

Coalition to Implement the FACT Act

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Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Docket No. R-1887

Dear Ms. Johnson:

This letter is submitted by The Coalition to Implement the FACT Act ("Coalition") in response to the Proposed Rule ("Proposed Rule") published by the Board of Governors of the Federal Reserve ("Board") to provide a model form that financial institutions may use to comply with the notice requirement relating to the furnishing of negative information contained in Section 217 of the Fair and Accurate Credit Transactions Act ("FACT Act"). The Coalition represents a full range of trade associations and companies that furnish and use consumer information, as well as those who collect and disclose such information. We appreciate this opportunity to provide comments on the Proposed Rule.

The Model Notice

The Coalition commends the Board for proposing a model disclosure that is concise and within the statutorily prescribed limit of 30 words. We believe that a short, concise, and complete notice is the most appropriate approach to providing customers with the required disclosures. We urge the Board to retain this focus in a final rule that includes the model form. Although the Proposed Rule adopts the correct approach with respect to the length of the disclosure, we urge the Board to consider revising the model notice to make it easier for customers to read and understand.

The model currently states that "We [may provide]/[have provided] information to credit bureaus about an insolvency, delinquency, late payment, or default on your account to include in your credit report." The Coalition believes that the model may imply to customers that the financial institution would provide only information about "insolvency, delinquency, late payment, or default" to a consumer reporting agency. In fact, many financial institutions report more than these four types of information to consumer reporting agencies. Therefore, we urge the Board to revise the model form to state "We [may provide]/[have provided] information to credit bureaus about your performance on your account, which may include negative information if you fail to fulfill your obligations on the account." We believe that such a statement more accurately reflects the nature of a financial institution's likely behavior with respect to furnishing information to consumer reporting agencies. If the Board determines that the furnisher should provide examples of "negative information," we believe the examples should be limited to "late payment" and "default." Additional examples are not likely to better educate the customer about the furnisher's practices, and would needlessly lengthen the disclosure.

Additional Models

The Coalition appreciates the Board's efforts to provide financial institutions with a model notice to assist them in their compliance with this new disclosure requirement. In fact, we believe financial institutions and customers would benefit if the Board proposed additional model forms that can be used by financial institutions in order to comply with

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the requirement. Although use of the model form is not mandatory, and financial institutions will **certainly be** able to comply with the disclosure requirement without necessarily using the model form, the Coalition urges the Board to provide additional models of language that will be deemed sufficient. **[We** believe the following models may be appropriate for the Board to consider:

"As required by law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the **terms** of your credit obligations."

"We may report your performance under [this **agreement**]/[your account] to credit reporting agencies, including your failure to make **minimum** payments on time."

Use of Model as Safe Harbor

The Board notes in its Supplementary Information to the Proposed Rule that the model form provides a safe harbor to furnishers who use it when making the necessary disclosures to customers. We appreciate the Board's discussion on this topic. **In fact**, we urge the Board to include reference to the safe harbor in the text of the final rule issued by the Board.

Clarifications to the Disclosure Requirement

Although not addressed in the Proposed Rule, we believe the Board, the other federal banking agencies, and the National Credit Union Administration ("Agencies") should consider reviewing the obligations imposed under Section 217 **of the FACT Act** to determine whether regulatory clarification of the requirements would be appropriate. Although most of **the** obligations are sufficiently clear in the statute, we believe the Agencies **could** provide financial institutions with guidance with **respect** to certain issues. For example, it is **important** for the customer to receive a notice with respect to each credit account the customer opens. However, the statute could be interpreted to require the customer to **receive** multiple notices with respect to the same account (**e.g.**, if the credit account is sold to another entity). We believe such an outcome would not **benefit** customers, is not the **congressional** intent, and would impose unnecessary **costs** on financial institutions. The **Board** may also **need** to provide guidance with respect to whether a furnisher has **complied** with the new FACT Act requirement if it provided the customer a similar disclosure prior to the enactment **of** the FACT Act. We **do** not believe there are any customer benefits to providing a similar disclosure to the customer multiple times that would justify its costs.

We also note that there may be other issues worthy of regulatory clarification or guidance. For example, the Board has considered how to provide notice to applicants and co-applicants or joint account in other contexts, such as under Regulations **B, P, Z**, and determined that a single notice is sufficient. We believe a similar **clarification** is appropriate in this context. In particular, a furnisher should **be** permitted to provide the disclosure to one person with respect to an **account**, without needing to provide additional disclosures to each co-signer or joint account holder.

Therefore, we urge the Agencies to seek comment on the need for regulatory guidance on the obligations under Section 217, and to provide it where necessary. In so doing, we also urge the Agencies to provide sufficient time to seek comment, issue clarifications, **and** allow financial institutions to adjust their practices **accordingly**. This may require a minor delay in the compliance deadline for the obligations imposed under

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Section 217

Conclusion

The Coalition believes the Board has provided financial institutions with a **model form** that is appropriately concise. We urge the Board to **consider revisions** to make the model more customer friendly, and to provide additional examples of disclosures that would **be deemed to be** compliant with the new requirements imposed under Section 217 **of the** FACT Act. We also urge the Agencies to consider providing regulatory **clarification** to a limited number of discrete issues **raised** in the context **of** Section 217. Thank you again for allowing the Coalition to **comment on this** issue. **Please** do not **hesitate** to contact me at 202 464 8815 if the coalition can **be of further** assistance.

Sincerely,



Jeffrey A. Tassey
Executive Director