§ 717.2 Information to consumer reporting agencies.

(b) Scope. (1) [Reserved]

(2) Institutions covered. (i) Except as otherwise provided in this part, the regulations in this part apply to federal credit unions.

[72 FR 62981, Nov. 7, 2007]

§ 717.2 Examples.
The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part. Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issue that may arise in this part.

§ 717.3 Definitions.

For purposes of this part, unless explicitly stated otherwise:

(a) Act means the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).

(b) Affiliate means any company that is related by common ownership or common corporate control with another company. For example, an affiliate of a Federal credit union is a credit union service corporation (CUSO), as provided in 12 CFR part 712, that is controlled by the Federal credit union.

(c) [Reserved]

(d) Company means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(e) Consumer means an individual.

(f)–(h) [Reserved]

(i) Common ownership or common corporate control means a relationship between two companies under which:

(1) One company has, with respect to the other company:

(i) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of a company, directly or indirectly, or acting through one or more other persons;

(ii) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of a company; or

(iii) The power to exercise, directly or indirectly, a controlling influence over the management or policies of a company, as the NCUA determines; or

(iv) Example. NCUA will presume a credit union has a controlling influence over the management or policies of a CUSO, if the CUSO is 67% owned by credit unions.

(2) Any other person has, with respect to both companies, a relationship described in paragraphs (i)(1)(i) through (i)(1)(iii) of this section.

(j) [Reserved]

(k) Medical information means:

(1) Information or data, whether oral or recorded, in any form or medium, created by or derived from a health care provider or the consumer, that relates to:

(i) The past, present, or future physical, mental, or behavioral health or condition of an individual;

(ii) The provision of health care to an individual; or

(iii) The payment for the provision of health care to an individual.

(2) The term does not include:

(i) The age or gender of a consumer;

(ii) Demographic information about the consumer, including a consumer’s residence address or e-mail address;

(iii) Any other information about a consumer that does not relate to the physical, mental, or behavioral health or condition of a consumer, including the existence or value of any insurance policy; or

(iv) Information that does not identify a specific consumer.

(l) Person means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

[70 FR 70692, Nov. 22, 2005, as amended at 72 FR 63768, Nov. 9, 2007; 75 FR 34621, June 18, 2010]

Subpart B [Reserved]

Subpart C—Affiliate Marketing

SOURCE: 72 FR 62981, Nov. 7, 2007, unless otherwise noted.

§ 717.20 Coverage and definitions.

(a) Coverage. Subpart C of this part applies to federal credit unions and their affiliates as defined in §717.3(a) of Subpart A.
(b) Definitions. For purposes of this subpart:

(1) Clear and conspicuous. The term “clear and conspicuous” means reasonably understandable and designed to call attention to the nature and significance of the information presented.

(2) Concise. (i) In general. The term “concise” means a reasonably brief expression or statement.

(ii) Combination with other required disclosures. A notice required by this subpart may be concise even if it is combined with other disclosures required or authorized by federal or state law.

(3) Eligibility information. The term “eligibility information” means any information the communication of which would be a consumer report if the exclusions from the definition of “consumer report” in section 603(d)(2)(A) of the Act did not apply. Eligibility information does not include aggregate or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(4) Pre-existing business relationship. (i) In general. The term “pre-existing business relationship” means a relationship between a person, or a person’s licensed agent, and a consumer based on—

(A) A financial contract between the person and the consumer which is in force on the date on which the consumer is sent a solicitation covered by this subpart;

(B) The purchase, rental, or lease by the consumer of the person’s goods or services, or a financial transaction (including holding an active account or a policy in force or having another continuing relationship) between the consumer and the person, during the 18-month period immediately preceding the date on which the consumer is sent a solicitation covered by this subpart; or

(C) An inquiry or application by the consumer regarding a product or service offered by that person during the three-month period immediately preceding the date on which the consumer is sent a solicitation covered by this subpart.

(ii) Examples of pre-existing business relationships. (A) If a consumer has a time deposit account, such as a share certificate, at a federal credit union that is currently in force, the federal credit union has a pre-existing business relationship with the consumer and can use eligibility information it receives from its affiliates to make solicitations to the consumer about its products or services.

(B) If a consumer obtained a share certificate from a federal credit union, but did not renew the certificate at maturity, the federal credit union has a pre-existing business relationship with the consumer and can use eligibility information it receives from its affiliates to make solicitations to the consumer about its products or services for 18 months after the date of maturity of the share certificate.

(C) If a consumer obtains a mortgage, the mortgage lender has a pre-existing business relationship with the consumer. If the mortgage lender sells the consumer’s entire loan to an investor, the mortgage lender has a pre-existing business relationship with the consumer and can use eligibility information it receives from its affiliates to make solicitations to the consumer about its products or services for 18 months after the date of maturity of the share certificate.

If a consumer obtains a mortgage, the mortgage lender has a pre-existing business relationship with the consumer. If the mortgage lender sells the consumer’s entire loan to an investor, the mortgage lender has a pre-existing business relationship with the consumer and can use eligibility information it receives from its affiliates to make solicitations to the consumer about its products or services for 18 months after the date of maturity of the share certificate.

(D) If a consumer applies to a federal credit union for a product or service that it offers, but does not obtain a
product or service from or enter into a financial contract or transaction with
the institution, the federal credit union has a pre-existing business rela-
tionship with the consumer and can therefore use eligibility information it
receives from an affiliate to make solicitions to the consumer about its
products or services for three months after the date of the application.

(E) If a consumer makes a telephone inquiry to a federal credit union about
its products or services and provides contact information to the institution,
but does not obtain a product or service from or enter into a financial con-
tract or transaction with the institution, the federal credit union has a pre-
existing business relationship with the consumer and can therefore use eligi-
bility information it receives from an affiliate to make solicitations to the
consumer about its products or services for three months after the date of
the inquiry.

(F) If a consumer makes an inquiry to a federal credit union by e-mail
about its products or services, but does not obtain a product or service from or
enter into a financial contract or transaction with the institution, the federal
credit union has a pre-existing business relationship with the consumer and can therefore use eligibility information it receives from an affiliate to make solicitations to the consumer about its products or services for three months after the date of the inquiry.

(G) If a consumer has an existing relationship with a federal credit union
that is part of a group of affiliated companies, makes a telephone call to the
centralized call center for the group of affiliated companies to in-
quire about products or services offered by the insurance brokerage affiliate,
and provides contact information to the call center, the call constitutes an
inquiry to the insurance brokerage affiliate that offers those products or services. The insurance brokerage affiliate has a pre-existing business relationship with the consumer and can therefore use eligibility information it receives from its affiliated federal cred-
it union to make solicitations to the consumer about its products or serv-
ices for three months after the date of the inquiry.

(iii) Examples where no pre-existing business relationship is created. (A) If a
consumer makes a telephone call to a centralized call center for a group of
affiliated companies to inquire about the consumer’s existing account at a
federal credit union, the call does not constitute an inquiry to any affiliate
other than the federal credit union that holds the consumer’s account and
does not establish a pre-existing business relationship between the con-
sumer and any affiliate of the account-holding federal credit union.

(B) If a consumer who has a deposit account with a federal credit union
makes a telephone call to an affiliate of the institution to ask about the af-
fliate’s retail locations and hours, but does not make an inquiry about the af-
fliate’s products or services, the call does not constitute an inquiry and does
not establish a pre-existing business relationship between the con-
sumer and the affiliate. Also, the affiliate’s capture of the consumer’s telephone num-
ber does not constitute an inquiry and does not establish a pre-existing business rela-
tionship between the consumer and the affiliate.

(C) If a consumer makes a telephone call to a federal credit union in re-
ponse to an advertisement that offers a free promotional item to consumers
who call a toll-free number, but the advertisement does not indicate that the
federal credit union’s products or services will be marketed to consumers
who call in response, the call does not create a pre-existing business relation-
ship between the consumer and the federal credit union because the consumer
has not made an inquiry about a product or service offered by the institu-
tion, but has merely responded to an offer for a free promotional item.

(5) Solicitation. (i) In general. The term “solicitation” means the mar-
keting of a product or service initiated by a person to a particular consumer
that is—

(A) Based on eligibility information communicated to that person by its af-
fliate as described in this subpart; and

(B) Intended to encourage the con-
sumer to purchase or obtain such prod-
uct or service.
(ii) Exclusion of marketing directed at the general public. A solicitation does not include marketing communications that are directed at the general public. For example, television, general circulation magazine, and billboard advertisements do not constitute solicitations, even if those communications are intended to encourage consumers to purchase products and services from the person initiating the communications.

(iii) Examples of solicitations. A solicitation would include, for example, a telemarketing call, direct mail, e-mail, or other form of marketing communication directed to a particular consumer that is based on eligibility information received from an affiliate.

(6) You means a person described in paragraph (a) of this section.

§ 717.21 Affiliate marketing opt-out and exceptions.

(a) Initial notice and opt-out requirement. (1) In general. You may not use eligibility information about a consumer that you receive from an affiliate to make a solicitation for marketing purposes to the consumer, unless—

(i) It is clearly and conspicuously disclosed to the consumer in writing or, if the consumer agrees, electronically, in a concise notice that you may use eligibility information about that consumer received from an affiliate to make solicitations for marketing purposes to the consumer;

(ii) The consumer is provided a reasonable opportunity and a reasonable and simple method to "opt out," or prohibit you from using eligibility information about that consumer received from an affiliate to make solicitations for marketing purposes to the consumer;

(iii) The consumer has not opted out.

(b) Making solicitations. (1) In general. For purposes of this subpart, 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)