

[Billing Code 6750-01-P]

**FEDERAL TRADE COMMISSION**

**16 CFR Part 682**

**[RIN 3084-AA94]**

**Prescreen Opt-Out Disclosure**

**AGENCY:** Federal Trade Commission.

**ACTION:** Final Rule.

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**SUMMARY:** The Fair and Accurate Credit Transactions Act of 2003 (“FACT Act” or “Act”) directs the Federal Trade Commission (“FTC” or “Commission”), in consultation with the federal banking agencies and the National Credit Union Administration, to adopt a rule to improve the required notice to consumers regarding their right to opt out of prescreened solicitations for credit or insurance. This final Rule implements this requirement.

**EFFECTIVE DATE:** This Rule is effective on August 1, 2005.

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**SUPPLEMENTARY INFORMATION:**

**Statement of Basis and Purpose**

**I. Background**

Section 615(d) of the Fair Credit Reporting Act (“FCRA”) requires that any person who uses a consumer report in order to make an unsolicited firm offer of credit or insurance to the consumer (“prescreened offer” or “prescreened solicitation”), shall provide with each written solicitation a clear and conspicuous statement that:

(A) information contained in the consumer’s consumer report was used in connection with the transaction; (B) the consumer received the offer of credit or insurance because the consumer satisfied the criteria for credit worthiness or insurability under which the consumer was selected for the offer; (C) if applicable, the credit or insurance may not be extended if, after the consumer responds to the offer, the consumer does not meet the criteria used to select the consumer for the offer or any applicable criteria bearing on credit worthiness or insurability or does not furnish any required collateral; (D) the consumer has a right to prohibit information contained in the consumer’s file with any consumer reporting agency from being used in connection with any credit or insurance transaction that is not initiated by the consumer; and (E) the consumer may exercise the right referred to in subparagraph (D) by notifying a notification system established under section 604(e) [of the FCRA].

Section 615(d)(1) of the FCRA [15 U.S.C. § 1681m(d)(1)].<sup>1</sup>

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<sup>1</sup> Section 604(e) of the FCRA requires that any consumer reporting agency that provides prescreened lists to marketers shall maintain a notification system through which consumers may choose to have their names and addresses excluded from such lists. That

The Fair and Accurate Credit Transactions Act of 2003, Pub. L. 108-159, 117 Stat. 1952 (FACT Act or the Act) was signed into law on December 4, 2003. Section 213(a) of the FACT Act amends FCRA section 615(d) to require that the statement mandated by section 615(d) “be presented in such format and in such type size and manner as to be simple and easy to understand, as established by the Commission, by rule, in consultation with the Federal banking agencies and the National Credit Union Administration.”

On September 27, 2004, the Commission issued, and sought comment on, a proposed Rule implementing the requirements of section 213(a) of the FACT Act (“the proposed Rule”).<sup>2</sup> In response to the proposed Rule, the Commission received approximately 60 comments from a variety of trade associations, creditors, insurers, consumer advocacy groups, and individual consumers. After carefully considering the comments received, the Commission adopts the proposed Rule with some modifications.

The final Rule carries out the Commission’s mandate to improve the prescreen notice so that it is simple and easy to understand. The FACT Act specifies that “simple

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section also requires that consumer reporting agencies that compile and maintain files on consumers on a nationwide basis establish a joint notification system. The nationwide consumer reporting agencies have done so, and the current telephone number for the joint notification system is 1-888-5-OPT-OUT (1-888-567-8688).

<sup>2</sup> The notice of proposed rulemaking and proposed Rule were published in the Federal Register on October 1, 2004. 69 FR 58861.

and easy to understand” is to be achieved by establishing a format, type size, and manner for the presentation of the notice. These three factors indicate that “simple and easy to understand” is meant to include both (1) the content, such as language and syntax, of the notice so that it effectively conveys the intended message to readers, and (2) the presentation and format of the notice such that it calls attention to the notice and enhances its understandability. Thus, the final Rule establishes certain baseline requirements for these two components to ensure that the notices meet the statutory mandate. As stated in the proposed Rule, the determination of whether a notice meets the “simple and easy to understand” standard is based on the totality of the disclosure and the manner and format in which it is presented, not on any single factor. Modifications have been made to the final Rule to make it clearer that the “simple and easy to understand” standard is a flexible one.

The final Rule: (1) sets forth the purpose and scope of the Rule; (2) defines “simple and easy to understand”; (3) requires a notice that consists of an initial statement that provides basic opt-out information (“short notice”), and a separate longer explanation that offers further information (“long notice”); (4) adds a definition for “principal promotional document,” the document in which the short notice must appear; (5) establishes the effective date for the Rule; and (6) proposes model notices that may be used for compliance.

Therefore, having consulted with the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance

Corporation, Office of Thrift Supervision, and National Credit Union Administration, the FTC issues the following Rule.

## **II. Overview of Comments Received**

The Commission received approximately 60 comments concerning the proposed Rule.<sup>3</sup> The vast majority of these comments were from industry trade organizations<sup>4</sup> and the business community.<sup>5</sup> Individual consumers, five members of Congress,<sup>6</sup> and

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<sup>3</sup> The public comments relating to this rulemaking may be viewed at <http://www.ftc.gov/os/comments/prescreenedoptout/index.htm>. Citations to comments filed in this proceeding are made to the name of the organization (if any) or the last name of the commenter, and the comment number of record.

<sup>4</sup> These included the Consumer Data Industry Association (“CDIA”) (the trade association that represents the nationwide consumer reporting agencies and a variety of other consumer reporting agencies), America’s Community Bankers, American Bankers Association, American Council of Life Insurers, American Financial Services Association, the Coalition to Implement the FACT Act (representing trade associations and companies that furnish, use, collect, and disclose consumer information), Consumer Bankers Association, Credit Union National Association, Florida Association of Mortgage Brokers, Independent Community Bankers of America, Michigan Credit Union League, Mortgage Bankers Association, National Association of Federal Credit Unions, National Independent Automobile Dealers Association, National Retail Federation, Pennsylvania Credit Union Association, and Property Casualty Insurers Association of America.

<sup>5</sup> These included financial institutions, such as Bank of America Corporation, Countrywide Home Loans, MasterCard International Incorporated, MBNA America Bank, N.A., Navy Federal Credit Union, Union Federal Bank, and Visa U.S.A. Inc.; insurers, such as Progressive; and credit reporting agencies, such as Equifax Information Services LLC, Experian Information Solutions, Inc., and TransUnion LLC.

<sup>6</sup> Congressman Spencer Bachus, Chair of the Subcommittee on Financial Institutions and Consumer Credit, of the House Financial Services Committee (R-AL); Congressman Paul Kanjorski (D-PA); Congressman John Sweeney (R-NY); Senator George Allen (R-VA); and Senator Jim Bunning (R-KY).

consumer advocacy groups<sup>7</sup> also submitted comments on the proposed Rule. In addition to considering the comments received, the Commission reviewed and considered the Board of Governors of the Federal Reserve System’s Report to the Congress on Further Restrictions on Unsolicited Written Offers of Credit or Insurance (“FRB Prescreen Report”).<sup>8</sup>

The Commission received comments on nearly all of the provisions contained in the proposed Rule. Most commenters, including consumers, businesses, trade associations, and consumer groups, expressed general support for a Rule requiring an improved and more understandable prescreen notice. However, commenters disagreed on what manner and format would best accomplish the goals of the FACT Act and what information should be contained in the notices.

The majority of industry commenters opposed the layered notice approach, asserting that a layered notice exceeds the FTC’s statutory authority, would overshadow other important notices, and would lead consumers to make uninformed decisions about whether to opt out.<sup>9</sup> Some industry members, as well as consumer advocacy groups,

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<sup>7</sup> These included the Consumer Action, National Consumers League, Consumer Federation of America, and Privacy Rights Clearinghouse.

<sup>8</sup> See [www.federalreserve.gov/boarddocs/rptcongress/](http://www.federalreserve.gov/boarddocs/rptcongress/).

<sup>9</sup> See, e.g., Comment, America’s Community Bankers #OL-100013; Comment, Discover Bank #OL-100016; Comment, Financial Services Roundtable #REG-000004; Comment, Juniper Financial Corp., #000009; Comment, MasterCard International Incorporated #000012; Comment, Visa U.S.A. Inc. #000005; Comment, Wells Fargo & Company #000007; Comment, Wilmer Cutler Pickering Hale and Dorr LLP #OL-100045.

supported the layered notice as an appropriate means of effecting the statutory directive of providing a simple and easy format for disclosing the required information.<sup>10</sup>

Commenters also disagreed on whether the type-size requirements should be larger<sup>11</sup> or smaller<sup>12</sup> than proposed, and whether the notice should include additional information, such as the benefits of prescreened offers,<sup>13</sup> or prohibit any additional information from being included in the notice.<sup>14</sup>

In general, commenters also approved of the definition of “simple and easy to understand,” but some expressed concern that the proposed Rule’s list of factors to be considered in determining whether a notice met this definition might be considered a

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<sup>10</sup> See, e.g., Comment, Boeing Employees’ Credit Union #000020; Comment, Commerce Bancshares, Inc. #OL-100045; Comment, National Consumers League, et al. #OL-100011; Comment, Pennsylvania Credit Union Association #OL-100024; Comment, Privacy Rights Clearinghouse #OL-100015.

