

LAW OFFICES

STEIN, MITCHELL & MEZINES
L.L.P.

1100 CONNECTICUT AVENUE, NORTHWEST
WASHINGTON, D. C. 20036

GLENN A. MITCHELL
JACOB A. STEIN
GERARD E. MITCHELL
ROBERT F. MUSE
DAVID U. FIERST
RICHARD A. BUSSEY
PATRICK A. MALONE
ROBERT L. BREDHOFF
CHRISTOPHER H. MITCHELL
ANDREW M. BEATO
LAURIE A. AMELL
DENIS C. MITCHELL
CHRISTINE M. SMITH

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OF COUNSEL
GEORGE ANTHONY FISHER
RETIRED
BASIL J. MEZINES

TELEPHONE: (202) 737-7777
TELECOPIER: (202) 296-8312
www.SteinMitchell.com

VIA HAND DELIVERY

Federal Trade Commission
Office of the Secretary
Room H-159 (Annex Q)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580



Re: *FACT Act Affiliate Marketing Rule*
Matter No. R411006

The following comments are submitted on behalf of ACA International (“ACA”) in response to the request by the Federal Trade Commission (“FTC” or “Commission”) for comments on the proposed rulemaking to issue regulations implementing the notice and opt out requirements set forth in section 214(a) of the Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”). As the Commission notes, section 214(a) adds new section 624 to the FACT Act requiring the provision of a consumer notice and opportunity to prohibit affiliates from using information to make or send marketing solicitations to the consumer.

I. Statement on ACA

ACA International is an association of credit and collection professionals who provide a wide variety of accounts receivable management services. Founded in 1939 and headquartered in Minneapolis, ACA represents approximately 5,300 third party collection agencies, attorneys, credit grantors, and vendor affiliates. ACA members include sole proprietorships, partnerships, and corporations ranging from small businesses to firms employing thousands of workers. ACA’s mission is to help its members serve their communities and meet the challenges created by changing markets through leadership, education, and service. ACA members comply with all applicable federal and state laws and

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regulations regarding debt collection, as well as ethical standards and guidelines established by ACA. ACA members are regulated by the Commission under the Fair Debt Collection Practices Act (“FDCPA”), the Fair Credit Reporting Act (“FCRA”), the Gramm-Leach-Bliley Act (“GLBA”), and other federal and state laws.

II. The Rule Should Clarify that Debt Collection Activities are not Regulated

By the express terms of the FACT Act, the proposed rule is limited to a “solicitation for marketing purposes to a consumer about [an affiliate’s] products or services. . . .” § 624(a)(1). Elsewhere, the term “solicitation” is defined as “the marketing of a product or service initiated by a person to a particular consumer that is based on an exchange of information described in subsection (a), and is intended to encourage the consumer to purchase such product or service, but does not include communications that are directed at the general public or determined not to be a solicitation by the regulations prescribed under this section.” § 624(d)(2).

The Commission requests comment whether there are communications, other than those statutorily defined, which should be determined by regulation not to meet the definition of “solicitation.” ACA believes that the Commission should expressly exempt communications with consumers for the purpose of collecting debts from the definition of the term “solicitation.” It should be obvious that debt collection communications do not have as their primary purpose the advertisement or promotion of a commercial product or service. Collection agencies communicate with debtors for the purpose of collecting preexisting debts owed typically to a third-party creditor. These communications do not advertise or promote products or services. It merely seeks to recover money owed for a product, service, or loan that has already been provided but has not been fully paid off by the debtor.

As the Commission recently noted in the Telemarketing Sales Rule context, “debt collection and market research activities are not covered by the Rule because they are not ‘telemarketing’ -- i.e., they are not calls made ‘to induce the purchase of goods or services.’ *FTC Telemarketing Sales Rule*, 68 Fed. Reg. 4580, 4664 n.1020. The same rationale applies to this rulemaking. ACA encourages the Commission to clarify this point by exempting collection communications from the definition of “solicitation.” If the Commission does not extend this regulatory exemption, ACA requests that the Commission clarify in its statement of basis and purpose to the final rule the inapplicability of section 624 to the collection communications.

ACA appreciates the opportunity to comment on the Commission’s proposed Disposal Rule. If you any questions, please contact Rozanne Andersen, ACA International General

STEIN, MITCHELL & MEZINES

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Counsel and Senior Vice President of Legal and Governmental Affairs, at (952) 928-8000 ext. 132, or Andrew M. Beato at (202) 737-7777.

Sincerely,



Glenn A. Mitchell, Esq.
Andrew M. Beato, Esq.
Stein, Mitchell & Mezines L.L.P.
1100 Connecticut Avenue, NW
Suite 1100
Washington, DC 20036
(202) 737-7777
ACA Federal Regulatory Counsel

cc: Rozanne Andersen, Esq.