The Comptroller of the Currency, on June 18, 2004, approved the proposed rulemaking under the Fair Credit Reporting Act to be published for comment in the Federal Register. The proposal's Supplementary Information and the OCC's proposed regulation text appear below. This proposed rulemaking would implement the affiliate marketing notice and opt out provisions in section 214 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). The rule generally would prevent an institution from using certain information about a consumer that it receives from an affiliate to make a solicitation to the consumer unless that consumer is given notice and an opportunity to opt out of the solicitation. Various exceptions that apply to the FACT Act provisions are contained in the proposed rule.

The Federal Reserve Board, Office of Thrift Supervision, and National Credit Union Administration also have approved the proposed rule for publication. Action by the Federal Deposit Insurance Corporation (FDIC) is pending. Note that technical changes could be made to the proposal before it is published in the Federal Register.

Comments on the proposed rulemaking will be requested for up to 30 days after it is published in the Federal Register.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 41

[Docket No. XX-XX]

RIN XXXXX

Fair Credit Reporting Affiliate Marketing Regulations

SUPPLEMENTARY INFORMATION:

I. Background

The Fair Credit Reporting Act

The Fair Credit Reporting Act (FCRA or Act), which was 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. 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 a 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, information that is not transaction or experience information—among its affiliates without becoming a consumer reporting agency if the person has given the consumer a clear and conspicuous notice that such information may be communicated among affiliates and an opportunity to "opt out" or direct that the information not be communicated, and the consumer has not opted out. The notice and opt out provided in section 603(d)(2)(A)(iii) of the FCRA limits the sharing of information among affiliates and was the subject of the October 20, 2000 proposal by the Federal banking agencies and NCUA. See 65 FR 63120 (Oct. 20, 2000); 65 FR 64168 (Oct. 26, 2000) (the October 2000 proposal).

The current proposal addresses a new notice and opt out provision that applies to a person's use of certain information that it receives from an affiliate to market its products and services to consumers. Although there is a certain degree of overlap between the two opt outs, the two opt outs are distinct and serve different purposes. Therefore, nothing in this proposal regarding the opt out for affiliate marketing supersedes or replaces the affiliate sharing opt out contained in section 603(d)(2)(A)(iii) of the Act.

The Fair and Accurate Credit Transactions Act of 2003

The Fair and Accurate Credit Transactions Act of 2003 (FACT Act) was signed into law on December 4, 2003. Pub. L. 108-159, 117 Stat. 1952. In general, the FACT Act amends the FCRA to enhance the ability of consumers to combat identity theft, to increase the accuracy of consumer reports, and to allow consumers to exercise greater control regarding the type and amount of solicitations they receive. The FACT Act also restricts the use and disclosure of sensitive medical information. To bolster efforts to improve financial literacy among consumers, the FACT Act creates a new Financial Literacy and Education Commission empowered to take appropriate actions to improve the financial literacy and education programs, grants, and materials of the Federal

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[1] The FCRA creates substantial obligations for a person that meets the definition of a "consumer reporting

government. Lastly, to promote increasingly efficient national credit markets, the FACT Act establishes uniform national standards in key areas of regulation regarding consumer report information.

Section 214 of the FACT Act adds a new section 624 of the FCRA. This new provision gives consumers the right to restrict a person from using certain information about a consumer obtained from an affiliate to make solicitations to that consumer. That section also requires the Agencies, in consultation and coordination with each other, to issue regulations in final form implementing section 214 not later than 9 months after the date of enactment.[2] These rules must become effective not later than 6 months after the date on which they are issued in final form.

II. Explanation of the Proposed Regulations

New section 624 of the FCRA generally provides that, if a person shares certain information about a consumer with an affiliate, the affiliate may not use that information to make or send solicitations to the consumer about its products or services, unless the consumer is given notice and a reasonable opportunity to opt out of such use of the information and the consumer does not opt out. Section 624 governs the use of information by an affiliate, not the sharing of information with or among affiliates. As such, the new opt out right contained in section 624 is distinct from the existing FCRA opt out right for affiliate sharing under section 603(d)(2)(A)(iii), although these opt out rights and the information subject to these two opt outs overlap to some extent. As noted

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agency" in section 603(f) of the statute.

[2] The Federal Trade Commission (FTC) and the Securities and Exchange Commission (SEC) are also required to issue regulations under new section 624 in consultation and coordination with the Agencies. The FTC published its proposed rule on June 15, 2004 (69 FR 33,324). The SEC proposal will be published in a separate Federal Register notice.

above, the FCRA allows some information (transaction or experience information) to be shared without giving the consumer notice and an opportunity to opt out, and provides that "other" information may not be shared among affiliates without giving the consumer notice and an opportunity to opt out. The new opt out right for affiliate marketing generally applies to both transaction or experience information and "other" information.

The Agencies seek comment on these proposed regulations implementing section 624 of the FCRA, including in particular the matters discussed below.

<u>Responsibility for Providing Notice and an Opportunity to Opt out</u>

Section 624 does not specify which affiliate must give the consumer notice and an opportunity to opt out of the use of the information by an affiliate for marketing purposes. Under one view, the person that receives certain consumer information from its affiliate and wants to use that information to make or send solicitations to the consumer could be responsible for giving the notice because the statute is drafted as a prohibition on the affiliate that receives the information from using such information to send solicitations, rather than as an affirmative duty imposed on the affiliate that sends or communicates that information. On the other hand, section 624(a)(1)(A) provides that the disclosure must state that the information "may be communicated" among affiliates for purposes of making solicitations, suggesting that the affiliate that sends or communicates information about a consumer should be responsible for providing the notice. In addition, section 214(b)(3) of the FACT Act requires the Agencies to consider existing affiliate sharing notification practices and provide for coordinated and consolidated notices. Similarly, section 214 allows for the combination of affiliate marketing opt out notices with other notices required by law, which may include Gramm-

Leach-Bliley Act (GLB Act) privacy notices. Thus, the provisions of section 214 suggest that the person communicating information about a consumer to its affiliate should give the notice because that is the person that would likely provide the affiliate sharing opt out notice under section 603(d)(2)(A)(iii) of the FCRA and other disclosures required by law.

The Agencies have proposed that the person communicating information about a consumer to its affiliate should be responsible for satisfying the notice requirement, if applicable. A rule of construction provides flexibility to allow the notice to be given by the person that communicates information to its affiliate, by the person's agent, or 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 Agencies invite comment on whether the affiliate receiving the information should be permitted to give the notice solely on its own behalf. The Agencies specifically solicit 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 requirements 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 Agencies have incorporated each of these statutory exceptions into the proposed rule.

In defining the circumstances when the regulatory provisions apply, the proposal focuses on the communication of eligibility information among affiliates. Under the proposal, "eligibility information" is defined to mean 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 Agencies invite 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. An institution 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 Agencies have 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 Agencies seek 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 Agencies solicit comment on all aspects of the proposal, including but not limited to items discussed in the Section-by-Section Analysis below.

III. Section-by-Section Analysis

Section __.1 Purpose, Scope, and Effective Dates

Proposed § ___.1 sets forth the purpose and scope of each agency’s regulations.

