

Commission Rule 4.9(c). 16 CFR 4.9(c). Any comment filed in paper form should be sent by courier or overnight service, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

An electronic comment can be filed by (1) clicking on <http://www.regulations.gov>; (2) selecting "Federal Trade Commission" at "Search for Open Regulations;" (3) locating the summary of this Notice; (4) clicking on "Submit a Comment on this Regulation;" and (5) completing the form. For a given electronic comment, any information placed in the following fields—"Title," "First Name," "Last Name," "Organization Name," "State," "Comment," and "Attachment"—will be publicly available on the FTC Web site. The fields marked with an asterisk on the form are required in order for the FTC to fully consider a particular comment. Commenters may choose not to fill in one or more of those fields, but if they do so, their comments may not be considered.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Trade Commission. Comments should be submitted via facsimile to (202) 395-6974 because U.S. postal mail at the Office of Management and Budget is subject to lengthy delays due to heightened security precautions. Such comments should also be sent to the following address: Federal Trade Commission/Office of the Secretary, Room H-159 (Annex Q), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

The FTC Act and other laws the Commission administers prohibit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site at <http://www.ftc.gov> to the extent practicable. As a matter of discretion, the FTC makes every effort to remove home contact information for

individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>, Tuesday, June 15, 2004



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A : Federal Trade Commission (FTC).
A : Proposed rule, request for comment.

A : The Federal Trade Commission ("FTC" or "Commission") is publishing for comment a proposed rule that is required by Section 214(b) of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), with respect to entities subject to its jurisdiction under Section 621(a) of the Fair Credit Reporting Act (FCRA). Section 214(a) of the FACT Act amends the FCRA by adding a new section 624, which the proposed regulations implement by providing for consumer notice and an opportunity to prohibit affiliates from using certain information to make or send marketing solicitations to the consumer. The FACT Act requires certain other federal agencies to publish similar rules, and mandates that the FTC and other agencies consult and cooperate so that their regulations implementing this provision are

form should include this reference both in the text and on the envelope, and should be mailed or delivered to: Federal Trade Commission, Office of the Secretary, Room H-159 (Annex Q), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form clearly labeled "Confidential," and comply with the

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I. Bac

The Fair Credit Reporting Act

The Fair Credit Reporting Act (FCRA or Act), enacted in 1970, sets standards for the collection, communication, and use of information bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is collected and communicated by consumer reporting agencies. 15 U.S.C. 1681-1681x. In 1996, the Consumer Credit Reporting Reform Act extensively amended the FCRA. Pub. L. 104-208, 110 Stat. 3009.

The FCRA, as amended, provides that a person may communicate to an affiliate or non-affiliated third party information solely as to transactions or experiences between the consumer and the person without becoming a consumer reporting agency.¹ In addition, the communication of such transaction or experience information among affiliates will not result in any affiliate becoming a consumer reporting agency. See FCRA §§ 603(d)(2)(A)(i) and (ii).

Section 603(d)(2)(A)(iii) of the FCRA provides that a person may communicate "other" information—that is, non-transaction or experience information that would otherwise be a "consumer report"—among its affiliates without becoming a consumer reporting

¹ The FCRA creates substantial obligations for a person that meets the definition of a "consumer reporting agency" (CRA) in section 603(f) of the statute. Most importantly, CRAs must make reports only to parties with permissible purposes listed in section 604, limit reporting of negative information that is older than the times set out in section 605, maintain reasonable procedures to ensure accuracy of reports as required by section 607(b), make file disclosures to consumers required by section 609, and reinvestigate disputes using the procedures set forth in section 611.

²The banking agencies are the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision. The National Credit Union Administration proposed a virtually identical rule to apply to institutions subject to its jurisdiction immediately thereafter. 65 FR 64168 (Oct. 26, 2000)

³The proposed regulations would implement the restrictions on the use of consumer information

through a joint notice with one or more other affiliates. This approach provides flexibility and facilitates the use of a single notice. At the same time, it ensures that the notice is not provided solely by the affiliate that receives and uses the information to make or send solicitations, which may be a person from which the consumer would not expect to receive important notices regarding the consumer's opt-out rights. The Commission invites comment on whether the affiliate receiving the information should be permitted to give the notice solely on its own behalf. The Commission specifically solicits comment on whether a receiving affiliate could provide notice without making or sending any solicitations at the time of the notice and on whether such a notice would be effective.

