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PROTECTING CONSUMERS SINCE 1975

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December 7, 2020

Via Electronic Submission: <https://www.regulations.gov>

Federal Trade Commission
 Office of the Secretary
 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex B)
 Washington, DC 20580

RE: Prescreen Opt-Out Notice Rule, 16 CFR part 642, Project No. P205408

Dear Commissioners:

The South Carolina Department of Consumer Affairs (“SCDCA”/“Department”) is pleased to offer comments in response to the Federal Trade Commission’s (“FTC”/“Commission”) proposed amendments to the Prescreen Opt-Out Notice Rule (“Proposed Rule”). SCDCA is South Carolina’s consumer protection agency. Established in 1974, SCDCA is responsible for the administration and enforcement of the South Carolina Consumer Protection Code, found in Title 37 of the South Carolina Code of Laws¹.

SCDCA helps formulate and modify consumer laws, policies, and regulations; resolves complaints arising out of the production, promotion, or sale of consumer goods or services in South Carolina, whether or not credit is involved; and promotes a healthy competitive business climate with mutual confidence between buyers and sellers. Overall, SCDCA protects consumers while giving due regard to those businesses acting in a fair and honest manner.

SCDCA supports modifying the Opt-Out Notice Rule and offers the following comments for the Commission’s consideration based upon SCDCA’s experience as a consumer credit regulator, mediating consumer complaints and responding to consumer inquiries.

¹ See S.C. Code Ann. § 37-1-101 et seq.; see also <https://consumer.sc.gov/>.



Discussion

1. Is there a continuing need for specific provisions of the Prescreen Opt-Out Notice Rule? Why or why not?

Within the context of the Proposed Rule, 15 U.S.C. § 1681b(c)(1)(B) permits a credit reporting agency to furnish a consumer report² to a motor vehicle dealer if it has reason to believe the motor vehicle dealer intends to use the information in connection with making a firm offer of credit (“prescreened offer” or “unsolicited offer”). The Department foresees a continuing need for the Proposed Rule. The Proposed Rule will ensure consistency in the regulation of prescreened offers amongst the motor vehicle industry and other creditors utilizing this form of advertising. While motor vehicle dealers extending credit directly to consumers may routinely assign credit contracts to affiliated *and* unaffiliated parties, the important purposes of the FCRA as stated in *Cole v. U.S. Capital, Inc.*, 389 F.3d 719, 722 (7th Cir. 2004) would be served by the Proposed Rule which would cover dealers that only assign to unaffiliated third parties. Otherwise, these dealers could find themselves outside the rulemaking authority of the CFPB, without a clearer corresponding Rule from the Commission.

The consumer benefits also provide a foundation for the existence of the Rule. Consumers benefit from the Rule because it requires the report users to inform consumers that information from their personal consumer report has been used for the purpose of making an unsolicited offer of credit. The five disclosure items comprehensively and succinctly inform the consumer how their personal consumer report has been used, why they’ve received a prescreened offer, and what they can do to exercise their right to opt out. This educational purpose gives the consumer the big picture, enabling them to fully understand the nature of the solicitation and options to prevent future receipt of similar items.

3. What modifications, if any, should be made to the Prescreen Opt-Out Notice Rule to increase the benefits to consumers?

The Rule should be modified to require disclosure of the credit reporting agencies’ website for prescreened offers, www.optoutprescreen.com. Further discussion on this addition is presented in our response to question 11 on pages 5-6. There are a few other modifications that could be made regarding prescreened credit offers that would benefit consumers. However, they apply to statutes other than 15 U.S.C. § 1681m, although still relating to prescreened offers. Since they are not derived from the requirements of Section 1681m, they are listed in bullet form here:

² Pursuant to 15 U.S.C. § 1681b(c)(2), a person may receive only the name and address of a consumer; an identifier that is not unique to the consumer and that is used by the person solely for the purpose of verifying the identity of the consumer; and “other information pertaining to a consumer that does not identify the relationship or experience of the consumer with respect to a particular creditor or other entity.”