<sup>11</sup> See, e.g., Comment, National Consumers League, et al. #OL-100011; Comment, Privacy Rights Clearinghouse #OL-10015.

<sup>12</sup> See, e.g., Comment, Commerce Bancshares, Inc. #OL-100045; Comment, Mortgage Bankers Association #OL-100036; Comment, National Independent Automobile Dealers Association #OL-100021; Comment, Union Federal Bank #OL-100044.

<sup>13</sup> See, e.g., Comment, Discover Bank #OL-100016; Comment, Financial Services Roundtable #EREG-000004; Comment, MBNA America Bank #OL-100031.

<sup>14</sup> See, e.g., Comment, Connors #OL-100014; Comment, National Consumers League, et al. #OL-100011; Comment, Privacy Rights Clearinghouse #OL-100015.

“checklist” rather than examples.<sup>15</sup> In addition, commenters generally agreed that the Rule should also include a definition for “principal promotional document.”<sup>16</sup>

Although commenters generally supported the proposed Rule’s inclusion of model notices,<sup>17</sup> some commenters suggested changes or additions to the language of those notices to achieve various goals, including using more “neutral” language for the short notice,<sup>18</sup> adding language regarding collateral requirements,<sup>19</sup> and adding language regarding the benefits of prescreened offers.<sup>20</sup>

All of these comments, as well as others, are discussed more fully below.

### **III. Section-By-Section Analysis**

#### **\_\_\_\_\_A. Section 642.1: Purpose and Scope.**

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<sup>15</sup> See, e.g., Comment, Coalition to Implement the FACT Act #OL-100042; Comment, Juniper Financial Corp. #000009; Comment, MasterCard International Incorporated #000012.

<sup>16</sup> See, e.g., Comment, Commerce Bancshares, Inc. #OL-100045; Comment, Credit Union National Association #000003; Comment, Mortgage Bankers Association #OL-100036; Comment, National Association of Federal Credit Unions #OL-100020; Comment, National Consumers League, et al. #OL-100011; Comment, Privacy Rights Clearinghouse #OL-100015

<sup>17</sup> See, e.g., Comment, Countrywide #000010; Comment, Visa U.S.A. Inc. #000005.

<sup>18</sup> See, e.g., Comment, Juniper Financial Corp. #000009; Comment, MasterCard International Incorporated #000012; Comment, Visa U.S.A. Inc. #000005; Comment, Wells Fargo & Company #000007.

<sup>19</sup> See, e.g., Comment, Mortgage Bankers Association #OL-100036.

<sup>20</sup> See, e.g., Comment, JPMorgan Chase Bank #OL-100019; Comment, Juniper Financial Corp. #000009.

Proposed section 642.1(a) set forth the purpose of the proposed Rule, which was to implement section 213(a) of the FACT Act. Section 213(a) requires the FTC to establish the format, type size, and manner in which the notices to consumers regarding the right to opt out of prescreened solicitations are to be presented. The Commission received no comments regarding this section and it is adopted as proposed.

Proposed section 642.1(b) set forth the scope of the proposed Rule. The Rule applies to any person who uses a consumer report on any consumer in connection with any credit or insurance transaction that is not initiated by the consumer, pursuant to section 604(c)(1)(B) of the FCRA. The Commission received no comments regarding this section and it is adopted as proposed.

**B. Section 642.2: Definitions.**

**1. “Simple and easy to understand.”**

The proposed Rule contained one definition in section 642.2. “Simple and easy to understand” was defined to mean “plain language designed to be understood by ordinary consumers.” Proposed section 642.2 also listed eight factors that would be considered in determining whether a statement is “simple and easy to understand.”<sup>21</sup>

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<sup>21</sup> The eight factors to be considered in determining whether a statement is “simple and easy to understand” were: (1) use of clear and concise sentences, paragraphs, and sections; (2) use of short explanatory sentences; (3) use of definite, concrete, everyday words; (4) use of active voice; (5) avoidance of multiple negatives; (6) avoidance of legal and technical business terminology; (7) avoidance of explanations that are imprecise and reasonably subject to different interpretations; and (8) use of language that is not misleading.

The Commission received several comments concerning this definition. Some commenters noted that they supported the definition, did not suggest any changes, and encouraged the Commission to retain it in the final Rule.<sup>22</sup> Other commenters suggested that the Commission eliminate the eight factors from the definition. These commenters expressed various concerns about the factors, including that they unduly complicate an otherwise uncomplicated definition and could be interpreted as a checklist of requirements that must each be present in order to meet the definition.<sup>23</sup>

As the Commission noted in the notice of proposed rulemaking (“NPRM”) accompanying the proposed Rule, the eight factors are intended to provide guidance to companies in complying with the Rule, while allowing them to maintain flexibility to determine how best to meet the definition.

The Commission has revised the Rule to clarify that use of clear and concise sentences, paragraphs, and sections is a mandatory part of the definition, but the remaining seven factors are simply examples to be considered in meeting the “simple and easy to understand” definition. These factors should neither be considered to be mandatory, nor to constitute an exhaustive list.

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<sup>22</sup> See, e.g., Comment, Discover Bank #OL-100016; Comment, Wells Fargo & Company #000007.

<sup>23</sup> See, e.g., Comment, Coalition to Implement the FACT Act #OL-100042; Comment, Equifax Information Services LLC #OL-100023; Comment, Juniper Financial Corp. #000009; Comment, MasterCard International Incorporated #000012.

In addition, the Commission has determined to specify in the final Rule that the layered notice is a required component of the “simple and easy to understand” definition. The Commission has determined that the layered format makes the prescreen disclosures simpler and easier to understand, and it is appropriate that it specifically be incorporated into the definition.<sup>24</sup>

## **2. “Principal promotional document.”**

Proposed section 642.3(a)(2) required that the short form of the layered notice be placed on the first page of the principal promotional document. The Commission noted in the NPRM that the question of what constitutes the “principal promotional document” is fact specific, but that, in general, the Commission would consider the cover letter or the document that is designed to be seen first by the consumer to be the “principal promotional document.” The proposed Rule did not define “principal promotional document,” however, and the Commission requested comment on whether such a definition was necessary.

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<sup>24</sup> The Commission also notes that, in addition to meeting the “simple and easy to understand” definition set forth by the Rule, prescreen opt-out notices must continue to meet the “clear and conspicuous” standard required by the FCRA. One recent case from the Court of Appeals for the Seventh Circuit noted that, in determining whether a prescreen notice is “clear and conspicuous,” factors to be considered are: “the location of the notice within the document, the type size used within the notice as well as the type size in comparison to the rest of the document . . . whether the notice is set off in any other way – spacing, font style, all capitals, etc.” Cole v. U.S. Capital, Inc., 389 F.3d 719, 731 (7th Cir. 2004). The court concluded, “In short, there must be something about the way the notice is presented in the document such that the consumer’s attention will be drawn to it.” Id. Thus, the “simple and easy to understand” standard overlaps to some extent with the “clear and conspicuous” standard.

The Commission received several comments requesting that the Commission provide a definition for “principal promotional document.”<sup>25</sup> Some commenters suggested specific definitions for the term, such as the document intended to be seen first by the consumer, the document that addresses the consumer directly with the offer, the cover letter or other document used to introduce the offer, or the cover letter or other document that the consumer sees first when opening the solicitation. At least one commenter asserted that the proper location for the disclosure is in the application or the offer of credit.<sup>26</sup> Another commenter suggested that factors to be considered in determining whether a document is the principal promotional document should include (1) whether the document is the first page of a letter to a consumer, or (2) whether the document contains the credit terms being offered.<sup>27</sup>

In addition, some commenters expressed concern that the concept of a principal promotional document would not translate well to an electronic prescreened offer. Specifically, these commenters were concerned that a pop-up advertisement that appeared

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<sup>25</sup> See, e.g., Comment, Commerce Bancshares, Inc. #OL-100045; Comment, Credit Union National Association #000003; Comment, Mortgage Bankers Association #OL-100036; Comment, National Association of Federal Credit Unions #OL-100020; Comment, National Consumers League, et al. #OL-100011; Comment, Privacy Rights Clearinghouse #OL-100015.

<sup>26</sup> Comment, Michigan Credit Union League #OL-100030.

<sup>27</sup> Comment, Mortgage Bankers Association #OL-100036.

on the consumer's computer screen would have to contain the short notice.<sup>28</sup> These commenters suggested that pop-up advertisements should be considered similar to envelopes, and therefore not considered the principal promotional document.

The Commission agrees with the commenters that a definition would help companies to comply with the Rule and has considered all of the suggested definitions. The final Rule defines principal promotional document as the document that is designed to be seen first by the consumer, such as the cover letter. Requiring that the disclosure appear early in the solicitation enhances the noticeability of the disclosure, thereby aiding in making the disclosure simple and easy to understand. The final Rule does not link the definition to the credit terms or the application, because many different documents within the solicitation may contain some or all of the credit terms, and those consumers who are interested in opting out of receiving solicitations for future offers may not be likely to review the terms and conditions of the offer at hand. Therefore, linking the definition to credit terms would not provide guidance to businesses, nor would it ensure that those interested in opting out could easily locate the notice.

In addition, the Commission has considered the concerns expressed by the commenters regarding the application of the definition to electronic offers. The Commission is in agreement with those commenters who equated a pop-up promotional screen with an envelope. Therefore, the Commission will consider the principal

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<sup>28</sup> See, e.g., Comment, Financial Services Roundtable #REG-000004; Comment, GE Consumer Finance-Americas #OL-100018.

promotional document in those circumstances to be the page designed to be seen first by the consumer who clicks on the pop-up promotional screen.

