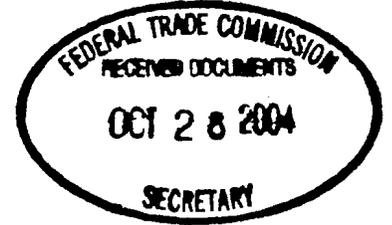




National Retail Federation
The Voice of Retail Worldwide



Before the
FEDERAL TRADE COMMISSION
Washington, D.C. 20580

**COMMENTS OF THE
NATIONAL RETAIL FEDERATION**

**FACTA Prescreen Rule
Project No. R411010**

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October 28, 2004

Comments of the National Retail Federation

Dear Mr. Secretary:

Pursuant to federal register notice, the National Retail Federation ("NRF") files these comments with respect to the Federal Trade Commission's ("FTC's" or "Commission's") request for public comment on its notice of proposed rulemaking. The NRF agrees in part with elements of the proposal put forward in the Commission's notice. NRF recommends that the FTC adopt an approach other than the layered notice.

By way of background, the National Retail Federation is the world's largest retail trade association, with membership that comprises all retail formats and channels of distribution including department, specialty, discount, catalog, Internet and independent stores as well as the industry's key trading partners of retail goods and services. NRF represents an industry with more than 1.4 million U.S. retail establishments, more than 23 million employees - about one in five American workers - and 2003 sales of \$3.8 trillion. As the industry umbrella group, NRF also represents more than 100 state, national and international retail associations.

NRF members are not the heaviest users of prescreened offers. Nevertheless, they believe that the attractive services and/or pricing such offers help make available should caution against the FTC taking steps that would inadvertently discourage consumers from receiving the benefits they can provide.

At the outset we should note that NRF supports the general comments of the Coalition to Implement the FACT Act ("Coalition") filed this day with the Commission. These comments are filed to highlight particular issues important to retailers' use of prescreening.

To begin with our conclusion, incorporating the "improved" notice (version 2) within the principal promotional document would fulfill the Congressional mandate, represent a significant advance over the current approach, and allow sufficient flexibility to accomplish the principal goals retailers' promotional documents are designed to deliver.

As was mentioned, retailers use prescreening less often than do other financial service providers and often in a different manner. Rather than using prescreening as a means of segmenting the credit market, and thus offering a variety of financial services with different price/feature tradeoffs, retailers typically offer a single set of terms for all consumers who accept their credit cards. On the positive side, there is less variation in the prescreened credit offers any particular retailer may offer. This makes it easier to design the credit portion of offer.

However, in a great number of cases, the prescreened offer of credit may not be the primary purpose of the solicitation.

Retailers often communicate with existing or potential customers when they move a new store location into those customers' neighborhood. Thus, for example, when a well-known New York City retailer prepares to open its first store across the river in New Jersey, it may send personalized announcements of that opening to individuals it knows have regularly shopped at its New York City store as well as to others whom it believes are likely to become its new location's best customers.

All, or some portion, of those individuals may receive a prescreened offer of a proprietary credit card in conjunction with that store opening announcement. Others may simply receive an offer to apply, or no credit solicitation whatsoever. All or some may receive promotional coupons. While retailers know that proprietary and private label cardholders are among their most loyal customers, the primary purpose of the various promotional materials is to generate excitement for the store opening. Retailers want the customers, regardless of whether they choose to use its credit card.

In such cases, the promotional document is serving multiple purposes, of which the prescreened offer of credit may be only one. The front page prominence for opting out of prescreening envisioned in the proposed "layered notice" (version 3) is likely to be completely disproportionate to its role in the mailing, or even to whether the consumer is likely to receive a mailing.

The purpose the Commission seeks to achieve, clearly advising those consumers who do not wish to receive mailings containing a prescreened credit solicitation how to opt out, are achieved by the improved version. The FTC's consumer surveys suggest that both the improved version and the layered notice provide more effective notice than do existing disclosures. The latter does a somewhat better job of alerting individuals the first time they see the notice.

Were it likely that consumers would receive a very few prescreened offers (in which case the associated "nuisance" factor likely would be small) this difference might have some importance. However, given the number of solicitations mailed annually by retailers (in addition to the many more mailed by various financial services companies) the likelihood that consumers would be directly exposed to the improved notice is quite high. Under those circumstances, the difference between comprehension of the layered and improved notices upon multiple viewings is insignificant. This is an important consideration, especially if the use of the latter allows merchants to deliver their primary messages more easily.

The information regarding opt-outs and other legally required information ought not be shoehorned onto the first page of the primary promotional material,

but it should be readily apparent. Requiring that version 2 appear on the first page, would effectively negate the advantages of moving to a notice that is clear, conspicuous and displayed proportionately with the mailing's primary purposes. (Even in a single purpose promotion, few would maintain that the primary purpose of that mailing would be to inform consumers how they can avoid comparative price information in the future.) So long as the disclosures are placed in a location such as they are reasonably calculated to be seen by consumers with an interest in not receiving future prescreened offers, which should satisfy the requirements of the statute. The Commission may wish to state that disclosures placed within the principal new account solicitation document satisfy this requirement.

Timing

We do not believe that sixty (60) days is a sufficient effective date period. Even if steps were taken to implement changes immediately, large-scale mailings are typically sent out for printing *at least* six weeks in advance. When one adds in the time needed to actually prepare the copy, obtain marketing and legal reviews, as well as other associated preparatory steps, 120 days is the shortest period in which most retailers could confidently comply with the new requirements.

Regulatory effort

After surveying a sample of our members, none of them believed that eight hours accurately reflected the likely regulatory burden associated with the new rule. The new notices will not be viewed in a vacuum. They likely will be positioned among other material in several alternative versions prior to being corporately approved. That effort is likely to take several more than the eight hours anticipated for retailers with relatively straightforward programs. For other financial services companies with multiple tiers of programs the review is likely to take far longer.

We appreciate the opportunity to provide these comments. Should you have additional questions please feel free to contact either Mallory Duncan or Elizabeth Oesterle at (202) 783-7971.

Respectfully submitted