Scope of Coverage

The statute specifies certain circumstances, which are included in the proposed regulations, when the provisions of this part do not apply. New section 624(a)(4) provides that the requirements and prohibitions of that section do not apply, for example, when: (1) The affiliate receiving the information has a pre-existing business relationship with the consumer; (2) the information is used to perform services for another affiliate (subject to certain conditions); (3) the information is used in response to a communication initiated by the consumer; or (4) the information is used to make a solicitation that has been authorized or requested by the consumer. The Commission has incorporated each of these statutory exceptions into the proposed rule.

The proposal uses the term "eligibility information" to describe the type of information that the statute allows consumers to bar affiliates from using to send marketing solicitations. The formula that defines the term in the proposal is designed to precisely reflect section 624(a)(1) of the Act—any information the communication of which would be a "consumer report" if the statutory exclusions from the definition of "consumer report" in section 603(d)(2)(A) of the FCRA (for transaction or experience information and for "other" information that is subject to the affiliate-sharing opt-out) did not apply. Under section 603(d)(1) of the FCRA, a "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which

is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for credit or insurance to be used primarily for personal, family, or household purposes, employment purposes, or any other purpose authorized in section 604 of the FCRA. The term "eligibility information" is designed to facilitate discussion, and not to change the scope of information covered by section 624(a)(1) of the Act. The Commission invites comment on whether the term "eligibility information," as defined, appropriately reflects the scope of coverage, or whether the regulation should track the more complicated language of the statute regarding the communication of information that would be a consumer report, but for clauses (i), (ii), and (iii) of section 603(d)(2)(A) of the FCRA.

Duration of Opt-Out

Section 624 provides that a consumer's election to prohibit marketing based on shared information shall be effective for at least 5 years. Accordingly, the proposal provides that a consumer's opt-out election is valid for a period of at least 5 years (the opt-out period), beginning as soon as reasonably practicable after the consumer's opt-out election is received, unless the consumer revokes the election in writing, or if the consumer agrees, electronically, before the opt-out period has expired. When a consumer opts out, an affiliate that receives eligibility information about that consumer from another affiliate may not make or send solicitations to the consumer during the opt-out period based on that information, unless an exception applies or the opt-out is revoked.

To avoid the cost and burden of tracking consumer opt-outs over 5-year periods with varying start and end dates and sending out extension notices in 5-year cycles, some companies may choose to treat the consumer's opt-out election as effective for a period longer than 5 years, including in perpetuity, unless revoked by the consumer. A company that chooses to honor a consumer's opt-out election for more than 5 years would not violate the proposed regulations.

Key Definitions

Section 624 allows eligibility information shared with an affiliate to be used by that affiliate in making solicitations in certain circumstances, including where the affiliate has a pre-existing business relationship with the consumer. The terms "solicitation" and

"pre-existing business relationship" are defined in the statute and the proposed regulation, and discussed in detail below in the Section-by-Section Analysis. The Commission has the authority to prescribe by regulation circumstances other than those specified in the statute that would constitute a "pre-existing business relationship" or would not constitute a "solicitation." The Commission seeks comment on whether there are additional circumstances that should be deemed a "pre-existing business relationship" or other types of communications that should not be deemed a "solicitation."

The Commission solicits comment on all aspects of the proposal, including but not limited to items discussed in the Section-by-Section Analysis below.

III. ~~FC~~ - ~~FC~~ A a

Section 680.1—Purpose, Scope, and Effective Dates

Proposed § 680.1 sets forth the purpose and scope of the proposed regulations.

Section 680.2—Examples

Proposed § 680.2 describes the use of examples in the proposed regulations. In particular, the examples in this part are not exclusive. However, compliance with an example, to the extent applicable, constitutes compliance with this part. Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issue that may arise in this part.

Section 680.3—Definitions

Proposed § 680.3 contains definitions for the following terms: "affiliate" (as well as the related terms "company" and "control"); "clear and conspicuous"; "communication"; "consumer"; "eligibility information"; "person"; "pre-existing business relationship"; and "solicitation."

