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July 23, 2004

Ms. Jennifer J. Johnson  
Secretary,  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, D.C. 20551

**Re: Docket No. OP-1195  
Notice of Study and Request for Information  
69 Federal Register 29539, May 25, 2004**

The American Bankers Association ('ABA') is pleased to submit our comments to the Federal Reserve Board's ("Board") request for information on a number of issues in preparation for its study concerning prescreened solicitations. The Board is conducting the study pursuant to the Fair and Accurate Credit Transactions Act of 2003. Specifically, the study concerns the ability of consumers to avoid receiving prescreened solicitations and the potential impact that any further restrictions on providing consumers with such prescreened solicitations would have on consumers.

The ABA brings together all elements of the banking community to represent the interests of this rapidly changing industry. Its membership – which includes community, regional, and money center banks and holding companies, as well as savings associations, trust companies, and savings banks – makes ABA the largest banking trade association in the country.

Prescreening is the linchpin of the country's lively and competitive credit card market. It also plays a critical role for other credit markets, including mortgage and home equity loans.

Any additional restrictions on prescreened solicitations would, without doubt:

1. drastically reduce competition in the credit market, especially the credit card market, by reducing pressure on existing creditors to compete and increasing barriers for new entrants in the market;
2. reduce competition by making consumers less aware of their credit choices;

3. increase interest rates and fees; and
4. reduce the availability of credit, especially in underserved or niche markets.

Moreover, there are few if any adverse consequences to consumers. They may discard unwanted solicitations or avoid them entirely by following the straight-forward “optout” directions that the Fair Credit Reporting Act (“FCRA”) requires that all solicitations contain. Certainly, consumers, when interested, are willing and able to opt out, as they have demonstrated when they signed up in droves for the national do-not-call registry. Notwithstanding some inaccurate opinions prescreened solicitations do not promote fraud.

***Prescreened solicitations are key to a competitive credit market.***

Prescreened solicitations are a key component of the robust competition evident in the credit markets, especially the credit card market. Prescreened solicitations thus contribute to lower interest rates and fees, and the variety of popular features such as those connected with credit cards.

As the *Financial Privacy, Consumer Prosperity, and the Public Good (“Financial Privacy”)*<sup>1</sup> study details, prescreening allows creditors to have access to information about their competitors’ customers in order to design and market products that will appeal to those customers and compete with their existing accounts. It presents a powerful force that drives competition.

Prescreened solicitations also drive down marketing costs, further promoting competition. Creditors can limit marketing to those most likely to be interested in and likely to qualify for the product. The process thus decreases the amount of mail and is the most efficient way to match consumers with the appropriate product. The only alternative is to mass mail generic offers, which is more expensive and creates more adverse action notices. Not only do mass mailings translate into more costs, but the additional mail and adverse action notices irritate, frustrate, and sometimes alienate consumers.

As the *Financial Privacy* study details, the value of this competitive tool is evident in the number of successful new entrants into the credit card market.<sup>2</sup> The study also describes the beneficial competitive effect of the new entrants:

The wave of new entrants to the bankcard market put great downward pressure on the finance charge rate and annual fees

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<sup>1</sup> Fred H. Cate, Robert E. Litan, Michael Staten, Peter Wallison, *Financial Privacy, Consumer Prosperity, and the Public Good* (Washington, D.C. Brookings Institute Press, 2003),

<sup>2</sup> Ibid. pp.16,17.

charged by existing issuers. Incumbent issuers were forced to make a choice; leave their rates unchanged and risk defection of their best customers to the new, low-rate entrants or cut finance charge rates and fees.<sup>3</sup>

Restricting use of prescreening by requiring consumers to opt-in, for example would greatly impede new entrants into the market.

This makes opt in an especially great impediment to new and smaller market entrants, who lack extensive customer lists of their own or the resources to engage in mass marketing to reach consumers likely to be interested in their products or services. If information for targeting offers is unavailable because the cost of soliciting opt-in consent is too great or because too few customers have received and responded to opt-in requests, new competitors may be unable to market their products and services.<sup>4</sup>

The *Financial Privacy* study further explains how opt in will harm competition:

Target marketing enhances competition, expands choice and lowers prices, all because it dramatically reduces the costs of soliciting new customers. But target marketing is impossible without access to information, and opt in acts as an effective ban on that information.<sup>5</sup>

Prescreening also promotes competition by increasing consumers' familiarity with their choices. The solicitations provide an effortless way for consumers to know their options and an effortless way to exercise those options.

