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FEDERAL TRADE COMMISSION

16 CFR Parts 642 and 698

RIN 3084-AB63

Prescreen Opt-Out Notice Rule

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) is issuing a final rule (“Final Rule”) to amend its Prescreen Opt-Out Notice Rule to correspond to changes made to the Fair Credit Reporting Act (“FCRA”) by the Dodd-Frank Act and to reinstate and amend a model prescreen opt-out notice.

DATES: This rule is effective October 13, 2021.

FOR FURTHER INFORMATION CONTACT: David Lincicum (202-326-2773), Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Prescreen Opt-Out Notice Rule

Section 615(d) of the FCRA¹ 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 opt-out right by notifying a notification system established under section 604(e) of the FCRA.

The Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”) was signed into law on December 4, 2003. Public Law 108-159, 117 Stat. 1952. Section 213(a) of the FACT Act amended 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 August 1, 2005, the FTC issued its Prescreen Opt-Out Notice Rule.²

B. Dodd-Frank Act

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) was signed into law in 2010.³ The Dodd-Frank Act substantially changed the federal legal framework for financial services providers. Among the changes, the Dodd-Frank Act transferred to the Consumer Financial Protection Bureau (“CFPB”) the Commission’s rulemaking authority under portions of the FCRA.⁴ Accordingly, in 2012, the Commission rescinded several of its FCRA rules, which had been replaced by rules issued by the CFPB.⁵ The FTC retained rulemaking authority for other rules to the extent the rules apply to motor vehicle dealers described in section 1029(a) of the Dodd-Frank Act⁶ that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both (“motor vehicle dealers”).⁷ The retained rules include the Prescreen Opt-Out Notice Rule, which now applies only to motor vehicle dealers.⁸ Consumer report users originally covered by the Prescreen Opt-Out Notice Rule that are not motor vehicle dealers are covered by the CFPB’s rule.⁹

On May 22, 2019, the FTC rescinded several FCRA model notices and forms

that were no longer necessary due to the Dodd-Frank Act’s change to its rulemaking authority.¹⁰ The prescreen opt-out model notice was included in this rescission.

II. Regulatory Review of the Prescreen Opt-Out Notice Rule

On September 21, 2020, the Commission solicited comments on the Prescreen Opt-Out Notice Rule. The Commission sought information about the costs and benefits of the Rule, and its regulatory and economic impact. In addition, the Commission proposed amending sections 642.1 and 642.2 to narrow the scope of the Rule to motor vehicle dealers excluded from CFPB jurisdiction as described in the Dodd-Frank Act and reinstating the Prescreen Opt-Out Notice Rule model notice. The Commission received two comments concerning the Rule.¹¹

III. Overview of Final Rule

The Commission promulgated the Prescreen Opt-Out Notice Rule at a time when it had rulemaking authority for a broader group of consumer report users. While the Dodd-Frank Act did not change the Commission’s enforcement authority for the Prescreen Opt-Out Notice Rule, it did narrow the Commission’s rulemaking authority with respect to the Rule. It now covers only motor vehicle dealers.¹² The amendments in the Dodd-Frank Act necessitate technical revisions to the Prescreen Opt-Out Notice Rule to ensure that the regulation is consistent with the text of the amended FCRA. Accordingly, the Commission amends the Prescreen Opt-Out Notice Rule to properly reflect the Rule’s scope.

The amendment to section 642.1 narrows the scope of the Prescreen Opt-Out Notice Rule to those entities set forth in the Dodd-Frank Act that are predominantly engaged in the sale and servicing of motor vehicles, excluding those dealers that directly extend credit to consumers and do not routinely assign the extensions of credit to an unaffiliated third party.¹³ It does so by replacing the general term “person” with the term “motor vehicle dealers,” as defined in amended section 642.2. One commenter argued the Rule should use the term “MVD” in the place of “motor vehicle dealers” in order to reduce the word count of the Rule.¹⁴ The Commission believes the term

² 70 FR 5021 (Aug. 1, 2005).

³ Public Law 111-203 (2010).

⁴ 15 U.S.C. 1681 *et seq.* The Dodd-Frank Act does not transfer to the CFPB rulemaking authority for section 615(e) of the FCRA (“Red Flag Guidelines and Regulations Required”) and section 628 of the FCRA (“Disposal of Records”). See 15 U.S.C. 1681s(e).

⁵ 77 FR 22200 (April 13, 2012); 12 U.S.C. 5519.

⁶ 15 U.S.C. 5519.

⁷ 77 FR 22200 (April 13, 2012).

⁸ *Id.*

⁹ 12 CFR 1022.54.

¹⁰ 84 FR 23471 (May 22, 2019).

¹¹ The comments can be found at www.regulations.gov/document/FTC-2020-0066-0001/comment.

¹² 15 U.S.C. 1681s(e)(1); 12 U.S.C. 5519.

¹³ 12 U.S.C. 5519.

¹⁴ Devin Davis (Comment 2).

