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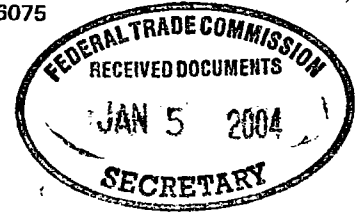
STEVEN B. HARRIS, STAFF DIRECTOR AND CHIEF COUNSEL  
 WAYNE A. ABERNATHY, REPUBLICAN STAFF DIRECTOR

# United States Senate

COMMITTEE ON BANKING, HOUSING, AND  
 URBAN AFFAIRS

WASHINGTON, DC 20510-6075

December 23, 2003



Alan Greenspan  
 Chairman  
 Board of Governors  
 Federal Reserve System  
 20<sup>th</sup> Street and Constitution Avenue, NW  
 Washington, D.C. 20551

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

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

Dear Chairman Greenspan and Chairman Muris:

The purpose of this letter is to comment on an ambiguity in the Joint Interim Final Rules issued by the Federal Reserve and the FTC on December 16 that needs to be clarified.

In these Joint Interim Final Rules, the Federal Reserve and the FTC are establishing December 31, 2003, as the effective date for Section 711 and Sections 151(a)(2), 212(e), 214(c), and 311(b) of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). The Supplementary Information provided in the Joint Interim Final Rules states:

"The Agencies believe there is good cause for adopting these rules as interim final rules effective without advance public comment or delay. As noted above, the current preemption provisions in the FCRA expire on January 1, 2004. . . . Adopting these rules in final form on an interim basis also will have the effect of preserving the current state of the law while comment is received. Implementing these interim final rules is consistent with the statutory directive to act quickly and 'to establish effective dates that are as early as possible.' "

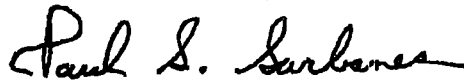
The entire rationale for this interim final rule is the expiration of the current preemption provisions in the FCRA on January 1, 2004. There is no recognition that Subsections 711(2) and 151(a)(2) of the FACT Act are new preemption provisions tied specifically and narrowly to new substantive provisions of the FACT Act primarily relating to identity theft that will not take effect until a later time.

Section 151(a) has a statutory effective date of 180 days after enactment, and state rights should not be preempted before that date. Section 711(2) preempts only with respect to and to the extent of the specific conduct required by the listed sections. Until those sections require conduct, section 711(2) cannot have a preemptive effect.

The Federal Reserve and the FTC should clarify that these new preemption provisions do not take effect until the underlying substantive provisions to which they are tied take effect. Otherwise it could be argued that the effective date of the new preemptions of state law precedes the effective date of the new federal protections against identity theft provided in the FACT Act. This would be directly contrary to the clear language of the statute. There should be no ambiguity in this regard.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Paul S. Sarbanes".

Paul S. Sarbanes