

October 28, 2004

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

Re: FACT Act Prescreen Rule, Project No. R411010

Equifax Information Services LLC is a consumer reporting agency that furnishes consumer reports, including consumer reports for prescreening purposes, to its financial institution customers, other businesses that have a permissible purpose as defined in the FCRA, and consumers. We are a subsidiary of Equifax Inc., a 105-year-old company and member of the Standard & Poor's (S&P) 500® Index, a global leader in turning information into intelligence, serving customers across a wide range of industries and markets, including financial services, retail, telecommunications, utilities, mortgage, brokerage, insurance, automotive, healthcare, direct marketing and transportation.

Equifax appreciates the opportunity to submit formal written comments in the above referenced matter. We understand and appreciate the task before the Federal Trade Commission (Commission) in developing the FACTA Prescreen Rule (Proposed Rule) for a notice advising consumers of their right to have their name and address removed from prescreened lists that is to "be presented in such format and in such type size and manner as to be simple and easy to understand". We also recognize the effort expended in conducting the consumer research on different test approaches to these notices.

Our comments are submitted with the intent that they will be of assistance to the Commission as it completes its work in preparing the final Prescreen Opt -Out Rule. Also, Equifax is a member of the Consumer Data Industry Association ("CDIA") and fully supports the comments CDIA provided to the Commission on this subject.

### **Overview**

We do not, however, believe that the "layered" approach in the Proposed Rule meets the requirements of the statutory mandate. Further, even were the Commission to, nevertheless, determine that a "layered" approach is appropriate; we believe the layered approach described in the Proposed Rule should be modified to meet the purpose and intent of the statutory notice requirement.

## **Benefits of Prescreening**

In its attempt to provide consumers with information about their ability to exercise their FCRA right to have their name and address excluded from prescreened lists provided by consumer reporting agencies to a variety of financial institutions and insurance companies, the Proposed Rule overlooks the benefits that prescreening provides to consumers, financial institutions, insurance companies and our overall economy. For further descriptions of the benefits that prescreening provides to the consumer economy of this country, please see the analyses prepared by the Information Policy Institute, “The Fair Credit Reporting Act: Access, Efficiency, and Opportunity.” June 2003.

This failure to recognize and appreciate the convenience, efficiencies and competitive choices that prescreening provides to consumers is contrary to the intent of Congress when it amended the FCRA in 1996 to make prescreening a specific permissible purpose under Section 604 of the FCRA. Not only did Congress specifically authorize prescreening for pre-approved offers of credit, but it also expanded prescreening purposes to include pre-approved offers of insurance.

As part of this statutory recognition of the important part that prescreening plays and should continue to play in making credit and insurance available to large numbers of consumers in a convenient and low cost manner, Congress also realized that not all consumers may want to receive prescreened offers and the benefits they provide. Accordingly, Congress provided consumers with the choice to not receive these offers by providing consumers with the right to request that consumer reporting agencies remove their names and addresses from future prescreening activity. Congress also required the nationwide consumer credit reporting agencies to develop a joint system that facilitates a consumer’s ability to exercise their decision to be removed from prescreening lists prepared by each of the nationwide consumer reporting agencies.

In order for consumers to make an informed choice and decision about whether to exercise their right to opt out of future prescreening or to continue to be able to receive the benefits of prescreening, consumers need to have the full information at the time they are provided the information on how to exercise their opt out right. The first tier of the Commission’s proposed “layered” approach fails to do this. It merely provides the consumer with a cigarette package style “warning” that they can opt out and provides the toll-free telephone number for immediately doing so. Although it also advises the consumer more details are available elsewhere, the seeming imperative to opt out has already been planted in the consumer’s mind and they are likely to act on this “warning” without reading the additional information.

## **“Simple and Easy to Understand”**

The statutory direction to the Commission under the FACT Act is to develop regulations that provide the consumer a notice of their opt out right that is “simple and easy to

understand”. The Commission was not authorized to develop a rule that speaks to requirements that the notice be “clear and conspicuous” or that the notice have prominence over other notification requirements. Nonetheless, the Proposed Rule does just this in its description of notices that must be set off from other text and highlighted by placement in special boxed text.

