Comptroller of the Currency, Treasury

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

(i) 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.

(ii) 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 non-public personal information about Mary, but not about John and not about John and Mary jointly.

(c) 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.

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

(e) 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 non-public 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.

(f) 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.

§ 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 non-affiliated 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:

(ii) Discloses a new category of non-public 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.

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