



**Comptroller of the Currency
Administrator of National Banks**

Privacy Regulation Compliance

Virtual Seminar

Tuesday, February 13, 2001

11:00 a.m. – 12:30 p.m. Eastern

10:00 a.m. – 11:30 a.m. Central

9:00 a.m. – 10:30 a.m. Mountain

8:00 a.m. – 9:30 a.m. Pacific

Presented by:

John D. Hawke, Jr.

Amy Friend

Mark Tenhundfeld

Ralph Sharpe

Dave Hammaker

John D. Hawke, Jr.
Comptroller of the Currency



John D. Hawke, Jr. was sworn in as the 28th Comptroller of the Currency on December 8, 1998. After serving for 10 months under a Recess Appointment, he was sworn in for a full five-year term as Comptroller on October 13, 1999.

The Comptroller of the Currency is the Administrator of National Banks. The Office of the Comptroller (OCC) supervises 2,600 federally chartered commercial banks and about 66 federal branches and agencies of foreign banks in the United States comprising more than half of the assets of the commercial banking system. The Comptroller also serves as a Director of the Federal Deposit Insurance Corporation, the Federal Financial Institutions Examination Council, and the Neighborhood Reinvestment Corporation.

Prior to his appointment as Comptroller, Mr. Hawke served for 3-1/2 years as Under Secretary of the Treasury for Domestic Finance. In that capacity he oversaw the development of policy and legislation in the areas of financial institutions, debt management and capital markets, and served as Chairman of the Advanced Counterfeit Deterrence Steering Committee and as a member of the board of the Securities Investor Protection Corporation. Before joining Treasury, Mr. Hawke was a

Senior Partner at the Washington, D.C. law firm of Arnold & Porter, which he first joined as an associate in 1962. At Arnold & Porter he headed the Financial Institutions practice, and from 1987 to 1995 he served as Chairman of the firm. In 1975 he left the firm to serve as General Counsel to the Board of Governors of the Federal Reserve System, returning in 1978.

Mr. Hawke graduated from Yale University in 1954 with a B.A. in English. From 1955 to 1957 he served on active duty with the U.S. Air Force. After graduating in 1960 from Columbia University School of Law, where he was Editor-in-Chief of the Columbia Law Review, Mr. Hawke was a law clerk for Judge E. Barrett Prettyman on the United States Court of Appeals for the District of Columbia Circuit. From 1961 to 1962 he served as counsel to the Select Subcommittee on Education in the House of Representatives.

From 1970 to 1987 Mr. Hawke taught courses on federal regulation of banking at the Georgetown University Law Center. He has also taught courses on bank acquisitions and financial regulation and serves as the Chairman of the Board of Advisors of the Morin Center for Banking Law Studies.

In 1987 Mr. Hawke served as a member of a Committee of Inquiry appointed by the Chicago Mercantile Exchange to study the role of futures markets in connection with the stock market crash in October of that year.

Mr. Hawke has written extensively on matters relating to the regulation of financial institutions, and is the author of "Commentaries on Banking Regulation," published in 1985. He was a founding member of the Shadow Financial Regulatory Committee, and served on the committee until joining Treasury in April 1995.

Mr. Hawke is a member of the Cosmos Club, the Economic Club of Washington and the Exchequer Club of Washington.

Born in New York City on June 26, 1933, Mr. Hawke resides in Washington, D.C. He was married in 1962 to the late Marie R. Hawke and has four adult children, Daniel, Caitlin, Anne and Patrick, and one grandchild, Spencer Patrick Hawke.

Ralph E. Sharpe

*Deputy Comptroller, Community and Consumer Policy
Office of the Comptroller of the Currency*



Ralph E. Sharpe became Deputy Comptroller for Community and Consumer Policy on June 4, 1999. He heads the OCC division responsible for establishing policies to ensure national bank compliance with the Community Reinvestment Act (CRA), as well as fair lending and other consumer protection laws, including the Truth in Lending and Truth in Savings Acts.

From 1997 through May of 1999, Mr. Sharpe was Senior Policy Advisor to the Senior Deputy Comptroller for Bank Supervision Policy. From 1994 to 1997, he was Deputy Comptroller for Multinational Banking. He served in the OCC's law department as Director of the Enforcement and Compliance Division from 1984 to 1994, and was Assistant Director in the Litigation Division from 1982 to 1984. He joined the OCC in 1978 as a staff attorney.

Previously, Mr. Sharpe was a staff attorney at the U.S. Department of Energy and an appellate defense attorney in the U.S. Army Judge Advocate General's Corps.

