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Federal Trade Commission
Office of the Secretary
Room 159-H (Annex C)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: FACTA Free File Disclosures Proposed Rule, Matter No. R411005

Ladies and Gentlemen:

This comment letter is submitted on behalf of TransUnion LLC (“TransUnion”) in response to the Proposed Rule (“Proposal”) published by the Federal Trade Commission (“Commission”) to implement a centralized source through which consumers may request one free file disclosure every 12 months from nationwide consumer reporting agencies under Section 211(a) of the Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”). TransUnion is a Delaware limited liability company that employs approximately 3,600 people with operations on five continents and in 24 countries. TransUnion is committed to fulfilling its important role in implementing and operating the centralized source and we appreciate the opportunity to comment on the Proposal.

In General

Section 211(a) of the FACT Act amended Section 612 of the Fair Credit Reporting Act (“FCRA”) to enable consumers to request free annual file disclosures from nationwide consumer reporting agencies through a centralized source. The centralized source must enable consumers to request such file disclosures through the Internet, a toll-free telephone number, and the mail. Section 211(d) of the FACT Act directs the Commission to promulgate regulations to implement the centralized source and, in Section 211(d)(2), Congress specified a number of elements the Commission “shall consider” in prescribing those regulations. Section 211(d)(2) makes clear, for example, that the Commission must consider “the ease by which consumers should be able to contact consumer reporting agencies with respect to access to [free annual disclosure of] consumer reports.” Pub. L. No. 108-159, § 211(d)(2).

Section 211(d)(2) also makes it clear, however, that Commission must consider the effects of the free disclosure requirements on the nationwide consumer reporting agencies. In particular, the Commission is directed to consider: (i) “the significant demands that may be placed on consumer reporting agencies in providing such [disclosures];” and (ii) “appropriate means to ensure that consumer reporting agencies can meet those demands including the efficacy of a system of staggering the availability to consumers of such [disclosures].” *Id.* The Proposal

makes it clear that the Commission has begun the process of considering these issues. We are concerned, however, that more must be done to ensure that the considerations provided by Congress in Section 211(d)(2) are fully reflected in the Commission’s final rule implementing the centralized source (“Final Rule”). In particular, in order to consider “the significant demands that may be placed on consumer reporting agencies” as a result of providing file disclosures, the level or volume of the demand for those disclosures must be defined. Even more importantly, the only way the Commission can effectively consider “appropriate means to *ensure* that consumer reporting agencies can satisfactorily meet those demands” (emphasis added) is to determine or define those demands as clearly as possible.

We understand the challenges faced by the Commission in considering these issues—the task is particularly difficult in view of the absence of any experience with free file disclosures on a national basis. As discussed in greater detail below, however, we believe that the Commission can adequately address each of these issues if it uses the basic information available to it and includes in the Final Rule the following three elements:

(i) The initial capacity of the centralized source must be clearly defined at a level that reasonably anticipates consumer demand and that the operators of the centralized source can reasonably achieve;

(ii) The initial implementation of the centralized source must be achieved in a controlled “roll-out;” and

(iii) The standards for maintaining adequate capacity and handling high capacity must be clearly defined at a level that reasonably accommodates consumer demand and can reasonably be achieved.

In addition, we urge that the Final Rule provide clear safe harbors the nationwide consumer reporting agencies can rely on for developing, implementing, and operating the centralized source. While we appreciate the flexibility provided by the Commission in the Proposal, we are concerned that without clear safe harbors there is an unacceptable level of risk that the operators of the centralized source will be embroiled in unnecessary litigation as the plaintiffs’ bar attempts to exploit the uncertainties, and the courts attempt to define the details, of the centralized source requirements that are left unspecified by the Commission. The following sets forth our recommendations for addressing these issues in the Final Rule and also includes more detailed comments on specific provisions of the Proposal.

Clearly Defining Initial Capacity

It is critically important that the Final Rule clearly establish the amount of capacity the centralized source must have when it begins operation on “day one.” Without this simple but essential information, the nationwide consumer reporting agencies will be unable to determine basic components of their implementation responsibilities accurately. For example, without clearly defined capacity requirements, the nationwide consumer reporting agencies will be unable to assess key issues accurately, such as how many personnel to hire to handle mail requests, the capacity of the web site, and the call volume that must be handled by telephone.¹

¹ We also note that defining the centralized source capacity is essential to enable nationwide consumer reporting

Moreover, unless the Commission determines the capacity requirements for the centralized source, it does not seem possible that the Commission has fulfilled its requirements under Section 211(d)(2) to consider the “significant demands” on consumer reporting agencies and considered “appropriate means to *ensure* that consumer reporting agencies can satisfactorily meet those demands . . .” These demands include all other disclosures made by nationwide consumer reporting agencies, *e.g.*, pursuant to adverse action notices or claims of identity theft. The nationwide credit bureaus have strict timeframes in which to meet those demands. It is vital to ensure that these types of disclosures continue to function smoothly. Setting a fixed limit to the initial capacity of the centralized source during the transition period will help to ensure that they do. Without such a limit, our ability to support disclosures and disputes resulting from adverse action and identity theft, for example, is jeopardized.