**\_\_\_\_\_ C. Section 642.3: Prescreen Opt-Out Notices.**

The proposed Rule required a “layered” notice – that is, a notice that includes both an initial short portion and a longer portion contained later in the solicitation. The short portion of the notice informed consumers about the right to opt out of receiving prescreened solicitations and specified a toll-free number for consumers to call to exercise that right. No additional information could be included in the short notice. The long portion of the notice provided consumers with all of the additional information required by section 615(d) of the FCRA. The long notice could contain additional information that did not interfere with, detract from, contradict, or otherwise undermine the purpose of the opt-out notice. The proposed Rule set forth certain baseline requirements for the type size of the notice, as well as the presentation of the notice.

Most of the comments the Commission received focused on various aspects of this section of the proposed Rule. Commenters addressed several topics pertaining to this section, including the Commission’s statutory authority to prescribe a layered notice, the Commission’s statutory authority to require the notice to appear in electronic solicitations, the content of the notice, the type size of the notice, and the format and manner in which the notice is presented, including within electronic solicitations. Each of these is addressed in turn below.

**1. Statutory authority for the layered notice.**

Several commenters questioned whether the Commission had exceeded its statutory authority by mandating a layered notice.<sup>29</sup> Many of these commenters stated that the Commission was improperly specifying a definition of the clear and conspicuous standard contained in section 615(d) of the FCRA, including imposing a prominence requirement.<sup>30</sup> These commenters argued that Congress did not intend this disclosure to be more prominent than other disclosures required by law, such as the so-called “Schumer box,”<sup>31</sup> or that any one element of the disclosure be more prominent than another. One commenter opined that the layered notice was actually two notices and therefore was contrary to the language in section 615(d) of the FCRA requiring “a clear and conspicuous statement.”<sup>32</sup>

The Commission has considered these comments and has decided to retain the layered notice approach in the final Rule. The FACT Act requires that the notice be “presented in a format and in such type size and manner as to be simple and easy to understand, as established by the Commission.” (Emphasis added). Thus, the plain language of the statute provides that “simple and easy to understand” encompasses

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<sup>29</sup> See, e.g., Comment, Consumer Bankers Association #OL-100028; Comment, HSBC North American Holdings #000004; Comment, Juniper Financial Corp. #000009; Comment, MasterCard International #000012; Comment, Visa U.S.A. Inc. #000005; Comment, Wachovia Corporation #OL-100017.

<sup>30</sup> See, e.g., Comment, Juniper Financial Corp. #000009; Comment, MasterCard International #000012; Comment, Wachovia Corporation #OL-100017.

<sup>31</sup> See 12 C.F.R. § 226.5a.

<sup>32</sup> Comment, Visa U.S.A. Inc. #000005.

presentation of the notice. The Commission has concluded that the layered notice is an appropriate and effective means of achieving this goal, and that nothing in the FACT Act or the FCRA prohibits the use of a layered notice approach.

Under section 615(d) of the FCRA, the prescreen disclosure must be clear and conspicuous. Section 213(a) of the FACT Act imposed the additional requirement that the disclosure be “simple and easy to understand.” Therefore, the statutory scheme establishes a different standard for the prescreen disclosure than it imposes on other disclosures that must only be clear and conspicuous. There is no evidence in the record that the layered notice required by this Rule will compromise the communication of other required disclosures in prescreened solicitations.

Some commenters stated that, even if the Commission has authority to require a layered notice, it was improper for the Commission to rely upon the consumer survey that the Commission undertook as part of developing the proposed Rule as support for the layered notice requirement. These commenters criticized the methodology of the survey as unrepresentative of consumer reactions in a real-world setting.<sup>33</sup> The Commission recognizes the limitations of any survey testing methodology because of the artificial setting of the test environment, but maintains that the study approximated real-world conditions to the extent feasible.<sup>34</sup> The Commission believes that the survey provides

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<sup>33</sup> See, e.g., Comment, Wilmer Cutler Pickering Hale and Dorr LLP #OL-100046. (For a discussion of the consumer survey, see 69 FR 58861, 58864.)

<sup>34</sup> The study used standard consumer testing methodology and consisted of an initial exposure, in which the test instrument was presented to the consumer and then

probative evidence of the comparative effectiveness of the three versions of notices it tested (“current,” “improved,” and “layered”).<sup>35</sup> The survey found that the layered notice better communicated the central messages – consumers’ right to opt out and how to exercise the right – than did the current version.<sup>36</sup>

A layered notice is particularly useful in cases such as this, where the information that must be disclosed consists of a relatively simple central proposition accompanied by a larger quantity of explanatory or ancillary information. The layered approach allows for clear communication of the central message with a clear reference to the additional

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removed from view, and a forced exposure, in which the consumer’s attention was focused on specific information in the test instrument. See Manoj Hastak, Ph.D., The Effectiveness of “Opt-Out” Disclosures in Pre-Screened Credit Card Offers, at 3-4, located at <http://www.ftc.gov/reports/prescreen/040927optoutdiscprecreenrpt.pdf>. In the view of the Commission’s consumer research expert consultant, the initial exposure was designed to simulate “fairly natural viewing conditions.” Id. at 4. The FRB Prescreen Report indicates that, for most of those consumers who actually open and review prescreened solicitations, this approach may indeed approximate real-world conditions. In a nationwide survey of consumers, the FRB found that 56% of consumers throw prescreened solicitations away without opening them, 34% merely “glance” at them, and the remaining 10% read them closely. See FRB Prescreen Report at 32. The initial exposure may have simulated the experience of consumers who glance at prescreened solicitations but do not examine them closely, that is, the experience of most consumers who actually open prescreened solicitations.

<sup>35</sup> The Commission has long recognized that methodological perfection is not required before a consumer survey can be probative and reliable; rather, imperfections in methodology affect the weight that is given to the survey. See, e.g., In re Stouffer Foods Corp., 118 F.T.C. 746, 799 (1994); In re Bristol-Meyers Co., 85 F.T.C. 688, 743-44 (1975).

<sup>36</sup> See 69 FR 58861, 58864. In addition, although there was not a statistical difference between the improved and layered versions in the communication of the opt-out right, the layered version was more effective in the initial “natural” exposure (as compared to the second “forced” exposure) at communicating how to exercise that right.

required information. Those consumers interested in the additional information have the opportunity to view that information in another location.<sup>37</sup>

## **2. Statutory authority to require notice in electronic solicitations.**

Several commenters suggested that the FCRA does not apply to solicitations that are transmitted electronically because such documents are not “written,” as that term is used in the FCRA.<sup>38</sup> The Commission believes that “written” refers to information that is capable of being preserved in a tangible form and read, as opposed to an oral statement that is intangible and transitory. As with information presented on paper, consumers using electronic media can read the information and preserve it for possible later review either by printing it on paper, saving it on disk, or by some other means. The Commission believes that the purpose of section 213(a) of the FACT Act was to enhance consumers’ awareness of opt-out rights, under section 615(d) of the FCRA, whenever they receive a

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<sup>37</sup> The results reported in the FRB Prescreen Report indicate that a layered notice may be a very effective means to ensure that consumers who open prescreened solicitations will see the prescreen disclosure. As noted, supra note 34, the FRB Prescreen Report found that 56% of consumers throw prescreened solicitations away without opening them, 10% of consumers open the solicitations and examine them, and the remainder (34%) open the solicitations and “glance” at them. Id. Those consumers who immediately throw the solicitation away are not likely to see the notice wherever it is located; those who examine the solicitation closely might see any disclosure, even one on the back of the page or in fine print; but those consumers who “glance” at the solicitation may be more likely to see a prescreen disclosure located on the first page of the principal promotional document that is printed in a noticeable type size and set apart from other text on the page. Thus, a layered notice seems more likely to be seen by the majority of consumers who open prescreened solicitations.

<sup>38</sup> See, e.g., Comment, American Financial Services Association #OL-100038; Comment, Discover Bank #OL-100016.

written solicitation in any form, regardless of the means of transmission. Therefore, the Commission has determined that the Rule should apply to all written solicitations, even if they are transmitted electronically.

### **3. Content of the notice.**

Commenters expressed two primary concerns with the content of the short portion of the notice: (1) whether it is appropriate to include a statement of the opt-out right and the telephone number of the opt-out system in the short portion of the notice; and (2) whether companies should be permitted to include additional information, beyond that mandated by the statute, in any part of the layered notice.

#### Inclusion of opt-out right and telephone number in the short notice

Several commenters suggested that it was improper for the Commission in the proposed Rule to require presentation of the opt-out right and the telephone number to opt out for placement in the short portion of the notice, while relegating other statutorily-required information to the long portion of the notice.<sup>39</sup> Some of these commenters stated that the Commission did not have the authority to make certain elements of the disclosure (in particular, the telephone number) more prominent than others by placing them in the short portion of the notice. Some were concerned that consumers would not read the long portion of the notice if they could obtain all of the information necessary to opt out from the short portion, which might lead them to make decisions about opting out without the

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<sup>39</sup> See, e.g., Comment, Coalition to Implement the FACT Act #OL-100040; Comment, Direct Marketing Association #OL-100035; Comment, TransUnion LLC #000022; Comment, Wachovia Corporation #OL-100017.

benefit of all pertinent information.<sup>40</sup> Other commenters expressed concern that consumers may mistakenly assume they can use the opt-out telephone number to reply to the offer itself, leading to frustration and confusion.<sup>41</sup>

As stated above, Congress has directed the Commission to prescribe the presentation of the notice, including its manner and format. In exercising that authority, the Commission has determined to include the opt-out right and telephone number in the short notice in the final Rule.<sup>42</sup> Nothing in the statute prohibits the Commission from exercising its authority in this manner, and, in fact, the only legislative history specifically discussing the content of the required notice supports this result and indicates Congress' interest in highlighting the opt-out right.<sup>43</sup>

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<sup>40</sup> See, e.g., Comment, American Bankers Association #OL-100040; Comment, Capital One Financial Corporation #OL-100033.

