

(7)(i) To comply with Federal, State, or local laws, rules and other applicable legal requirements;

(ii) To comply with a properly authorized civil, criminal, or regulatory investigation, or subpoena or summons by Federal, State, or local authorities; or

(iii) To respond to judicial process or government regulatory authorities having jurisdiction over a bank for examination, compliance, or other purposes as authorized by law.

(b) *Examples of consent and revocation of consent.* (1) A consumer may specifically consent to a bank's disclosure to a nonaffiliated insurance company of the fact that the consumer has applied to the bank for a mortgage so that the insurance company can offer homeowner's insurance to the consumer.

(2) A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under § 40.7(f).

Subpart D—Relation to Other Laws; Effective Date

§ 40.16 Protection of Fair Credit Reporting Act.

Nothing in this part shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), and no inference shall be drawn on the basis of the provisions of this part regarding whether information is transaction or experience information under section 603 of that Act.

§ 40.17 Relation to State laws.

(a) *In general.* This part shall not be construed as superseding, altering, or affecting any statute, regulation, order, or interpretation in effect in any State, except to the extent that such State statute, regulation, order, or interpretation is inconsistent with the provisions of this part, and then only to the extent of the inconsistency.

(b) *Greater protection under State law.* For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this part if the protection such statute, regulation, order, or interpretation affords any consumer is

greater than the protection provided under this part, as determined by the Federal Trade Commission, after consultation with the OCC, on the Federal Trade Commission's own motion, or upon the petition of any interested party.

§ 40.18 Effective date; transition rule.

(a) *Effective date.* This part is effective November 13, 2000. In order to provide sufficient time for banks to establish policies and systems to comply with the requirements of this part, the OCC has extended the time for compliance with this part until July 1, 2001.

(b)(1) *Notice requirement for consumers who are the bank's customers on the compliance date.* By July 1, 2001, a bank must have provided an initial notice, as required by § 40.4, to consumers who are the bank's customers on July 1, 2001.

(2) *Example.* A bank provides an initial notice to consumers who are its customers on July 1, 2001, if, by that date, the bank has established a system for providing an initial notice to all new customers and has mailed the initial notice to all the bank's existing customers.

(c) *Two-year grandfathering of service agreements.* Until July 1, 2002, a contract that a bank has entered into with a nonaffiliated third party to perform services for the bank or functions on the bank's behalf satisfies the provisions of § 40.13(a)(1)(ii) of this part, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as the bank entered into the agreement on or before July 1, 2000.

APPENDIX A TO PART 40—SAMPLE CLAUSES

Financial institutions, including a group of financial holding company affiliates that use a common privacy notice, may use the following sample clauses, if the clause is accurate for each institution that uses the notice. (Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act, such as a requirement to permit a consumer to opt out of disclosures to

affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.)

A-1—CATEGORIES OF INFORMATION A BANK COLLECTS (ALL INSTITUTIONS)

A bank may use this clause, as applicable, to meet the requirement of § 40.6(a)(1) to describe the categories of nonpublic personal information the bank collects.

Sample Clause A-1:

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates, or others; and
- Information we receive from a consumer reporting agency.

A-2—CATEGORIES OF INFORMATION A BANK DISCLOSES (INSTITUTIONS THAT DISCLOSE OUTSIDE OF THE EXCEPTIONS)

A bank may use one of these clauses, as applicable, to meet the requirement of § 40.6(a)(2) to describe the categories of nonpublic personal information the bank discloses. The bank may use these clauses if it discloses nonpublic personal information other than as permitted by the exceptions in §§ 40.13, 40.14, and 40.15.

Sample Clause A-2, Alternative 1:

We may disclose the following kinds of nonpublic personal information about you:

- Information we receive from you on applications or other forms, such as [*provide illustrative examples, such as “your name, address, social security number, assets, and income”*];
- Information about your transactions with us, our affiliates, or others, such as [*provide illustrative examples, such as “your account balance, payment history, parties to transactions, and credit card usage”*]; and
- Information we receive from a consumer reporting agency, such as [*provide illustrative examples, such as “your creditworthiness and credit history”*].

Sample Clause A-2, Alternative 2:

We may disclose all of the information that we collect, as described [*describe location in the notice, such as “above” or “below”*].

A-3—CATEGORIES OF INFORMATION A BANK DISCLOSES AND PARTIES TO WHOM THE BANK DISCLOSES (INSTITUTIONS THAT DO NOT DISCLOSE OUTSIDE OF THE EXCEPTIONS)

A bank may use this clause, as applicable, to meet the requirements of §§ 40.6(a)(2), (3), and (4) to describe the categories of nonpublic personal information about customers and former customers that the bank discloses and the categories of affiliates and nonaffiliated third parties to whom the bank discloses. A bank may use this clause if the bank does not disclose nonpublic personal in-

formation to any party, other than as permitted by the exceptions in §§ 40.14, and 40.15.

Sample Clause A-3:

We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law.

