



RESCINDED #287

Office of Thrift Supervision
Department of the Treasury

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Rescinded 8/31/10 with the issuance of RB 37-60. Click to link to RB 37-60.

October 3, 2008

MEMORANDUM FOR: CHIEF EXECUTIVE OFFICERS

Montrice Godard Yakimov

FROM: Montrice Godard Yakimov, Managing Director
Compliance and Consumer Protection

**SUBJECT: FCRA Affiliate Marketing Regulation
Exam Procedures**

The “affiliate marketing” rules were issued last Fall by the federal financial institution regulatory agencies, Federal Trade Commission, and Securities and Exchange Commission.¹ These rules implement Section 624 of the Fair Credit Reporting Act (FCRA), as amended by the Fair and Accurate Credit Transactions Act of 2003. Section 624 gives a consumer the right to restrict an entity, such as a financial institution with which it does not have a pre-existing business relationship, from *using* certain information obtained from an affiliate to make solicitations to that consumer. Under Section 624, an entity may not use information received from an affiliate to market its products or services to a consumer, unless the consumer is given notice and a reasonable opportunity and a reasonable and simple method to opt out of receiving such solicitations.²

Model forms in the appendix to the rules provide a “safe harbor” for complying with the notice and opt-out requirement. The five model forms include initial and renewal notices for thrifts with one affiliate or multiple affiliates, and a voluntary “no marketing” notice. Compliance with the affiliate marketing rules is mandatory as of October 1, 2008.³

[Section 1300 of the Examination Handbook](#) includes procedures used by OTS examiners to assess compliance with the FCRA. These procedures are structured into the following series of modules, grouping similar requirements together:

¹ See 12 CFR 571.20 (version of the rules applicable to OTS supervised institutions).

² Under section 603(d)(2)(A)(iii) of the FCRA, entities are responsible for complying with the affiliate *sharing* notice and opt-out requirement, where applicable. Thus, under the FCRA, certain consumer information will be subject to two opt-outs: a sharing opt-out under section 603(d), and a marketing opt-out under section 624. These two opt-outs may be consolidated.

³ For more information about the rules, see CEO Memo 265, issued on December 20, 2007.

- Module 1 Obtaining Consumer Reports.
- Module 2 Obtaining Information and Sharing Among Affiliates.
- Module 3 Disclosures to Consumers and Miscellaneous Requirements.
- Module 4 Financial Institutions as Furnishers of Information.
- Module 5 Consumer Alerts and Identity Theft Protections.

Module 2 now includes guidance and examination procedures that address affiliate marketing rules. They are designed to assist you in assessing and monitoring your compliance program. Revisions to other modules will follow as the FACT Act regulations and examination procedures are finalized.

For additional information, please contact Suzanne McQueen, Consumer Regulations Analyst, at (202) 906-6459.