§ 571.28 Effective date, compliance date, and prospective application.

(a) Effective date. This subpart is effective January 1, 2008.

(b) Mandatory compliance date. Compliance with this subpart is required not later than October 1, 2008.

(c) Prospectively application. The provisions of this subpart shall not prohibit you from using eligibility information that you receive from an affiliate to make solicitations to a consumer if you receive such information prior to October 1, 2008. For purposes of this section, you are deemed to receive eligibility information when such information is placed into a common database and is accessible by you.

Subpart D—Medical Information

Source: 70 FR 70689, Nov. 22, 2005, unless otherwise noted.

§ 571.30 Obtaining or using medical information in connection with a determination of eligibility for credit.

(a) Scope. This section applies to:

(1) Any of the following that participates as a creditor in a transaction—

(i) A savings association;
(ii) A subsidiary owned in whole or in part by a savings association;
(iii) A savings and loan holding company;
(iv) A subsidiary of a savings and loan holding company other than a bank or subsidiary of a bank; or
(v) A service corporation owned in whole or in part by a savings association; or

(2) Any other person that participates as a creditor in a transaction involving a person described in paragraph (a)(1) of this section.

(b) General prohibition on obtaining or using medical information—(1) In general. A creditor may not obtain or use medical information pertaining to a consumer in connection with any determination of the consumer’s eligibility, or continued eligibility, for credit, except as provided in this section.

(2) Definitions. (i) Credit has the same meaning as in section 702 of the Equal Credit Opportunity Act, 15 U.S.C. 1691a.
(ii) Creditor has the same meaning as in section 702 of the Equal Credit Opportunity Act, 15 U.S.C. 1691a.
(iii) Eligibility, or continued eligibility, for credit means the consumer’s qualification or fitness to receive, or continue to receive, credit, including the terms on which credit is offered. The term does not include:

(A) Any determination of the consumer’s qualification or fitness for employment, insurance (other than a credit insurance product), or other non-credit products or services;

(B) Authorizing, processing, or documenting a payment or transaction on behalf of the consumer in a manner that does not involve a determination of the consumer’s eligibility, or continued eligibility, for credit;

(C) Maintaining or servicing the consumer’s account in a manner that does not involve a determination of the consumer’s eligibility, or continued eligibility, for credit.

(c) Rule of construction for obtaining and using unsolicited medical information—(1) In general. A creditor does not obtain medical information in violation of the prohibition if it receives medical information pertaining to a consumer in connection with any determination of the consumer’s eligibility, or continued eligibility, for credit without specifically requesting medical information.

(2) Use of unsolicited medical information. A creditor that receives unsolicited medical information in the manner described in paragraph (c)(1) of this section may use that information in connection with any determination of the consumer’s eligibility, or continued eligibility, for credit to the extent the creditor can rely on at least one of the exceptions in §571.30(d) or (e).

(3) Examples. A creditor does not obtain medical information in violation of the prohibition if, for example:

(i) In response to a general question regarding a consumer’s debts or expenses, the creditor receives information that the consumer owes a debt to a hospital;
(ii) In a conversation with the creditor’s loan officer, the consumer informs the creditor that the consumer has a particular medical condition; or
(iii) In connection with a consumer’s application for an extension of credit, the creditor requests a consumer report from a consumer reporting agency and receives medical information in the consumer report furnished by the agency even though the creditor did not specifically request medical information from the consumer reporting agency.

(d) Financial information exception for obtaining and using medical information—(1) In general. A creditor may obtain and use medical information pertaining to a consumer in connection with any determination of the consumer’s eligibility, or continued eligibility, for credit so long as:

(i) The information is the type of information routinely used in making credit eligibility determinations, such as information relating to debts, expenses, income, benefits, assets, collateral, or the purpose of the loan, including the use of proceeds;

(ii) The creditor uses the medical information in a manner and to an extent that is no less favorable than it would use comparable information that is not medical information in a credit transaction; and

(iii) The creditor does not take the consumer’s physical, mental, or behavioral health, condition or history, type
of treatment, or prognosis into account as part of any such determination.