¹ 15 U.S.C. 1681m(d).

“motor vehicle dealers” is more easily understood than an abbreviation and declines to make this change.

The amendment to section 642.2 adds a definition of “motor vehicle dealer” that defines motor vehicle dealers as entities excluded from CFPB jurisdiction as described in the Dodd-Frank Act.¹⁵

The amendments also reinstate the model prescreen opt-out notice that was rescinded in 2019 on the basis that motor vehicle dealers could use the CFPB-provided model form.¹⁶ The model notice, Appendix C to Part 698, remains largely unchanged from the one previously provided except, as noted below, the model now includes a reference to the consumer reporting agencies’ opt-out website. The amendments also revise section 698.2 to include Appendix C in the list of model notices. The amendments make no substantive changes to the Rule.

The South Carolina Department of Consumer Affairs (the “Department”) stated that there is a continuing need for the Prescreen Opt-Out Notice Rule and it benefits consumers by informing them their information has been shared for a prescreen offer and educating them of their rights to opt out of such offers.¹⁷ The Department also suggested that the Commission amend the Rule to require companies to provide the URL for the consumer reporting agencies’ opt-out website, www.optoutprescreen.com. Although the Commission agrees that the opt-out website is a valuable resource for consumers, it declines to change the Rule to require dealers to include it. Changing the Rule in this way would cause the Commission’s Rule to differ substantively from the CFPB’s rule, which applies much more broadly. The Commission believes that consumers and businesses are better served by uniformity in the rules. However, because the Commission agrees that including the address for the optoutprescreen.com site would be helpful to consumers who choose to opt

out, the Commission has revised the model notice to include a reference to the optoutprescreen.com website. While motor vehicle dealers are not required to use the model notice, the Commission believes that many will choose to do so.¹⁸ The Commission has consulted with the CFPB concerning this change to the Commission’s model notice.

IV. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),¹⁹ federal agencies are generally required to seek Office of Management and Budget (“OMB”) approval for information collection requirements prior to implementation.

The Final Rule amends 16 CFR part 642 and 698. The Rule does not contain information collection requirements as defined by the PRA. The rule requires certain motor vehicle dealers using consumer report to provide consumers with opt-out notices and the amendments include a model notice that motor vehicle dealers may use. The public disclosure of information originally supplied by the Federal Government for the purpose of disclosure to the public is not included within the definition of the collection of information.²⁰ Therefore, the Commission does not believe that the amendments will add any “collections of information” as defined by the PRA.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires an agency to either provide an Initial Regulatory Flexibility Analysis (“IRFA”) with a proposed rule, or certify that the proposed rule will not have a significant impact on a substantial number of small entities.²¹ The Commission published an Initial Regulatory Flexibility Analysis in order to inquire into the impact of the proposed Rule on small entities.²² The Commission received no responsive comments.

The Commission does not believe that these amendments have the threshold impact on small entities. The amendments effectuate changes to the Dodd-Frank Act and will not impose costs on small motor vehicle dealers because the amendments are for clarification purposes and will not result in any increased burden on any motor vehicle dealer. Thus, a small entity that complies with current law need not take any different or additional action under the Final Rule. Although the Final Rule adopts a slightly revised model notice, motor vehicle dealers are not obligated to use the model notice. Therefore, the Commission certifies that amending the Prescreen Opt-Out Notice Rule will not have a significant economic impact on a substantial number of small businesses.

Although the Commission certifies under the RFA that the Final Rule will not have a significant impact on a substantial number of small entities, and hereby provides notice of that certification to the Small Business Administration, the Commission nonetheless has determined that publishing a final regulatory flexibility analysis (“FRFA”) is appropriate to ensure that the impact of the rule is fully addressed. Therefore, the Commission has prepared the following analysis:

A. Need for and Objectives of the Final Rule

To address the Dodd-Frank Act’s changes to the Commission’s rulemaking authority, the amendments clarify that the Rule applies only to motor vehicle dealers and reinstate a model form.

B. Significant Issues Raised in Public Comments in Response to the IRFA

The Commission did not receive any comments that addressed the burden on small entities. In addition, the Commission did not receive any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (“SBA”).

C. Estimate of Number of Small Entities to Which the Final Rule Will Apply

The Commission anticipates that many covered motor vehicle dealers may qualify as small businesses according to the applicable SBA size standards. As explained in the IRFA, however, determining a precise estimate of the number of small entities is not readily feasible. No commenters addressed this issue. Nonetheless, as discussed above, these amendments do not add any additional burdens on any covered small businesses.

¹⁵ 12 U.S.C. 5519.

¹⁶ 84 FR 23471 (May 22, 2019).

¹⁷ The Department also argued the Commission should issue regulations that would modify prescreened offers of credit under the FCRA by: (1) Limiting the information motor vehicle dealers can obtain for prescreened offers to that which is necessary for determining eligibility for the prescreened offer, (2) requiring motor vehicle dealers to extend the prescreened offer within a specified time frame after they receive the information from the consumer reporting agency; and (3) requiring all information related to a prescreened offer be deleted after the offer has expired. We welcome the Department’s suggestions on these issues. As the Department recognized in its comment, however, these changes would require changes to statutory provisions not at issue in this rulemaking.

