



August 16, 2004

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

Re: FACTA Notices, Matter No. R411013

Dear Sirs and Madams:

The Mortgage Bankers Association (“MBA”) appreciates the opportunity to comment on the Federal Trade Commission’s (“FTC”) Proposed Rule and Request for Comment (“RFC”)TP¹PT to revise model notices and add new notices reflecting changes made by the Fair and Accurate Credit Transactions Act of 2003 (“FACTA”),TP²PT to the Fair Credit Reporting Act (“FCRA”). Prior to enactment of FACTA, the FTC had issued Model Notices under FCRA that addressed topics such as the consumer’s rights under FCRA and the responsibilities of users of consumer reports. FACTA requires the FTC to create new Model Notices and revise existing notices, reflecting changes in the substantive requirements of FCRA. Several of the provisions summarized in the Model Notices, including the risk-based pricing notice, are to be implemented through rulemaking. Unfortunately, FACTA sets a deadline for issuance of these notices before some of the significant rulemakings have been completed.

The FTC has generally addressed this issue by summarizing the general requirements of the provision and explaining that it will be implemented by regulation. The MBA supports this approach, which recognizes that the details of how these provisions will work depend on the outcome of the rulemakings. The section of the Model Notice that describes the risk-based pricing notice required under Section 311 of FACTA, however, could turn out to be inconsistent with the joint FTC/Federal Reserve Board (“FRB”) regulations that ultimately implement that provision.

Specifically, the description of the risk-based pricing notice states that receipt of the notice entitles the consumer to a free file disclosure under FCRA. Section 311 does not explicitly mandate any new free file disclosures, but it does require a notice of the consumer’s right to a free file disclosure. The MBA believes that a better reading of the statute is that the reference to a free disclosure is to the free annual disclosure through a centralized source created by Section 211(a) of FACTA.

¹ 69 Fed. Reg. 42616 (July 16, 2004).

² P.L. 108-159 (Dec. 4, 2003).

Regardless of how the FTC and FRB resolve this issue in the final regulations implementing Section 311, the purpose of the Model Notice to users is to explain the user's responsibilities. This purpose would not be served if the final regulation interprets the law differently from the way it is described in the Model Notices. In addition, the issue of whether the consumer is entitled to a free file disclosure as a result of receiving a risk-based pricing notice does not directly bear on a user's responsibilities under FCRA, because the consumer reporting agency, not the user, would have to provide the notice containing the summary of rights. Therefore, the MBA recommends that the sentence that reads, "Consumers who receive a notice will be entitled to a free copy of their consumer report," be deleted from the Model Notice to Users of Consumer Reports: Obligations of Users under the FCRA. See 69 Fed. Reg. at 42625.

The MBA thanks the FTC for the opportunity to provide comments on the proposed model forms. Should you have any questions, please do not hesitate to contact Mary Jo Sullivan at (202) 557-2859.

Most sincerely,

A handwritten signature in cursive script that reads "Jonathan L. Kempner". The signature is written in black ink and is positioned above the typed name and title.

Jonathan L. Kempner
President and Chief Executive Officer