

# THE FINANCIAL SERVICES ROUNDTABLE



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Federal Trade Commission  
Office of the Secretary  
Room H-159 (Annex R)  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

RE: FACTA Prescreen Rule, Project No. R411010

Dear Sir or Madam:

The Financial Services Roundtable<sup>1</sup> (the “Roundtable”) appreciates the opportunity to provide comments on the proposed rulemaking (the “Proposed Rule”) issued by the Federal Trade Commission (“FTC”) outlining new disclosures in relation to a consumer’s right to opt out of prescreened solicitations. The Proposed Rule is required by section 213(a) of the Fair and Accurate Credit Transactions Act (the “FACT Act”).

## **Roundtable Comments**

The Proposed Rule implements section 213(a) of the FACT Act, which requires companies making prescreened solicitations for credit or insurance to provide enhanced disclosures about the consumer’s right to opt out of receiving such offers in the future. Section 213(a) directs the FTC to draft a rule establishing opt-out disclosures that are simple and easy to understand.<sup>2</sup> These notices require two components: (1) language and syntax that effectively convey the intended message to readers, and (2) presentation and format that call attention to the notice and enhance its readability.

The Proposed Rule would require institutions using prescreened solicitations to include a “layered notice” consisting of a short, prominent notice

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<sup>1</sup> The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Roundtable member companies provide fuel for America's economic engine accounting directly for \$18.3 trillion in managed assets, \$678 billion in revenue, and 2.1 million jobs.

<sup>2</sup> The FTC defines “simple and easy to understand” as plain language designed to be understood by ordinary consumers. Factors that are considered in this determination include clear and concise sentences and the active voice, avoiding legal and technical terminology as well as multiple negatives.

informing consumers of their right to opt out, and a longer notice informing consumers of additional rights.

The Roundtable appreciates the FTC's effort in drafting the Proposed Rule. We applaud the FTC for giving institutions flexibility in designing disclosures about prescreened solicitations. However, we have the following concerns with the Proposed Rule.

- Roundtable member companies oppose the layered notice approach taken by the FTC. We believe the proposed approach does not effectively educate consumers about the benefits of prescreening.
- The Roundtable believes the proposed notice is confusing and would limit consumers' access to credit.
- The Proposed Rule is inconsistent with Regulation Z, which implements the Truth in Lending Act ("TILA").
- We are concerned that the Proposed Rule may impose more difficult standards for the disclosure of the short notice on electronic solicitations than it imposes on mailed solicitations.
- We urge the FTC to take into account the unique use of prescreened offers by insurance companies.
- We recommend that the FTC allow financial institutions at least nine (9) months to comply with these new disclosure requirements.
- We believe the Proposed Rule would create costs for the industry and the consumer above those estimated in the proposal.

### **Consumer Benefits of Prescreening**

Roundtable member companies are concerned that the layered notice approach in the Proposed Rule does not adequately educate consumers about the benefits of prescreening. On July 23, 2004, the Roundtable submitted comments to the Board of Governors of the Federal Reserve System (the "Board") in relation to their study of prescreening. This letter outlined the significant benefits of prescreening, including the following:

- Roundtable member companies believe that prescreening reduces costs, both for consumers and issuers. Some economists have indicated that

consumer savings in the cost of credit from the increased competition in the credit card industry – largely enabled by prescreening – is about \$30 billion per year.<sup>3</sup>

- Prescreening allows financial institutions to target marketing efforts and therefore reduces mailings to consumers. Without prescreening, lenders would most likely solicit consumers more broadly because they are unable to identify the subset of consumers that will likely qualify for their products. Issuers would need to acquire new borrowers through generic solicitations (email, telephone calls, and postal mail). These untargeted marketing solicitations would contain no clear terms or conditions and would not include an offer of credit. Subsequently, consumers may be confused when they apply for the product and are either rejected or given unfavorable terms by the lender.
- Prescreening allows issuers to reach a larger pool of consumers with a greater geographic distribution. Prescreening enables individuals in underserved populations to gain access to credit whereas they may not otherwise seek or receive credit. Prescreening also alerts consumers about the variety of credit products available to them.
- Roundtable member companies believe that prescreening helps create and maintain a competitive marketplace which benefits the consumer. Prescreening allows financial institutions to manage and underwrite risk more efficiently which limits losses.
- Consumers are less likely to be victims of identity theft when prescreening is used. According to a 2002 GAO report (GAO-02-363, 2002), less than 0.7% of the cases of identity theft (where the method for the stolen information was known) involved a telephone or mail solicitation; “prescreened” credit solicitations represent an even smaller fraction of this category.

