

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 depository institution to ask about retail locations and hours, but does not request information about products or services. The institution 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 depository institution'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 depository institution to ask about retail 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 certificates of deposit. 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 depository institution may use eligibility information it receives from an affiliate to make solicitations to the consumer about certificates of deposit because such solicitations would respond to the consumer-initiated communication about products or services.

(4) *Examples of consumer authorization or request for solicitations.* (i) A con-

sumer 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 credit card issuer. The issuer's online application contains a blank check box that the consumer may check to authorize or request information from the credit card issuer's affiliates. The consumer checks the box. The consumer has authorized or requested solicitations from the card issuer's affiliates.

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

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

(e) *Relation to affiliate-sharing notice and opt-out.* Nothing in this subpart 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.

§ 41.22 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.* (i) *In general.* If the consumer establishes a continuing relationship with a bank or its affiliate, an opt-out notice may apply to eligibility information obtained in connection with—

(A) A single continuing relationship or multiple continuing relationships that the consumer establishes with the bank or its affiliates, including continuing relationships established subsequent to delivery of the opt-out notice, so long as the notice adequately describes the continuing relationships covered by the opt-out; or

(B) Any other transaction between the consumer and the bank or its affiliates as described in the notice.

(ii) *Examples of continuing relationships.* A consumer has a continuing relationship with a bank or its affiliate if the consumer—

(A) Opens a deposit or investment account with the bank or its affiliate;

(B) Obtains a loan for which the bank or its affiliate owns the servicing rights;

(C) Purchases an insurance product from the bank or its affiliate;

(D) Holds an investment product through the bank or its affiliate, such as when the bank acts or its affiliate acts as a custodian for securities or for assets in an individual retirement arrangement;

(E) Enters into an agreement or understanding with the bank or its affiliate whereby the bank or its affiliate undertakes to arrange or broker a home mortgage loan for the consumer;

(F) Enters into a lease of personal property with the bank or its affiliate; or

(G) Obtains financial, investment, or economic advisory services from the bank or its affiliate for a fee.

(3) *No continuing relationship.* (i) *In general.* If there is no continuing relationship between a consumer and a bank or its affiliate, and the bank or its affiliate obtains eligibility information about the consumer in connection with a transaction with the consumer, such as an isolated transaction or a

credit application that is denied, an opt-out notice provided to the consumer only applies to eligibility information obtained in connection with that transaction.

(ii) *Examples of isolated transactions.* An isolated transaction occurs if—

(A) The consumer uses a bank's or its affiliate's ATM to withdraw cash from an account at another financial institution; or

(B) A bank or its affiliate sells the consumer a cashier's check or money order, airline tickets, travel insurance, or traveler's checks in isolated transactions.

(4) *Menu of alternatives.* A consumer may be given the opportunity to choose from a menu of alternatives when electing to prohibit solicitations, such as by electing to prohibit solicitations from certain types of affiliates covered by the opt-out notice but not other types of affiliates covered by the notice, electing to prohibit solicitations based on certain types of eligibility information but not other types of eligibility information, or electing to prohibit solicitations by certain methods of delivery but not other methods of delivery. However, one of the alternatives must allow the consumer to prohibit all solicitations from all of the affiliates that are covered by the notice.

(5) *Special rule for a notice following termination of all continuing relationships.* (i) *In general.* A consumer must be given a new opt-out notice if, after all continuing relationships with a bank or its affiliate(s) are terminated, the consumer subsequently establishes another continuing relationship with the bank or its affiliate(s) and the consumer's eligibility information is to be used to make a solicitation. The new opt-out notice must apply, at a minimum, to eligibility information obtained in connection with the new continuing relationship. Consistent with paragraph (b) of this section, the consumer's decision not to opt out after receiving the new opt-out notice would not override a prior opt-out election by the consumer that applies to eligibility information obtained in connection with a terminated relationship, regardless of whether the new opt-out notice

applies to eligibility information obtained in connection with the terminated relationship.

(ii) *Example.* A consumer has a checking account with a depository institution that is part of an affiliated group. The consumer closes the checking account. One year after closing the checking account, the consumer opens a savings account with the same depository institution. The consumer must be given a new notice and opportunity to opt out before the depository institution's affiliates may make solicitations to the consumer using eligibility information obtained by the depository institution in connection with the new savings account relationship, regardless of whether the consumer opted out in connection with the checking account.

(b) *Duration of opt-out.* The election of a consumer to opt out must be effective for a period of at least five years (the "opt-out period") beginning when the consumer's opt-out election is received and implemented, unless the consumer subsequently revokes the opt-out in writing or, if the consumer agrees, electronically. An opt-out period of more than five years may be established, including an opt-out period that does not expire unless revoked by the consumer.

(c) *Time of opt-out.* A consumer may opt out at any time.

§ 41.23 Contents of opt-out notice; consolidated and equivalent notices.

(a) *Contents of opt-out notice.* (1) *In general.* A notice must be clear, conspicuous, and concise, and must accurately disclose:

(i) The name of the affiliate(s) providing the notice. If the notice is provided jointly by multiple affiliates and each affiliate shares a common name, such as "ABC," then the notice may indicate that it is being provided by multiple companies with the ABC name or multiple companies in the ABC group or family of companies, for example, by stating that the notice is provided by "all of the ABC companies," "the ABC banking, credit card, insurance, and securities companies," or by listing the name of each affiliate providing the notice. But if the affiliates providing the joint notice do not

all share a common name, then the notice must either separately identify each affiliate by name or identify each of the common names used by those affiliates, for example, by stating that the notice is provided by "all of the ABC and XYZ companies" or by "the ABC banking and credit card companies and the XYZ insurance companies"

(ii) A list of the affiliates or types of affiliates whose use of eligibility information is covered by the notice, which may include companies that become affiliates after the notice is provided to the consumer. If each affiliate covered by the notice shares a common name, such as "ABC," then the notice may indicate that it applies to multiple companies with the ABC name or multiple companies in the ABC group or family of companies, for example, by stating that the notice is provided by "all of the ABC companies," "the ABC banking, credit card, insurance, and securities companies," or by listing the name of each affiliate providing the notice. But if the affiliates covered by the notice do not all share a common name, then the notice must either separately identify each covered affiliate by name or identify each of the common names used by those affiliates, for example, by stating that the notice applies to "all of the ABC and XYZ companies" or to "the ABC banking and credit card companies and the XYZ insurance companies";

(iii) A general description of the types of eligibility information that may be used to make solicitations to the consumer;

(iv) That the consumer may elect to limit the use of eligibility information to make solicitations to the consumer;

(v) That the consumer's election will apply for the specified period of time stated in the notice and, if applicable, that the consumer will be allowed to renew the election once that period expires;

(vi) If the notice is provided to consumers who may have previously opted out, such as if a notice is provided to consumers annually, that the consumer who has chosen to limit solicitations does not need to act again until the consumer receives a renewal notice; and