We understand that there are certain limitations with respect to how precisely the initial capacity can be defined in view of the absence of historical data regarding a nationwide free file disclosure requirement. Nonetheless, we believe that there is sufficient data regarding experience with state free file disclosure requirements that would enable the Commission to develop a clear and reasonable standard for central source capacity at its inception. In particular, the Congressional Research Service Report to Congress, which is discussed in the Supplementary Information to the Proposal, indicates that in those states where consumers already have the right to a free annual disclosure, the average disclosure rates in those states are 231% of the request rates in other states. We believe it would be reasonable and highly defensible to use this figure to establish initial capacity for the centralized source. For example, the 231% figure is the information that was developed for Congress to use in considering the free file disclosures and centralized source provisions included in the FACT Act. It seems axiomatic that if the information was deemed sufficient to provide the basis for congressional action, it should, at a minimum, provide a reasonable starting point for the Final Rule.

Also, to our knowledge, the 231% figure is the best approximation of the demand that can be expected when the free annual disclosure requirements are put in place. The 231% figure is based on actual experience at the state level and should reflect many of the variables that will impact demand for the centralized source. Indeed, our own experience at the state level is consistent with the 231% approach. More specifically, in attempting to predict volume, TransUnion has examined historical disclosure rates, by state, as a percentage of the number of consumers in our database residing in each state. While several states have allowed consumers the right to a free report, we have never seen those rights publicized to the degree we expect to occur once the national right to a free annual report becomes effective. However, Colorado, by virtue of its requirement that consumer reporting agencies send consumers a notice in certain

agencies to satisfy other statutory obligations that are triggered when consumers obtain file disclosures. These “back-end” obligations to consumers who have obtained disclosures include the obligation to provide trained personnel to explain the information disclosed, and the obligation to notify the appropriate data furnisher about a consumer’s dispute within 5 business days of receiving the dispute from the consumer. The cost of handling the back-end responsibilities and the time it takes to properly train staff to handle consumer calls and disputes are both considerable. We believe it would be important for the Commission to examine these factors in considering the significant demands to be placed on consumer reporting agencies by the centralized source requirements. Also, a finite limit on the total number of disclosures nationwide consumer reporting agencies are expected to make is necessary to enable the consumer reporting agencies to staff accordingly to meet all of their obligations to consumers.

circumstances advising them of the right to a free annual disclosure, had the highest percentage of consumers in our database request disclosure (7.38% in 2003). By applying that same percentage to the total number of records in our database, we might expect our disclosure volume to be 211% of the total disclosures TransUnion processed in 2003. Accordingly, we believe that 231% is a reasonable number to which the industry should build. Moreover, since the 231% figure is the only empirical data available with respect to addressing this issue, failing to use it in determining the Final Rule's definition of initial capacity would seem difficult to justify.

It also should be noted that a Final Rule that more than doubles the capacity of the consumer reporting industry to receive file requests would send a strong message to the public regarding the commitment of the Commission and the nationwide consumer reporting agencies to the success of the centralized source. Additionally, as discussed below, combining an initial capacity of 231% with a regional roll-out of the centralized source would provide for a substantial "safety margin" of extra capacity that may be particularly helpful when centralized source operations initially commence. For these reasons, we urge that the Commission specify in the Final Rule that the initial daily capacity of the centralized source must be 231% of the daily average combined request rate experienced by the operators of the centralized source for the 90-day period ending on November 30, 2004. The Final Rule should make it clear that this level of capacity is required, at least through the transition period for implementing the centralized source. The total initial capacity to receive requests for file disclosures through the centralized source or otherwise for each of the three nationwide consumer reporting agencies should be equal to 100% of the initial capacity of the centralized source. Establishing this initial capacity benchmark for each of the agencies is important in order to clearly define the circumstances under which protections for "high request volume" and "extraordinary request volume" are triggered as discussed below. Similarly, the initial capacity of each of the three request methods should be established by the nationwide consumer reporting agencies based on relative percentage of requests received through those channels during the 90-day period ending on November 30, 2004. For example, if during that time period the nationwide consumer reporting agencies received 20% of their file disclosure requests by mail, 10% by Internet, and 70% by telephone, the initial capacity of the centralized source would be allocated among the three request methods using those percentages. (See below for a discussion of capacity issues regarding high and extraordinary request volume during the transition period.)

Regional Roll-Out

Although we believe that setting initial capacity for the centralized source at the 231% level is reasonable, we believe that it would be prudent to provide additional protection to increase the probability that the volume of consumer requests for file disclosures can be appropriately accommodated. The Proposal takes an important step in this direction by utilizing a regional roll-out approach during a transition period in which the centralized source would become available in four cumulative steps. A roll-out approach would add an extra margin of capacity that would reduce the likelihood of an inauspicious start to the centralized source. In this regard, if the initial capacity of the centralized source is built to accommodate 231% of the national request volume experienced by the nationwide consumer reporting agencies, and that capacity is applied in the initial regional roll-out to one-quarter of the population, the effective capacity increase of the nationwide consumer reporting agency for that initial transition period would essentially be quadrupled. For these reasons, we strongly support the approach of rolling

out the centralized source in multiple steps. We request, however, that the Commission consider a number of changes to the roll-out approach contained in the Proposal.