Mr. Sharpe graduated in 1974 from the University of Wisconsin Law School, Madison, Wisconsin. He received a B.A. from the University of Wisconsin-Milwaukee in 1969.

Mark Tenhundfeld

*Assistant Director, Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency*



Mark Tenhundfeld is Assistant Director in the Legislative and Regulatory Activities Division of the Office of the Comptroller of the Currency's Law Department.

Prior to joining the OCC, Mr. Tenhundfeld was a partner in the law firm of Miller, Hamilton, Snider & Odom, LLC, where he specialized in bank regulatory matters. He also served as Attorney in the Legal Division of the Board of Governors of the Federal Reserve System.

Mr. Tenhundfeld received his law degree from the Vanderbilt School of Law and his undergraduate degree from Yale University.

Amy S. Friend

Assistant Chief Counsel

Office of the Comptroller of the Currency



Amy Friend is Assistant Chief Counsel at the Office of the Comptroller of the Currency. Amy works extensively on issues involving consumer privacy, including the rulemaking under the privacy title of the Gramm-Leach-Bliley Act and the Fair Credit Reporting Act. Prior to joining the OCC in January 1998, Amy was minority general counsel for the Committee on Banking and Financial Services of the U.S. House of Representatives. Amy worked for the U.S. Congress for 10 years, serving as counsel to both the House Judiciary and House Banking Committees. Amy is a graduate of the University of Pennsylvania and Georgetown University Law Center.

David G. Hammaker

*Deputy Comptroller, Compliance Operations
Office of the Comptroller of the Currency*



David (Dave) G. Hammaker is Deputy Comptroller for Compliance Operations with the Office of the Comptroller of the Currency.

As Deputy Comptroller, Dave serves as principal advisor on compliance and CRA operations activities. In addition, he directs the activities of the compliance specialists, works closely with the Deputy Comptroller for Community and Consumer Policy to oversee Bank Supervision Operation's implementation of consumer/CRA policy, and serves as a member of the Bank Supervision Operation's management team.

Mr. Hammaker joined the OCC in 1975 after graduation from the Pennsylvania State University. Previously, he held a variety of positions, including field manager in both Pittsburgh and Philadelphia and Examiner-In-Charge of Mellon Bank Corporation and PNC Bank Corporation. In addition, Mr. Hammaker has served as a compliance examiner and was the Examiner-In-Charge of Compliance at both Mellon and PNC. For a number of years, Mr. Hammaker also coordinated compliance and CRA activities for the Northeastern District's regional banks. In that role, he developed analytical tools for assessing bank CRA performance, organized banker outreach programs, and maintained contact with numerous community organizations, among other duties.

Overview of the Financial Privacy Rule

OCC Telephone Seminar
February 13 and 14, 2001

I. Purposes of privacy provisions of GLBA

- A. Disclose privacy policies and practices.
- B. Give consumers right to opt out.

II. Key definitions

A. Consumer. 40.3(e)¹

- i. Definition applies only to individuals... 40.3(e)(1)

Transactions with corporations, trusts, and other business entities excluded. See, e.g., 40.3(vi) - (viii)

- ii. Who obtains a financial product or service... Id.

Note that this includes evaluating or brokering information provided by a person. 40.3(l)(2)

- iii. For personal, family, or household purposes. 40.3(e)(1)

¹ Numbers refer to sections in the OCC's financial privacy rule, which may be found at 12 CFR Part 40.

- B. Customer. 40.3(h)
- i. A person becomes a customer when he or she enters into a continuing relationship with you. 40.3(i)
 - ii. All customers are consumers, but not vice versa.
 - iii. If unsure about customer status, ask whether it is reasonable to assume further communications with the person.
- C. Nonpublic personal information. 40.3(n)
- i. Starting point: Any information you receive in connection with a consumer transaction.
 - a. Includes information obtained from the consumer, that results from a transaction with the consumer, or that is otherwise obtained in connection with a consumer transaction. 40.3(n); 40.3(o)
 - b. It also includes customer lists. 40.3(n)(1)(ii)
 - ii. Information not covered:
 - a. Publicly available information. 40.3(n)(2)(i)
 - 1. Information is publicly available if you have a reasonable basis to believe that it was lawfully made available to the general public from government records, widely distributed media, or disclosures required by law. 40.3(p)
 - 2. Even publicly available information will be deemed "nonpublic," if part of a customer list is derived from nonpublic personal information. 40.3(n)(1)(i)
 - b. Information obtained outside of a consumer transaction.

III. Duty to provide privacy notice

A. Timing.

- i. Initial notice.
 - a. Give privacy notice no later than when customer relationship is established. 40.4(a)(1)
 - b. Existing customers – by July 1, 2001. 40.18(b)
- ii. Annual notice.
 - a. Privacy notice must be given annually as long as customer relationship continues. 40.5(a)(1)
 - b. May define any 12-month period as "annual," but must be consistent. Id.

