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April 16, 2004

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

Matter No. R411005

Re: Free Annual File Disclosures  
69 FR 13192 (March 19, 2004)

Dear FTC Representative:

America's Community Bankers ("ACB")<sup>1</sup> is pleased to comment on the proposed rule<sup>2</sup> to implement the free credit report requirements of the Fair and Accurate Credit Transaction Act of 2003 ("FACTA" or the "Act")<sup>3</sup> issued by the Federal Trade Commission (the "Commission"). FACTA permanently reauthorizes the critical national standards of the Fair Credit Reporting Act ("FCRA")<sup>4</sup>, and establishes new provisions focused on enhancing the accuracy of credit reports, improving consumer access to credit reports, and combating identity theft.

The proposal would amend the regulations adopted to implement the FCRA—as amended by the FACTA—to establish a centralized Internet site, toll-free number and postal address through which consumers may request a free annual credit report from each of the nationwide consumer reporting agencies.

### **ACB Position**

ACB supports the efforts of the Commission to develop a rule that provides for an orderly transition to a centralized request system for providing free credit reports. We are concerned that some of the provisions of the proposal may unnecessarily increase the costs of credit reports and potentially subject consumer reporting agencies to excessive liability.

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<sup>1</sup> America's Community Bankers represents the nation's community banks. ACB members, whose aggregate assets total more than \$1 trillion, pursue progressive, entrepreneurial and service-oriented strategies in providing financial services to benefit their customers and communities.

<sup>2</sup> 69 Fed. Reg. 13192 (March 19, 2004).

<sup>3</sup> Pub. L. 108-159 (December 4, 2003).

<sup>4</sup> Pub. L. 91-508 (Codified at 15 USC 1681-1681t)

The integrity of the national credit reporting system demands that credit reports be as accurate as possible. Throughout the legislative debate leading to the enactment of FACTA, ACB supported empowering consumers to manage proactively their credit information by providing free access to annual credit reports. However, ACB recognized that these consumer empowerment tools come with a cost that will be distributed among all parties in the credit granting process. To help control these costs, Congress granted the Commission significant flexibility to promulgate regulations that help mitigate the adverse affect on our national credit reporting system. We urge the Commission to exercise this flexibility wherever possible to minimize the potential impact to the cost of credit that will be borne ultimately by consumers.

ACB urges the Commission to give careful consideration to the comments of the key stakeholders in this proposal—the consumer reporting agencies and their representatives. While community banks and others serve as both furnishers of credit information and users of credit reports, only the consumer reporting agencies understand the challenges of managing and securing such massive amounts of consumer data. As such, these entities are best able to identify provisions within the proposal that could be changed to minimize the cost and disruption to the national credit reporting system.

### **Security for Consumer Reporting Agencies**

ACB is concerned that proposed section 610.3(d)<sup>4</sup> would have a number of unintended negative consequences. The proposed section would establish that a nationwide consumer reporting agency must comply with the standards for safeguarding customer information required by the Gramm-Leach-Bliley Act (GLBA)<sup>5</sup>. The proposed section specifically refers to the Commission's implementing regulation for the GLBA requirement. We do not believe that the reference is necessary because the definition of financial institution for these purposes includes consumer reporting agencies.

The adoption of proposed section 610.3(d) would insert another layer of regulatory oversight that we do not believe is necessary. In fact, because the remedies for violations of the GLBA requirements are different from those permitted under the FCRA, we are concerned that such an addition would create confusion for consumers. Further, adoption of the proposed section could be interpreted to permit private rights of action for violations of laws for which no right currently exists. We urge the Commission to reconsider this section as part of its development of the final rule.

### **Regional Rollout Strategy**

In order to accommodate the anticipated significant demand for free credit reports, the Commission has proposed a "regional roll-out" approach whereby consumers on the west coast will be the first to have access to free credit reports starting December 1, 2004. The three other regions (e.g., Midwest, Central, etc.) will be phased in every three months, concluding with the

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<sup>4</sup> 69 Fed. Reg. 13209 (March 19, 2004).

<sup>5</sup> 16 CFR 314.3 and 314.4.

east coast region where consumers will have access to free credit reports through the centralized data source no later than September 1, 2005.

Based on anecdotal evidence, it appears that the highest demand for free credit reports will come from those states where the state legislature has been engaged in this issue, such as California and Washington. As such, starting with a regional definition that would include these states could overwhelm the system and frustrate consumers. ACB urges the Commission to reassess its regional rollout strategy to ensure the transition effort is manageable and consumer expectations are met. We suggest the Commission actively consult with representative of the national consumer reporting agencies to work out an effective rollout strategy.

### **Preserve Alternative Uses of Centralized Source Request System**

ACB supports the efforts of the Commission to develop a rule that attempts to protect the credit reporting agencies from receiving more requests than they can handle and allows the use of the centralized request system to help educate consumers on credit issues and market credit-related products to help offset the incredible costs of providing free credit reports. The Commission should preserve this provision in order to help minimize credit report costs and educate consumers on products and services that may be of value to them.

### **Conclusion**

We appreciate the opportunity to comment on this very important proposal. ACB supports the Commission's efforts to craft a workable implementing regulation for the free disclosures of credit reports. We stand ready to work with the Commission to develop a regulation that is effective and one that minimizes the adverse impact on the credit reporting system.

Should you have any questions, please contact myself at 202-857-3148 or via email at [rdrozdowski@acbankers.org](mailto:rdrozdowski@acbankers.org), or Charlotte Bahin at 202-857-3121 or via email at [cbahin@acbankers.org](mailto:cbahin@acbankers.org).

Sincerely,



Robert C. Drozdowski  
Vice President, Payments and Technology Policy