UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

September 29, 2005

Robert McKew, Esq.
Senior Vice President and General Counsel
American Financial Services Association
919 Eighteenth Street, NW, Suite 300
Washington, DC 20006

Dear Mr. McKew:

This letter responds to a July 18, 2005 letter and petition submitted to the Federal Trade Commission by the American Financial Services Association ("AFSA"). AFSA's petition requests that the FTC delay the effective date of Section 642.3(a) of the Pre-Screen Opt-Out Disclosure Rule ("the Prescreen Rule").[1] This provision requires that written prescreened offers of credit and insurance contain a notice of the right to opt out of receiving future prescreened offers, and sets forth specific requirements for the form of the notice. For the reasons stated below, the Commission hereby denies AFSA's petition.

AFSA requests that "the effective date of [Section 642.3(a)] be delayed while the Commission considers the May 20, 2005 Petition filed by the Center for Regulatory Effectiveness ('CRE')." The CRE petition was submitted pursuant to the Data Quality Act and, among other things, challenged the accuracy of Commission statements relating to a consumer research study ("the Prescreen study") that was conducted in connection with the Prescreen rulemaking.[2] AFSA asserts that the CRE petition "raises serious question about the validity" of the Prescreen study and that it would be "manifestly unfair" to allow the notice requirement "to take effect before the Commission has evaluated and responded to the [CRE] petition challenging the very basis of that requirement." As you know, pursuant to the Commission's procedures implementing the Data Quality Act, Joel Winston, the Associate Director of the

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[1] Prescreen Opt-Out Disclosure Rule, 70 Fed. Reg. 5022 (2005) (to be codified at 16 C.F.R. Parts 642 and 698).

[2] These statements are found in the Statement of Basis and Purpose for the Prescreen Rule and in two reports on the Prescreen study.

Division of Financial Practices, responded on August 16, 2005 to CRE's petition, denying CRE's request for correction.[3]

Based upon the record before us, the Commission sees no grounds at this time for staying the implementation of the Prescreen Rule.[4] We believe that the Prescreen study provides probative evidence supporting the Commission's conclusion that the opt-out notice format required by the Rule provides for a disclosure that is simple and easy to understand. CRE's assertion that mall intercept methodology is inherently unreliable is belied by, among other things, its widespread use in the market research community and its acceptance in numerous forums as probative evidence regarding advertising communication. Furthermore, as explained in Mr. Winston's letter, the Prescreen study was only one of several bases for the Commission's adoption of the notice requirements contained in the Rule, and irrespective of the merits of the study methodology, there is ample support for the Prescreen Rule as promulgated.

By direction of the Commission.

Donald S. Clark
Secretary

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[3] On September 26, 2005 CRE filed an appeal of the FTC's initial decision denying its petition. This appeal will be handled pursuant to the Commission's procedures, and is not addressed here.

[4] The Commission staff initially misplaced AFSA's petition. Neither this fact nor the passing of the effective date for the Prescreen Rule played any role in the Commission's decision to deny AFSA's petition.