§ 216.1 Purpose and scope.

(a) Purpose. This part governs the treatment of nonpublic personal information about consumers by the financial institutions listed in paragraph (b) of this section. This part:

(1) Requires a financial institution to provide notice to customers about its privacy policies and practices;

(2) Describes the conditions under which a financial institution may disclose nonpublic personal information about consumers to nonaffiliated third parties; and

(3) Provides a method for consumers to prevent a financial institution from disclosing that information to most nonaffiliated third parties by “opting out” of that disclosure, subject to the exceptions in §§ 216.13, 216.14, and 216.15.

(b) Scope. (1) This part applies only to nonpublic personal information about individuals who obtain financial products or services primarily for personal, family, or household purposes from the institutions listed below. This part does not apply to information about companies or about individuals who obtain financial products or services for business, commercial, or agricultural purposes. This part applies to the U.S. offices of entities for which the Board has primary supervisory authority. They are referred to in this part as “you.” These are: State member banks, bank holding companies and certain of their nonbank subsidiaries or affiliates, State uninsured branches and agencies of foreign banks, commercial lending companies owned or controlled by foreign banks, and Edge and Agreement corporations.

(2) Nothing in this part modifies, limits, or supersedes the standards governing individually identifiable health information promulgated by the Secretary of Health and Human Services under the authority of sections 262 and 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–1320d–8).

§ 216.2 Model privacy form and examples.

(a) Model privacy form. Use of the model privacy form in appendix A of this part, consistent with the instructions in appendix A, constitutes compliance with the notice content requirements of §§ 216.6 and 216.7 of this part, although use of the model privacy form is not required.

(b) Examples. The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part.

§ 216.3 Definitions.

As used in this part, unless the context requires otherwise:

(a) Affiliate means any company that controls, is controlled by, or is under common control with another company.

(b) (1) Clear and conspicuous means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(2) Examples—(i) Reasonably understandable. You make your notice reasonably understandable if you:

(A) Present the information in the notice in clear, concise sentences, paragraphs, and sections;

(B) Use short explanatory sentences or bullet lists whenever possible;

(C) Use definite, concrete, everyday words and active voice whenever possible;

(D) Avoid multiple negatives;

(E) Avoid legal and highly technical business terminology whenever possible; and

(F) Avoid explanations that are imprecise and readily subject to different interpretations.

(ii) Designed to call attention. You design your notice to call attention to the nature and significance of the information in it if you:

(A) Use a plain-language heading to call attention to the notice;
(B) Use a typeface and type size that are easy to read;
(C) Provide wide margins and ample line spacing;
(D) Use boldface or italics for key words; and
(E) In a form that combines your notice with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars, when you combine your notice with other information.

(iii) Notices on web sites. If you provide a notice on a web page, you design your notice to call attention to the nature and significance of the information in it if you use text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the web site (such as text, graphics, hyperlinks, or sound) do not distract attention from the notice, and you either:
(A) Place the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or
(B) Place a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature, and relevance of the notice.

(c) Collect means to obtain information that you organize or can retrieve by the name of an individual or by identifying number, symbol, or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(d) Company means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(e)(1) Consumer means an individual who obtains or has obtained a financial product or service from you that is to be used primarily for personal, family, or household purposes, or that individual’s legal representative.

(2) Examples—(i) An individual who applies to you for credit for personal, family, or household purposes is a consumer of a financial service, regardless of whether the credit is extended.

(ii) An individual who provides nonpublic personal information to you in order to obtain a determination about whether he or she may qualify for a loan to be used primarily for personal, family, or household purposes is a consumer of a financial service, regardless of whether the loan is extended.

(iii) An individual who provides nonpublic personal information to you in connection with obtaining or seeking to obtain financial, investment, or economic advisory services is a consumer regardless of whether you establish a continuing advisory relationship.

(iv) If you hold ownership or servicing rights to an individual’s loan that is used primarily for personal, family, or household purposes, the individual is your consumer, even if you hold those rights in conjunction with one or more other institutions. (The individual is also a consumer with respect to the other financial institutions involved.) An individual who has a loan in which you have ownership or servicing rights is your consumer, even if you, or another institution with those rights, hire an agent to collect on the loan.

(v) An individual who is a consumer of another financial institution is not your consumer solely because you act as agent for, or provide processing or other services to, that financial institution.

