Privacy Act type standard for compatible uses.
- Data brokers: Information used for administrative and decision-making purposes have been and should continue to be subject to fair information practice principles, but non-administrative and decisional uses should not be subject to the proposed privacy framework.

II. DBA and the Debt Buying Industry

DBA was formed in 1997 to serve as the trade association and voice for the debt buying industry. DBA currently has approximately 500 members. DBA provides a forum for debt buyers to exchange ideas and information. DBA also provides information to its members about FDCPA compliance and compliance with other consumer statutes. Further, DBA provides networking and educational opportunities for its members.

a. Debt Buying Overview

Debt buyers are financial institutions, which purchase uncollected accounts from originating lenders for less than the face value of the debt. Although debt buying has existed for some time, the industry has grown rapidly in the last ten years as an increasing number of credit originators sell increasing amounts of charged-off receivables. Examples of the types of charged-off receivables sold to debt buyers include accounts from credit card companies, mortgage lenders, telecommunications providers, retail merchants, and utilities. Upon the purchase of a portfolio of charged-off receivables, a debt buyer steps into the shoes of the originating lenders and enjoys all the same rights, title, and interest.

Generally speaking, debt buyers are either “active” or “passive.” An active debt buyer is one that purchases portfolios and engages in direct collection activity with the individual debtors. “Passive” debt buyers own a debt portfolio or an interest in a debt portfolio, but do not seek to collect on the debt directly; these companies outsource the collection of the portfolios to traditional third party collection agencies.

Debt buying is a highly regulated industry under the FDCPA, but is also subject to other consumer protection laws including, but not limited to: (1) the Dodd-Frank Wall Street Reform and Consumer Protection Act; (2) the FCRA; (3) the Fair and Accurate Credit Transaction Act; (4) the Gramm-Leach-Bliley Act (“GLB”) Financial Privacy Rule; (5)

the GLB Safeguards Rule; (6) the Electronic Funds Transfer Act; (7) the Telephone Consumer Protection Act, and (8) the Health Insurance Portability and Accountability Act. Additionally, depending upon their activities, debt buyers may be subject to state and local statutes relating to credit and debt that may be more stringent than federal law.

Debt buying has become an integral part of the credit and collection process. DBA members strive to insure compliance with the FDCPA, the FCRA, and related consumer laws. DBA members subscribe to a Code of Ethics and apply this Code to collect on valid and enforceable accounts while safeguarding the privacy of the consumer.

b. Benefits of Debt Buying

By creating a secondary debt market, debt buyers provide benefits to both consumers and the economy. Because debt buyers purchase accounts for less than the face value of the debt, they are uniquely positioned to offer more attractive repayment options to low and middle income consumers. Some examples of the options made available to consumers by debt buyers are reduced interest rates, reduced settlements, and more accommodating payment plans. This allows consumers to clear debts from their credit record and, by doing so, improve their ability to access or to reduce the cost of any future credit.

Statistics show that 95 percent of Americans pay their debts in a timely manner. By helping the remaining 5 percent repay their debts, debt buyers assist in reducing the cost of goods and services for the vast majority of consumers. By returning capital back into the marketplace, debt buying provides lenders with a return on what might otherwise be a lost asset; helps to lower the cost of credit for all consumer borrowers; and helps to make credit available for low and middle income consumers.

c. Sources of PII

After accounts are purchased, debt buyers obtain PII from the seller via a secure automated connection protected by physical, administrative and technical security measures. The initial data provided by the seller often includes information such as the date of delinquency, the date of last payment, last known address, balance due, the debtor's personal identification information, and a history of the account.

Debt buyers may also receive a computerized summary of the creditor's business records. Provisions in the purchase agreement customarily state that the seller will

furnish more complete data on a particular debt as necessary and by request. Due diligence on the part of the debt buyer and reliance on the representations and warranties contained in the purchase agreement help ensure the accuracy and integrity of the information obtained and provide some protections if the information is insufficient or incorrect.

Debt buyers also augment the PII contained in the purchased accounts with additional PII, such as bankruptcy and deceased debtor information, using external sources. Debt buyers may also utilize various address update and location services. Debt buyers may also conduct permissible pulls of credit bureau reports for location information. Communications directly with the consumer can also provide debt buyers with additional account information and updated consumer data.

