

FEDERAL RESERVE SYSTEM
12 CFR Part 222
[Regulation V; Docket No. R-1175]

FEDERAL TRADE COMMISSION
16 CFR Part 602
RIN 3084 Project No. P044804

Effective Dates for the Fair and Accurate Credit Transactions Act of 2003

AGENCIES: Board of Governors of the Federal Reserve System (Board) and Federal Trade Commission (FTC).

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The recently enacted Fair and Accurate Credit Transactions Act of 2003 (FACT Act or the Act) requires the Board and the FTC (the Agencies) jointly to adopt rules establishing the effective dates for provisions of the Act that do not contain specific effective dates. The Agencies are taking two related actions to comply with this requirement. In this action, the Agencies are proposing rules that would establish a schedule of effective dates for many of the provisions of the FACT Act for which the Act itself does not specifically provide an effective date. In the second action, published elsewhere in today's Federal Register, the Agencies are jointly adopting interim final rules that establish December 31, 2003, as the effective date for provisions of the Act that determine the relationship between the Fair Credit Reporting Act (FCRA) and state laws and provisions that authorize rulemakings and other implementing action by various agencies.

DATES: Comments must be submitted on or before January 12, 2004.

ADDRESSES: Because the Agencies will jointly review all of the comments submitted, interested parties may send comments to either of the Agencies and need not send comments (or copies) to both of the Agencies. Because paper mail in the Washington area and at the Agencies is subject to delay, please consider submitting your comments by e-mail. Commenters are encouraged to use the title "Proposed Effective Dates for the FACT Act" to facilitate the organization and distribution of comments among the Agencies. Interested parties are invited to submit written comments to:

Board of Governors of the Federal Reserve System: Comments should refer to Docket No. R-1175 and may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Please consider submitting your comments by e-mail to regs.comments@federalreserve.gov, or faxing them to the Office of the Secretary at (202) 452-3819 or (202) 452-3102. Members of the public may inspect comments in Room MP-500 between 9 a.m. and 5 p.m. on weekdays pursuant to section 261.12, except as provided in section 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

Federal Trade Commission: Comments should refer to “Proposed Effective Dates for the FACT Act, Project No. P044804.” Comments filed in paper form should be mailed or delivered to: Federal Trade Commission/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW, Washington, DC 20580. Comments filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) should be sent to: FACTAdates@ftc.gov. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled “Confidential.”¹ Regardless of the form in which they are filed, the Commission will consider all timely comments, and will make the comments available (with confidential material redacted) for public inspection and copying at the Commission’s principal office and on the Commission web site at www.ftc.gov. As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC web site.

FOR FURTHER INFORMATION CONTACT:

Board: Thomas E. Scanlon, Counsel, Legal Division, (202) 452-3594; David A. Stein, Counsel, Minh-Duc T. Le, Ky Tran-Trong, Senior Attorneys, Krista P. DeLargy, Attorney, Division of Consumer and Community Affairs, (202) 452-3667 or (202) 452-2412; for users of Telecommunications Device for the Deaf (“TDD”) only, contact (202) 263-4869.

FTC: Christopher Keller or Katherine Armstrong, Attorneys, Division of Financial Practices, (202) 326-3224.

SUPPLEMENTARY INFORMATION:

Background and Discussion

Congress enacted the FACT Act, which the President signed into law on December 4, 2003. Pub. L. 108-159, 117 Stat. 1952. In general, the Act amends the FCRA to enhance the ability of consumers to combat identity theft, to increase the accuracy of consumer reports, and to allow consumers to exercise greater control regarding the type and amount of marketing solicitations they receive. The FACT Act also restricts the use and disclosure of sensitive medical information that is contained in a consumer report. To bolster efforts to improve financial literacy among consumers, title V of the Act (entitled the “Financial Literacy and Education Improvement Act”) creates a new Financial Literacy and Education Commission empowered to take appropriate actions to improve the financial literacy and education programs, grants, and materials of the Federal government. Lastly, to promote increasingly efficient national credit markets, the FACT Act establishes uniform national standards in key areas of regulation regarding consumer report information.

The Act includes effective dates for many of its sections that vary to take account of the need for rulemaking, implementation efforts by industry, and other policy concerns. Section 3 of the FACT Act requires the Agencies to prescribe joint regulations establishing an effective date for

¹ Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must also be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission’s General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

each provision of the Act for which the Act itself does not specifically provide an effective date. The FACT Act requires that the Agencies jointly adopt final rules establishing the effective dates within two months of the date of enactment of the Act. Thus, by law, the Agencies must complete these rulemaking efforts by February 4, 2004. The Act also provides that each of these effective dates must be “as early as possible, while allowing a reasonable time for the implementation” of that provision, but in no case later than ten months after the date of issuance of the Agencies’ joint final rules establishing the effective dates for the Act (117 Stat. 1953).

