



555 West Adams Street  
Chicago, IL 60661  
Tel 312 466 7730  
Fax 312 466 7986  
jblenke@transunion.com  
www.transunion.com

**John W. Blenke**  
Executive Vice President  
General Counsel

July 23, 2004

Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, DC 20551

Re: FACT Act Study of Prescreening Opt-Out, Section 213(e); Docket No. OP-1195

Dear Ms. Johnson:

This comment letter is submitted on behalf of TransUnion LLC (“TransUnion”) in response to your Request for Information (“RFI”) of May 24, 2004 in the captioned matter. TransUnion is a Delaware limited liability company with businesses that operate as a “consumer reporting agency” as that term is defined under the Fair Credit Reporting Act (“FCRA”). TransUnion has approximately 4,000 employees with operations on five continents and in 34 countries. TransUnion has access to consumer credit information supplied by data furnishers on substantially all of the credit active consumers in the United States. As such, TransUnion is one of the major national providers of credit reporting and prescreening services to financial institutions and others with a permissible purpose under the FCRA. These include the major national financial institutions as well as many local and regional banks and credit unions.

In general, we believe that the practice of prescreening, i.e., of extending a firm offer of credit or insurance to an individual who meets the selection criteria of that particular institution, has increased competition among financial institutions and thus has expanded access to financial services and lowered costs to consumers. TransUnion’s emergence in the late 1980s as one of the national consumer credit reporting agencies enabled the use our database for the development of national credit scoring models, which financial institutions have employed with increasing sophistication over this period in their prescreened solicitation campaigns. We are proud of our role in enabling greater consumer access to credit and lowered costs through the practice of prescreening.

The Board posed several questions in the RFI. We are pleased to offer these observations, in reply to each:

**Question:**

To what extent are insurance providers providing prescreened solicitations to consumers?

**Response:**

Many property and casualty insurers have found that prescreening allows them to underwrite more predictive policies and to accurately assess risk, as evidenced by fewer claims filings. In

2003, Transunion performed prescreening services for 42 insurance providers, delivering lists that contained, in total, over 200 million names.

**Question:**

What statutory and voluntary mechanisms are available to a consumer to notify lenders and insurance providers that the consumer does not wish to receive prescreened solicitations?

**Response:**

Transunion believes that most lenders and insurance providers voluntarily utilize the Direct Marketing Association (“DMA”) opt-out file, as well as providing a mechanism for a consumer to notify that institution that the consumer does not wish to be solicited for any type of offers. We also are aware of various state and federal do-not-call laws, and state laws preventing the use of certain public record information for commercial solicitation.

The Gramm-Leach-Bliley Act<sup>1</sup> requires financial institutions, under certain circumstances, to provide consumers with an annual notice of their privacy policies, including an opportunity to opt-out of the sharing of their personal information with unaffiliated parties. In 2003, as part of the Fair and Accurate Credit Transactions Act of 2003 (the “FACT Act”), Congress added a provision to the FCRA<sup>2</sup> which requires a notice to the consumer and opportunity to opt-out of the use by an affiliate, for marketing purposes, of information that would otherwise be a consumer report. Rulemaking on this provision is pending.

The 1996 amendments to the FCRA, which added Section 604(e), provides consumers with the ability to be excluded from prescreened lists supplied by consumer reporting agencies. This subsection included a requirement that the national consumer reporting agencies jointly establish and maintain a toll-free telephone number, through which consumers may request to be excluded from lists.<sup>3</sup> The 1996 amendments also included a requirement in Section 615(d) for users of reports for prescreening to notify the consumer of his or her right to opt-out in a clear and conspicuous statement included with the written firm offers of credit or insurance.<sup>4</sup>

With a view toward making this notice more robust, Congress, in the FACT Act, amended FCRA Section 615(d), requiring the Federal Trade Commission (“FTC”), in consultation with the federal banking agencies and the National Credit Union Administration, to issue rules concerning this notice, and that the notice “be presented in such format and in such type size and manner as to be simple and easy to understand”.<sup>5</sup> These rules are to be issued in final form by December 4, 2004. The FACT Act also requires the FTC to conduct a public awareness campaign to publicize the right to opt-out and the toll-free telephone numbers and mailing addresses required for this purpose by the FCRA.<sup>6</sup>

Transunion also voluntarily includes consumers on our opt-out list:

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<sup>1</sup> Pub. L. 106-102, Title V, Subtitle A (15 U.S.C. 6801 et seq.).

