



July 23, 2004

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

RE: Docket No. OP-1195

On behalf of the members of the Consumer Data Industry Association (CDIA)¹, we provide the following comments with regard to the above-referenced matter. We appreciate this opportunity to provide comment and the care with which the Board is conducting its inquiry.

As the Federal Register notice states, “Section 213(e) of the FACT Act requires the Board to conduct a study of the ability of consumers to avoid receiving prescreened solicitations, and the potential impact that any further restrictions on providing consumers with such prescreened solicitations would have on consumers.” CDIA’s members strongly support the current statutory regime found in the FCRA, as it was amended in 1996.² The 1996 amendments continue to bring great benefits to all consumers by ensuring ongoing, robust and fair competition among financial institutions, which brings down prices and broadens consumer choice.³

Below you will find specific questions posited by the Board for which the CDIA can provide an answer.

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

CDIA Answer:

FCRA Sec. 615(d)(1) and (2) place requirements on users of consumer reports to notify a consumer of his or her right to opt out of receiving future offers of credit or insurance in each such offer where a consumer report was used. This notice must include the following points:

- That information contained in a consumer report was used in connection with the offer of credit or insurance.
- That the consumer received the offer of credit or insurance because he/she satisfied the criteria for making such an offer.
- Consumers must be made aware of the fact that the application to accept the offer is subject to a “post screen” of the consumer to ensure that he/she does still qualify.
- Consumers must be given contact information for the opt-out system administered by the consumer reporting agency which produced the list of consumers who qualified for the institution’s criteria. It is most common for the institution making the offer to notify the consumer of the opt-out system jointly-administered by all nationwide consumer reporting agencies defined under FCRA Sec. 604(e).

¹ Founded in 1906, the CDIA is the international trade association that represents more than 400 consumer data companies. CDIA members represent the nation’s leading institutions in credit reporting, mortgage reporting, check verification, fraud prevention, risk management, employment reporting, tenant screening and collection services.

² PL 104-208.

³ See FCRA Section 604(c).

In 2003 the Congress added the notification requirements under FCRA Sec. 615(d)(2)(B) to ensure that the notices were as effective as possible for consumers.⁴ Specifically the new notification requirement states that the notice:

“be presented in such a format and in such a type size and manner as to be simple and easy to understand, as established by the Commission, by rule, in consultation with the Federal banking agencies, and the National Credit Union Administration.”

In taking this step, the Congress has now implemented an ongoing rulemaking process by which the federal agencies can continue to work with financial institutions in designing a notice which is effective in informing consumers of both the benefits of prescreening as well as the options for opting out of such offers. It is likely that more than four billion offers are made to creditworthy consumers every year and thus consumers are receiving ample notice of their right under law to opt out if they so choose.⁵

FRB 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?

CDIA Answer:

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 per year and approximately 10 million consumers over the three-year period. During this same three-year time frame, 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.⁶ Still millions of other consumers are pragmatic, choosing to continue to receive offers and to make the easiest of choices and that is to simply shred, throw away or decline such offers on a case-by-case basis.

FRB Question: What are the benefits to consumers in receiving prescreened solicitations?

CDIA Answer:

Consumers benefit in an incredible number of ways from the practice of prescreening. Prescreened offers of credit or insurance are the most effective means for consumers to shop, make comparisons and ultimately make good decisions about the 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. Consider the following examples of how consumers benefit from choices which are tailored to their needs:

- They can shop “via their mailbox” with lenders from across the country to obtain the best credit card rate.
- They can learn of an affinity card program which helps support their favorite charity or university.
- They can learn of new products and services of which they were otherwise not aware.
- They can transfer balances from higher interest rate cards and thus consolidate high-cost loans under lower payment plans.

⁴ See FACT Act Sec. 213 (PL 108-159).