Section __.2 Examples

Proposed § ___.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 __.3 Definitions

Proposed § ___.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 definitions of "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.[3] The Agencies believe it is important to harmonize the various definitions of affiliate as much as possible and construe the various FCRA and FACT Act definitions to mean the same thing. Comment is solicited on whether there is any meaningful difference between the various 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 (i) ("control").[4]

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

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[3] For purposes of this regulation, an "affiliate" of a bank or savings association includes an operating subsidiary of such bank or savings association. An affiliate of a credit union includes a credit union service organization that is controlled by a federal credit union.

[4] For purposes of the proposed regulation, NCUA will presume a federal credit union has a controlling influence over the management or policies of a credit union service organization if it is 67 percent owned by credit unions.

the information presented. Institutions retain flexibility in determining how best to meet the clear and conspicuous standard.

Institutions may wish to consider a number of practices 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 wide margins and ample line spacing; using boldface or italics for key words. Institutions 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 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, an institution may have to use legal terminology, rather than everyday words, in certain circumstances to provide a precise explanation. Institutions 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 (j), 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's own transaction or experience information, such as information about a consumer's account history with that person, and other information, such as information from credit bureau reports or applications.

Person

Proposed paragraph (l) defines the term "person" to mean any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity. A person may act through an agent, such as a licensed agent (in the case of an insurance company), a trustee (in the case of a trust), or any other agent. For purposes of this part, actions taken by an agent on behalf of a person that are within the scope of the agency relationship will be treated as actions of that person.

Pre-existing business relationship

Proposed paragraph (m) defines this term to mean a relationship between a person and a consumer based on the following: (1) a financial contract between the person and the consumer that is in force; (2) the purchase, rental, or lease by the consumer of that 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 that person, during the 18-month period immediately preceding the date on which a solicitation covered by subpart C 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 subpart C is made or sent to the consumer. The proposed definition generally tracks the statutory definition contained in section 624 of the Act, with certain revisions for clarity.

The Agencies have the statutory authority to define in the regulations other circumstances that qualify as a pre-existing business relationship. The Agencies have 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 Agencies should include within the definition of "pre-existing business relationship."

Solicitation

Proposed paragraph (n) 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 communications. The proposed definition tracks the statutory definition contained in section 624 of the Act, with certain revisions for clarity.

The Agencies have the statutory authority to determine by regulation that other communications do not constitute a solicitation. The Agencies have not proposed to exercise this authority to specify other communications that would not be deemed "solicitations" beyond the circumstances set forth in the statute. Comment is solicited, however, on whether there are other communications that the Agencies should determine do not meet the definition of "solicitation." Comment is also requested on whether, and to what extent, various tools used in Internet marketing, such as pop-up ads, may constitute solicitations as opposed to communications directed at the general public, and whether further guidance is needed to address Internet marketing.

Section ___.20 Use of Eligibility Information by Affiliates for Marketing

Proposed § ___.20 establishes the basic rules governing the requirement to provide the consumer with notice and a reasonable opportunity to opt out of a person's use of eligibility information that it obtains from an affiliate for the purpose of making or sending solicitations to the consumer. The statute is ambiguous because it does not specify which affiliate must provide the opt out notice to the consumer. The proposed regulation would resolve this ambiguity by imposing certain duties on the person that communicates the eligibility information and certain duties on the affiliate that receives the information with the intent to use that information to make or send solicitations to consumers. These bifurcated duties are set forth in paragraphs (a) and (b).[5]

Paragraph (a) sets forth the duty of a person that communicates eligibility information to an affiliate. Under the proposal, before an affiliate may use eligibility information to make or send solicitations to the consumer, the person that communicates eligibility information about a consumer to an affiliate must provide a notice to the consumer stating that such information may be communicated to and used by the affiliate to make or send solicitations to the consumer regarding the affiliate's products and services, and must give the consumer a reasonable opportunity and a simple method to opt out.

Some organizations may choose to share eligibility information among affiliates but not allow the affiliates that receive that information to use it for marketing purposes. In that case, proposed paragraph (a) would not apply and an opt out notice would not be required if none of the affiliates that receive eligibility information use it to make or send solicitations to consumers.

Under the proposal, paragraph (a) would not apply if, for example, an insurance company asks its affiliated bank to include insurance company marketing material in periodic statements sent to consumers by the bank without regard to eligibility information. The Agencies invite comment on whether, given the policy objectives of section 214 of the FACT Act, proposed paragraph (a) should apply if affiliated companies seek to avoid providing notice and opt out by engaging in the "constructive sharing" of eligibility information to conduct marketing. For example, the Agencies request commenters to consider the applicability of paragraph (a) in the following circumstance. A consumer has a relationship with a bank, and the bank is affiliated with an insurance company. The insurance company provides the bank with specific eligibility criteria, such as consumers having combined deposit balances in excess of $50,000, and average monthly demand account deposits in excess of $10,000, for the

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[5] Because the proposed regulations generally would impose duties on more than one person in an affiliated

purpose of having the bank make solicitations on behalf of the insurance company to consumers that meet those criteria. Additionally, the consumer responses provide the insurance company with discernible eligibility information, such as a response form that is coded to identify the consumer as an individual who meets the specific eligibility criteria.

Proposed paragraph (a) also contains two rules of construction. The first rule of construction provides that the notice may be provided either in the name of a person with which the consumer currently does or previously has done business or in one or more common corporate names shared by members of an affiliate group of companies that includes the common corporate name used by that person. The rule of construction also provides alternatives regarding the manner in which the notice is given. A person that communicates eligibility information to an affiliate may provide the notice directly to the consumer, or may use an agent to provide the notice on the person's behalf. If the agent is the person's affiliate, the agent may not include any solicitations other than those of the person on or with the notice, unless one of the exceptions in paragraph (c) applies. Additionally, the agent must provide the opt out notice in the name of the person or a common corporate name.[6] If an agent is used, the person remains responsible for any failure of the agent to fulfill its notice obligations. Alternatively, a person may provide a joint notice with one or more of its affiliates as provided in § ___.24(c) and discussed more fully below.

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group, different Agencies may have enforcement authority over the different affiliates involved in communicating and using eligibility information to make or send solicitations.

[6] If 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.

This rule of construction strikes a balance between giving institutions flexibility to allow different entities within the affiliated group to provide the notice while ensuring that the notice 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, then 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. Comment is solicited on whether there are circumstances in which it is necessary and appropriate to allow oral notice and opt out and how an oral notice can satisfy the clear and conspicuous standard in the statute. In this regard, the Agencies note that certain exceptions to the notice and opt out requirement may be triggered by an oral communication from or with a consumer. These exceptions are contained in paragraph (c) and discussed below.

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 focuses on "a communication of information that would be a consumer report, but for clauses (i), (ii), and (iii) of section 603(d)(2)(A)." The Agencies have proposed to define "eligibility information" in a manner consistent with the statutory definition. The Agencies recognize, however, that there are other exceptions to the statutory definition of "consumer report," such that it may be burdensome for institutions 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 Agencies believe that institutions may satisfy the requirements of section 624 by voluntarily offering consumers the ability to opt out of marketing based on consumer report information that is shared under any of the exceptions in section 603(d)(2) of the FCRA, not just those in section 603(d)(2)(A), as required by section 624.

