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**SUPPLEMENTARY INFORMATION:** Congress enacted the FACT Act, which the President signed into law on December 4, 2003. Pub. L. 108-159, 117 Stat. 1952. In general, the Act amends the FCRA to enhance the ability of consumers to combat identity theft, to increase the accuracy of consumer reports, and to allow consumers to exercise greater control regarding the type and amount of marketing solicitations they receive. The FACT Act also restricts the use and disclosure of sensitive medical information that is contained in a consumer report. To bolster efforts to improve financial literacy among consumers, title V of the Act (entitled the "Financial Literacy and Education Improvement Act") creates a new Financial Literacy and Education Commission empowered to take appropriate actions to improve the financial literacy and education programs, grants, and materials of the Federal government. Lastly, to promote increasingly efficient national credit markets, the FACT Act establishes uniform national standards in key areas of regulation regarding consumer report information.

The Act includes effective dates for many of its sections that vary to take account of the need for rulemaking, implementation efforts by industry, and other policy concerns. Section 3 of the FACT Act requires the Agencies to prescribe joint regulations establishing an effective date for each provision of the Act for which the Act itself does not specifically provide an effective date. The FACT Act requires that the Agencies jointly adopt final rules establishing the effective dates within two months of the date of enactment of the Act. The Act also provides that each of these effective dates must be "as early as possible, while allowing a reasonable time for the implementation" of that provision, but in no case later than ten months after the date of issuance of the Agencies' joint final rules establishing the effective dates for the Act (117 Stat. 1953).

The Agencies are jointly adopting these interim final rules that establish December 31, 2003, as the effective date

for section 711 and certain other provisions of the Act that establish the relationship between the FCRA and state laws, as well as for the provisions that authorize rulemaking and other agency action under the FACT Act. In a separate notice published in conjunction with this action, the Agencies are jointly proposing regulations that establish effective dates for the other applicable provisions of the FACT Act. As noted above, the Agencies must complete these effective date rules by February 4, 2004.

The Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) generally requires an agency to publish a notice of a proposed rule and afford interested persons an opportunity to participate in the rulemaking by providing comments prior to promulgation of the rule. The requirement for providing notice of the proposed rule and an opportunity for public comment do not apply "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." Correspondingly, a rule may not be made effective less than thirty days after publication, unless as otherwise provided by the agency for good cause found and published with the rule.<sup>2</sup>

The current FCRA contains provisions that preempt state laws in seven areas governed by the FCRA. Under section 624(d)(2) of the FCRA, these provisions expire on January 1, 2004.<sup>3</sup> One of the central aims of the FACT Act is to eliminate this so-called sunset provision and make permanent the current preemption provisions and add others.<sup>4</sup> In these interim final rules, the Agencies are establishing December 31, 2003, as the effective date for section 711 of the FACT Act, which amends section 624(d)(2) of the FCRA, as well as for sections 151(a)(2), 212(e), 214(c), and 311(b) of the FACT Act, each of which similarly determines the relationship of state laws to areas governed by the FCRA.

The Agencies believe that 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. Delaying final action on these provisions of the FACT Act would undermine the purpose of these

provisions and is likely to provoke substantial confusion about the applicability of some state laws in areas that Congress has determined should be governed by uniform nationwide standards. 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."

Certain provisions of the Act require one or more agencies to undertake an action or rulemaking within a specified period of time after enactment of the Act. For example, section 213(b) states that the Commission's regulations implementing that section "shall be issued in final form not later than 1 year after the date of enactment of this Act." The Agencies have determined that no joint regulations under section 3 of the FACT Act are required to make these provisions effective. The Agencies believe that, in these cases, Congress has specified the date of enactment as the lawful effective date because that is the predicate for mandating that an agency action be performed within a specified period of time after the date of enactment.

There are, however, several sections of the Act that do not specify the period for rulemaking or other action. To address this, the Agencies' interim final rules establish December 31, 2003, as the effective date for each provision of the FACT Act that authorizes an agency, without establishing an implementation date, to issue a regulation or to take other action to implement the Act or the applicable provision of the FCRA, as amended by the FACT Act. The Agencies believe that there is good cause for adopting these rules in final form on an interim basis without advance public comment or delay. Establishing an early effective date for these regulatory provisions would allow the agencies to begin immediately to perform their responsibilities under the FACT Act. The Agencies note that this section of the interim final rules applies only to the provisions of the FACT Act without effective dates that relate to an agency's authority to issue a regulation or to take other action to implement the Act. These interim final rules do not affect the substantive provisions of the FACT Act implemented by an agency rule. The substantive provisions of the Act become effective as provided in the Act, as provided in the Agencies joint effective date rules, or as provided by the substantive rules promulgated by the agencies, as appropriate.

<sup>2</sup> 5 U.S.C. 553(b)(3)(B) and (d)(3).

<sup>3</sup> 15 U.S.C. 1681t(d)(2).

<sup>4</sup> See, e.g., S. Rep. No. 108-166 (2003) at 10-11, 25.