



1120 Connecticut Avenue, NW
Washington, DC 20036

1-800-BANKERS
www.aba.com

*World-Class Solutions,
Leadership & Advocacy
Since 1875*

Nessa Feddis
Senior Federal Counsel
Phone: 202-663-5433
Fax: 202-828-5052
nfeddis@aba.com

January 7, 2004

Ms. Jennifer J. Johnson
Secretary
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: Federal Reserve System
Docket No. R-1175**

**Federal Trade Commission
Project No. P044804**

**Joint notice of proposed rulemaking
Effective dates for the Fair and Accurate
Credit Transactions Act of 2003**

The American Bankers Association (“ABA”) is pleased to submit our comments on the Federal Reserve Board’s and Federal Trade Commission’s (“Agencies”) joint proposed rules published in the December 15, 2003 *Federal Register*. The proposed rules establish the effective date for provisions of the Fair and Accurate Credit Transactions Act of 2003 (“Act”) that do not contain specific effective dates.

The ABA brings together all elements of the banking community to represent the interests of this rapidly changing industry. Its membership – which includes community, regional, and money center banks and holding companies, as well as savings associations, trust companies, and savings banks – makes ABA the largest banking trade association in the country.

Section 3 of the Act requires the Agencies to prescribe joint regulations establishing an effective date for those provisions of the Act for which the Act does not specifically provide an effective date. It also requires the Agencies to jointly adopt final rules establishing the effective dates within two months of the date of the Act’s enactment. The Agencies

propose an effective date of March 31, 2004 for self-effectuating provisions that do not contain a specific effective date. The Agencies propose December 1, 2004 as the effective date for provisions without effective dates that would require changes in systems, disclosure forms or practices, or implementing regulations to be administered effectively.

Generally, we agree with the proposed schedule, assuming that final regulations are adopted in final form with sufficient time for depository institutions to comply. Final rules should allow for at least six months between publication of final rules and their effective dates.

The Act imposes many new and complex requirements on depository institutions and sufficient time is necessary for depository institutions to review and understand final regulations, modify procedures, revise, create, and order notices and forms, implement auditing programs, and educate and train staff. We note that the Act specifically provides that the effective date of regulations related to sharing information among affiliates shall be six months after the adoption of final rules. The final rule should make clear that this six-month effective date will apply, notwithstanding the Act's provision giving the Agencies nine months to adopt regulations.

In addition, we strongly recommend that the Agencies avoid adopting any other unrelated regulations to be effective in the same time frame. For most institutions, it is the same department – or individual for small institutions – that must digest and implement *all* new banking regulations. In the past, there have been instances when multiple, unrelated regulations were released and effective in the same short time frame, overwhelming the compliance officers and departments as well as vendors supplying software and other materials.

The Agencies in particular seek comment as to whether the proposed schedule of effective dates would allow affected entities a reasonable period of time to comply with or act on the newly-enacted provisions. It is difficult to predict with any accuracy which provisions will require more time to comply absent details of final regulations as moving from concept to execution often produces unexpected challenges, obstacles, and complications. Moreover, small institutions will face greater challenges as some requirements of the Act that may generally parallel practices of larger institutions, will be new to them.

Nonetheless, we expect that compliance with those provisions that require actions that are already general industry practice to be more easily implemented than those that are not, assuming that final regulations conform to industry practices to the degree possible. For example, the requirements related to identity theft alerts in consumer reports track the practices of many institutions, and while some adjustments will have to be

made, we do not expect that these requirements will present a major change.

In contrast, adoption of the new risk-based pricing notice is likely to require more time and thought as depository institutions determine how and when to provide it, modify systems, and educate staff to the adjustments. Similarly, the identity theft red-flag guidelines, depending on their specificity and the requirements for small institutions, could entail major systems and policy changes, staff education etc. Finally, as noted, the affiliate sharing provisions, because of system changes, notice adjustments, and policy changes, may demand additional time.

ABA generally supports the proposed schedule of effective dates for the Act and appreciates the opportunity to provide our comments.

Sincerely,

Nessa Eileen Feddis