

§ 1016.8

(i) Send a single opt out notice to John's address, but you must accept an opt out direction from either John or Mary.

(ii) Treat an opt out direction by either John or Mary as applying to the entire account. If you do so, and John opts out, you 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 you do so:

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

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

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

(g) *Time to comply with opt out.* You must comply with a consumer's opt out direction as soon as reasonably practicable after you receive it.

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

(i) *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 you collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with you, the opt out direction that applied to the former relationship does not apply to the new relationship.

(j) *Delivery.* When you are required to deliver an opt out notice by this section, you must deliver it according to §1016.9 of this part.

(k) *Model privacy form.* Pursuant to §1016.2(a) of this part, a model privacy form that meets the notice content requirements of this section is included in the appendix to this part.

12 CFR Ch. X (1–1–14 Edition)

§ 1016.8 Revised privacy notices.

(a) *General rule.* Except as otherwise authorized in this part, you must not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a non-affiliated third party other than as described in the initial notice that you provided to that consumer under §1016.4 of this part, unless:

(1) You have provided to the consumer a clear and conspicuous revised notice that accurately describes your policies and practices;

(2) You have provided to the consumer a new opt out notice;

(3) You have given the consumer a reasonable opportunity, before you disclose the information to the non-affiliated third party, to opt out of the disclosure; and

(4) The consumer does not opt out.

(b) *Examples.* (1) Except as otherwise permitted by §§1016.13, 1016.14, and 1016.15 of this part, you must provide a revised notice before you:

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

(ii) Disclose nonpublic personal information to a new category of non-affiliated 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 you disclose nonpublic personal information to a new nonaffiliated third party that you adequately described in your prior notice.

(c) *Delivery.* When you are required to deliver a revised privacy notice by this section, you must deliver it according to §1016.9 of this part.

§ 1016.9 Delivering privacy and opt out notices.

(a) *How to provide notices.* You 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.

Bur. of Consumer Financial Protection

§ 1016.9

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

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

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

(iii) For the consumer who conducts transactions electronically:

(A) In the case of financial institutions other than those described in §1016.3(1)(3) of this part, post the notice on the electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service; or

(B) In the case of financial institutions described in §1016.3(1)(3), clearly and conspicuously post the notice on the electronic site and require 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, post the notice on the ATM screen and require 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.* You may not, however, reasonably expect that a consumer will receive actual notice of your privacy policies and practices if you:

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

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

(c) *Annual notices only.* You may reasonably expect that a customer will receive actual notice of your annual privacy notice if:

(1) The customer uses your Web site to access financial products and services electronically and agrees to receive notices at the Web site, and you post your current privacy notice continuously in a clear and conspicuous manner on the Web site; or

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

(d) *Oral description of notice insufficient.* You 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, you must provide the initial notice required by §1016.4(a)(1), the annual notice required by §1016.5(a), and the revised notice required by §1016.8 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.* You provide a privacy notice to the customer so that the customer can retain it or obtain it later if you:

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

(ii) Mail a printed copy of the notice to the last known address of the customer, or, in the case of credit unions, mail a printed copy of the notice to the last known address of the customer upon request of the customer; or

(iii) Make your 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.* You may provide a joint notice from you and one or more of your affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to you and the other institutions.

(g) *Joint relationships in the case of financial institutions other than credit unions and covered entities subject to FTC enforcement jurisdiction.* For purposes of this paragraph (g), “you” is limited to financial institutions other than credit unions and the financial institutions described in §1016.3(1)(3). If two or more consumers jointly obtain a financial product or service from you, you may satisfy the initial, annual, and revised notice requirements of

§ 1016.10

12 CFR Ch. X (1–1–14 Edition)

§§ 1016.4(a), 1016.5(a), and 1016.8(a), respectively, by providing one notice to those consumers jointly.

(h) *Joint relationships in the case of covered entities subject to FTC enforcement jurisdiction.* For purposes of this paragraph (h), “you” is limited to the financial institutions described in § 1016.3(1)(3). If two or more consumers jointly obtain a financial product or service from you, you may satisfy the initial, annual, and revised notice requirements of §§ 1016.4(a), 1016.5(a), and 1016.8(a) by providing one notice to those consumers jointly, unless one or more of those consumers requests separate notices.

(i) *Joint relationships in the case of credit unions.* (1) If two or more consumers jointly obtain a financial product or service, other than a loan, from a credit union, the credit union may satisfy the requirements of § 1016.4(a) by providing one initial notice to those consumers jointly.

(2) *Special rule for loans in the case of credit unions.* (i) A credit union is required to provide an initial notice to a borrower or guarantor on a loan if the credit union shares his or her nonpublic personal information with non-affiliated third parties other than for purposes under §§ 1016.13, 1016.14, and 1016.15.

(ii) A credit union may satisfy the annual notice requirements of § 1016.5 by providing one notice to those borrowers and guarantors jointly.

Subpart B—Limits on Disclosures

§ 1016.10 Limits on disclosure of nonpublic personal information to non-affiliated third parties.

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

(i) You have provided to the consumer an initial notice as required under § 1016.4 of this part;

(ii) You have provided to the consumer an opt out notice as required in § 1016.7 of this part;

(iii) You have given the consumer a reasonable opportunity, before you disclose the information to the non-

affiliated third party, to opt out of the disclosure; and

(iv) The consumer does not opt out.

(2) *Opt out definition.* Opt out means a direction by the consumer that you not disclose nonpublic personal information about that consumer to a non-affiliated third party, other than as permitted by §§ 1016.13, 1016.14, and 1016.15.

(3) *Examples of reasonable opportunity to opt out.* You provide a consumer with a reasonable opportunity to opt out if:

(i) *By mail.* You mail the notices required in paragraph (a)(1) of this section to the consumer and allow the consumer to opt out by mailing a form, calling a toll-free telephone number, or any other reasonable means within 30 days from the date you mailed the notices.

(ii) *By electronic means.* A customer opens an online account with you and agrees to receive the notices required in paragraph (a)(1) of this section electronically, and you allow the customer to opt out by any reasonable means within 30 days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

(iii) *Isolated transaction with consumer.* For an isolated transaction, such as the purchase of a cashier’s check by a consumer, you provide the consumer with a reasonable opportunity to opt out if you provide the notices required in paragraph (a)(1) of this section at the time of the transaction and request that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(b) *Application of opt out to all consumers and all nonpublic personal information.* (1) You must comply with this section, regardless of whether you and the consumer have established a customer relationship.

(2) Unless you comply with this section, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer that you have collected, regardless of whether you collected it before or after receiving the direction to opt out from the consumer.

(c) *Partial opt out.* You may allow a consumer to select certain nonpublic