B. Delivery. Must be given so that each customer may reasonably be expected to receive actual notice. Must be in writing or, if customer agrees, electronically. 40.9(a)

- i. Examples of acceptable delivery:
 - a. Hand-delivery. 40.9(b)(1)(i)
 - b. Mailing to last known address. 40.9(b)(1)(ii)
 - c. For transactions conducted electronically, posting the notice on the site and requiring consumers to acknowledge receipt in order to obtain the product or service. 40.9(b)(1)(iii)
- ii. Examples of unacceptable delivery:
 - a. Posting on lobby wall only. 40.9(b)(2)(i)
 - b. Oral notice only. 40.9(d)

C. Content.

- i. Three sets of disclosures every bank must make (the "simplified notice"):
 - a. Categories of information you collect, identified by one of the four sources set out in the regulation (as appropriate). 40.6(a)(1)
 - 1. Information from the consumer. 40.6(c)(1)(i)
 - 2. Information about the consumer's transactions with you or your affiliates. 40.6(c)(1)(ii)
 - 3. Information about the consumer's transactions with nonaffiliated third parties. 40.6(c)(1)(iii)
 - 4. Information from a consumer reporting agency. 40.6(c)(1)(iv)
 - b. Information shared pursuant to exceptions to the opt out rules. May state that you share "as permitted by law." 40.6(a)(9) and (b)
 - 1. These exceptions are, for the most part, intended to permit sharing as needed to conduct routine business practices. See 40.14 and 40.15
 - 2. Note: The exceptions apply only to the opt out disclosure, not the privacy disclosure.

- c. What you are doing to protect confidentiality and security of customer information – the "501(b)" disclosure. 40.6(a)(8). You may satisfy this by disclosing –
 - 1. Who has access. 40.6(c)(6)(i)
 - 2. That you comply with federal standards (if accurate). 40.6(c)(6)(ii)

- ii. Other disclosures required, if sharing practices are broader than what is permitted by exceptions to opt out requirements:
 - a. Categories of information shared. 40.6(a)(2)
 - 1. List by categories of information collected. 40.6(c)(2)(i)
 - 2. Provide examples of types of information in each. Id.

 - b. Categories of third parties with whom you share. 40.6(a)(3)
 - 1. Both affiliates and nonaffiliates. Id.
 - 2. May use the three categories listed in the regulation, as appropriate. 40.6(c)(3)
 - A. Financial service providers. 40.6(c)(3)(i)
 - B. Nonfinancial companies. 40.6(c)(3)(ii)
 - C. Other types of companies. 40.6(c)(3)(iii)
 - 3. Provide examples of each category that applies. Id.

- c. Practices for sharing information about former customers. 40.6(a)(4)
 - 1. Include categories of information shared and categories of third parties with whom information is shared. Id.
 - 2. This disclosure is not required if you do not share about former customers.
 - d. Opt out rights.
 - 1. Under GLBA, to block sharing with nonaffiliated third parties. 40.6(a)(6)
 - 2. Under FCRA, to block sharing with affiliates. 40.6(a)(7)
- iii. All disclosures must be clear and conspicuous. 40.4(a)

IV. Joint marketing and servicing exception

- A. Purpose: Intended to even the playing field for big and small banks.
- B. Scope.
 - i. Applies to servicing in connection with marketing the bank's own products and services. 40.13(b)
 - ii. Also applies to joint marketing agreements, which is defined as "a written contract pursuant to which a bank and one or more financial institutions jointly offer, endorse, or sponsor a financial product or service." 40.13(c)

C. Requirements.

- i. Must give a consumer copy of privacy notice. 40.13(a)(1)(i)
- ii. Must disclose in your privacy notice that you are sharing pursuant to the joint marketing and servicing exception. 40.6(a)(5)
- iii. Must have a contract with the servicer or joint marketer that limits what a third party may do with the information. 40.13(a)(1)(ii)

V. **Sharing pursuant to an opt out**

A. Opt out notice.

- i. Timing.
 - a. Must give the consumer a reasonable opportunity to opt out before sharing with nonaffiliated third parties. 40.10(a)(1)(iii)
 - b. Examples in regulation:
 - 1. 30 days for notices given by letter or in connection with an on-line account. 40.10(a)(3)(i) and (ii)
 - 2. Immediately for notices given to consumer in an isolated transaction. 40.10(a)(3)(iii)
- ii. Delivery: Notices must be given in a way that is intended to ensure actual receipt. 40.9(a)
- iii. Content. Tell consumers:
 - a. That you disclose (or reserve the right to disclose) nonpublic personal information with nonaffiliates. 40.7(a)(1)(i). This will entail identifying –

