

FTC Issues Affiliate Marketing Rule Under FACTA

December 26, 2007

The Federal Trade Commission ("FTC") issued a new rule under the Fair and Accurate Credit Transactions Act ("FACTA") regulating the use of certain specified information shared by affiliates and used for marketing purposes. Specifically, under the Rule, a company may not use "eligibility information" received from an "affiliate" to "make" a "solicitation" to a consumer unless the consumer has received (or constructively received) a notice of such use and a "reasonable" period to exercise an opportunity to opt out.

If your company receives information about consumers from a corporate affiliate, this Rule may impose a new notice and opt-out requirement prior to your company's use of the information for marketing purposes. The Rule applies to information relating to a consumer -- including transactional information between the consumer and the affiliate that provides the information -- if that the information was used or expected to be used for purposes of determining the consumer's eligibility for credit, insurance, or employment, and if that information is shared with a corporate affiliate for that affiliate's marketing purposes.

Kelley Drye's [Advertising Law](#) Practice Group has prepared an advisory, which provides key definitions to assist in determining whether the rule applies to your particular business.