



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

**RE: Prescreen Opt-Out Rule, Project No. R411010**

To Whom It May Concern:

On behalf of the members of the Consumer Data Industry Association<sup>1</sup> we provide the following comments on the Federal Trade Commission's proposed rule concerning prescreened opt-out disclosures. We appreciate the opportunity to comment on this important notice.

**Economic Benefits of Prescreening are Many**

Prescreening benefits consumers in innumerable ways. CDIA stated the following in a recent letter to the Federal Reserve Board<sup>2</sup>. "Prescreened offers of credit or insurance are the most effective means for consumers to shop, make comparisons, and ultimately make good decisions about financial services products which are best for them. Prescreening is about choice at its very best. In thinking about alternative modes of shopping, most consumers can ill afford the time it would take to effectively shop for credit, whether it is by driving from one financial institution to another, using the internet, or making phone calls." CDIA's letter also pointed to measurable benefits for individual consumers. Consider the following data which is drawn from analyses prepared by the Information Policy Institute<sup>3</sup>:

- Consumers have clearly benefited from offers for lower interest rates on credit cards. In 2004, seventy four percent (nearly three quarters) of all outstanding card balances were at interest rates below 18%. In 1990, seventy three percent of card balances were tied to interest rates greater than 18%.
- Consumers who maintain outstanding balances were among those who benefited the most from the competition fostered by prescreening. In 1990, approximately 94% of consumers who carried balances on credit cards were charged rates above 16.5%. By 2002, 71% of balances were charged rates below 16.5%.

The above data is only a small sample of the many examples of the economic benefits of prescreening to individual consumers to the U.S. economy. The IPI estimates that competition in the credit card marketplace resulting from prescreening has saved consumers an aggregate of \$30 billion per year from

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<sup>1</sup> Founded in 1906, CDIA is an international trade association which represents more than 400 consumer information companies. CDIA members represent the nation's leading institutions in the fields of credit reporting, mortgage reporting, check verification, fraud prevention, risk management, employment reporting, tenant screening, and collection services.

<sup>2</sup> See CDIA's letter of comment to the FRB regarding Docket No. OP-1195

<sup>3</sup> Turner, Michael, et al. "The Fair Credit Reporting Act: Access, Efficiency, and Opportunity." June 2003.

1998 to 2002. It is for these reasons that the CDIA's members believe that notices to consumers of their right to opt out should be effective not only in explaining the right, but the benefits of the prescreened process.

Encouraging opt out on its own without a concurrent discussion of benefits of prescreened offers would be a serious failing in the FTC's overall efforts to ensure a fair and beneficial marketplace for consumers and in the design of a new notice of opt-out as required by the FACT Act<sup>4</sup>.

### **The Current Opt-out System is Working Well**

CDIA believes that the FTC must consider the success of the current system by which consumers may exercise their right to opt out. CDIA's members report that for the years 2001 through 2003, an average of 3.14 million consumers chose to opt out. This equates to more than 8,600 consumers per day, 365 days a year and approximately 10 million consumers over the three-year period. Notably, during this same three-year period over 1 million consumers chose to rescind their choice to opt out because of the value they see in receiving prescreened offers.

These data clearly demonstrate that every year many millions of consumers can and do successfully exercise their right. We believe it is equally valid to conclude that many millions of consumers also review the notices, recognize the value of continuing to receive prescreened offers of credit or insurance, and thus choose not to opt out. It is a fact that tens of millions of consumers make a valued buying decision to accept the offer because the process does save them money as well as time otherwise spent shopping for a variety of financial services products. Still millions of other consumers are pragmatic, choosing to continue to receive offers and make the easiest of choices, and that is to simply shred, throw away or decline such offers on a case-by-case basis.

The FTC's proposed rules requiring the statement "be presented in such format and in such type size and manner as to be simple and easy to understand..." should in no way interfere with a marketplace where tens of millions of consumers are already choosing to make informed buying decisions which save them both time and money.

### **Responses to Selected FTC Questions**

FTC Q. – 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?

CDIA A. – This question implies that perhaps many consumers today do not understand their right. As discussed above, for the years 2001 through 2003, approximately 3 million consumers per year chose to opt out and interestingly enough approximately 1 million consumers opted back in during this same three-year period.

CDIA does not believe that the proposal requiring layered notices is appropriate and shares the concern of many that such a system of notices will fail to properly inform consumers of the benefits of prescreened offers of credit. Separating key information via the layering of information, and the propensity of consumers to read both notices does not appear to have been tested by the FTC and thus any conclusions regarding the effectiveness of layered notices drawn from the FTC's consumer study as discussed in the Federal Register notice are suspect. CDIA believes that a single, improved notice, a version of which in fact was a part of the FTC's consumer study, would best meet the need of informing consumers, while at the same time, ensuring that a consumer will see all relevant information within the same notice and thus make an informed decision.

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<sup>4</sup> See FACT Act Sec. 213 (PL 108-159).

FTC Q. – 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 long notice appropriate? Should they be larger? Should they be smaller?

