

CBS&S[®] Legal Update

CONSUMER FINANCIAL SERVICES

News & Developments in Consumer Financial Services Law

Articles
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FTC Affiliate Marketing Rule

In October 2007, the Federal Trade Commission (FTC) approved an affiliate marketing rule addressing the way affiliated entities use consumer information. The final rule became effective on January 1, 2008, and mandates compliance no later than October 1, 2008. The Final Rule for Affiliate Marketing may be found at 16 CFR Parts 680 and 698. Below are some questions you may consider:

What Does this Rule Address? The rule addresses situations when one of your affiliated entities wants to market to another entity's consumer. For example, one state entity may want to solicit another state entity's consumer.

What will be the Effect of the Rule? You will likely add another opt-out notice to your privacy policy. If the notice accurately reflects your policies, follows the model notice provided, and mentions the affiliates that may solicit the consumer, then affiliates can solicit consumers who have not opted out.

Do Exceptions Exist? Yes. Even if your affiliate marketing notice did not mention the possibility of solicitation from a given affiliate, some exemptions and exceptions may allow the consumer to receive marketing information about such affiliate.

Why is this Important? Maintaining maximum flexibility with respect to customer information may increase the value of your company for future marketing arrangements or in the event of a potential sale. In addition, failure to comply with the Rule may create liability.

We have prepared a detailed overview of the general rule and its scope, the penalties for noncompliance, the requirements for the opt-out notice, and the rule's exceptions and exemptions, so please do not hesitate to contact us for more information.

Identity Theft Prevention Programs The Importance of Establishing, Maintaining & Updating

Recent federal regulations impose new requirements regarding identity theft, and the FTC will begin enforcing them in November.

The regulations impose a "red flag requirement" on creditors with any account for which there is a reasonably foreseeable risk from identity theft. The regulations mandate that companies detect, prevent, and mitigate identity theft. This requires establishing an identity theft prevention program following specific regulatory guidelines.

If you would like more information regarding developing an identity theft prevention program, please do not hesitate to contact us.

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