- **Limit the information obtainable by motor vehicle dealers to only the information required to certify criteria and verify the consumer's identity.** The consumer report information obtainable by motor vehicle dealers making prescreened offers is comprised of the "name and address of a consumer, an identifier that is not unique to the consumer and that is used by the motor vehicle dealer solely for the purpose of verifying the identity of the consumer, and other information pertaining to a consumer that does not identify the relationship or experience of the consumer with respect to a particular creditor or other entity." 15 U.S.C. 1681b(c)(2). Federal regulation should specify what "other information" a consumer reporting agency may furnish to a motor vehicle dealer for purposes of determining which consumers meet the "specified criteria" for a firm offer and for verifying the consumer's identity to prevent identity theft. This would protect consumers from unnecessary disclosure of private information.
- **Require motor vehicle dealers to deliver prescreened solicitations within a specified timeframe after credit reporting agencies furnish the consumer report information.** Imposing a deadline on issuing a prescreened offer after receipt of consumer report information helps ensure the motor vehicle dealer is making an offer with up to date consumer report information. This practice would also help ensure only qualifying consumers receive prescreened offers based off current consumer report information. This would decrease the risk that firm offers land in the wrong hands due to death or changes of address, and it would decrease the risk that consumers receive prescreened solicitations that are based off stale consumer report data. The furnishing of consumer report information pursuant to 1681b(c)(1)(B) is dependent on a "transaction [that] consists of a firm offer of credit" that exists prior to the request for the information. A firm offer of credit is an offer already formed prior to requesting the consumer report information from consumer reporting agencies, and "will be honored if the consumer is determined...to meet the specific criteria used to select the consumer for the offer." § 1681a(l). Thus, the motor vehicle dealer should have offer criteria and transaction terms prepared and submitted to the consumer reporting agency at the time of request as part of certification. On paper, the "deal" is already finalized, and the dealers just need a list of qualified consumers to receive the prescreened offers. Delaying delivery only hurts the motor vehicle dealer because the information becomes less reliable over time.
- **Amend rules regarding disposal and destroying of consumer report information in 16 CFR § 682 to add deadlines for the destruction of consumer information used by motor vehicle dealers pursuant to 16 CFR § 642.** A prescreened offer is only available for a specified time, after which the motor vehicle dealer has no use for it. At that point, the motor vehicle dealer should be required to destroy the consumer report information to safeguard consumer privacy. The Commission has authority to impose such a deadline pursuant to 15 U.S.C. § 1681w(a)(1) because requiring disposal or destruction of consumer

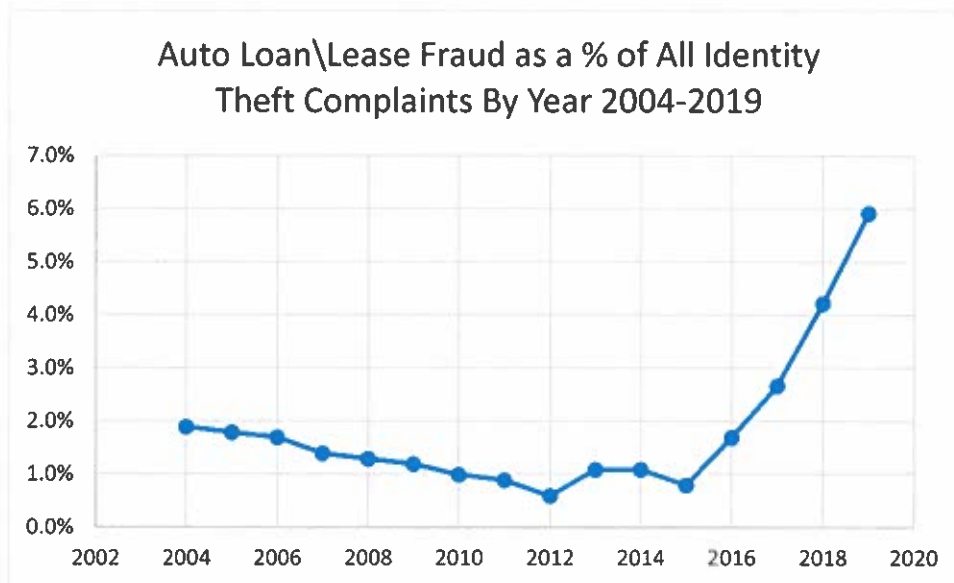


report information after the motor vehicle dealers' certified business purpose would only be proper.

