

October 28, 2004

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

Re: FACT Act Prescreen Rule, Project No. R411010

Dear Commission,

This letter is submitted on behalf of First National Bank of Omaha in response to the request for comment on the Notice of Proposed Rulemaking under the Fair and Accurate Credit Transaction Act of 2003, published by the Commission on October 1, 2004. Please find the following detail outlining our input into this request:

The Proposed Rule Overemphasizes the Opt-Out Notice

Based on our review of existing opt-out disclosure practices at First National Bank of Omaha, we believe the Proposed Rule overemphasizes the opt-out notice, negatively impacts the firm offer of credit being targeted to the consumer, and does not provide for creditor flexibility in meeting the requirements of rule. The Proposal suggests a dual disclosure process that places excessive emphasis on a short notice that is contained within the text of the firm offer of credit. Albeit, the notice can be at the bottom of the page, but the short notice is to be of a specific font, font type, location, etc. and this places an undue burden on the creditor to effectively market bank products. The overall valuable message of a firm offer of credit is downplayed because of the undue overemphasis of the opt-out notice.

The Proposed Rule provides two key points to ensure that the notice is simple and easy to understand: 1) language and syntax that effectively communicates the intended message; and 2) presentation and format that call attention to the notice and enhance its readability. We concur that the notice should be easy to understand and call attention; however, emphasizing the notice beyond other material information within the offer may negatively impact the consumer and cause confusion. The proposed notice will likely cause consumers to opt-out when they in fact are not fully aware of the impact it will have on their ability to receive and stay abreast of diverse and competitive credit trends, offers, and benefits. Thus, less savvy consumers may potentially seek high-cost loans through non-traditional acquisition channels. This would circumvent the spirit and intent of the Fair and Accurate Credit Transactions Act of 2003.

Creditors should be left to proactively manage the opt-out disclosure in order to meet the needs of the business and marketing materials, such as size and disclosure constraints, while ensuring compliance with the rule. The Commission should provide creditors the flexibility in implementing the opt-out notice so long as the disclosure language and syntax effectively

communicates the intended message and calls attention to its importance. Merely increasing font size and type of specific language does not provide for easier understanding but distorts the importance of the offer, as well as required Truth in Lending disclosures.

Alternative Proposal

We believe the Federal Trade Commission should prescribe a clear and concise single notice disclosure at the discretion of the creditor. The dual notice disclosure should allow creditors to place a safe-harbor disclosure on the primary page of the offer that states: "You may choose to opt out of credit offers from us and other lenders. See the Summary of Credit Terms for details." This text should be consistent with the text, format and size of the offer details on that page. This would ensure that overemphasis does not occur.

In addition, the long notice should be simple, easy to understand and advise the customer of the effect of exercising their opt-out. We believe the following language would be more appropriate for consumers: "We sent you this offer of credit based on your credit report. This offer of credit shows that you meet certain criteria. You may not be approved if you do not continue to meet these criteria. You may choose to opt out of getting this type of offer from us and other lenders by writing, CRA Address. If you opt out, you may not know if you qualify for the offers of credit you get and you may receive fewer diverse and competitive credit offers."

Each creditor should have the choice to use the long notice by itself so long as it is easy to find. In order for the notice to be easy to find, it should be 1) no less than a type size of 8 point or no smaller than the principal type size of the offer, or 2) a distinct typeface from other information on the page, and in any case is set apart from other text on the page to call attention.

Lastly, creditors should have a minimum of 120 days to implement the changes because of the timing with direct mail campaigns. Often times, solicitation campaigns are on a set schedule and timeline that may expand a three to four month process and last minute changes may impact the profitability of such solicitations. Additionally, it is recommended that only the credit bureau contact information from the primary bureau used in the prescreen selection process be provided to the consumer. This will help maintain a clear and understandable consumer disclosure. Credit bureau reporting agencies have the responsibilities to compile and share opt-out information.

First National Bank of Omaha appreciates the opportunity to comment on this important topic. If you have any questions concerning these comments, or if we may otherwise be of assistance in connection with this matter, please do not hesitate to contact me at (402) 636-6647.

Sincerely,

Eric Durham
Director, Corporate Compliance
First National Bank of Omaha