(2) Examples. (i) Examples of the types of information routinely used in making credit eligibility determinations. Paragraph (d)(1)(i) of this section permits a creditor, for example, to obtain and use information about:

(A) The dollar amount, repayment terms, repayment history, and similar information regarding medical debts to calculate, measure, or verify the repayment ability of the consumer, the use of proceeds, or the terms for granting credit;

(B) The value, condition, and lien status of a medical device that may serve as collateral to secure a loan;

(C) The dollar amount and continued eligibility for disability income, workers’ compensation income, or other benefits related to health or a medical condition that is relied on as a source of repayment; or

(D) The identity of creditors to whom outstanding medical debts are owed in connection with an application for credit, including but not limited to, a transaction involving the consolidation of medical debts.

(ii) Examples of uses of medical information consistent with the exception. (A) A consumer includes on an application for credit information about two $20,000 debts. One debt is to a hospital; the other debt is to a retailer. The creditor contacts the hospital and the retailer to verify the amount and payment status of the debts. The creditor learns that both debts are more than 90 days past due. Any two debts of this size that are more than 90 days past due would disqualify the consumer under the creditor’s established underwriting criteria. The creditor denies the application on the basis that the debt is current and that the consumer has no delinquencies in her repayment history. The creditor has used medical information in accordance with the exception.

(B) A consumer includes on an application for a $10,000 mortgage loan that he has a $50,000 debt to a medical facility that specializes in treating a potentially terminal disease. The creditor contacts the medical facility to verify the debt and obtain the repayment history and current status of the loan. The creditor learns that the debt is current. The applicant meets the income and other requirements of the creditor’s underwriting guidelines. The creditor grants the application. The creditor has used medical information in accordance with the exception.

(iii) Examples of uses of medical information inconsistent with the exception. (A) A consumer applies for $25,000 of credit and includes on the application information about a $50,000 debt to a hospital. The creditor contacts the hospital to verify the amount and payment status of the debt, and learns that the debt is current and that the consumer has no delinquencies in her repayment history. If the existing debt were instead owed to a retail department store, the creditor would approve the application and extend credit based on the amount and repayment history of the outstanding debt. The creditor, however, denies the application because the consumer is indebted to a hospital. The creditor has used medical information, here the identity of the medical creditor, in a manner and to an extent that is less favorable than it would use comparable non-medical information.

(B) A consumer meets with a loan officer of a creditor to apply for a mortgage loan. While filling out the loan application, the consumer informs the loan officer orally that she has a potentially terminal disease. The consumer meets the creditor’s established requirements for the requested mortgage loan. The loan officer recommends to
the credit committee that the consumer be denied credit because the consumer has that disease. The credit committee follows the loan officer’s recommendation and denies the application because the consumer has a potentially terminal disease. The creditor has used medical information in a manner inconsistent with the exception by taking into account the consumer’s physical, mental, or behavioral health, condition, or history, type of treatment, or prognosis as part of a determination of eligibility or continued eligibility for credit.

(C) A consumer who has an apparent medical condition, such as a consumer who uses a wheelchair or an oxygen tank, meets with a loan officer to apply for a home equity loan. The consumer meets the creditor’s established requirements for the requested home equity loan and the creditor typically does not require consumers to obtain a debt cancellation contract, debt suspension agreement, or credit insurance product in connection with such loans. However, based on the consumer’s apparent medical condition, the loan officer recommends to the credit committee that credit be extended to the consumer only if the consumer obtains a debt cancellation contract, debt suspension agreement, or credit insurance product from a nonaffiliated third party. The credit committee agrees with the loan officer’s recommendation. The loan officer informs the consumer that the consumer must obtain a debt cancellation contract, debt suspension agreement, or credit insurance product from a nonaffiliated third party to qualify for the loan. The consumer obtains one of these products and the creditor approves the loan. The creditor has used medical information in a manner inconsistent with the exception by taking into account the consumer’s physical, mental, or behavioral health, condition, or history, type of treatment, or prognosis in setting conditions on the consumer’s eligibility for credit.

