Comment #: 51

Larkin W. Fields
Senior Vice President
Enterprise Compliance / Privacy Officer
General Counsel

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Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave., N.W.
Washington, DC 20551

Mr. Jonathan G. Katz, Secretary
Securities and Exchange Commission
450 5th Street, N.W.
Washington, DC 20549-0609

Office of the Comptroller of the Currency
250 E. Street, S.W.
Mail Stop 1-5
Washington, DC 20219

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

RE: FACT Act Affiliate Marketing Rule
F.T.C. Matter No. R411006
O.C.C. Docket No. 04-16
F.R.B. Docket No. R-1203
S.E.C. File Number S7-29-04

Dear Sirs and Madams:

USAA appreciates the opportunity to comment on the proposed Affiliate Marketing Rule. USAA is a member of the Coalition to Implement the FACT Act, the Financial Services Roundtable, the American Insurance Association, the Investment Company Institute and the Consumer Bankers of America. We support the comments made by those groups, but wish to also submit comments from our own unique perspective. USAA's primary purpose in commenting on this proposed rule is to share examples of how some well-intended provisions in the rule might result in consumer confusion or inconvenience.

Introduction to USAA

USAA has been serving present and former members of the U.S. military and their families since 1922 and has become one of America's leading insurance and financial services companies. The Association, well known for its exceptional customer service and the trust it has earned from its membership, offers its customers a variety of services to help them meet their financial security needs.

USAA owns or manages assets of $73 billion and provides insurance, banking, and investment products to more than 5 million members of the U.S. military and their families. The property and casualty insurance products are available only to USAA members. Other products, while available to the general public, are actively marketed only to the military and their families.

9800 Fredericksburg Road San Antonio, Texas 78288 210 498 6736 Fax: 877 432 8099

USAA has a relatively unique relationship with its customers. The Association is owned by its members; thus, it does not have the shareholder-driven obligations that publicly-traded and privately-owned companies have. USAA's customers are commonly known within the organization – and self-referentially – as "members" of the USAA family. USAA's goal in serving its membership has been to provide "one-stop" financial services that address the unique needs of the military community and to back them with impeccable service that is tailored to the requirements of the men and women in uniform and their families. USAA members demand – and the Association is always striving to provide – a full range of highly competitive financial products, which are always offered under the USAA brand.

USAA is nationally recognized for its commitment to outstanding member service, which has earned the company numerous quality awards, including the J.D. Power & Associates Chairman's Award. In a 2002 survey of USAA members, 95 percent indicated they were likely or extremely likely to buy from USAA in the future. USAA is the highest-ranking financial services company for customer advocacy, according to an independent survey conducted by Forrester Research in 2004.

USAA concerns with the proposed rule

USAA recognizes that the affiliated marketing rule is a complex issue with conflicting goals and overlapping exceptions. Each exception was carefully crafted by Congress to ensure that existing customers receive all the relevant information about products offered by companies they do business with and that businesses are able to fully and accurately respond to communications initiated by a consumer. To the extent that the regulations narrow the scope of these exceptions, USAA believes that consumers are harmed more than protected. USAA also believes that the notice to consumers should be as concise and easy to read as possible. These high level concerns are discussed in detail below.

Consumer-initiated Communications

USAA believes that the statutory language is plain and unambiguous that any communication in response to a communication initiated by a consumer is exempt from the notice and opt-out provisions. The following restrictions in the proposed rules will only lead to additional customer confusion and limit USAA's ability to appropriately respond to our members' needs:

Contact Information. An example provided in the proposed regulation seems to imply that the consumer must provide contact information at the time of the communication in order for this exception to apply. We do not believe that this is consistent with either the statute or consumer expectations. Our members do not like to repeat information they have already provided, especially basic information such as contact information. In a telephone environment, consumers expect an immediate response to their questions and, in most situations; contact information is not even relevant. For example, if a customer calls to inquire about saving for college expenses through life insurance, it would be extremely awkward for a customer contact representative to ask for contact information

before he or she is permitted to mention other alternative savings products, such as a 529 investment program available through an affiliate. Consumers sometimes don't understand all of their investment options and expect their financial institution to educate them; it would be a disservice to constrain companies from fully responding to consumer inquiries. Even if the follow up response is through a different channel, such as mail, consumers do not expect to be asked for contact information already provided. **We ask the federal agencies to clarify that contact information need not be provided for this exemption to apply.**

