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United States Senate

December 21, 2004

The Honorable Deborah Platt Majoras
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20680

FEDERAL TRADE COMMISSION
04 DEC 35 AM 11:11
CONG. CONRES. BRANCH

Dear Chairman Majoras:

I understand the Federal Trade Commission (FTC) is in the process of finalizing its proposed regulation under the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) on Improving Prescreen Opt-Out Notices. In the FACT Act, Congress directed the FTC to promulgate regulations that would require such notices be "simple and easy to understand."

The Federal Reserve Bank's recent FACT Act study on prescreening shows that prescreening offers many benefits to consumers. I am told that prescreening has dramatically increased competition which has resulted in better offers of credit to a broader range of consumers. In fact the study confirms that prescreened offers increase access to credit for underserved consumers. Also, as the legislative history of the FACT Act makes clear, prescreening reduces identity theft.

I have heard from constituents who are concerned that the current rule will lead consumers to believe that by choosing to opt-out of prescreened offers they are opting-out of all solicitations – much like the FTC's highly successful Do-Not-Call list. However, many believe that consumers who opt-out of prescreened solicitations will still get offers – in fact, many more of them – just not targeted prescreened offers – and will likely become frustrated with the system and angry with financial institutions.

It is my understanding that under the proposed rule, the mandatory first-page notice is more prominent than other important and required notices, even the APR or annual fee. Unfortunately, many consumers do not know the benefits of prescreening, and it is possible the FTC's rule not only does not assist them in that regard, it actually serves to encourage opting out before learning about those benefits.

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It is also my understanding that prescreening makes consumers aware of their eligibility for improved credit terms as their credit scores improve – a tool that is especially important for those with low credit scores. Many consumers with low credit scores have difficulty obtaining favorable credit offers. Yet those consumers will improve their credit score over time just by remaining in the credit reporting system in good standing, because negative items drop off after seven years and carry less weight before then. If those consumers opt out of receiving prescreened offers, they will be unaware that they are eligible for credit on substantially better terms. That is why it is particularly important that consumers who make the decision to opt out do so in an informed way.

Instead of the proposed “layered” approach, many of my constituents recommend that the FTC issue a final rule that embraces the “simple and easy to understand” language as required by Congress. Under this approach, a single easy to understand notice, placed in a conspicuous location would appropriately balance the need to inform consumers of their opt-out rights with the need to disclose other crucial information in a clear and conspicuous manner, ensure that consumers understand what they are opting out of, and provide consumers with the benefits of prescreening. At the same time, such a notice would appropriately give consumers the opportunity to understand what prescreening is and its benefits before they opt out of receiving prescreened offers. A single improved notice is the best and most sensible way for the FTC to implement its statutory mandate.

As a member of the Commerce Committee, I respectfully request that you carefully reconsider this rule so that the final rule does not confuse consumers and offers a true service to American consumers consistent with Congress’ intent. Please treat this letter in conformance with all applicable procedural rules and ethical guidelines.

Sincerely,



George Allen