

## **Regulators Announce Revised Affiliate Marketing Rule Tuesday, January 15, 2008**

The federal bank regulatory agencies – Office of the Comptroller of the Currency, Office of Thrift Supervision, Federal Deposit Insurance Corporation, Federal Reserve Board, and National Credit Union Administration – have issued a new rule that provides consumers with an opportunity to opt-out before a financial institution uses certain information that is provided by an affiliated company to market its products and services.

These rules implement the affiliate marketing requirements of Section 624 of the Fair Credit Reporting Act (FCRA). The FTC has issued similar rules and the SEC is expected to do so shortly. The rules are effective on January 1, 2008, but all covered institutions have until October 1, 2008 to comply.

The affiliate marketing rule generally prohibits a financial institution from using eligibility information received from an affiliate to market to a consumer, unless an exception applies or the consumer receives notice and a reasonable opportunity to opt-out. The rule restricts the ability of an institution to use any information obtained from the consumer's transactions or account relationships with an affiliate, or in any credit reports or credit applications submitted by the consumer to an affiliate, for marketing purposes.

The rule incorporates all of the statutory exceptions to the affiliate marketing requirements contained in Section 624 of the FCRA. Since the rule governs the use, but not the sharing, of information by an affiliate, the

existing FCRA opt-out rules regarding the sharing of certain customer information continue in effect.

The affiliate marketing rule will impose significant additional compliance hurdles for cross-marketing of products and services among affiliates. The affiliate marketing and affiliate sharing opt-outs, and the information that triggers these opt-outs, overlap to some extent, and must be read in context. FCRA allows consumer transaction and experience information to be shared among affiliates without giving the consumer an opportunity to opt-out, but information from credit reports or credit applications may not be shared without giving the consumer the right to opt-out.

The affiliate marketing rules would restrict the use of all such information for marketing purposes, unless an exception applies or the consumer receives the opportunity to opt-out. These restrictions should not apply to the use of contact information such as names and addresses, or demographic information purchased for marketing purposes.