First, we urge that the Commission consider reversing the direction of the roll-out by beginning on the East coast and moving towards the West. In this regard, although approximately 22% of the U.S. population lives in the Western region defined by the Commission, and TransUnion's file disclosures historically are fairly evenly distributed among the four proposed regions, there are other factors that argue against beginning the roll-out in the West. In particular, we are informed that approximately 40% of one nationwide consumer reporting agency's file disclosures is for consumers in the Western region. Under the Commission's West to East proposal, this means that a disproportionately high percentage of the file disclosures requested through the centralized source for that consumer reporting agency, and therefore for the other two nationwide consumer reporting agencies, could occur in the very first region eligible for the centralized source. In view of the many uncertainties involved in implementing the centralized source, such a result should be avoided. Because none of the three nationwide consumer reporting agencies has a disproportionately high share of its file disclosures weighted towards consumers in the East, this issue can be addressed by simply reversing the direction of the regional roll-out and beginning in the East. Second, we request that the Commission consider extending the time period for the roll-out. This would help spread the distribution of file requests and decrease the risk of overwhelming the centralized source system. Third, we urge that the Commission consider increasing the number of regions and periods in the roll-out from 4 to 6. This would increase the likelihood that the initial capacity of the centralized source is adequate.

Maintaining Adequate Capacity During and After the Transition Period

During the Transition Period

It is critically important that the Final Rule clearly define what the operators of the centralized source must do to maintain adequate capacity throughout the life of the centralized source. As noted above, we believe that it would be appropriate to establish the initial capacity of the centralized source at 231% of the historical request rate of the nationwide consumer reporting agencies. This would simplify the Proposal by eliminating the need for rolling daily average calculations and would establish the 231% figure as the benchmark throughout the transition period. We recognize, however, that the centralized source must be prepared to accommodate some higher level of volume even during the transition period. The Proposal currently provides a framework for addressing this issue in the provisions relating to "high request volume." Specifically, in instances of "high request volume," a nationwide consumer reporting agency will not be deemed to be in violation of the requirement to have adequate capacity to accept requests provided the nationwide consumer reporting agency: (i) complies with the requirement to implement reasonable procedures to anticipate, and to respond to, the request volume; (ii) collects all consumer request information and delays accepting the request for processing until a reasonable later time; and (iii) clearly and prominently informs the consumer of when the request will be accepted for processing. We believe that this approach to "high request volume" generally provides a workable solution so long as the initial capacity of the centralized source is set at 231%. Accordingly, we urge that the Commission include in the Final Rule the flexibility for "high request volume" that is included in the Proposal. It also is

important to retain in the Final Rule the provisions that measure and provide relief for high request volume based on consumers contacting or attempting to contact: (i) a particular centralized source request method; (ii) the centralized source through any request method; and (iii) a nationwide consumer reporting agency through the centralized source or through any other method. These protections are extremely important to ensure that the centralized source and the nationwide consumer reporting agencies can adequately manage sudden increases in demand for file disclosures, and we appreciate the Commission's decision to include these protections in the Proposal. We urge that they be retained in the Final Rule. We believe, however, that it would be important to incorporate one significant modification to the "high request volume" provisions before the Final Rule is adopted. Specifically, the protections afforded to the centralized source should not be linked to or conditioned on compliance with the separate requirements to anticipate demand. In this regard, the high request volume provisions are intended to address circumstances that are completely beyond the control of the centralized source and the operators of the centralized source should receive the protection of those provisions independent of other considerations. Otherwise, the operators of the centralized source could find themselves in the untenable position of having no relief from uncontrollably high demand.

We also believe that the protections for "extraordinary request volume" during the transition period should be incorporated into the Final Rule with the same modification. In addition, the Commission should define "extraordinary request volume" as 125% of the initial capacity of a particular request method, the centralized source, or a nationwide consumer reporting agency. We believe that maintaining an additional 25% in capacity should be reasonably achievable and would provide an extra measure of protection to handle sudden surges in demand.

After the Transition Period

We believe that it is also important that the Final Rule clearly define the requirements for maintaining the capacity of the centralized source after the transition period has expired. In our view, the ongoing capacity of the centralized source should be based on the historical data generated during the transition period. Specifically, the capacity of the centralized source immediately after the transition period should be the average daily request volume over the last 90 days of the transition period. Once again, however, provision must be made for request volumes that exceed that capacity. We believe that the basic concept set forth above for addressing "high request volume" during the transition period should be applied during the post-transition life of the centralized source. That is, on any day in which the request volume for a particular request method, the centralized source as a whole, or a nationwide consumer reporting agency exceeds 115% of the average daily volume for the preceding 90 days, the protections for "high request volume" should apply. We also believe that the Commission should retain protections for "extraordinary request volume." We are concerned, however, that the Proposal's approach of waiting until demand hits 200% before triggering the extraordinary request volume provisions will provide little, if any, protection. In this regard, a 200% threshold essentially means that the centralized source must, at all time, maintain two times the expected capacity or incur the risk of liability for failure to comply. It is important that such a result be avoided particularly in view of the fact that the operators of the centralized source have no way of controlling request volumes, and "extraordinary" request volumes are impossible to predict with sufficient lead time to make staffing and other adjustments. To address this issue, we urge that

the Final Rule define extraordinary request volume at 125% of required capacity. We believe that maintaining a 25% buffer in excess capacity should be reasonably achievable and should be sufficient based on our historical experience with surges in demand for file disclosures.