1. The categories of information shared. 40.7(a)(2)(i)(A)
 2. The categories of third parties with whom you share. Id.
 3. The products to which the opt out rights apply. 40.7(a)(2)(i)(B)
- b. That consumers have a right to opt out. 40.7(a)(1)(ii)
 - c. The means by which they may exercise their right to opt out. 40.7(a)(1)(iii)
 1. These means must be reasonable.
 2. Reasonable means include check-off boxes, toll-free telephone numbers, etc. 40.7(a)(2)(ii)
 3. Unreasonable means include requiring consumer to write a letter. 40.7(a)(2)(iii)

B. Privacy notice.

- i. Must also give copy of privacy notice. 40.4(a)(2)
- ii. May give noncustomer consumers short form notice. 40.6(d). Short form notice must –
 - a. Be clear and conspicuous. 40.6(d)(2)(i)
 - b. State that full privacy notice is available upon request. 40.6(d)(2)(ii)
 - c. Inform consumer how to obtain a copy of full notice. 40.6(d)(2)(iii)
- iii. For consumers who become customers, you must give full privacy notice. 40.6(d)

VI. Sharing of account numbers

- A. General rule: Do not share account numbers of transaction accounts with third parties for use in marketing.
- B. Exceptions and clarifications.
- i. Encrypted numbers are not considered account numbers. 40.12(c)(1)
 - ii. May share with third parties to market bank's own products or services, provided the third party cannot initiate charge. 40.12(b)(1)
 - iii. May share with participants in private label credit card program or affinity program, provided participants in program are identified to customer. 40.12(b)(2)
 - iv. Account will not be considered a "transaction account," if the third party is unable to initiate a charge to the account. 40.12(c)(2)
 - v. May share with consumer reporting agencies. 40.12(a)
- C. Scope of "marketing": Marketing does not end when the customer agrees to purchase the product.

VII. Limits on reuse and redisclosure

- A. When the information is obtained pursuant to exceptions intended to facilitate routine business practices (i.e., those under 40.14 and 40.15):
- i. May disclose to your affiliates and affiliates of entity from which you received information. 40.11(a)(1)(i) and (ii)
 - ii. May disclose and use the information pursuant to one of the exceptions in 40.14 or 40.15. 40.11(a)(1)(iii)

B. When information is obtained pursuant to joint marketing and servicing exception:

i. May disclose and use information only to carry out the purposes for which the information was shared.
40.13(a)(1)(ii)

ii. This includes disclosures as permitted by 40.14 and 40.15 exceptions. 40.13(a)(1)(ii)

C. When information is obtained pursuant to an opt out notice:

i. May disclose to your affiliates or affiliates of entity making initial disclosure. 40.11(b)(1)(i) and (ii)

ii. May also make other disclosures that would be lawful if made by entity making initial disclosure. 40.11(b)(1)(iii)

a. Recipient "stands in the shoes" of the entity making initial disclosure.

b. Must be able to live up to opt out notices of initial disclosure and track those consumers who have opted out.

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Background

The privacy rule requires banks to provide initial and annual notices to customers about their privacy policies and practices. It also requires banks that share nonpublic personal information with nonaffiliated third parties to create a method for consumers to prevent banks from sharing that information by "opting out" of the disclosure B subject to specific exceptions. These exceptions generally permit banks to disclose consumer information as necessary to carry out routine business practices. (All the provisions that apply to banks also apply to a wide variety of other types of financial institutions.)

Banks that disclose nonpublic personal information about consumers to nonaffiliated third parties outside of these exceptions will be subject to more requirements than banks that do not, including the requirement to provide more detailed privacy policies and an opportunity for consumers to opt out of these information disclosures.

The compliance requirements and costs probably will vary depending upon a number of factors, including whether a bank intends to disclose covered information. A bank that discloses nonpublic personal information about consumers to third parties only to the extent permitted under the exceptions:

- May provide its customers with a streamlined privacy notice.
- Will not need to provide an opt out notice to consumers.
- Will not need to implement procedures to honor the wishes of consumers who want to opt out of covered information sharing.

By July 1, 2001, banks are expected to be in full compliance with the privacy regulations. That means that banks must provide existing customers with a copy of their privacy policies no later than July 1. Banks that share information with nonaffiliated third parties outside of the exceptions must provide privacy notices sufficiently in advance of July 1, so that consumers who choose to opt out have a reasonable opportunity to do so before July 1.