

[For open-end credit, either:] (1) The monthly fee for [PRODUCT NAME] is based on your account balance each month multiplied by the unit-cost, which is \_\_\_\_; or (2) The formula used to compute the fee is \_\_\_\_\_].

- Lump sum payment of fee

[Applicable if a bank offers the option to pay the fee in a single payment]

[Prohibited where the debt subject to the contract is a residential mortgage loan]

You may choose to pay the fee in a single lump sum or in [monthly/quarterly] payments. Adding the lump sum of the fee to the amount you borrow will increase the cost of [PRODUCT NAME].

- Lump sum payment of fee with no refund

[Applicable if a bank offers the option to pay the fee in a single payment for a no-refund DCC]

[Prohibited where the debt subject to the contract is a residential mortgage loan]

You have the option to purchase [PRODUCT NAME] that includes a refund of the unearned portion of the fee if you terminate the contract or prepay the loan in full prior to the scheduled termination date. Prices of refund and no-refund products may differ.

- Refund of fee paid in lump sum

[Applicable where the customer pays the fee in a single payment and the fee is added to the amount borrowed]

[Prohibited where the debt subject to the contract is a residential mortgage loan]

[Either:] (1) You may cancel [PRODUCT NAME] at any time and receive a refund; or (2) You may cancel [PRODUCT NAME] within \_\_\_\_ days and receive a full refund; or (3) If you cancel [PRODUCT NAME] you will not receive a refund.

- Use of card or credit line restricted

[Applicable if the contract restricts use of card or credit line when customer activates protection]

If [PRODUCT NAME] is activated, you will be unable to incur additional charges on the credit card or use the credit line.

- Termination of [PRODUCT NAME]

[Either:] (1) You have no right to cancel [PRODUCT NAME]; or (2) You have the right to cancel [PRODUCT NAME] in the following circumstances: \_\_\_\_\_.

[And either:] (1) The bank has no right to cancel [PRODUCT NAME]; or (2) The bank has the right to cancel [PRODUCT NAME] in the following circumstances: \_\_\_\_\_.

- Eligibility requirements, conditions, and exclusions

There are eligibility requirements, conditions, and exclusions that could prevent you from receiving benefits under [PRODUCT NAME].

[Either:] (1) The following is a summary of the eligibility requirements, conditions, and exclusions. [The bank provides a summary of any eligibility requirements, conditions, and exclusions]; or (2) You may find a complete explanation of the eligibility requirements, conditions, and exclusions in paragraphs \_\_\_\_ of the [PRODUCT NAME] agreement.

## PARTS 38–39 [RESERVED]

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#### APPENDIX A TO PART 40—SAMPLE CLAUSES

AUTHORITY: 12 U.S.C. 93a; 15 U.S.C. 6801 *et seq.*

SOURCE: 65 FR 35196, June 1, 2000, unless otherwise noted.

## § 40.1

## 12 CFR Ch. I (1–1–05 Edition)

### § 40.1 Purpose and scope.

(a) *Purpose.* This part governs the treatment of nonpublic personal information about consumers by the financial institutions listed in paragraph (b) of this section. This part:

(1) Requires a financial institution to provide notice to customers about its privacy policies and practices;

(2) Describes the conditions under which a financial institution may disclose nonpublic personal information about consumers to nonaffiliated third parties; and

(3) Provides a method for consumers to prevent a financial institution from disclosing that information to most nonaffiliated third parties by “opting out” of that disclosure, subject to the exceptions in §§ 40.13, 40.14, and 40.15.

(b) *Scope.* (1) This part applies only to nonpublic personal information about individuals who obtain financial products or services primarily for personal, family, or household purposes from the institutions listed below. This part does not apply to information about companies or about individuals who obtain financial products or services for business, commercial, or agricultural purposes. This part applies to United States offices of entities for which the Office of the Comptroller of the Currency has primary supervisory authority. They are referred to in this part as “the bank.” These are national banks, District of Columbia banks, Federal branches and Federal agencies of foreign banks, and any subsidiaries of such entities except a broker or dealer that is registered under the Securities Exchange Act of 1934, a registered investment adviser (with respect to the investment advisory activities of the adviser and activities incidental to those investment advisory activities), an investment company registered under the Investment Company Act of 1940, an insurance company that is subject to supervision by a State insurance regulator (with respect to insurance activities of the company and activities incidental to those insurance activities), and an entity that is subject to regulation by the Commodity Futures Trading Commission.

(2) Nothing in this part modifies, limits, or supersedes the standards governing individually identifiable health

information promulgated by the Secretary of Health and Human Services under the authority of sections 262 and 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d-1320d-8).

### § 40.2 Rule of construction.

The examples in this part and the sample clauses in appendix A of this part are not exclusive. Compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this part.

### § 40.3 Definitions.

As used in this part, unless the context requires otherwise:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company.

(b)(1) *Clear and conspicuous* means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(2) *Examples.* (i) *Reasonably understandable.* A bank makes its notice reasonably understandable if it:

(A) Presents the information in the notice in clear, concise sentences, paragraphs, and sections;

(B) Uses short explanatory sentences or bullet lists whenever possible;

(C) Uses definite, concrete, everyday words and active voice whenever possible;

(D) Avoids multiple negatives;

(E) Avoids legal and highly technical business terminology whenever possible; and

(F) Avoids explanations that are imprecise and readily subject to different interpretations.

(ii) *Designed to call attention.* A bank designs its notice to call attention to the nature and significance of the information in it if the bank:

(A) Uses a plain-language heading to call attention to the notice;

(B) Uses a typeface and type size that are easy to read;

(C) Provides wide margins and ample line spacing;

(D) Uses boldface or italics for key words; and

(E) In a form that combines the bank’s notice with other information,