<sup>2</sup> FACT Act Section 214

<sup>3</sup> 15 U.S.C. § 1681b(e)(6)

<sup>4</sup> 15 U.S.C. § 1681m(d)(1)

<sup>5</sup> FACT Act, Section 213(a)(2)(B)

<sup>6</sup> FACT Act, Section 213(d)

- We mutually exchange opt-out requests received directly from consumers through our Consumer Relations and Fraud Victim Assistance groups with the other national consumer reporting agencies. The FACT Act makes this exchange a statutory requirement, but we note that this is already our voluntary practice.
- We supplement our opt-out list with the general-purpose opt-out list maintained by the DMA, of which we are a member. This is a significant, voluntary measure—the DMA’s list currently accounts for over 35% of the names on our opt-out file.

**Question:**

To what extent are consumers currently utilizing existing statutory and voluntary mechanisms to avoid receiving prescreened solicitations? For example, what percent of consumers (who have files at consumer reporting agencies) opt-out of receiving prescreened solicitations for credit or for insurance?

**Response**

As of June 2004, we had 18.7 million consumer names and addresses opted-out of prescreening. Since we believe there are approximately 200 million active adults using credit in the United States, approximately 9.4% of this population currently has an opt-out in effect at TransUnion. Transunion does not have data on the extent to which consumers use other statutory or voluntary opt-out opportunities, such as those maintained by our customers.

**Question:**

What are the benefits to consumers in receiving prescreened solicitations?  
Please be specific.

**Response:**

The June 2003 report prepared for the US Chamber of Commerce by the Information Policy Institute<sup>7</sup> reported that major credit card issuers said that over two-thirds of new accounts are acquired through prescreening, and that without the ability to prescreen, acquisition costs would increase between \$269 million and \$1.36 billion per year—an increase that would ultimately be borne by consumers.

The report also found that “As a result of robust data on consumer credit history and prescreening... more and more people of all financial strata—from families and individuals with the highest 20% of incomes to those with the lowest 20%—have gained access to credit. In fact, families in the lowest income quintile with credit cards grew from 2 percent in 1970 to 38 percent in 2001. ...access to credit cards also has been growing rapidly for minority populations, both in absolute terms and in comparison to whites. ... the percentage of minority families with bank-type credit cards has more than doubled over the last 20 years, growing from 25.9 percent in 1983 to 54.3 percent in 2001. While the share of minority families with credit cards continues to be below the share for non-Hispanic whites, the racial and ethnic gap has narrowed considerably.”

Prescreening, through fostering competition, has lowered the cost of credit for most consumers. As the 2003 report by the Information Policy Institute notes:

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<sup>7</sup> “The Fair Credit Reporting Act Access, Efficiency and Opportunity”, June 2003, US Chamber of Commerce

Year	Interest Rate Tier				
	<5.5%	5.5 – 10.99%	11 – 16.49%	16.5 – 17.99%	18% and over
2002	15	31	25	3	26
1990		6		20	73

Consumers also benefit from the ability of mid-sized, regional financial institutions to participate in the prescreening marketplace. These institutions offer consumers a competitive, local alternative in light of the increasing consolidation among the major national banks. In 2003, TransUnion provided prescreening services to over 200 regional, small to mid-sized or other specialized financial institutions.

We note that Congress has also acted in order to preserve the benefits of prescreening. By enacting the FACT Act, Congress provided a permanent national uniform standard with respect to prescreening, to protect the benefits of prescreening for consumers.

**Question:**

What significant costs or other adverse effects, if any, do consumers incur as a result of receiving prescreened solicitations? Please be specific. For example, to what extent, if any, do prescreened solicitations contribute to identity theft or other fraud? What percent of fraud-related losses are due to identity theft emanating from prescreened solicitations?