III. DBA Comments on the Proposed Privacy Framework

With this basic understanding of how the industry works, DBA offers the following comments on specific issues raised in the FTC Report.

a. Scope of the Proposed Privacy Framework

There has always been a high standard for the privacy and confidentiality of debt information. As discussed, debt buying is a highly regulated industry and is already subject to numerous state and federal consumer protection laws. The FDCPA requires debt buyers to comply with many of the fair information practice principles that would be included in a national privacy framework, such as controls on how to acquire location information (FDCPA § 804); limits on who debt information may be communicated to (FDCPA § 806); and requirements to validate any debt information at a consumer's request (FDCPA § 809).

b. Commonly Accepted Practices

Consumers who receive credit understand that the debt is meant to be repaid. Even though most consumers pay their debts in a timely fashion, those who fail to do so, for whatever reason, should have a reasonable expectation that they will be contacted about repayment. Thus, the DBA believes that the use of commercial data about consumers for debt-related purposes should be recognized by the FTC as a commonly accepted practice. DBA recommends that the list contained in the FTC Report of commonly accepted practices include an express reference to debt buying and debt collection. FTC Report, Section V(C)(1), pp. 53-54. Further, DBA recommends

that Appendix C, identifying uses of commercial data, be amended to include uses of information for debt-related purposes. FTC Report, pp. C-1, C-2.

c. Scalable Access and Control of Consumer Debt Information

The DBA supports the FTC's proposed approach to make determinations about the proper extent of consumer access and control of PII based on a sliding scale. Any privacy framework should limit the ability of consumers to change or delete accurate debt information.

By its very nature, debt information is the type of information that consumers, once given access, may be incentivized to alter or delete regardless of the accuracy of the information. Obviously, debt information can be adverse and stigmatizing and is almost always sensitive.

Although the vast majority of consumers repay their debts in a timely manner, those consumers bear the burden for consumers that seek to "hide" and otherwise avoid their obligations. Thus, consumers are not and should not be able to alter or delete information that would assist debt buyers in identifying or locating individuals with outstanding debts.

d. Data Retention

DBA believes that debt buyers should retain consumer data for at least seven years to reflect the reporting period for such obligations under the FCRA. Should a particular state have a statute of limitations more than the FCRA seven year period, DBA believes that this longer period should apply.

e. Industry-Specific Privacy Approaches

DBA believes that the FTC should "maintain its flexibly, technology-neutral approach" to privacy across industries, so that each industry can address its own unique privacy challenges. FTC Report, p. 35. As recommended in the Department of Commerce's recent green paper on privacy, DBA supports "flexibility for each industry sector to develop tailored implementation plans that correspond to the privacy risks posed by their services." Commerce Report, p. 25.

The debt buying industry has already implemented important self-regulatory safeguards. DBA members adhere to ethical and business conduct standards, including

the DBA Code of Ethics. The DBA Ethics Committee is charged with enforcing the code by penalizing DBA member companies or revoking membership for Code violations.

f. Secondary Uses of PII

The FTC Report expresses concern that the enhanced ability to collect and store consumer data has increased the risk that data will be “used for purposes not contemplated or disclosed at the time of collection.” FTC Report, p. 22. However, advances in technology offer innovative new uses for information that did not exist at the time of the initial disclosure. These innovative new uses of consumer data should be preserved, especially where the use causes no harm to consumers. DBA recommends that secondary uses of non-PII should be subject to a Privacy Act type compatible use standard, so that commercial entities can take advantage of newly-developed technologies and uses of information that are reasonable and consistent with the original purposes of collection.

In the debt industry, consumer data collected in association with a particular account are frequently anonymized and used for important secondary purposes. Debt buyers, for example, are using anonymized and aggregated debt information to develop cost-effective pricing and collection models.

g. Data Brokers

DBA urges the FTC to recognize a distinction between PII used for administrative or decision-making purposes (which have been and should continue to be subject to fair information practice principles) and non-decisional uses such as research, marketing, and “tips and leads”, which should not be subject to fair information practice standards.

The debt industry, for example, relies on services provided by “skip-tracers” for “tips and leads” as to the location of an outstanding debtor. This type of information is not sensitive in nature, but merely offers possible matches between a particular name and location. Skip-tracers may make use of information from a variety of mostly public sources.

Should the FTC seek to pursue further privacy standards for data brokers, DBA recommends that a solution lies with the FCRA. By expanding the permissible purposes under the FCRA to include administrative uses of data obtained from data brokers, the PII involved would be protected by the FCRA’s robust and well-established privacy safeguards.

IV. Conclusions

DBA hopes that the FTC staff will take advantage of the DBA's offer to meet to discuss the unique privacy environment applicable to the debt buying industry and the responsible way in which the industry is meeting these challenges. Thank you for your consideration.