

October 28, 2004

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

Re: FACTA Prescreen Rule, Project No. R411010 (Electronic Comment)

To Whom It May Concern:

Ford Motor Credit Company, a wholly owned subsidiary of Ford Motor Company, is one of the largest automobile finance companies in the world. We appreciate the opportunity to comment on the Fact Act Prescreen Rule ("Proposed Rule") issued by the Federal Trade Commission ("Commission") regarding improving the prescreen opt-out notices included in Section 615(d) of the Fair Credit Reporting Act ("FCRA") as amended by the Fair and Accurate Credit Transactions Act ("FACT Act").

Although Ford Motor Credit Company has been a leader in promoting consumer disclosures and education, we are concerned the Proposed Rule does not adequately take into account the interests of those providing prescreened solicitations. We concur with the comment letter submitted by the Coalition to Implement the FACT Act ("Coalition"). For the reasons set forth below and in the Coalition's letter, the Commission should modify the Proposed Rule.

Concerns with the layered notice approach

The layered notice approach proposed by the Commission elevates the opt-out right beyond what is "simple and easy to understand" to what would be the most distinctive feature of a prescreened solicitation. Following the approach set forth in the Proposed Rule will inject an ominous and negative tone into an offer of credit. The notices required under the Commission's approach could eclipse other statutorily required notices regarding the terms and conditions of the credit offer. Furthermore, neither the FACT Act nor its legislative history adequately support the layered approach set forth in the proposal.

A single notice approach

For the reasons stated above, we support a single notice approach. The single notice described as the "Improved Notice" in the study report referenced in the Proposed Rule provides a well balanced, yet "simple and easy to understand", explanation of the opt-out right. In fact, because several of the phrases used in the Improved Notice provide key

information that can assist a consumer in evaluating the usefulness of exercising the opt-out right, we encourage the Commission to specifically authorize use of these phrases.¹

We strongly support flexibility in allowing the marketer to determine the location of the notice within the solicitation materials. This flexibility permits the marketer to effectively balance the layout of the materials so that both the offer's message and the notice can be presented in a logical manner to the consumer.

Comments on the "short notice"

While we urge a single notice, if the Commission retains the layered approach, we recommend the Proposed Rule be modified with respect to the short notice to allow its location to be varied, its content to be reduced and safe harbor protection to be provided for following model provisions.

Location. Additional flexibility should be provided to allow the short notice to be located either on the first page of the principal promotional document *or* on the page where the prescreened credit offer is first presented to the consumer. Not all promotional materials containing prescreened credit offers have the credit offer as the exclusive message. In our experience, as a company supporting the vehicle sales of our parent, some prescreened solicitations include information on vehicle content and performance. By allowing the short notice to be placed on same page as the presentation of the prescreened offer, the customer will have both the core elements of the credit offer and the short notice readily available to be jointly considered. Compliance will be more certain given that a standard tied to the location of the credit offer will, in many cases, be easier to determine than one directed solely to the "first page".

Content. As was noted in the Commission's discussion of the Proposed Rule, "in prescreened solicitations, space is at a premium." Space constraints are especially prevalent on the "first page" where key aspects of the promotion are being presented to the consumer. To this end, we recommend the length of the short notice be reduced. For example, the short notice could be modified to read as follows: "*Please see our OPT-OUT NOTICE for information on your rights and prescreened offers of [credit or insurance].*" Such a shortened notice is more concise, saves space and still directs the consumer to the existence of a more complete explanation. Specific directions to the location of the long notice should not be required because such directions could unintentionally "clutter-up" the short notice and, given the prominence of the long notice, a casual scan of the materials will easily locate the long notice.

Safe harbor. The content of short notice is tightly prescribed. It appears the only substantive portion to be provided by the creditor under the Proposed Rule is the location of

¹ The Improved Notice, in addition to FCRA required information, used the following phrases: "Offers like these may be useful in comparing terms and benefits of various credit offers."; "If you call or write, 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."; and "Please note: Even if you choose not to receive prescreened offers of credit [or insurance], you still may get other credit [or insurance] offers."

the long notice. As mentioned above, the short notice could be drafted in a manner that would have virtual universal applicability. It should be made clear that following a model of such a short notice would qualify the user for safe harbor protection.

Comments on the "simple and easy to understand" definition

The Proposed Rule includes a list of eight factors to be considered in determining whether a statement is "simple and easy to understand." These factors should be eliminated from the Proposed Rule. As drafted, these eight factors could be used to unduly complicate the determination of "simple and easy to understand." We recommend the definition remain limited to "plain language designed to be understood by ordinary consumers." For example, if the first six factors are "followed", the seventh and eighth factors are superfluous. A "clear and concise sentence" under the first factor would not be "imprecise" under the seventh.

Thank you for the opportunity to comment on these issues. Please feel free to contact Robert Aitken at (615) 315-7456 or me at (313) 594-7743 if you have questions or would like further information.

Sincerely,

David L. Korman

David L. Korman
Executive Vice President
and Global General Counsel
Ford Motor Credit Company