⁵ “Synovate Mail Monitor, a service of Synovate’s financial services practice, showed that 4.29 billion credit card offers were received by U.S. households in 2003, down from 4.89 billion in 2002.” - DM News, April 2, 2004

⁶ Synovate Mail Monitor, a service of Synovate’s financial service practice, indicates that there was a 0.6 consumer response rate to the 4.29 billion credit card offers made in 2003. - DM News, April 2, 2004.

- They are empowered through increased competition which results from prescreening to renegotiate loans with current creditors, since these creditors recognize that they cannot afford to lose valuable and profitable customers.
- They can increase their disposable income when they learn about drops in interest rates and choose to accept an offer to refinance a home or take out a home equity loan as a means of paying off higher-priced loans or to fund a child's education.
- They face far less mail in their mailbox since prescreening ensures careful selection of consumers who will receive offers and this eliminates mass mailings.⁷

In addition to the many examples outlined above, there are measurable benefits for consumers from prescreening, as well. Consider the following data all of which is drawn from analyses prepared by the Information Policy Institute⁸:

- 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%.

Prescreening has benefited consumers by also contributing to overall competition in our financial services economy as the following points demonstrate:

- Statistics cited above speak to the savings consumers netted between 1990 and 2002. In fact, the Information Policy Institute suggests that aggregate savings for consumers is about \$30 billion per year from 1998 to 2002, assuming constant prices for credit card credit since 1997.
- In a 1998 survey conducted by the Federal Reserve, it found that at least 72 issuers have nationwide customer bases and an additional 42 issuers are competing regionally.

FRB Question: What significant costs or other adverse effects, if any, do consumers incur as a result of receiving prescreened solicitations?

CDIA Answer:

CDIA cannot identify any meaningful costs which would be incurred by consumers as a result of prescreening. In fact there is a great deal to be gained by using the prescreened process as the best, most effective means of shopping in a highly competitive credit marketplace. For consumers who do not wish to receive such offers, the FCRA provides an easy and simple mechanism by which the choice to opt out is made. The majority of consumers recognize that there's no need to opt out of shopping and benefiting from competition and lower interest rates. When placed into the context of the many positive, measurable benefits, perhaps the only identifiable cost to consumers is the choice to opt out of prescreened offers. Indeed, as outlined above, opting out of prescreened offers of credit and insurance has an adverse impact on the consumer's overall financial standing since he or she will, in all likelihood, pay higher costs than necessary in the credit marketplace.

FRB Question: To what extent, if any, do prescreened solicitations contribute to identity theft or other fraud?

CDIA Answer:

While lenders are likely in the best position to fully respond to this question, it appears that there's an incorrect perception underlying the question that when a consumer receives a firm offer of credit or insurance, the mere action

⁷ According to a white paper authored by Professors Michael Staten and Fred Cate ("The Adverse Impact of Opt-in Privacy Rules on Consumers: A Case Study of Retail Credit, Privacy Leadership Initiative, April 1002) one major card issuer in this country found that mass marketing would result in materials being 27% less well targeted. Said differently, 109 million offers were made which would not have otherwise been the case.

⁸ Turner, Michael, et al. "The Fair Credit Reporting Act: Access, Efficiency, and Opportunity." June, 2003.

of returning a completed application results in a line of credit being opened. This is not the case. A request for credit, whether made by a consumer in a branch location of a bank, or as a result of a prescreened offer of credit, is going to be processed in a full and complete manner. While the direct costs alone of opening fraudulent lines of credit are likely the prime motivation for use of an array of fraud prevention strategies used by financial institutions, consider the following statutory requirements with which financial institutions must comply in processing applications:

- First, the plain language of the FCRA speaks to this point. Section 604(1)(2) describes how a “firm offer” can be “further conditioned” on a lender’s choice to verify “that the consumer continues to meet the specific criteria used to select the consumer for the offer, by using information in a consumer report on the consumer, information in the consumer’s application for the credit or insurance, or other information bearing on the credit worthiness or insurability of the consumer.” Post-screening is a necessary part of the application process.
- Second, the USA Patriot Act, Section 326 account opening rules⁹ layer in additional and specific requirements that all financial institutions must follow with regard to proper identification of an applicant.
- Third, the newly enacted FCRA amendments add compelling new processes which place yet more requirements on the shoulders of financial institutions when it comes to how applications are processed.
 - For example, FCRA Sec. 605(h) requires that where a nationwide consumer reporting agency defined under Sec. 603(p) notifies the financial institution that the application address differs substantially from that of the address in the file of the consumer, the financial institution must follow additional guidance which will be prescribed by the federal banking agencies, the National Credit Union Administration and the FTC this year.
 - Further, FCRA Sec. 615(g) requires federal banking agencies, the NCUA and the FTC to prescribe guidelines and regulations regarding how regulated financial institutions must “establish and maintain guidelines for each financial institution and each creditor regarding identity theft with respect to account holders at, or customers of, such entities, and update such guidelines as often as necessary.”
 - Finally, FCRA Sec. 605A(h) requires recipients of fraud alerts placed on consumer reports to put into place new procedures to ensure that the financial institution “...knows the identity of the person making the request...” for a financial product or service.

When one considers the full complement of law with which a lender must comply in processing any type of application, it is clear that robust procedures and effective fraud prevention tools will be deployed to ensure that all forms of credit fraud are kept to a minimum, including the crime of identity theft.

FRB 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?

CDIA Answer:

Congress fully addressed this question when it enacted amendments to the FCRA in 1996 and no new restrictions are necessary.¹⁰ In doing so, the Congress recognized the needs of consumers to have greater price competition and to have a greater array of choices of products, the importance of consumer notice and choice, and the criticality of a national standard for this nationwide system. The 1996 amendments included:

- FCRA Sec. 604(c) - Codifying the permitted business practice of providing consumers with firm offers of credit or insurance.
- FCRA Sec. 604(c)(2) - Restricting the amount of data a financial institution or insurer may receive in developing a target group of consumers to whom the firm offer of credit or insurance will be made.
- FCRA Sec. 604(e) – Providing consumers with jointly administered system by which they may choose to opt out of receiving firm offers of credit or insurance.

⁹ Section 5318(l) of Title 31, United States Code.

¹⁰ Supra.

- FCRA Sec. 604(e)(5)(A)(ii) – Ensuring that consumers are aware of their right to opt out by requiring that consumer reporting agencies which provide prescreened services publish a notice each year which informs consumers of this right.
- FCRA Sec. 615(d)(1) – Ensuring that consumers are aware of their right to opt out by requiring that a notice of this right be included with each firm offer of credit or insurance, including instructions on how to opt out.

Further, in 2003, the Congress again reviewed the system of prescreening (and the choice to opt out therein) and made three material changes to the law and placed an additional requirement on the FTC.

- As described above, the Congress amended FCRA Sec. 615(d)(2) to ensure that notices operate effectively for consumers who receive them.
- The Congress also amended FCRA Sec. 604(e)(3)(A) to extend a consumer’s choice to a temporary opt out of prescreened offers from two to five years.
- The Congress also tied the right of opt out to certain key fraud provisions. In Section 605A(b) consumers who request an extended fraud alert are also opted out of prescreened offers for five years. In Section 605A(c) consumers who request placement of an active duty alert are also opted out for two years.
- In FACT Act Sec. 213(d) Congress placed requirements on the FTC to take a broad range of actions to further educate consumers on the benefits of prescreening and also the right to opt out.

With these amendments, the House of Representative and the Senate voted by significant margins to approve, once again, the essential 1996 architecture for prescreening.

Conclusion:

There is no need to change a system that is working well and by every measure is a full and complete success for consumers and for the U.S. economy. CDIA believes that this is the only reasonable conclusion. Congress has exercised its powers diligently in overseeing the process of prescreening and has created the statutory and regulatory frameworks necessary for the system to operate optimally for consumers. In fact, any actions which inhibit the ability of consumers to receive prescreened offers of credit or insurance could cost consumers tens of billions of dollars a year.

Sincerely,

Stuart K. Pratt
President & CEO