<sup>41</sup> See, e.g., Comment, American Financial Services Association #OL-100038; Comment, Capital One Financial Corporation #OL-100033.

<sup>42</sup> Although the FCRA specifically mentions both the address and telephone number for the notification system, the Commission has determined that it is appropriate to require only the telephone number in the short notice because: (1) the Commission understands that space is at a premium in prescreened solicitations, particularly on the first page of the principal promotional document, and therefore does not want to require more information than necessary in the short notice; and (2) the communication of the central message is likely to be more effective with less verbiage in the short notice. The telephone number requires less space and less verbiage than the address.

<sup>43</sup> For example, FACTA section 213(a), amending FCRA section 615(d)(2), is entitled, "Enhanced Disclosure of the Means Available to Opt Out of Prescreened Lists." Although the title of a statutory section cannot limit that section, it may assist in explaining what was intended by that section. See also, e.g., 149 CONG. REC. S13851-52 (daily ed. Nov. 4, 2003) (statement of Sen. Sarbanes) (noting that the amendments to the FCRA "will require a summary of consumers' rights to opt out of prescreened offers.");

The FRB Prescreen Report seems to confirm Congress' concern that the existing notice under FCRA section 615(d) has not been especially effective at communicating to consumers that they have a right to opt out of prescreened solicitations. The FRB conducted a nationwide survey of consumers and found that only 20% of consumers were aware of the opt-out right, and that less than half of those had learned of it through the section 615(d) notice.<sup>44</sup> The Report cites the pending "review of the presentation and the placement of the notice in written prescreened solicitations" mandated by the FACT Act (that is, the Commission's rulemaking proceeding), as one basis for its recommendation that further legislative changes are not necessary at this time.

The Commission has concluded that the statute's purpose is best accomplished by requiring that the short notice include the essential information that consumers need if they choose to opt out. Those consumers who are seeking more information about prescreened offers and their options are invited by the short notice to obtain further information from the long notice.

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149 CONG. REC. S13855 (daily ed. Nov. 4, 2003) (statement of Sen. Johnson) (noting that the amendments to the FCRA "take[] important new steps to empower consumers to reduce unwanted credit solicitations."); 149 CONG. REC. S15806-07 (daily ed. Nov. 24, 2003) (statement of Sen. Sarbanes) (noting that the amendments to the FCRA will "help ensure that consumers are aware of how to opt out of the prescreening process . . . . The FTC . . . will be required to write rules on the size and prominence of the disclosure of the opt-out telephone number that is included with offers of credit to consumers.")

<sup>44</sup> FRB Prescreen Report at 32.

Finally, the Commission is not persuaded that consumers will be confused about the purpose of the telephone number, given that the short notice will explicitly state that the number is to be used for opting out of future prescreened offers.

Additional information in the notices

The proposed Rule prohibited senders of prescreened solicitations from including information in the short portion of the notice other than that specified by the Rule – that is, consumers’ right to opt out and how to exercise it. The proposed Rule contained no such restriction on the content of the long portion of the notice, so long as any additional content did not interfere with, detract from, contradict, or otherwise undermine the purpose of the notice.

Some commenters supported the proposed Rule’s prohibition on additional information being included in the short notice, and encouraged the Commission to prohibit additional information in the long notice as well. These commenters argued that allowing additional information in the notices would be contrary to the Commission’s statutory mandate, confuse consumers, and allow marketers to discourage consumers from opting out.<sup>45</sup> Other commenters, however, advocated allowing additional information, such as the benefits of prescreened offers and the consequences of opting out, in both the short and long notices in order to provide consumers with sufficient information to make an

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<sup>45</sup> See, e.g., Comment, Connors #OL-100014; Comment, National Consumers League, et al. #OL-100011; Comment, Privacy Rights Clearinghouse #OL100015.

informed decision about whether to opt out.<sup>46</sup> Some of these commenters cited to an exchange between Representatives Bachus and Kanjorski during the House of Representatives' consideration of the bill, in which the Congressmen stated that consumers should be aware "not only of the right to opt out of receiving prescreened solicitations, but also of the benefits and consequences of opting out."<sup>47</sup> Representatives Bachus and Kanjorski submitted a comment to the Commission expressing the importance of consumer awareness of the benefits and consequences of opting out.

The Commission recognizes that prescreened offers may confer many benefits on consumers. As discussed in several of the comments, such offers may be an easy and efficient means for consumers to learn of competing credit or insurance offers and to identify those that best suit their needs. The Commission also acknowledges, as stated in certain of the comments, that the growth in prescreened offers has coincided with a general trend towards lower initial interest rates and certain other more favorable terms, and that a substantial percentage of credit card enrollments result from prescreened offers. Moreover, the Commission recognizes that if prescreened offers became less viable, marketers may switch to direct mail solicitations, which may be more costly and carry less

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<sup>46</sup> See, e.g., Comment, CDIA #OL-100026; Comment, Direct Marketing Association #OL-100035; Comment, Wilmer Cutler Pickering Hale and Dorr LLP #OL-100046.

<sup>47</sup> Congressional Record, November 21, 2003, page H12219. See also infra note 51.

favorable terms.<sup>48</sup> At the same time, the Commission notes the concerns raised by certain commenters about the alleged costs of prescreening, such as the privacy implications for those consumers who do not wish to have their personal financial information shared or used to make unsolicited credit and insurance offers.<sup>49</sup>

Regardless of the costs and benefits of prescreening, the FCRA provides that consumers may opt out of prescreened offers, and simply directs the Commission to determine how best to inform consumers of this right and how to exercise it. Moreover, the FCRA does not require that marketers notify consumers of the consequences of opting out, nor does it direct the Commission to require such a disclosure. The final Rule, therefore, requires only the statutorily-mandated messages, but permits additional information where appropriate.

The Commission has concluded that permitting additional information in the short notice could significantly diminish the communication of the statutorily-mandated message.<sup>50</sup> The final Rule, like the proposed Rule, does allow additional information, including information about the benefits of prescreening, in the long notice, if that

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<sup>48</sup> See also FRB Prescreen Report at 28-36 (discussing the benefits of receiving prescreened offers).

<sup>49</sup> See also FRB Prescreen Report at 37-46 (discussing the costs of receiving prescreened offers).

<sup>50</sup> See, e.g., Funkhouser, An Empirical Study of Consumers' Sensitivity to the Wording of Affirmative Disclosure Messages, 3 J. PUB. POL. & MKTG. at 31, 33 (finding that “information must be presented simply and straightforwardly,” and “affirmative disclosures should say exactly what they are intended to mean.”) (Emphasis in the original).

information does not interfere with, detract from, contradict, or undermine the purpose of the prescreen notices. The Commission believes this approach allows marketers to provide consumers with information that may be useful to them in making their decisions, while at the same time not interfering with the statutory mandate to make the notices simple and easy to understand. The Commission also notes that marketers are free to include information about prescreening elsewhere in their solicitations. Finally, section 213(d) of the FACT Act requires the Commission to undertake a public awareness campaign to alert consumers to the availability of the opt-out right. The Commission intends to use this campaign to educate consumers about the benefits and consequences of opting out.<sup>51</sup>

#### **4. Type size of the notice.**

The proposed Rule required the short portion of the notice to be in a type size that is larger than the principal text on the same page, but in no event smaller than 12-point type, and the long portion of the notice to be in a type size that is no smaller than the type size of the principal text on the same page, but in no event smaller than 8-point type.

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<sup>51</sup> The colloquy between Representatives Bachus and Kanjorski cited by some commenters refers to this public awareness campaign as a vehicle for informing consumers of the benefits and consequences of opting out. See 149 CONG. REC. H12,218-19 (daily ed. Nov. 21, 2003) (“Mr. KANJORSKI. Mr. Speaker, does the gentleman share with me the understanding that the FTC’s public awareness campaign is to be designed to increase public awareness, not only of the right to opt out of receiving prescreened solicitations, but also of the benefits and consequences of opting out? Mr. BACHUS. Mr. Speaker, yes, I share that understanding.”).

Some commenters asserted that the type size prescribed for the short notice was adequate, but that the type size for the long notice was too small.<sup>52</sup> Others found the type size required for the long notice to be appropriate, but opined that the type size for the short notice was too large.<sup>53</sup> Still others proposed that the Commission adopt the approach used in the commentary to the Truth in Lending Act's implementing Regulation Z, which deems disclosures in 12-point type to be readily noticeable, but permits smaller type size to be used.<sup>54</sup> A few commenters suggested that the Commission not impose a type-size requirement at all,<sup>55</sup> or that the requirement only be relative to surrounding text rather than specifying an absolute size.<sup>56</sup>

The Commission has considered these comments, but has determined not to change the type-size requirements for written prescreened solicitations. The FACT Act directs the Commission to prescribe a rule that establishes, among other things, a type size

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<sup>52</sup> See, e.g., Comment, National Consumers League, et al. #OL-100011. See also Comment, Privacy Rights Clearinghouse #OL-100015 (commenting that the long notice type size requirement was too small).

