

## § 571.23

## 12 CFR Ch. V (1–1–10 Edition)

an account at another financial institution; or

(B) You or your 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 you or your affiliate(s) are terminated, the consumer subsequently establishes another continuing relationship with you or your 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 depos-

itory 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.

### **§ 571.23 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

(vii) A reasonable and simple method for the consumer to opt out.

(2) *Joint relationships.* (i) If two or more consumers jointly obtain a product or service, a single opt-out notice may be provided to the joint con-

sumers. Any of the joint consumers may exercise the right to opt out.

(ii) The opt-out notice must explain how an opt-out direction by a joint consumer will be treated. An opt-out direction by a joint consumer may be treated as applying to all of the associated joint consumers, or each joint consumer may be permitted to opt-out separately. If each joint consumer is permitted to opt out separately, one of the joint consumers must be permitted to opt out on behalf of all of the joint consumers and the joint consumers must be permitted to exercise their separate rights to opt out in a single response.

(iii) It is impermissible to require *all* joint consumers to opt out before implementing *any* opt-out direction.

(3) *Alternative contents.* If the consumer is afforded a broader right to opt out of receiving marketing than is required by this subpart, the requirements of this section may be satisfied by providing the consumer with a clear, conspicuous, and concise notice that accurately discloses the consumer’s opt-out rights.

(4) *Model notices.* Model notices are provided in appendix C of this part.

(b) *Coordinated and consolidated notices.* A notice required by this subpart may be coordinated and consolidated with any other notice or disclosure required to be issued under any other provision of law by the entity providing the notice, including but not limited to the notice described in section 603(d)(2)(A)(iii) of the Act and the Gramm-Leach-Bliley Act privacy notice.

(c) *Equivalent notices.* A notice or other disclosure that is equivalent to the notice required by this subpart, and that is provided to a consumer together with disclosures required by any other provision of law, satisfies the requirements of this section.

#### § 571.24 Reasonable opportunity to opt out.

(a) *In general.* You must not use eligibility information about a consumer that you receive from an affiliate to make a solicitation to the consumer about your products or services, unless the consumer is provided a reasonable