OTHER ISSUES

Rule of Construction (§610.1)

Rule of Construction

The Proposal states that the examples provided in the Proposal are illustrative and not exclusive. Furthermore, compliance with an example, to the extent applicable, would constitute compliance with the Final Rule. We commend the Commission for including illustrative examples in the Proposal. We believe that examples will assist nationwide consumer reporting agencies and others to understand the obligations imposed under the Final Rule. We urge the Commission to include examples in the Final Rule and, where applicable, make it clear that compliance with an example will constitute compliance with the Final Rule.

Purpose of the Centralized Source (§610.2(a))

The Proposal states that the purpose of the centralized source “is to enable consumers to make a single request to obtain annual file disclosures” from all nationwide consumer reporting agencies, as required under Section 612(a) of the FCRA. We commend the Commission for acknowledging that the centralized source is not the mechanism by which annual file disclosures are *provided* to consumers. In this regard, the Commission notes correctly that “[t]he FACT Act requires that consumers be able to request their annual file disclosures through specific request methods, but does not mandate the method by which the nationwide consumer reporting agencies may deliver those file disclosures.” We note that the nationwide consumer reporting agencies may choose to provide annual file disclosures through the centralized source, such as may occur in an Internet context. However, in light of the need individual nationwide consumer reporting agencies may have to verify the consumer’s identity, it may not be possible to provide the annual file disclosure using the centralized source. It would also be impossible to provide a consumer with the annual file disclosures using the centralized source if the consumer were to request the annual file disclosures using the telephone. Therefore, the Commission should retain this approach in the Final Rule.

We also commend the Commission for limiting the purpose of the centralized source to receiving consumers’ requests for free annual file disclosures under Section 612(a) of the FCRA. In this regard, the congressional authorization for the Commission’s Proposal appears limited to purposes related to consumers’ requests for their annual file disclosures under Section 612(a). Furthermore, to allow the centralized source to be used by consumers for other purposes could result in the centralized source becoming overwhelmed with consumer contacts, limiting its capacity to accept requests from consumers for annual file disclosures.

Establishing the Centralized Source (§610.2(b))

Jointly Establishing the Centralized Source

The Proposal states that *all* nationwide consumer reporting agencies must “jointly design, fund, implement, maintain, and operate” a centralized source. At this time, TransUnion does not anticipate any practical or logistical problems regarding the three identified nationwide consumer reporting agencies’ ability to work together to establish a centralized source. However, it may be useful for the Commission to provide guidance with respect to newly created or discovered nationwide consumer reporting agencies once the centralized source is designed and implemented. In this regard, it is important that the emergence or identification of any new nationwide consumer reporting agency will not cause the centralized source to be redesigned and reimplemented in order to meet the requirement that it be “jointly” designed and implemented. We believe the best approach would be to incorporate the new nationwide consumer reporting agency as part of the existing centralized source and to impose the burden to fund, maintain, and operate the centralized source on the new nationwide consumer reporting agency in a reasonably proportionate manner. In particular, it would be important to ensure that the Final Rule make it clear that any new participants in the centralized source must reimburse the developers of the centralized source for the new participant’s share of the costs incurred to develop and implement the centralized source. For example, the Final Rule should clarify that if a fourth nationwide consumer reporting agency is required to participate in the centralized source, that fourth agency must reimburse the initial three nationwide consumer reporting agencies an amount equal to one quarter of the costs incurred by the initial three agencies to develop and implement the centralized source. We also request that the Commission assume responsibility for identifying those consumer reporting agencies that must participate in the centralized source. The determination of whether a particular consumer reporting agency is covered by Section 603(p) of the FCRA should not be made by competitors of that agency.

Joint Liability

The Commission states in the Supplementary Information to the Proposal that “all participants in the centralized source, including any new entrants, must comply with, and may be jointly liable for any violations of, proposed rule section 610.2.” The statement that the participants in the centralized source may be “jointly liable” for violation does not accurately reflect the statutory requirements of the FACT Act, and we request that it be eliminated from the Final Rule. In this regard, each of the nationwide consumer reporting agencies is an independent organization with an independent statutory obligation to participate in the centralized source. A nationwide consumer reporting agency that does its part to participate in the centralized source cannot and should not be liable for the failure of another nationwide consumer reporting agency to do the same. For example, if a nationwide consumer reporting agency refused to fund the centralized source or failed to provide required file disclosures, the other nationwide consumer reporting agencies that comply with these requirements should not be liable. Similarly, the consumer reporting agencies that participate in the centralized source cannot be liable for those that do not. In addition, imposing liability jointly is unnecessary because each nationwide consumer reporting agency has its own compliance obligations, including obligations to maintain the centralized source, and failure to meet those obligations can be addressed by imposing liability individually on each of the consumer reporting agencies responsible for the failure. In

order to address this issue, we urge that the Commission delete the reference to joint liability and clarify in the Supplementary Information to the Final Rule that any liability imposed on consumer reporting agencies will be imposed individually on each agency for that agency's actions (or failure to act) and that no consumer reporting agency participating in the centralized source will be liable for the behavior of another.