<sup>53</sup> See, e.g., Comment, Boeing Employees' Credit Union #000020; Comment, Michigan Credit Union League #OL-100030; Comment, Mortgage Bankers Association #OL-100036; Comment, National Independent Automobile Dealers Association #OL-100021; Comment, Union Federal Bank #OL-100044.

<sup>54</sup> See, e.g., Comment, Credit Union National Association #000003; Comment, Navy Federal Credit Union #000006.

<sup>55</sup> See, e.g., Comment, Coalition to Implement the FACT Act #OL-100042; Comment, Consumer Bankers Association #OL-100028; Comment, TransUnion LLC #000022.

<sup>56</sup> See, e.g., Comment, Countrywide #000010.

that is sufficient to render the notice simple and easy to understand. It is important that the notices be large enough to be noticed and readable by ordinary consumers. At the same time, the Commission understands that space is at a premium in prescreened solicitations. Requiring the short portion of the notice to be in a type size that is larger than the principal text on the same page, combined with a minimum 12-point type-size requirement, is sufficient to ensure that it is noticeable and readable without imposing unnecessary expense on marketers.

The long notice, which contains additional information, presents a somewhat different calculus. Consumers who see the short notice and are interested in learning further information are directed by the short notice to the long notice. Accordingly, the Commission believes that the long notice should be in a type size that is sufficiently large to be readable, but that there is less need for the long notice to be readily noticeable. Balancing these interests, the Commission concludes that the long notice should be no smaller than 8-point type and no smaller than the principal text on the same page.

Some commenters also expressed concerns about complying with the type-size requirements in electronic solicitations. Several commenters pointed out that because the settings of the computer on which a solicitation is viewed can alter a solicitation's format, meeting a specific minimum point requirement would be burdensome.<sup>57</sup> These commenters suggested that the Commission instead impose a standard of relative

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<sup>57</sup> See, e.g., Comment, Credit Union National Association #000003; Comment, Countrywide #000010; Comment, Progressive #OL-100010.

prominence for electronic solicitations, which would require, for example, that the short notice be larger than the principal text.<sup>58</sup> The Commission agrees that, for electronic solicitations, a standard of relative prominence is an appropriate means by which to accommodate the vast range of electronic devices that may be used to view the offer. Thus, the final Rule provides that, for electronic solicitations, marketers must take reasonable steps to ensure that the short notice is in a type size that is larger than the principal text on the same page. The long notice must be in a type size no smaller than the principal text on the same page.

#### **5. Form of the notice.**

The proposed Rule set forth certain baseline requirements for the form of both the long and the short portions of the notice. The proposed Rule required the short notice to be on the front side of the first page of the principal promotional document in the solicitation, or, if provided electronically, on the first screen; located on the page and in a format so that it is distinct from other text; and in a type style that is distinct from other type styles used on the same page. The proposed Rule required the long notice to begin with a heading identifying it as the “OPT-OUT NOTICE”; be in a type style that is distinct from other type styles used on the same page; and be set apart from other text on the page. The Commission received several comments concerning these requirements generally, as

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<sup>58</sup> See, e.g., Comment, Countrywide #000010; Comment, National Independent Automobile Dealers Association #OL-100021; Comment, Progressive #OL-100010.

well as specific comments regarding the required location, type style, and heading requirements. These are addressed in turn below.

#### General comments

Some commenters asserted that the requirements regarding form did not provide companies with enough flexibility to determine the best method for making the notices clear and conspicuous, as well as simple and easy to understand.<sup>59</sup> Conversely, other commenters were concerned that the requirements were not specific enough to ensure that the notices would meet the statutory standards.<sup>60</sup> These commenters suggested, for example, that the Rule require businesses to use bolded type style, rather than allowing them the flexibility to determine how to comply with the distinct type style requirement.

The Commission has considered these comments and declines to alter the baseline requirements in the final Rule. The requirements are not overly restrictive and allow companies flexibility to determine how best to use the basic formatting tools set forth in the Rule to make a statement noticeable and understandable. At the same time, the requirements provide sufficient specificity to ensure that the notices are simple and easy to understand.

#### Location of notices in one-page solicitations

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<sup>59</sup> See, e.g., Comment, Property Casualty Insurers Association of America #000008.

<sup>60</sup> See, e.g., Comment, National Consumers League, et al. #OL-100011; Comment, Privacy Rights Clearinghouse #OL-100015.

Several commenters noted that certain prescreened solicitations may consist of only a single page, and recommended that the final Rule not require a layered format in that circumstance.<sup>61</sup> Others requested that the Commission clarify that the short and long portions of the notice could both appear on the first page of the principal promotional document.<sup>62</sup> Others stated that, because prescreened offers of insurance usually consist of a single page or a fold-out self mailer, the final Rule should not apply to prescreened offers of insurance.<sup>63</sup>

Section 615(d) of the FCRA clearly covers prescreened offers of insurance, and the Commission declines to establish an exemption for such offers from the final Rule. The Commission also declines to provide an exception from the layered notice requirement for one-page solicitations. Even in a one-page solicitation, the layered format contributes to making the notice simple and easy to understand. The Commission agrees that both the short and long portions of the notice may appear on the first page of the principal promotional document. As in the proposed Rule, the final Rule allows businesses to place the long notice in any location within the solicitation so long as that location is referenced in the short notice.

#### Location of notices in electronic solicitations

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<sup>61</sup> See, e.g., Comment, Coalition to Implement the FACT Act #OL-100042.

<sup>62</sup> See, e.g., Comment, National Independent Automobile Dealers Association #OL-100021.

<sup>63</sup> See, e.g., Comment, American Council of Life Insurers #OL-100027.

Because the settings of the device on which an electronic solicitation is viewed can alter a solicitation's format, some commenters objected to the requirement that the short-form notice appear on the first screen of an electronic solicitation.<sup>64</sup> Some commenters proposed that the short portion of the notice simply be required to appear on the first page of an electronic solicitation,<sup>65</sup> or "reasonably proximate to, or included in, the main marketing message,"<sup>66</sup> in order to accommodate variations among viewing devices. By contrast, other commenters supported requiring the short notice to appear on the first screen of the offer.<sup>67</sup>

The Commission has determined that, for the reasons stated in the comments, it is not practicable to require that the short portion of the notice always appear on the first page or first screen of electronic solicitations. Thus, the final Rule requires that, for electronic solicitations, the short notice be included on the same page and in close proximity to the principal marketing message. This standard ensures that consumers viewing the solicitation will be reasonably likely to see the short notice.

Distinct type style requirement

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<sup>64</sup> See, e.g., Comment, Credit Union National Association #000003.

<sup>65</sup> See, e.g., Comment, Credit Union National Association #000003.

<sup>66</sup> See, e.g., Comment, Wachovia Corporation #OL-100017.

<sup>67</sup> See, e.g., Comment, Financial Services Roundtable #EREG-000004; Comment, MasterCard International Incorporated #0000012.

Some commenters requested that the Commission modify the proposed Rule to clarify that the type style of the notice must contrast only with the principal type style used on the same page, rather than with all type styles on the page.<sup>68</sup> The Commission agrees that this clarification should be made. Companies should not be precluded, for example, from presenting the notices in bolded type style simply because a small portion of the text on the page is in bold.<sup>69</sup> Therefore, the final Rule specifies that both the short and long portions of the notice must be in a type style that is distinct from the type style of the principal text on the same page.

#### Long notice heading

The proposed Rule required that the long portion of the notice include the heading “OPT-OUT NOTICE.” Some commenters suggested that this heading should reflect the totality of information in the long notice, rather than focusing on the opt-out information in the notice.<sup>70</sup> These commenters suggested a variety of new headings, such as “PRESCREEN DISCLOSURES.”

The Commission has considered these comments and agrees that the long notice heading should be modified to reflect the totality of the information contained in that

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<sup>68</sup> See, e.g., Comment, MasterCard International Incorporated #0000012.

<sup>69</sup> For example, 12 C.F.R. Part 226, Appendix G, requires that the headings in certain Truth-in-Lending disclosures be in bolded type style. This would not preclude companies from also placing the prescreen disclosure in bolded type style.

<sup>70</sup> See, e.g., Comment, Consumer Bankers Association #OL-100028; Comment, Juniper Financial Corp. #000009; Comment, MasterCard International Incorporated #100012.

portion of the notice. Therefore, the final Rule requires that the long notice begin with a heading identifying it as the “PRESCREEN & OPT-OUT NOTICE.”

**D. Section 682.4: Effective Date.**

The Commission initially proposed to make the Prescreen Opt-Out Disclosure Rule effective 60 days after publication of the final Rule. Many industry commenters requested a longer effective date in order to allow covered entities to implement changes to their prescreened solicitations. These commenters explained that prescreened solicitations are generally prepared several months in advance, and therefore they need more time to comply with the final Rule in order to exhaust existing inventories of solicitations and to prepare and disseminate new compliant solicitations.<sup>71</sup> These commenters suggested time periods ranging from 90 days to 1 year after publication of the final Rule. After considering the comments, the Commission has extended the effective date to August 1, 2005. The Commission believes that this time period will provide businesses with sufficient time to implement the new requirements, while ensuring that the benefits to consumers of the improved opt-out notice occur as soon as reasonably practicable.

