

**§ 1070.44**

(c) *State requests for information other than confidential information.* A request or demand by a state agency for information or records of the CFPB other than confidential information shall be made and considered in accordance with the rules set forth elsewhere in this part.

(d) *Negotiation of standing requests.* The CFPB may negotiate terms governing the exchange of confidential information with federal or state agencies on a standing basis, as appropriate.

**§ 1070.44 Disclosure of confidential consumer complaint information.**

Nothing in this part shall limit the discretion of the CFPB, to the extent permitted by law, to disclose confidential consumer complaint information as it deems necessary to investigate, resolve, or otherwise respond to consumer complaints or inquiries concerning financial institutions or consumer financial products and services.

**§ 1070.45 Affirmative disclosure of confidential information.**

(a) The CFPB may disclose confidential investigative information and other confidential information, in accordance with applicable law, as follows:

(1) To a CFPB employee, as that term is defined in §1070.2 of this part and in accordance with §1070.41 of this subpart;

(2) To either House of the Congress or to an appropriate committee or subcommittee of the Congress, as provided by 12 U.S.C. 5562(d)(2);

(3) In investigational hearings and witness interviews, as is reasonably necessary, at the discretion of the CFPB;

(4) In an administrative or court proceeding to which the CFPB is a party. In the case of confidential investigatory material that contains any trade secret or privileged or confidential commercial or financial information, as claimed by designation by the submitter of such material, or confidential supervisory information, the submitter may seek an appropriate protective or *in camera* order prior to disclosure of such material in a proceeding;

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(5) To law enforcement and other government agencies in accordance with this subpart; or

(6) As required under any other applicable law.

**§ 1070.46 Other disclosures of confidential information.**

(a) To the extent permitted by law and as authorized by the Director in writing, the CFPB may disclose confidential information other than as set forth in this subpart.

(b) Prior to disclosing confidential information pursuant to paragraph (a) of this section, the CFPB may, as it deems appropriate under the circumstances, provide written notice to the person to whom the confidential information pertains that the CFPB intends to disclose its confidential information in accordance with this section.

(c) The authority of the Director to disclose confidential information pursuant to paragraph (a) shall not be delegated. However, a person authorized to perform the functions of the Director in accordance with law may exercise the authority of the Director as set forth in this section.

**§ 1070.47 Other rules regarding the disclosure of confidential information.**

(a) *Further disclosure prohibited.*

(1) All confidential information made available under this subpart shall remain the property of the CFPB, unless the General Counsel provides otherwise in writing.

(2) Except as set forth in this section, no supervised financial institution, federal or state agency, any officer, director, employee or agent thereof, or any other person to whom the confidential information is made available under this subpart, may further disclose such confidential information without the prior written permission of the General Counsel.

(3) A supervised financial institution, federal or state agency, any officer, director, employee or agent thereof, or any other person to whom the CFPB's confidential information is made available under this subpart, that receives from a third party a legally enforceable demand or request for such confidential information (including but

not limited to, a subpoena or discovery request or a request made pursuant to the Freedom of Information Act, 5 U.S.C. 552, the Privacy Act of 1974, 5 U.S.C. 552a, or any state analogue to such statutes) should:

(i) Inform the General Counsel of such request or demand in writing and provide the General Counsel with a copy of such request or demand as soon as practicable after receiving it;

(ii) In the case of a request made pursuant to the Freedom of Information Act, 5 U.S.C. 552, the Privacy Act, 5 U.S.C. 552a, or any state analogue to such statutes, advise the requester that:

(A) The confidential information sought may not be disclosed insofar as it is the property of the CFPB; and

(B) Any request for the disclosure of such confidential information is properly directed to the CFPB pursuant to its regulations set forth in this part.

(iii) In the case of all other types of requests or demands, consult with the General Counsel before complying with the request or demand, and to the extent applicable:

(A) Give the CFPB a reasonable opportunity to respond to the demand or request;

(B) Assert all reasonable and appropriate legal exemptions or privileges that the CFPB may request be asserted on its behalf; and

(C) Consent to a motion by the CFPB to intervene in any action for the purpose of asserting and preserving any claims of confidentiality with respect to any confidential information.

(4) Nothing in this section shall prevent a supervised financial institution, federal or state agency, any officer, director, employee or agent thereof, or any other person to whom the information is made available under this subpart from complying with a legally valid and enforceable United States federal court order compelling production of the CFPB's confidential information or, if compliance is deemed compulsory, with a request or demand from either House of the Congress or a duly authorized committee of the Congress. To the extent that compulsory disclosure of confidential information occurs as set forth in this paragraph, the producing party shall use its best

efforts to ensure that the requestor secures an appropriate protective order or, if the requestor is a legislative body, use its best efforts to obtain the commitment or agreement of the legislative body that it will maintain the confidentiality of the confidential information.

(5) No person obtaining access to confidential information pursuant to this subpart may make a personal copy of any such information, and no person may remove confidential information from the premises of the institution or agency in possession of such information except as permitted by specific language in this regulation or by the CFPB.

(b) *Additional conditions and limitations.* The CFPB may impose any additional conditions or limitations on disclosure or use under this subpart that it determines are necessary.

(c) *Non-waiver.* (1) *In general.* The CFPB shall not be deemed to have waived any privilege applicable to any information by transferring that information to, or permitting that information to be used by, any Federal or State agency.

(2) *Rule of construction.* Paragraph (c)(1) of this section shall not be construed as implying that any person waives any privilege applicable to any information because paragraph (c)(1) does not apply to the transfer or use of that information.

[76 FR 45377, July 28, 2011, as amended at 77 FR 39623, July 5, 2012]

**§ 1070.48 Privileges not affected by disclosure to the CFPB.**

(a) *In general.* The submission by any person of any information to the CFPB for any purpose in the course of any supervisory or regulatory process of the CFPB shall not be construed as waiving, destroying, or otherwise affecting any privilege such person may claim with respect to such information under Federal or State law as to any person or entity other than the CFPB.

(b) *Rule of construction.* Paragraph (a) of this section shall not be construed as implying or establishing that—