

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).

In this action, the Agencies are proposing rules that would establish a schedule of effective dates for certain provisions of the FACT Act for which the Act itself does not specifically provide an effective date. In a separate notice published in conjunction with this action, the Agencies are jointly adopting interim final regulations to establish effective dates for provisions of the FACT Act that relate to state laws and to implementing authority for the agencies. The Agencies seek comment on the issues associated with the schedule of effective dates set forth in both the proposed and interim final joint regulations.

### **Schedule of Effective Dates**

The FACT Act contains a number of provisions that clarify or address rights and requirements under the FCRA that are self-effectuating but that do not contain a specific effective date. These provisions are: section 156 (statute of limitations); sections 312(d) (furnisher liability exception), (e) (liability and enforcement), and (f) (rule of construction); section 313(a) (action concerning complaints); section 611 (communications for employee investigations); and section 811 (clerical amendments). Section 111 (amendment to definitions) contains definitions that are self-effectuating but that do not contain specific effective dates. The Agencies propose to establish March 31, 2004, as the effective date for each of the provisions of the Act listed above. With respect to each of these provisions, the Agencies consider that the "reasonable time to implement" standard of section 3 of the Act permits an early effective date because these provisions do not require significant changes to business procedures. Each of these provisions furnishes important benefits to consumers and affected businesses. March 31, 2004, is therefore an appropriate date that balances the statutory mandate to effectuate provisions of the Act "as early as possible" and the Agencies' desire to obtain and consider comment prior to implementation.

The FACT Act contains a number of other provisions without effective dates that would require changes in systems, disclosure forms or practices, or implementing regulations to be administered effectively. The Agencies propose December 1, 2004, as the effective date for these provisions. This will allow industry and the various

agencies a reasonable time to establish systems and rules to implement these sections effectively. These sections are listed in the proposed rules.

As explained in the preamble to the Interim Final Rules published concurrently with this Notice (and set forth in section (1)(B) of the applicable interim final rule), the Agencies note that with respect to any provision of the Act that provides for a rulemaking proceeding or other agency action, the proposed rules establishing effective dates do not affect the substantive provisions of the FACT Act implemented by 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 various agencies, as appropriate.

### **Request for Comments**

The Agencies invite comment on the proposal. In particular, the Agencies seek comment on whether the proposed schedule of effective dates would allow affected entities a reasonable period of time to comply with or act on the newly-enacted provision(s). The Agencies also invite comment on whether a different effective date is appropriate for any provision. In addition, the Agencies seek comment on whether it is necessary to establish an effective date for any provision not listed (or specifically listed) on the proposed schedule.

### **Regulatory Analysis**

#### *Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Agencies have reviewed the proposed joint rules. (The Board has done so under authority delegated to the Board by the Office of Management and Budget.) The proposed joint rules contain no collections of information pursuant to the Paperwork Reduction Act.

#### *Regulatory Flexibility Act*

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)), the Agencies must publish an initial regulatory flexibility analysis with the joint proposed rules.

The joint proposed rules, if adopted, would establish effective dates for several provisions of the FACT Act. Prior to the enactment of the FACT Act, the FCRA imposed various duties on parties that furnish information to consumer reporting agencies, on parties that use consumer reports, and on

consumer reporting agencies themselves. The FACT Act modifies and extends some of these existing duties and imposes new duties on these respective parties. The schedule of effective dates proposed by the Agencies would make the newly-enacted statutory provisions applicable with respect to these parties. The Agencies seek comment on the extent to which the proposed time periods for compliance may affect the scope or nature of the burdens that affected parties are likely to face in complying with the applicable provisions of the FACT Act, if at all. A description of the reasons for the Agencies' decisions and a statement of the objectives of, and legal basis for, the joint interim final and proposed regulations, respectively, are set forth in the supplementary information provided above. The types of entities, if any, to be affected by these rules is also described above, although the agencies do not presently have a basis for estimating the number of small entities to which these rules will apply. Because the rules merely establish effective dates, the rules themselves impose no reporting, recordkeeping or other requirements, which would arise either from obligations imposed by the statute itself or as a result of rulemakings or other implementing actions that may be taken by agencies under the statute. Nonetheless, the Agencies specifically seek comment on the likely burden the joint proposed rule would have on small entities, such as small creditors that furnish information to consumer reporting agencies or use consumer reports, and how the Agencies' proposed rules might minimize this burden, to the extent consistent with the requirements and intent of the FACT Act.

#### *Communications by Outside Parties to Commissioners and Their Advisors*

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. 16 CFR 1.26(b)(5).

#### *Solicitation of Comments on Use of Plain Language*

Section 722(a) of the Gramm-Leach-Bliley Act requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000.<sup>2</sup> In light of this requirement, the Board has sought to present the proposed rule in a simple

<sup>2</sup> Pub. L. 106-102, 113 Stat. 1338 (1999), codified at 12 U.S.C. 4809.