**Comments to the Federal Trade Commission from**
**The National Consumers League, Consumer Action, and Consumer Federation of America**
**Regarding FACTA Prescreen Rule,**
**Project No. R411010**
**October 27, 2004**

## Introduction

The National Consumers League (NCL) was founded in 1899 to identify, represent, and advocate for the economic and social interests of consumers and workers. Since 1971, the nonprofit organization Consumer Action (CA) has served consumers nationwide through complaint referral, education, and advocacy. Consumer Federation of America (CFA), established in 1968, is a nonprofit association of 300 consumer groups that seeks to advance the consumer interest through research, advocacy, and education. We are pleased to provide comments on the proposed Prescreen Rule (the Rule) under the Fair and Accurate Credit Transaction Act (FACTA).[1] Our organizations have long been concerned about protecting consumers from unwanted marketing solicitations and from the potential to become victims of identity theft. This Rule will help consumers on both counts.

Few people would argue that the opt-out notices consumers receive today in prescreened offers of credit or insurance are either clear or conspicuous. They are usually buried in the marketing materials, in fine print that is often fainter than the rest of the text, and in language that does not make clear that consumers can stop receiving such solicitations and how to do so.

This is not surprising, since the vendors and the credit bureaus that compile the marketing lists on their behalf have little motivation to urge recipients to opt-out of receiving further offers. Therefore, the Rule must give very strict guidance for how the opt-out notice should be provided and what it should say. We generally support the approach that the Federal Trade Commission

[1] Pub. L. 108-159, 117 Stat. 1952

(FTC) proposes, but we have some specific concerns and suggestions that we will express in these comments.

**Format and Manner of Disclosure**

We do not believe that there should be as much flexibility in the format and manner of disclosure as proposed. The FTC has not presented any compelling reasons why this simple disclosure should not be presented to consumers in a uniform manner, with only the words "credit" or "insurance" varying.

In door-to-door sales and other situations covered by the FTC's Cooling-Off Rule, the FTC recognized that there was little incentive for the sellers to highlight the buyers' cancellation rights. To ensure that buyers get that information in a clear and conspicuous manner, the Cooling-Off Rule requires a specific statement about the right to cancel to be made in "substantially" the form that the FTC provides.[2] We strongly urge the FTC to take the same approach in both the short and longer notices here.

**Layered Notice Requirement**

As the FTC consumer study documented, the layered notice requirement would work best to convey the opt-out information. Congress clearly intended section 213 to improve the notice that consumers get about their ability to opt-out of prescreened offers. Indeed, the title of that section, "Enhanced Disclosure of the Means Available to Opt Out of Prescreened Lists," emphasizes the importance of the opt-out information.

The short notice that the FTC proposes would effectively alert recipients to their ability to opt-out and the means to do so, as long as it is required to be substantially the same as the model included in the notice of proposed rulemaking. Details about the basis of the offer or that it is not

[2] Title 16, Part 429, Section 429.1 (a)

guaranteed if recipients do not meet certain criteria are not necessary to have in order to decide whether to opt-out of future solicitations and may be contained in the second, longer notice.

To make the short notice more clear, we would suggest adding the words "such as this" as illustrated in italics below:

"To stop receiving "prescreened" offers of [credit and insurance] *such as this* from…"

This would help ensure that consumers understand that the opt-out applies to the type of offer that they have just received and not other kinds of offers from that or other companies.

**Type Size and Contrast**

In the FTC model notices the type is bolded, but the proposed Rule allows for other ways to distinguish the typeface, including italicizing, underlining, or using colors that contrast with the background. We are concerned that these alternatives might not be adequate; for instance, a contrasting color may not necessarily stand out if it is a light color against a light background of another color. We believe that the most simple and effective way to distinguish the type is the bold format that the FTC chose to use in its models and question why other alternatives are necessary. We also note that the Cooling-Off Rule requires the cancellation notice to be in bold face type.

We agree that 12-point type should be the minimum requirement for the short notice, but 8-point type in the longer notice is far too small to read easily, even if it is bolded. The minimum requirement in the longer notice should be 10-point type, as the Cooling-Off Rule requires; 12-point type would be even better.

**Placement of Notices**

The front of the cover letter is the best place for the opt-out notice to appear because that is the first thing recipients are likely to read. They might never look at the application form or other materials.

We believe that the longer notice should be on the reverse side of the cover letter, or at least in the same document, not in another document. It would be confusing to direct consumers to other materials. The additional information should be readily available, in close context to the short notice. We also believe that it would be helpful for the FTC to define the "principal promotional document" as the cover letter or whatever document is used to introduce the offer.

**Including Other Information in the Notices**

We strongly oppose including any information in the longer notice other than that proposed by the FTC. The information in the longer notice should be specifically limited to that which the FACTA spells out in section 213. Again, it should be required to "substantially" follow the FTC model.

Additional information could be confusing to consumers and distract from the simple message that the notice seeks to convey. And while it might be useful for consumers to learn about the benefits of prescreened offers of credit or insurance, there are also potential drawbacks, such as becoming over-extended and the danger of prescreened offers falling into the hands of identity thieves, that would be helpful for them to know. Since there is no way for the FTC to ensure that the additional information would be balanced, it would be inappropriate to allow it to be included as part of the government-mandated notice. Moreover, this incidental information is not specified in section 213.

**Conclusion**

If the opt-out notice for prescreened offers of credit and insurance is improved along the lines we have suggested, consumers will benefit from the ability to reduce the amount of unwanted solicitations they receive and the potential to become victims of identity theft. We urge the FTC to issue clear, strong rules regarding the wording, format, and placement of the notice to ensure that it fulfills its intended purpose. Thank you very much for considering our comments on this important matter.

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