(vi) An individual is not your consumer solely because he or she has designated you as trustee for a trust.

(vii) An individual is not your consumer solely because he or she is a beneficiary of a trust for which you are a trustee.

(viii) An individual is not your consumer solely because he or she is a participant or a beneficiary of an employee benefit plan that you sponsor or for which you act as a trustee or fiduciary.

(f) Consumer reporting agency has the same meaning as in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

(g) Control of a company means:

(1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(2) Control in any manner over the election of a majority of the directors,
trustees, or general partners (or individuals exercising similar functions) of
the company; or
(3) The power to exercise, directly or
indirectly, a controlling influence over
the management or policies of the
company, as the Board determines.
(b) Customer means a consumer who
has a customer relationship with you.
(1) Customer relationship means a
continuing relationship between a con-
sumer and you under which you pro-
vide one or more financial products or
services to the consumer that are to be
used primarily for personal, family, or
household purposes.
(2) Examples—(1) Continuing relation-
ship. A consumer has a continuing rela-
tionship with you if the consumer:
(A) Has a deposit or investment ac-
count with you;
(B) Obtains a loan from you;
(C) Has a loan for which you own the
servicing rights;
(D) Purchases an insurance product
from you;
(E) Holds an investment product
through you, such as when you act as a
custodian for securities or for assets in
an Individual Retirement Arrangement;
(F) Enters into an agreement or un-
derstanding with you whereby you un-
dertake to arrange or broker a home
mortgage loan for the consumer;
(G) Enters into a lease of personal
property with you; or
(H) Obtains financial, investment, or
economic advisory services from you for
a fee.
(ii) No continuing relationship. A con-
sumer does not, however, have a con-
tinuing relationship with you if:
(A) The consumer obtains a financial
product or service only in isolated
transactions, such as using your ATM
to withdraw cash from an account at
another financial institution or pur-
chasing a cashier’s check or money
order;
(B) You sell the consumer’s loan and
do not retain the rights to service that
loan; or
(C) You sell the consumer airline
tickets, travel insurance, or traveler’s
checks in isolated transactions.
(i) Federal functional regulator means:
(1) The Board of Governors of the
Federal Reserve System;
(2) The Office of the Comptroller of
the Currency;
(3) The Board of Directors of the Fed-
eral Deposit Insurance Corporation;
(4) The Director of the Office of
Thrift Supervision;
(5) The National Credit Union Admin-
istration Board; and
(6) The Securities and Exchange
Commission.
(k)(1) Financial institution means any
institution the business of which is en-
gaging in activities that are financial
in nature or incidental to such financial
activities as described in section 4(k) of the Bank Holding Company Act
of 1956 (12 U.S.C. 1843(k)).
(2) Financial institution does not in-
clude:
(i) Any person or entity with respect
to any financial activity that is subject
to the jurisdiction of the Commodity
Futures Trading Commission under the
Commodity Exchange Act (7 U.S.C. 1 et
seq.);
(ii) The Federal Agricultural Mort-
gage Corporation or any entity char-
tered and operating under the Farm
seq.); or
(iii) Institutions chartered by Con-
gress specifically to engage in
securitizations, secondary market sales
(including sales of servicing rights), or
similar transactions related to a trans-
action of a consumer, as long as such
institutions do not sell or transfer non-
public personal information to a non-
affiliated third party.
(l)(1) Financial product or service
means any product or service that a fi-
nancial holding company could offer by
engaging in an activity that is financial
in nature or incidental to such a fi-
nancial activity under section 4(k) of the
Bank Holding Company Act of 1956
(12 U.S.C. 1843(k)).
(2) Financial service includes your
evaluation or brokerage of information
that you collect in connection with a
request or an application from a con-
sumer for a financial product or serv-
ce.
(m)(1) Nonaffiliated third party means
any person except:
(i) Your affiliate; or
(i) A person employed jointly by you and any company that is not your affiliate (but nonaffiliated third party includes the other company that jointly employs the person).

(2) Nonaffiliated third party includes any company that is an affiliate solely by virtue of your or your affiliate’s direct or indirect ownership or control of the company in conducting merchant banking or investment banking activities of the type described in section 4(k)(4)(H) or insurance company investment activities of the type described in section 4(k)(4)(I) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)(4)(H) and (I)).

