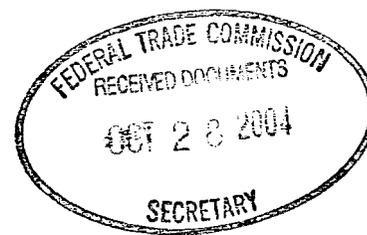


Law Department
MAC T5008-022
P.O. Box 3326
Houston, TX 77253-3328
713 284-5537
713 284-5539 Fax

Lorena Rush
Senior Counsel



October 27, 2004

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

Re: FACTA Prescreen Rule, Project No. R411010

Ladies and Gentlemen:

Wells Fargo & Company, its subsidiaries and affiliates (“Wells Fargo”), including Wells Fargo Bank, N.A. (of which Wells Fargo Home Mortgage is now a division) and Wells Fargo Financial, Inc., appreciate the opportunity to comment on the requirements that are the subject of a Proposed Rule issued by the Federal Trade Commission (“FTC”) on October 1, 2004. The Proposed Rule provides requirements concerning the format, manner and type size of disclosures informing consumers of their right to opt out of prescreened offers of credit or insurance (“opt-out notices”) that must be provided by creditors and insurers making such offers. Wells Fargo is a financial services company that owns and operates a national bank in 23 Western and Midwestern states, one of the nation’s leading retail mortgage lender, and one of the nation’s leading finance companies.

Under the Fair Credit Reporting Act (“FCRA”), Wells Fargo utilizes consumer reports as the basis for sending firm offers of credit to consumers who meet certain pre-established criteria for credit worthiness (“pre-screened offers”). Wells Fargo respects and supports the right of every consumer to opt out of marketing solicitations, including prescreened offers of credit and insurance; however, we believe that (1) the Proposed Rule and the model short form notice overemphasize the pre-screen opt-out, (2) the Proposed Rule underestimates the costs and time to implement and comply with the new opt out notice, and (3) the Proposed Rule undervalues the consumer benefits of pre-screened offers.

I. The Proposed Rule and model short form notice overemphasize the importance of the prescreen opt-out.

The FTC's stated objective of the Proposed Rule is to "to improve the required notice to consumers regarding their right to opt out of prescreened solicitations for credit or insurance by establishing a format, type size, and manner of the notice so that the notice will be simple and easy to understand."¹ Wells Fargo supports the FTC's definition of what constitutes "simple and easy to understand" as set forth in the Proposed Rule. We agree that an opt out notice to consumers should include such attributes as use of clear and concise sentences, paragraphs and sections, avoidance of legal and technical business terminology and use of language that is not misleading; however, we believe that while the Proposed Rule and the model notices strictly comply with the definition of "simple and easy to understand", in fact the notices are not a substantial improvement over existing Fair Credit Reporting Act opt out notices and, by overemphasizing the consumer's ability to opt out, potentially lead to more consumer confusion.

The Proposed Rule employs a layered approach that requires a short opt out notice that in turn references a longer opt out notice. The model short notice proposed by the FTC states: "To stop receiving 'prescreened' offers of [credit or insurance] from this and other companies, call toll-free, [toll-free number]. See OPT-OUT NOTICE on other side [or other location] for details."² This content is written in a manner that would be alarming to a consumer and virtually instructs the consumer to opt out. There is little reason for a consumer to refer to the longer opt out notice – all of the information that the consumer needs to opt out is available in the short notice opt out instructions. As currently drafted, the language proposed in the model short form opt out may also easily confuse the consumer into believing that exercise of this opt out is the same as opting out of telemarketing solicitations. In addition, even if the consumer actually consulted the long notice before opting out, it does not provide the consumer with any substantive information, including the consequences of opting out. Further, the Proposed Rule does not allow a creditor or insurer to include "other information that interferes with, detracts from, contradicts or otherwise undermines the purpose of the opt-out notices".³ Presumably, this language would preclude a creditor or insurer from explaining a pre-screened offer, its benefits, and the implications of opting-out. Overall, the form of notice required by the Proposed Rule and the model notice detracts from the terms and the purpose of a pre-screened offer. Requiring a short form opt out notice with bordered text and a typeface print that will be larger, bolder and more distinct than the text of the offer itself overshadows the important credit terms of the prescreened offer.

The prominence of the short form opt out notice can also undermine the importance of other consumer protection disclosures. An oversized opt out notice could have an adverse affect on other important disclosures that must be made by a creditor in its prescreened offers. For example, the Truth in Lending Act ("TILA"), as promulgated by Regulation Z, requires that if a

¹ 69 Fed. Reg. 58861, 58866.