The Roundtable believes that the goal of the opt-out notice should be to allow consumers to make an informed decision about whether or not they wish to receive further prescreened solicitations. In order to achieve this goal, we *recommend* that the notice provide the consumer with information about the benefits of prescreening. We believe that the layered approach does not achieve this purpose.

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<sup>3</sup> Testimony of Michael Turner, The Information Policy Institute before the Subcommittee on Financial Institutions, Committee on Financial Services, U.S. House of Representatives, May 8, 2003.

## **The Proposed Notice May Confuse Consumers**

The Roundtable believes the “layered” notice would diminish the impact of the offer and encourage consumers to opt out of prescreened solicitations without understanding the benefits of prescreened offers. We are also concerned the consumers may interpret the prescreening opt-out as a “do not mail” opt-out.

The Roundtable believes that short notice in the layered approach is confusing and misleading. Most consumers are unfamiliar with the term “prescreening”. In addition, we believe that prominently listing the toll-free number could confuse the consumer. Consumers may be led to call the number without the benefit of having read the longer notice outlining the benefits of prescreening and the consequences of opting out. Consumers may also view the notice as an offer of credit and call the toll free number.

The FTC conducted a consumer study to compare the noticeability and comprehension of three different versions of an opt-out notice embedded in prescreened offers of credit. We recommend that the FTC adopt the proposed version #2 (improved) notice outlined in the FTC consumer study. Version #2 uses simpler and clearer language than the language in the proposed layered notice approach. Version #2 is a single disclosure that allows consumers to make an informed choice about opting out of prescreened solicitations. The FTC study found that version #2 was more effective than the current version in communicating the opt-out messages.

## **The Proposed Rule Would Limit Consumers’ Access to Credit and Would Increase the Cost of Credit**

We believe the layered notice approach encourages individuals to opt out of prescreening without informing of the consequences of this decision. Subsequently, fewer consumers would have access to credit.

Roundtable member companies believe that prescreening provides consumers access to credit. Prescreening creates competition and allows consumers to become informed about their credit options and how to obtain more favorable credit terms. As stated in our July 23<sup>rd</sup> letter to the Board on prescreening, we do not believe that opting out of prescreening will reduce the flow of mail to consumers. Institutions would instead use non-qualified mass mailings to fill the void. The consumer would ultimately be harmed since they would be responding to offers without knowing the terms of the offer or whether they qualify for credit.

If a consumer chooses to opt out, they will not receive prescreened solicitations for five (5) years. The Roundtable believes that this will reduce the access to credit for consumers, especially those who are unaware of the opportunities to access these markets. These may be those individuals with little credit history or those individuals who are repairing their credit and could take advantage of better credit terms and conditions.

Consumers who opt out of prescreened solicitations would likely receive more expensive offers of credit, because credit issuers would not be able to verify the creditworthiness of that consumer. Prescreening allows lenders to review a consumer's creditworthiness prior to sending solicitations and again at the time of application. This gives institutions flexibility in adjusting the credit terms and allows them to manage their credit risk more efficiently. The end result is that cost of credit is low. The credit process becomes more difficult and more costly without prescreening. For example, a recent Visa Functional Credit Study states that credit processing costs are approximately \$10 per account for prescreened solicitations, \$25 per account for non-prescreened solicitations, and \$18 per account for branch/indirect solicitations.

### **The Proposed Notice Would Be Inconsistent with Regulation Z**

The Roundtable is concerned that the proposed notice would conflict with other terms and disclosures, such as those required by Regulation Z. For example, requiring lenders to disclose the short notice and toll-free number on the front page undermines the prominence of Regulation Z disclosures and Schumer Box information. The front page notice would draw the consumer's attention away from descriptions of pricing terms and conditions and other key elements that are meant to educate and protect consumers under Regulation Z.

### **The Proposed Rule Should Be Applied Differently to Insurers**

The Roundtable believes that the FTC's Proposed Rule does not take into account the use of prescreened offers by insurance companies. Prescreened solicitations of insurance educate a targeted audience about insurance products available, insurers who offer them, and insurance agents that provide services. This process provides consumers with information that they may not otherwise obtain.

