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November 21, 2016

Via electronic submission to <https://ftcpublish.commentworks.com/ftc/disposalrule>

Donald S. Clark
Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Suite CC-5610 (Annex B)
Washington, DC 20580

Re: Comments on Disposal Rule, 16 CFR part 682, Project No. 165410, RIN 3084-AB41

Dear Secretary Clark:

The Electronic Transactions Association (“ETA”)¹ appreciates this opportunity to provide comments regarding the Federal Trade Commission’s (“FTC” or “Commission”) Request for Public Comment on its rule regarding Disposal of Consumer Report Information and Records (“Disposal Rule” or “Rule”).² ETA supports maintaining the Disposal Rule as it currently stands, particularly the flexibility the Rule provides for the disposal of consumer information.

ETA is the leading trade association for the payments industry, representing nearly 550 companies worldwide involved in electronic transaction processing products and services. The purpose of ETA is to influence, monitor, and shape the payments industry by providing leadership through education, advocacy, and the exchange of information. ETA’s membership spans the breadth of the payments industry, and includes financial institutions, payment processors, independent sales organizations, and equipment suppliers. ETA’s members use data to provide a wide range of products and services designed to enhance and secure electronic transfers. Our members rely on data to help reduce fraud and to authenticate transactions to make transactions between businesses and consumers seamless and secure.

The Disposal Rule requires that persons over which the FTC has jurisdiction who maintain or otherwise possess consumer information for a business purpose properly dispose of such information by taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal. ETA’s position is that the Disposal Rule as currently written effectively promotes consumer information security. Since taking effect in 2005, the Disposal Rule has provided industry with flexibility to maintain and dispose of consumer information in compliance with the requirements of the Fair Credit Reporting Act (“FCRA”). The inherent flexibility in the Disposal Rule has provided companies the ability to tailor their disposal practices in ways that meet their unique business models, data use practices, and industries.

¹ <http://www.electran.org/>.

² Federal Trade Commission, 81 Fed. Reg. 61632 (September 7, 2016).



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As the FTC recognizes, in providing examples of disposal methods in the Rule, there is no one right way to ensure compliance, and companies should have the flexibility to develop their own methods for compliance with the FCRA and the Rule's requirements. The Rule appropriately uses a flexible reasonable measures standard, and ETA agrees with the FTC that there is no "foolproof" method for record destruction that would be appropriate given the unique circumstances of companies within and across various industries.

To this point, ETA cautions that additional prescriptive requirements would limit the flexibility currently built into the Rule, which, in turn, would limit the ability of industry to develop new and innovative approaches to information security. As technology and innovation continue to shape how information is created, used, stored, and disposed of, regulation must remain adaptable and should not impose rigid rules that have the effect of unnecessarily restraining innovation or imposing unnecessary costs or burdens on industry. If the FTC were to mandate a specific method, there is no guarantee the method would improve upon existing methods, but there would be a significant risk that any such method would quickly become outdated, all while imposing significant costs on industry to conform their existing practices to the FTC's mandated approach.

Given how quickly technology evolves in today's market, voluntary frameworks or self-regulation are better tools through which any prescriptive requirements, beyond those already included in the Disposal Rule, should be developed. Voluntary frameworks and self-regulation allow for on-going review and modification to reflect an ever changing marketplace. By its very nature, the regulatory system is not designed for the constant evolution taking place today. Accordingly, ETA supports maintaining the Disposal Rule as currently written, and believes that any additional "specific or prescriptive requirements," to the extent appropriate are best addressed through voluntary frameworks or self-regulation.

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ETA thanks you for the opportunity to submit these comments.

Respectfully submitted,

~ ~
Scott Talbott
Senior Vice President of Government Affairs
Electronic Transactions Association