Proposed § ___.20(c) contains exceptions to the requirements of Subpart C. Paragraph (c) incorporates each of the following statutory exceptions to the affiliate marketing notice and opt out requirements set forth in section 624(a)(4) of the FCRA: (1) using the information to make a solicitation to a consumer with whom the affiliate has a pre-existing business relationship; (2) using the information to facilitate communications to an individual for whose benefit the affiliate provides employee benefit or other services under a contract with an employer related to and arising out of a current employment relationship or an individual's status as a participant or beneficiary of an employee benefit plan; (3) using the information to perform services for another affiliate, unless the services involve sending solicitations on behalf of the other affiliate and such affiliate is not permitted to send such solicitations itself as a result of the consumer's decision to opt out; (4) using the information to make solicitations in response to a communication initiated by the consumer; (5) using the information to make solicitations in response to a consumer's request or authorization for a solicitation; or (6) if compliance with the requirements of section 624 by the affiliate would prevent that affiliate from complying with any provision of state insurance laws pertaining to unfair discrimination in a state where the affiliate is lawfully doing business. See FCRA, section 624(a)(4). Several of these exceptions are discussed below.

Proposed paragraph (c)(1) clarifies that the provisions of this subpart do not apply where the affiliate using the information to make a solicitation to a consumer has a pre-existing business relationship with that consumer. As noted above, a pre-existing business relationship exists when: (1) there is a financial contract in force between the affiliate and the consumer; (2) the consumer and the affiliate have engaged in a financial transaction (including holding an active account or a policy in force or having another continuing relationship) during the 18 months immediately preceding the date of the solicitation; (3) the consumer has purchased, rented, or leased the affiliate's goods or services during the 18 months immediately preceding the date of the solicitation; or (4) the consumer has inquired about or applied for a product or service offered by the affiliate during the 3-month period immediately preceding the date of the solicitation.

The third and fourth elements of the definition are substantially similar to the definition of "established business relationship" under the amended Telemarketing Sales Rule (TSR) (16 CFR 310.2(n)). That definition was informed by Congress's intent that the "established business relationship" exemption to the "do not call" provisions of the Telephone Consumer Protection Act (47 U.S.C. 227 et seq.) should be grounded on the reasonable expectations of the consumer.[7] Congress's incorporation of similar language in the definition of "pre-existing business relationship"[8] suggests that it would be

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[7] H.R. Rep. No. 102-317, at 14-15 (1991). See also 68 FR 4580, 4591-94 (Jan. 29, 2003).
[8] 149 Cong. Rec. S13,980 (daily ed. Nov. 5, 2003) (statement of Senator Feinstein).

appropriate to 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.[9] 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. Proposed paragraph (d)(1) provides examples of the pre-existing business relationship exception.

Proposed paragraph (c)(3) clarifies that the provisions of this subpart do not apply where the information is used to perform services for another affiliate, except that the exception does not permit the service provider to make or send solicitations on behalf of itself or an affiliate if the service provider or the affiliate, as applicable, would not be permitted to make or send such solicitations as a result of the consumer's election to opt out. Thus, when the notice has been provided to a consumer and the consumer has opted-out, an affiliate subject to the consumer's opt out election that has received eligibility information from a person that has a relationship with the consumer may not circumvent the opt out by instructing the person with the consumer relationship or another affiliate to make or send solicitations to the consumer on its behalf.

Proposed paragraph (c)(4) incorporates the statutory exception for information used in response to a communication initiated by the consumer. The proposed rule clarifies that this exception may be triggered by an oral, electronic, or written communication initiated by the consumer. To be covered by the proposed exception, use

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[9] See 68 FR at 4594.

of eligibility information must be responsive to the communication initiated by the consumer. For example, if a consumer calls an affiliate to ask about retail locations and hours, the affiliate may not then use eligibility information to make solicitations to the consumer about specific products because those solicitations would not be responsive to the consumer's communication. Conversely, if the consumer calls an affiliate to ask about its products or services, then solicitations related to those products or services would be responsive to the communication and thus permitted under the exception. The time period during which solicitations remain responsive to the consumer's communication will depend on the facts and circumstances. The proposal also contemplates that a consumer has not initiated a communication if an affiliate makes the initial call and leaves a message for the consumer to call back, and the consumer responds. Proposed paragraph (d)(2) provides examples of the consumer-initiated communications exception.

Proposed paragraph (c)(5) provides that the provisions of this subpart do not apply where the information is used to make solicitations affirmatively authorized or requested by the consumer. This provision may be triggered by an oral, electronic, or written authorization or request by the consumer. Under the proposal, a pre-selected check box or boilerplate language in a disclosure or contract would not constitute an affirmative authorization or request.

The exception in paragraph (c)(5) could be triggered, for example, if a consumer obtains a mortgage from a mortgage lender and authorizes or requests to receive solicitations about homeowner's insurance from an insurance affiliate of the mortgage lender. Under this exception, the consumer may provide the authorization or make the request either through the person with whom the consumer has a business relationship or directly to the affiliate that will make the solicitation. In addition, the duration of the authorization or request will depend on the facts and circumstances. Finally, nothing in this exception supersedes the restrictions contained in the Telemarketing Sales Rule, including the "Do-Not-Call List" established by the FTC and the Federal Communications Commission. Proposed paragraph (d)(3) provides an example of the affirmative authorization or request exception.

The exceptions in proposed paragraphs (c)(1), (4), and (5) described above overlap in certain situations. For example, if a consumer who has an account with a bank makes a telephone call to the bank's securities affiliate and requests information about brokerage services or mutual funds, the securities affiliate may use information about the consumer it obtains from the bank to make or send solicitations in response to the telephone call initiated by the consumer under the exception in paragraph (c)(4) for responding to a communication initiated by the consumer. In addition, the consumer's request for information from the securities affiliate triggers the exceptions in paragraph (c)(1) for inquiries by the consumer regarding a product or service offered by the securities affiliate under the statutory definition of a "pre-existing business relationship" as well as the exception in paragraph (c)(5) for a use in response to a solicitation requested by the consumer.

Proposed paragraph (e) provides that the provisions of this subpart do not apply to eligibility information that was received by an affiliate prior to the date on which compliance with these regulations is required. This incorporates a limitation contained in the statute. The mandatory compliance date will be included in the final rule. Comment is requested on what the mandatory compliance date should be and whether it should be different from the effective date of the final regulations.

Finally, proposed paragraph (f) clarifies the relationship between the affiliate sharing notice and opt out under section 603(d)(2)(A)(iii) of the FCRA and the affiliate marketing notice and opt out in new section 624 of the Act. Specifically, paragraph (f) provides that nothing in Subpart C (the affiliate marketing regulations) limits the responsibility of a company to comply with the notice and opt out provisions of section 603(d)(2)(A)(iii) of the Act before it shares information other than transaction or experience information among affiliates to avoid becoming a consumer reporting agency.

