

- maintains a deposit or investment account;
- obtains a loan;
- enters into a lease of personal property; or
- obtains financial, investment, or economic advisory services for a fee.

Customers are entitled to initial and annual privacy notices regardless of the information disclosure practices of their financial institution.

There is a special rule for loans. When a financial institution sells the servicing rights to a loan to another financial institution, the customer relationship transfers with the servicing rights. However, any information on the borrower retained by the institution that sells the servicing rights must be accorded the protections due any consumer.

- Note that isolated transactions alone will not cause a consumer to be treated as a customer. For example, if an individual purchases a bank check from a financial institution where the person has no account, the individual will be a consumer but not a customer of that institution because he or she has not established a customer relationship. Likewise, if an individual uses the ATM of a financial institution where the individual has no account, even repeatedly, the individual will be a consumer, but not a customer of that institution.

### Financial Institution Duties

The regulations establish specific duties and limitations for a financial institution based on its activities. Financial institutions that intend to disclose nonpublic personal information outside the exceptions will have to provide opt out rights to their customers and to consumers who are not customers. All financial institutions have an obligation to provide an initial and annual notice of their privacy policies to their customers. All financial institutions must abide by the regulatory limits on the disclosure of account numbers to nonaffiliated third parties and on the redisclosure and reuse of nonpublic personal information received from nonaffiliated financial institutions.

A brief summary of financial institution duties and limitations appears below. A more complete explanation of each appears in the regulations.

#### Notice and Opt Out Duties to Consumers

If a financial institution intends to disclose nonpublic personal information about any of its consumers (whether or not they are customers) to a nonaffiliated third party, and an exception does not apply, then the financial institution must provide to the consumer:

- an initial notice of its privacy policies;

- an opt out notice (including, among other things, a reasonable means to opt out); and
- a reasonable opportunity, before the financial institution discloses the information to the nonaffiliated third party, to opt out.

The financial institution may not disclose any nonpublic personal information to nonaffiliated third parties except under the enumerated exceptions unless these notices have been provided *and* the consumer has not opted out. Additionally, the institution must provide a *revised notice* before the financial institution begins to share a new category of nonpublic personal information or shares information with a new category of nonaffiliated third party in a manner that was not described in the previous notice.

Note that a financial institution need not comply with the initial and opt-out notice requirements for consumers who are not customers if the institution limits disclosure of nonpublic personal information to the exceptions.

#### Notice Duties to Customers

In addition to the duties described above, there are several duties unique to customers. In particular, regardless of whether the institution discloses or intends to disclose nonpublic personal information, a financial institution must provide notice to its customers of its privacy policies and practices at various times.

- A financial institution must provide an *initial notice* of its privacy policies and practices to each customer, not later than the time a customer relationship is established. Section 4(e) of the regulations describes the exceptional cases in which delivery of the notice is allowed subsequent to the establishment of the customer relationship.
- A financial institution must provide an *annual notice* at least once in any period of 12 consecutive months during the continuation of the customer relationship.
- Generally, new privacy notices are not required for each new product or service. However, a financial institution must provide a *new notice* to an existing customer when the customer obtains a new financial product or service from the institution, if the initial or annual notice most recently provided to the customer was *not* accurate with respect to the new financial product or service.
- When a financial institution does not disclose nonpublic personal information (other than as permitted under section 14 and section 15 exceptions) and does not reserve the right to do so, the institution has the option of providing a simplified notice.

#### Requirements for Notices

***Clear and Conspicuous.*** Privacy notices must be clear and conspicuous, meaning they must be reasonably understandable