a. What evidence supports the proposed modifications?

In 2004, the Federal Reserve published a one-time report to Congress pursuant to section 213(e) of the Fair and Accurate Credit Transactions Act of 2003.³ In the report, the Federal Reserve found that identity theft crimes arising from prescreened solicitations account for only a small amount of identity theft under either a broad or narrow definition of the crime."⁴ Since 2004, however, the percentage of total identity theft complaints specifically concerning auto loan/lease fraud has increased threefold. This trend may justify additional regulatory scrutiny regarding prescreened offers from motor vehicle dealers.

According to the Commission's Consumer Fraud and Identity Theft Complaint Data from 2006⁵ - 2016 and its Consumer Sentinel Network Data Books for 2017 - 2019,⁶ Auto Loan/Lease fraud has rapidly increased since 2015 and has increased 105% from 2018 to 2019. A chart of this data is presented below.



b. How would these modifications affect the costs imposed by the Prescreen Opt-Out Notice Rule?

Virtually all the modifications would incur no new compliance costs. The only modification that may incur an additional cost on motor vehicle dealers is issuing a deadline on

³ <https://www.congress.gov/108/plaws/publ159/PLAW-108publ159.pdf> (Page 29)

⁴ <https://www.federalreserve.gov/boarddocs/rptcongress/UnsolicitedCreditOffers2004.pdf> (page 41)

⁵ The 2006 report includes historical data from 2004 and 2005.

⁶ <https://www.ftc.gov/enforcement/consumer-sentinel-network/reports>



making a prescreen offer after receipt of consumer report information. While it may require some dealers to obtain fresh consumer report information more often, it may result in a more efficient prescreen offer program that negates the costs of refreshing consumer report information.

These changes would not result in a “less competitive marketplace and thus relatively higher prices and reduced availability to consumers,”⁷ but instead would provide additional protections to consumers in a way that also benefits motor vehicle dealers.

11. What modification, if any, should be made to the Prescreen Opt-Out Rule to account for changes in relevant technology or economic conditions? What evidence supports the proposed modification?

As mentioned previously, the Rule should be modified to require users of consumer reports to disclose the website www.optoutprescreen.com along with the phone number and addresses. Using this website, consumers can quickly and easily find more information about prescreened offers, can opt out, and can opt in.⁸ At a minimum, consumer reporting agencies that provide consumer reports for the purpose of making prescreened offers are required to maintain a toll-free telephone number for consumers to opt out. 15 U.S.C. § 1681b(e)(5) (Each consumer reporting agency that furnishes a consumer report under subsection (c)(1)(B) shall establish and maintain a notification system, including a toll-free telephone number.) (*emphasis added*). The agencies’ addresses and toll-free telephone numbers must be included in the opt-out notice. 15 U.S.C. § 1681m(d)(2). These statutes should not be interpreted to prohibit the Commission’s ability to require disclosure of the website along with the toll-free telephone number and addresses, especially when the website offered by the credit reporting agencies has more information. The phone number and mail in options do not provide additional information about benefits of prescreened offers at all. The Rule must establish a format that is simple and easy to understand. 15 U.S.C. § 1681m(d)(2)(B). While disclosure of the website is not expressly required by statute, most consumers have access to the internet.⁹

According to Pew Research, when the Rule was originally passed in 2005, 68% of adults in the United States used the internet, compared to 90% in 2019.¹⁰ The Federal Reserve Bank of