CDIA A. – CDIA believes that a layered notice, which provides so little information in the first notice, is not simple in that the consumer may or may not find it easy or convenient to take the time to read the second notice and thus will not likely make an informed decision. The layering of notices in this particular situation is not helpful to the consumer. CDIA cautions the FTC about the parallels it appears to be drawing between privacy notices under the Gramm-Leach-Bliley Act and the studies of layered notices in the context of these notices, on the one hand, and the opt-out notice that is the subject of this rule, on the other. CDIA believes that a single, improved notice which is balanced would be most effective in meeting the test of simplicity and ease of use. CDIA will defer to the financial institutions to comment on the questions concerning type size.

FTC Q. – 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?

CDIA A. – There are a variety of notices required to be delivered to consumers under any prescreened offer of credit. CDIA is concerned that the FTC may be overreaching in attempting to force the prominence of the notice of opt-out over other such notices. The mandate of the FACT Act to require that the statement “be presented in such format and in such type size and manner as to be simple and easy to understand...” does not mean that the placement of this notice should be more or less prominent than other notices of rights of which a consumer should be aware. As the FTC points out in its Federal Register notice, “In addition to Section 615(d) of the FCRA, other federal laws may require disclosures in prescreened solicitations. For example Truth in Lending Act (TILA) and its implementing Regulation Z require, in certain credit offers relating to the cost of credit, a number of disclosures. Various state laws may also require disclosures.”<sup>5</sup>

FTC Q. – Is there additional information that should be required in the short notice to enhance its simplicity and understandability?

CDIA A. – CDIA believes that the concept of an “improved notice”, as discussed by the FTC in its consumer study, is a better approach than the layered notice proposal. The current short notice is phrased pejoratively not only by employing the phrasing “to stop”, but also merely by the absence of any other context that would help a consumer understand the opt-out choice. Further, the sheer density of the long notice may deter many consumers from reading it and thus the short notice may effectively operate on its own. The two-step process of notices is not simple or easy to use.

FTC Q. – 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?

CDIA A. – Consistent with our answers above, CDIA does not support a two-step layered notice approach. However, CDIA does believe that the notice must include additional information sufficient to help a consumer not only understand the fact and mechanics of the right of opting out, but also the consequences of doing so, and the benefits they reap from lower priced offers.

FTC Q. – Is the effective date adequate and appropriate?

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<sup>5</sup> See footnote number 6 in the FTC’s Federal Register notice regarding Prescreened Opt-out Disclosure, Project No. R411010.

CDIA A. – CDIA ultimately defers to the financial institutions which must administer this notice, but it seems practical to allow for an effective date which is no less than twelve months from the date of publication of the final Rule.

FTC Q. – Are the model notices simple and easy to understand? Are there terms used in the model notices 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?”

CDIA A. – The concept of providing the financial services industry with model notices is helpful. The Rule should, however, allow financial institutions the flexibility to draft compliant notices which are substantially similar to the models.

FTC Q. – 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.

CDIA A. – CDIA generally defers to financial institutions with regard to the content of the notices. However, CDIA clearly believes that the proposed short notice, which is used in combination with the long notice, is inadequate simply because the proposed short notice offers absolutely no information on the reasons for which consumers benefit from such offers. The absence of any such guidance in the short notice, is a point of great concern to CDIA’s members.

FTC. Q. – 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?

CDIA A. – The notice should not name any nationwide consumer reporting agency unless one of those agencies was used in prescreening. If this is the case, CDIA believes that consumers are best served by contacting the toll free number which is jointly administered by nationwide consumer reporting agencies. Consumers who wish to opt out permanently in writing will receive a form on which to make this written request. The standardized forms used by the nationwide consumer reporting agencies ensure that a consumer’s request can be handled with a minimum of confusion. Where consumers are directed to write in without, for example, further guidance on all of the identifying information necessary to properly administer the consumer’s request to opt out, will give rise to unnecessary frustration.

FTC Q. – What is the number and nature of entities that are covered by the Rule? Are any of these entities small business entities?

CDIA A.– CDIA generally agrees with the FTC’s data wherein it states under Section VI (Paperwork Reduction Act) of the rule that there are likely between 500 and 750 entities that make prescreened solicitations in this country. CDIA’s members have little information on how many of these entities may be small businesses.

## **Conclusion**

In conclusion, the CDIA appreciates the extensive efforts of the FTC to develop a Rule that accomplishes the goal of ensuring that the notice to consumers of their right to opt out be simple and easy to understand. CDIA disagrees with the premise that the congressional mandate required that the notice also

be made more prominent. Further, CDIA strongly believes that layered notices cannot operate effectively and thus do not meet the dual test of simplicity and ease of understanding.

The FTC's consumer study, though it appeared to study issues outside of the mandate of the FACT Act, did show that an "improved" notice operated much more effectively than the old notices and that an improved notice is in what appears to be a statistical dead heat with the operation of a layered system of notices (the study reports that the improved notices were within 2 percentage points of the layered notices with regard to improved consumer awareness). CDIA believes that an improved notice ensures that all information necessary for an informed decision is located within the same text and thus meets the congressional mandate of making the notices simple and easy to understand.

Thank you for this opportunity to comment. Ensuring the continued success of a system of marketing and competition which has saved consumers billions of dollars per year is critical and cannot be underestimated. The Rule must ensure that consumers can, in fact, understand and act upon their rights in an informed manner. A layered notice will not accomplish this goal.

Sincerely,

A handwritten signature in black ink, appearing to read "Stuart K. Pratt", is centered on the page. The signature is fluid and cursive.

Stuart K. Pratt  
President & CEO