Section ___.21 Contents of Opt out Notice

Proposed § ___.21 addresses the contents of the opt out notice. Proposed paragraph (a) requires that the opt out notice be clear, conspicuous, and concise, and accurately disclose: (1) that the consumer may elect to limit a person's affiliate from using eligibility information about the consumer that it obtains from that person 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. Use of a model form in Appendix A in appropriate circumstances would comply with paragraph (a), but is not required. Paragraph (a) reflects the intent of Congress, as expressed in section 624(a)(2)(B) of the FCRA, that the notice required by this subpart must be "clear, conspicuous, and concise," and that the method for opting out must be "simple."

Proposed paragraph (b) defines the term "concise" to mean a reasonably brief expression or statement. Paragraph (b) also provides that a notice required by Subpart C may be concise even if it is combined with other disclosures required or authorized by federal or state law. Such disclosures include, but are not limited to, a notice under the GLB Act, a notice under section 603(d)(2)(A)(iii) of the FCRA, and other similar consumer disclosures. Finally, paragraph (b) clarifies that the requirement for a concise notice would be satisfied by the appropriate use of one of the model forms contained in Appendix A of this part, although use of the model forms is not required.

Proposed paragraph (c) provides that the notice may allow a consumer to choose from a menu of alternatives when opting out, such as by selecting certain types of affiliates, certain types of information, or certain modes of delivery from which to opt out, so long as one of the alternatives gives the consumer the opportunity to opt out with respect to all affiliates, all eligibility information, and all methods of delivering solicitations.

Proposed paragraph (d) provides that, where an institution elects to give consumers a broader right to opt out of marketing than is required by law, the institution would have the ability to modify the contents of the opt out notice to reflect accurately the scope of the opt out right it provides to consumers. Appendix A provides Model Form A-3 that may be helpful for institutions that wish to allow consumers to prevent all marketing from the institution and its affiliates, but use of the model form is not required.

Section __.22 Reasonable Opportunity to Opt out

Proposed paragraph (a) provides that before the affiliate uses the eligibility information to make or send solicitations to the consumer, the person that communicates such eligibility information to the affiliate must provide the consumer with a reasonable opportunity to opt out following delivery of the opt out notice. Given the variety of circumstances in which institutions must provide a reasonable opportunity to opt out, the Agencies believe that a reasonable opportunity to opt out should be construed as a general test that avoids setting a mandatory waiting period in all cases. A general standard would provide flexibility to allow affiliates to use eligibility information received from another affiliate to make or send solicitations at an appropriate point in time which may vary depending upon the circumstances, while assuring that the consumer is given a realistic opportunity to prevent such use of this information. The Agencies also believe that providing examples for what constitutes a reasonable opportunity to opt out may be useful by illustrating how the opt out might work in different situations and by providing a safe harbor for opt out periods of 30 days in certain situations. Although 30 days is a safe harbor, a person subject to this requirement may decide, at its option, to give consumers more than 30 days in which to decide whether or not to opt out. Whether a shorter waiting period would be adequate in certain situations depends on the circumstances.

Proposed paragraphs (b)(1) and (2) contain examples of reasonable opportunities to opt out by mail or by electronic means. These examples are consistent with examples used in the GLB Act privacy rules.

The example of a reasonable opportunity to opt out for notices given by electronic means in paragraph (b)(2) is triggered by the consumer's acknowledgement of receipt of the electronic notice. Several commenters on the October 2000 proposal sought clarification of an identical acknowledgement of receipt reference in the electronic delivery example, suggesting that such a reference would be inconsistent with the E-Sign Act and beyond the scope of the Agencies' interpretive authority. The current proposal retains the acknowledgement reference. This reference is consistent with an example in the GLB Act privacy regulations and the Agencies' determination that electronic delivery of the FCRA affiliate-marketing opt out notices would not require consumer consent in accordance with E-Sign, because nothing in section 624 of the Act requires that the notice be provided in writing. Moreover, this reference is contained in an example. Thus, affiliates subject to this rule retain flexibility to determine the form of consumer agreement.

Proposed paragraph (b)(3) would provide an example of a reasonable opportunity to opt out where, in a transaction that is conducted electronically, the consumer is required to decide, as a necessary part of proceeding with the transaction, whether or not to opt out before completing the transaction, so long as the institution provides a simple process at the Internet web site that the consumer may use at that time to opt out. In this example, the opt out notice would automatically be provided to the consumer, such as through a non-bypassable link to an intermediate webpage, or "speedbump." The consumer would be given a choice of either opting out or not opting out at that time through a simple process conducted at the web site. For example, the consumer could be required to check a box right at the Internet web site in order to opt out or decline to opt out before continuing with the transaction. However, this example would not cover a situation where the consumer is required to send a separate e-mail or visit a different Internet web site in order to opt out. The Agencies seek comment on this example and whether additional protections or clarifications are needed.

Proposed paragraph (b)(4) illustrates that including the affiliate marketing opt out notice in a notice under the GLB Act will satisfy the reasonable opportunity standard. In such cases, the consumer should be allowed to exercise the opt out in the same manner and be given the same amount of time to exercise the opt out as is provided for any other opt out provided in the GLB Act privacy notice. This example is consistent with the statutory requirement that the Agencies consider methods for coordinating and combining notices.

Proposed paragraph (b)(5) illustrates how an "opt in" can meet the requirement to provide a reasonable opportunity to opt out. Specifically, if an institution has a policy of not allowing its affiliates to use eligibility information to market to consumers without the consumer's affirmative consent, providing the consumer with an opportunity to "opt in" or affirmatively consent to such use constitutes a reasonable opportunity to opt out. The consumer's affirmative consent must be documented, and a pre-selected check box is not evidence of the consumer's affirmative consent.

The proposed regulations do not require institutions subject to this rule to disclose in their opt out notices how long a consumer has to respond to the opt out notice before eligibility information communicated to other affiliates will be used to make or send solicitations to the consumer. Institutions, however, have the flexibility to include such disclosures in their notices. In this respect, the proposed regulations are consistent with the GLB Act privacy regulations.

Section __.23 Reasonable and Simple Methods of Opting Out

Proposed paragraph (a) sets forth reasonable and simple methods of opting out. These examples generally track the examples of reasonable opt out means from section

7(a)(2)(ii) of the GLB Act privacy regulations with certain revisions to give effect to Congress's mandate that methods of opting out be simple. For simplicity, the example in paragraph (a)(2) contemplates including a self-addressed envelope with the reply form and opt out notice. In addition, the Agencies contemplate that a toll-free telephone number would be adequately designed and staffed to enable consumers to opt out in a single phone call.

Proposed paragraph (b) sets forth methods of opting out that are not reasonable and simple. Such methods include requiring the consumer to write a letter to the institution or to call or write to obtain an opt out form rather than including it with the notice. In addition, a consumer who agrees to receive the opt out notice in electronic form only, such as by electronic mail or a process at a web site, should be allowed to opt out by the same or a substantially similar electronic form and should not be required to opt out solely by telephone or paper mail.

Section __.24 Delivery of Opt out Notices

Proposed paragraph (a) provides that an institution must deliver an opt out notice so that each consumer can reasonably be expected to receive actual notice. For opt out notices delivered electronically, the notices may be delivered either in accordance with the electronic disclosure provisions in this subpart or in accordance with the E-Sign Act. For example, the institution may e-mail its notice to a consumer who has agreed to the electronic delivery of information or provide the notice on its Internet web site for the consumer who obtains a product or service electronically from that web site.

As indicated by the examples provided in proposed paragraph (b), the 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.

Several commenters on the October 2000 proposal sought clarification of the acknowledgement of receipt reference in the electronic delivery example in proposed paragraph (b)(1)(iii), suggesting that it would be inconsistent with the E-Sign Act and beyond the scope of the Agencies' interpretive authority. As discussed above with respect to the requirement in proposed § ___.22 to provide a reasonable opportunity to opt out, the current proposal retains the acknowledgement reference. This reference is consistent with an example in the GLB Act privacy regulations and the Agencies' determination that electronic delivery of the FCRA opt out notices would not require consumer consent in accordance with E-Sign, because nothing in section 624 of the Act requires that the notice be provided in writing. Moreover, this reference is contained in an example, thus persons subject to the rule retain flexibility to determine the method of delivery that will provide a reasonable expectation of actual 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 institutions 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 each family of companies with a common name or the institution.

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 joint checking account. For example, a person subject to this rule may provide a single opt out notice to joint accountholders. The notice must indicate whether the person will consider an opt out by a joint accountholder as an opt out by all of the associated accountholders, or whether each accountholder may opt out separately. The person may not require all accountholders to opt out before honoring an opt out direction by one of the joint accountholders. 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 ___.25 Duration and Effect of Opt out

Proposed § ___.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 successive opt out election.

Proposed paragraph (b) provides that a receiving affiliate may not make or send solicitations to a consumer during the opt out period based on eligibility information it receives from an affiliate, except as provided in the exceptions in § ___.20(c) or if the opt out is revoked by the consumer. Under this paragraph, the opt out is tied to the consumer, not to the information. Thus, if a consumer initially elects to opt out, but does not extend the opt out upon expiration of the opt out period, a receiving affiliate may use all eligibility information it has received about the consumer from its affiliate, including eligibility information that it received during the opt out period. However, if the consumer subsequently opts out again some time after the initial opt out period has lapsed, a receiving affiliate may not use any eligibility information about the consumer it has received from an affiliate on or after the mandatory compliance date for the regulations under Subpart C, including information it received during the period in which no opt out election was in effect.[10]

Proposed paragraph (c) clarifies that a consumer may opt out at any time. Thus, even if the consumer did not opt out in response to the initial opt out notice or if the consumer's election to opt out is not prompted by an opt out notice, a consumer may still opt out. Regardless of when the consumer opts out, the opt out period must be effective for an opt out period of at least 5 years.

Proposed paragraph (d) describes how the termination of a consumer relationship affects the consumer's opt out. Specifically, if a consumer's relationship with an institution terminates for any reason when a consumer's opt out election is in force, the opt out will continue to apply indefinitely, unless revoked by the consumer.

Section ___.26 Extension of Opt out

Proposed § ___.26 describes the procedures for extension of an opt out. Proposed paragraph (a) provides that a receiving affiliate may not make or send solicitations to the consumer after the expiration of the opt out period based on eligibility information it receives or has received from an affiliate, unless the person responsible for providing the initial opt out notice, or its successor, has given the consumer an extension notice and a reasonable opportunity to extend the opt out, and the consumer does not extend the opt out. If an extension notice is not provided to the consumer, the opt out period continues indefinitely. The requirement to provide an extension notice also applies when a consumer fails to opt out initially, but at a subsequent point in time informs the institution of his or her decision to opt out, which would be effective for a period of at least 5 years. The consumer may extend the opt out at the expiration of each successive opt out period. Paragraph (b) also provides that each opt out extension must comply with § ___.25(a), which means that it must be effective for a period of at least 5 years.

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[10] Section 624(a)(5) of the FCRA contains a non-retroactivity provision, which provides 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.

Proposed paragraph (c) addresses the contents of an extension notice. A notice under paragraph (c) must be clear and conspicuous, and concise. Paragraph (c) provides some flexibility in the design and contents of the notice. Under one approach, the notice must accurately disclose the same items required to be disclosed in the initial opt out notice under § ___.21(a), along with a statement explaining that the consumer's prior opt out has expired or is about to expire, as applicable, and that if the consumer wishes to keep the consumer's opt out election in force, the consumer must opt out again. Under another approach, the extension notice would provide: (1) that the consumer previously elected to limit an affiliate from using eligibility information about the consumer that it obtains from the communicating affiliate to make or send solicitations to the consumer; (2) that the consumer's election has expired or is about to expire, as applicable; (3) that the consumer may elect to extend the consumer's previous election; and (4) a reasonable and simple method for the consumer to opt out. The Agencies propose to give institutions the flexibility to decide which of these notices best meets their needs.

Institutions do not need to provide extension notices if they treat the consumer's opt out election as valid in perpetuity, unless revoked by the consumer. Comment is requested on whether institutions plan to limit the duration of the opt out or not, and on the relative burdens and benefits of the two approaches.

Proposed paragraph (d) addresses the timing of the extension notice and provides that an extension notice can be given to the consumer either a reasonable period of time before the expiration of the opt out period, or any time after the expiration of the opt out period but before solicitations that would have been prohibited by the expired opt out are made to the consumer. Providing the extension notice a reasonable period of time before the expiration of the opt out period is appropriate to facilitate the smooth transition of consumers that choose to change their election.

An extension notice given too far in advance of the expiration of the opt out period, however, may be confusing to consumers. The Agencies do not propose to set a fixed time for what would constitute a reasonable period of time before the expiration of the opt out period to send an extension notice, because a reasonable period of time may depend upon the amount of time afforded to the consumer for a reasonable opportunity to opt out, the amount of time necessary to process opt outs, and other factors. Nevertheless, providing an extension notice on or with the last annual privacy notice required by the GLB Act privacy provisions sent to the consumer before the expiration of the opt out period shall be deemed reasonable in all cases. Proposed paragraph (e) makes clear that sending an extension notice to the consumer before the expiration of the opt out period does not shorten the 5-year opt out period.

Including an affiliate marketing opt out notice or an extension notice on an initial or annual notice under the GLB Act raises special issues, because GLB Act notices typically state that the consumer does not need to opt out again if the consumer previously opted out. This statement would be accurate if the institution and its affiliates choose to make the affiliate marketing opt out effective in perpetuity. However, if the opt out period is limited to a defined period of 5 years or more, such a statement would not be accurate with respect to the extension notice, and the notice would have to make clear to the consumer the necessity of opting out again in order to extend the opt out.

Section __.27 Consolidated and Equivalent Notices

Proposed § ___.27 implements section 624(b) of the Act, and provides that a notice required by this subpart may be coordinated and consolidated with any other notice or disclosure required to be issued under any other provision of law, including but not limited to the notice described in section 603(d)(2)(A)(iii) of the Act and the notice required by title V of the GLB Act. A notice or other disclosure that is equivalent to the notice required by this subpart, and that is provided to a consumer together with disclosures required by any other provision of law, shall satisfy the requirements of this subpart.

Comment is solicited on whether the affiliate marketing notice will be consolidated with the GLB Act privacy notice or the affiliate sharing opt out notice under section 603(d)(2)(A)(iii) of the FCRA, whether the Agencies have provided sufficient guidance on consolidated notices, and whether consolidation would be helpful to consumers.

Effective Date

Consistent with the requirements of section 624 of the FACT Act, the proposed regulations will become effective 6 months after the date on which they are issued in final form. Comment is requested on whether there is any need to delay the compliance date beyond the effective date to permit institutions to incorporate the affiliate marketing notice into their next annual GLB Act privacy notice.

Appendix A

The Agencies are proposing model forms to illustrate by way of example how institutions may comply with the notice and opt out requirements of section 624 and the proposed regulations. Appendix A includes three proposed model forms. Model Form

A-1 is a proposed form of an initial opt out notice. Model Form A-2 is a proposed form of an extension notice; it may be used when the consumer's prior opt out has expired or is about to expire. Model Form A-3 is a proposed form that institutions may use if they offer consumers a broader right to opt out of marketing than is required by law.

Use of the model forms is not mandatory. Institutions have the flexibility to use or not use the model forms, or to modify the forms, so long as the requirements of the regulation are met. For example, although Model Forms A-1 and A-2 use 5 years as the duration of the opt out period, institutions are free to choose an opt out period of longer than 5 years and substitute the longer time period in the opt out notices. Alternatively, institutions may choose to treat the consumer's opt out as effective in perpetuity and thereby omit any reference to the limited duration of the opt out period or the right to extend the opt out in the initial opt out notice.

Each of the proposed model forms is designed as a stand-alone form. The Agencies anticipate that some institutions may want to combine the opt out form with their GLB Act privacy notice. If so combined, the Agencies expect that institutions would integrate the affiliate marketing opt out notice with other required disclosures and avoid repetition of certain information, such as the methods for opting out. Developing a model form that combines various opt out notices, however, is beyond the scope of this rulemaking.

The proposed model forms have been designed to convey the necessary information to consumers as simply as possible. The Agencies have tested the proposed model forms using two widely available readability tests, the Flesch reading ease test and the Flesch-Kincaid grade level test, each of which generates a score.[11] Proposed Model Form A-1 has a Flesch reading ease score of 53.7 and a Flesch-Kincaid grade level score of 9.9. Proposed Model Form A-2 has a Flesch reading ease score of 57.5 and a Flesch-Kincaid grade level score of 9.6. Proposed Model Form A-3 has a Flesch reading ease score of 69.9 and a Flesch-Kincaid grade level score of 6.7. Ideally, the Agencies would test the proposed model forms both alone and in conjunction with other opt out notices under the FCRA and GLB Act. Consumer testing may result in better, more readable notices. However, such testing is unlikely to be completed before this rule is issued in final form.

The Agencies recognize the benefits of working with communications experts and conducting consumer testing in developing appropriate language for a consumer opt out notice. Comment is solicited on the form and content of the proposed model forms based on commenters' work with communications experts and experience with consumer testing. Comment is also requested on whether institutions would combine the affiliate marketing notice with other opt out notices or issue a separate affiliate marketing opt out notice, and how those two approaches may affect consumer comprehension of the notices and their rights. In developing a final rule, the Agencies will carefully consider any consumer testing that may suggest ways to improve the proposed model forms, including efforts by consumer groups and industry, as well as the Agencies' own initiative to consider alternative forms of privacy notices under the GLB Act. See 68 FR 75164 (Dec. 30, 2003).

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[11] The 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

List of Subjects

12 CFR Part 41

Banks, banking, Consumer protection, National banks, Reporting and recordkeeping requirements.

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the preamble, the OCC proposes to amend part 41 of Chapter I of title 12 of the Code of Federal Regulations as follows:

PART 41—FAIR CREDIT

1. The authority citation for part 41 is revised to read as follows:

Authority: 12 U.S.C. 1 et seq., 24(Seventh), 93a, 481, 484, and 1818; 15 U.S.C. 1681a, 1681b, 1681s, and 1681t.

2. Sections 41.1 and 41.2 are restated, without change, to read as follows:

§ 41.1 Purpose, scope, and effective dates.

(a) [Reserved]

(b) Scope.

(1) [Reserved]

(2) Institutions covered. Except as otherwise provided in this part, these regulations apply to national banks, Federal branches and agencies of foreign banks, and their respective operating subsidiaries that are not functionally regulated within the

grade-level at which the text is written.

meaning of section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5)).

* * * * *

§ 41.2 Examples.

The examples in this part are not exclusive. 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.

3. Revise § 41.3 to read as follows:

§ 41.3 Definitions.

For purposes of this subpart C, unless explicitly stated 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) [Reserved]

(g) [Reserved]

(h) [Reserved]

(i) Control 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, as the OCC determines.

(j) <u>Eligibility information</u> 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.

(k) [Reserved]

(l) <u>Person</u> means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(m) <u>Pre-existing business relationship</u> 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 subpart C of 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 subpart C of 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 three-month period immediately preceding the date on which a solicitation covered by subpart C of this part is made or sent to the consumer.

(n) Solicitation—(1) 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 subpart C of this part; and

(ii) Intended to encourage the consumer to purchase or obtain 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 and services from the person initiating the communications.

(3) Examples of solicitations. A solicitation would include, for example, 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.

4. The title to subpart C is revised, new §§ 41.20 through 41.27 are added, and a new appendix to subpart C of 12 CFR part 41 is added to read as follows:

Subpart C—Affiliate Use of Eligibility Information for Marketing

Sec.

§ 41.20 Affiliate use of eligibility information for marketing

§ 41.21 Contents of opt out notice

§ 41.22 Reasonable opportunity to opt out

§ 41.23 Reasonable and simple methods of opting out

§ 41.24 Delivery of opt out notices

§ 41.25 Duration and effect of opt out

§ 41.26 Extension of opt out

§ 41.27 Consolidated and equivalent notices

Subpart C—Affiliate Use of Eligibility Information for Marketing

§ 41.20 Affiliate use of eligibility information for marketing.

For purposes of this subpart, Bank means national banks, Federal branches and agencies of foreign banks, and their respective operating subsidiaries that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5)).

(a) General duties of a person communicating eligibility information to an affiliate—(1) Notice and opt out. If a bank communicates eligibility information about a consumer to its affiliate, the bank's affiliate may not use the information to make or send solicitations to the consumer, unless prior to such use by the affiliate:

(i) The bank provides a clear and conspicuous notice to the consumer stating that the information may be communicated to and used by the bank's affiliate to make or send solicitations to the consumer about its products and services;

(ii) The bank provides the consumer a reasonable opportunity and a simple method to "opt out" of such use of that information by its affiliate; and

(iii) The consumer has not chosen to opt out.

(2) Rules of construction—(i) General. The notice required by this paragraph may be provided either in the name of a person with which the consumer currently does or previously has done business or in one or more common corporate names shared by members of an affiliated group of companies that includes the common corporate name used by that person, and may be provided in the following manner:

(A) A bank may provide the notice directly to the consumer;

(B) A bank's agent may provide the notice on the bank's behalf, so long as—

(*1*) The bank's agent, if an affiliate of the bank, does not include any solicitation other than the bank's on or with the notice, unless it falls within one of the exceptions in paragraph (c) of this section; and

(*2*) The bank's agent gives the notice in the bank's name or a common name or names used by the family of companies; or

(C) A bank may provide a joint notice with one or more of the bank's affiliates or under a common name or names used by the family of companies as provided in § 41.24(c).

(ii) Avoiding duplicate notices. If Affiliate A communicates eligibility 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:

(A) Permit B to use the information to make solicitations if:

(*1*) A has provided the opt out notice directly to the consumer; or

(*2*) B or C has provided the opt out notice on behalf of A.

(B) Permit B or C to use the information to make solicitations if:

(*1*) A's notice is broad enough to cover both B's and C's use of the eligibility information; or

(*2)* A, B, or C has provided a joint opt out notice on behalf of the entire affiliated group of companies.

(C) Not permit B or C to use the information for marketing purposes if B has provided the opt out notice only in B's own name, because no notice would have been provided by or on behalf of A.

(b) General duties of an affiliate receiving eligibility information. If the bank receives eligibility information from an affiliate, the bank may not use the information to make or send solicitations to a consumer, unless the consumer has been provided an opt out notice, as described in paragraph (a) of this section, that applies to the bank's use of eligibility information and the consumer has not opted-out.

(c) Exceptions. The provisions of this subpart C do not apply if a bank uses eligibility information it receives from an affiliate:

(1) To make or send a marketing solicitation to a consumer with whom a bank has a pre-existing business relationship as defined in § 41.3(m);

(2) To facilitate communications to an individual for whose benefit a bank provides employee benefit or other services pursuant to a contract with an employer related to and arising out of the current employment relationship or status of the individual as a participant or beneficiary of an employee benefit plan;

(3) To perform services on behalf of an affiliate, except that this paragraph shall not be construed as permitting a bank to make or send solicitations on its behalf or on behalf of an affiliate if the bank or the affiliate, as applicable, would not be permitted to make or send the solicitation as a result of the election of the consumer to opt out under this subpart C;

(4) In response to a communication initiated by the consumer orally, electronically, or in writing;

(5) In response to an affirmative authorization or request by the consumer orally, electronically, or in writing to receive a solicitation; or

(6) If a bank's compliance with this subpart C would prevent it from complying with any provision of state insurance laws pertaining to unfair discrimination in any state in which the bank is lawfully doing business.

(d) Examples of exceptions—(1) Examples of pre-existing business relationships. (i) If a consumer has an insurance policy with a bank's insurance affiliate that is currently in force, the bank's insurance affiliate has a pre-existing business relationship with the consumer and can therefore use eligibility information it has received from the bank to make solicitations.

(ii) If a consumer has an insurance policy with a bank's insurance affiliate that has lapsed, the bank's insurance affiliate has a pre-existing business relationship with the consumer for 18 months after the date on which the policy ceases to be in force and can therefore use eligibility information it has received from the bank to make solicitations for 18 months after the date on which the policy ceases to be in force.

(iii) If a consumer applies to the bank's affiliate for a product or service, or inquires about the affiliate's products or services and provides contact information to the bank's affiliate for receipt of that information, the bank's affiliate has a pre-existing business relationship with the consumer for three months after the date of the inquiry or application and can therefore use eligibility information it has received from the bank to make solicitations for three months after the date of the inquiry or application.

(iv) If a consumer makes a telephone call to a centralized call center for an affiliated group of companies to inquire about the consumer's bank account, the call does not constitute an inquiry with any affiliate other than the bank that holds the consumer's bank account and does not establish a pre-existing business relationship between the consumer and any affiliate of the bank.

(2) Examples of consumer-initiated communications. (i) If a consumer who has an account with the bank initiates a telephone call to the bank's securities affiliate to

request information about brokerage services or mutual funds and provides contact information for receiving that information, the bank's securities affiliate may use eligibility information about the consumer it obtains from the bank to make solicitations in response to the consumer-initiated call.

(ii) If the bank's affiliate makes the initial marketing call, leaves a message for the consumer to call back, and the consumer responds, the communication is not initiated by the consumer, but by the bank's affiliate.

(iii) If the consumer calls the bank's affiliate to ask about the affiliate's retail locations and hours, but does not request information about the bank's affiliate's products or services, solicitations by the bank's affiliate using eligibility information about the consumer it obtains from the bank would not be responsive to the consumer-initiated communication.

(3) Example of consumer affirmative authorization or request. If a consumer who obtains a mortgage from a bank requests or affirmatively authorizes information about homeowner's insurance from the bank's insurance affiliate, such authorization or request, whether given to the bank or to the bank's insurance affiliate, would permit the bank's insurance affiliate to use eligibility information about the consumer it obtains from the bank to make solicitations about homeowner's insurance to the consumer. A pre-selected check box would not satisfy the requirement for an affirmative authorization or request.

(e) Prospective application. The provisions of this subpart C shall not prohibit a bank's affiliate from using eligibility information communicated by the bank to make or send solicitations to a consumer if such information was received by the bank's affiliate prior to [INSERT MANDATORY COMPLIANCE DATE].

(f) Relation to affiliate-sharing notice and opt out. Nothing in this subpart C limits the responsibility of a company to comply with the notice and opt out provisions of section 603(d)(2)(A)(iii) of the Act before it shares information other than transaction or experience information among affiliates to avoid becoming a consumer reporting agency.

§ 41.21 Contents of opt out notice.

(a) General. A notice must be clear, conspicuous, and concise, and must accurately:

(1) Disclose that the consumer may elect to limit a bank's affiliate from using eligibility information about the consumer that it obtains from the bank to make or send solicitations to the consumer;

(2) Disclose 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) Include a reasonable and simple method for the consumer to opt out.

(b) Concise—(1) General. For purposes of this subpart C, the term "concise" means a reasonably brief expression or statement.

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

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

(c) Providing a menu of opt out choices. With respect to the opt out election, a bank 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 the bank offers 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 a bank provides the consumer with a broader right to opt out of marketing than is required by law, the bank satisfies 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. A model notice is provided in Appendix A of this part for guidance, although use of the model notice is not required.

§ 41.22 Reasonable opportunity to opt out.

(a) General. Before a bank's affiliate uses eligibility information communicated by the bank to make or send solicitations to a consumer, the bank must provide the consumer with a reasonable opportunity, following the delivery of the opt out notice, to opt out of such use by the bank's affiliate.

(b) Examples of a reasonable opportunity to opt out. A bank provides a consumer with a reasonable opportunity to opt out if:

(1) By mail. The bank mails the opt out notice to a consumer and gives the consumer 30 days from the date the bank mailed the notice to elect to opt out by any reasonable means.

(2) By electronic means. The bank notifies the consumer electronically and gives 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. The bank provides the opt out notice to the consumer at the time of an electronic transaction, such as a transaction conducted on a Web site, and requests that the consumer decide, as a necessary part of proceeding with the transaction, whether to opt out before completing the transaction, so long as the bank provides 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. The bank includes the opt out notice in a Gramm-Leach-Bliley Act privacy notice (12 CFR 40 subpart A) and allows 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 (15 USC 1681 et seq.).

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

§ 41.23 Reasonable and simple methods of opting out.

(a) <u>Reasonable and simple methods of opting out</u>. A bank provides a reasonable and simple method for a consumer to exercise a right to opt out if it:

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

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

(3) Provides an electronic means to opt out, such as a form that can be electronically mailed or processed at the bank's Web site, if the consumer agrees to the electronic delivery of information; or

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

(b) <u>Methods of opting out that are not reasonable or simple</u>. A bank does not provide a reasonable and simple method for exercising an opt out right if it:

(1) Requires the consumer to write a letter to the bank;

(2) Requires the consumer to call or write the bank to obtain a form for opting out, rather than including the form with the notice; or

(3) Requires the consumer who agrees to receive the opt out notice in electronic form only, such as by electronic mail or at the bank's Web site, to opt out solely by telephone or by paper mail.

§ 41.24 Delivery of opt out notices.

(a) <u>General</u>. A bank must provide an opt out notice so that each consumer can reasonably be expected to receive actual notice. For opt out notices the bank provides electronically, it may either comply with the electronic disclosure provisions in this subpart C or with the provisions in section 101 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq.

(b) Examples of expectation of actual notice. (1) A bank may reasonably expect that a consumer will receive actual notice if it:

(i) Hand-delivers a printed copy of the notice to the consumer;

(ii) Mails a printed copy of the notice to the last known mailing address of the consumer; or

(iii) For the consumer who obtains a product or service from a bank electronically, such as at an Internet Web site, post the notice on the bank's electronic Web site and require the consumer to acknowledge receipt of the notice as a necessary step for obtaining a particular product or service.

(2) A bank may not reasonably expect that a consumer will receive actual notice if it:

(i) Only posts a sign in its branch or office or generally publishes advertisements presenting the notice; or

(ii) Sends the notice via electronic mail to a consumer who has not agreed to the electronic delivery of information.

(c) Joint notice with affiliates—(1) General. A bank may provide a joint notice from it and one or more of the bank's affiliates, as identified in the notice, so long as the notice is accurate with respect to the bank and each affiliate.

(2) Identification of affiliates. A bank does not have to list each affiliate providing 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 institutions 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 each family of companies with a common name or the institution.

(d) Joint relationships—(1) General. If two or more consumers jointly obtain a product or service from a bank (joint consumers), the following rules apply:

(i) The bank may provide a single opt out notice.

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

(iii) The bank 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 a bank permits each joint consumer to opt out separately, the bank 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 the bank of their opt out directions in a single response.

(v) A bank must explain in its opt out notice which of the policies in paragraph (d)(1)(iii) of this section the bank will follow, as well as the information required by paragraph (d)(1)(iv) of this section.

(vi) A bank may not require all joint consumers to opt out before it implements any opt out direction.

(vii) If a bank receives an opt out by a particular joint consumer that does not apply to the others, the bank 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 checking account with a bank and arrange for the bank to send statements to A's address, the bank may do any of the following, but the bank must explain in the bank's opt out notice which opt out policy the bank will follow. The bank may send a single opt out notice to A's address and:

(i) Treat an opt out direction by A as applying to the entire account. If the bank does so and A opts out, the bank may not require B to opt out as well before implementing A's opt out direction.

(ii) Treat A's opt out direction as applying to A only. If a bank does so, it must also permit:

(A) A and B to opt out for each other; and

(B) A and B to notify the bank of their opt out directions in a single response (such as on a single form) if they choose to give separate opt out directions.

(iii) If A opts out only for A, and B does not opt out, the bank's affiliate may use information only about B to send solicitations to B, but may not use information about A and B jointly to send solicitations to B.

§ 41.25 Duration and effect of opt out.

(a) Duration of opt out. The election of a consumer to opt out shall be effective for the opt out period, which is a period of at least five years beginning as soon as reasonably practicable after the consumer's opt out election is received. A bank may establish an opt out period of more than five years, including an opt out period that does not expire unless the consumer revokes it in writing, or if the consumer agrees, electronically.

(b) Effect of opt out. A receiving affiliate may not make or send solicitations to a consumer during the opt out period based on eligibility information it receives from an affiliate, except as provided in the exceptions in § 41.20(d) or if the opt out is revoked by the consumer.

(c) Time of opt out. A consumer may opt out at any time.

(d) Termination of relationship. If the consumer's relationship with a bank terminates when a consumer's opt out election is in force, the opt out will continue to apply indefinitely, unless revoked by the consumer.

§ 41.26 Extension of opt out.

(a) General. For a consumer who has opted out, a receiving affiliate may not make or send solicitations to the consumer after the expiration of the opt out period based on eligibility information it receives or has received from an affiliate, unless the person responsible for providing the initial opt out notice, or its successor, has given the consumer an extension notice and a reasonable opportunity to extend the opt out, and the consumer does not extend the opt out.

(b) Duration of extension. Each opt out extension shall comply with § 41.25(a).

(c) Contents of extension notice. The notice provided at extension must be clear, conspicuous, and concise, and must accurately disclose either:

(1) The same contents specified in § 41.21(a) for the initial notice, along with a statement explaining that the consumer's previous opt out has expired or is about to

expire, as applicable, and that the consumer must opt out again if the consumer wishes to keep the opt out election in force; or

(2) Each of the following items:

(i) That the consumer previously elected to limit a bank's affiliate from using information about the consumer that it obtains from the bank to make or send solicitations to the consumer;

(ii) That the consumer's election has expired or is about to expire, as applicable;

(iii) That the consumer may elect to extend the consumer's previous election; and

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

(d) Timing of the extension notice—(1) General. An extension notice may be provided to the consumer either:

(i) A reasonable period of time before the expiration of the opt out period; or

(ii) Any time after the expiration of the opt out period but before any affiliate makes or sends solicitations to the consumer that would have been prohibited by the expired opt out.

(2) Reasonable period of time before expiration. Providing an extension notice on or with the last annual privacy notice required by the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 et seq., that is provided to the consumer before expiration of the opt out period shall be deemed reasonable in all cases.

(e) No effect on opt out period. The opt out period may not be shortened to a period of less than five years by sending an extension notice to the consumer before expiration of the opt out period.

§ 41.27 Consolidated and equivalent notices.

(a) Coordinated and consolidated notices. A notice required by this subpart C may be coordinated and consolidated with any other notice or disclosure required to be issued under any other provision of law, including but not limited to the notice described in section 603(d)(2)(A)(iii) of the Act and the Gramm-Leach-Bliley Act privacy notice.

(b) Equivalent notices. A notice or other disclosure that is equivalent to the notice required by this subpart C, and that a bank provides to a consumer together with disclosures required by any other provision of law, shall satisfy the requirements of this subpart C.

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Appendix A to 12 CFR part 41 – Model Forms for Opt out Notices

A-1: Model Form for Initial Opt out Notice

Your Choice to Limit Marketing

- You may limit our affiliates from marketing their products or services to you based on information that we share with them, such as your income, your account history with us, and your credit score.
- [Include if applicable.] Your decision to limit marketing offers from our affiliates will apply for 5 years. Once that period expires, you will be allowed to extend your decision.
- [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 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.