A-4—CATEGORIES OF PARTIES TO WHOM A BANK DISCLOSES (INSTITUTIONS THAT DISCLOSE OUTSIDE OF THE EXCEPTIONS)

A bank may use this clause, as applicable, to meet the requirement of § 40.6(a)(3) to describe the categories of affiliates and nonaffiliated third parties to whom the bank discloses nonpublic personal information. The bank may use this clause if the bank discloses nonpublic personal information other than as permitted by the exceptions in §§ 40.13, 40.14, and 40.15, as well as when permitted by the exceptions in §§ 40.14 and 40.15.

Sample Clause A-4:

We may disclose nonpublic personal information about you to the following types of third parties:

- Financial service providers, such as [*provide illustrative examples, such as “mortgage bankers, securities broker-dealers, and insurance agents”*];
- Non-financial companies, such as [*provide illustrative examples, such as “retailers, direct marketers, airlines, and publishers”*]; and
- Others, such as [*provide illustrative examples, such as “non-profit organizations”*].

We may also disclose nonpublic personal information about you to nonaffiliated third parties as permitted by law.

A-5—SERVICE PROVIDER/JOINT MARKETING EXCEPTION

A bank may use one of these clauses, as applicable, to meet the requirements of § 40.6(a)(5) related to the exception for service providers and joint marketers in § 40.13. If a bank discloses nonpublic personal information under this exception, the bank must describe the categories of nonpublic personal information the bank discloses and the categories of third parties with whom the bank has contracted.

Sample Clause A-5, Alternative 1:

We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements:

- Information we receive from you on applications or other forms, such as [*provide illustrative examples, such as “your name, address, social security number, assets, and income”*];
- Information about your transactions with us, our affiliates, or others, such as [*provide illustrative examples, such as “your account balance, payment history, parties to transactions, and credit card usage”*]; and

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• Information we receive from a consumer reporting agency, such as [provide illustrative examples, such as “your creditworthiness and credit history”].

Sample Clause A-5, Alternative 2:

We may disclose all of the information we collect, as described [describe location in the notice, such as “above” or “below”] to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements.

A-6—EXPLANATION OF OPT OUT RIGHT (INSTITUTIONS THAT DISCLOSE OUTSIDE OF THE EXCEPTIONS)

A bank may use this clause, as applicable, to meet the requirement of § 40.6(a)(6) to provide an explanation of the consumer’s right to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right. The bank may use this clause if the bank discloses nonpublic personal information other than as permitted by the exceptions in §§ 40.13, 40.14, and 40.15.

Sample Clause A-6:

If you prefer that we not disclose nonpublic personal information about you to nonaffiliated third parties, you may opt out of those disclosures, that is, you may direct us not to make those disclosures (other than disclosures permitted by law). If you wish to opt out of disclosures to nonaffiliated third parties, you may [describe a reasonable means of opting out, such as “call the following toll-free number: (insert number)].

A-7—CONFIDENTIALITY AND SECURITY (ALL INSTITUTIONS)

A bank may use this clause, as applicable, to meet the requirement of § 40.6(a)(8) to describe its policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

Sample Clause A-7:

We restrict access to nonpublic personal information about you to [provide an appropriate description, such as “those employees who need to know that information to provide products or services to you”]. We maintain physical, electronic, and procedural safeguards that comply with federal standards to guard your nonpublic personal information.

PART 41—FAIR CREDIT REPORTING

Subpart A—General Provisions

Sec.

41.1 Purpose.

41.2 [Reserved]

41.3 Definitions.

Subparts B-H—[Reserved]

Subpart I—Duties of Users of Consumer Reports Regarding Identity Theft

41.80-82 [Reserved]

41.83 Disposal of consumer information

AUTHORITY: 12 U.S.C. 1 *et seq.*, 24 (Seventh), 93a, 481, 484, and 1818; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

SOURCE: 69 FR 77616, Dec. 28, 2004, unless otherwise noted.

EFFECTIVE DATE NOTE: At 69 FR 77616, Dec. 28, 2004, part 41 was added, effective July 1, 2005.

Subpart A—General Provisions

§ 41.1 Purpose.

(a) *Purpose.* The purpose of this part is to establish standards for national banks regarding consumer report information. In addition, the purpose of this part is to specify the extent to which national banks may obtain, use, or share certain information. This part also contains a number of measures national banks must take to combat consumer fraud and related crimes, including identity theft.

(b) [Reserved]

§ 41.2 [Reserved]

§ 41.3 Definitions.

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

(a)-(d) [Reserved]

(e) *Consumer* means an individual.

(f)-(n) [Reserved]

Subparts B-H—[Reserved]

Subpart I—Duties of Users of Consumer Reports Regarding Identity Theft

§ 41.80-82 [Reserved]

§ 41.83 Disposal of consumer information.

(a) *Definitions as used in this section.*
(1) *Bank* means national banks, Federal branches and agencies of foreign banks, and their respective operating subsidiaries.