Anti-Trust Issues

The Commission states in the Supplementary Information that “although the [Proposal] requires nationwide consumer reporting agencies, which are presumably competitors, to jointly design, fund, implement, maintain, and operate the centralized source required under the FACT Act, nothing in the [Proposal] would permit any activity that is otherwise prohibited by applicable United States antitrust laws.” This statement appears, unintentionally, to introduce legal uncertainty into the process of complying with the centralized source requirements. The nationwide consumer reporting agencies are developing the centralized source to fulfill their legal obligations under the FACT Act and the Final Rule. It simply cannot be the case that their efforts to comply with the statutory and regulatory requirements for the centralized source would expose the nationwide consumer reporting agencies to liability under the antitrust laws. Otherwise, nationwide consumer reporting agencies may find themselves in the untenable position of having to choose between violating the centralized source requirements or violating antitrust laws. In order to address this issue, we request that the Commission make it clear in the Final Rule that a nationwide consumer reporting agency's efforts to comply with the Final Rule will not subject the agency to exposure under the antitrust laws.

Request Methods Under the Centralized Source (§610.2(b)(1))

The Proposal requires the centralized source to enable consumers to request annual file disclosures through, at the consumer's option: (i) a single, dedicated Internet web site; (ii) a single, dedicated toll-free telephone number; or (iii) mail directed to a single address. We believe that the Proposal faithfully implements the congressional mandate with respect to the request methods to be included as part of the centralized source, and we urge the Commission to retain them. However, the Supplementary Information suggests that the centralized source would need to have live personnel in order to receive the request for an annual file disclosure from a consumer that does not have phone equipment “compatible with an automated system.” We urge the Commission to delete this reference. The nationwide consumer reporting agencies have already developed reliable systems to receive a consumer's request for file disclosures (and to receive a consumer's opt out of prescreening) using an automated telephone process including in those instances where the consumer does not have touchtone phone capabilities. We believe this system provides all consumers with access to a simple, efficient, and reliable method to obtain their file disclosures, and it should be permitted under the Final Rule.

Information Collection and Verification (§610.2(b)(2)(ii))

Flexibility to Verify a Consumer's Identity

The Commission states that the Proposal “permits...each nationwide consumer reporting agency the flexibility to implement its own identification procedures for consumers who make

file disclosure requests through the centralized source, in order to allow proper identification of consumers and to protect against fraud.” In granting this flexibility, the Commission explicitly recognizes the need for nationwide consumer reporting agencies to be able to identify consumers because “[i]f misdirected to, or fraudulently obtained by, someone other than the consumer to whom it relates, a file disclosure would provide the ideal means for identity theft and fraudulent activity.” The Commission also believes that the flexibility for each nationwide consumer reporting agency is necessary in light of the different information contained in each of the nationwide consumer reporting agency’s files and the need to adjust to rapidly evolving threats and patterns of fraudulent activity. TransUnion applauds the Commission for providing such flexibility, and we strongly urge the Commission to retain this critical consumer protection in the Final Rule.

“Reasonably Necessary”

Under the Proposal, the centralized source must be established in a manner that “[c]ollects only as much information as is reasonably necessary to properly identify the consumer... and to process the transaction(s) requested by the consumer.” The Commission states that this provision in the Proposal “reflects the need to balance two competing goals:” (i) creating a centralized source that is easy to use; and (ii) allowing the nationwide consumer reporting agencies to identify properly consumers who request annual file disclosures. In particular, the Commission “is concerned that a centralized source that collects too much information may discourage some consumers from requesting their annual file disclosures.” As noted above, the Commission also understands the critical need to ensure that nationwide consumer reporting agencies are able to verify the identity of those who request annual file disclosures, and are able to collect the information necessary to meet that objective.

TransUnion recognizes the need to create a centralized source that is easy for consumers to use. We also believe that, as the Commission has noted, it is critically important that the Final Rule permit each nationwide consumer reporting agency to collect the information it needs to identify the consumer properly. However, we are concerned that the Proposal as drafted could have the unintended consequence of unnecessarily limiting the information a nationwide consumer reporting agency collects in order to identify consumers properly. In particular, although we agree with the general concept embodied in the Proposal, the “reasonably necessary” standard creates uncertainty.