⁷ Federal Reserve Report, Page 47

⁸ The Board of Governors of the Federal Reserve System issued a “Report to the Congress on Further Restrictions on Unsolicited Written Offers of Credit and Insurance” pursuant to section 213(e) of the Fair and Accurate Credit Transactions Act of 2003, in which they noted some of the perceived benefits of prescreened offers: “Prescreened solicitations significantly benefit consumers by providing them with ready access to product information on credit and insurance products for which they likely qualify. Thus, prescreened offers help consumers by greatly reducing the time and effort necessary for shopping for these products.” (Page 32). Also, “Because of their advantages to senders and consumers, prescreened solicitations are important in promoting competition and enhancing consumer welfare in the markets for credit and insurance.” (Page 3). The report is accessible here: <https://www.federalreserve.gov/boarddocs/rptcongress/UnsolicitedCreditOffers2004.pdf>

⁹ See response to Question 11.

¹⁰ <https://www.pewresearch.org/internet/fact-sheet/internet-broadband/>



St. Louis Economic Data (FRED) database lists 68M U.S. internet users in 2005, compared to 88M in 2018.¹¹ As more U.S. citizens use the internet, it becomes more obvious that requiring disclosure of the consumer reporting agencies' website would account for changing technological and economic conditions. The website is maintained by the consumer reporting agencies as a source of information to the consumer that a phone number and addresses cannot provide. Adding the website to the disclosure requirements is simple and easy to understand for consumers in the current marketplace.

14. The Commission proposes to provide a model prescreen opt-out notice that motor vehicle dealers may use. Should the model be modified?

At a minimum, change the model signature block to state it is from a motor vehicle dealer instead of a credit card company. The model form currently states it is from a credit card company. This modification would provide clarity for motor vehicle dealers as to whether the model form applies, where to place their information, and would generally further simplify the compliance process for motor vehicle dealers. The model form could be further revised to update its appearance to prescreen offers commonly mailed by motor vehicle dealers today.

a. What evidence supports the proposed modifications?

Using a different term may cause the reader to wonder if you are referring to the same group.¹² As stated by the National Archives in its *Making Regulations Readable* Writing Resource,¹³ “readable regulations help the public find requirements quickly and understand them easily. They increase compliance, strengthen enforcement, and decrease mistakes, frustration, phone calls, appeals, and distrust of government. Everyone gains.” The National Archives suggests “avoiding contradictions.” Having a regulation pertaining only to motor vehicle dealers with an accompanying model form that appears to apply to credit card companies presents a contradiction that may reduce clarity. This does not simplify the compliance process as effectively as changing the model signature block to state the model prescreen offer is from a motor vehicle dealer.

b. How would these modifications affect the benefits provided by the Prescreen Opt-Out Notice Rule?

The benefits provided by the Rule would be fully preserved, and this modification would provide clarity to motor vehicle dealers for purposes of compliance.

¹¹ <https://fred.stlouisfed.org/series/ITNETUSERP2USA>

¹² Federal Plain Language Guidelines, Page 45. <https://www.plainlanguage.gov/media/FederalPLGuidelines.pdf>

¹³ National Archives' Making Regulations Readable Writing Resource, available at <https://www.archives.gov/federal-register/write/plain-language/readable-regulations.html>



Conclusion

SCDCA appreciates the opportunity to comment on the Proposed Rule regarding Opt-Out Notices for motor vehicle dealers. SCDCA commends the FTC for its work to modernize the Opt-Out Rule in a manner that protects consumers while clarifying its applicability to motor vehicle dealers as a result of amendments made to the FCRA by the Dodd-Frank Act. We hope the information provided assists with this effort. Should you have any questions pertaining to our comments, please feel free to contact me at 803-734-4233.

Best Regards,

A handwritten signature in blue ink that reads "Carri Grube Lybarker". The signature is fluid and cursive, with the first name "Carri" being the most prominent.

Carri Grube Lybarker, Esq.