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October 28, 2004

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

Re: FACTA Prescreen Rule, Project No. R411010

To Whom It May Concern:

The Independent Community Bankers of America (ICBA)<sup>1</sup> appreciates the opportunity to comment on the *Prescreen Opt-Out Disclosure* proposed rule submitted by the Federal Trade Commission (FTC). The proposal is designed to reflect changes made by the Fair and Accurate Credit Transactions Act of 2003 (FACT Act).

### **Background**

The FACT Act amended Section 615(d) of the FCRA to require the FTC to “improve the required notice to consumers regarding their right to opt out of prescreened solicitations for credit or insurance.” The FACT Act states that the opt-out disclosure is presented in a manner that is “simple and easy to understand.” This includes determining the format, type size, and manner of the ability to opt-out from future prescreened disclosures.

The FTC states that there are two components to make the disclosure simple and easy to understand. The notice must use language and syntax that effectively convey the intended message and the presentation and format must call attention to the notice and enhance its readability.

### **ICBA Position**

The ICBA applauds the FTC for its efforts to make the prescreening disclosures “simple and easy to understand.” And, we agree that the disclosure

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<sup>1</sup> ICBA represents the largest constituency of community banks in the nation and is dedicated exclusively to protecting the interests of the community banking industry. We aggregate the power of our members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.

should focus on language and syntax. However, the ICBA respectfully disagrees with the FTC's statement that making the prescreening opt-out disclosures "simple" and "easy to understand" necessarily leads to calling attention to the prescreen disclosures by making the opt-out notice more prominent than any other information provided in marketing materials. The ICBA strongly encourages the FTC to consider incorporating sufficient flexibility in the final rule so that the opt-out disclosure does not become more prominent than other legal notices, terms and conditions. In any marketing materials, the terms and the conditions of credit should be more prominent, and while the ability to opt-out is important, it should not be the **most** prominent disclosure. Further, ICBA encourages the FTC to maintain flexibility in the final rule and allow individual institutions to determine the best way to inform individual groups of customers in a specific market.

It also is important to recognize that marketing materials serve to educate consumers about available options. If mandatory disclosures become too onerous, the cost and burden of furnishing the information may cause some financial institutions, particularly smaller community banks with limited resources, to discontinue marketing products and services. This response to regulatory burden is a disservice to consumers since it diminishes available information about products and services for consumers' needs and reduces consumer choice.

### **Effective Date**

The proposed regulation suggests that the final rule will become effective 60 days after issuance. The ICBA questions whether such an abbreviated time between issuance of a final rule and the effective date is realistic. Rather, we believe that community bankers should be given at least 9 months to make the appropriate changes to solicitations. Prescreened solicitations are created up to two months before the customer receives them so more lead-time is needed than the 60 days the FTC proposes. Finally, the rule is not being issued in isolation and community banks are working on many other new requirements, particularly requirements under the FACT Act that also need attention and require allocation of resources.

Thank you for the opportunity to comment. If you need additional information or have any questions, please contact me by phone at 202-659-8111 or by e-mail at [katie.bragan@icba.org](mailto:katie.bragan@icba.org).

Sincerely,



Katherine Bragan  
Associate Director of Lending and  
Accounting Policy