**E. Appendix A to Part 698: Model Prescreen Opt-Out Notices**

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<sup>71</sup> See, e.g., Comment, American Council of Life Insurers #OL-100027; Comment, Boeing Employees’ Federal Credit Union #000020; Comment, Wachovia Corporation #OL-100017; Comment, Wells Fargo & Company #000007.

In the proposed Rule, the Commission set forth model notices, including both a short and long portion, in both English and Spanish. These notices included model language and also illustrated proper placement and display of the language.

Several commenters suggested changes to the language in the model notices, including specifying more “neutral” language for the short notice, adding information to the long notice, providing model language for collateral requirements, and clarifying that the telephone number is for the consumer reporting agencies, not the prescreen marketer. The Commission agrees that some changes to the proposed model notices are appropriate, and is making the modifications described below. Otherwise, the proposed notices are retained.

These model notices adopted in the final Rule may be used for purposes of complying with the Rule.<sup>72</sup>

**1. Model language in the short notice.**

The proposed Rule’s model short notice stated, “To stop receiving ‘prescreened’ offers of [credit or insurance] from this and other companies, call toll-free, [toll free number]. See OPT-OUT NOTICE on other side [or other location] for details.”

According to several commenters, this language implies that prescreened offers are

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<sup>72</sup> Some commenters suggested that the final Rule require marketers to use notices that substantially conform with the model notices. See, e.g., Comment, National Consumers League, et al. #OL-100011. However, the Commission believes that there are sufficient requirements in the Rule to make the notices effective, and therefore it is not necessary to require that marketers’ notices substantially conform with the model notices.

undesirable and encourages consumers to opt-out.<sup>73</sup> These commenters requested that the Commission revise the model short notice to use less negative language.

The Commission has determined to revise the short notice language to remove any possible negative characterization of prescreened solicitations. The first sentence of the short notice in the final Rule states, “You can choose to stop receiving ‘prescreened’ offers of [credit or insurance] from this and other companies by calling toll-free [toll-free number].” The Commission believes that this language does not imply a recommendation of any course of action, but rather simply informs consumers of their statutory right.

In addition, for the same reasons that commenters suggested that the long notice heading should be modified, the Commission has determined that the model short notice’s reference to the long notice should be modified to reflect to totality of the information in the long notice. Therefore, the second sentence of the model short notice in the final Rule states, “See PRESCREEN & OPT-OUT NOTICE on other side [or other location] for more information about prescreened offers.”

## **2. Additional information in long notices.**

Several commenters suggested that the model long notice should contain additional information, including information about the benefits and drawbacks of prescreening,<sup>74</sup>

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<sup>73</sup> See, e.g., Comment, Direct Marketing Association #OL-100035; Comment, Discover Bank #OL-100016; Comment, Juniper Financial Corp. #000009; Comment, MasterCard International Incorporated #000012; Comment, Visa U.S.A. Inc. #000005; Comment, Wells Fargo & Company #000007.

<sup>74</sup> See supra text accompanying notes 48 and 49 discussing the benefits and drawbacks of prescreening that were raised by the commenters.

that opting out will not stop all offers of credit and insurance, or that consumers may be asked to provide their Social Security numbers when exercising the opt-out right.<sup>75</sup> The Commission believes that each of these messages can be useful to consumers, and notes that it tested the communication of each of these messages as part of its consumer survey.<sup>76</sup>

The Commission has considered these comments, but has determined not to include information beyond that required by the statute in the model notice. The model notice contains plain language statements of the statutorily-required information. Rather than single out other particular messages for inclusion in the model, and thereby imply that certain information is required or that other information is prohibited, the final Rule allows companies flexibility to determine what, if any, additional information should be included

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<sup>75</sup> See, e.g., Comment, Coalition to Implement the FACT Act #OL-100042; Comment, Consumer Bankers Association #OL-100028; Comment, Wachovia Corporation #OL-100017. The potential benefits of prescreening were described above in Section III.C.3. In addition, as discussed in the NPRM, not all credit card or insurance offers consumers receive are prescreened offers. For example, some such offers are mass-mailed to consumers and do not derive from prescreened lists. Therefore, opting out of precreened offers will not end all mail solicitations. Finally, as explained in the NPRM, the opt-out system operated by the nationwide consumer reporting agencies requires a Social Security number for verification; including the need to provide a Social Security number in the notice might alleviate consumers' concerns about revealing this sensitive information.

<sup>76</sup> The survey found that the tested language used to convey these ancillary messages did not communicate well to consumers; at the same time, it does not appear that the tested language, at least under the conditions of the study, detracted from the primary message that consumers could choose to opt out. See 69 FR 58861, 58864.

(so long as the additional information does not interfere with, detract from, contradict, or undermine the purpose of the opt-out notices).<sup>77</sup>

### **3. Collateral requirement.**

The proposed Rule's model long notice contained a plain-language summary of the information required by section 615(d) of the FCRA to be included in prescreened offers. At least one commenter noted that, among other things, it must be disclosed when a prescreened offer is contingent upon the consumer providing adequate collateral. This commenter stated that the model notice did not specifically include this information, and requested that the Commission revise the model notices to include it.<sup>78</sup>

The Commission has considered this argument and agrees that the model long notice should contain additional language regarding the collateral requirement for use by creditors and insurers in appropriate circumstances. Therefore, the final Rule modifies the second sentence of the model long notice to state, "This offer is not guaranteed if you do not meet our criteria [including providing acceptable property as collateral]."

### **4. Telephone number.**

Some commenters recommended that the Commission make clear in the model notice that consumers would be calling the consumer reporting agencies that operate the

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<sup>77</sup> The Commission also notes that appropriate additional information might be a website address where consumers can obtain additional information about prescreening and the opt-out right.

<sup>78</sup> See, e.g., Comment, Mortgage Bankers Association #OL-100036.

toll-free number for opting out, and not the creditor or insurer, when exercising their opt-out right.<sup>79</sup>

The Commission has considered these comments and agrees that language should be added to the model long notice to clarify that the telephone number is that of the consumer reporting agencies, not the creditor or insurer. Therefore, the final Rule modifies the third sentence of the model long notice to state, “If you do not want to receive prescreened offers of [credit or insurance] from this and other companies, call the consumer reporting agencies [or name of consumer reporting agency] toll free, [toll free number]; or write: [consumer reporting agency name and address].”

#### **IV. Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act, as amended, 44 U.S.C. §§ 3501, et seq., the Commission submitted the proposed Rule to the Office of Management and Budget (“OMB”) for review. The OMB approved the Rule’s information collection requirements through November 30, 2007, and assigned OMB control number 3084-0132. In response to comments received, the Commission has revised its estimate of the burden for companies that issue many different prescreened solicitations and therefore will be required to revise multiple solicitations in order to comply with the Rule. On December 8, 2004, the OMB approved the new burden estimate.

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<sup>79</sup> See, e.g., Comment, Bank of America Corporation #OL-100032; Comment, Mortgage Bankers Association #OL-100036.

As set forth in the NPRM, the Rule imposes certain disclosure requirements on makers of prescreened credit solicitations, as required by the FACT Act. Specifically, such solicitations must include a statement containing a short-form and a long-form notice, which provides consumers with information concerning prescreened solicitations and how to opt out of receiving such solicitations in the future. In addition, the Rule contains a model disclosure that companies may use to comply with the Rule's requirements.

The NPRM estimated the time to revise and re-format an existing solicitation to be about 8 hours per firm. At the same time, the NPRM estimated that between 500 and 750 entities would be affected, so that the total annual burden to the industry would be between 4000 and 6000 hours and the estimated total annual cost would be between \$110,000 and \$167,000.<sup>80</sup> Numerous commenters stated that the NPRM underestimated the costs of revising solicitations by failing to calculate the additional costs to be borne by larger companies that issue multiple solicitations.<sup>81</sup>

At the outset, the Commission notes that any new disclosure format, as required by the FACT Act's mandate to improve the existing opt-out disclosure, requires affected

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<sup>80</sup> This estimate was based on Bureau of Labor Statistics data (as of July, 2002), as follows: 2 hours of managerial/professional time at \$31.55 per hour; plus 6 hours of skilled technical labor at \$26.44 per hour; multiplied by 500 and 750 companies, for a total of \$110,870 and \$166,305, respectively.

<sup>81</sup> See, e.g., Comment, Bank of America Corporation #OL-100032; Comment, JPMorgan Chase Bank #OL-100019; Comment, MasterCard International Incorporated #000012; Comment, Wachovia Corporation #OL-100017; Comment, Wells Fargo & Company #000007; Comment, Wilmer Cutler Pickering Hale and Dorr LLP #OL-100046.

firms to revise their prescreened solicitations. Moreover, the Commission does not believe that the layered notice format of the final Rule appreciably increases the burdens on affected entities. Nevertheless, the Commission recognizes that companies that offer multiple solicitations will incur added costs to revise these notices. Thus, the Commission now estimates that the total annual burden to the industry will be between 43,600 and 45,600 hours. This figure reflects the Commission's estimate that approximately 100 entities will need additional time to revise multiple notices as follows: for each of these 100 entities, an additional four hours each for an estimated 99 solicitations not accounted for in the NPRM. Based on the time needed to bring these additional solicitations into compliance, the Commission now estimates that the total cost to the industry will be between \$1,157,894 and \$1,213,329. This figure reflects the 39,600 additional hours of skilled technical labor (at \$26.44 per hour) that the Commission estimates will be required to revise the multiple solicitations.<sup>82</sup>

Although some commenters also estimated that more time would be needed to format and develop a disclosure than the eight hours estimated by the NPRM,<sup>83</sup> or that the labor costs to revise each notice would be higher than estimated,<sup>84</sup> the Commission has

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<sup>82</sup> As in the NPRM, the hourly rate is based on Bureau of Labor Statistics data, as of July, 2002.