In this action, the Agencies are proposing rules that would establish a schedule of effective dates for certain provisions of the FACT Act for which the Act itself does not specifically provide an effective date. In a separate notice published in conjunction with this action, the Agencies are jointly adopting interim final regulations to establish effective dates for provisions of the FACT Act that relate to state laws and to implementing authority for the agencies. The Agencies seek comment on the issues associated with the schedule of effective dates set forth in both the proposed and interim final joint regulations.

Schedule of Effective Dates

The FACT Act contains a number of provisions that clarify or address rights and requirements under the FCRA that are self-effectuating but that do not contain a specific effective date. These provisions are: section 156 (statute of limitations); sections 312(d) (furnisher liability exception), (e) (liability and enforcement), and (f) (rule of construction); section 313(a) (action concerning complaints); section 611 (communications for employee investigations); and section 811 (clerical amendments). Section 111 (amendment to definitions) contains definitions that are self-effectuating but that do not contain specific effective dates. The Agencies propose to establish March 31, 2004, as the effective date for each of the provisions of the Act listed above. With respect to each of these provisions, the Agencies consider that the “reasonable time to implement” standard of section 3 of the Act permits an early effective date because these provisions do not require significant changes to business procedures. Each of these provisions furnishes important benefits to consumers and affected businesses. March 31, 2004, is therefore an appropriate date that balances the statutory mandate to effectuate provisions of the Act “as early as possible” and the Agencies’ desire to obtain and consider comment prior to implementation.

The FACT Act contains a number of other provisions without effective dates that would require changes in systems, disclosure forms or practices, or implementing regulations to be administered effectively. The Agencies propose December 1, 2004, as the effective date for these provisions. This will allow industry and the various agencies a reasonable time to establish systems and rules to implement these sections effectively. These sections are listed in the proposed rules.

As explained in the preamble to the Interim Final Rules published concurrently with this Notice (and set forth in section (1)(B) of the applicable interim final rule), the Agencies note that with respect to any provision of the Act that provides for a rulemaking proceeding or other agency action, the proposed rules establishing effective dates do not affect the substantive provisions of the FACT Act implemented by agency rule. The substantive provisions of the Act become effective as provided in the Act, as provided in the Agencies’ joint effective date rules, or as provided by the substantive rules promulgated by the various agencies, as appropriate.

Request for Comments

The Agencies invite comment on the proposal. In particular, the Agencies seek comment on 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 provision(s). The Agencies also invite comment on whether a different effective date is appropriate for any provision. In addition, the Agencies seek comment on whether it is necessary to establish an effective date for any provision not listed (or specifically listed) on the proposed schedule.

Regulatory Analysis

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Agencies have reviewed the proposed joint rules. (The Board has done so under authority delegated to the Board by the Office of Management and Budget.) The proposed joint rules contain no collections of information pursuant to the Paperwork Reduction Act.

Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)), the Agencies must publish an initial regulatory flexibility analysis with the joint proposed rules.

The joint proposed rules, if adopted, would establish effective dates for several provisions of the FACT Act. Prior to the enactment of the FACT Act, the FCRA imposed various duties on parties that furnish information to consumer reporting agencies, on parties that use consumer reports, and on consumer reporting agencies themselves. The FACT Act modifies and extends some of these existing duties and imposes new duties on these respective parties. The schedule of effective dates proposed by the Agencies would make the newly-enacted statutory provisions applicable with respect to these parties. The Agencies seek comment on the extent to which the proposed time periods for compliance may affect the scope or nature of the burdens that affected parties are likely to face in complying with the applicable provisions of the FACT Act, if at all. A description of the reasons for the Agencies' decisions and a statement of the objectives of, and legal basis for, the joint interim final and proposed regulations, respectively, are set forth in the supplementary information provided above. The types of entities, if any, to be affected by these rules is also described above, although the agencies do not presently have a basis for estimating the number of small entities to which these rules will apply. Because the rules merely establish effective dates, the rules themselves impose no reporting, recordkeeping or other requirements, which would arise either from obligations imposed by the statute itself or as a result of rulemakings or other implementing actions that may be taken by agencies under the statute. Nonetheless, the Agencies specifically seek comment on the likely burden the joint proposed rule would have on small entities, such as small creditors that furnish information to consumer reporting agencies or use consumer reports, and how the Agencies' proposed rules might minimize this burden, to the extent consistent with the requirements and intent of the FACT Act.

Communications by Outside Parties to Commissioners and Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. 16 CFR 1.26(b)(5).

Solicitation of Comments on Use of Plain Language

Section 722(a) of the Gramm-Leach-Bliley Act requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000.² In light of this requirement, the Board has sought to present the proposed rule in a simple and straightforward manner. The Board invites your comments on how to make the rule easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

List of Subjects in 12 CFR Part 222

Banks, banking, Fair Credit Reporting Act, Federal Reserve System, Holding companies, state member banks.

Authority and Issuance

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 222 as follows:

PART 222? FAIR CREDIT REPORTING (REGULATION V)

Subpart A? General Provisions

* * * * *

§ 222.1 Purpose, scope, and effective dates.

* * * * *

(c) Effective dates. * * *

* * * * *

(2) Provisions effective March 31, 2004.

