



August 26, 2004

Federal Trade Commission  
Office of the Secretary  
Room H-159 (Annex Q)  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Re: Summary of Rights and Notices of Duties Under the Fair Credit Reporting Act  
FACTA Notices, Matter No. R411013  
69 FR 42616 (July 16, 2004)

Dear Sir or Madam:

America's Community Bankers ("ACB")<sup>1</sup> appreciates the opportunity to comment on the Federal Trade Commission's ("FTC") proposal to revise model notices and add new notices required by changes made by the Fair and Accurate Credit Transactions Act of 2003 ("FACTA"),<sup>2</sup> to the Fair Credit Reporting Act ("FCRA")<sup>3</sup>.

### **ACB Position**

ACB generally supports FTC's proposal regarding the summaries of rights and the notices of duties as required by Sections 609 and 607, respectively of the FCRA. However, we are concerned about specific language in the Model Notice to Users of Consumer Reports: Obligations of Users under the FCRA<sup>4</sup>. We offer a specific suggested amendment to the Model Notice. We urge the FTC to delete the sentence in the proposed model notice that states that consumers who receive the risk-based pricing notice will receive a free credit report. We believe that the provisionary credit report pursuant to this section is contrary to the statute.

### **Background**

Prior to enactment of FACTA, the FTC issued Model Notices as required by FCRA addressing a variety of topics including the consumer's rights under FCRA and the responsibilities of users of consumer reports. FACTA requires the FTC to create new

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<sup>1</sup> America's Community Bankers is the member-driven national trade association representing community banks that pursue progressive, entrepreneurial and service-oriented strategies to benefit their customers and communities. To learn more about ACB, visit [www.AmericasCommunityBankers.com](http://www.AmericasCommunityBankers.com)

<sup>2</sup> P.L. 108-159 (Dec. 4, 2003).

<sup>3</sup> 69 Fed. Reg. 42616

<sup>4</sup> Id at 42624

Model Notices and revise existing notices, reflecting changes in the substantive requirements of FCRA.

Several of the substantive provisions underlying the information being given as part of the Model Notices, for example, the risk-based pricing notice information, are required to be implemented through rulemaking. The statute establishes deadlines for the issuance of these new and revised notices that will occur prior to the promulgation of the substantive regulation. Most often, the FTC addresses this occurrence by summarizing the general requirements of the statutory provision and explaining that it will be implemented by regulation.

### **The Proposal**

ACB supports this approach, which recognizes that the details of how these provisions will work depend on the outcome of the rulemakings. We are concerned that the section of the Model Notice that describes the risk-based pricing notice required under Section 311 of FACTA, could result in a notice that is inconsistent with the joint FTC and Board of Governors of the Federal Reserve Board (“Federal Reserve”) regulations that will be issued to implement that provision.

Specifically, the description of the risk-based pricing notice states that receipt of the notice entitles the consumer to a free file disclosure under FCRA. Section 311 does not explicitly mandate any new free file disclosures, but it does require a notice of the consumer’s right to a free file disclosure. ACB suggests that a better reading of the statute is that the reference to a free disclosure is to the free annual disclosure through a centralized source created by Section 211(a) of FACTA.

Regardless of how the FTC and Federal Reserve resolve this issue in the final regulations implementing Section 311, the purpose of the Model Notice to Users is to explain the user’s responsibilities. This purpose would not be served if the final regulation interprets the law differently from the way it is described in the Model Notices. In addition, the question of whether the consumer is entitled to a free file disclosure as a result of receiving a risk-based pricing notice does not directly bear on a user’s responsibilities under FCRA, because the consumer reporting agency, not the user, would have to provide the notice containing the summary of rights.

Therefore, ACB recommends that the proposed sentence that reads, “Consumers who receive a notice will be entitled to a free copy of their consumer report,”<sup>5</sup> be deleted from the Model Notice to Users of Consumer Reports: Obligations of Users under the FCRA.

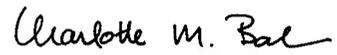
Thank you for this opportunity to provide comments on the proposed model forms. If you have any questions, please do not hesitate to contact Rob Drozdowski at (202) 857-3148 or via E-mail at [rdrozdowski@acbankers.org](mailto:rdrozdowski@acbankers.org) or Janet Frank at (202) 857-3129 or via E-mail at [jfrank@acbankers.org](mailto:jfrank@acbankers.org).

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<sup>5</sup> *Id.* at 42625

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Sincerely,

A handwritten signature in black ink that reads "Charlotte M. Bahin". The signature is written in a cursive style with a large initial 'C' and a long, sweeping tail on the 'n'.

Charlotte M. Bahin  
Senior Vice President, Regulatory Affairs