



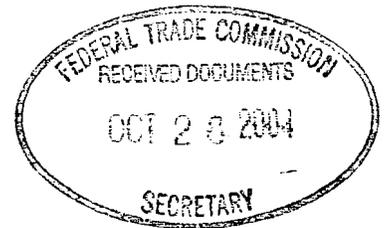
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October 27, 2004

**VIA OVERNIGHT MAIL**

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



RE: Comment for:  
FACTA Prescreen Rule  
Project No. R411010

Ladies and Gentlemen:

Countrywide Home Loans, Inc., together with its affiliates (collectively, "Countrywide"), appreciates the opportunity to provide comment to the proposed rule to improve the required notice to consumers regarding their right to opt out of prescreened solicitations for credit or insurance, as directed by Section 213(a) of the Fair and Accurate Credit Transactions Act ("FACT Act").

**INDUSTRY BACKGROUND:**

Countrywide is one of the nation's largest mortgage banking companies, and in the fourth quarter of 2003, became the largest home mortgage lender in the United States. Countrywide funded more than \$435 billion in home loans last year. Since its founding in 1969, its mission has been to make the dream of homeownership possible for as many Americans as possible.

Prescreening programs have been instrumental in allowing Countrywide to extend the dream of homeownership and in helping consumers choose lending programs suitable for their particular needs.

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## **OVERVIEW:**

Countrywide understands the perceived need to add definition to the formatting and presentation of opt-out disclosure notices; however, Countrywide respectfully submits that the existing system of opt-outs works well and provides consumers adequate protection from unwanted solicitations. Statistics gathered by the Consumer Data Industry Association and others show that during the period of 2001 through 2003, a yearly average of over three million consumers has successfully opted out of receiving prescreened solicitations. Significantly, during the same period, over ten percent of those who originally opted out chose to rescind their choice to opt out because of the value they see in receiving prescreened offers.

In short, Countrywide sees no need to modify the existing opt-out process. We offer our comments and suggestions in the event modifications are deemed necessary.

Although the proposed rule provides some degree of flexibility for the improved notice, Countrywide would request reconsideration of requirements such as the layered notice and minimum font sizes. Such rigid requirements may well detract from the impact and perceived value of the offer, and thereby hurt response rates and drive up marketing costs. Lower response rates and higher marketing costs will inevitably be passed along to consumers in the form of higher prices and rates and/or fewer benefits and features. In addition, the relative importance seemingly placed on the opt-out notice by two distinct disclosures may distract from other material conditions and disclosures made in the offer.

Further, the effective date for the final rule will not allow enough time for sufficient testing and sampling of the redesigned notice required by the new rule. Countrywide estimates that it will need a minimum of 120 days to change format, change copy and to evaluate consumers' response.

## **SPECIFIC COMMENTS:**

As requested, we present our views and suggestions with respect to each numbered topic presented for comment:

**1. Are the proposed requirements for format and manner of disclosure appropriate and adequate to fulfill the purpose of enabling consumers to understand their right to opt out of receiving prescreened offers?**

Countrywide offers no comment on this issue.

**2. Does the layered notice requirement provide a simple and easy format for disclosing the required information? Are the type sizes proposed for the short notice and the long notice appropriate? Should they be larger? Should they be smaller?**

Countrywide has no objection to making the notices distinct from the surrounding text, but feels that the proposed font sizes are too restrictive. We suggest that the requirement be that the font size be larger than surrounding text, without specifying a minimum size. This could eliminate the need for multiple pages and will enhance the continuity and clarity of the communication. Specifying that font size be larger than surrounding text, rather than a minimum size, would also minimize formatting and rendering issues that arise when sending prescreen communications electronically. See further comments regarding electronic prescreen solicitations to Question 14, below.

**3. Is the requirement that the short notice be “on the first page of the principal promotional document in the solicitation” sufficient to ensure that the short notice is prominent and noticeable? Should “principal promotional document” be a defined term? Should there be a safe harbor for placing the short notice on the first page of the document that is designed to be seen first by the consumer? What other factors should be considered in determining whether a document is the “principal promotional document”?**

Countrywide offers no comment on this question; but please see comments to Question 6 below.

**4. Is there additional information that should be required in the short notice to enhance its simplicity and understandability? If additional information is needed, identify the information and state why it is needed.**

Countrywide offers no comment on this question; but please see comments to Question 6 below.

**5. Should the Rule allow additional information in the short notice? If so, what, if any, restrictions or conditions should apply to the inclusion of additional information?**

Countrywide offers no comment on this question; but please see comments to Question 6 below.

**6. Is there additional information that should be required in the long notice to enhance its simplicity and understandability? If additional information is needed, identify the information and state why it is needed.**

Countrywide suggests that language be added to the long notice to make it clear that the 800 telephone number listed in the short notice is a number directed to the consumer reporting agencies. Countrywide has found that many consumers mistakenly think they are contacting the soliciting lender directly.

**7. Should the Rule prohibit information beyond that required by the statute from being included in the long notice?**

Countrywide recommends that other information be allowed in the long notice. For instance, although the information in the sample form appears adequate for credit card solicitations, home mortgage solicitations might be more informative if information regarding collateral condition and appraisals were also allowed. Insurers might include other information appropriate to their offerings.

**8. Should the Rule require the long notice to appear in the same document as the short notice?**

Countrywide urges that the long notice and short notice not be required to appear in the same document. Requiring them to be included in the same communication, or in the case of prescreen solicitations sent electronically, accessible, such as through a link within the same email message should satisfy the purposes of the rule, and the added flexibility of placement will enhance the effectiveness of the communication.