#### *Identity Theft*

One of the goals of section 213(a) of the FACT Act is to allow consumers to opt out of receiving prescreened offers in order to avoid becoming victims of identity theft. As previously stated, there is little evidence suggesting prescreened

solicitations lead to identity theft. This is especially true in the insurance context. Insurance offers do not invite mail-in responses. Instead, these solicitations invite recipients to meet face to face with insurance agents for a quote. The Roundtable *recommends* that the FTC provide an exception from the layered notice requirement for prescreened offers of insurance.

### *Marketing Insurance*

The Proposed Rule requires that the short notice appear “on the front side of the first page of the principal promotional document in the solicitation.” The short form must also direct the consumer to the existence and location of the long notice. The long notice must be set apart from other text on the page and begin with a heading which identifies it as the opt-out notice.

Prescreened offers of insurance, however, are not subject to excessive disclosures, such as those required under Regulation Z and other laws. Many prescreened offers of insurance consist of a single page or fold-out self mailer that consumers may return to the company in order to accept the offer. We do not believe that a single page offer of insurance should be required to have both a short notice and a long notice. The Roundtable *recommends* that the FTC take insurers’ marketing practices into consideration and limit the application of the Proposed Rule in relation to prescreened offers of insurance.

### **The Proposed Rule Could Impose More Difficult Standards on Electronic Prescreened Solicitations**

The Roundtable believes that a short form notice is unnecessary regardless of whether or not the solicitation is sent via mail or is in electronic form. However, we are concerned that if the FTC decides to go forward with the short notice, the Proposed Rule could impose more difficult standards for the disclosure of the short notice on electronic solicitations than it imposes on mailed solicitations.

Many lenders make prescreened solicitations online. These online solicitations are often provided in the form of a box, statement, pop-up or other link that consumers must click on in order to obtain more information about the offer. The link functions as an “envelope” that the consumer must “open” to find out about the offer, and the screen that the consumer is directed to after clicking on the link functions as the cover letter presenting the offer. The requirement to place the short notice on the first electronic screen could be interpreted to mean the first screen that refers to the offer or the link. Such a requirement would be similar to requiring lenders to place the short notice on the envelope of a mailed solicitation. The Roundtable *recommends* that, if the FTC proposes a short notice, the final rule

should clarify that it is the first full screen of the promotion (rather than the link) that should include any short notice information.

### **More Time is Needed to Comply with the Disclosure Requirements**

Paragraph 642.4 of the Proposed Rule provides that the rule would become effective sixty (60) days after it is final. The Roundtable believes that sixty days is not an adequate amount of time to comply with the new regulation. Roundtable member companies prepare these solicitations several months in advance. Creating new notices and allowing consumers time to respond will require significant personnel and resources. The Roundtable *recommends* that FTC give financial institutions at least nine (9) months to comply with these new disclosure requirements.

### **The Proposed Rule Would Create Additional Costs for Institutions**

The Proposed Rule indicates that about five hundred (500) to seven hundred fifty (750) firms offer prescreened solicitations. The Proposed Rule estimates that the cost to the entire industry of the proposed layered notice will be between \$110,000 and \$167,000. We believe these estimated total costs are too low. The Proposed Rule does not take into account the personnel needed to create the notices and deal with potential consumer confusion and other customer service issues once the notices are sent out. We also believe that the Proposed Rule would force institutions to send consumers less-targeted solicitations, which would create an additional cost for the industry and ultimately the consumer.

### **Conclusion**

The Roundtable applauds the FTC's efforts in conjunction with the Proposed Rule. Our member companies believe that prescreening provides significant benefits to the consumer and allows the industry to more adequately account for credit risk. Prescreening is a cost effective way to reach an underserved market of consumers who may not otherwise receive these products. Prescreening promotes competition and bolsters the economy.

We *recommend* that the FTC create a notice that will inform the consumer about the benefits of prescreening and allow them to make an educated decision when deciding whether or not to opt out of these solicitations. We do not believe that the proposed layered approach would accomplish this goal. We strongly urge the FTC to consider using version #2 as the model notice.

If you have any further questions or comments on this matter, please do not hesitate to contact me or John Beccia at (202) 289-4322.

Sincerely,

*Richard M. Whiting*

Richard M. Whiting  
Executive Director and General Counsel