² Proposed 16 C.F.R. pt. 698, App. A

³ Proposed 16 C.F.R. 642.3(b).

trigger term is used in advertising material, which would include a prescreened offer (such as the annual percentage rate for a pre-screened offer for an open end credit), then additional and “clear and conspicuous” disclosures must be provided.⁴ In addition, Regulation Z requires that in connection with credit cards, other financial information (the so-called “Schumer Box”) be clear and conspicuous, meaning “in a reasonably understandable form and readily noticeable to the consumer.”⁵ To our knowledge, the traditional “clear and conspicuous” standard under Regulation Z has never been interpreted as requiring 12 point type. A large and overly distinct opt out disclosure implies to a consumer that the opt out notice for pre-screened offers is more important than other financial terms associated with the offer that are required to be disclosed pursuant to other regulations. A single long form notice of the consumer’s right to opt out, in the format, type size, and manner set forth in the Proposed Rule and the model long form opt out should be sufficient to both inform the consumer of the opt out election without compromising the important terms of the prescreened offer itself or reducing other regulatory disclosures to meaningless words.

II. The Proposed Rule underestimates the costs and time required to implement and comply with the new opt out notice.

In the Supplemental Information to the Proposed Rule, the FTC estimates that the time required for each entity that makes pre-screened offers to revise and reformat pre-screened offers would be approximately 8 hours (1 business day) and the cost to each such entity would be \$221.74.⁶ Once the rule is finalized, entities engaged in pre-screened offers of credit and insurance will need to make opt out notice revisions to each pre-screened offer form letter and other mailer type. This is not simply a matter of inserting the short form and long form notice in a single existing pre-screened offer form letter. Instead *each* pre-screened offer form is affected. Currently, in connection with pre-screened offers, Wells Fargo Home Mortgage has 22 different prescreened offer forms; Wells Fargo Card Services has approximately 20 different prescreened offer forms; Wells Fargo Consumer Credit Group has 33 different prescreened offer forms. In addition, the content of the prescreened offer must be redesigned. Since the font size of the short form opt out notice must be at least the same size as the primary text of the prescreened offer and no less than 12 point type, the overemphasis on the opt out notice would require redesign of the content of the prescreened offer to ensure that a consumer can evaluate the terms of the offer and not focus solely on the 12 point type notice. Presently, the primary text of most Wells Fargo pre-screened offers of credit appears in 10 or 11 point type. Some of the primary text of the offer would need to be altered and/or omitted in order to accommodate the excess size of the short form notice. The FTC’s calculation of estimated costs does not appear to take any of these important factors into consideration.

Similarly, many pre-screened offers have been tested and retested with consumer focus groups in order to refine the effectiveness and comprehension of pre-screened offers. Such testing

⁴ 12 C.F.R. 226.16(b).

⁵ Official Staff Commentary, 12 C.F.R. 225a(a)(2).

⁶ 69 Fed. Reg. 58861, 58865.

attempts to assure that the offer would be of interest to the average consumer and the maximum response rate is achieved. Revising the text of a prescreened offer that has been tried and tested could result in a financial loss to the creditor and insurer that make prescreened offers due to potential reduction in response rates.

In addition, not all pre-screened offers appear in letter format, but instead utilize photographs, logos, artwork and other creative material provided by advertising vendors which have taken a great deal of time, effort and cost to create. These types of pre-screened offers typically unfold to a single sheet of heavy gage glossed paper --- so-called "self mailers". Many Wells Fargo business units make pre-screened offers in the form of self mailers; however, as an example, the Wells Fargo Consumer Credit Group alone estimates that in connection with its twelve separate pre-screened home equity product offers that constitute self mailers, simply to add the short form opt out notice would cost approximately \$2,000 for all self mailer forms and production costs are estimated to increase by \$0.025 per offer (or \$22,500 for a typical mailing of 900,000 offers) due to the likely increase of paper size and change in vendor set-ups to accommodate the proposed opt-out short notice.

The Proposed Rule must be issued in final form by December 4, 2004. As presently drafted, it allows creditors and insurers only 60 days to make revisions to prescreened offer forms. Creditors and insurers are unable to anticipate the form of the final opt out notice and make any required changes to pre-screened offer forms prior to December 4. In addition, at this time of year, it is not unusual for creditors and insurers to be designing prescreened offers for a March 2005 mailing. Sixty days to implement and comply with the pre-screened opt out notices, as currently proposed, simply does not allow a creditor or insurer to print new forms and exhaust their old stock of forms. In addition, a 60 day implementation schedule does not allow a sufficient window of response by consumers to existing pre-screened offers mailed prior to December 4. As we interpret the proposed rule, all outstanding existing offers would have to expire prior to February 2, 2005. Consequently, we respectfully propose that a more realistic timeframe to implement and comply with any new opt out notice requirements and exhaust old stock is 6 months.