We do not intend to collect personally identifiable information through the centralized source for purposes other than identification verification, product fulfillment, or related customer service needs. We are concerned, however, that the uncertainty created by the “reasonably necessary” standard would invite disputes from the plaintiffs’ bar. We are particularly concerned that the Proposal, by creating significant liability as to what information may be “reasonably necessary” to identify the consumer, may unintentionally create perverse incentives for a nationwide consumer reporting agency to collect only the minimal amount of information needed to meet its legal obligations under the FCRA and other applicable laws. Such a minimalist approach may result in collecting less information than is helpful in thwarting otherwise preventable cases of identity theft or fraud. We do not believe the collection of such additional information, if any, would make the centralized source difficult for consumers to use. However, it could result in significantly fewer cases of fraud or identity theft resulting from abuse of the

centralized source. Therefore, we urge the Commission to revise the Proposal to allow the centralized source and the nationwide consumer reporting agencies to collect personally identifiable information to be used only for purposes of identification verification, product fulfillment, and any related customer service needs.

We also urge the Commission to delete the suggestion that the consumer “may be asked for his or her personally identifiable information...*once at the beginning of the process*,” and that only additional information may be requested as part of the verification process, as is stated in the Supplementary Information. (Emphasis added.) This statement suggests that a nationwide consumer reporting agency cannot request personally identifiable information a second time as part of the verification process. For example, it raises questions whether a consumer who is asked for identification information as part of a telephone or Internet file disclosure, but cannot be authenticated, can later be asked to submit proof of identification, such as proof of address, in writing. We do not believe such a result was the intent of the Commission, and we urge the Commission to provide clarification that a nationwide consumer reporting agency has the flexibility to collect personally identifiable information as part of a verification process, even if the information had been collected previously.

Collection of Anonymous Data for Maintenance Needs or Service Improvement

As discussed above, the Proposal would restrict the collection of *all* information through the centralized source to only that information which is reasonably necessary to identify the consumer or process transactions requested by the consumer. We are concerned that this restriction may have the unintended consequence of prohibiting the centralized source from collecting anonymous data that may be necessary as part of the centralized source’s operations. For example, it will be necessary to collect information through the centralized source with respect to how many consumers contact the centralized source and through which methods. The Commission or the nationwide consumer reporting agencies may also want to evaluate consumers’ patterns of usage on the Internet web site or with respect to telephone requests. Anonymous Internet tracking also will be important to assist in detecting potential intrusions and other activities that may harm the centralized source web site. Data collection for these and other purposes can be done in an anonymous manner, and the data could be used to improve the operation of the centralized source or consumers’ experiences with it. We urge that the Final Rule permit the centralized source, and the nationwide consumer reporting agencies through the centralized source, to collect such data.

Providing Information and Instructions to Consumers (§610.2(b)(2)(iv))

“Clear and Easily Understandable”

The Proposal requires the centralized source to provide “clear and easily understandable information and instructions to consumers.” TransUnion agrees that the centralized source should provide consumers with instructions and information that are clear and easily understandable. However, we are concerned that a requirement for information to be “clear and easily understandable” is subject to broad interpretation and evaluation, and could expose the centralized source or the nationwide consumer reporting agencies to unnecessary litigation. We request that the Commission develop an alternative approach that would ensure the centralized

source is not difficult to use, but would not create opportunities for litigation. For example, we urge the Commission to provide model language that could be used to give consumers the appropriate instructions and information required by the Proposal, including, for example, the “help” or “FAQ” page of the Internet web site required by the Proposal. Alternatively, the Commission could permit the centralized source to provide a hotlink to a web site maintained by the Commission for such purposes.

“Progress of the Consumer’s Request”

Included as part of the information or instructions that must be provided to the consumer through the centralized source is “information on the progress of the consumer’s request while the consumer is engaged in the process of requesting a file disclosure.” TransUnion believes that this requirement, if clarified, would provide useful information to consumers. As we understand the Proposal, we believe this provision requires the centralized source to inform the consumer of the various stages of the request process while the consumer is actually providing information. The provision is not intended to allow a consumer to return to the centralized source once he or she has requested an annual file disclosure to learn of the “progress” of the request, *e.g.*, the estimated time before delivery of the annual file disclosure. We ask the Commission to provide clarification on this point.

We also request the Commission to limit the applicability of the requirement to provide information on the progress of the consumer’s request to requests made using the Internet web site. The Internet provides a medium in which providing such information does not complicate the request process. However, we are concerned that providing such information as part of a telephone request may contribute to an unnecessarily verbose or confusing request process for the consumer. In addition, we do not believe such a requirement would be appropriate in a mail request context. If the Commission disagrees, we request guidance as to how such information could be given to consumers.

Liability Issues (§610.2(c))

The Proposal imposes liability on a nationwide consumer reporting agency if it fails to develop and implement contingency plans to address circumstances outside such agencies’ control that adversely affect the operations of the centralized source or a nationwide consumer reporting agency. Although we believe a nationwide consumer reporting agency should take reasonable steps to mitigate the effects of such circumstances, it would be inappropriate to impose liability on a nationwide consumer reporting agency as a result of circumstances outside of its control. In fact, the Final Rule should provide a safe harbor for failures of the centralized source or the nationwide consumer reporting agencies that result from circumstances outside of their control. Furthermore, the Final Rule should clarify that it may be necessary to perform routine or preventative maintenance on the centralized source’s Internet web site or telephone lines, and that no liability is created if a consumer’s request for a file disclosure is not accepted during these times.