Further the Commission’s definition of “simple and easy to understand” is itself far from being simple and easy to understand. Recognizing that the Commission may well be concerned that opt out notices not be the complicated and involved privacy notices that are the provided pursuant to the Gramm-Leach-Bliley Act (“GLBA”), the simple fact is that prescreen opt out notices have significantly less information to convey. The ability to communicate to consumers that they can choose to no longer receive prescreened offers, how to exercise that right, that there are benefits to prescreening they will no longer receive, and that they may still nonetheless receive some offers, is much less involved than the information that GLBA notices are required to provide. In this regard, the eight factors to be considered, as set out in the Proposed Regulation’s definition of “simple and easy to understand” are unnecessary, and themselves do much to complicate the simple requirements of the communication to consumers of their right to opt out of prescreening.

### **One Notice**

As discussed briefly above, in order for consumers to make an informed choice about exercising their right to opt out, consumers need full information at the time they are provided information on how to exercise their right to be removed from prescreening. To simply provide the toll-free telephone number for opting out, which is highlighted in a manner similar to warning messages on various products, conveys an overwhelming sense of concern and alarm to consumers that simply is not justified. Responding to this implied “danger”, consumers are more likely to opt out without knowing the consequences to their ability to easily obtain credit or insurance at low and competitive rates in the ease and comfort of their own home.

Accordingly, consumers should have the complete information regarding their opt out rights in one notice. It should be concise and easy to read but advise the consumer of their right to opt out of prescreening, the ways they can exercise this right, the benefits to receiving prescreened offers, and a statement that they may continue to receive some offers even if they opt out. The wording for such a notice, similar to the Commission’s study notice that was not used in the “layered approach”, could be as follows:

“PRESCREENING NOTICE: (1) This “prescreened” offer of credit is based on information in your credit report indicating that you meet certain criteria. This offer is not guaranteed if you do not meet those criteria. (2) Offers like these may be helpful in comparing terms and benefits of various credit offers. Even if not interested in these offers, today they can be helpful to you in the future. (3) However, if you do not want to receive prescreened offers of credit or insurance from this or other companies, call toll-free 1-888-5OPTOUT. You may be asked to provide your Social Security number and

other personal information to verify your identity. This information will be used only to process your request. Please note: Even if you choose not to receive prescreened offers of credit, you still may get other credit offers.”

The wording of this notice provides consumers with full information so that they can make an informed choice about exercising their opt out right and how to do so. It also informs consumers of the potential consequences of doing so. This is all done in terms that are “easy and simple to understand”.

Not only does this single notice approach meet the statutory requirements, it would also be quicker and less costly for financial institutions and insurance companies to implement. This provides benefits to consumers both in terms of this improved notice being available to them sooner, and with lower costs for credit or insurance than if more complicated dual tier notices are required.

### **“Layered Approach”**

Even though we believe a single notice, that is “simple and easy to understand”, as suggested above, is the appropriate approach; we recognize that the Commission may still proceed with a “layered” approach as set out in the Proposed Rule. If so, the notice of the “first” tier should be modified to be less alarming to consumers, and only provide notice to consumers of their opt out right while information consumers where they can receive the details of their opt out right. This revised first tier notice can be:

“NOTICE: You have a choice about continuing to receive pre-approved offers of credit or insurance in the future. For details, please see the PRESCREENING NOTICE [\_\_\_\_\_].”

The wording for the Prescreening Notice referenced in this first tier notice should be the same wording suggested above for the single notice.

### **Effective Date**

Although financial institutions and insurance companies that provide prescreened offers to consumers are in the best position to comment, and we defer to their comments on this, it seems to us that sixty (60) days is not sufficient time for these organizations to prepare and implement the revised prescreened notices that the Final Rule will require. This is particularly true if the “layered” approach is adopted, as it would require at changes to the current prescreen documents in at least two places. We feel that a minimum of twelve (12) months should be provided for implementation the final Prescreen Notice rule.

### **Summary**

Equifax strongly believes that the statutory mandate for prescreening opt out notices requires that consumers be fully informed of their right to opt out, how to exercise it, the

benefits of prescreening they will no longer have, and that not all offers be stop. We also strongly believe that this information should be provided to consumers in one notice, that is simple and easy to understand rather than in a complicated two-tiered layered approach.

We appreciate this opportunity to provide our views and perspective on this important issue.

Sincerely,

Kent E. Mast  
General Counsel  
Equifax Information Services LLC