Affiliate

Several FCRA provisions apply to information sharing with persons "related by common ownership or affiliated by corporate control," "related by common ownership or affiliated by common corporate control," or "affiliated by common ownership or common corporate control." *E.g.*, FCRA, sections 603(d)(2), 615(b)(2), and 624(b)(2). Section 2 of the FACT Act defines the term "affiliate" to mean "persons that are related by common ownership or affiliated by corporate control."

The FCRA, the FACT Act, and the GLB Act contain a variety of approaches to the term "affiliate." Proposed

paragraph (b) simplifies the various FCRA and FACT Act formulations by defining “affiliate” to mean any person that is related by common ownership or common corporate control with another person.⁵ The Commission believes it is important to harmonize the various treatments of “affiliate” as much as possible and construe them to mean the same thing. Comment is solicited on whether there is any meaningful difference between the FCRA, FACT Act, and GLB Act definitions. In addition, the proposal uses a definition of “control” that applies exclusively to the control of a “company,” and defines “company” to include any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization. See proposed paragraphs (d) (“company”) and (f) (“control”).

Clear and Conspicuous

Proposed paragraph (c) defines the term “clear and conspicuous” to mean reasonably understandable and designed to call attention to the nature and significance of the information presented. Companies retain flexibility in determining how best to meet the clear and conspicuous standard.

Companies may wish to consider a number of methods to make their notices clear and conspicuous. A notice or disclosure may be made reasonably understandable through methods that include but are not limited to: using clear and concise sentences, paragraphs, and sections; using short explanatory sentences; using bullet lists; using definite, concrete, everyday words; using active voice; avoiding multiple negatives; avoiding legal and highly technical business terminology; and avoiding explanations that are imprecise and are readily subject to different interpretations. Various methods may also be used to design a notice or disclosure to call attention to the nature and significance of the information in it, including but not limited to: using a plain-language heading; using a typeface and type size that are easy to read; using

⁵ In this rule, “affiliate” refers to any entity over which the Commission has FCRA enforcement authority under section 621(a)(1), which is universal except where “specifically committed to some other government agency under subsection (b) hereof.” Section 621(b) assigns federal bank and other agencies to enforce the statute as to certain banks, savings associations, credit unions, transportation and agricultural entities to other agencies. Because the Commission has enforcement authority over FCRA provisions as to all entities not assigned to other agencies, it is quite possible that in some corporate families one affiliate (e.g., a mortgage lender) may be subject to the jurisdiction of the Commission while another (e.g., a bank) would be subject to the jurisdiction of a different federal regulator.

wide margins and ample line spacing; using boldface or italics for key words. Companies that provide the notice on a web page may use text or visual cues to encourage scrolling down the page if necessary to view the entire notice, and take steps to ensure that other elements on the web site (such as pop-up ads, text, graphics, hyperlinks, or sound) do not distract attention from the notice.

When a notice or disclosure is combined with other information, methods for designing the notice or disclosure to call attention to the nature and significance of the information in it may include using distinctive type sizes, styles, fonts, paragraphs, headings, graphic devices, and groupings or other devices. It is unnecessary, however, to use distinctive features, such as distinctive type sizes, styles, or fonts, to differentiate an affiliate marketing opt-out notice from other components of a required disclosure, for example, where a privacy notice under the GLB Act includes several opt-out disclosures in a single notice. Nothing in the clear and conspicuous standard requires the segregation of an affiliate marketing opt-out notice when it is combined with a privacy notice under the GLB Act or other required disclosures.

It may not be feasible to incorporate all of the methods described above all the time. For example, a company may have to use legal terminology, rather than everyday words, in certain circumstances to provide a precise explanation. Companies are encouraged, but not required, to consider the practices described above in designing their notices or disclosures, as well as using readability testing to devise notices that are understandable to consumers.

Consumer

Proposed paragraph (e) defines the term “consumer” to mean an individual, which follows the statutory definition in section 603(c) of the FCRA. For purposes of this definition, an individual acting through a legal representative qualifies as a consumer.

