

# CBS&S® Legal Update

CONSUMER  
FINANCIAL  
SERVICES

News &  
Developments  
in  
Consumer  
Financial  
Services Law

Articles  
Contributed by

Ron Gorsline  
Clint Heyworth  
Justin Hosie

## FTC Affiliate Marketing Rule

In October 2007, the Federal Trade Commission (FTC) approved an affiliate marketing rule addressing the way affiliated entities use consumer information. The final rule became effective on January 1, 2008, and mandates compliance no later than October 1, 2008. The Final Rule for Affiliate Marketing may be found at 16 CFR Parts 680 and 698. Below are some questions you may consider:

**What Does this Rule Address?** The rule addresses situations when one of your affiliated entities wants to market to another entity's consumer. For example, one state entity may want to solicit another state entity's consumer.

**What will be the Effect of the Rule?** You will likely add another opt-out notice to your privacy policy. If the notice accurately reflects your policies, follows the model notice provided, and mentions the affiliates that may solicit the consumer, then affiliates can solicit consumers who have not opted out.

**Do Exceptions Exist?** Yes. Even if your affiliate marketing notice did not mention the possibility of solicitation from a given affiliate, some exemptions and exceptions may allow the consumer to receive marketing information about such affiliate.

**Why is this Important?** Maintaining maximum flexibility with respect to customer information may increase the value of your company for future marketing arrangements or in the event of a potential sale. In addition, failure to comply with the Rule may create liability.

We have prepared a detailed overview of the general rule and its scope, the penalties for noncompliance, the requirements for the opt-out notice, and the rule's exceptions and exemptions, so please do not hesitate to contact us for more information.

## Identity Theft Prevention Programs The Importance of Establishing, Maintaining & Updating

Recent federal regulations impose new requirements regarding identity theft, and the FTC will begin enforcing them in November.

The regulations impose a "red flag requirement" on creditors with any account for which there is a reasonably foreseeable risk from identity theft. The regulations mandate that companies detect, prevent, and mitigate identity theft. This requires establishing an identity theft prevention program following specific regulatory guidelines.

If you would like more information regarding developing an identity theft prevention program, please do not hesitate to contact us.

*This is an advertisement. Certification as a Specialist in Consumer Financial Services by the Tennessee Commission on Continuing Legal Education and Specialization is not currently available. None of the attorneys listed in this communication are certified in any area of Specialization.*

*This legal update is provided with the understanding that the authors are not rendering legal advice or services. Laws are constantly changing, and each federal law, state law, and regulation should be checked by legal counsel for the most current version. We make no claims, promises, or guarantees about the accuracy, completeness, or adequacy of the information contained in this bulletin. Do not act upon this information without seeking the advice of an attorney.*