



July 23, 2004

Ms. Jennifer L. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th St. and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Comment for: Docket No. OP - 1195

Dear Ms. Johnson:

The Mortgage Bankers Association ("MBA") appreciates the opportunity to assist in the Board of Governors of the Federal Reserve System's ("the Board") consideration of issues related to prescreening solicitations. Section 213 (e) of the Fair and Accurate Credit Transactions Act of 2003 requires that the Board conduct a study of the ability of consumers to avoid receiving prescreened solicitations, and the potential impact that any further solicitations would have to consumers. A report summarizing the results of the study is due to Congress by December 4, 2004.

MBA believes that there is great utility in the use of prescreened solicitations in the marketplace and for consumers. Prescreening allows mortgage lenders to focus their marketing efforts on consumers who are most likely to qualify for and be interested in their products. It increases efficiency and competition, reduces consumers' credit costs, and increases consumer awareness of a variety of financial products and programs. MBA urges the Board to design the study in a way that takes into account the use of prescreening solicitations as a means of educating the consumer and making the dream of homeownership a reality, particularly for those who may believe that they would not qualify.

MBA represents 2700 companies involved in the origination, finance, servicing and securitization of mortgages. Our membership is comprised of mortgage companies, banks, mortgage insurers, thrifts, mortgage brokers, credit unions and commercial banks. We tailor these comments based on the experience and conduct of our membership.

Responses to Specific Question:

1. What statutory or voluntary mechanisms are available to a consumer to notify lenders and insurance providers that the consumer does not wish to receive prescreened solicitations?

As the Board notes, the Fair Credit Reporting Act (“FCRA”) provides a mechanism that allows consumers to easily prevent such solicitations by notifying the consumer reporting agencies (“CRAs”). The FCRA mechanism is an efficient method of allowing consumers to block solicitations based on information from a CRA. We note that many lenders and other companies have also adopted voluntary mechanisms that allow consumers to “opt-out” of receiving solicitations that are not based on information from a CRA. For example, many web sites operated by mortgage lenders allow consumers to opt-out of receiving marketing information from that lender.

2. To what extent are consumers currently utilizing existing statutory and voluntary mechanisms to avoid receiving prescreened solicitations?

As noted, the FCRA mechanism that allows consumers to “opt-out” of receiving prescreened solicitations operates through the CRAs. The CRAs then omit that consumer’s name from any prescreened list. Therefore, lenders and other users of the prescreened list generally do not know which consumers have “opted-out.” Where consumers utilize the voluntary opt-out mechanism established by lenders, those consumers are flagged and are not sent any further solicitations whether prescreened or not.

3. What are the benefits to consumers in receiving prescreened solicitations?

MBA believes that there are tremendous benefits to consumers in receiving prescreened solicitations. Those benefits include:

- Awareness of opportunities— Prescreened solicitations inform consumers who would not otherwise be aware that they may qualify for a variety of products and programs. The solicitation communicates to a consumer the potential for refinancing a mortgage into a lower rate or qualifying for a home equity line of credit. Significantly, a prescreened solicitation can alert a consumer who might not otherwise be aware of his or her opportunity of becoming a homeowner or of reducing his or her costs through refinancing.
- Customized offers – When requesting a prescreened list, a lender will enumerate certain criteria that the list of prescreened consumers must meet. The lender will use that list to appropriately match a product with a consumer’s credit risk. This prevents solicitations that a consumer is either not qualified for or for whom more competitive products are more appropriate. Further, the prescreened list prevents solicitation for inappropriate product offerings, such as issuing a refinancing solicitation to a consumer who does not own a home.
- Efficient use of the consumer’s and lender’s time - When a consumer responds to a prescreened solicitation, the lender can use the basic information about the consumer that it already has to quickly identify suitable products.

- Competition - The use of prescreening as a marketing tool facilitates competition among lenders in the market place. A consumer that receives a solicitation for a product that he or she is interested in will often comparison-shop, stimulating the lender to issue a competitive solicitation at the outset.
- Lower costs – The competition and the efficiency discussed above in using prescreened solicitations lowers the cost of mortgage products, including purchase-money mortgages, home-equity lines of credit, and refinancings.
- Innovation – Consumer reaction to prescreened offers promotes modifications to existing products and development of new products. It is one way that lenders can determine market needs.

4. What significant costs or other adverse effects, if any, do consumers incur as a result of receiving prescreened solicitations?

MBA does not believe that there are significant costs to consumers who receive prescreened solicitations. In the absence of prescreening, lenders that use this efficient form of solicitation would incur increased origination costs because other marketing methods are less effective. This, inevitably, would be passed on to consumers in the form of higher prices.

Although mortgage fraud is a significant problem, mortgage prescreening, in itself, does not add to it because lenders will not make a mortgage loan without conducting extensive due diligence. Mortgage lenders have a very critical business interest in mitigating fraud, since a mortgage loan is usually of significant value. The nature of a mortgage transaction requires an extensive underwriting process that entails cross-checking information and documents to ensure the information is consistent. Most lenders engage in a thorough pre-funding, quality assurance process that includes the use of fraud detection systems to ensure the veracity of the information submitted as part of an application. When fraud occurs it is usually the lender that takes the loss, so the lender has every incentive to mitigate fraud.

Prescreening in the mortgage context requires a higher level of due diligence than in other financial service sectors. When a consumer contacts a lender to take advantage of a prescreened solicitation for a home equity line of credit or a second mortgage, most lenders require that the consumer provide a copy of their deed and a copy of their tax assessment to verify the loan-to-value ratio. Lenders will also conduct a “bring-current title search” to ensure there are no encumbrances on the title. This process protects the lender’s security interest and operates as an excellent screen to prevent fraud – particularly identity theft.

5. What additional restrictions, if any, should be imposed on consumer reporting agency, lenders, or insurers to restrict the ability of lenders and insurers to provide prescreened solicitations to consumers?

Further restrictions on the process by which lenders obtain a prescreened list and on the ultimate use of that list will neither benefit the lender or the consumer in the mortgage context. The current regulatory regime sufficiently protects consumers by limiting consumer information included on the prescreened list the lender receives, and by providing consumers a simple method of opting out. Further restrictions on this process will invariably lower production and increase costs for lenders – a cost that will, regrettably, be passed onto consumers. In addition, the loss of the information related to the needs of the market will inhibit innovation and the process of continually tailoring of products to best meet the needs of consumers.

More restrictions on prescreening will logically lead to fewer prescreened solicitations, which will impede consumers' knowledge of products and competitive offers. Far from protecting consumers, additional restrictions would discourage consumer comparative-shopping and result in less consumer awareness of the mortgage products that are available to them.

Conclusion

The MBA supports the use of prescreened solicitation with appropriate protections for consumers. We believe that the existing mechanism under FCRA provides those protections. If the Board decides to recommend that Congress further restrict the use of prescreening, we request that before doing so, the MBA and its members have an opportunity to discuss ways in which to preserve prescreening and eliminate abuses.

Thank you for considering MBA's comments. If you have any questions or concerns, please contact Mary Jo Sullivan at (202) 557-2859.

Most sincerely,



Jonathan L. Kempner
President and Chief Executive Officer