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December 29, 2003

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Board of Governors of the Federal Reserve
System
Office of the Secretary
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

Federal Trade Commission
Office of the Secretary, Room 159-H
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Re: Joint Interim Final Rules for the FACT Act, Docket No. R-1172, Project No. P044804
Effective Dates for the FACT Act

Ladies and Gentlemen:

We request that the Board of Governors of the Federal Reserve System (Board) and the Federal Trade Commission (FTC) reconsider and revise the Joint Interim Final Rules issued December 15, 2003, as those rules relate to the effective date of Section 711 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). Specifically, we urge the Board and the FTC to limit the December 31, 2003 effective date to paragraph (3) of Section 711.¹

Paragraph (3) of Section 711 makes permanent the preemption provisions set forth in existing Section 624(d) [15 U.S.C. § 1681t(d)] of the Fair Credit Reporting Act (FCRA). While we recognize that it may be necessary to provide for immediate implementation with respect to the FCRA's existing preemption provisions, we strongly believe that the effective date of the new preemption provisions contained in the FACT Act should be linked with the effective dates of the substantive provisions of the Act.

¹Paragraph (3) of Section 711 makes changes to Section 625(d) of the Fair Credit Reporting Act (15 U.S.C. § 1681t(d)).

The basis for this request is our concern that the Board's and FTC's Joint Interim Final Rules² may have the effect of terminating existing state identity theft protections on December 31, 2003, long before the comparable substantive provisions of the FACT Act become effective. We believe it is highly unlikely that Congress, in enacting measures intended to prevent identity theft and assist victims, intended that existing protections in state law be terminated months prior to the federal law taking effect.

In publishing the Joint Interim Final Rules, the Board and the FTC cited as a basis for adopting the rules without public comment or delay the fact that "the current preemption provisions in the FCRA expire on January 1, 2004."³ There is therefore a sound basis for ensuring that the portion of the FACT Act that makes those existing preemption provisions permanent becomes effective prior to the expiration date. That portion of the FACT Act is found in Section 711(3).

While we acknowledge that it is reasonable and appropriate to set an effective date of December 31, 2003, for Section 711(3), we believe there is no sound reason for making all of Section 711 effective on that date. As noted above, doing so will needlessly deprive consumers of existing protections of state law, while not providing comparable protections under the federal law, which will not become effective until a later date.

We therefore urge the Board and the FTC to coordinate the effective dates for the various preemption provisions with the effective dates of the substantive provisions, and to limit the December 31, 2003, effective date to Section 711(3) alone. Thank you for your consideration of our views.

Attorney General Bill Lockyer
Attorney General of California and
NAAG President

Attorney General Stephen Carter
Attorney General of Indiana and
NAAG Vice-President

Attorney General William H. Sorrell
Attorney General of Vermont and
NAAG President-Elect

²The joint interim final rules are at 12 CFR § 222.1 and 16 CFR § 602.1.

³"Effective Dates for the Fair and Accurate Credit Transactions Act of 2003," FRB-6210-01-P and FTC-6750-01, p. 5.

cc: Federal Reserve Board and the Federal Trade Commission

Federal Reserve Board

Thomas E. Scanlon, David A. Stein, Minh-Duc T. Le, Ky Tran-Trong, and Krista P. DeLargy

Federal Trade Commission

Lydia Parnes, Katherine Armstrong, and Christopher Keller