¹⁸ The South Carolina Department of Consumer Affairs also suggests that the Commission revise the model notice so that the fictional offer of credit in the notice is being sent from a motor vehicle dealer rather than a credit card company. The Commission understands this change would further the goal of making clear that the Commission’s Rule applies only to motor vehicle dealers. However, as much of the notice’s content is dummy text, it is clear the model notice is meant to illustrate the formatting and content of the Rule’s required disclosures, and there is value in maintaining consistency with the CFPB’s Rule. Accordingly, the Commission declines to make this change.

¹⁹ 44 U.S.C. 3501 *et seq.*

²⁰ See 5 CFR 1320.3(c)(2).

²¹ 5 U.S.C. 603–605.

²² 85 FR 59226, 59228 (Sept. 21, 2020).

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements, Including Classes of Covered Small Entities and Professional Skills Needed To Comply

The amendments impose no new reporting, recordkeeping, or other compliance requirements.

E. Description of Steps Taken To Minimize Significant Economic Impact, if Any, on Small Entities, Including Alternatives

The Commission did not propose any specific small entity exemption or other significant alternatives because the amendments will not increase reporting requirements and will not impose any new requirements or compliance costs.

VI. Other Matters

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a “major rule,” as defined by 5 U.S.C. 804(2).

Final Rule Language

List of Subjects in 16 CFR Parts 642 and 698

Consumer protection, Credit, Trade practices.

For the reasons stated above, the Federal Trade Commission amends title 16 of the Code of Federal Regulations as follows:

PART 642—PRESCREEN OPT-OUT NOTICE

- 1. Revise the authority section for part 642 to read as follows:

Authority: Pub. L. 108–159, sec. 311; 15 U.S.C. 1681m(d); 12 U.S.C. 5519(d).

- 2. In § 642.1, revise paragraph (b) to read as follows:

§ 642.1 Purpose and scope.

* * * * *

(b) *Scope.* This part applies to any motor vehicle dealer as defined in § 642.2 of this part that 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 motor vehicle dealer under section 604(c)(1)(B) of the FCRA (15 U.S.C. 1681b(c)(1)(B)).

- 3. In § 642.2, redesignate paragraph (b) as paragraph (c) and add a new paragraph (b) to read as follows:

§ 642.2 Definitions.

* * * * *

(b) *Motor vehicle dealer* means any person excluded from Consumer Financial Protection Bureau jurisdiction as described in 12 U.S.C. 5519.

* * * * *

- 4. In § 642.3, revise the introductory text to read as follows:

§ 642.3 Prescreen opt-out notice.

Any motor vehicle dealer that 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:

* * * * *

PART 698—MODEL FORMS AND DISCLOSURES

- 5. The authority citation continues to read as follows:

Authority: 12 U.S.C. 5519; 15 U.S.C. 1681m(h); 15 U.S.C. 1681s–3; Sec. 214(b), Pub. L. 108–159.

- 6. Revise § 698.2 to read as follows:

§ 698.2 Legal effect.

The model forms and disclosures prescribed by the FTC in this part do not constitute a trade regulation rule. The issuance of the model forms and disclosures set forth in appendices A, B, and C of this part carry out the directive in the statute that the FTC prescribe these forms and disclosures. Use or distribution of the model forms and disclosures in this part will constitute compliance with any section or subsection of the FCRA requiring that such forms and disclosures be used by any motor vehicle dealer subject to the FTC’s rulemaking authority.

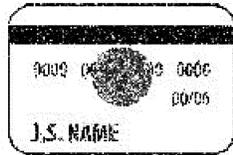
- 7. Add appendix C to part 698 to read as follows:

Appendix C to Part 698—Model Prescreen Opt-Out Notices

In order to comply with 16 CFR part 642, the following model notices may be used:

- (a) *English language model notice—(1) Short notice.*

BILLING CODE 6750-01-P



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 in 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 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 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" offer of [credit or insurance] from this and other companies by calling toll-free [toll-free number]; or visiting [prescreen opt-out website]. See PREScreen & OPT-OUT NOTICE on other side [or other location] for more information about prescreened offers.

(b) Spanish language model notice—(1)
Short notice.



Aquí están líneas crédito

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

PF00H 00 MON FIBO ABC

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.

TRANSPARENCIA DE
BALANCE POR MESES

■

SIN CUOTA MENSUAL

■

PAGO ELECTRÓNICO
SEGURO

■

PROTECCIÓN CONTRA
FRAUDE EN LÍNEA
GARANTIZADO

■

SU BALANCE PAGA SU
CUEENTA

■

PROGRAMA DE
RECOMPENSAS SIN CUENTA

John W. Doe
Presidente, Compañía

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