

(ii) Treat an opt out direction by either John or Mary as applying to the entire account. If the bank does so and John opts out, the bank may not require Mary to opt out as well before implementing John's opt out direction.

(iii) Permit John and Mary to make different opt out directions. If the bank does so:

(A) It must permit John and Mary to opt out for each other;

(B) If both opt out, the bank must permit both of them to notify it in a single response (such as on a form or through a telephone call); and

(C) If John opts out and Mary does not, the bank may only disclose nonpublic personal information about Mary, but not about John and not about John and Mary jointly.

(e) *Time to comply with opt out.* A bank must comply with a consumer's opt out direction as soon as reasonably practicable after the bank receives it.

(f) *Continuing right to opt out.* A consumer may exercise the right to opt out at any time.

(g) *Duration of consumer's opt out direction.* (1) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(2) When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal information that the bank collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the bank, the opt out direction that applied to the former relationship does not apply to the new relationship.

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

(i) *Model privacy form.* Pursuant to § 40.2(a) of this part, a model privacy form that meets the notice content requirements of this section is included in Appendix A of this part.

[65 FR 35196, June 1, 2000, as amended at 74 FR 62916, Dec. 1, 2009]

§ 40.8 Revised privacy notices.

(a) *General rule.* Except as otherwise authorized in this part, a bank must

not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party other than as described in the initial notice that the bank provided to that consumer under § 40.4, unless:

(1) The bank has provided to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;

(2) The bank has provided to the consumer a new opt out notice;

(3) The bank has given the consumer a reasonable opportunity, before the bank discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(4) The consumer does not opt out.

(b) *Examples.* (1) Except as otherwise permitted by §§ 40.13, 40.14, and 40.15, a bank must provide a revised notice before it:

(i) Discloses a new category of nonpublic personal information to any nonaffiliated third party;

(ii) Discloses nonpublic personal information to a new category of nonaffiliated third party; or

(iii) Disclose nonpublic personal information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.

(2) A revised notice is not required if the bank discloses nonpublic personal information to a new nonaffiliated third party that the bank adequately described in its prior notice.

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

§ 40.9 Delivering privacy and opt out notices.

(a) *How to provide notices.* A bank must provide any privacy notices and opt out notices, including short-form initial notices, that this part requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(b) (1) *Examples of reasonable expectation of actual notice.* A bank may reasonably expect that a consumer will receive actual notice if the bank:

§ 40.10

12 CFR Ch. I (1–11 Edition)

(i) Hand-delivers a printed copy of the notice to the consumer;

(ii) Mails a printed copy of the notice to the last known address of the consumer;

(iii) For the consumer who conducts transactions electronically, posts the notice on the electronic site and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service;

(iv) For an isolated transaction with the consumer, such as an ATM transaction, posts the notice on the ATM screen and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular financial product or service.

(2) *Examples of unreasonable expectation of actual notice.* A bank may not, however, reasonably expect that a consumer will receive actual notice of its privacy policies and practices if it:

(i) Only posts a sign in its branch or office or generally publish advertisements of its privacy policies and practices;

(ii) Sends the notice via electronic mail to a consumer who does not obtain a financial product or service from the bank electronically.

(c) *Annual notices only.* A bank may reasonably expect that a customer will receive actual notice of the bank's annual privacy notice if:

(1) The customer uses the bank's web site to access financial products and services electronically and agrees to receive notices at the web site and the bank posts its current privacy notice continuously in a clear and conspicuous manner on the web site; or

(2) The customer has requested that the bank refrain from sending any information regarding the customer relationship, and the bank's current privacy notice remains available to the customer upon request.

(d) *Oral description of notice insufficient.* A bank may not provide any notice required by this part solely by orally explaining the notice, either in person or over the telephone.

(e) *Retention or accessibility of notices for customers.* (1) For customers only, a bank must provide the initial notice required by § 40.4(a)(1), the annual notice required by § 40.5(a), and the re-

vised notice required by § 40.8 so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(2) *Examples of retention or accessibility.* A bank provides a privacy notice to the customer so that the customer can retain it or obtain it later if the bank:

(i) Hand-delivers a printed copy of the notice to the customer;

(ii) Mails a printed copy of the notice to the last known address of the customer; or

(iii) Makes its current privacy notice available on a web site (or a link to another web site) for the customer who obtains a financial product or service electronically and agrees to receive the notice at the web site.

(f) *Joint notice with other financial institutions.* A bank may provide a joint notice from it and one or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the bank and the other institutions.

(g) *Joint relationships.* If two or more consumers jointly obtain a financial product or service from a bank, the bank may satisfy the initial, annual, and revised notice requirements of §§ 40.4(a), 40.5(a), and 40.8(a), respectively, by providing one notice to those consumers jointly.

Subpart B—Limits on Disclosures

§ 40.10 Limits on disclosure of non-public personal information to non-affiliated third parties.

(a)(1) *Conditions for disclosure.* Except as otherwise authorized in this part, a bank may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party unless:

(i) The bank has provided to the consumer an initial notice as required under § 40.4;

(ii) The bank has provided to the consumer an opt out notice as required in § 40.7;

(iii) The bank has given the consumer a reasonable opportunity, before it discloses the information to the non-affiliated third party, to opt out of the disclosure; and