Call-back messages. We also disagree with the federal agencies' conclusion that a communication is not initiated by the consumer if prompted to call by a call-back message. Consumers are prompted to call through many channels--direct marketing, Internet offers, outbound call campaigns, and integrated campaigns that combine several channels. No matter which channel a company uses to encourage a consumer to contact it, the consumer ultimately makes the decision whether or not to pick up the phone and call. It is not reasonable or practical for a company to tailor the conversation based on the means used to encourage the call. In most cases, the employee receiving the call will not know what prompted the customer's phone call. **We ask the federal agencies to treat all communications from a consumer the same, regardless of whether the consumer was prompted by a call-back message.**

Communications in response to consumers. **We also request that the federal agencies delete the reference to the requirement that the company's marketing must be "responsive" to the communication from the consumer.** This is a very subjective standard that will force companies to either avoid giving appropriate and useful information to consumers, or risk being out of compliance with this regulation. For example, if a consumer contacts a company about starting a long-term investment plan, a company should be able to respond with information on alternative investment vehicles, including those offered by affiliate companies. Is this "responsive" to the consumer's inquiry?" It is clearly "in response to" the inquiry and represents useful and important information to be conveyed to the consumer. The two examples contained in the proposed regulation do not give sufficient guidance for companies as to what would meet the standard of "responsive."

Marketing at the request of the consumer

We do not agree that preselected check boxes are *per se* an unacceptable method for obtaining consumer authorization. While some preselected check boxes may be misleading or obscure, they can also be clearly and conspicuously presented to consumers. Consumers do not object to preselected check boxes that are used properly, as they reduce the number of clicks necessary to complete an online transaction. We urge the Commission to reconsider this guidance.

The notice and opt out

The required elements. The statute requires only two pieces of information in an opt-out notice: 1) that the consumer may elect to limit affiliate use of eligibility

information for sending marketing solicitation and 2) a simple method for opting out. USAA urges the Commission to remove several provisions that add required additional information to the notice and opt-out. We believe that Congress intended for these notices to be short and simple to read; adding elements not required by the statute complicates notices and does not provide any consumer benefit.

USAA disagrees with the Commission's approach of requiring a company to declare a specified time period for the opt-out election and to state that the consumer will be allowed to extend. Congress required only that consumers be given an additional chance to renew their opt-out before it expires. By requiring companies to state a specific time period, the Commission effectively forces companies to choose the statutory 5 year minimum in order to preserve their options. Stating the time period does not provide a meaningful protection to consumers since they will be given the opportunity to extend their opt-outs before they expire.

USAA also is concerned about the proposal to require a statement of a company's rule applicable to joint account holders. While the joint account rule made sense in the context of the Gramm-Leach-Bliley Act privacy requirements, this statute relates only to the use of information for marketing to a particular consumer. Companies do not direct marketing to a joint account; they direct it to an individual. For companies that do not give a GLB opt-out, this requirement prevents making a simple one sentence addition to an existing privacy notice and unnecessarily complicates the notice.

The model language. USAA would prefer to see model language that qualifies the type of information affected by the opt-out. Consumers may think that the examples listed at the end of the sentence represent the only types of information affected by an opt-out. **USAA suggests that the model language describe the opt-out information as "credit eligibility information" and delete the examples at the end of the sentence. USAA also requests that the Commission consider providing model language for joint notice by a group of affiliated companies.**

The compliance date

USAA requests that the agencies consider setting a compliance date that takes into account the breadth of companies affected by this rule and their varying compliance burdens. Some companies may already offer a broader right to opt-out of marketing and are ready to comply immediately upon publication of the final rule. Others may have to invest in significant complex system modifications, redesign processes and procedures, and train a large workforce. For these companies, six months may not be sufficient time for compliance. Also, since many companies may combine this notice with their annual GLB notice, time should be allowed for a rollout of notices concurrent with the next GLB notice.

USAA suggests that the approach taken in connection with the 1996 amendments to the FCRA is appropriate: permit companies to comply early, but allow for a longer period before requiring compliance. Companies choosing to comply early will have the benefit of federal preemption

and assurance that they do not need to comply with multiple state laws on this issue. Consumers will also benefit from early compliance.

USAA appreciates the opportunity to submit comments in this rulemaking.

Sincerely yours,

Larkin Fields
Chief Privacy Officer