(e) Specific exceptions for obtaining and using medical information—(1) In general.
A creditor may obtain and use medical information pertaining to a consumer in connection with any determination of the consumer’s eligibility, or continued eligibility, for credit—

(i) To determine whether the use of a power of attorney or legal representative that is triggered by a medical condition or event is necessary and appropriate or whether the consumer has the legal capacity to contract when a person seeks to exercise a power of attorney or act as legal representative for a consumer based on an asserted medical condition or event;

(ii) To comply with applicable requirements of local, state, or federal laws;

(iii) To determine, at the consumer’s request, whether the consumer qualifies for a legally permissible special credit program or credit-related assistance program that is—

(A) Designed to meet the special needs of consumers with medical conditions; and

(B) Established and administered pursuant to a written plan that—

(I) Identifies the class of persons that the program is designed to benefit; and

(2) Sets forth the procedures and standards for extending credit or providing other credit-related assistance under the program;

(iv) To the extent necessary for purposes of fraud prevention or detection;

(v) In the case of credit for the purpose of financing medical products or services, to determine and verify the medical purpose of a loan and the use of proceeds;

(vi) Consistent with safe and sound practices, if the consumer or the consumer’s legal representative specifically requests that the creditor use medical information in determining the consumer’s eligibility, or continued eligibility, for credit, to accommodate the consumer’s particular circumstances, and such request is documented by the creditor;

(vii) Consistent with safe and sound practices, to determine whether the provisions of a forbearance practice or program that is triggered by a medical condition or event apply to a consumer;

(viii) To determine the consumer’s eligibility for, the triggering of, or the reactivation of a debt cancellation contract or debt suspension agreement if a
medical condition or event is a triggering event for the provision of benefits under the contract or agreement; or

(ix) To determine the consumer’s eligibility for, the triggering of, or the reactivation of a credit insurance product if a medical condition or event is a triggering event for the provision of benefits under the product.

(2) Example of determining eligibility for a special credit program or credit assistance program. A not-for-profit organization establishes a credit assistance program pursuant to a written plan that is designed to assist disabled veterans in purchasing homes by subsidizing the down payment for the home purchase mortgage loans of qualifying veterans. The organization works through mortgage lenders and requires mortgage lenders to obtain medical information about the disability of any consumer that seeks to qualify for the program, use that information to verify the consumer’s eligibility for the program, and forward that information to the organization. A consumer who is a veteran applies to a creditor for a home purchase mortgage loan. The creditor informs the consumer about the credit assistance program for disabled veterans and the consumer seeks to qualify for the program. Assuming that the program complies with all applicable law, including applicable fair lending laws, the creditor may obtain and use medical information about the medical condition and disability, if any, of the consumer to determine whether the consumer qualifies for the credit assistance program.

(3) Examples of verifying the medical purpose of the loan or the use of proceeds.

(i) If a consumer applies for $10,000 of credit for the purpose of financing vision correction surgery, the creditor may verify with the surgeon that the procedure will be performed. If the surgeon reports that the procedure will not be performed on the consumer, the creditor may use that medical information to deny the consumer’s application for credit, because the loan would not be used for the stated purpose.

(ii) If a consumer applies for $10,000 of credit for the purpose of financing cosmetic surgery, the creditor may confirm the cost of the procedure with the surgeon. If the surgeon reports that the cost of the procedure is $5,000, the creditor may use that medical information to offer the consumer only $5,000 of credit.

(iii) A creditor has an established medical loan program for financing particular elective surgical procedures. The creditor receives a loan application from a consumer requesting $10,000 of credit under the established loan program for an elective surgical procedure. The consumer indicates on the application that the purpose of the loan is to finance an elective surgical procedure not eligible for funding under the guidelines of the established loan program. The creditor may deny the consumer’s application because the purpose of the loan is not for a particular procedure funded by the established loan program.

