pre-existing business relationship with
the consumer and can therefore use eli-
gibility information it receives from
its affiliated creditor to make solicita-
tions to the consumer about its prod-
ucts or services for three months after
the date of the inquiry.
(3) Examples where no pre-existing busi-
ness relationship is created. (i) If a con-
sumer makes a telephone call to a cen-
tralized call center for a group of affili-
ated companies to inquire about the
consumer’s existing account with a
creditor, the call does not constitute
an inquiry to any affiliate other than
the creditor that holds the consumer’s
account and does not establish a pre-
existing business relationship between
the consumer and any affiliate of the
account-holding creditor.
(ii) If a consumer who has a loan ac-
count with a creditor makes a tele-
phone call to an af-filiate of the cred-
itor to ask about the affiliate’s retail
locations and hours, but does not make
an inquiry about the affiliate’s prod-
ucts or services, the call does not con-
stitute an inquiry and does not estab-
lish a pre-existing business relation-
ship between the consumer and the af-
iliate. Also, the affiliate’s capture of
the consumer’s telephone number does
not constitute an inquiry and does not
establish a pre-existing business rela-
tionship between the consumer and the
affiliate.
(iii) If a consumer makes a telephone
call to a creditor in response to an ad-
vertisement that offers a free pro-
motional item to consumers who call a
toll-free number, but the advertise-
ment does not indicate that creditor’s
products or services will be marketed
to consumers who call in response, the
call does not create a pre-existing busi-
ness relationship between the consumer and the
creditor because the consumer has not made an
inquiry about a product or service offered by
the creditor, but has merely responded
to an offer for a free promotional item.
(k) Solicitation—(1) In general. The
term “solicitation” means the mar-
keting of a product or service initiated
by a person to a particular consumer
that is—
(i) Based on eligibility information
communicated to that person by its af-
iliate as described in this part; and
(ii) Intended to encourage the con-
sumer to purchase or obtain such prod-
uct or service.
(2) Exclusion of marketing directed at
the general public. A solicitation does
not include marketing communica-
tions that are directed at the general
public. For example, television, general
circulation magazine, and billboard ad-
vertisements do not constitute solici-
tations, even if those communications
are intended to encourage consumers
to purchase products and services from
the person initiating the communica-
tions.
(3) Examples of solicitations. A solicita-
tion would include, for example, a tele-
marketing call, direct mail, e-mail, or
other form of marketing communica-
tion directed to a particular consumer
that is based on eligibility information
received from an affiliate.
(1) You means a person described in
§680.1(b).

§§ 680.4–680.20 [Reserved]

§ 680.21 Affiliate marketing opt-out
and exceptions.

(a) Initial notice and opt-out require-
ment—(1) In general. You may not use
eligibility information about a con-
sumer that you receive from an affil-
iate to make a solicitation for mar-
keting purposes to the consumer, un-
less—
(i) It is clearly and conspicuously dis-
closed to the consumer in writing or, if
the consumer agrees, electronically, in
a concise notice that you may use eli-
gibility information about that con-
sumer received from an affiliate to
make solicitations for marketing pur-
poses to the consumer;
(ii) The consumer is provided a rea-
sonable opportunity and a reasonable
and simple method to “opt out,” or
prohibit you from using eligibility in-
fomation about that consumer received
from an affiliate to
make solicitations for marketing pur-
poses to the consumer;
(iii) The consumer has not opted out.
(2) Example. A consumer has a home-
owner’s insurance policy with an insur-
ance company. The insurance company
furnishes eligibility information about
the consumer to its affiliated creditor.
Based on that eligibility information,
the creditor wants to make a solicitation to the consumer about its home equity loan products. The creditor does not have a pre-existing business relationship with the consumer and none of the other exceptions apply. The creditor is prohibited from using eligibility information received from its insurance affiliate to make solicitations to the consumer about its home equity loan products unless the consumer is given a notice and opportunity to opt out and the consumer does not opt out.

(3) **Affiliates who may provide the notice.** The notice required by this paragraph (a) must be provided:

(i) By an affiliate that has or has previously had a pre-existing business relationship with the consumer; or

(ii) As part of a joint notice from two or more members of an affiliated group of companies, provided that at least one of the affiliates on the joint notice has or has previously had a pre-existing business relationship with the consumer.

(b) **Making solicitations.—(1) In general.** For purposes of this part, you make a solicitation for marketing purposes if—

(i) You receive eligibility information from an affiliate;

(ii) You use that eligibility information to do one or more of the following:

(A) Identify the consumer or type of consumer to receive a solicitation;

(B) Establish criteria used to select the consumer to receive a solicitation; or

(C) Decide which of your products or services to market to the consumer or tailor your solicitation to that consumer; and

(iii) As a result of your use of the eligibility information, the consumer is provided a solicitation.

(2) **Receiving eligibility information from an affiliate, including through a common database.** You may receive eligibility information from an affiliate in various ways, including when the affiliate places that information into a common database that you may access.

(3) **Receipt or use of eligibility information by your service provider.** Except as provided in paragraph (b)(5) of this section, you receive or use an affiliate’s eligibility information if a service provider acting on your behalf (whether an affiliate or a nonaffiliated third party) receives or uses that information in the manner described in paragraphs (b)(1)(i) or (b)(1)(ii) of this section. All relevant facts and circumstances will determine whether a person is acting as your service provider when it receives or uses an affiliate’s eligibility information in connection with marketing your products and services.

(4) **Use by an affiliate of its own eligibility information.** Unless you have used eligibility information that you receive from an affiliate in the manner described in paragraph (b)(1)(ii) of this section, you do not make a solicitation subject to this part if your affiliate:

(i) Uses its own eligibility information that it obtained in connection with a pre-existing business relationship it has or had with the consumer to market your products or services to the consumer; or

(ii) Directs its service provider to use the affiliate’s own eligibility information that it obtained in connection with a pre-existing business relationship it has or had with the consumer to market your products or services to the consumer, and you do not communicate directly with the service provider regarding that use.

(5) **Use of eligibility information by a service provider.—(i) In general.** You do not make a solicitation subject to this part if a service provider (including an affiliated or third-party service provider that maintains or accesses a common database that you may access) receives eligibility information from your affiliate that your affiliate obtained in connection with a pre-existing business relationship it has or had with the consumer and uses that eligibility information to market your products or services to the consumer, so long as—

(A) Your affiliate controls access to and use of its eligibility information by the service provider (including the right to establish the specific terms and conditions under which the service provider may use such information to market your products or services);

(B) Your affiliate establishes specific terms and conditions under which the service provider may access and use the affiliate’s eligibility information to market your products and services (or those of affiliates generally) to the
consumer, such as the identity of the affiliated companies whose products or services may be marketed to the consumer by the service provider, the types of products or services of affiliated companies that may be marketed, and the number of times the consumer may receive marketing materials, and periodically evaluates the service provider’s compliance with those terms and conditions;

(C) Your affiliate requires the service provider to implement reasonable policies and procedures designed to ensure that the service provider uses the affiliate’s eligibility information in accordance with the terms and conditions established by the affiliate relating to the marketing of your products or services;

(D) Your affiliate is identified on or with the marketing materials provided to the consumer; and

(E) You do not directly use your affiliate’s eligibility information in the manner described in paragraph (b)(1)(ii) of this section.

(ii) Writing requirements. (A) The requirements of paragraphs (b)(5)(i)(A) and (C) of this section must be set forth in a written agreement between your affiliate and the service provider;

(B) The specific terms and conditions established by your affiliate as provided in paragraph (b)(5)(i)(B) of this section must be set forth in writing.

(6) Examples of making solicitations. (i) A consumer has a loan account with a creditor, which is affiliated with an insurance company. The insurance company receives eligibility information about the consumer from the creditor. The insurance company uses that eligibility information to identify the consumer to receive a solicitation about insurance products, and, as a result, the insurance company has made a solicitation to the consumer about insurance products. Pursuant to paragraph (b)(1) of this section, the insurance company has made a solicitation to the consumer because it used eligibility information about the consumer that it received from an affiliate to identify the consumer to receive a solicitation about its products or services, and, as a result, a solicitation was provided to the consumer about the insurance company’s products.

(ii) The same facts as in the example in paragraph (b)(6)(i) of this section, except that eligibility information about consumers that have loan accounts with the creditor is placed into a common database that all members of the affiliated group of companies may independently access and use. Without using the creditor’s eligibility information, the insurance company develops selection criteria and provides those criteria, marketing materials, and related instructions to the creditor. The creditor reviews eligibility information about its own consumers using the selection criteria provided by the insurance company to determine which consumers should receive the insurance company’s marketing materials and sends marketing materials about the insurance company’s products to those consumers. Even though the insurance company has received eligibility information through the common database as provided in paragraph (b)(2) of this section, it did not use that information to identify consumers or establish selection criteria; instead, the creditor used its own eligibility information. Therefore, pursuant to paragraph (b)(4)(i) of this section, the insurance company has not made a solicitation to the consumer.

(iv) The same facts as in the example in paragraph (b)(6)(iii) of this section, except that the creditor provides the insurance company’s criteria to the creditor’s service provider and directs the service provider to use the creditor’s eligibility information to identify creditor consumers who meet the criteria and to send the insurance company’s marketing materials to those consumers. The insurance company does not communicate directly with the service provider regarding the use
of the creditor’s information to market its products to the creditor’s consumers. Pursuant to paragraph (b)(4)(ii) of this section, the insurance company has not made a solicitation to the consumer.

(v) An affiliated group of companies includes a creditor, an insurance company, and a service provider. Each affiliate in the group places information about its consumers into a common database. The service provider has access to all information in the common database. The creditor controls access to and use of its eligibility information by the service provider. This control is set forth in a written agreement between the creditor and the service provider. The written agreement also requires the service provider to establish reasonable policies and procedures designed to ensure that the service provider uses the creditor’s eligibility information in accordance with specific terms and conditions established by the creditor relating to the marketing of the products and services of all affiliates, including the insurance company. In a separate written communication, the creditor specifies the terms and conditions under which the service provider may use the creditor’s eligibility information to market the insurance company’s products and services to the creditor’s consumers.

The specific terms and conditions are: a list of affiliated companies (including the insurance company) whose products or services may be marketed to the creditor’s consumers by the service provider; the specific products or types of products that may be marketed to the creditor’s consumers by the service provider; the categories of eligibility information that may be used by the service provider in marketing products or services to the creditor’s consumers; the types or categories of the creditor’s consumers to whom the service provider may market products or services of creditor affiliates; the number and/or types of marketing communications that the service provider may send to the creditor’s consumers; and the length of time during which the service provider may market the products or services of the creditor’s affiliates to its consumers. The creditor periodically evaluates the service provider’s compliance with these terms and conditions. The insurance company asks the service provider to market insurance products to certain consumers who have loan accounts with the creditor. Without using the creditor’s eligibility information, the insurance company develops selection criteria and provides those criteria, marketing materials, and related instructions to the service provider. The service provider uses the creditor’s eligibility information from the common database to identify the creditor’s consumers to whom insurance products will be marketed. When the insurance company’s marketing materials are provided to the identified consumers, the name of the creditor is displayed on the insurance marketing materials, an introductory letter that accompanies the marketing materials, an account statement that accompanies the marketing materials, or the envelope containing the marketing materials. The requirements of paragraph (b)(5) of this section have been satisfied, and the insurance company has not made a solicitation to the consumer.

(vi) The same facts as in the example in paragraph (b)(6)(v) of this section, except that the terms and conditions permit the service provider to use the creditor’s eligibility information to market the products and services of other affiliates to the creditor’s consumers whenever the service provider deems it appropriate to do so. The service provider uses the creditor’s eligibility information in accordance with the discretion afforded to it by the terms and conditions. Because the terms and conditions are not specific, the requirements of paragraph (b)(5) of this section have not been satisfied.

(c) Exceptions. The provisions of this part do not apply to you if you use eligibility information that you receive from an affiliate:

1. To make a solicitation for marketing purposes to a consumer with whom you have a pre-existing business relationship;
2. To facilitate communications to an individual for whose benefit you provide employee benefit or other services pursuant to a contract with an employer related to and arising out of the current employment relationship or
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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 you to send solicitations on behalf of an affiliate if the affiliate would not be permitted to send the solicitation as a result of the election of the consumer to opt out under this part;
(4) In response to a communication about your products or services initiated 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 provision of State insurance laws pertaining to unfair discrimination in any State in which you are lawfully doing business.

(d) Examples of exceptions—(1) Example of the pre-existing business relationship exception. A consumer has a loan account with a creditor. The consumer also has a relationship with the creditor’s securities affiliate for management of the consumer’s securities portfolio. The creditor receives eligibility information about the consumer from its securities affiliate and uses that information to make a solicitation to the consumer about the creditor’s wealth management services. The creditor may make this solicitation even if the consumer has not been given a notice and opportunity to opt out because the creditor has a pre-existing business relationship with the consumer.

(2) Examples of service provider exception. (i) A consumer has an insurance policy issued by an insurance company. The insurance company furnishes eligibility information about the consumer to an affiliated creditor. Based on that eligibility information, the creditor wants to make a solicitation to the consumer about its credit products. The creditor does not have a pre-existing business relationship with the consumer and none of the other exceptions in paragraph (c) of this section apply. The consumer has been given an opt-out notice and has elected to opt out of receiving such solicitations. The creditor asks a service provider to send the solicitation to the consumer on its behalf. The service provider may not send the solicitation on behalf of the creditor because, as a result of the consumer’s opt-out election, the creditor is not permitted to make the solicitation.

(ii) The same facts as in paragraph (d)(2)(i) of this section, except the consumer has been given an opt-out notice, but has not elected to opt out. The creditor asks a service provider to send the solicitation to the consumer on its behalf. The service provider may send the solicitation on behalf of the creditor because, as a result of the consumer’s not opting out, the creditor is permitted to make the solicitation.

(3) Examples of consumer-initiated communications. (i) A consumer who has a consumer loan account with a finance company initiates a communication with the creditor’s mortgage lending affiliate to request information about a mortgage. The mortgage lender affiliate may use eligibility information about the consumer it obtains from the finance company or any other affiliate to make solicitations regarding mortgage products in response to the consumer-initiated communication.

(ii) A consumer who has a loan account with a creditor contacts the creditor to request information about how to save and invest for a child’s college education without specifying the type of product in which the consumer may be interested. Information about a range of different products or services offered by the creditor and one or more affiliates of the creditor may be responsive to that communication. Such products or services may include the following: mutual funds offered by the creditor’s mutual fund affiliate; section 529 plans offered by the creditor, its mutual fund affiliate, or another securities affiliate; or trust services offered by a different creditor in the affiliated group. Any affiliate offering investment products or services that would be responsive to the consumer’s request for information about saving and investing for a child’s college education may use eligibility information to make solicitations to the consumer in response to this communication.
(iii) A credit card issuer makes a marketing call to the consumer without using eligibility information received from an affiliate. The issuer leaves a voice-mail message that invites the consumer to call a toll-free number to apply for the issuer's credit card. If the consumer calls the toll-free number to inquire about the credit card, the call is a consumer-initiated communication about a product or service and the credit card issuer may now use eligibility information it receives from its affiliates to make solicitations to the consumer.

(iv) A consumer calls a creditor to ask about retail locations and hours, but does not request information about products or services. The creditor may not use eligibility information it receives from an affiliate to make solicitations to the consumer about its products or services because the consumer-initiated communication does not relate to the creditor's products or services. Thus, the use of eligibility information received from an affiliate would not be responsive to the communication and the exception does not apply.

(v) A consumer calls a creditor to ask about office locations and hours. The customer service representative asks the consumer if there is a particular product or service about which the consumer is seeking information. The consumer responds that the consumer wants to stop in and find out about second mortgage loans. The customer service representative offers to provide that information by telephone and mail additional information and application materials to the consumer. The consumer agrees and provides or confirms contact information for receipt of the materials to be mailed. The creditor may use eligibility information it receives from an affiliate to make solicitations to the consumer about mortgage loan products because such solicitations respond to the consumer-initiated communication about products or services.

Examples of consumer authorization or request for solicitations. (i) A consumer who obtains a mortgage from a mortgage lender authorizes or requests information about homeowner's insurance offered by the mortgage lender's insurance affiliate. Such authorization or request, whether given to the mortgage lender or to the insurance affiliate, would permit the insurance affiliate to use eligibility information about the consumer it obtains from the mortgage lender or any other affiliate to make solicitations to the consumer about homeowner's insurance.

(ii) A consumer completes an online application to apply for a credit card from a department store. The store's online application contains a blank check box that the consumer may check to authorize or request information from the store's affiliates. The consumer checks the box. The consumer has authorized or requested solicitations from store's affiliates.

(iii) A consumer completes an online application to apply for a credit card from a department store. The store's online application contains a pre-selected check box indicating that the consumer authorizes or requests information from the store's affiliates. The consumer does not deselect the check box. The consumer has not authorized or requested solicitations from the store's affiliates.

(iv) The terms and conditions of a credit account agreement contain preprinted boilerplate language stating that by applying to open an account the consumer authorizes or requests to receive solicitations from the creditor's affiliates. The consumer has not authorized or requested solicitations from the creditor's affiliates.

(e) Relation to affiliate-sharing notice and opt-out. Nothing in this part limits the responsibility of a person to comply with the notice and opt-out provisions of section 603(d)(2)(A)(iii) of the Act where applicable.

§ 680.22 Scope and duration of opt-out.

(a) Scope of opt-out—(1) In general. Except as otherwise provided in this section, the consumer's election to opt out prohibits any affiliate covered by the opt-out notice from using eligibility information received from another affiliate as described in the notice to make solicitations to the consumer.

(2) Continuing relationship—(1) In general. If the consumer establishes a continuing relationship with you or your