Eligibility Information

Under proposed paragraph (g), the term “eligibility information” means any information the communication of which would be a consumer report if the exclusions from the definition of “consumer report” in section 603(d)(2)(A) of the FCRA did not apply. Eligibility information may include a person’

⁶ H.R. Rep. No. 102-317, at 14-15 (1991). 68 FR 4580, 4591-94 (Jan. 29, 2003).

⁷ 149 Cong. Rec. S13,980 (daily ed. Nov. 5, 2003) (statement of Senator Feinstein).

consider the reasonable expectations of the consumer in determining the scope of this exception. Thus, for purposes of this regulation, an inquiry includes any affirmative request by a consumer for information, such that the consumer would reasonably expect to receive information from the affiliate about its products or services.⁸ A consumer would not reasonably expect to receive information from the affiliate if the consumer does not request information or does not provide contact information to the affiliate.

The Commission has the statutory authority to define in the regulations other circumstances that qualify as a pre-existing business relationship. The Commission has not proposed to exercise this authority to expand the definition of "pre-existing business relationship" beyond the circumstances set forth in the statute. Comment is solicited, however, on whether there are other circumstances that the Commission should include within the definition of "pre-existing business relationship."

Solicitation

Proposed paragraph (j) defines this term to mean marketing initiated by a person to a particular consumer that is based on eligibility information communicated to that person by its affiliate and is intended to encourage the consumer to purchase a product or service. A communication, such as a telemarketing solicitation, direct mail, or e-mail, is a solicitation if it is directed to a specific consumer based on eligibility information. The proposed definition of solicitation does not, however, include communications that are directed at the general public without regard to eligibility information, even if those communications are intended to encourage consumers to purchase products and services from the person initiating the communication with the consumer for the affiliate.

The Commission has the statutory

authority to define in the regulations those communications that the Commission has not proposed to

include in the definition of solicitation if the intended recipient is a consumer of the affiliate.

The Commission has not proposed to include in the definition of solicitation those communications that are directed at the general public without regard to eligibility information, even if those communications are intended to encourage consumers to purchase products and services from the person initiating the communication with the consumer for the affiliate.

⁹ If the principal is a financial institution, and the agent sending the notice is not an affiliate, the agent would only be permitted to use the information for limited purposes under the GLB Act privacy regulations. 16 CFR 313.11(a)(1).

⁸ See 68 FR at 4594.

provided to the consumer is meaningful and designed to be effective. Thus, an opt-out notice provided to the consumer solely in the name of an affiliate that receives eligibility information but that is not known or recognizable to the consumer as an entity with which the consumer does or has done business is not likely to be an effective notice. For example, if the consumer has a relationship with the ABC affiliate, but the opt-out notice is provided solely in the name of the XYZ affiliate—which does not share a common name with the ABC affiliate—the notice is not likely to be effective. Indeed, many consumers may disregard a notice from the XYZ affiliate on the assumption that the notice is unsolicited junk mail. If, however, the consumer has a relationship with the ABC affiliate, and the opt-out notice is provided jointly in the name of all affiliated companies that share the ABC name and the XYZ name, the notice is likely to be effective.

The second rule of construction makes clear that it is not necessary for each affiliate that communicates the same eligibility information to provide an opt-out notice to the consumer, so long as the notice provided by the affiliate that initially communicated the information is broad enough to cover use of that information by each affiliate that receives and uses it to make solicitations. For example, if affiliate A communicates eligibility information to affiliate B, and affiliate B communicates that same information to affiliate C, affiliate B does not have to provide the consumer with an opt-out notice, so long as affiliate A's notice is broad enough to cover both B's and C's use of that information to make solicitations to the consumer. Examples are provided to illustrate how the rules of construction work.

Paragraph (a) contemplates that the opt-out notice will be provided to the consumer in writing or, if the consumer agrees, electronically. The Commission notes that the methods discussed above for complying with the statutory "clear and conspicuous" provision do not apply to oral notices, and seeks comment on whether (1) there are circumstances in which it is necessary and appropriate to allow an oral notice, and (2) there exists any practical method for meeting the "clear and conspicuous" standard in oral notices.

Paragraph (b) sets forth the general duties of an affiliate that receives eligibility information ("the receiving affiliate"). The receiving affiliate may not use eligibility information it receives from an affiliate to make solicitations to the consumer unless, prior to such use, the consumer has

been provided an opt-out notice, as described in paragraph (a), that applies to that affiliate's use of eligibility information and a reasonable opportunity and simple method to opt out and the consumer did not opt out of that use.

