Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
Federal Trade Commission
National Credit Union Administration
Office of the Comptroller of the Currency
Office of Thrift Supervision

November 24, 2004

Nessa Feddis
American Bankers Association
1120 Connecticut Avenue, NW
Washington, DC 20036

Subject: Fair and Accurate Credit Transactions Act of 2003 - Compliance Dates

Dear Ms. Feddis:

This letter, signed by the chief and general counsels of the Federal Deposit Insurance Corporation, Federal Reserve Board (Board), National Credit Union Administration, Office of the Comptroller of the Currency, and the Office of Thrift Supervision, and the Acting Director of the Bureau of Consumer Protection of the Federal Trade Commission (FTC) (collectively, the Agencies), responds to your inquiry of the Agencies dated November 2, 2004. In addition to the American Bankers Association, the inquiry was submitted on behalf of the America's Community Bankers, Consumer Bankers Association, Credit Union National Association, Financial Services Roundtable, Independent Community Bankers of America, Mortgage Bankers Association, and the National Association of Federal Credit Unions (the Associations). Your inquiry seeks guidance on how the Agencies expect to apply ten provisions of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act).

Six of the provisions discussed in your letter must be implemented by regulations or guidance adopted by the Agencies. The provisions requiring rulemaking are:

- Red Flag Guidelines and Regulations (FACT Act § 114, FCRA § 615(e));
- Disposal of Consumer Report Information (FACT Act § 216, FCRA § 628);
- Risk-Based Pricing Notice (FACT Act § 311, FCRA § 615(h));
- Accuracy and Integrity Guidelines and Regulations (FACT Act § 312(a), FCRA § 623(e)(1));
- Ability of Consumer to Dispute Information with Furnisher (FACT Act § 312(c), FCRA § 623(a)(8)); and
- Reconciling Addresses (FACT Act § 315, FCRA § 605(h)(2)).

By their terms, sections 114, 216, 312(a) and 312(c), and the provisions of section 315 applicable to persons who have requested a consumer report require some or all of the Agencies to adopt implementing guidance or regulations. As these statutory provisions are written, the obligations of various persons flow from the guidelines and rules that are to be adopted by the designated agencies. Thus, compliance with any applicable guidance or rules cannot be determined until they are finally adopted by the Agencies. The effective date will be set forth in the guidance or rule.

Section 311 of the FACT Act, which governs risk-based pricing notices, becomes effective on December 1, 2004. The provisions of section 311 are, by their terms, enforceable only by the Federal agencies designated in section 621 of the Fair Credit Reporting Act. Joint rulemaking by the FTC and the Board will establish the parameters for compliance, including the requirements for consumer notice, and will state the date for compliance.

The designated Agencies have in several cases begun work on guidance or rules (as appropriate) to implement the provisions discussed above and hope to seek comment on various proposals in the short term. With respect to the provisions of section 216 regarding disposal of consumer information, the Agencies expect to issue a final rule by year-end that will include an effective date for compliance.

There are a number of other provisions of the FACT Act listed in your letter that do not involve the publication of implementing rules. You have asked the Agencies to indicate their willingness to take into account the implementation difficulties associated with these provisions when considering possible agency enforcement actions. In particular, you have indicated that developing and implementing systems to comply with the following provisions of the FACT Act may be complex and difficult for many institutions:

- Fraud and Active Duty Alerts (FACT Act § 112, FCRA § 605A);
- Blocking of Information Resulting from Identity Theft (FACT Act § 152, FCRA § 605B);
- Prevention of Repollution of Consumer Reports (FACT Act § 154(a)–(b), FCRA §§ 615(f), 623(a)(6)); and
- Disclosure of Credit Scores (FACT Act § 212(c), FCRA § 609(g)).

The requirements of these provisions are effective on December 1, 2004, and do not depend on agency rulemaking. As a result, the Agencies expect that covered persons will begin to comply with these provisions on that date.

The Agencies appreciate the difficulties associated with developing compliance procedures, modifying systems, and training staff to implement new requirements. Consequently, the Agencies will take into account these difficulties together with all other relevant circumstances, including the good faith efforts made by each institution to comply with these provisions when considering whether to bring enforcement actions under the FACT Act.

The Agencies note that this letter only addresses liability of regulated persons under the FACT Act and the FCRA listed above. Any obligations under other provisions of law would be beyond the scope of this letter.

Sincerely,

Scott Alvarez,
General Counsel
Board of Governors of the Federal Reserve System

John E. Bowman
Chief Counsel
Office of Thrift Supervision

William F. Kroener, III
General Counsel
Federal Deposit Insurance Corporation

Daniel P. Stipano
Acting Chief Counsel
Office of the Comptroller of the Currency

Lydia B. Parnes
Acting Director
Bureau of Consumer Protection
Federal Trade Commission

Robert M. Fenner
General Counsel
National Credit Union Administration