



February 6, 2019

VIA ELECTRONIC DELIVERY

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Ave NW
Suite CC-5610 (Annex B)
Washington, DC 20580

Re: *Comments of ACA International on the Federal Trade Commission’s Request for Public Comment on Identity Theft Rules 16 CFR part 681, Project No. 188402*

Dear Sir/Madam:

ACA International (“ACA”), the Association of Credit and Collection Professionals, submits these comments in response to the Federal Trade Commission’s (FTC) request for public comment on its Identity Theft Rules (ITR). ACA appreciates the opportunity to provide comments on these rules and the impact on the debt collections industry.

I. BACKGROUND ON ACA INTERNATIONAL

ACA International (ACA) is the leading trade association for credit and collection professionals. Founded in 1939, and with offices in Washington, D.C. and Minneapolis, Minnesota, ACA represents approximately 2,500 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates in an industry that employs more than 230,000 employees worldwide. Given its longstanding history and broad membership, ACA is uniquely positioned to assist the FTC with information gathering related to debt collection, as well as to collaborate with the FTC on how its proposed policies and regulations will impact the credit and collection industry.

ACA members include the smallest of businesses that operate within a limited geographic range of a single state, and the largest of publicly held, multinational corporations that operate in every state. The majority of ACA-member debt collection companies, however, are small businesses. According to a recent survey, 44 percent of ACA member organizations (831 companies) have

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fewer than nine employees. Additionally, 85 percent of members (1,624 companies) have 49 or fewer employees and 93 percent of members (1,784) have 99 or fewer employees.

As part of the process of attempting to recover outstanding payments, ACA members are an extension of every community's businesses. ACA members work with these businesses, large and small, to obtain payment for the goods and services already received by consumers. In years past, the combined effort of ACA members has resulted in the annual recovery of billions of dollars. This saving is returned to and reinvested by businesses. This allows small businesses and large employers, to limit losses on the financial statements of those businesses. Without an effective collection process, the economic viability of these businesses and, by extension, the American economy in general, is threatened. Recovering rightfully-owed consumer debt enables organizations to survive, helps prevent job losses, keeps credit, goods, and services available, and reduces the need for tax increases to cover governmental budget shortfalls.

Importantly, ACA members are committed to fair, reasonable, and respectful practices and take their obligations in collecting debt very seriously. As credit and collection professionals, ACA members play a key role in helping consumers fulfill their financial goals and responsibilities while facilitating broad access to the credit market.

II. COMMENTS OF ACA INTERNATIONAL

A. Debt Collectors and the Fair Credit Reporting Act

ACA members are on the front lines when it comes to identity theft. In many instances a consumer first learns that they are or maybe a victim of identity theft when they are contacted by a debt collection professional. For ACA members who are also data furnishers to credit reporting agencies (CRA) under the Fair Credit Reporting Act ("FCRA")¹, the statute clearly mandates the duties and responsibilities for furnishers of data when they learn from a consumer that they are a victim of identity theft; the statute further mandates that a consumer must provide the data furnisher with a copy of an identity theft report. Under those circumstances, a data furnisher may not furnish information to a CRA regarding the fraudulent account or debt.²

The Fair and Accurate Credit Transaction Act of 2003 ("FACTA") amended sections to the FCRA to provide additional responsibilities for both CRAs and data furnishers when it comes to identity theft prevention and blocking of information.³ FACTA provided additional responsibilities upon debt collectors, even if those debt collectors are not data furnishers but are working on behalf of a creditor or other user of a consumer report. If a debt collector learns that any information relating to the debt may be fraudulent or may be the result of identity theft, the debt collector is required to notify their client as well as provide the consumer with all information the consumer would otherwise be entitled to if the consumer was not a victim of identity theft.⁴

¹ 15 U.S.C. §1681 *et seq.*

² 15 U.S.C. § 1681s-2(a)(6)

³ 15 U.S. C. §1681c-1, §1681c-2

⁴ 15 U.S.C. § 1681m(g); this provision provided an exception to the 3rd party disclosure provision of the Fair Debt Collections Practices Act ("FDCPA"), specifically 15 U.S.C. §1692c(b), which prohibits a debt collector to

Finally, furnishers of information who may happen to be debt collectors must also comply with the Furnisher Rule⁵ to ensure that the information that is being supplied to the CRA is accurate and that reasonable investigations are conducted when a consumer directly disputes. This includes claims of identity theft that may be made by a direct dispute.