Paragraphs (a) and (b) focus on whether the information communicated to affiliates meets the definition of "eligibility information." Section 624(a)(1) of the Act concerns "a communication of information that would be a consumer report, but for clauses (i), (ii), and (iii) of section 603(d)(2)(A)." The Commission has proposed to define "eligibility information" in a manner consistent with the statutory definition. The Commission recognizes, however, that there are other exceptions to the statutory definition of "consumer report," such that it may be burdensome for companies to determine and track whether consumer report information is eligibility information (to which the marketing opt-out provisions of section 624 apply) or information that may be shared with affiliates under other exceptions in the FCRA (to which the marketing opt-out provisions of section 624 do not apply). To minimize this burden, the Commission believes that companies may satisfy the requirements of section 624 by voluntarily offering

standard described in paragraph (a) is a lesser standard than actual notice. For instance, if a person subject to the rule mails a printed copy of its notice to the last known mailing address of a consumer, the person has met its obligation even if the consumer has changed addresses and never receives the notice.

Proposed paragraph (c) permits a person subject to this rule to provide a joint opt-out notice with one or more of its affiliates that are identified in the notice, so long as the notice is accurate with respect to each affiliate jointly issuing the notice. A joint notice does not have to list each affiliate participating in the joint notice by its name. If each affiliate shares a common name, such as "ABC," then the joint notice may state that it applies to "all companies with the ABC name" or "all affiliates in the ABC family of companies." If, however, an affiliate does not have ABC in its name, then the joint notice must separately identify that company or family of companies with a common name.

Proposed paragraph (d)(1) sets out rules that apply when two or more consumers jointly obtain a product or service from a person subject to this rule (referred to in the proposed regulation as joint consumers), such as a loan to two consumers (joint debtors). For example, a lender subject to this rule may provide a single opt-out notice to two joint debtors. The notice must indicate whether the person will consider an opt-out by one joint debtor as an opt-out by both, or whether each consumer may opt out separately. The person may not require both consumers to opt out before honoring an opt-out direction by one of them. Paragraph (d)(2) gives examples of these rules.

Proposed paragraph (d)(1)(vii) and the example in paragraph (d)(2)(iii) address the situation where only one of two joint consumers has opted out. Those paragraphs are derived from similar provisions in the GLB Act privacy regulations. Because section 624 of the FCRA deals with the use of information for marketing by affiliates, rather than the sharing of information among affiliates, comment is requested on whether information about a joint account should be allowed to be used for making solicitations to a joint consumer who has not opted out.

Section 680.25—Duration and Effect of Opt-Out

Proposed § 680.25 addresses the duration and effect of the consumer's opt-out election. Proposed paragraph (a) provides that the consumer's election to opt out shall be effective for the opt-out

period, which is a period of at least 5 years, beginning as soon as reasonably practicable after the consumer's opt-out election is received. Nothing in this paragraph limits the ability of affiliated persons to set an opt-out period longer than 5 years, including an opt-out period that does not expire unless revoked by the consumer. No opt-out period, however, may be less than 5 years. In addition, if a consumer elects to opt out every year, a new opt-out period of at least 5 years begins upon receipt of each success vbH5

¹¹ Section 624(a)(5) of the FCRA is a non-retroactivity provision, which states that nothing shall prohibit the use of information to send a solicitation to a consumer if such information was received prior to the date on which persons are required to comply with the regulations implementing section 624.

duration of the opt-out or not, and on the relative burdens and benefits of the two approaches.

¹²The Flesch reading ease test generates a score between zero and 100, where the higher score correlates with improved readability. The Flesch-Kincaid grade level test generates a numerical assessment of the grade-level at which the text is written.

¹³This estimate is derived from an analysis of a database of U.S. businesses based on SIC codes for businesses that market goods or services to

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A d A Pa § 680

15 U.S.C. 1681s; sec. 214, Pub. L. 108–159; 117 Stat. 1952.

680.1

(a) *Purpose.* This part implements section 214 of the Fair and Accurate Credit Transactions Act of 2003, which is designed to allow consumers to prohibit (“opt out” of) the use of certain information about them to send marketing solicitations.

