



BEACON/PRE-SCREENED MAILERS: DO YOURS CONTAIN REQUIRED NOTIFICATIONS?

By Robert C. Byerts

Direct mail has become an integral part of dealers' growth and marketing strategy. Direct mail provides another way to reach the customer that you could not reach or would not respond to your TV, radio, or other advertising. Dealers usually contract with an advertiser or mail house to send out pre-approved credit mailers – also known as “beacon mailers.” Direct mailings provide targeted recipients an opportunity to respond to the financing options available at your dealership. These solicitations must be prepared in advance of mailings and often run for periods of 30 to 60 days. **Regardless of whether a dealership prepares and sends its own solicitations or retains a marketing company to do so, the dealership is ultimately responsible for ensuring that the solicitations comply with applicable federal and state laws.**

The Federal Fair Credit Reporting Act (FCRA) strictly regulates the use of Consumer Credit Reports. The public policy behind these restrictions is clear -- consumers consider their credit history confidential. Any provision that allows for its use and disclosure without their permission will be carefully limited. The provision for use of “pre-screened lists” is carefully controlled by the FCRA. They may only be provided without the consumer's permission if the transaction offered consists of a “firm offer of credit.”

Whenever a creditor uses a “pre-screened list” from a consumer credit reporting agency to create a “firm offer of credit,” the FCRA requires such offers to contain notices to consumers. “Pre-screened” solicitations/beacon mailers sent to consumers – such as “pre-approved” offers for auto loan financing – are required to contain a notice with information about the offer and instructions on how consumers can opt-out of receiving future offers by calling a toll-free number or writing to a specified address. The Federal Trade Commission (FTC) regulations implementing FCRA strengthen required notices in pre-screened credit offers. The FTC regulations result from the Fair and Accurate Credit Transactions Act of 2003 (FACTA) provisions that require the FTC to prescribe pre-screen notices that are “simple and easy to understand.” FACTA specifies that the FTC must establish a format, type size, and manner for the presentation of opt-out notices.

The stronger notices are designed to better inform consumers about their right to opt out of receiving future pre-screened offers.

The FTC rule provides for a “layered” approach. Each pre-screened offer must contain a short statement informing consumers of their right to opt-out and listing a toll-free number to call, as well as a longer statement providing additional information about pre-screening. Current law requires disclosure to consumers of their right to opt-out of future mailing. The FTC rules provide for much more prominent disclosure. Instead of a disclosure buried in the print, the FTC rule requires a “short notice” on the front page of the mailer in a box or otherwise set off. The disclosure must be in the same size type as the principal text on the page – but no smaller than 12-point type.

The “long notice” includes the information in the short form and adds 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 because the consumer satisfied the criteria for credit worthiness under which the consumer was selected for the offer; (C) if applicable, the credit 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 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 right referred to in subparagraph (D) by notifying a notification system established under section 604(e) of the Fair Credit Reporting Act (FCRA).

Your dealership should review its existing contracts with beacon mailers/mail houses and other advertisers to ensure that the credit offers include the required notices. Penalties under FACTA include fines of \$1000 for each piece in a non-complying mailer. Not so long ago, a Minnesota dealership paid \$250,000 to settle a complaint under FCRA and state law by that state's attorney general's office alleging that it misused the credit information of 12,000 consumers. The misuse was based upon a beacon mailer that used data about people who had filed for bankruptcy to develop sales leads. The mailers resembled checks, which promised credit for a vehicle purchase. **Remember, mail houses do little if any, legal review.** Dealers should obtain legal review of beacon mailers prior to final printing in order to evaluate compliance with FACTA, FCRA, FTC and other requirements of State and Federal law. ■

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