

§ 1070.37

(3) Compliance would reveal information properly classified in the interest of national security;

(4) Compliance would reveal confidential or privileged commercial or financial information or trade secrets without the owner's consent;

(5) Compliance would compromise the integrity of the deliberative processes of the CFPB;

(6) Compliance would not be appropriate or necessary under the relevant substantive law governing privilege;

(7) Compliance would reveal confidential information; or

(8) Compliance would interfere with ongoing investigations or enforcement proceedings, compromise constitutional rights, or reveal the identity of a confidential informant.

(c) The CFPB may condition disclosure of official information pursuant to a request or demand on the entry of an appropriate protective order.

§ 1070.37 Prohibition on providing expert or opinion testimony.

(a) Except as provided in this section, and subject to 5 CFR 2635.805, CFPB employees or former employees shall not provide opinion or expert testimony based upon information which they acquired in the scope and performance of their official CFPB duties, except on behalf of the CFPB or the United States or a party represented by the CFPB, or the Department of Justice, as appropriate.

(b) Any expert or opinion testimony by a former employee of the CFPB shall be excepted from paragraph (a) of this section where the testimony involves only general expertise gained while employed at the CFPB.

(c) Upon a showing by the requester of exceptional need or unique circumstances and that the anticipated testimony will not be adverse to the interests of the United States, the General Counsel may, consistent with 5 CFR 2635.805, exercise his or her discretion to grant special, written authorization for CFPB employees, or former employees, to appear and testify as expert witnesses at no expense to the United States.

(d) If, despite the final determination of the General Counsel, a court of competent jurisdiction or other appro-

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priate authority orders the appearance and expert or opinion testimony of a current or former CFPB employee, that person shall immediately inform the General Counsel of such order. If the General Counsel determines that no further legal review of or challenge to the court's order will be made, the CFPB employee, or former employee, shall comply with the order. If so directed by the General Counsel, however, the employee, or former employee, shall decline to testify.

Subpart D—Confidential Information

§ 1070.40 Purpose and scope.

This subpart does not apply to requests for official information made pursuant to subparts B, C, or E of this part.

§ 1070.41 Non-disclosure of confidential information.

(a) *Non-disclosure.* Except as required by law or as provided in this part, no current or former employee or contractor or consultant of the CFPB, or any other person in possession of confidential information, shall disclose such confidential information by any means (including written or oral communications) or in any format (including paper and electronic formats), to:

(1) Any person who is not an employee, contractor, or consultant of the CFPB; or

(2) Any CFPB employee, contractor, or consultant when the disclosure of such confidential information to that employee, contractor, or consultant is not relevant to the performance of the employee's, contractor's, or consultant's assigned duties.

(b) *Disclosures to contractors and consultants.* CFPB contractors or consultants may receive confidential information only if such contractors or consultants certify in writing to treat such confidential information in accordance with these rules, Federal laws and regulations that apply to Federal agencies for the protection of the confidentiality of personally identifiable information and for data security and integrity, as well as any additional conditions or limitations that the CFPB may impose.

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(c) *Disclosure of materials derived from confidential information.* Nothing in this subpart shall limit the discretion of the CFPB to disclose materials that it derives from or creates using confidential information to the extent that such materials do not identify, either directly or indirectly, any particular person to whom the confidential information pertains.

(d) *Disclosability of confidential information provided to the CFPB by other agencies.* Nothing in this subpart requires or authorizes the CFPB to disclose confidential information that another agency has provided to the CFPB to the extent that such disclosure contravenes applicable law or the terms of any agreement that exists between the CFPB and the agency to govern the CFPB's treatment of information that the agency provides to the CFPB.

§ 1070.42 Disclosure of confidential supervisory information to supervised financial institutions and their affiliates and by supervised financial institutions and their affiliates to others.

(a) *Discretionary disclosure of confidential supervisory information to supervised financial institutions and their affiliates.* The CFPB may, in its discretion, and to the extent consistent with applicable law, disclose confidential supervisory information concerning a supervised financial institution or its service providers to that supervised financial institution or to its affiliates.

(b) *Disclosure of confidential supervisory information by a supervised financial institution or its affiliates.* Unless directed otherwise by the Associate Director for Supervision, Enforcement, and Fair Lending or by his or her delegee:

(1) Any supervised financial institution lawfully in possession of confidential supervisory information of the CFPB pursuant to this section may disclose such information, or portions thereof, to its affiliates and to the following individuals to the extent that the disclosure of such confidential supervisory information is relevant to the performance of such individuals' assigned duties:

(i) The directors, officers, trustees, members, general partners, or employ-

ees of the supervised financial institution; and

(ii) The directors, officers, trustees, members, general partners, or employees of the affiliates of the supervised financial institution.

(2) Any supervised financial institution or affiliate thereof that is lawfully in possession of confidential supervisory information of the CFPB pursuant to this section may disclose such information, or portions thereof, to:

(i) Its certified public accountant, legal counsel, contractor, consultant, or service provider; or

(ii) Another person, with the prior written approval of the Associate Director for Supervision, Enforcement, and Fair Lending or his or her delegee.

(3) Where a supervised financial institution or its affiliate discloses confidential supervisory information pursuant to this paragraph (b) of this section:

(i) The recipient of such confidential supervisory information shall not, without the prior written approval of the Associate Director for Supervision, Enforcement, and Fair Lending or his or her delegee, utilize, make, or retain copies of, or disclose confidential supervisory information for any purpose, except as is necessary to provide advice or services to the supervised financial institution or its affiliate; and

(ii) The supervised financial institution or affiliate disclosing the confidential supervisory information shall take reasonable steps to ensure that the recipient complies with paragraph (b)(3)(i) of this section.

§ 1070.43 Disclosure of confidential information to law enforcement agencies and other government agencies.

(a) *Required disclosure of confidential information to government agencies.* The CFPB shall:

(1) Disclose a draft of a report of examination of a supervised financial institution prior to its finalization, in accordance with 12 U.S.C. 5515(e)(1)(C), and disclose a final report of examination, including any and all revisions made to such a report, to a Federal or State agency with jurisdiction over that supervised financial institution, provided that the CFPB receives from