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Consumers Union
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Electronic Privacy Information Center
1718 Connecticut Avenue NW, Suite 200, Washington, DC 20009

National Consumer Law Center
77 Summer Street, 10th Floor, Boston, MA 02110

U. S. Public Interest Research Group
218 D Street SE, Washington, DC 20003

March 24, 2003

Ms. Pamela F. Olson
Assistant Secretary (Tax Policy)
U.S. Treasury Department
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Subprime Mortgage Marketing through IRS Free File

Dear Ms. Olson:

The Consumer Federation of America, National Consumer Law Center (on behalf of its low-income consumers), Consumers Union, U. S. Public Interest Research Group and the Electronic Privacy Information Center write to you again regarding the issue of consumer privacy, this time specifically regarding the deprivation of privacy protections that, as we understand it, consumers are encountering when they access the website of H&R Block via the IRS Free File program. In a disturbing development, we have been informed that Free File taxpayers who use Block's website via www.irs.gov are being required to be subject to cross-marketing of not only tax-related products, but potentially subprime mortgages as well.

It appears that H&R Block is pitching mortgages to Free File taxpayers when these taxpayers are preparing their tax returns, using information that has been submitted as part of that return. A copy of such a solicitation from a consumer who accessed the Block website as a Free File taxpayer is attached to this letter as Exhibit A. This solicitation pops up when a taxpayer, in preparing his return on the Block website that he reached via www.irs.gov, enters mortgage interest in his tax form. The solicitation is entitled "Refinancing Your Mortgage" and reads:

We noticed that you entered an itemized deduction for home mortgage interest. By refinancing your mortgage, you may be able to lower your monthly payments or pay off other debts. Now is a great time to take advantage of historically low interest rates. It's easy! Do you want to learn how refinancing your mortgage can help you?

The taxpayer must click on “Yes,” “No,” or “Contact me later” to return to tax preparation.

If the taxpayer clicks on “Quick Help,” the next message includes:

What happens if I say Yes? We will gather a little more information about your current mortgage and debt situation for a preliminary refinancing analysis. Then we will forward your information to one of our mortgage professionals, who will contact you to discuss your refinancing options further. If you wish to speak to a mortgage professional now, just call 1-877-HRBLOCK (1-877-472-5625). There is no obligation to use H&R Block for your new home mortgage.

The message doesn’t disclose that H&R Block owns both H&R Block Mortgage **and** Option One, one of the largest subprime mortgage companies in the country. Thus, some of the Free File taxpayers who are sold mortgages may end up with subprime mortgages, which present the potential for high costs and risks for these taxpayers. Indeed, we are aware of at least two predatory lending cases in which Option One is involved. And since Block uses income eligibility as its Free File criteria, these taxpayers will be low-income consumers by definition, who are more likely to be sold subprime mortgages.

It also appears that Block is *requiring* all Free File taxpayers to consent to cross-marketing, despite the protections of the Internal Revenue Code, 26 U.S.C. section 7216. As you can see from Exhibit B, Block states “You must agree to the license agreement to use the online tax program.” In turn, the license agreement at paragraph 3 refers to the Block Privacy Policy, attached here as Exhibit C. The Privacy Policy states under “Information We May Disclose” that:

Subject to applicable laws, we may disclose information we collect to our affiliates. Our affiliates may assist us in providing services you have requested, or they may offer related tax or financial services, such as mortgages, investment accounts, and banking products.

Not only does the Block Privacy Policy permit marketing by affiliates, it permits disclosure to “service providers ... or financial institutions with whom we have joint marketing agreements.” Thus, Block is forcing consumers to consent to marketing by affiliated third parties. This appears to be a violation of the Free File Agreement, which we understand requires that: “Consortium Participants shall also agree that provision of Free Services shall not be conditioned on obtaining an eligible taxpayer’s consent to solicitations of additional business.”¹

¹ Internal Revenue Service, Free On-Line Tax Filing Agreement, Section III.B.8, available at www.irs.gov. Block privacy policy at the very end does give taxpayers the option to limit cross-marketing. However, the only way to consumers to even learn of this opt-out is to go through 2 weblinks, and then proactively call a telephone number or go to Customer Support. This is hardly a real and meaningful opportunity to opt-out of cross-marketing

In September 2002, we sent your agency a letter outlining our concerns that Free File would become a “loss leader” for commercial preparers to market other products to consumers. We raised the issue that some Free File sites would charge extra for preparing state tax returns, for personal assistance, and for other products and services tangentially related to preparing and electronically filing tax returns. However, this new level of marketing, based on the information a taxpayer enters into his tax return using Free File, is extremely troubling and requires enforcement action by Treasury and the Internal Revenue Service.

In our meeting of October 2002, when we raised our concerns regarding the potential marketing of RALs through Free File, the response of Treasury officials was that the provisions of section 7216 would protect taxpayers from unwanted solicitations. *This is simply not true - IRS rules have not been sufficient to protect consumers from sharing of personal financial information provided during tax preparation.* The rules create a huge loophole for privacy protection by permitting disclosure of taxpayer information for other lines of business with the written consent of the taxpayer. Taxpayers who use the commercial tax preparation sites in the Free File program are forced to accept license agreements and privacy policies that authorize data sharing with affiliates of the tax preparation entity. As a result, taxpayers are exposed to the cross marketing of unrelated financial services when they file their taxes through the take-it-or-leave-it deals offered through Free File.

As we urged you in our letter dated October 24, 2002, the Treasury should amend its regulations under Section 7216 to close the “consent” loophole. This loophole is now permitting commercial preparers to peddle, not only usurious refund anticipation loans, but potentially subprime mortgages to taxpayers who access websites through a government promoted program. We renew our request to prohibit commercial preparers

from selling RALs via Free File, and add to that a request to prohibit commercial preparers from marketing other financial products and services to taxpayers.

Sincerely,

Jean Ann Fox
Consumer Federation of America

Chi Chi Wu
National Consumer Law Center

Edmund Mierzwinski
U.S. Public Interest Research Group

Chris Hoofnagle
Electronic Privacy Information Center

Shelley Curran
Consumers Union

cc: Christopher Smith, U.S. Treasury Department
Nina Olson, National Taxpayer Advocate
Timothy Muris, Chairman, Federal Trade Commission
Robert Knecht, Office of Thrift Supervision
Penny Marshall, Office of Thrift Supervision
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