

FEDERAL RESERVE SYSTEM

Request for Information for Study on Prescreened Solicitations or Firm Offers of Credit or Insurance

Docket No. OP-1195

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of Study and Request for Information.

SUMMARY: The Board is conducting a study concerning prescreened solicitations, pursuant to section 213(e) of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), which generally amends the Fair Credit Reporting Act (FCRA). The Board is requesting public comment on a number of issues to assist in preparation of the study. Under the FCRA, creditors and insurers in specific circumstances may use certain consumer reports as the basis for sending unsolicited offers of credit or insurance to consumers who meet certain criteria for credit worthiness or insurability (so-called “prescreened solicitations”). The FCRA provides a mechanism by which consumers can elect not to receive these prescreened solicitations, by directing consumer reporting agencies to exclude the consumer’s name and address from lists provided by these agencies to creditors or insurers for use in sending prescreened solicitations. Section 213(e) of the FACT Act requires the Board to conduct a study of the ability of consumers to avoid receiving these prescreened solicitations (including using the mechanism described above), and the potential impact that any further restrictions on providing consumers with such prescreened solicitations would have on consumers.

DATES: Comments must be received by July 23, 2004.

ADDRESSES: You may submit comments, identified by OP-1195, by any of the following methods:

- Agency Web Site: <http://www.federalreserve.gov>. Follow the instructions for submitting comments on the <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: regs.comments@federalreserve.gov. Include docket number in the subject line of the message.
- FAX: 202/452-3819 or 202/452-3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

All public comments are available from the Board's web site at www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets, N.W.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Krista P. DeLargy, Senior Attorney, and David A. Stein, Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or 452-2412; for users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Fair and Accurate Credit Transactions Act of 2003 (FACT Act) was signed into law on December 4, 2003. Pub. L. 108-159, 117 Stat. 1952. In general, the FACT Act amends the Fair Credit Reporting Act (FCRA) to enhance the ability of consumers to combat identity theft, to increase the accuracy of consumer reports, and to allow consumers to exercise greater control regarding the type and amount of marketing solicitations they receive. The FACT Act also restricts the use and disclosure of sensitive medical information. To bolster efforts to improve financial literacy among consumers, title V of the Act (entitled the "Financial Literacy and Education Improvement Act") creates a new Financial Literacy and Education Commission empowered to take appropriate actions to improve the financial literacy and education programs, grants, and materials of the Federal government. Lastly, to promote increasingly efficient national credit markets, the FACT Act establishes uniform national standards in key areas of regulation regarding consumer report information.

The FCRA currently provides that creditors and insurers in specific circumstances may use certain consumer reports as the basis for sending unsolicited firm offers of credit or insurance to consumers (so-called "prescreened solicitations"). The FCRA provides a mechanism by which consumers can elect not to receive these prescreened solicitations, by directing consumer reporting agencies (CRAs) to exclude the consumer's name and address from lists provided by CRAs to creditors or insurers for use in sending these prescreened solicitations.

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. The Board must submit a report summarizing the results of the study no later than December 4, 2004, which is 12 months after the date of enactment of the Act. The report must contain recommendations for legislative or administrative actions as the Board may determine to be appropriate. In addition, the report must address:

- The current statutory or voluntary mechanisms that are available to a consumer to notify lenders and insurance providers that the consumer does not wish to receive prescreened solicitations.
- The extent to which consumers are currently utilizing existing statutory and voluntary mechanisms to avoid receiving prescreened solicitations.
- The benefits provided to consumers as a result of receiving prescreened solicitations.
- Whether consumers incur significant costs or are otherwise adversely affected by the receipt of prescreened solicitations.
- Whether further restricting the ability of lenders and insurers to provide prescreened solicitations would affect (1) the cost consumers pay to obtain credit or insurance; (2) the availability of credit or insurance; (3) consumers' knowledge about new or alternative products and services; (4) the ability of lenders or insurers to compete with one another; and (5) the ability to offer credit or insurance products to consumers who have been traditionally underserved.

II. FCRA Statutory Provisions on Prescreened Solicitations

Current Provisions

The FCRA establishes requirements for CRAs when furnishing consumer reports for use in connection with prescreened solicitations. A CRA may only furnish a person with consumer reports for such prescreening purposes if: (1) the consumer authorizes the CRA to provide such report to such person; or (2) the transaction consists of a "firm offer of credit or insurance," as defined in section 603(l) of the FCRA; the CRA has established the required procedures to permit consumers to elect to be excluded from prescreened lists; and no such election is in effect as to the consumer. 15 U.S.C. 1681b(c)(1). A "firm offer of credit or insurance" is any offer of credit or insurance to a consumer that will be honored if the consumer is determined, based on information in a consumer report on the consumer, to meet the specific criteria used to select the consumer for the offer, except that the offer may be further conditioned in certain circumstances outlined in section 603(l) of the FCRA. 15 U.S.C. 1681a(l).

A person receiving a prescreened list from a CRA may, as to each consumer on the list, receive only the following information: (1) the name and address of the consumer; (2) an identifier that is not unique to the consumer and that is used by the person solely for the purpose of verifying the identity of the consumer (such as a partial social security number); and (3) other information about the consumer that does not identify the relationship or experience of the consumer with a particular creditor or other entity. 15 U.S.C. 1681b(c)(2).

As indicated above, a CRA must establish procedures that allow a consumer to notify the agency that the consumer elects to be excluded from prescreened lists furnished by the agency. A consumer may notify the agency through a notification

system maintained by the agency (which must include a toll-free telephone number) or by submitting a signed “notice of election form” issued by the agency. 15 U.S.C. 1681b(e)(2), (5). Currently under the FCRA, requests made through the notification system maintained by the agency expire two years following notification, unless the consumer revokes the election. 15 U.S.C. 1681b(e)(4). Requests made through a signed notice of election form never expire, although they may be revoked by the consumer. 15 U.S.C. 1681b(e)(4).¹

Currently under the FCRA, any person who uses a consumer report on any consumer in connection with a prescreened solicitation must provide with each written solicitation to the consumer, a clear and conspicuous statement that: (1) information contained in a consumer’s consumer report was used in connection with the offer; (2) the consumer received the offer because he or she satisfied the criteria for creditworthiness or insurability used to screen for the offer; (3) if applicable, the credit or insurance may not be extended if, after the consumer responds, it is determined that the consumer does not meet the criteria used for screening or any applicable criteria bearing on creditworthiness or insurability, or the consumer does not furnish required collateral; and (4) the consumer has the right to prohibit use of information in the consumer’s file in connection with future prescreened offers of credit or insurance by contacting the notification system established by the CRA that provided the report. The address and toll-free telephone number of the appropriate notification system also must be provided. 15 U.S.C. 1681m(d).

FACT Act Amendments

Section 213 of the FACT Act amends the FCRA with respect to prescreened solicitations in two ways. First, section 213(a) amends the FCRA to require that the notice provided by creditors or insurers with each written unsolicited prescreened offer, as discussed above, be presented in such format and in such type size and manner as to be simple and easy to understand, as established by regulations issued by the Federal Trade Commission, in consultation with the federal banking agencies and the National Credit Union Administration. These regulations must be issued in final form not later than 12 months after the date of enactment of the FACT Act, or December 4, 2004. Second, section 213(c) of the FACT Act extends from two years to five years the effective period of a consumer’s election not to receive prescreened solicitations through a telephone notification system. This provision will become effective December 1, 2004. (69 FR 6526, Feb. 11, 2004).

III. Request for Specific Information

As described above, section 213(e) of the FACT Act requires the Board to conduct a study, and report its finding to Congress, of the ability of consumers to avoid

¹ When a consumer contacts an agency through the notification system, the agency must inform the consumer that the election is effective only for the 2 year period following the election if the consumer does not submit to the agency a signed notice of election form issued by the agency. The agency also must provide to the consumer a notice of election form, upon request of the consumer. 15 U.S.C. 1681b(e)(3).

receiving prescreened solicitations, and the potential impact that any further restrictions on providing consumers with such prescreened solicitations would have on consumers. In conducting the study, the Board is requesting public comment on the following issues:

- To what extent are insurance providers providing prescreened solicitations to consumers?
- 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?
- 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?
- What are the benefits to consumers in receiving prescreened solicitations? Please be specific.
- 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?
- 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.

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By order of the Board of Governors of the Federal Reserve System, May 18, 2004.

Jennifer J Johnson (signed)
Jennifer J. Johnson,
Secretary of the Board