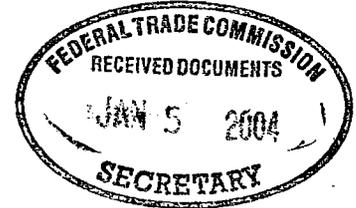




Consumer Federation of America



December 17, 2003

Mr. J. Howard Beales III
Director, Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue
Washington, DC 20580

By Telefacsimile

***Re: Interim Final Rules for FACT Act, Project # P044804
Request to tie the effective date of each new FCRA preemption to the effective dates of the specific substantive federal provision that is the reason for that new preemption***

Dear Mr. Beales:

News reports on December 12, 2003 suggested that the financial services industry might seek an expedited process for the issuance of an FTC regulation to set January 1, 2004 as the effective date of the portion of the Fair and Accurate Credit Transactions Act (FACT) that extends the expiring preemptions. The Commission and the Federal Reserve Board's announcement of December 16th proposes regulations that would set a single, early effective date of January 1, 2004 for the entirety of FACT section 711. We respectfully suggest that this would be a serious error, because making section 711(2) effective before the effective date of the substantive provisions it references might deprive consumers of the protection of some existing state protections before the comparable federal protections become effective.

The reason the banking industry gives for seeking an early effective date for the provision extending the prior preemptions, as described in the news reports, is that the status quo that has existed since 1996 would be disturbed if state legislatures enacted legislation in the very short window of time between Jan. 1, 2004 and the date the normal FTC regulatory process would select as the effective date of the extended preemptions. We do not believe that this is a realistic fear, as state legislatures are extremely unlikely to waste their time and their taxpayers' money enacting a new law that will be preempted within a very short time period.

However, even if this worst case scenario occurred, it would only affect those parts of FACT preemption that extend preexisting preemptions, not those which create new preemptions. Thus, the FTC and the Board could respond to this stated concern by setting an early effective date only for FACT section 711(3), which amends FCRA section 624(d)(2). An early effective date should not be established for FACT section 711(2), which adds a new FCRA section 625(b)(5). An effective date on any new preemption that precedes the effective date of the related federal substantive provisions would deprive consumers of existing rights under state law.

For example, making section 151(a)(2), to be codified at FCRA 625(b)(1)(G), effective January 1, 2004, as stated in the interim rule, would deprive consumers in several states of existing rights. Both California and Washington give identity theft victims an existing statutory right to receive information from certain businesses with whom the thief has engaged in transactions. Louisiana has a similar requirement. The comparable substantive provision of FCRA does not come into effect until 180 days from enactment, per FACT sec. 151(a)(1), to be codified at FCRA section 609(e)(12). This cannot be the right result. Surely Congress did not intend to deprive consumers of existing state rights before the comparable rights provided by Congress come into effect.

Similarly the new, narrow, "conduct required" preemption for some state identity theft laws of FACT section 711(2), to be codified at FCRA section 625(b)(5), is tied to specific provisions that impose requirements on a variety of topics, many of which are also the subject of existing state law. For example, Texas, California, and Louisiana have fraud alert statutes, and Connecticut and California have blocking statutes. If the effective date of the preemption in FACT section 711(2), codified in FCRA section 625(b)(5), is any earlier than the effective date of the particular sections listed there, or is any earlier than the regulations to be promulgated under section 615(e), this would create confusion and uncertainty about the effect on existing state laws that continue to be needed to serve consumers unless and until the provisions of federal law which address the same conduct that is required under the state laws take effect.

For these reasons, we request that any prompt action to extend the preemptions of FACT, including any part of section 711, should be limited to affect only the preexisting preemptions, FACT section 711(3), covering FCRA section 624(b)(1)(A)-(F) and FCRA section 624(b)(2); renumbered as FCRA section 625(b)(1)(A)-(F) and section 625(b)(2).

We further request that the effective date of all other preemptions under FCRA be set no earlier than the effective date of the comparable substantive provision of the federal act. This will prevent the effective date of the preemptions from leaving consumers unprotected by either state or federal law while waiting for the effective dates of the comparable substantive federal protections to arrive. The best way to accomplish this would be for the FTC to narrow the interim rules it announced on December 16, 2003 to address only the effective date of the preexisting preemptions, FCRA sections 625(b)(1)(A)-(F) and 625(b)(2), then to take more time and careful thought to match the effective date of any new preemptions to the effective date of the protections under the federal substantive provisions which trigger those preemptions.

For more information, please contact: Gail Hillebrand of Consumers Union at 415-431-6747, or any of the undersigned.

Sincerely,

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Consumer Federation of America

Ed Mierzwinski
U.S. Public Interest Research Group

CC. Andrew M. Smith
Joel C. Winston
Peggy Twohig
Chris Keller
The Honorable Richard C. Shelby
The Honorable Paul S. Sarbanes
The Honorable Michael G. Oxley
The Honorable Barney Frank