**9. Is the effective date adequate and appropriate? If not, please specify what an appropriate effective date would be and provide specific information regarding why an effective date other than the date in this proposed Rule is necessary and appropriate. For example, is the effective date adequate for marketers to exhaust their existing inventories of solicitation forms, re-design the opt-out notice in order to incorporate the layered approach, and print solicitations with the new layered notices? Is there any small business that has a particular need for a longer period for compliance?**

As noted above in the "Overview" section, Countrywide feels that 60 days from the final rule is much too short a timeframe for the rule to become effective. For an enterprise that operates on the scale of Countrywide, 120 days from the final rule would provide the bare minimum of adequate opportunity to reformat, rewrite copy and evaluate consumer reception and response.

**10. Are the model notices simple and easy to understand? Are there terms used in the model notice that are not likely to be understood by ordinary consumers? If so, what are those terms, and what other terms would be understandable? For example, is the term "criteria" understandable to ordinary consumers? Are ordinary consumers more likely to understand a term such as "credit standards" or "requirements"?**

The model notices are simple and easy to understand.

**11. Do the model notices adequately provide consumers with the information necessary to exercise their right to opt out? If additional information is needed, identify such information and state why it is needed.**

Please see comments to Question 13 and 14 below.

**12. Do the model notices offer helpful guidance for complying with the Rule?**

Yes.

**13. The model long notice includes the name of the consumer reporting agency to whom the consumer can write to exercise the opt-out right. Is this helpful to consumers? Should the notice include the names of all nationwide consumer reporting agencies?**

Countrywide suggests creating a mechanism similar to the national 800 prescreen opt out telephone number, whereby consumers can write to a single address to opt out with respect to all national CRAs.

**14. To what extent do credit and insurance providers make prescreened solicitations electronically? Describe the circumstances under which a prescreened solicitation would be made electronically. Are electronic prescreened offers likely to become more prevalent? Does the proposed rule adequately address prescreened offers that are made electronically?**

Countrywide anticipates that prescreen email solicitations will increase in response to demand from consumers who prefer to interact and conduct business transactions electronically. Countrywide does not believe that the proposed rule adequately addresses prescreen offers that are made electronically. As proposed, prescreen email solicitations would need to include a short and a long notice in the email message, in addition to an unsubscribe mechanism and other disclosures required to comply with CAN-SPAM. Consumers are accustomed to unsubscribe mechanisms in commercial email messages, but will likely be confused, rather than informed, about which opt out action applies to commercial email offers and which opt out action applies to prescreen offers. One option that would resolve confusion over which opt out action applies is to exempt prescreen messages that are sent electronically from CAN-SPAM requirements with respect to the opt out mechanism. Consumers who opt out of electronic prescreen offers will not receive future prescreen offers electronically or otherwise, and they will still have the opportunity to opt out of other types of commercial email messages.

As noted in response to Question 8, the rule should be flexible and allow the long notice to be accessible through a link in the message. Additionally, the rule should only require notice font size to be larger than surrounding text to eliminate issues that arise with how email formats, including font size, render to the recipient as a result of numerous and

varied email software packages, ISPs, mail systems and browser technologies. Countrywide urges the Commission to carefully consider these issues to assure rules can be implemented in a way that promotes reasonable informed choices and expectations for consumers.

**15. What is the number and nature of entities that are covered by the Rule? Are any of these entities small businesses? If so, what is the number and nature of any such small business entities? How many of these small entities make prescreened offers of credit or insurance?**

Countrywide offers no comment on this question.

**16. Please provide comment on any or all of the provisions in the proposed Rule with regard to (a) the impact of the provision(s) (including any benefits and costs), if any, and (b) what alternatives, if any, the Commission should consider, as well as the costs and benefits of those alternatives, paying specific attention to the effect of the proposed Rule on small entities in light of the above analysis. Costs to “implement and comply” with the proposed Rule should include expenditures of time and money for any employee training, attorney, computer programmer, or other professional time, as well as notice reformatting, mailing, or other implementation costs.**

Although the changes under the proposed rule appear simple and straightforward on their face, their implementation could prove complex and costly for large-scale mortgage lenders. As noted above, we estimate that it will take a minimum of 120 days from finalization to properly rewrite and reformat copy and evaluate the impact of the revisions with the consuming public. Requirements for minimum font sizes, for instance, will require additional pages to a communication, which in turn may increase weight and postage costs for mailings. Requirements for layered notice will require creative rewrites to minimize substantial declines in response rates, again driving up costs, and, ultimately, the cost of credit to consumers.

As an experimental matter, Countrywide and certain of its business channels and divisions “mocked up” a number of prescreened offerings they have used, utilizing the proposed minimum font sizes and formats. In all instances, the reformatted solicitation extended into two pages (with associated increases in production and mailing expense) and resulted in a significant interruption in the “flow” of the message, which will require extensive redesign.

**17. Please describe ways in which the proposed Rule could be modified, consistent with the FACT Act’s mandated requirements, to reduce any costs or burdens for small entities.**

Countrywide offers no comment on this question.

**18. Please describe whether and how technological developments could reduce the costs to small entities of complying with the proposed Rule.**

Countrywide offers no comment on this question.

**19. Please provide any information quantifying the economic costs and benefits of the proposed Rule for regulated entities, including small entities.**

Countrywide offers no comment on this question.

**20. Please identify any relevant federal, state, or local rules that may duplicate, overlap, or conflict with the proposed Rule.**

Countrywide offers no comment on this question.

Thank you for the opportunity to comment upon these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Weinstock", with a long horizontal flourish extending to the right.

Chris Weinstock  
Senior Vice President and  
Assistant General Counsel