Disclosures Required (§610.2(d))

According to the Proposal, “[i]f a nationwide consumer reporting agency has the ability to provide a consumer report to a third party relating to a consumer, that agency shall provide an annual file disclosure to such consumer if the consumer makes a request through the centralized source.” TransUnion commends the Commission for crafting the Proposal so that it does not suggest that an annual file disclosure must be provided if the nationwide consumer reporting agency has no access to a file on the consumer. We urge the Commission to retain this approach with one clarification. We believe it would be appropriate to revise this requirement in order to clarify that a nationwide consumer reporting agency is not obligated to provide a consumer with an annual file disclosure if the nationwide consumer reporting agency cannot confirm the requester’s identity. The nationwide consumer reporting agency should not be required to provide the consumer an annual file disclosure in such circumstances, regardless of whether the nationwide consumer reporting agency “has the ability to provide a consumer report to a third party relating to [such] consumer.” We do not believe that such an inappropriate result was the Commission’s intent.

Associated Consumer Reporting Agencies (§§ 610.1(b)(2) and 610.2(b))

The Proposal states that “[i]f a nationwide consumer reporting agency has the ability to provide a consumer report to a third party relating to a consumer, that agency shall provide an annual file disclosure to such consumer if the consumer makes a request through the centralized source.” This requires a nationwide consumer reporting agency to disclose the file of an “associated consumer reporting agency” if the nationwide consumer reporting agency has the ability to provide consumer reports based on that file to third parties. Because of the scope of the Proposal, this situation raises some legal uncertainty which we request be addressed in the Final Rule. In particular, it is important that the Final Rule make it clear that a nationwide consumer reporting agency is not required to pay an associated consumer reporting agency in order to make such disclosures. This could be accomplished through a number of alternative approaches. For example, the Final Rule could provide that a nationwide consumer reporting agency need not make a free file disclosure if it must pay a fee to an associated consumer reporting agency to do so. Another approach may be to make it clear in the Final Rule that an associated consumer reporting agency may not impede a nationwide consumer reporting agency’s ability to make those disclosures. For example, an associated consumer reporting agency must be precluded from attempting to contractually restrict a nationwide consumer reporting agency from making those disclosures, and must be prohibited from imposing a fee on the nationwide consumer reporting agency for making such disclosures.

Information Security (§610.2(f))

The Proposal requires each nationwide consumer reporting agency to “comply with Standards for Safeguarding Customer Information, 16 CFR 314.3 and 314.4, [‘Information Safeguarding Rule’] for all personally identifiable information collected or disclosed by the” nationwide consumer reporting agency or the centralized source. As part of the Supplementary Information, the Commission explains that the Information Safeguarding Rule “form[s] the core of a reasonable information security program and [is] therefore appropriate in this context.” TransUnion agrees that safeguarding the security of consumer information is important. We take

our obligations to protect the security of consumer information seriously and already have in place a program designed to comply with the requirements of the Information Safeguarding Rule. The obligation to comply with the Information Safeguarding Rule also extends to the other nationwide consumer reporting agencies. As a result, it is unnecessary to impose a separate obligation on each nationwide consumer reporting agency to comply with the Information Safeguarding Rule as part of the Proposal. These obligations would apply in the context of a nationwide consumer reporting agency's participation in the centralized source, regardless of whether there is a specific requirement in the Final Rule. Furthermore, the obligations would extend to the centralized source itself. Therefore, it does not appear that the information security requirements would provide consumer data with any protections that are not already provided by current law.

Although the Proposal would not increase consumer protections with respect to data security, the Proposal would create inappropriate liability on a nationwide consumer reporting agency with respect to its compliance with the Information Safeguarding Rule. When enacting the GLBA, Congress specifically considered how the requirements of the GLBA were to be enforced. In particular, in Section 505 of the GLBA, Congress directed the Commission to implement the Information Safeguarding Rule by rule and stated that the requirement under that rule shall be enforced administratively. Congress did not grant enforcement authority with respect to the Information Safeguards Rule to any state entity or through private rights of action. However, by including an obligation to comply with the Information Safeguarding Rule in the Proposal, the Commission would unilaterally create a unique enforcement regime with respect to the Information Safeguarding Rule as it applies to nationwide consumer reporting agencies. The Proposal, in essence, would make compliance with the Information Safeguarding Rule subject to the enforcement mechanisms under the FCRA, including through state attorneys general and private rights of action. Not only is this contrary to how Congress intended the Information Safeguarding Rule to be enforced, but it would single out nationwide consumer reporting agencies as the only "financial institutions" subject to such an enforcement regime for the GLBA's information safeguarding requirements. Therefore, we strongly urge the Commission to delete this requirement before issuing a Final Rule.

