

SPENCER BACHUS
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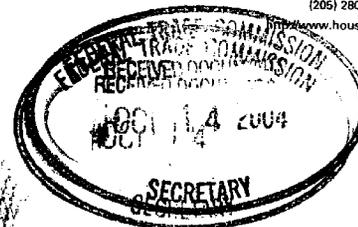
COMMITTEES:
FINANCIAL SERVICES
CHAIRMAN, SUBCOMMITTEE ON FINANCIAL
INSTITUTIONS AND CONSUMER CREDIT
TRANSPORTATION AND
INFRASTRUCTURE
JUDICIARY

Congress of the United States
House of Representatives
Washington, DC

October 8, 2004

The Honorable Deborah Platt Majoras
Chairman, Federal Trade Commission
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Dear Chairman Majoras:

We are pleased that you are working diligently toward the implementation of new section 624 of the Fair Credit Reporting Act ("FCRA"), as added by section 214 of the FACT Act, pertaining to affiliate marketing. This important provision will allow consumers to opt out of certain types of marketing when affiliates exchange information that meets the baseline definition of a "consumer report" (*i.e.*, the fundamental definition of a "consumer report" regardless of the statutory exceptions to the definition) ("covered information"). This new provision will give consumers control about how covered information is used when it is shared among affiliates.

As you craft a proposed rule to implement section 624 of the FCRA, we urge you to review the statutory language carefully. In particular, Congress crafted the new requirements to balance two important concepts: (i) the consumer's desire to control information and marketing; (ii) and the consumer's desire to retain access to a variety of financial products and services at lower costs. We strongly believe that consumers will be well served by the new provisions in section 624 of the FCRA if they are implemented properly.

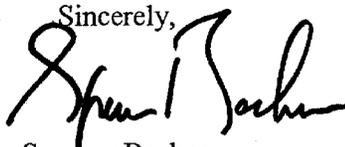
As a fundamental matter, the statute applies only when a "person that receives from [an affiliate] a communication of [covered information] may not use the information to make a solicitation for marketing purposes" unless certain conditions are met. Therefore, in order for the new provision to apply, there must first be an exchange of covered information among affiliates and the receiving affiliate must seek to use such information to make the solicitation. It was not our intent in this legislation to address all types of marketing. Indeed, Congress has previously addressed broad portions of marketing through telemarketing and e-mail marketing legislation giving tools to consumers to avoid telemarketing and e-mail solicitations. Our goal in enacting the FACT Act was to address only those circumstances in which an affiliate receives certain types of information from another affiliate, and then uses that information to market the consumer.

We also note that the statute imposes obligations only on the affiliate that receives information and uses the information to make certain solicitations to consumers. Such an approach ensures that consumers will receive the appropriate notice described in section 624 while providing flexibility with respect to how the notice is provided. It is our hope that the final regulation reflects this statutory construction.

We also urge you to consider the statutory exceptions to section 624. These were critical to ensure that the legislation did not arbitrarily and unnecessarily limit the ability of consumers to learn of better or less expensive products in certain circumstances. For example, the provisions would not apply when a company markets to its own customers or in response to any communication initiated by a consumer. It was our distinct determination that solicitations to existing customers should not be covered under section 624. Of course, existing customers could still avoid many types of marketing by taking advantage of other legal protections provided in other telemarketing and e-mail marketing legislation. The FACT Act would not alter those fundamental protections. Similarly, if a consumer initiates contact with a company, section 624 would not apply in connection with any solicitations made to the consumer as a result of the consumer-initiated contact. We did not want to stifle a company's ability to provide information to a consumer in circumstances where the consumer decided to obtain information from the company. We also note that consumers can authorize a company or its affiliates to make solicitations to the consumer, such as may be included as part of an account agreement or similar document. This concept was borrowed from the regulations implementing Gramm-Leach-Bliley, and accordingly, it was our intention that the implementation occur in the same fashion.

It is our hope that you will take this information into account when drafting the final regulations to implement section 624 of the FCRA. We strongly urge you to consider the competing consumer interests at stake throughout your process.

Sincerely,

A handwritten signature in black ink, appearing to read "Spencer Bachus". The signature is fluid and cursive, with the first name "Spencer" written in a larger, more prominent script than the last name "Bachus".

Spencer Bachus
Member of Congress

CC:

James E. Gilleran, Office of Thrift Supervision
William H. Donaldson, Securities Exchange Commission
John D. Hawke, Jr., Office of the Comptroller of the Currency
Donald E. Powell, Federal Deposit Insurance Corporation