



**CUNA & Affiliates**  
A Member of the Credit Union System

**Credit Union  
National Association, Inc.**

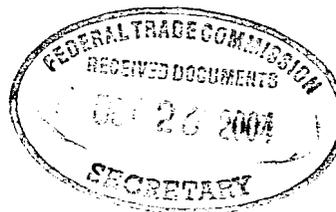
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October 26, 2004

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



RE: FACTA Prescreen Rule, Project No. R411010

Dear Sir or Madam:

The Credit Union National Association (CUNA) is pleased to respond to the Federal Trade Commission's (FTC's) proposed rule that will require entities making prescreened offers for credit or insurance to provide enhanced disclosures regarding the consumer's right to decline, or "opt-out" of, receiving such offers in the future. These disclosures will replace the current disclosures now being used to comply with the existing provisions of the Fair Credit Reporting Act (FCRA) and will implement the Fair and Accurate Credit Transactions (FACT) Act provisions that direct the FTC to issue a rule to make these disclosures simple and easy to understand. By way of background, CUNA is the largest credit union trade association, representing approximately 90% of our nation's nearly 9,300 state and federal credit unions.

#### **Summary of CUNA's Position**

- CUNA supports enhanced disclosures. However, we do not believe it is necessary to have both a short and long notice regarding the consumer's right to opt-out of receiving prescreened offers.
- If a short notice is required, the FTC should allow flexibility with regard to the 12-point type size requirement and permit slightly smaller type.
- If a short notice were required, the proposed rule would require that it be on the first page of the "principal promotional document." We believe it would be helpful to define this term. For electronic solicitations, there should be clarification regarding the requirement that the short notice be on the "first screen" in order to address situations in which consumers may need to scroll down the first page in order to view the opt-out notice.
- For electronic solicitations, the rule should clarify that any type size requirement for the opt-out notices should refer to how the information is transmitted by the lender, not how it appears on the consumer's computer.



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- The effective date of the rule should be six months after the final rule is issued.

## **Discussion**

CUNA supports the intent of the proposed rule to improve the required notice to consumers regarding their right to opt-out of prescreened solicitations for credit or insurance. However, we have concerns regarding the “layering” approach outlined in the rule, in which there would be a “short” notice highlighting the opt-out right, followed by a subsequent “long” notice within the solicitation that provides additional information.

We do not believe the layering approach would be appropriate in this situation because the long notice would only be required to include a limited amount of additional information than would be provided in the short notice. Under these circumstances, the “long” notice would still be relatively short and would not be very much longer than the “short” notice. Since both notices would be relatively short and would include similar information, the result would be two redundant notices within these solicitations.

We believe the redundancy between the short and long notice can be eliminated by requiring only one notice, such as the long notice, which succinctly includes all the information currently required under the FCRA. The proposed long notice would be a simpler and an easier to understand version of the current language that is used to disclose the required information. We also agree that this notice should be in a location within the solicitation that the consumer is likely to see and that each organization should be allowed to place their notices in a manner that it believes best highlights the information.

One example for the location of the notice could be within the information that includes the rates, terms, and other conditions, consistent with the example included in the proposed rule regarding the placement of the long notice. To the extent consumers open and review these solicitations, they are likely to see this portion of the solicitation, as well as the cover letter. We believe this approach will fulfill the requirement of the FACT Act that these notices be “simple and easy to understand.”

The proposed rule would require that the short notice be placed on the page first seen by the consumer, but this will not necessarily guarantee that the consumer will grasp its significance. For example, a consumer interested in the offer may very easily skim or skip over the cover letter and would almost certainly review the rates and terms portion of the document in order to decide whether to accept the offer. At least under these circumstances, one could argue that a notice in the rates and terms portion of the document would attract more attention than if the notice was placed on the first page of the cover letter.

If the FTC requires a short notice, along with the long notice, we request additional flexibility regarding the requirement that the short notice be no smaller than 12-point type. We suggest the FTC incorporate the approach the Federal Reserve Board adopted with regard to type size for credit card solicitations. The disclosure requirements for credit card solicitations and applications under Regulation Z, the Truth in Lending Act, suggest, but do not require, that a significant portion of these disclosures be in 12-point type. These rules specifically permit slightly smaller type, while indicating that disclosures appearing in less than 8-point type would likely be unacceptable.

We believe the FTC should adopt a similar approach with regard to the short notices. There are a number of ways, such as changes in font and color, bolding, or italicizing verbiage, that an organization may structure a promotional document to call attention to particular information. We believe each organization should be allowed to draft their notices in a manner that best highlights this information within the broader context of their promotional documents.

If the FTC requires a short notice, the rule would require that this notice be on the first page of the "principal promotional document." We believe it would be helpful to define this term. This term could be defined as "the document intended to be seen first by the consumer."

For electronic solicitations, we also believe there should be additional clarification regarding both the requirement of 12-point type for the short notice and 8-point type for the long notice. The type size appearing on one computer may appear as a different size when viewed on another computer, and lenders have no control over these computer settings. To resolve this issue, the rule should clarify that the information must or should be "delivered or transmitted" in 12 or 8 point-type size, as opposed to the requirement that it "be" in 12 or 8 point-type size. Lenders should only be responsible for how they transmit the information, not how it appears on the consumer's screen.

For electronic solicitations, the rule would require that the short notice be placed on the first "screen" of the solicitation. We believe this should be clarified to require that it be on the first "page" of the electronic solicitation. Otherwise, there would be confusion as to whether the proposed requirement would cover situations in which the consumer would need to scroll down the first page in order to see the notice. Similar to controlling the type size that appears on the consumer's computer, the lender cannot control what appears on the first screen of the consumer's computer without requiring the consumer to scroll down further in order to see the notice.

The proposed rule establishes an effective date that will be sixty days after the rule is issued in final form. We do not believe this will be a sufficient amount of time. We believe the optimal effective date should be six months after the rule is

issued. Smaller financial institutions, such as credit unions, do not have the same level of resources as larger institutions to prepare for these changes, and we believe this justifies a further delay of the effective date.

Thank you for the opportunity to comment on the proposed rule regarding the disclosures in connection with prescreened offers for credit or insurance. If you have questions about our comments, please contact Senior Vice President and Associate General Counsel Mary Dunn or me at (202) 638-5777.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey Bloch", written in a cursive style.

Jeffrey Bloch  
Assistant General Counsel