III. The Proposed Rule undervalues the consumer benefits of pre-screened offers.

Section 213(e) of the Fair and Accurate Credit Transactions Act requires the Federal Reserve Board to conduct a study and report its findings to Congress of the ability of consumers to avoid receiving prescreened offers and the potential impact that any further restrictions on providing consumers with such pre-screened offers would have on consumers. On May 18, 2004, the Federal Reserve Board solicited comments on these issues. The Proposed Rule does not take into consideration the issues that are the subject of the Board's study.

As stated above, the opt out notices set forth in the Proposed Rule seem to stress exercise of pre-screened offer opt outs at the expense of the benefits that pre-screened offers can provide to consumers. These benefits include the following:

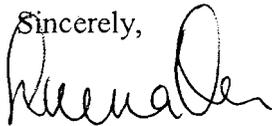
1. Prescreening provides consumers with firm offers of credit that they are actually qualified to receive. If the consumer accepts that offer, it will be honored if the consumer continues to meet the initial criteria of the offer. Therefore, a prescreened offer also provides a consumer with a product for which they qualify and can actually obtain; a consumer can avoid making applications for products for which they do not qualify and avoid receiving declinations of credit through adverse action notices required under FCRA and Regulation B (promulgating the Equal Credit Opportunity Act) that could adversely affect their credit.
2. Prescreening can omit consumers who either do not need or will not qualify for either a credit or an insurance product and it also allows marketing to a larger audience of creditworthy individuals. For example, prescreened offers of credit reach a wider spectrum of individuals, including those in the low to moderate income bracket, who have a need for credit, but may not otherwise apply due to a fear of decline.
3. A prescreened offer can also provide consumers with the ability to choose from among a variety of products may be available for to a consumer. For example, from a credit perspective, a consumer may receive a credit card prescreened offer and a home equity prescreened offer, compare the benefits of both, review the terms applicable to each, and choose the product that best fits their needs.
4. Due to nation-wide competition between creditors, prescreened offers are likely to contain lower pricing in terms of interest rate and/or fees, as well as higher credit availability. By removing ineligible consumers from a mail file, the creditor's costs of acquiring a customer is reduced, which, in turn, can result in lower and more competitive pricing.
5. Increased competition from prescreened offers can also result in a consumer receiving non-credit related benefits. For example, in the credit card industry, the competition promoted by prescreened offers has contributed to the development of other ancillary benefits such as airline miles, free membership in certain clubs, redemption of points for cash, merchandise and gift certificates from select merchants, travel services, to mention only a few. The increased competition in the credit card industry has also resulted in the co-branding of credit cards with philanthropic organizations, educational institutions and charitable causes (from which they derive monetary benefit).
6. A prescreened offer can provide a consumer with the most expeditious and streamlined approach to financing; for example, at the maturity of a vehicle lease, a prescreened offer can reduce the time in which consumer would have to investigate financing options to purchase their formerly leased vehicle. A prescreened offer is an expeditious approach to what otherwise could be a lengthy credit approval process.

The Proposed Rule does not offer an effective means for consumers to consciously make a decision to opt out of prescreened offer (as described above). The new formatting and type size requirements do not assure that consumers understand their right to opt out of receiving firm

offers of credit as well as how to exercise that right. The cost and other implications of providing the opt out notices set forth in the Proposed Rule may result in creditors and insurers deciding not to extend prescreened offers or dropping the number of prescreened offers, thereby reducing the availability of credit. Reduced availability of credit would adversely affect primarily low to moderate income consumers. Further, more stringent requirements could lead to an increase in the costs of consumer credit, resulting in reduced borrowing by consumers and, consequently, less consumer spending. Prescreening allows a lender or insurer to test new pricing and new products; the Proposed Rule could adversely affect such innovation. If a creditor and insurer cannot effectively make prescreened offers, then a more efficient marketing process that allows lenders and insurers to tailor programs and services to meet the needs of consumers, as well as the delivery of low cost products to all qualified consumers, would be lost.

Thank you for the opportunity to provide comment on these issues. We would be pleased to supplement our comments or to discuss any of them with you. Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Lorena Rush". The signature is fluid and cursive, with a large initial "L" and "R".

Lorena Rush
Senior Counsel