



August 12, 2004

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

RE: FACT Act Affiliate Marketing Rule, Matter No. R411006

Dear FTC,

The Michigan Credit Union League (MCUL) appreciates the opportunity to provide comments to the Federal Trade Commission (FTC) concerning the proposed implementation of the FACT Act's rule on sharing information among affiliates. The MCUL is a trade association representing over 90% of state and federally chartered credit unions in the state of Michigan. This comment letter was drafted in consultation with the MCUL Government Affairs Committee, which is comprised of Michigan credit union staff and officials.

The MCUL suggests changes to a number of the proposed FTC regulations regarding a consumer's ability to opt-out of an information sharing agreement that a business may have with one of its affiliates. The MCUL believes that there are a number of areas in this proposal, which the FTC may have taken a position beyond what was originally intended in the FACT Act. We believe that there need to be significant changes and clarification in order to make this proposal beneficial to both consumers and businesses.

Summary of Comments

- MCUL believes that the party responsible for providing the opt-out notice to the consumer should be left to the discretion of the arrangement between the business and its affiliate. The responsibility should not fall on the entity that plans on distributing the information, unless that is their agreement.
- MCUL believes that inquiries from consumers should be considered an exception to the requirement to provide a notice and opportunity to opt-out of certain marketing information. The FTC should remove the requirement that the inquiry be an affirmative request for information and that the consumer provide contact information.
- MCUL believes that the exception to opt-out should extend to any contact the consumer initiates, not only when they request information related to the product or service that the company offers.
- MCUL believes that there should be as much uniformity between the FTC's proposal and the current information restrictions spelled out in the Gramm-Leach-Bliley Act (GLBA) and Fair Credit Reporting Act (FCRA).
- MCUL does not believe that an indefinite opt-out is necessary when credit union members terminate their accounts. This poses difficulties in tracking member identification when files are purged from the system and it is unlikely that credit unions would solicit member information.
- MCUL believes that opt-out renewals should be the same forms as the originals.

- MCUL recommends delaying the mandatory compliance date to allow those credit unions that choose to send them with GLBA privacy notices. They could distribute opt-out notices with the annual privacy notice in the one-year period after the effective date.

Discussion

Opt-out Notice Delivery Requirements. MCUL does not believe that it matters who submits the opt-out notice of information sharing to the consumer as long as the parties involved are clearly disclosed and their relationship is indicated. To dictate that the business providing the information to the affiliate should be responsible serves no benefit to the consumer and inhibits the business from using whatever logistics best suit their needs. The FACT Act does not indicate who is responsible to provide the notice, and we do not believe that there was any clear intent that it be the sharing party. However, with that being said, the party responsible for providing the notice should be liable for any infractions against the consumer who has opted out.

Exceptions For Providing the Opt-out Notice. There are exceptions to the opt-out notice when there is a pre-existing business relationship between the consumer and receiver of consumer information. The FACT Act indicates that such a relationship exists if there is an inquiry or application by the consumer regarding a product or service within three months by the consumer. The FTC's proposal states that unless the inquiry is an affirmative request by a consumer for information, such that the consumer would reasonably expect to receive the information from the affiliate about its products or services. It would also require the consumer provide contact information.

The FACT Act does not mention an "affirmative request" or the requirement to provide contact information by the consumer. We believe that both of these items are burdensome and defeat the intent of this provision. If a consumer calls a business and asks for information over the phone, then there would not be any information sent to the consumer. However, in this example, this consumer may be an ideal candidate for the services of that business. We believe that the FACT Act is intended to cut down on unwanted solicitations by businesses from which the consumer has no interest in hearing from, not businesses that the consumer has contacted in the recent past.

As for the contact information issue, we feel that it is unnecessary for a consumer to provide contact information to the business every time they contact the company. It would be burdensome and annoying to consumers to have to provide this information as they would not see the necessary intent of it. It may also discourage consumers from calling companies if, in order for the company to answer a simple question, the consumer is required to submit all of their personal information, which the company is already likely to have on file.

Another exception to the requirement to provide consumers with a notice and opportunity to opt-out will be when the information is used in response to a communication initiated by the consumer. The FACT Act does not include the requirement that there be any connection between the consumer and an affirmative request for information. If a consumer is going to contact the credit union regarding a service that they, or one of their credit union service organizations offer, then they should not have to be sent information, for there to be future solicitation. Credit unions, as not-for-profit financial cooperatives are unlikely to try to exploit or bother their member/owners. This puts an unnecessary burden on a credit union to have to monitor.

Consistency With Other Acts. MCUL recommends that the FTC make every effort to remain as consistent as possible with other acts for which credit unions must comply. One of the proposed rules concerns not allowing credit unions to accept oral opt-out notices. Not only would this be a restriction with regards to a method of opting-out that may be beneficial to the credit union's business, it would be in contrast to what is allowed under the FCRA. The Fair Credit Reporting Act permits notices to be provided orally, and there is no reason that we can find that would indicate that this would not be a suitable alternative for this FACT Act provision. Credit unions may prefer that their notices be provided in writing, but that should be their choice.

In addition, since credit unions must comply with GLBA privacy notices, which must be provided annually, we believe these provisions of the FTC's proposed rules and the Gramm-Leach-Bliley Act should be as consistent as possible. Included in one of the FTC's rules is a requirement to include an expiration date in the opt-out notice. This is not required by the FACT Act and would create an inconsistency with GLBA opt-out provisions. Also, the requirement to include an expiration date may prevent an affiliate from simply choosing to not put an expiration date on the notice and letting the opt-out continue indefinitely, as is consistent with GLBA. If the FTC has indicated that they foresee credit unions using the opt-out notices as part of annual GLBA privacy notices provided to credit union members, then they should make the rules as consistent as possible.

The requirement to include an electronic means of response to an electronic opt-out notice is, again, inconsistent with GLBA. This prevents credit unions from using whichever means are cost effective or fit within their systems, such as written responses or telephone calls, to accept opt-out notices. GLBA does not require this, nor to provide an envelope to return the opt-out notice, in their act. We believe it is an unnecessary requirement under implementation of the FACT Act.

Indefinite Opt-out Provisions. If a credit union provides limitations on their opt-out provisions and if a consumer terminates his or her relationship with an affiliated entity, the FTC proposes that the opt-out will remain in effect indefinitely, unless revoked by the consumer. We feel that those credit unions that choose to impose time limits on their opt-out notices will be overly burdened to track these former members, especially when their information expires from their data base. We feel that this is not an issue of concern for credit unions since they are not for-profit institutions that do not typically inundate consumers with solicitations.

Same Opt-out Notices at Renewal. We do not see any advantage when a credit union elects to put a limitation on their opt-out notice to require them to provide a different opt-out notice at renewal. The extension notice must include language indicating that the consumer's opt-out period has or is about to expire. As long as the information that they would receive a new notice at expiration was disclosed on the first notice, then the same copy for both notices should suffice. We believe different formats are an unnecessary burden for credit unions that provides little benefit to consumers.

Mandatory Compliance Date. MCUL recommends that the FTC delay their mandatory compliance date (which is scheduled for six months after the rule is issued in final form) to be consistent with GLBA privacy notices. Credit unions may decide to include this information along with their GLBA notices so they do not have two separate mailings. This, again, is designed to create uniformity between the two acts, provides credit unions with additional compliance time, and saves them the cost of an additional mailing.

We thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink that reads "Matthew Beard". The signature is written in a cursive style with a large, stylized "M" and "B".

Matthew Beard
Regulatory Specialist
Michigan Credit Union League

cc: Credit Union National Association, Inc.