<sup>83</sup> See, e.g., Comment, Countrywide #000010; Comment, JPMorgan Chase Bank #OL-100019; Wachovia Corporation #OL-100017.

<sup>84</sup> See, e.g., Comment, American Bankers Association #OL-100040; Comment, Capitol One Financial Corporation #OL-100033.

concluded that it is feasible to design a solicitation according to its original estimates. Nevertheless, in order to permit companies to implement such changes in a more cost-effective manner, the Commission has extended the time to comply with the rule to August 1, 2005.

**V. Final Regulatory Flexibility Analysis.**

The Regulatory Flexibility Act (“RFA”), 5 U.S.C. 601-612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (“IRFA”) with a proposed Rule and a Final Regulatory Flexibility Analysis (“FRFA”), with the final Rule, unless the Commission certifies that the Rule will not have a significant economic impact on a substantial number of small business entities.

The Commission hereby certifies that the final Rule will not have a significant economic impact on a substantial number of small business entities. The FCRA previously mandated the prescreen disclosure. The FACT Act requires the Commission to adopt a rule to make the required disclosure simple and easy to understand. The proposed Rule applies to any entity that makes prescreened offers of credit or insurance. The Commission has been unable to determine the number of small entities that purchase prescreened lists from consumer reporting agencies. However, the Commission believes that only a small number of small entities make prescreened offers. The Commission did not receive any comments to the IRFA that would allow it to determine the precise number of small entities that will be affected. Although there may be some small entities among the entities making prescreened offers, the economic impact of the final Rule is not likely

to be significant on a particular entity, nor is the final Rule likely to have a significant economic impact on a substantial number of small entities. The minimal impact on creditors and insurers would likely consist of revising disclosures that they already give in order to make the disclosures simple and easy to understand.

The Commission requested comment on the IRFA and the proposed Rule's impact on small businesses. The Commission received a few comments in response. These comments, which are discussed in more detail below, requested more time to comply with the Rule<sup>85</sup> and suggested that the layered notice requirement may be difficult for some small businesses.<sup>86</sup>

The Commission continues to believe that a precise estimate of the number of small entities that fall under the Rule is not currently feasible. However, based on the comments received and the Commission's own experience and knowledge of industry practices, the Commission also continues to believe that the cost and burden to small business entities of complying with the Rule is minimal and that the final Rule will not have a significant impact on a substantial number of small entities. Accordingly, this document serves as notice to the Small Business Administration of the agency's certification of no effect. Nonetheless, the Commission has decided to publish a Final

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<sup>85</sup> See, e.g., Comment, Credit Union National Association #000003; Comment, National Independent Automobile Dealers Association #OL-100021.

<sup>86</sup> See, e.g., Comment, ChoicePoint Precision Marketing, Inc. #OL-100025; Comment, Wilmer Cutler Pickering Hale and Dorr LLP #OL-100046.

Regulatory Flexibility Analysis with this final Rule. Therefore, the Commission has prepared the following analysis:

**A. Need for and objectives of the Rule.**

Section 213 of the FACT Act directs the FTC to adopt a rule to improve the required notice to consumers regarding their right to opt out of prescreened solicitations for credit or insurance. In this action, the FTC promulgates a final Rule that would implement this requirement of the FACT Act. The Rule is authorized by and based upon section 213 of the FACT Act.

**B. Significant issues received by public comment.**

The Commission received a few comments in response to its IRFA. Some commenters, in particular, trade associations representing small businesses, were primarily concerned about the time allowed for compliance with the Rule. These commenters asserted that small businesses, which have more limited resources than larger marketers, needed more than the proposed 60 days to comply with the Rule. The commenters suggested an effective date ranging from 120 days to 6 months from the date the final Rule is issued.<sup>87</sup> The final Rule changes the effective date to August 1, 2005. Therefore, small businesses, as well as other entities, should have sufficient time to comply.

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<sup>87</sup> See, e.g., Comment, Credit Union National Association #000003; Comment, National Independent Automobile Dealers Association #OL-100021.

Other commenters suggested that the layered notice requirement may be difficult for some small entities.<sup>88</sup> Some of these comments noted that small entities often have one-page solicitations, and that the layered notice would likely require them to increase the length of their marketing materials, at great expense. As an alternative, these commenters suggested that a one-part notice, rather than the layered notice, should be permitted. The Commission has considered these comments, but does not believe that the layered notice requirement is overly burdensome for small businesses. The Commission has clarified in the statement of basis and purpose that accompanies the final Rule that both parts of the layered notice may appear in a single page solicitation, obviating the need for an additional page or document. Even on a single page solicitation, the layered format contributes to a notice that is simple and easy to understand. The Rule also allows companies flexibility as to the precise formatting and language of the notices. The Commission considers this flexibility sufficient to allow all entities, including small entities, to determine an appropriate means of complying with the Rule within the framework of their own solicitations.

**C. Small entities to which the Rule will apply.**

As described above, the Rule applies to any entity, including small entities, that makes prescreened offers of credit or insurance. The Commission has been unable to ascertain a precise estimate of the number of small entities that are creditors or insurers,

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<sup>88</sup> See, e.g., Comment, ChoicePoint Precision Marketing, Inc. #OL-100025; Comment, Wilmer Cutler Pickering Hale and Dorr LLP #OL-100046.

and received no specific comments to the IRFA that allow it to determine the precise number of small entities that will be affected. Entities potentially covered by the Rule include any entity that extends credit or insurance, including insurance companies, retailers, department stores, and banking institutions, if they are engaging in prescreened offers of credit. For these kinds of entities, the Small Business Administration defines small business to include, in general, a business whose annual receipts do not exceed \$6 million in total receipts for insurance companies and retailers, and \$23 million in total receipts for department stores. For banking institutions, the Small Business Administration defines small business to include entities whose total assets do not exceed \$150 million.<sup>89</sup>

However, not all businesses that extend credit or insurance are required to comply with the Rule. Rather, only such entities that make prescreened solicitations will be subject to the Rule's requirements. Although the number of small businesses that offer credit or insurance is large, the Commission believes that only a small number of those businesses engage in prescreened solicitations. The Commission believes that many small businesses find it more cost effective to engage in other forms of solicitation, including point-of-sale solicitations and/or solicitations of existing customers.

**D. Projected reporting, recordkeeping, and other compliance requirements.**

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<sup>89</sup> These numbers represent size standards for most entities in the industries mentioned above. A list of the SBA's size standards for all industries can be found at <http://www.sba.gov/size/indextableofsize.html>.

Under the final Rule, any entity making a prescreened offer of credit or insurance will be required to provide recipients of the offer with a disclosure regarding their right to opt out of such offers. (There are no filing or recordkeeping requirements in the Rule.) These disclosures are to be in a form that is simple and easy to understand. As noted in the Paperwork Reduction Act analysis above, the estimated time to revise the notice and re-format solicitations is approximately 8 hours (one business day), and the total cost for all entities to comply with this Rule is between \$1,157,894 and \$1,213,329.

**E. Steps taken to minimize significant economic impact of the Rule on small entities.**

The Commission considered whether any significant alternatives, consistent with the purposes of the FACT Act, could further minimize the Rule's impact on small entities. The FTC asked for comment on this issue. Some commenters suggested that the layered notice requirement may be difficult for small businesses, and that a single notice would be more appropriate.<sup>90</sup> However, as discussed above, the Commission has determined that the layered format is the best way to ensure that the disclosures are simple and easy to understand and does not find that the layered notice approach poses a particular burden to small entities. The Rule allows small entities flexibility in determining how best to present the layered notice within the framework of their solicitations, and therefore does not impose a substantial burden.

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<sup>90</sup> See, e.g., Comment, ChoicePoint Precision Marketing, Inc. #OL-100025; Comment, Wilmer Cutler Pickering Hale and Dorr LLP #OL-100046.

The Commission also requested comment on the need to adopt a delayed effective date for small entities in order to provide them with additional time to come into compliance. The Commission received some comments on this issue;<sup>91</sup> the Commission has decided to extend the effective date for all entities subject to the Rule to August 1, 2005. This additional time will allow small entities to assess their compliance obligations and make cost-sensitive decisions concerning how best to comply with the Rule.

## **VI. Final Rule**

### **List of Subjects**

#### **16 CFR Part 642**

Fair Credit Reporting Act, Consumer reports, Consumer reporting agencies, Credit, Trade practices.

#### **16 CFR Part 698**

Fair Credit Reporting Act, Consumer reports, Consumer reporting agencies, Credit, Trade practices.

The Federal Trade Commission amends chapter I, title 16, Code of Federal Regulations, as follows:

1. Add new part 642 to read as follows:

#### **PART 642--PRESCREEN OPT-OUT NOTICE**

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<sup>91</sup> See, e.g., Comment, Credit Union National Association #000003; Comment, National Independent Automobile Dealers Association #OL-100021.

