



Compliance News...

FACT Act Section 214 – Affiliate Marketing Provisions

In our December 2007 newsletter, we alerted you that the final rule implementing the [affiliate marketing provisions](#)¹ of the FACT Act had been released (Section 214). The final rule became effective January 1, 2008, but compliance is not mandatory until October 1, 2008. These provisions only apply if you receive consumer information from an affiliate and you use that information for marketing purposes. If you don't share information with affiliates you can stop reading because these provisions do not apply to you.

This section states if your institution receives “eligibility information”² from an affiliate, you may not use this information to market your products and/or services to the consumer. But, there are always exceptions. You may use this information for marketing purposes if you allow the customer to opt-out and they don't (very much like the Privacy rules). This section does not prohibit the use of information based on a consumer's transactions and experiences with the affiliates.

Requirements:

These rules are a little different than the Privacy opt-out rules. If the consumer elects to opt-out of affiliate marketing, it is only effective for five years. At the end of the five years, you must give the consumer another opportunity to opt-out. You may decide to establish an opt-out period greater than five years or indefinitely. The key thing to remember is that a five year opt-out period is the minimum and the consumer must be allowed to opt-out at any time.

For joint accounts, you have the ability to decide if one party's opt-out will apply to all other parties on the account or if each party will have the ability to opt-out individually. Whichever option is used, it is important to note you may not require all parties to opt-out before you start the opt-out period. The opt-out provided to the consumer should address how you will handle joint account opt-outs.

For those of you thinking, “not another disclosure”, there is some relief. The Affiliate Marketing notice can be incorporated into your Privacy notice. The notice must make it clear that your institution may use certain information received from an affiliate to make solicitations for marketing purposes. The notice is required to contain the following information:

1. The name of the affiliate(s) providing the notice;
2. A list of the affiliate(s) [present or future] whose use of information is covered by the notice;
3. A general description of the types of information that may be used to make solicitations to the consumer;
4. The fact that the consumer may elect to limit the use of the information;
5. That the consumer's election will apply for the specified period of time stated in the notice and, if applicable, that the consumer will be allowed to review the election once the period expires; and,
6. A reasonable and simple method for the consumer to opt-out.

Exceptions:

There are many exceptions to these provisions. The requirements mentioned above do not apply if you use the information you receive from an affiliate:

1. To market to a consumer whom both affiliates have a pre-existing business relationship with;
2. To facilitate communications to an individual for whose behalf you provide an 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 (this does not include sending solicitations for an affiliate that normally could not be based on a consumers opt-out election);
4. In response to a communication about your products or services initiation by the consumer;
5. In response to an authorization or request by the consumer to receive solicitations; or,
6. If your compliance with this part would prevent you from complying with any provisions of State insurance laws pertaining to unfair discrimination in any State in which you are lawfully doing business.

As of the date of this newsletter, you have eight months to be in compliance with these provisions. We would recommend starting now. Here are some steps to help you get started:

1. Identify those affiliates from whom you receive information;
2. Determine if you are using this information for marketing purposes and if you want to continue; and,
3. Determine how the notices will be provided (joint with your affiliates or separate), how will you provide the opt-out notice, etc.

This will save you a lot of time and headaches once October 1st rolls around. We are providing a FACT Act seminar in April. This seminar will cover the Affiliate Marketing requirements and the new ID Theft Red Flag requirements. Additionally, the seminar will briefly discuss all previously issued FACT Act sections as well as those yet to be released.

For more information on our FACT Act Seminar:

http://www.bankerscompliance.com/assets/files/Seminars/2008_FACT_Act.pdf

Footnotes:

¹ <http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/07-5349.pdf>

² Eligibility information is information that personally identifies a consumer such as a phone number, social security number, address, driver's license number, etc.

HMDA & CRA Threshold Adjustments. . .

The asset-size threshold for both HMDA and CRA were adjusted effective January 1, 2008:

HMDA – An institution with an office located in a Metropolitan Statistical Area (MSA) with assets of \$37 million or less as of December 31, 2007, will not be subject to HMDA in 2008.

CRA –As of December 31, 2007, (of either the two prior calendar years) the following assets size thresholds determine a bank's classification for CRA purposes:

Small Bank - less than \$1.061 billion in assets;

Intermediate Small Bank - at least \$265 million and less than \$1.061 billion in assets;

Large Bank – greater than \$1.061 in assets.

2007 HMDA & CRA Data is Due March 1, 2008. . .

If your bank is required to collect and submit data under the Home Mortgage Disclosure Act (HMDA) or the Community Reinvestment Act (CRA), you have a deadline quickly approaching! The HMDA and CRA data your bank collected in 2007 must be submitted no later than March 1, 2008. If you haven't already done so, now is a good time to analyze and evaluate your 2007 data to ensure that you have as few errors as possible.

Managing Flood Insurance. . .

The FDIC recently released a Financial Institution Letter (FIL) entitled, "Managing Risks Associated with Lapses in Flood Insurance Coverage". With all the scrutiny that has followed the flood insurance rules the last several years, it would seem the suggestions in the FIL seem to be very common sense. However, based on the number of banks that are continuing to get hit with civil money penalties, it is obvious that this is still an area where banks are falling short. This FIL serves as a good reminder for all banks to periodically check your procedures and make sure they are still adequate. Whether you are regulated by the FDIC or not, we encourage you to read the FIL at: <http://www.fdic.gov/news/news/financial/2007/fil07114.pdf>