Communications Through the Centralized Source (§610.2(g))

Communications Made Through the Centralized Source

As part of the Supplementary Information to the Proposal, the Commission states that:

The centralized source established in compliance with this part will provide the nationwide consumer reporting agencies with the means to communicate with interested consumers about a variety of topics related to consumer reporting and file disclosures... It also presents the nationwide consumer reporting agencies with a unique opportunity to market credit-related products and services to a group of consumers who may be interested in such products. The [Proposal] would not prohibit the nationwide consumer reporting agencies advertising their products and services through the centralized source, nor offering those products and services, as

well as additional file disclosures, directly through the centralized source.

TransUnion supports the Commission's approach to allowing a nationwide consumer reporting agency to offer consumers additional products and services by way of the centralized source. Consumers who contact the centralized source are likely to be interested in the types of products and services offered by nationwide consumer reporting agencies, and therefore it would be appropriate to allow nationwide consumer reporting agencies to inform those consumers of those products and services. We urge the Commission to retain this approach, and to include a reference to a nationwide consumer reporting agency's ability to provide such information to consumers as part of the Final Rule itself.

The Proposal states that "[a]ny communications or instructions, including any advertising or marketing, provided through the centralized source shall not interfere with, detract from, contradict, or otherwise undermine the purpose of the centralized source." TransUnion agrees that the communications provided through the centralized source should not make it difficult for the consumer to exercise his or her right to obtain an annual file disclosure. However, we believe it would be appropriate to explain the added value other products (e.g., credit scores) may provide to consumers in addition to their annual file disclosures. In this regard, we urge the Commission to clarify that communications explaining the benefits of additional products and services, and why the consumer should consider purchasing them, do not "detract from" the purpose of the centralized source.

Communications Made by Impostors

The Commission has specifically asked whether the Final Rule should require the nationwide consumer reporting agencies to undertake specific measures to prevent fraudulent ploys that may mimic the centralized source in order to gain access to consumer personally identifiable information. TransUnion shares the Commission's concern that unscrupulous individuals may attempt to use the concept of the centralized source as the basis for a fraudulent scheme. However, we believe the most effective approach to thwarting such schemes is swift and thorough enforcement actions brought by the Commission and other appropriate agencies once these schemes are uncovered. For example, the Commission appears to have had a commendable level of success in combating fraud schemes involving the national do-not-call registry. We would expect the Commission to be equally effective in fighting fraud schemes involving the centralized source. Therefore, we do not believe it would be appropriate to require a nationwide consumer reporting agency to take specific measures to prevent fraudulent ploys related to the centralized source.

The Commission also asks whether the Final Rule should require the nationwide consumer reporting agencies to employ measures to reassure consumers that they are contacting the legitimate centralized source. TransUnion would look forward to discussing this issue with the Commission to learn what types of measures would be effective. For example, the Commission has likely taken measures to reassure consumers that they are contacting the legitimate do-not-call registry. We would be interested in learning of the Commission's experience in this area in order to evaluate what types of measures may be appropriate.

Effective Date (§610.2(h))

According to the Proposal, the effective date for the Final Rule is December 1, 2004. We urge the Commission to modify the effective date to the later of December 1, 2004 or six months after the Final Rule is published in the *Federal Register*. In light of the operational issues surrounding the establishment and operation of the centralized source, nationwide consumer reporting agencies will need at least six months once the Final Rule is published to begin complying with its requirements. A six month period before compliance is required is also consistent with the congressional intent. Therefore, we request the Commission to provide a six month window to comply with the Final Rule if it is published after June 1, 2004.

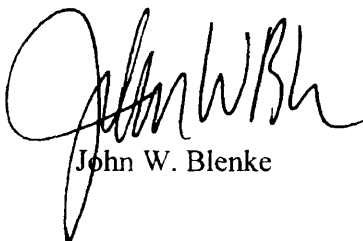
Free File Disclosure Generated by a Risk-Based Pricing Notice

In a footnote in the Supplementary Information, the Commission indicates that “the FACT Act has expanded consumers’ rights to obtain a free file disclosure in a number of ways” such as under Section 311 of the FACT Act. Section 311 of the FACT Act amends Section 615 of the FCRA to impose an obligation on users of consumer reports to provide a “risk-based pricing notice” in connection with certain credit transactions. Section 311 of the FACT Act does not include any indication that the receipt of a statutorily required “risk-based pricing” notice generates a consumer right to a free file disclosure. Furthermore, we believe serious questions remain as to whether other provisions of the FCRA, such as Section 612(b), necessitate a free file disclosure if the consumer is provided a statutorily required risk-based pricing notice. We do not believe that the Proposal, which pertains to a centralized source, is the appropriate forum in which the Commission should issue an interpretation of the FCRA, which is more appropriately discussed in a rulemaking related to Section 311 of the FACT Act. Therefore, we strongly urge the Commission to delete the reference to Section 311 of the FACT Act in the Supplementary Information and to reserve interpretation of that issue until the broader issues surrounding Section 311 are discussed.

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Once again, TransUnion appreciates the opportunity to comment on the Proposal. If you have any questions regarding our comments, or if we may otherwise be of assistance in connection with this matter, please do not hesitate to call me at the number indicated above.

Respectfully Submitted



John W. Blenke

Cc: FTC Commissioners