

Federal Trade Commission

**Comments on FTC's FACTA Free File Disclosures Proposed Rule  
Matter No. R411005**

The following comments are in response to the Federal Trade Commission's (the "Commission") proposed rule requiring the establishment of a centralized source through which consumers may request a free annual file disclosure from each nationwide consumer reporting agency (the "Proposal"), as required by the Fair and Accurate Credit Transactions Act of 2003 (the "FACT Act" or the "Act"). These comments focus on one aspect of the Proposal: whether the nationwide consumer reporting agencies ("CRAs") should be permitted to use the centralized source and/or information about consumers who avail themselves of the centralized source for marketing ancillary products and services.

For the reasons summarized below, we strongly urge the Commission to prevent CRAs from exploiting the centralized source and consumer information obtained through the centralized source for their own commercial purposes.

Neither the FACT Act nor the legislative history behind the FACT Act contain any indication whatsoever that Congress intended for CRAs to be able to use the centralized source to their own commercial advantage. Authorizing the CRAs to advertise their products on the centralized source or use consumer information derived from the centralized source for marketing purposes would exceed the FACT Act's mandate and detract from the consumer benefits that Congress was seeking to provide. To preserve Congress's goal of benefiting consumers, the Commission should adopt the same approach it used in implementing its nationwide do-not-call registry, and expressly provide that CRAs may use the centralized source and related consumer information solely for responding to annual file disclosure requests.

Consumers who want to request a free copy of their credit file should be able to do so simply, easily and without uncertainty. If the Commission permits CRAs to promote additional products through the centralized source, consumers are likely to be confused about the choices presented and what information they are entitled to receive without cost. Moreover, many consumers are likely to incorrectly assume that the government endorses any additional products and services offered along with the free annual file disclosure.

Allowing CRAs to use the centralized source and related consumer information for marketing purposes would put other consumer service providers at a competitive disadvantage, to the ultimate detriment of the consumers they serve. In response to increasing consumer awareness of the importance of their credit scores and information, as well as growing concerns about identity theft, the business community has responded by offering an array of valuable products and services for consumers, including credit report monitoring, education and analysis of credit reports and scores, and identity theft assistance. These services are offered by providers independent of the CRAs, both

directly and through consumers' financial institution relationships, and compete with services marketed by the CRAs. If the Commission allows the three CRAs to exploit the centralized source to gain access to the consumers who exercise their annual file disclosure rights, the CRAs will gain an overwhelming advantage over other providers. This advantage will stifle competition in this emerging industry, hamper innovation, reduce the choices available to consumers, and increase the prices that consumers pay for the products and services that remain available.

Finally, preventing CRAs from using the centralized source for money-making purposes would not in any way prevent them from marketing and advertising their commercial products and services through alternative means. The cost of establishing and operating the centralized source will be a negligible expense to the CRAs, as estimated by the Commission in its proposed rulemaking, and it would be bad policy to offset that expense in a manner that will clearly damage competition and injure consumers.

For these reasons, we urge the Commission to expressly preclude the CRAs from using the centralized source and consumer information obtained from the centralized source to market their commercial products to consumers.