(b) *Scope.* This part applies to any person over which the Federal Trade Commission has jurisdiction that shares information with affiliated persons to make or send marketing solicitations.

680.2

The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part.

680.3

As used in this part, unless the context requires otherwise:

- (a) *Act* means the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*).
- (b) *Affiliate* means any person that is related by common ownership or common corporate control with another person.
- (c) *Clear and conspicuous* means reasonably understandable and designed to call attention to the nature and significance of the information presented.
- (d) *Company* means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.
- (e) *Consumer* means an individual.
- (f) *Control* of a company means:

(1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the company; or

(3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company.

(g) *Eligibility information* means any information the communication of which would be a consumer report if the exclusions from the definition of “consumer report” in section 603(d)(2)(A) of the Act did not apply.

(h) *Person* means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(i) *Pre-existing business relationship* means a relationship between a person and a consumer, based on—

(1) A financial contract between the person and the consumer which is in force on the date on which the consumer is sent a solicitation covered by this part;

(2) The purchase, rental, or lease by the consumer of the person’s goods or services, or a financial transaction (including holding an active account or a policy in force or having another continuing relationship) between the consumer and the person, during the 18-month period immediately preceding the date on which a solicitation covered by this part is made or sent to the consumer; or

(3) An inquiry or application by the consumer regarding a product or service offered by that person during the 3-month period immediately preceding the date on which a solicitation covered by this part is made or sent to the consumer.

(j) *Solicitation*—(1) *In general.* Solicitation means marketing initiated by a person to a particular consumer that is—

(i) Based on eligibility information communicated to that person by its affiliate as described in this part; and

(ii) Intended to encourage the consumer to purchase such product or service.

(2) *Exclusion of marketing directed at the general public.* A solicitation does not include communications that are directed at the general public and distributed without the use of eligibility information communicated by an affiliate. For example, television, magazine, and billboard advertisements do not constitute solicitations, even if those communications are intended to encourage consumers to purchase products or services from the person initiating the communications.

(3) *Examples of solicitations.* A solicitation includes a telemarketing call, direct mail, e-mail, or other form of marketing communication directed to a specific consumer that is based on eligibility information communicated by an affiliate.

(k) *You* includes each person or company over which the Commission has enforcement jurisdiction pursuant to section 621(a)(1) of the Act.

information about a consumer to Affiliate B, and Affiliate B communicates that same information to Affiliate C, Affiliate B does not have to give an opt-out notice to the consumer when it provides eligibility information to Affiliate C, so long as Affiliate A's notice is broad enough to cover Affiliate C's use of the eligibility information to make solicitations to the consumer.

(iii) *Examples of rules of construction.* A, B, and C are affiliates. The consumer currently has a business relationship with affiliate A, but has never done business with affiliates B or C. Affiliate A communicates eligibility information about the consumer to B for purposes of making solicitations. B communicates the information it received from A to C for purposes of making solicitations. In this circumstance, the rules of construction would—

(1) That the consumer may elect to limit your affiliate from using eligibility information about the consumer that it obtains from you to make or send solicitations to the consumer;

(2) If applicable, that the consumer's election will apply for a specified period of time and that the consumer will be allowed to extend the election once that period expires; and

(3) A reasonable and simple method for the consumer to opt out.

(b) *Concise*—(1) *In general*. For purposes of this part, the term “concise” means reasonably brief.

(2) *Combination with other required disclosures*. A notice required by this part may be concise even if it is combined with other disclosures required or authorized by federal or state law.

(3) *Use of model form*. The requirement for a concise notice is satisfied by use of a model form contained in Appendix A of this part, although use of the model form is not required.

(c) *Providing a menu of opt-out choices*. With respect to the opt-out election, you may allow a consumer to choose from a menu of alternatives when opting out of affiliate use of eligibility information for marketing, such as by selecting certain types of affiliates, certain types of information, or certain methods of delivery from which to opt out, so long as you offer as one of the alternatives the opportunity to opt out with respect to all affiliates, all eligibility information, and all methods of delivery.

