

Regulatory Update OLA Fall Meeting

Suzanne Garwood

sgarwood@venable.com

202-344-8046



Regulated Issues

- Advertising
- Credit Denial
- Electronic Payments
- Customer Data Security



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ADVERTISING



Advertising

- Unfair and Deceptive
- Truth in Lending Act
 - Trigger Terms
 - Required Disclosures
 - FTC Actions
 - Lenders
 - Lead Generators
- State Requirements
 - Disclosures
 - Licensing



Advertising

- Trigger Terms
 - Amount or percentage of down payment
 - Amount of any payment (*i.e.*, \$20 per week)
 - Number of payments (*i.e.*, 4 biweekly)
 - Period of repayment (*i.e.*, one month)
 - Amount of any finance charge (*i.e.*, \$20 fee)
- Required Disclosures
 - Amount or percentage of down payment
 - Terms of repayment
 - APR
 - Disclosure of variable rate feature



CREDIT DENIAL



Credit Denial

- ECOA
- FCRA
- Adverse Action Notices



CREDIT DENIAL

■ **Sample Forms Provided in Regulation B**

Statement of Credit Denial, Termination or Change

Date: _____

Applicant's Name: _____

Applicant's Address: _____

Description of Account, Transaction, or Requested Credit:

Description of Action Taken:

Principal Reason(s) for Credit Denial, Termination, or Other Action Taken Concerning Credit

Credit application incomplete

Insufficient number of credit references provided

Name: _____

Address: _____

[Toll-free] Telephone number: _____

If you have any questions regarding this notice, you should contact:

Creditor's name: _____

Creditor's address: _____

Creditor's telephone number: _____

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).



ELECTRONIC PAYMENTS



Electronic Payments

- Electronic Funds Transfer Act/Regulation E
- ACH Rules
- Bank Regulations
 - International transactions
 - Remotely-Created Checks
 - Merchant Activities
 - Reputation Risk



Electronic Payments

- Similar Authentication
- WEB Authorizations
- Telephone Authorizations
 - TEL
 - PPD



Customer Data Security



Customer Data Security

- Red Flag Rules
- Affiliate Sharing



Red Flag Program

Creating the Program

- Financial institutions and creditors must develop a written program that identifies and detects the relevant warning signs or red flags of identity theft.
- The agencies identify 26 possible red flags falling into five categories.
- The Board of Directors or senior employees must manage the program and provide for oversight or any service providers.
- All financial institutions and creditors must design and implement a program that is appropriate to their size and complexity as well as the nature of their operations.



Red Flag Program

- Effective **January 1, 2008**
- Compliance mandatory
November 1, 2008



Affiliate Marketing Rule

Key Definitions

- “Affiliate” – Any company that is related by common ownership or common corporate control with another company.
- “Eligibility Information” – Transactional and experience information and “other” information that would normally be considered a “consumer report” but for the exclusions under FCRA. Does not include aggregate or blind data.
- “Solicitation” – Marketing of a product or service by a person to a particular consumer where the marketing is: (i) based on eligibility information communicated to that person by its affiliate; and (ii) is intended to encourage a person to purchase or obtain a product or service (not general marketing to the public).



Affiliate Marketing Opt Out

Unless otherwise falling within an exemption, a solicitation cannot occur unless the consumer receives a clear and conspicuous disclosure in writing or (if the consumer assents) electronically, that:

- Such marketing activities may occur;
- The consumer is given a reasonable opportunity to opt out;
- A simple means of opting out is available; and
- The consumer has not opted out.



Affiliate Opt Out Notice Content

Model notices are contained in the final rule, and must:

- Identify the name of the affiliate providing the notice;
- Identify the types of eligibility information that may be used to make solicitations;
- State that the consumer may elect to limit the use of eligibility information for solicitations;
- State that the consumer's selection will apply for a specified time (*i.e.*, 5 years);
- State that the consumer will be able to renew the election once that period expires;
- State that the consumer need not opt out again until he receives a renewal notice; and
- Provide a reasonable and simple opt out.



Affiliate Marketing Rule Exceptions

In the following instances, an affiliate-marketing notice and an opt-out opportunity is not required:

- **Pre-Existing Business Relationship** – The relationship must be between the consumer and the person looking to sell the goods or services.
- **Consumer-Initiated Communication** – The solicitation must be in response to a communication initiated by the consumer in writing, orally or electronically.
- **Consumer Authorization or Request** – The request must be specific (*i.e.*, no boilerplate waivers) and the solicitation must be responsive to that specific request.



Affiliate Marketing Rule

- Effective **January 1, 2008**
- Compliance mandatory
October 1, 2008