(4) Examples of obtaining and using medical information at the request of the consumer. (i) If a consumer applies for a loan and specifically requests that the creditor consider the consumer’s medical disability at the relevant time as an explanation for adverse payment history information in his credit report, the creditor may consider such medical information in evaluating the consumer’s willingness and ability to repay the requested loan to accommodate the consumer, but may evaluate the consumer’s application in accordance with its otherwise applicable underwriting criteria. The creditor may also decline to consider such medical information to accommodate the consumer, but may evaluate the consumer’s application in accordance with its otherwise applicable underwriting criteria. The creditor may not deny the consumer’s application or otherwise treat the consumer less favorably because the consumer specifically requested a medical accommodation, if the creditor would have extended the credit or treated the consumer more favorably under the creditor’s otherwise applicable underwriting criteria.

(ii) If a consumer applies for a loan by telephone and explains that his income has been and will continue to be interrupted on account of a medical condition and that he expects to repay the loan by liquidating assets, the creditor may, but is not required to, evaluate the application using the sale
of assets as the primary source of re-

payment, consistent with safe and sound practices, provided that the
creditor documents the consumer’s re-

quest by recording the oral conversa-
tion or making a notation of the re-
quest in the consumer’s file.

(iii) If a consumer applies for a loan
and the application form provides a
space where the consumer may provide
any other information or special cir-
rstances, whether medical or non-
medical, that the consumer would like
the creditor to consider in evaluating
the consumer’s application, the cred-
itor may use medical information pro-
vided by the consumer in that space on
that application to accommodate the
consumer’s application for credit, con-
sistent with safe and sound practices,
or may disregard that information.

(iv) If a consumer specifically re-
quests that the creditor use medical in-
formation in determining the con-
sumer’s eligibility, or continued eligi-
bility, for credit and provides the cred-
itor with medical information for that
purpose, and the creditor determines
that it needs additional information re-
garding the consumer’s circumstances,
the creditor may request, obtain, and
use additional medical information
about the consumer as necessary to
verify the information provided by the
consumer or to determine whether to
make an accommodation for the con-
sumer. The consumer may decline to
provide additional information, with-
draw the request for an accommoda-
tion, and have the application consid-
ered under the creditor’s otherwise ap-
licable underwriting criteria.

(v) If a consumer completes and signs
a credit application that is not for
medical purpose credit and the applica-
tion contains boilerplate language that
routinely requests medical information
from the consumer or that indicates
that by applying for credit the con-
sumer authorizes or consents to the
creditor obtaining and using medical
information in connection with a de-
termination of the consumer’s eligi-
bility, or continued eligibility, for
credit, the consumer has not specifi-
cally requested that the creditor ob-
tain and use medical information to
accommodate the consumer’s par-
ticular circumstances.

(5) Example of a forbearance practice or
program. After an appropriate safety
and soundness review, a creditor insti-
tutes a program that allows consumers
who are or will be hospitalized to defer
payments as needed for up to three
months, without penalty, if the credit
account has been open for more than
one year and has not previously been in
default, and the consumer provides
confirming documentation at an appro-
priate time. A consumer is hospitalized
and does not pay her bill for a par-
ticular month. This consumer has had
a credit account with the creditor for
more than one year and has not pre-
viously been in default. The creditor
attempts to contact the consumer and
speaks with the consumer’s spouse,
who is not the consumer’s legal rep-
 resentative. The spouse informs the
creditor that the consumer is hospital-
ized and is unable to pay the bill at
that time. The creditor defers pay-
ments for up to three months, without
penalty, for the hospitalized consumer
and sends the consumer a letter con-
firming this practice and the date on
which the next payment will be due.
The creditor has obtained and used
medical information to determine
whether the provisions of a medically-
triggered forbearance practice or pro-
gram apply to a consumer.

§ 571.31 Limits on redisclosure of in-
formation.

(a) Scope. This section applies to sav-
ings associations and federal savings
association operating subsidiaries.

(b) Limits on redisclosure. If a person
described in paragraph (a) of this sec-
tion receives medical information
about a consumer from a consumer re-
porting agency or its affiliate, the per-
son must not disclose that information
to any other person, except as nec-
essary to carry out the purpose for
which the information was initially
disclosed, or as otherwise permitted by
statute, regulation, or order.

§ 571.32 Sharing medical information
with affiliates.

(a) Scope. This section applies to sav-
ings associations and federal savings
association operating subsidiaries.

(b) In general. The exclusions from
the term “consumer report” in section