Not only does prescreening work to reduce rates and fees, it improves competition by fostering innovation. To gain notice from the consumer, card issuers must offer new, appealing features that set them apart from their competitors. Creditors use the information from prescreening to design new features that will attract particular consumers. Prescreening lets them identify which consumers should be solicited to invite them to get a card that better suits their needs.

***Prescreened solicitations allow creditors to expand into traditionally underserved markets.***

For many of the same reasons that prescreening facilitates competition, it is also a critical tool in endeavors to reach to those who have traditionally been underserved regarding credit. As discussed earlier, prescreening reduces the cost of marketing by allowing creditors to

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<sup>3</sup> Ibid. p. 17.

<sup>4</sup> Ibid. p. 35.

<sup>5</sup> Ibid. p. 37.

tailor their offers so that the recipient is likely to be interested in and qualified for the product. This cost efficiency allows creditors to develop and offer more variety in their products and the terms and features of those products, including ones to suit and appeal to previously underserved markets. It also means they can design and market a particular product that appeals to a smaller number of people and still be viable. Finally, prescreened solicitations can promote competition to such a level that as existing markets become saturated and highly competitive, creditors are pushed into new markets.

***Any adverse consequences are negligible.***

Not only is prescreening essential to a competitive credit market that helps expand credit opportunities to a greater number of people, there are few, if any adverse impacts to consumers. More mail is the main consequence. Consumers can deal with this in fairly painless ways: discard the solicitations or contact the credit bureau and request that they be excluded from prescreened lists.

Opting out is fairly simple. Under Section 615(d) of FCRA, users of prescreened lists must provide in solicitations a clear and conspicuous statement explaining that the solicitation was based on information in their consumer report. The notice must also instruct them how to be excluded from further offers based on prescreening. Consumers may exercise that right under the notification system required under Section 604(e), which includes the ability to call a toll-free number. Consumer reporting agencies that report nationwide are required to have a joint notification system. Thus, avoiding solicitations based on prescreened lists is quite simple.

That a large percentage of consumers have not elected to opt-out is neither indicative of ignorance of the option nor of impediments, minor or otherwise, to exercising the right. Consumers, with modest publicity and no personalized notice, quickly exercised their right to avoid telemarketing calls by signing up for the national do-not-call registry: the FTC reports that over 60 billion numbers had registered in less than a year. Clearly, consumers are willing to act when a solicitation is sufficiently intrusive and annoying. Apparently, they do not find that mailed solicitations reach this level.

***Prescreened solicitations do not promote identity theft.***

Contrary to some assertions, prescreened solicitations do not facilitate identity theft in any meaningful way. Identity thieves cannot simply intercept a prescreened solicitation and submit the application with a different address and then obtain a credit card in the victim's name. First, the applicant must know and provide personal information about the victim, e.g. the Social Security number and date of birth, that the creditor then verifies independently. (The solicitation only contains the name and address, which is easily obtained elsewhere.) Since Section 326 of the

U.S. Patriot Act went into effect last year and because of increased industry attention to identity theft, creditors have been more vigilant in obtaining and verifying this information. If the thief submits a different address, the creditor is alerted that the application is problematic and responds appropriately, e.g., with a letter mailed to the address on the original solicitation explaining that the application could not be processed and requesting that the recipient contact the creditor.

Identify thieves who have both obtained the additional personal information and also have routine, repeated access to the victim's mail to be able to intercept the card, may succeed in opening an account. However, they can achieve the same fraud by applying for the account online, by submitting a take-one application, or by phone. Indeed, these methods may be more attractive because it is not necessary to take the obvious risks associated with stealing mail or rummaging through trash in order to obtain the solicitation. Both activities draw attention and suspicion. Mail theft is a federal crime.

Moreover, the Federal Trade Commission's *Identity Theft Survey Report*, released in September, 2003, suggests mail theft is rare element of identity theft: only 4% of all victims and 7% of those who suffered new account and "other" fraud cited stolen mail as the thief's source of the information (page 30).

ABA will submit to the Board specific details of credit card issuers' experience with prescreened solicitations and fraud as that information becomes available.

**Conclusion.**

Further restricting prescreened solicitations would lessen competition in the credit market and result in higher rates and fees and fewer consumer choices. Any adverse consequence to prescreening is minimal: an increase in mail. This may be avoided by a request not to be solicited. Prescreened solicitations do not promote identity theft. ABA appreciates the opportunity to comment on this request for information and is happy to provide any additional information or comments.

Regards,

A handwritten signature in cursive script that reads "Nessa E. Feddis".

Nessa Eileen Feddis