



January 12, 2004

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
Office of the Secretary
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551
Attention: Docket No. R-1175

Email: regs.comments@federalreserve.gov

Federal Trade Commission
Office of the Secretary
Room 159-H
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
Attention: Project No. P044804

Email: FACTAdates@ftc.gov

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

Ladies and Gentlemen:

This comment letter is submitted by MBNA America Bank, N.A. ("MBNA") in response to the Joint Notice of Proposed Rulemaking ("Proposed Rule") of the Board of Governors of the Federal Reserve System and the Federal Trade Commission (collectively, the "Agencies") published in the Federal Register on December 24, 2003, concerning the proposed effective dates for provisions of the Fair and Accurate Credit Transactions Act of 2003 ("FACT Act") for which effective dates were not included in the statute itself. MBNA generally supports the Agencies' Proposed Rule establishing a schedule of effective dates, subject to the comments set forth herein.

1. The Agencies' proposal to establish March 31, 2004 as the effective date for certain provisions of the FACT Act is reasonable and appropriate.

Section 3 of the FACT Act directs the Agencies to establish effective dates for those provisions for which an effective date is not included in the statute itself. In particular, the Agencies are directed to establish dates that are "as early as possible, while allowing a reasonable time for the implementation" of the various substantive statutory provisions. However, any effective date established by the Agencies cannot be later than ten months after the date the Agencies issue their joint final effective date rule.

The Agencies propose to establish March 31, 2004 as the effective date for the provisions in the FACT Act that clarify or address rights and requirements under the Fair Credit Reporting Act (“FCRA”) that are self-effectuating and that the Agencies believe will not require significant changes in existing systems, practices or disclosures. Specifically, these provisions include: section 111, amendments to definitions; section 156, statute of limitations; section 312(d), furnisher liability exception; section 312(e), liability and enforcement with respect to furnisher responsibilities; section 312(f), rule of construction; section 313(a), action concerning complaints; section 611, communications for employee investigations; and section 811, clerical amendments.

In establishing March 31, 2004 as the effective date for the provisions specified above, the Agencies explain that this date meets the “reasonable time to implement” standard of the FACT Act because the Agencies believe these provisions do not require significant changes to existing business practices. In addition, the Agencies note that these provisions benefit both consumers and business. MBNA agrees with the Agencies’ determination and believes that, since these provisions should not require significant changes to existing business practices, the proposed March 31, 2004 effective date is appropriate.

2. The Agencies’ proposal to establish December 1, 2004 as the effective date for other provisions of the FACT Act is, with one exception, reasonable and appropriate.

The FACT Act includes other provisions without effective dates that would require significant changes to existing business practices, and the Agencies propose December 1, 2004 as the scheduled effective date for these provisions. That date is consistent with the ten-month maximum provided in the statute for effective dates established by the Agencies under section 3. In general, MBNA agrees with the determination regarding the effective date for these provisions of the FACT Act. However, MBNA does not believe that December 1, 2004 should be the effective date for section 214(a) of the FACT Act (affiliate sharing solicitation requirements) because this proposed effective date (a) is inconsistent with the statutory language of the FACT Act and (b) conflicts with the legislative intent with respect to the notices required for affiliate marketing solicitations under this section of the Act.

(a) In releasing the Proposed Rule, the Agencies clarify that “with respect to any provision of the [FACT] 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 Agencies also note that the substantive provisions of the various sections of the statute become effective “as provided by the substantive rules promulgated by the various agencies.” In this regard, section 214 of the FACT Act amends the FCRA by providing a new notice requirement relating to the use of information from affiliates for marketing solicitation purposes, and directs the Federal banking agencies, the National Credit Union Administration and the Federal Trade Commission to prescribe regulations implementing this section. Specifically, the FACT Act directs those agencies to issue the regulations in final form no later than nine months after the date of enactment (namely, by September 4, 2004), and provides that the regulations must be effective no later than six months after the date the regulations are issued (namely, by March 4, 2005). The statutory language of section 214 is clear as to the authority of those agencies to establish regulations implementing that sections, substantive provisions, and as to the contemplated effective date of those regulations. Accordingly, the Agencies’ proposal to establish December 1, 2004 as the effective date of

section 214(a) is inconsistent with the time frame contemplated by the statute. In this regard, the effective date for section 214(a) is outside the scope of section 3 of the FACT Act because the effective date for section 214(a) is already provided for in section 214(b).

(b) One of the substantive provisions in section 214(b) of the FACT Act permits the affiliate marketing solicitation notice to be coordinated and consolidated “with any other notice required to be issued under any other provision of law,” such as the Gramm-Leach-Bliley Act (“GLBA”) privacy notice. In prescribing the implementing regulations, the agencies must, among other things, ensure that financial institutions are able to coordinate and consolidate the affiliate marketing solicitation notice and the GLBA notice contemplated by section 624(b) of the FCRA. Moreover, the legislative history to section 214 confirms the legislative intent as to concurrent notice delivery, explaining that the provision permitting the combination of the section 214 notice with the GLBA notice is “intended to allow an entity to time its notice to a consumer (after the effective date of the regulations) in the next regularly scheduled mailing to that consumer of other legally required notices. This coordination and consolidation is intended to reduce consumer confusion and avoid duplicative notices and disclosures.” In accordance with this objective, the effective dates provided in the FACT Act regarding the notice requirements for affiliate marketing solicitations are fully consistent with the schedule for the development and mailing of the GLBA privacy notices that have been adopted by many financial institutions.

Consequently, including the effective date for section 214(a) in the Proposed Rule conflicts with the statutory language and legislative intent of that section. The effective date for section 214(a) cannot be determined until the regulations implementing the requirements of that section are promulgated in final form. The FACT Act clearly directs the appropriate federal agencies to prescribe the implementing regulations for the substantive provisions of section 214(a). Therefore, the Agencies’ final rule implementing the effective dates under section 3 of the FACT Act should not apply to section 214(a) of the Act.

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MBNA appreciates the opportunity to submit comments on this important topic. If you have any questions concerning these comments, or if we may otherwise be of assistance in connection with this matter, please do not hesitate to contact the undersigned.

Respectfully submitted,

MBNA America Bank, N.A.

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