Sec.

642.1 Purpose and scope.

642.2 Definitions.

642.3 Prescreen opt-out notices.

642.4 Effective date.

**Authority:** Pub. L. 108-159, sec. 213(a); 15 U.S.C. 1681m(d).

**§ 642.1 Purpose and scope.**

(a) Purpose. This part implements section 213(a) of the Fair and Accurate Credit Transactions Act of 2003, which requires the Federal Trade Commission to establish the format, type size, and manner of the notices to consumers, required by section 615(d) of the Fair Credit Reporting Act (“FCRA”), regarding the right to prohibit (“opt out” of) the use of information in a consumer report to send them solicitations of credit or insurance.

(b) Scope. This part applies to any person who uses a consumer report on any consumer in connection with any credit or insurance transaction that is not initiated by the consumer, and that is provided to that person under section 604(c)(1)(B) of the FCRA [15 U.S.C. § 1681b(c)(1)(B)].

**§ 642.2 Definitions.**

As used in this part:

(a) Simple and easy to understand means:

- (1) a layered format as described in paragraph 642.3 of this part;
- (2) plain language designed to be understood by ordinary consumers; and

(3) use of clear and concise sentences, paragraphs, and sections.

(A) Examples. For purposes of this part, examples of factors to be considered in determining whether a statement is in plain language and uses clear and concise sentences, paragraphs, and sections include:

- (i) use of short explanatory sentences;
- (ii) use of definite, concrete, everyday words;
- (iii) use of active voice;
- (iv) avoidance of multiple negatives;
- (v) avoidance of legal and technical business

terminology;

(vi) avoidance of explanations that are imprecise and reasonably subject to different interpretations; and

- (vii) use of language that is not misleading.

(b) Principal promotional document means the document designed to be seen first by the consumer, such as the cover letter.

**§ 642.3 Prescreen opt-out notice.**

Any person who uses a consumer report on any consumer in connection with any credit or insurance transaction that is not initiated by the consumer, and that is provided to that person under section 604(c)(1)(B) of the FCRA [15 U.S.C. § 1681b(c)(1)(B)], shall, with each written solicitation made to the consumer about the transaction, provide the consumer

with the following statement, consisting of a short portion and a long portion, which shall be in the same language as the offer of credit or insurance:

(a) Short notice. The short notice shall be a clear and conspicuous, and simple and easy to understand statement as follows:

(1) Content. The short notice shall state that the consumer has the right to opt out of receiving prescreened solicitations, and shall provide the toll-free number the consumer can call to exercise that right. The short notice also shall direct the consumer to the existence and location of the long notice, and shall state the heading for the long notice. The short notice shall not contain any other information.

(2) Form. The short notice shall be:

(A) in a type size that is larger than the type size of the principal text on the same page, but in no event smaller than 12-point type, or if provided by electronic means, then reasonable steps shall be taken to ensure that the type size is larger than the type size of the principal text on the same page;

(B) on the front side of the first page of the principal promotional document in the solicitation, or, if provided electronically, on the same page and in close proximity to the principal marketing message;

(C) located on the page and in a format so that the statement is distinct from other text, such as inside a border; and

(D) in a type style that is distinct from the principal type style used on the same page, such as bolded, italicized, underlined, and/or in a color that contrasts with the color of the principal text on the page, if the solicitation is in more than one color.

(b) Long notice. The long notice shall be a clear and conspicuous, and simple and easy to understand statement as follows:

(1) Content. The long notice shall state the information required by section 615(d) of the Fair Credit Reporting Act [15 U.S.C. § 1681m(d)]. The long notice shall not include any other information that interferes with, detracts from, contradicts, or otherwise undermines the purpose of the notice.

(2) Form. The long notice shall:

(A) appear in the solicitation;

(B) be in a type size that is no smaller than the type size of the principal text on the same page, and, for solicitations provided other than by electronic means, the type size shall in no event be smaller than 8-point type;

(C) begin with a heading in capital letters and underlined, and identifying the long notice as the “PRESCREEN & OPT-OUT NOTICE”;

(D) be in a type style that is distinct from the principal type style used on the same page, such as bolded, italicized, underlined, and/or in a color that contrasts with the color of the principal text on the page, if the solicitation is in more than one color; and

(E) be set apart from other text on the page, such as by including a blank line above and below the statement, and by indenting both the left and right margins from other text on the page.

**§ 642.4 Effective date.**

This part shall become effective on August 1, 2005.

2. Amend section 698.1 by revising paragraph (b) to read as follows:

**§ 698.1 Authority and purpose.**

\* \* \* \* \*

(b) Purpose. The purpose of this part is to comply with sections 607(d), 609(c), 609(d), 612(a), and 615(d) of the Fair Credit Reporting Act, as amended by the Fair and Accurate Credit Transactions Act of 2003, and Section 211 of the Fair and Accurate Credit Transactions Act of 2003.

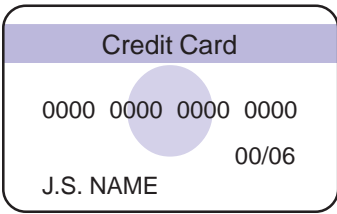
3. Add Appendix A to Part 698 as follows:

**Appendix A to Part 698 - Model prescreen opt-out notices.**

In order to comply with part 642 of this title, the following model notices may be used:

(a) English language model notice.

(1) Short notice.



# Here's a Line About Credit

J.S. Name  
12345 Friendly Street  
City, ST 12345

Dear Ms. Name,

Back in the last century, we saw how technology was changing the way people do things. So we set out to create a the last century, we saw how technology was changing the way people do things. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a the last century, we saw how technology was changing the way people do things.

Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a the last century, we saw how technology was changing the way people do things.

Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way peop. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit a smart kind of credit card.

So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way people. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card.

We saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology.

Sincerely,

John W. Doe  
President, Credit Card Company

PFOR 00 MON  
FIXED ABC



BALANCE TR  
FOR 00 MONTHS



NO MONTHS FEE



INTERNET SECURITY  
SECURITY



ONLINE FRAUD PRO  
GUARANTEE



YOUR BALANCE  
PAY YOUR BILL



FEE-FREE REWARDS  
PROGRAM

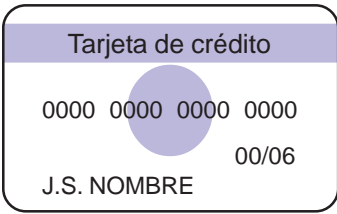
**You can choose to stop receiving “prescreened” offers of [credit or insurance] from this and other companies by calling toll-free [toll-free number]. See [PRESCREEN & OPT-OUT NOTICE](#) on other side [or other location] for more information about prescreened offers.**

(2) Long notice.



(b) Spanish language model notice.

(1) Short notice.



# Aquí están líneas crédito

J.S. Nombre  
1234 Calle Amistosa  
Ciudad, ST 12345

Estimada Señora Nombre:

En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente, vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.

Así que creamos una tarjeta de crédito inteligente. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente, vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.

Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente, vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.

Así que creamos una tarjeta de crédito inteligente. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.

Sinceramente,

John W. Doe  
Presidente, Compañía

PFOR 00 MON FIJO ABC



TRANSFERENCIA DE  
BALANCE POR MESES



SIN CUOTA MENSUAL



PAGO ELECTRÓNICO  
SEGURO



PROTECCIÓN CONTRA  
FRAUDE EN LÍNEA  
GARANTIZADO



SU BALANCE PAGA SU  
CUENTA



PROGRAMA DE  
RECOMPENSAS SIN  
CUENTA

**Usted puede elegir no recibir más “ofertas de [crédito o seguro] pre-investigadas” de esta y otras compañías llamando sin cargos al [número sin cargo]. Ver la NOTIFICACIÓN DE PRE-INVESTIGACIÓN Y EXCLUSIÓN VOLUNTARIA al otro lado de esta página [o en otro lugar] para más información sobre ofertas pre-investigadas.**

(2) Long notice.

En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente, vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente.

#### AQUÍ ESTÁN

Protección Contra Fraude	Programa de Recompensas	Su Balance Paga	Sin Cuota Mensual	Protección Contra Fraude	Recompensas Sin Cuenta	Sin Cuota Mensual
En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.	Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.	En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. En el siglo pasado vimos como la gente hace las cosas. Así que creamos.	Así que creamos una tarjeta de crédito inteligente.	En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.	Así que creamos.	Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.

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#### TERMINOS Y CONDICIONA

En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente, vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.

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**NOTIFICACIÓN DE PRE-INVESTIGACIÓN Y EXCLUSIÓN VOLUNTARIA:** Esta oferta de [crédito o seguro] está basada en información contenida en su informe de crédito que indica que usted cumple con ciertos criterios [incluyendo la condición de tener propiedades aceptables como colateral]. Si usted no cumple con nuestros criterios, esta oferta no está garantizada. Si usted no desea recibir ofertas de [crédito o seguro] pre-investigadas de ésta y otras compañías, llame a las agencias de información del consumidor [o nombre de la agencia de información del consumidor] sin cargos, [número sin cargo]; o escriba a: [nombre de la agencia de información del consumidor y dirección de correo].

**En el siglo pasado vimos como:** la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.

By direction of the Commission.

Donald S. Clark

Secretary

Date: