

sure required under the amendment made by subsection (a) [amending this section] after notice duly given in the Federal Register and an opportunity for public comment in accordance with section 553 of title 5, United States Code.”

[For definitions of terms used in section 217(b) of Pub. L. 108-159, set out above, see section 2 of Pub. L. 108-159, set out as a Definitions note under section 1681 of this title.]

§ 1681s-3. Affiliate sharing

(a) Special rule for solicitation for purposes of marketing

(1) Notice

Any person that receives from another person related to it by common ownership or affiliated by corporate control a communication of information that would be a consumer report, but for clauses (i), (ii), and (iii) of section 1681a(d)(2)(A) of this title, may not use the information to make a solicitation for marketing purposes to a consumer about its products or services, unless—

(A) it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons for purposes of making such solicitations to the consumer; and

(B) the consumer is provided an opportunity and a simple method to prohibit the making of such solicitations to the consumer by such person.

(2) Consumer choice

(A) In general

The notice required under paragraph (1) shall allow the consumer the opportunity to prohibit all solicitations referred to in such paragraph, and may allow the consumer to choose from different options when electing to prohibit the sending of such solicitations, including options regarding the types of entities and information covered, and which methods of delivering solicitations the consumer elects to prohibit.

(B) Format

Notwithstanding subparagraph (A), the notice required under paragraph (1) shall be clear, conspicuous, and concise, and any method provided under paragraph (1)(B) shall be simple. The regulations prescribed to implement this section shall provide specific guidance regarding how to comply with such standards.

(3) Duration

(A) In general

The election of a consumer pursuant to paragraph (1)(B) to prohibit the making of solicitations shall be effective for at least 5 years, beginning on the date on which the person receives the election of the consumer, unless the consumer requests that such election be revoked.

(B) Notice upon expiration of effective period

At such time as the election of a consumer pursuant to paragraph (1)(B) is no longer effective, a person may not use information that the person receives in the manner described in paragraph (1) to make any solici-

tation for marketing purposes to the consumer, unless the consumer receives a notice and an opportunity, using a simple method, to extend the opt-out for another period of at least 5 years, pursuant to the procedures described in paragraph (1).

(4) Scope

This section shall not apply to a person—

(A) using information to make a solicitation for marketing purposes to a consumer with whom the person has a pre-existing business relationship;

(B) using information to facilitate communications to an individual for whose benefit the person provides employee benefit or other services pursuant to a contract with an employer related to and arising out of the current employment relationship or status of the individual as a participant or beneficiary of an employee benefit plan;

(C) using information to perform services on behalf of another person related by common ownership or affiliated by corporate control, except that this subparagraph shall not be construed as permitting a person to send solicitations on behalf of another person, if such other person would not be permitted to send the solicitation on its own behalf as a result of the election of the consumer to prohibit solicitations under paragraph (1)(B);

(D) using information in response to a communication initiated by the consumer;

(E) using information in response to solicitations authorized or requested by the consumer; or

(F) if compliance with this section by that person would prevent compliance by that person with any provision of State insurance laws pertaining to unfair discrimination in any State in which the person is lawfully doing business.

(5) No retroactivity

This subsection shall not prohibit the use of information to send a solicitation to a consumer if such information was received prior to the date on which persons are required to comply with regulations implementing this subsection.

(b) Notice for other purposes permissible

A notice or other disclosure under this section may be coordinated and consolidated with any other notice required to be issued under any other provision of law by a person that is subject to this section, and a notice or other disclosure that is equivalent to the notice required by subsection (a), and that is provided by a person described in subsection (a) to a consumer together with disclosures required by any other provision of law, shall satisfy the requirements of subsection (a).

(c) User requirements

Requirements with respect to the use by a person of information received from another person related to it by common ownership or affiliated by corporate control, such as the requirements of this section, constitute requirements with respect to the exchange of information among per-

sons affiliated by common ownership or common corporate control, within the meaning of section 1681t(b)(2) of this title.

(d) Definitions

For purposes of this section, the following definitions shall apply:

(1) Pre-existing business relationship

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 a person and a consumer which is in force;

(B) the purchase, rental, or lease by the consumer of that 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 that person during the 18-month period immediately preceding the date on which the consumer is sent a solicitation covered by this section;

(C) an inquiry or application by the consumer regarding a product or service offered by that person, during the 3-month period immediately preceding the date on which the consumer is sent a solicitation covered by this section; or

(D) any other pre-existing customer relationship defined in the regulations implementing this section.

(2) Solicitation

The term “solicitation” means the marketing of a product or service initiated by a person to a particular consumer that is based on an exchange of information described in subsection (a), and is intended to encourage the consumer to purchase such product or service, but does not include communications that are directed at the general public or determined not to be a solicitation by the regulations prescribed under this section.

(Pub. L. 90-321, title VI, §624, as added Pub. L. 108-159, title II, §214(a)(2), Dec. 4, 2003, 117 Stat. 1980.)

Editorial Notes

PRIOR PROVISIONS

A prior section 624 of Pub. L. 90-321 was renumbered section 625 and is classified to section 1681t of this title.

Another prior section 624 of Pub. L. 90-321 was renumbered section 626 and is classified to section 1681u of this title.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section subject to joint regulations establishing effective dates as prescribed by Federal Reserve Board and Federal Trade Commission, except as otherwise provided, see section 3 of Pub. L. 108-159, set out as an Effective Date of 2003 Amendment note under section 1681 of this title.

REGULATIONS

Pub. L. 108-159, title II, §214(b), Dec. 4, 2003, 117 Stat. 1982, as amended by Pub. L. 111-203, title X, §1088(b)(3), July 21, 2010, 124 Stat. 2092, provided that:

“(1) IN GENERAL.—Regulations to carry out section 624 of the Fair Credit Reporting Act (15 U.S.C. 1681s-3), shall be prescribed, as described in paragraph (2), by—

“(A) the Commodity Futures Trading Commission, with respect to entities subject to its enforcement authorities;

“(B) the Securities and Exchange Commission, with respect to entities subject to its enforcement authorities; and

“(C) the Bureau, with respect to other entities subject to this Act [see Short Title of 2003 Amendment note set out under section 1601 of this title].

“(2) COORDINATION.—Each agency required to prescribe regulations under paragraph (1) shall consult and coordinate with each other such agency so that, to the extent possible, the regulations prescribed by each such entity are consistent and comparable with the regulations prescribed by each other such agency.

“(3) CONSIDERATIONS.—In promulgating regulations under this subsection, each agency referred to in paragraph (1) shall—

“(A) ensure that affiliate sharing notification methods provide a simple means for consumers to make determinations and choices under section 624 of the Fair Credit Reporting Act [15 U.S.C. 1681s-3], as added by this section;

“(B) consider the affiliate sharing notification practices employed on the date of enactment of this Act [Dec. 4, 2003] by persons that will be subject to that section 624; and

“(C) ensure that notices and disclosures may be coordinated and consolidated, as provided in subsection (b) of that section 624.

“(4) TIMING.—Regulations required by this subsection shall—

“(A) be issued in final form not later than 9 months after the date of enactment of this Act [Dec. 4, 2003]; and

“(B) become effective not later than 6 months after the date on which they are issued in final form.”

[For definitions of terms used in section 214(b) of Pub. L. 108-159, set out above, see section 2 of Pub. L. 108-159, set out as a Definitions note under section 1681 of this title.]

STUDIES OF INFORMATION SHARING PRACTICES

Pub. L. 108-159, title II, §214(e), Dec. 4, 2003, 117 Stat. 1983, as amended by Pub. L. 111-203, title X, §1088(b)(4), July 21, 2010, 124 Stat. 2092, provided that:

“(1) IN GENERAL.—The Federal banking agencies, the National Credit Union Administration, and the Bureau shall jointly conduct regular studies of the consumer information sharing practices by financial institutions and other persons that are creditors or users of consumer reports with their affiliates.

“(2) MATTERS FOR STUDY.—In conducting the studies required by paragraph (1), the agencies described in paragraph (1) shall—

“(A) identify—

“(i) the purposes for which financial institutions and other creditors and users of consumer reports share consumer information;

“(ii) the types of information shared by such entities with their affiliates;

“(iii) the number of choices provided to consumers with respect to the control of such sharing, and the degree to and manner in which consumers exercise such choices, if at all; and

“(iv) whether such entities share or may share personally identifiable transaction or experience information with affiliates for purposes—

“(I) that are related to employment or hiring, including whether the person that is the subject of such information is given notice of such sharing, and the specific uses of such shared information; or

“(II) of general publication of such information; and

“(B) specifically examine the information sharing practices that financial institutions and other creditors and users of consumer reports and their affiliates employ for the purpose of making underwriting decisions or credit evaluations of consumers.

“(3) REPORTS.—

“(A) INITIAL REPORT.—Not later than 3 years after the date of enactment of this Act [Dec. 4, 2003], the Federal banking agencies, the National Credit Union Administration, and the Commission shall jointly submit a report to the Congress on the results of the initial study conducted in accordance with this subsection, together with any recommendations for legislative or regulatory action.

“(B) FOLLOWUP REPORTS.—The Federal banking agencies, the National Credit Union Administration, and the Commission shall, not less frequently than once every 3 years following the date of submission of the initial report under subparagraph (A), jointly submit a report to the Congress that, together with any recommendations for legislative or regulatory action—

“(i) documents any changes in the areas of study referred to in paragraph (2)(A) occurring since the date of submission of the previous report;

“(ii) identifies any changes in the practices of financial institutions and other creditors and users of consumer reports in sharing consumer information with their affiliates for the purpose of making underwriting decisions or credit evaluations of consumers occurring since the date of submission of the previous report; and

“(iii) examines the effects that changes described in clause (ii) have had, if any, on the degree to which such affiliate sharing practices reduce the need for financial institutions, creditors, and other users of consumer reports to rely on consumer reports for such decisions.”

[For definitions of terms used in section 214(e) of Pub. L. 108-159, set out above, see section 2 of Pub. L. 108-159, set out as a Definitions note under section 1681 of this title.]

§ 1681t. Relation to State laws**(a) In general**

Except as provided in subsections (b) and (c), this subchapter does not annul, alter, affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to the collection, distribution, or use of any information on consumers, or for the prevention or mitigation of identity theft, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency.

(b) General exceptions

No requirement or prohibition may be imposed under the laws of any State—

(1) with respect to any subject matter regulated under—

(A) subsection (c) or (e) of section 1681b of this title, relating to the prescreening of consumer reports;

(B) section 1681i of this title, relating to the time by which a consumer reporting agency must take any action, including the provision of notification to a consumer or other person, in any procedure related to the disputed accuracy of information in a consumer's file, except that this subparagraph shall not apply to any State law in effect on September 30, 1996;

(C) subsections (a) and (b) of section 1681m of this title, relating to the duties of a person who takes any adverse action with respect to a consumer;

(D) section 1681m(d) of this title, relating to the duties of persons who use a consumer

report of a consumer in connection with any credit or insurance transaction that is not initiated by the consumer and that consists of a firm offer of credit or insurance;

(E) section 1681c of this title, relating to information contained in consumer reports, except that this subparagraph shall not apply to any State law in effect on September 30, 1996;

(F) section 1681s-2 of this title, relating to the responsibilities of persons who furnish information to consumer reporting agencies, except that this paragraph shall not apply—

(i) with respect to section 54A(a) of chapter 93 of the Massachusetts Annotated Laws (as in effect on September 30, 1996); or

(ii) with respect to section 1785.25(a) of the California Civil Code (as in effect on September 30, 1996);

(G) section 1681g(e) of this title, relating to information available to victims under section 1681g(e) of this title;

(H) section 1681s-3 of this title, relating to the exchange and use of information to make a solicitation for marketing purposes;

(I) section 1681m(h) of this title, relating to the duties of users of consumer reports to provide notice with respect to terms in certain credit transactions;

(J) subsections (i) and (j) of section 1681c-1 of this title relating to security freezes; or

(K) subsection (k) of section 1681c-1 of this title, relating to credit monitoring for active duty military consumers, as defined in that subsection;

(2) with respect to the exchange of information among persons affiliated by common ownership or common corporate control, except that this paragraph shall not apply with respect to subsection (a) or (c)(1) of section 2480e of title 9, Vermont Statutes Annotated (as in effect on September 30, 1996);

(3) with respect to the disclosures required to be made under subsection (c), (d), (e), or (g) of section 1681g of this title, or subsection (f) of section 1681g of this title relating to the disclosure of credit scores for credit granting purposes, except that this paragraph—

(A) shall not apply with respect to sections 1785.10, 1785.16, and 1785.20.2 of the California Civil Code (as in effect on December 4, 2003) and section 1785.15 through section 1785.15.2 of such Code (as in effect on such date);

(B) shall not apply with respect to sections 5-3-106(2) and 212-14.3-104.3 of the Colorado Revised Statutes (as in effect on December 4, 2003); and

(C) shall not be construed as limiting, annulling, affecting, or superseding any provision of the laws of any State regulating the use in an insurance activity, or regulating disclosures concerning such use, of a credit-based insurance score of a consumer by any person engaged in the business of insurance;

(4) with respect to the frequency of any disclosure under section 1681j(a) of this title, except that this paragraph shall not apply—

(A) with respect to section 12-14.3-105(1)(d) of the Colorado Revised Statutes (as in effect on December 4, 2003);