**Response:**

We believe that, in general, consumers suffer no losses as a result of prescreened solicitations. A consumer can simply tear up and discard unwanted offers. Alternatively, the consumer can opt-out of receiving prescreened offers altogether.

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<sup>8</sup> Ibid, page 30

With respect to identity theft, we believe very few consumers can attribute their situation to misuse or interception of a prescreened solicitation.

In fact, the Information Policy Institute 2003 Report to the US Chamber' found that "Prescreened offers of credit are not driving the rise in identity theft. In fact, prescreened offers of credit have a lower incidence of identity theft and application fraud than other forms of customer acquisition. Prescreened solicitations are subject to the same procedures for fraud detection as other forms of customer acquisition, and other fraud prevention procedures specific to prescreening."

In an August, 2003 survey of 3,462 individuals by Harris Interactive, commissioned by Privacy & American Business, 7% of the victims responding said that the cause of identity theft was intercepted mail, which at least in theory could include some cases of prescreened offers." Note, however, that prescreened offers only contain a name and address. They do not contain Social Security Numbers or dates of birth. Therefore, a prescreened solicitation should provide little utility to an identity thief

**Question:**

What additional restrictions, if any, should be imposed on consumer reporting agencies, lenders, or insurers to restrict the ability of lenders and insurers to provide prescreened solicitations to consumers? How would these additional restrictions benefit consumers? How would these additional restrictions affect the cost consumers pay to obtain credit or insurance, the availability of credit or insurance, consumers' knowledge about new or alternative products and services, the ability of lenders or insurers to compete with one another, and the ability of creditors or insurers to offer credit or insurance products to consumers who have been traditionally underserved? Please be specific.

**Response:**

The fact that over 9% of the population is currently exercising the right to opt-out suggests that the current system is working and is effective. Congress has also made some changes with respect to prescreening opt-outs, including the new rulemaking on the presentation and

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<sup>9</sup> Ibid, page 10.

<sup>10</sup> August 2003, Harris Interactive Survey commissioned by Privacy & American Business: 'From the Victims: How ID Theft Was Committed. Survey respondents provided actual stories of how they were victimized by identity thieves. Of those who knew how the ID theft or fraud was committed:

34% say someone obtained their credit card information, forged a credit card in their name, and used it to make purchases.

12% say someone stole or obtained improperly a paper or computer record with their personal information on it and used that to forge their identity.

11% say someone stole their wallet or purse and used their identity.

10% say someone opened charge accounts in stores in their name and made purchases as them.

7% say someone opened a bank account in their name or forged checks and obtained money from their account.

7% say someone got to their mail or mailbox and used information there to steal their identity.

5% say they lost their wallet or purse and someone used their identity.

4% say someone went to a public record and used information there to steal their identity.

3% say someone created false IDs and posed as them to get government benefits or payments.

In addition, 16% say it was a friend, relative or co-worker who stole their identity.

placement of the opt-out notice," an extension of the opt-out period from two to five years<sup>12</sup>, and mandating that the FTC conduct a public awareness campaign.<sup>13</sup> Each of these can be expected to further boost consumer awareness of the right to opt-out. As a result, the number of opt-outs at TransUnion may rise. Consideration of further changes in the opt-out system should be deferred until these new regulations are promulgated and in effect and appropriate consideration can be given to their resulting effects. Moreover, given the important role that prescreening has played in lowering cost and increasing availability of both credit and insurance products, and given its benign, or at least neutral, effect on identity fraud, policymakers should exercise great caution in promoting or otherwise encouraging opting-out of this vital segment of the country's financial services marketplace.

**Conclusion:**

Consumers are being told of their right to opt-out and those who choose to do so are exercising this right. It seems clear that many more consumers recognize the benefits of prescreening and want regular access to lower cost credit and insurance without being required to affirmatively seek out these opportunities. The new regulations and publicity campaign taking effect in the next year can be expected to further raise awareness. The system appears to be in balance, not requiring further change.

Sincerely,



John W. Blenke

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<sup>11</sup> mandated by FACT Act Section 213(a) and (b)

<sup>12</sup> mandated by FACT Act Section 213(c)

<sup>13</sup> mandated by FACT Act Section 213(d)