April 16, 2004

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

Re: FACTA Free File Disclosures Proposed Rule, Matter No. R411005
69 Fed. Reg. 13192 (March 19, 2004)

The Mortgage Bankers Association ("MBA") appreciates the opportunity to submit comments on the Federal Trade Commission's (the "Commission" or "FTC") proposed rule implementing the requirement of Section 211 of the Fair and Accurate Transactions Act of 2003 ("FACTA") that nationwide consumer reporting agencies ("CRAs") provide an annual disclosure of the contents of the consumer's file at the CRA. The MBA is a trade association representing approximately 2,700 members involved in all aspects of real estate finance. Our members include national and regional lenders, mortgage brokers, mortgage conduits, and service providers. MBA encompasses residential mortgage lenders, both single-family and multifamily, and commercial mortgage lenders.

The MBA's interest in the proposal relates both to the increase in our members' compliance costs that the change in the Fair Credit Reporting Act ("FCRA") is likely to generate and to larger concerns about the integrity of the credit-reporting process. MBA strongly endorses the concept underlying Section 211 of FACTA — that giving consumers easier access to their credit files will encourage them to check their credit reports and correct any errors before they apply for a loan, in time to prevent those errors from causing the consumer to be rejected or to pay more for a mortgage. We support the FTC's general approach in the proposal of phasing-in the new requirement on a geographic basis and of providing some "surge protection" for CRAs that experience unusual demand for the new service. However, the MBA believes that the rule should specifically recognize that the new FACTA provision will generate many more consumer requests to reinvestigate items in the consumer's file, and that this increase in reinvestigation requests will impose a burden on furnishers of information as well as on the CRAs themselves.

As the Commission recognizes, the "significant demands" that the free file disclosure and other FACTA provisions will place on CRAs include "additional significant demands in responding to . . . requests for reinvestigation," that will be generated by the free annual file disclosure and other expanded free file disclosures provided by the legislation. 69 Fed. Reg. at 13194. Under FCRA, the CRA must ask a lender that furnished a disputed item of information to investigate and the CRA must delete the item if it cannot be verified. Therefore, this increase in the number of requests that the CRA reinvestigates will result in a corresponding increase in requests from CRAs to furnishers of information, which will have to verify each disputed item within the 45-day time limit provided for disputes that arise as a result of the free file disclosure. *See* FCRA §§ 611(2)(A), 623(b), and 609(a)(3). Moreover, FACTA adds a new provision that allows consumers to raise disputes directly with a furnisher of information in certain circumstances, which will also add to lenders' compliance responsibilities. *See* FCRA § 623(a)(8).

Apart from the specific compliance burden that our members face, we are also concerned about the implications that a surge in demand caused by the new free-credit-report provision could have for the integrity of the credit-reporting process. Under another new provision added by FACTA, a furnisher of information is permanently banned from reporting information that cannot be verified in the reinvestigation. FCRA § 623(b)(1)(E). This provision could be read to say that, if a furnisher is unable to investigate a consumer dispute within the time limits provided because of a surge in demand, the information will disappear from the consumer's credit record, even if it is true and the consumer's dispute was instigated by an unscrupulous credit-repair company that promoted its ability to remove valid information from a consumer's credit file for a fee. If the quality of information in the consumer-reporting system declines, consumers will suffer because their costs will increase to compensate lenders for their increased risk. This result would be completely contrary to the intent of Congress in enacting FCRA, which was to benefit consumers by *improving* the accuracy and completeness of consumer reports.

MBA urges the Commission to address the surge in demand for furnishers to investigate disputed items that will likely arise as a result of the new free credit-report provision. The rule should specifically state that an "extraordinary request volume" or "high request volume" not only suspends or defers the obligation of the CRA to provide free file disclosures, it also extends the period for both the CRA and any furnisher to investigate any pending disputed item by the number of days that the CRA experiences extraordinary or high request volume. As noted, FACTA places many additional burdens on both CRAs and furnishers, and it is appropriate for the rule to recognize that the disruption is not limited by the burden on the CRA of providing the free file disclosure.

Any questions about the foregoing should be addressed to Mary Jo Sullivan at (202) 557-2859.

Thank you for your consideration.

Sincerely,

Kurt Pfotenhauer
Senior Vice President
Government Affairs