Pursuant to the above mentioned statutory scheme, the FTC promulgated the ITR. Although the debt collections industry is not directly subject to these rules because they are neither financial institutions, creditors, nor CRAs, as vendors to these covered entities, they have been indirectly impacted by the ITR.

B. The ITR can have a Negative Impact on the Ability of ACA Members to Recover Legitimately Owed Debts.

The ITR can have an indirect impact on all ACA members regardless of whether they are data furnishers, by putting them in an Hobson's Choice situation when a consumer asserts a claim for identity theft **but provides no proof to support the claim.** For those creditors and financial institutions that ACA members serve, a claim for identity theft must be given the highest priority. As vendors for these clients, ACA members have been required to develop extensive robust policies and procedures to ensure that every claim for identity theft is fully vetted and investigated and information is subsequently passed on to those same clients. However, any claim for identity theft is also treated as a dispute under the FDCPA no matter when in the collection process the identity theft claim is made. Therefore a claim for identity theft halts the collection process immediately.

ACA members report repeated instances where a consumer alleges a claim of fraud or identity theft but otherwise fails to complete an identity theft report or provide relevant information to the ACA member in order to inform its client. Despite this lack of collaboration and/or evidence to confirm that such fraudulent activity has occurred, ACA members are still required to report to their clients under § 1682m(g) of the FCRA. For many ACA members' clients, an alleged claim for identity theft is enough to close the file in order for them to be in compliance with the ITR. Furthermore, for those ACA members that are data furnishers, the failure of the consumer to cooperate in an investigation puts that ACA member in a difficult situation because they are not sure whether the information they are reporting to the CRA is in fact accurate. Clients and ACA members alike typically err on the side of the consumer and mark the account as disputed or provide a fraud alert as the case maybe, but the nature of the dispute or the claim may sometimes never be confirmed.

ACA members see an inequity in this process. While ACA and its members are fully committed to ensure that victims of identity theft are provided the relief they deserve, a better balance is needed. ACA is not suggesting consumer should have unreasonable burdens to prove identity theft, but believes consumers could easily provide a response to a reasonable inquiry about the

communicate with a third party regarding a consumer's debt. Although § 1692c(b) provides an exception when communicating to a CRA, that section of the statute made no mention of data furnishers or others who may be working on behalf of creditors or users of consumer reports.

⁵ 16 CFR Part 660 *et seq.*

claim which would be helpful to ensure accurate information. ACA member clients face significant liability if they fail to appropriately address claims of identity theft and that responsibility is pushed down to ACA members as their vendors. The Furnisher Rule addresses the issue of duplicative and frivolous claims in regards to data furnishers.⁶ For those ACA members that do not furnish data, duplicative and frivolous claims are common and despite the lack of evidence of fraud or any further response from the consumer, those files are closed at the request of the client without any conclusion or determination that the claim of identity theft has merit. If legitimate collection accounts are closed, then consumers who do meet their debt obligations are unfairly impacted in many ways including but not limited to an increased cost of credit as the result of those consumers who do not pay.

ACA encourages the FTC to consider ways for consumers to cooperate when claims of identity theft are alleged. As noted above, ACA does not support burdensome obligations by consumers in order to prove their claims of identity theft. Rather the FTC should encourage consumers to not only communicate when claims of identity theft are alleged, but to do so with alternative methods of communication, like email and text. By encouraging or even mandating consumers provide at least the minimum amount of information regarding their claim for identity theft, debt collectors will be able to conduct an investigation that is meaningful in relation to the claim being made. Then the debt collections industry will be able to accurately gather the relevant information to not only assist consumers with their claims of identity theft but assist their clients in their ability to comply with the ITR.

ACA appreciates the opportunity to provide comments to the FTC in regard to the Identity Theft Rules.

Sincerely,

A handwritten signature in cursive script that reads "Leah Dempsey".

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⁶ 16 CFR part 660.4(f)