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U.S. House of Representatives
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2129 Rayburn House Office Building
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December 23, 2003

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Alan Greenspan, Chairman
Board of Governors
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Timothy J. Muris, Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Federal Reserve: Docket No. R-1172
Federal Trade Commission: Interim Final Rules for the FACT Act, Project No. P044804

Dear Chairmen Greenspan and Muris:

I have reviewed the Federal Reserve and Federal Trade Commission's December 16, 2003, interim final rule establishing effective dates for certain preemption provisions of the FACT Act and am encouraged by Agencies' timely action. (I hope the Agencies will continue this pace and quickly implement that Act's substantive provisions). I am concerned, however, that the interim rule creates ambiguity regarding the effective date of new FACT Act preemptions and could have the perverse effect of preempting state laws before imposing a meaningful federal alternative – leaving a gap where consumers lack important identity theft and other protections. As such, please confirm that the interim rule does not make effective new FACT Act preemptions until the corresponding substantive provisions become effective.

The interim rule would establish a single, early effective date of December 31, 2003, for several FACT Act sections, including sections 151(a)(2), 212(e), 214(c), 311(b) and the entirety of section 711. Several of these sections (e.g., section 711), however, include new preemptions that are tied to other substantive protections, many of which are not yet effective. Because the interim rule does not distinguish between the preemptions, its broad language suggests that all the preemptions contained in these sections will be effective on December 31, regardless of whether corresponding federal protections are effective to take the place of preempted state law. Such an interpretation would leave consumers without any substantive protections in these areas.

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For example, a number of States have enacted “fraud alert” statutes that permit identity theft victims and other consumers to place alerts on their consumer reports. Given how well these alerts help consumers combat identity theft, Congress established a nationwide fraud alert system in the FACT Act (section 112) and empowered the Federal Reserve and Federal Trade Commission to establish rules to make this requirement effective. The purpose of this new provision is to provide to all consumers strong tools to combat identity theft – not to temporarily strip away the tools available to some consumers and reinvigorate identity thieves. If the interim rule makes the preemption effective *before* the underlying provision, it would do just that.

Fundamentally, our intent in crafting the FACT Act was to provide meaningful protections and tools to consumers nationwide, while remaining cognizant of the burdens and costs imposed on industry and the credit reporting system. Thus, Congress established new consumer protections *and* accepted new, carefully limited, preemptions; it empowered regulatory agencies to phase-in these new requirements to help minimize burden but imposed “not later than” dates to ensure that consumer protections are not put off indefinitely. Throughout the legislation we sought to obtain the most consumer protection “bang” for our legislative/regulatory “buck.” Relying on a delayed effective date to temporarily eliminate consumer protections would directly contradict that clear intent. Accordingly, I urge the Agencies to implement the preemptions (and all FACT Act provisions) with this understanding in mind and am encouraged by recent staff-level statements that the Agencies plan to move in this direction.

Thank you for your attention to this request and I look forward to your response.



BARNEY FRANK