

Agencies Issue Final Rules on Affiliate Marketing

The federal financial regulatory agencies issued final rules today that provide consumers with an opportunity to "opt out" before a financial institution uses information provided by an affiliated company to market its products and services to the consumer. The final rules on affiliate marketing implement section 214 of the Fair and Accurate Credit Transactions Act of 2003, which amends the Fair Credit Reporting Act (FCRA).

The final rules generally prohibit a financial institution from using certain information received from an affiliate to make a solicitation to a consumer unless the consumer is given notice and a reasonable opportunity to opt out of such solicitations, and the consumer does not opt out. The final rules apply to information obtained from the consumer's transactions or account relationships with an affiliate, any application the consumer submitted to an affiliate, and third-party sources, such as credit reports, if the information is to be used to send marketing solicitations. Nothing in the final rules supersedes or amends a consumer's existing right to opt out of the sharing of non-transaction or experience information under section 603(d) of the FCRA.

The final rules also implement the statutory exceptions to the affiliate marketing notice and opt-out requirement. The appendix to the final rules contains model forms to facilitate compliance with the notice and opt-out requirement.

The final rules, issued by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, are attached. The final rules are effective on January 1, 2008. All covered entities must comply with the rules no later than October 1, 2008.

Substantially similar rules will be issued separately by the Federal Trade Commission and the Securities and Exchange Commission. The Federal Register notice is attached.