



ISSUE PAPER

Subject: Fair and Accurate Credit Transactions Act of 2003

Issue: The passage of the Fair and Accurate Credit Transactions Act (FACTA) reauthorizing the Fair Credit Reporting Act (FCRA) includes a significant number of rulemakings, many of which MBA will be responding to. The Act sets forth an aggressive rulemaking schedule requiring significant member input.

Background: FCRA was enacted in 1970 and amended in 1996 for the purpose of ensuring accuracy and fairness in credit reporting, maintaining confidentiality, and ensuring the proper use and dissemination of certain types of consumer information. Specifically, FCRA requires credit reporting agencies ("CRA") to maintain accurate reports, to distribute the information for statutorily enumerated purposes and protect consumers from faulty reporting or misuse of their information.

The 1996 FCRA Amendments contained important preemption provisions related to prescreening activities, time periods for disputing the accuracy of reports, adverse action requirements, information contained in credit reports and furnisher obligations, to name a few. These preemptions were established by Congress on an experimental basis and were set to expire on December 31, 2003, unless reauthorized by Congress.

The President signed FACTA into law on December 4, 2003, permanently reauthorizing the preemptions. In addition, FACTA contains several new and important provisions that will affect the way lenders do business including:

- mandatory issuance of credit scores,
- mandatory issuance of risk based pricing notices,
- restrictions on affiliate sharing,
- increased furnisher obligations,
- identity theft protections,
- one free credit report to each consumer per year, and
- enhanced disclosure of the means available to opt-out of prescreened lists.

With the exception of mandatory credit score disclosure by mortgage lenders, all of the provisions noted above require rulemakings by several agencies, including the Federal Reserve Board (the FRB), the Federal Trade Commission (FTC), the National Credit Union Administration (NCUA) and the Securities and Exchange Commission (SEC). The rulemaking schedule set forth in FACTA is aggressive and MBA will likely comment on sixteen of these proposals.

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MBA Position: MBA applauds Congress for permanently reauthorizing the preemptions within the Fair Credit Reporting Act by passing FACTA. The maintenance of a national standard of consumer credit promises to continue to benefit consumers by lowering the cost of homeownership. It also benefits lenders through requiring compliance with one set of rules instead of a patchwork of state laws.

In addition, MBA further applauds the federal regulatory agencies for their hard work and commitment in issuing the numerous rules required under FACTA. MBA staff and members continue to meet with the regulators to discuss the impact of certain policies and to provide guidance.

Status: MBA has been heavily engaged in the rulemaking process by meeting with the regulators to provide pre-rule guidance. To date, MBA has commented on eight proposed rulemakings including: (1) a consumers right to a free credit report per year from each of the national credit bureaus, (2) model language used in informing a consumer that negative information has been or will be furnished to a credit bureau about them, (3) privacy of medical information, (4) requirement that affiliates who share consumer information for marketing purposes provide that consumer with notice and an opportunity to opt-out, (5) the Summary of Rights that must be furnished by the credit reporting agencies to consumers (6) procedures to enhance the accuracy and integrity of information furnished to consumer reporting agencies, (7) responses to an Interim Final Rule issued by the Federal Banking regulators related to the use of medical information which became effective April 1, 2006 and (8) a requirement that lenders develop red flag guidelines to protect against identity theft.

The agencies have issued the following final rules: (1) consumers right to a free credit report (effective 12/04), (2) model notices to consumers that negative information has or will be reported about them to the credit reporting agencies (effective 12/04), (3) requirement that lenders dispose of consumer report information and records (FTC's rule effective 6/05, the Federal Reserve Board's rule effective 7/05), (4) model prescreening notices informing consumers of their right of opt-out of prescreened solicitations (effective 8/05), and (5) a model form and procedures for consumers to use and report identity theft to lenders and consumer reporting agencies (effective 5/02/05).

The FRB and the FTC issued final effective dates for the rulemakings. Most of the rules were due to become effective on December 1, 2004. The banking community was alarmed at potential liability for failing to comply with provisions that had effective dates but no rules. The banking regulators and the FTC issued a letter in September 2004 providing lenders some comfort in the fact that they would not enforce a lender's failure to comply with a provision in the absence of a required rule.

MBA will continue to monitor the agencies' proposals and review and comment where appropriate.

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