(n)(1) Nonpublic personal information means:

(i) Personally identifiable financial information; and

(ii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.

(2) Nonpublic personal information does not include:

(i) Publicly available information, except as included on a list described in paragraph (n)(1)(ii) of this section; or

(ii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information that is not publicly available.

(3) Examples of lists—(i) Nonpublic personal information includes any list of individuals’ names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.

(ii) Nonpublic personal information does not include any list of individuals’ names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

(o)(1) Personally identifiable financial information means any information:

(i) A consumer provides to you to obtain a financial product or service from you;

(ii) About a consumer resulting from any transaction involving a financial product or service between you and a consumer; or

(iii) You otherwise obtain about a consumer in connection with providing a financial product or service to that consumer.

(2) Examples—(i) Information included. Personally identifiable financial information includes:

(A) Information a consumer provides to you on an application to obtain a loan, credit card, or other financial product or service;

(B) Account balance information, payment history, overdraft history, and credit or debit card purchase information;

(C) The fact that an individual is or has been one of your customers or has obtained a financial product or service from you;

(D) Any information about your consumer if it is disclosed in a manner that indicates that the individual is or has been your consumer;

(E) Any information that a consumer provides to you or that you or your agent otherwise obtain in connection with collecting on a loan or servicing a loan;

(F) Any information you collect through an Internet “cookie” (an information collecting device from a web server); and

(G) Information from a consumer report.

(ii) Information not included. Personally identifiable financial information does not include:

(A) A list of names and addresses of customers of an entity that is not a financial institution; and

(B) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(p)(1) Publicly available information means any information that you have a reasonable basis to believe is lawfully made available to the general public from:
§ 216.4 Initial privacy notice to consumers required.

(a) Initial notice requirement. You must provide a clear and conspicuous notice that accurately reflects your privacy policies and practices to:

(1) Customer. An individual who becomes your customer, not later than when you establish a customer relationship, except as provided in paragraph (e) of this section; and

(2) Consumer. A consumer, before you disclose any nonpublic personal information about the consumer to any nonaffiliated third party, if you make

(company and a subsidiary of a State member bank, except for:

(i) A national bank or a State bank that is not a member of the Federal Reserve System;

(ii) A broker or dealer that is registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(iii) A registered investment adviser, properly registered by or on behalf of either the Securities Exchange Commission or any State, with respect to its investment advisory activities and its activities incidental to those investment advisory activities;

(iv) An investment company that is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.); or

(v) An insurance company, with respect to its insurance activities and its activities incidental to those insurance activities, that is subject to supervision by a State insurance regulator;

(4) A State agency or State branch of a foreign bank, as those terms are defined in 12 U.S.C. 3101(b) (11) and (12), the deposits of which agency or branch are not insured by the Federal Deposit Insurance Corporation;

(5) A commercial lending company, as defined in 12 CFR 211.21(f), that is owned or controlled by a foreign bank, as defined in 12 CFR 211.21(m); or


Subpart A—Privacy and Opt Out Notices

§ 216.4 Initial privacy notice to consumers required.

(a) Initial notice requirement. You must provide a clear and conspicuous notice that accurately reflects your privacy policies and practices to:

(1) Customer. An individual who becomes your customer, not later than when you establish a customer relationship, except as provided in paragraph (e) of this section; and

(2) Consumer. A consumer, before you disclose any nonpublic personal information about the consumer to any nonaffiliated third party, if you make

(company and a subsidiary of a State member bank, except for:

(i) A national bank or a State bank that is not a member of the Federal Reserve System;

(ii) A broker or dealer that is registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(iii) A registered investment adviser, properly registered by or on behalf of either the Securities Exchange Commission or any State, with respect to its investment advisory activities and its activities incidental to those investment advisory activities;

(iv) An investment company that is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.); or

(v) An insurance company, with respect to its insurance activities and its activities incidental to those insurance activities, that is subject to supervision by a State insurance regulator;

(4) A State agency or State branch of a foreign bank, as those terms are defined in 12 U.S.C. 3101(b) (11) and (12), the deposits of which agency or branch are not insured by the Federal Deposit Insurance Corporation;

(5) A commercial lending company, as defined in 12 CFR 211.21(f), that is owned or controlled by a foreign bank, as defined in 12 CFR 211.21(m); or