- (A) Section 111, concerning the definitions;
- (B) Section 156, concerning the statute of limitations;

² Pub. L. 106-102, 113 Stat. 1338 (1999), codified at 12 U.S.C. 4809.

- (C) Sections 312(d), (e), and (f), concerning the furnisher liability exception, liability and enforcement, and rule of construction, respectively;
- (D) Section 313(a), concerning action regarding complaints;
- (E) Section 611, concerning communications for employee investigations; and
- (F) Section 811, concerning clerical amendments.

(3) Provisions effective December 1, 2004.

- (A) Section 112, concerning fraud alerts and active duty alerts;
- (B) Section 114, concerning procedures for the identification of possible instances of identity theft;
- (C) Section 115, concerning truncation of the social security number in a consumer report;
- (D) Section 151(a)(1), concerning the summary of rights of identity theft victims;
- (E) Section 152, concerning blocking of information resulting from identity theft;
- (F) Section 153, concerning the coordination of identity theft complaint investigations;
- (G) Section 154, concerning the prevention of repollution of consumer reports;
- (H) Section 155, concerning notice by debt collectors with respect to fraudulent information;
- (I) Section 211(a) and (c), concerning free consumer reports;
- (J) Section 212(a)-(d), concerning the disclosure of credit scores;
- (K) Section 213(c), concerning enhanced disclosure of the means available to opt out of prescreened lists;
- (L) Section 214(a), concerning affiliate sharing;
- (M) Section 216, concerning the disposal of consumer report information and records;
- (N) Section 217(a), concerning the duty to provide notice to a consumer;
- (O) Section 311(a), concerning the risk-based pricing notice;
- (P) Section 312(a)-(c), concerning procedures to enhance the accuracy and integrity of information furnished to consumer reporting agencies;
- (Q) Section 314, concerning improved disclosure of the results of reinvestigation;
- (R) Section 315, concerning reconciling addresses;
- (S) Section 316, concerning notice of dispute through reseller; and
- (T) Section 317, concerning the duty to conduct a reasonable reinvestigation.

For the reasons set forth in the preamble, the FTC proposes to amend 16 CFR part 602 as follows:

PART 602? FAIR CREDIT REPORTING

Subpart A? General Provisions

* * * * *

§ 602.1 Purpose, scope, and effective dates.

* * * * *

(c) Effective dates. * * *

* * * * *

(2) Provisions effective March 31, 2004.

- (A) Section 111, concerning the definitions;
- (B) Section 156, concerning the statute of limitations;
- (C) Sections 312(d), (e), and (f), concerning the furnisher liability exception, liability and enforcement, and rule of construction, respectively;
- (D) Section 313(a), concerning action regarding complaints;
- (E) Section 611, concerning communications for employee investigations; and
- (F) Section 811, concerning clerical amendments.

(3) Provisions effective December 1, 2004.

- (A) Section 112, concerning fraud alerts and active duty alerts;
- (B) Section 114, concerning procedures for the identification of possible instances of identity theft;
- (C) Section 115, concerning truncation of the social security number in a consumer report;
- (D) Section 151(a)(1), concerning the summary of rights of identity theft victims;
- (E) Section 152, concerning blocking of information resulting from identity theft;
- (F) Section 153, concerning the coordination of identity theft complaint investigations;
- (G) Section 154, concerning the prevention of repollution of consumer reports;
- (H) Section 155, concerning notice by debt collectors with respect to fraudulent information;
- (I) Section 211(a) and (c), concerning free consumer reports;
- (J) Section 212(a)-(d), concerning the disclosure of credit scores;
- (K) Section 213(c), concerning enhanced disclosure of the means available to opt out of prescreened lists;
- (L) Section 214(a), concerning affiliate sharing;
- (M) Section 216, concerning the disposal of consumer report information and records;
- (N) Section 217(a), concerning the duty to provide notice to a consumer;
- (O) Section 311(a), concerning the risk-based pricing notice;
- (P) Section 312(a)-(c), concerning procedures to enhance the accuracy and integrity of information furnished to consumer reporting agencies;

- (Q) Section 314, concerning improved disclosure of the results of re-investigation;
- (R) Section 315, concerning reconciling addresses;
- (S) Section 316, concerning notice of dispute through reseller; and
- (T) Section 317, concerning the duty to conduct a reasonable re-investigation.

[THIS SIGNATURE PAGE RELATES TO THE JOINT PROPOSED RULEMAKING ON THE
“EFFECTIVE DATES FOR THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF
2003”]

By order of the Board of Governors of the Federal Reserve System, December 16, 2003.

Jennifer J. Johnson (signed)
Jennifer J. Johnson
Secretary of the Board

[THIS SIGNATURE PAGE RELATES TO THE JOINT PROPOSED RULEMAKING ON THE
“EFFECTIVE DATES FOR THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF
2003”]

Dated: December 15, 2003

By Direction of the Commission

Donald S. Clark (signed)

Donald S. Clark

Secretary