

§ 40.12

12 CFR Ch. I (1–1–04 Edition)

(2) *Example.* If a bank receives a customer list from a nonaffiliated financial institution in order to provide account processing services under the exception in § 40.14(a), the bank may disclose that information under any exception in §§ 40.14 or 40.15 in the ordinary course of business in order to provide those services. For example, the bank could disclose the information in response to a properly authorized subpoena or to its attorneys, accountants, and auditors. The bank could not disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.

(b)(1) *Information a bank receives outside of an exception.* If a bank receives nonpublic personal information from a nonaffiliated financial institution other than under an exception in §§ 40.14 or 40.15 of this part, the bank may disclose the information only:

(i) To the affiliates of the financial institution from which the bank received the information;

(ii) To its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the bank can disclose the information; and

(iii) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which the bank received the information.

(2) *Example.* If a bank obtains a customer list from a nonaffiliated financial institution outside of the exceptions in §§ 40.14 and 40.15:

(i) The bank may use that list for its own purposes; and

(ii) The bank may disclose that list to another nonaffiliated third party only if the financial institution from which the bank purchased the list could have lawfully disclosed the list to that third party. That is, the bank may disclose the list in accordance with the privacy policy of the financial institution from which the bank received the list, as limited by the opt out direction of each consumer whose nonpublic personal information the bank intends to disclose and the bank may disclose the list in accordance with an exception in §§ 40.14 or 40.15, such as to the bank's attorneys or accountants.

(c) *Information a bank discloses under an exception.* If a bank discloses nonpublic personal information to a nonaffiliated third party under an exception in §§ 40.14 or 40.15 of this part, the third party may disclose and use that information only as follows:

(1) The third party may disclose the information to the bank's affiliates;

(2) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

(3) The third party may disclose and use the information pursuant to an exception in §§ 40.14 or 40.15 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(d) *Information a bank discloses outside of an exception.* If a bank discloses nonpublic personal information to a nonaffiliated third party other than under an exception in §§ 40.14 or 40.15 of this part, the third party may disclose the information only:

(1) To the bank's affiliates;

(2) To the third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

(3) To any other person, if the disclosure would be lawful if the bank made it directly to that person.

§ 40.12 Limits on sharing account number information for marketing purposes.

(a) *General prohibition on disclosure of account numbers.* A bank must not, directly or through an affiliate, disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a consumer's credit card account, deposit account, or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

(b) *Exceptions.* Paragraph (a) of this section does not apply if a bank discloses an account number or similar form of access number or access code:

(1) To the bank's agent or service provider solely in order to perform marketing for the bank's own products or services, as long as the agent or service provider is not authorized to directly initiate charges to the account; or

(2) To a participant in a private label credit card program or an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

(c) *Examples.* (1) *Account number.* An account number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as the bank does not provide the recipient with a means to decode the number or code.

(2) *Transaction account.* A transaction account is an account other than a deposit account or a credit card account. A transaction account does not include an account to which third parties cannot initiate charges.

Subpart C—Exceptions

§ 40.13 Exception to opt out requirements for service providers and joint marketing.

(a) *General rule.* (1) The opt out requirements in §§ 40.7 and 40.10 do not apply when a bank provides nonpublic personal information to a nonaffiliated third party to perform services for the bank or functions on the bank's behalf, if the bank:

(i) Provides the initial notice in accordance with § 40.4; and

(ii) Enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the bank disclosed the information, including use under an exception in § 40.14 or 40.15 in the ordinary course of business to carry out those purposes.

(2) *Example.* If a bank discloses nonpublic personal information under this section to a financial institution with which the bank performs joint marketing, the bank's contractual agreement with that institution meets the requirements of paragraph (a)(1)(ii) of this section if it prohibits the institution from disclosing or using the non-

public personal information except as necessary to carry out the joint marketing or under an exception in §§ 40.14 or 40.15 in the ordinary course of business to carry out that joint marketing.

(b) *Service may include joint marketing.* The services a nonaffiliated third party performs for a bank under paragraph (a) of this section may include marketing of the bank's own products or services or marketing of financial products or services offered pursuant to joint agreements between the bank and one or more financial institutions.

(c) *Definition of joint agreement.* For purposes of this section, *joint agreement* means a written contract pursuant to which a bank and one or more financial institutions jointly offer, endorse, or sponsor a financial product or service.

§ 40.14 Exceptions to notice and opt out requirements for processing and servicing transactions.

(a) *Exceptions for processing transactions at consumer's request.* The requirements for initial notice in § 40.4(a)(2), the opt out in §§ 40.7 and 40.10 and service providers and joint marketing in § 40.13 do not apply if the bank discloses nonpublic personal information as necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes, or in connection with:

(1) Servicing or processing a financial product or service that a consumer requests or authorizes;

(2) Maintaining or servicing the consumer's account with a bank, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or

(3) A proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer.

(b) *Necessary to effect, administer, or enforce a transaction* means that the disclosure is:

(1) Required, or is one of the lawful or appropriate methods, to enforce the bank's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or