Right to Financial Privacy Act

Introduction

The 1978 Right to Financial Privacy Act (RFPA) establishes specific procedures that federal government authorities must follow in order to obtain information from a financial institution about a customer's financial records. Generally, these requirements include obtaining subpoenas, notifying the customer of the request, and providing the customer with an opportunity to object. The Act imposes related limitations and duties on financial institutions prior to the release of information requested by federal authorities. For purposes of RFPA, a customer is defined as any person or representative of that person who utilized or is utilizing any service of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the person's name. "Person" is defined by the RFPA as an individual or a partnership of five or few individuals. Therefore, restrictions in the Act do not apply to the financial records of corporations or partnerships with six or more partners. The RFPA has been amended several times, most recently in 2001, to permit greater access without customer notice to customer information requested for criminal law enforcement purposes and for certain intelligence activities.

Examination Objective

The objective of the examination is to ensure that the financial institution has procedures in place to ensure compliance with the RFPA, and to test whether its practices conform to RFPA.

Examination Procedures

1. Determine whether the financial institution has established procedures and internal controls for fulfilling requests by government authorities for a customer's financial records to ensure that all requests are handled in compliance with the Act. (§ 1100)

2. Determine whether the financial institution has received any requests covered by the RFPA for a customer's financial records since the last compliance examination. (1103, 1105, 1106, 1107, 1108, 1114)

   NOTE: RFPA does not apply to prohibit or limit the FDIC's disclosure of financial information to state authorities, including banking, law enforcement and other state agencies such as appraisal certification boards.

   NOTE: RFPA does not prohibit the FDIC from providing DOJ with "raw" CRA census-tract data from banks' annual CRA reports even if DOJ used the CRA data to assist in enforcing anti-trust or other public laws. The FDIC should furnish DOJ with "raw" CRA data only in conjunction or consultation with the other federal banking agencies.

If the financial institution has received such requests since the last compliance examination:

3. Determine whether the financial institution provided a customer's financial records to government authorities only after receiving the proper written certification. (1105, 1106, 1107, 1108)
4. Determine whether internal procedures require that the financial institution refrain from requiring a customer's authorization for disclosure of financial records as a condition of doing business. (1103(d)(2) and 1104(b))
5. Determine whether the financial institution keeps appropriate records of instances when a customer's records are disclosed to the government authority upon authorization by the customer, including a copy of the request and the identity of the government authority. (1104(c) and 1113(h)(6))
6. Determine whether the financial institution provides the customer a copy of the records upon request (unless a court order has been obtained blocking such access). (1104(c) and 1113(h)(6))
7. Determine whether the financial institution maintains appropriate records of all disclosures of a customer's records made to a government authority in connection with a government loan, guaranty, or insurance program.
8. Determine whether the financial institution allows a customer to examine these records upon request. (1113(h)(6))

References

Right to Financial Privacy Act of 1978:
12 USC §§3401 – 3422

Job Aids

The following is a workpaper template and instructions for its use.

General Instructions for Workpapers

1. Enter requested information on worksheet(s). If information is not available or disclosure is not applicable, enter "N/A."
2. Use the Comments and Violations Section:
   - For apparent violations (for example, subsequent disclosures were not provided, etc.).
   - Any issues requiring additional comments or review/follow-up.

Clearly state violations. Highlight or mark in red for easy reference.

NOTE: Document only those instances where violations or issues worthy of comment are present.

Right to Financial Privacy Worksheet

1. Enter the financial institution's:
   - Name
   - Cert. #
   - Branch
   - Examination date
   - Examiner-in-Charge
   - Name of the individual who actually completes the workpaper
2. Enter the name of the customer.
3. Enter the types of accounts involved in the Federal government request, for example, loan, deposit, etc.
4. Identify the Federal government authority involved in the request.
5. Identify whether financial information was given out by customer authorization and the bank maintains the required information for customer review when allowed.
6. Indicate whether the financial institution had proper written certification from Federal government authorities prior to releasing financial information.

Examination Worksheet—Right to Financial Privacy				
Bank:	Exam Date:	EIC:		
Branch:	Prepared by:	Cert#:		
Accounts Customer	Government Involved	Cust. Authority	Agency Authority	Comments & Violations