
Board of Governors of the Federal Reserve System

Federal Trade Commission

December 23, 2003

Travis Plunkett
Consumer Federation of America
1424 16th Street, N.W., Suite 604
Washington, D.C. 20036

Gail K. Hillebrand
Consumers Union

Ed Mierzwinski
U.S. Public Interest Research Group

Dear Mr. Plunkett, Ms. Hillebrand, and Mr. Mierzwinski:

This concerns your letter of December 19, 2003, regarding the potential consequences of the interim final rules recently approved by the Board and the Commission to establish effective dates under the Fair and Accurate Transactions Act of 2003 (FACT Act).

We understand that you are concerned that, if the effective date for the preemption provisions of section 711(2) of the FACT Act and certain other provisions is December 31, 2003, state laws that protect consumers against the harms of identity theft in particular would appear to be preempted, while the corresponding federal protections would not yet be in effect.


We believe that the joint interim final rules do not compel the result you describe. In our view, the joint interim final rules adopted by the Board and the Commission establishing the effective date for section 711(2) of the FACT Act do not speak to how or when the preemption provisions added to the Fair Credit Reporting Act (FCRA) will apply and do not alter the relationship between these newly-enacted provisions and state laws in these areas.


Section 711(2) of the FACT Act adds a new provision to the FCRA that bars any requirement or prohibition under any state laws “*with respect to the conduct required by the specific provisions*” of the FCRA, as amended by the FACT Act. The joint rules are based on our opinion that the specific protections afforded under the FCRA override state laws only when the referenced federal provisions that require conduct by the affected persons are in effect. Similarly, section 151(a)(2) of the FACT Act adds a new provision to section 625(b)(1) of the FCRA which preempts any state law “*with respect to any subject matter regulated under*” that provision, and thus overrides state laws only when a federal provision is in effect that regulates that subject matter.¹ In other words, we believe that a requirement that applies under an existing state law will remain in effect until the applicable specific provision of the FCRA, as amended by the FACT Act, becomes effective. Consequently, because the substantive federal provisions actually will become effective at different times, from six months to three years after the FACT Act was enacted, establishing December 31, 2003, as the effective date for the preemption provisions would allow the state law to continue in effect until the respective federal protections come into effect.

The views expressed herein are the views of the Agencies’ staff and do not necessarily reflect the views of either Agency or any particular Governor or Commissioner.

I hope this information is useful.

Sincerely,


 J. Virgil Mattingly, Jr.
 General Counsel
 Board of Governors of the
 Federal Reserve System


 J. Howard Beales, III
 Director
 Bureau of Consumer Protection
 Federal Trade Commission

¹ Identical language in the FCRA prefaces the preemption provisions established in sections 214(c) and 311(b) of the FACT Act, and similar language prefaces the preemption provision established in section 212(e).