

§ 40.5

12 CFR Ch. I (1–1–10 Edition)

(D) Becomes the bank's client for the purpose of the bank's providing credit counseling or tax preparation services.

(ii) *Examples of loan rule.* A bank establishes a customer relationship with a consumer who obtains a loan for personal, family, or household purposes when the bank:

(A) Originates the loan to the consumer; or

(B) Purchases the servicing rights to the consumer's loan.

(d) *Existing customers.* When an existing customer obtains a new financial product or service from a bank that is to be used primarily for personal, family, or household purposes, the bank satisfies the initial notice requirements of paragraph (a) of this section as follows:

(1) The bank may provide a revised privacy notice, under § 40.8, that covers the customer's new financial product or service; or

(2) If the initial, revised, or annual notice that the bank most recently provided to that customer was accurate with respect to the new financial product or service, the bank does not need to provide a new privacy notice under paragraph (a) of this section.

(e) *Exceptions to allow subsequent delivery of notice.* (1) A bank may provide the initial notice required by paragraph (a)(1) of this section within a reasonable time after the bank establishes a customer relationship if:

(i) Establishing the customer relationship is not at the customer's election; or

(ii) Providing notice not later than when the bank establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

(2) *Examples of exceptions.* (i) *Not at customer's election.* Establishing a customer relationship is not at the customer's election if a bank acquires a customer's deposit liability or the servicing rights to a customer's loan from another financial institution and the customer does not have a choice about the bank's acquisition.

(ii) *Substantial delay of customer's transaction.* Providing notice not later than when a bank establishes a cus-

tomers relationship would substantially delay the customer's transaction when:

(A) The bank and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the financial product or service; or

(B) The bank establishes a customer relationship with an individual under a program authorized by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*) or similar student loan programs where loan proceeds are disbursed promptly without prior communication between the bank and the customer.

(iii) *No substantial delay of customer's transaction.* Providing notice not later than when a bank establishes a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at the bank's office or through other means by which the customer may view the notice, such as on a web site.

(f) *Delivery.* When a bank is required to deliver an initial privacy notice by this section, the bank must deliver it according to § 40.9. If the bank uses a short-form initial notice for non-customers according to § 40.6(d), the bank may deliver its privacy notice according to § 40.6(d)(3).

§ 40.5 Annual privacy notice to customers required.

(a)(1) *General rule.* A bank must provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship. *Annually* means at least once in any period of 12 consecutive months during which that relationship exists. A bank may define the 12-consecutive-month period, but the bank must apply it to the customer on a consistent basis.

(2) *Example.* A bank provides a notice annually if it defines the 12-consecutive-month period as a calendar year and provides the annual notice to the customer once in each calendar year following the calendar year in which the bank provided the initial notice. For example, if a customer opens an account on any day of year 1, the bank

must provide an annual notice to that customer by December 31 of year 2.

(b)(1) *Termination of customer relationship.* A bank is not required to provide an annual notice to a former customer.

(2) *Examples.* A bank's customer becomes a former customer when:

(i) In the case of a deposit account, the account is inactive under the bank's policies;

(ii) In the case of a closed-end loan, the customer pays the loan in full, the bank charges off the loan, or the bank sells the loan without retaining servicing rights;

(iii) In the case of a credit card relationship or other open-end credit relationship, the bank no longer provides any statements or notices to the customer concerning that relationship or the bank sells the credit card receivables without retaining servicing rights; or

(iv) The bank has not communicated with the customer about the relationship for a period of 12 consecutive months, other than to provide annual privacy notices or promotional material.

(c) *Special rule for loans.* If a bank does not have a customer relationship with a consumer under the special rule for loans in §40.4(c)(2), then the bank need not provide an annual notice to that consumer under this section.

(d) *Delivery.* When a bank is required to deliver an annual privacy notice by this section, the bank must deliver it according to §40.9.

§ 40.6 Information to be included in privacy notices.

(a) *General rule.* The initial, annual, and revised privacy notices that a bank provides under §§40.4, 40.5, and 40.8 must include each of the following items of information, in addition to any other information the bank wishes to provide, that applies to the bank and to the consumers to whom the bank sends its privacy notice:

(1) The categories of nonpublic personal information that the bank collects;

(2) The categories of nonpublic personal information that the bank discloses;

(3) The categories of affiliates and nonaffiliated third parties to whom the

bank discloses nonpublic personal information, other than those parties to whom the bank discloses information under §§40.14 and 40.15;

(4) The categories of nonpublic personal information about the bank's former customers that the bank discloses and the categories of affiliates and nonaffiliated third parties to whom the bank discloses nonpublic personal information about the bank's former customers, other than those parties to whom the bank discloses information under §§40.14 and 40.15;

(5) If a bank discloses nonpublic personal information to a nonaffiliated third party under §40.13 (and no other exception in §§40.14 or 40.15 applies to that disclosure), a separate statement of the categories of information the bank discloses and the categories of third parties with whom the bank has contracted;

(6) An explanation of the consumer's right under §40.10(a) 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 at that time;

(7) Any disclosures that the bank makes under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates);

(8) The bank's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

(9) Any disclosure that the bank makes under paragraph (b) of this section.

(b) *Description of nonaffiliated third parties subject to exceptions.* If you disclose nonpublic personal information to third parties as authorized under §§40.14 and 40.15, you are not required to list those exceptions in the initial or annual privacy notices required by §§40.4 and 40.5. When describing the categories with respect to those parties, it is sufficient to state that you make disclosures to other nonaffiliated companies:

(1) For your everyday business purposes, such as [*include all that apply*] to