(d) *Alternative contents*. If you provide the consumer with a broader right to opt out of marketing than is required by law, you satisfy the requirements of this section by providing the consumer with a clear, conspicuous, and concise notice that accurately discloses the consumer's opt-out rights. Proposed Model Notice A-3 provided in Appendix A provides guidance, although use of the model notice is not required.

680.22

(a) *In general*. Before your affiliate uses eligibility information communicated by you to make or send solicitations to a consumer, you must provide the consumer with a reasonable opportunity, following the delivery of the opt-out notice, to opt out of such use by your affiliates.

(b) *Examples of a reasonable opportunity to opt out*. You provide a consumer with a reasonable opportunity to opt out if:

(1) *By mail*. You mail the opt-out notice to a consumer and give the consumer 30 days from the date you mailed the notice to elect to opt out by any reasonable means.

(2) *By electronic means*. You notify the consumer electronically and give the consumer 30 days after the date that the consumer acknowledges receipt of the electronic notice to elect to opt out by any reasonable means.

(3) *At the time of an electronic transaction*. You provide the opt-out notice to the consumer at the time of an electronic transaction, such as a transaction conducted on an Internet web site, and request that the consumer decide, as a necessary part of proceeding with the transaction, whether to opt out before completing the transaction, so long as you provide a simple process at the Internet web site that the consumer may use at that time to opt out.

(4) *By including in a privacy notice*. You include the opt-out notice in a Gramm-Leach-Bliley Act privacy notice and allow the consumer to exercise the opt-out within a reasonable period of time and in the same manner as the opt-out under the Gramm-Leach-Bliley Act.

(5) *By providing an “opt-in”*. If you have a policy of not allowing an affiliate to use eligibility information to make or send solicitations to the consumer unless the consumer affirmatively consents, you give the consumer the opportunity to “opt in” by affirmative consent to such use by your affiliate. You must document the consumer's affirmative consent. A pre-selected check box does not constitute evidence of the consumer's affirmative consent.

680.23

(a) *Reasonable and simple methods of opting-out*. You provide a reasonable and simple method for a consumer to exercise a right to opt out if you—

(1) Designate check-off boxes in a prominent position on the relevant forms included with the opt-out notice required by this part;

(2) Include a reply form and a self-addressed envelope together with the opt-out notice required by this part;

(3) Provide an electronic means to opt out, such as a form that can be electronically mailed or processed at your web site, if the consumer agrees to the electronic delivery of information; or

(4) Provide a toll-free telephone number that consumers may call to opt out.

(b) *Methods of opting-out.1111 ep*

separately identify each such affiliate or similarly-named family of companies.

(d) *Joint relationships*— (1) *In general.*

If two or more consumers jointly obtain a product or service from you (joint consumers), the following rules apply:

(i) You may provide a single opt-out notice.

(ii) Any of the joint consumers may exercise the right to opt out.

(iii) You may either—

(A) Treat an opt-out direction by a joint consumer as applying to all of the associated joint consumers; or

(B) Permit each joint consumer to opt out separately.

(iv) If you permit each joint consumer to opt out separately, you must permit:

(A) One of the joint consumers to opt out on behalf of all of the joint consumers; and

(B) One or more joint consumers to notify you of their opt-out directions in a single response.

(v) You must explain in your opt-out notice which of the policies in paragraph (d)(1)(iii) you will follow, as well as the information required by paragraph (d)(1)(iv).

(vi) You may not require *all* joint consumers to opt out before you implement *any* opt-out direction.

(vii) If you receive an opt-out by a particular joint consumer that does not apply to the others, you may use eligibility information about the others as long as no eligibility information is used about the consumer who opted out.

(2) *Example.* If consumers A and B, who have different addresses, have a joint loan account with you and arrange

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our affiliates will apply for 5 years. Once that period expires, you will be allowed to extend your decision.

3. [Include if applicable.] This limitation does not apply in certain circumstances, such as if you currently do business with one of our affiliates or if you ask to receive information or offers from them.

To limit marketing offers [include all that apply]:

- Call us toll-free at 877-###-####; or
- Visit our Web site at *http://www.websiteaddress.com*; or

- Check the box below and mail it to:
[Company name]
[Company address]

I do not want your affiliates to market their products or services to me based on information that you share with them.

A 2 M F \ E N

Extending Your Choice To Limit Marketing