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June 11, 2004

Federal Trade Commission  
Post Office Box 1030  
Merrifield, VA 22116-1030

***RE: FACTA IDENTITY THEFT RULE,  
MATTER NO. R411011***

Dear Sir or Madam:

The Pennsylvania Credit Union Association (PCUA) is pleased to have this opportunity to comment upon the Federal Trade Commission's (FTC) proposed rule on identity theft pursuant to the Fair and Accurate Credit Transactions Act of 2003 (FACTA). The PCUA is a statewide trade association that represents approximately ninety percent (90%) of the credit unions located in the Commonwealth of Pennsylvania.

In responding to the proposed rule, the PCUA consulted with its Regulatory Review Committee (the Committee). The Committee consists of eleven (11) CEOs who lead the management teams of federal and state-chartered credit unions. The Committee consists of credit unions of all asset sizes. The comments contained in this letter reflect the input of the Committee and PCUA staff.

### **Definition of the Term Identity Theft and Identifying Information**

Proposed section 603.2 outlines broad yet clear definitions of the terms Identity Theft and Identifying Information. The Committee discussed scenarios that their members have experienced in terms of identity theft or unauthorized use of a credit card or similar asset-backed card. The FTC's language appears to address and adequately define the bulk of situations that society labels as identity theft. We suggest that the FTC consider including additional language within the definition of the term identity theft to address the practice of "phishing." Phishing, as we understand the term, is the unauthorized duplication or mimicking of a legitimate website in order to deceive unsuspecting consumers and to unlawfully collect identifying information. The information is then utilized for fraudulent purposes. Phishing causes financial harm to consumers and harms the reputation of legitimate businesses that utilize the internet to conduct commerce.

For clarification purposes we also suggest an addition to the items included within the term "identifying information." Personal identification numbers (PINs), though they do not directly identify an individual, initiate a variety of transactions. PINs initiate automated teller machine

transactions, credit card cash advances, automated clearinghouse transactions, and a variety of online transactions such as funds transfers between asset accounts or loan payments. Accordingly, PINs and access devices as defined in the Electronic Funds Transfer Act and the Federal Reserve Board's Regulation E should fall within the FTC's definition of identifying information.

### **Identity Theft Report**

An identity theft report, outlined in proposed section 603.3, consists of a report that alleges identity theft with specificity and that is a copy of an official, valid report filed by a consumer with a law enforcement agency. We whole-heartedly support the FTC's approach to reporting identity theft and triggering action on the part of credit reporting agencies and users of credit report information. The proposal articulates a well-balanced mechanism that permits consumers to quickly report suspect identity theft and protect their credit history and financial records. At the same time, the requirement that the report be an official report filed with law enforcement is an appropriate deterrent to the filing of false reports. The Committee reported a significant number of instances where a consumer will allege the unauthorized use of a credit card, debit card or ATM card. Then, after a reasonable investigation, the consumer will decline to sign an affidavit or take action that might assist a civil suit or criminal investigation. Consumers should be protected from identity theft. It is also reasonable for the consumer to have a stake in the investigation and prosecution or other disposition of identity theft.<sup>1</sup>

### **Active Duty Alert**

The duration of an active duty alert as proscribed by FACTA and the FTC rule would be twelve (12) months. At first glance, twelve (12) months appears to be a reasonable and sufficient period of time for active duty military personnel to alert consumer reporting agencies and users of consumer credit reports that they may be unable to attend to financial matters. We would urge the FTC to monitor the deployment of US Forces and consider a window ranging from twelve (12) to eighteen (18) months as the length of active duty enlistments lengthens.

### **Proof of Identity**

Section 614.1 establishes requirements for information that consumers will submit to consumer reporting agencies in connection with submitting the various reports or alerts created by FACTA. The information cited in section 614.1 would be appropriate to verify the identity of a consumer. As the FTC finalizes this rule and endeavors to implement any compliance deadlines that might have been set out in FACTA, the FTC should note that the verifying procedure will take considerable effort by the consumer reporting agencies, data processors and ultimate users of

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<sup>1</sup> The Board of Governors of the Federal Reserve should take note of the FTC's definition of identity theft report and modify the dispute resolution procedures set out in the Truth in Lending Act and Regulation Z and the Electronic Funds Transfer Act and Regulation E.

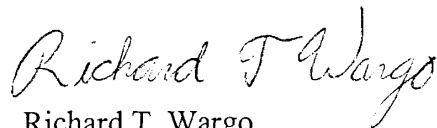
consumer credit reports. Therefore, an amnesty period between the final rule and a mandatory compliance deadline of approximately twelve (12) months would be appropriate.

**Conclusion**

Overall the identity theft measures created in FACTA represent a fair and balanced effort to protect consumers. At the same time, credit reporting agencies and the users of consumer credit reports must undertake some compliance efforts, but such efforts will not be extraordinary.

Sincerely,

Pennsylvania Credit Union Association



Richard T. Wargo.

Sr. Vice President/General Counsel

RTW:llb

cc: Association Board  
Regulatory Review Committee  
J. McCormack  
J. Kilduff  
M. Dunn, CUNA