

# Privacy of Consumer Financial Information

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## Community Bankers for Compliance School 2016

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# **Section 1: Privacy – Purpose and Scope [12 C.F.R. § 1016.1]**

## **Model Privacy Forms and Examples [12 C.F.R. § 1016.2]**

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### ***Introduction***

Title V of the Gramm-Leach-Bliley Act of 1999 (GLBA) deals specifically with the safeguarding of nonpublic personal financial information.

### ***Purpose and Scope***

The regulation applies only to nonpublic personal information about individuals who obtain financial products or services primarily for personal, family, or household purposes, and requires the bank to:

- Provide notice to customers about its privacy policies and practices;
- Describe the conditions under which the bank may disclose nonpublic information about consumers to nonaffiliated third-parties; and
- Provide a method for consumers to prevent the bank from disclosing that information to nonaffiliated third-parties by “opting out” of that disclosure, subject to certain exceptions.

The regulation does not apply to companies or individuals who obtain financial products or services for business, commercial, or agricultural purposes.

Neither the law nor the regulations dictate the bank’s policy regarding privacy. That is determined by the bank’s board of directors. Therefore, senior management and the board of directors must make appropriate decisions concerning the bank’s policy.

### ***Model Privacy Forms and Examples***

Use of the model privacy form in the Appendix to the regulation, consistent with the instructions in the Appendix, constitutes compliance with the notice content requirements of the regulation, although use of the model privacy form is not required.

### ***Examples***

The examples are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with the regulation.

## **Section 2: Selected Definitions [12 C.F.R. § 1016.3]**

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### **Affiliate**

Any company that controls, is controlled by, or is under common control with another company; including bank:

- subsidiaries;
- holding companies; and
- other banks or companies owned by the bank's holding company.

### **Clear and Conspicuous**

This means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information contained in the notice.

#### **To make the information reasonably understandable, the bank should:**

- Present the information in clear, concise sentences, paragraphs, and sections;
- Use short explanatory sentences or bullet lists whenever possible;
- Use definite, concrete, everyday words and active voice whenever possible;
- Avoid multiple negatives;
- Avoid legal and highly technical business terminology whenever possible; and
- Avoid explanations that are imprecise and readily subject to different interpretations.

#### **To call attention to the nature and significance of the information in a notice, the bank should:**

- Use a plain-language heading to call attention to the notice;
- Use a typeface and type size that are easy to read (no "fine print" notices);
- Provide wide margins and ample line spacing;
- Use boldface or italics for key words; and
- If the privacy notice is combined with other information on a form, use distinctive type size, style, and graphic devices, such as shading or sidebars to highlight the notice.

#### **For notices on a Web site, the bank should 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
- Place the notice on a screen that consumers frequently access, such as a page on which transactions are conducted, or
- Place a link on a screen that consumers frequently access that connects directly to the notice and is labeled appropriately to convey the importance of the notice.

## **Collect**

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.

## **Company**

Any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

## **Control of a Company**

- Ownership, control, or power to vote 25% 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;
- 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
- The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the applicable regulator determines.

## **Financial Product or Service**

Any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under section 4(k) of the Bank Holding Company Act of 1956 (12 USC 1843(k)).

A “financial service” includes the bank’s evaluation or brokerage of information that the bank collects in connection with a request or an application from a consumer for a financial product or service.

## **Joint Agreement**

A written contract pursuant to which a bank and one or more financial institutions jointly offer, endorse, or sponsor a financial product or service.

## **Nonaffiliated Third-Party**

Any person (individual, corporation, partnership, trust, etc.) except:

- the bank’s affiliate; or
- a person employed jointly by the bank and any company that is not the bank’s affiliate. Note: the other company that jointly employs that person would be a nonaffiliated third-party.

The term also includes certain companies that are engaged in merchant banking or investment banking, activities which are not common to community banking.

## **Section 3: What is Protected? [12 C.F.R. § 1016.3]**

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### ***Introduction***

Generally, nonpublic personally identifiable financial information is protected under this rule. The following definitions include:

- The general definition for personally identifiable financial information, and
- A definition of what personally identifiable financial information is public and nonpublic.

### ***Personally Identifiable Financial Information***

#### **Includes any of the following:**

- Information provided by a consumer to the bank to obtain a financial product or service;
- Information resulting from any transaction involving a financial product or service between the bank and a consumer; or
- Information the bank otherwise obtains about a consumer in connection with providing a financial product or service to that consumer, other than publicly available information.

#### **Examples include:**

- Information a consumer provides to the bank on an application to obtain a loan, credit card, or other financial product or service;
- Account balance information, payment history, overdraft history, and credit or debit card purchase information;
- The fact that the individual is or has been a bank customer or has obtained a financial product or service from the bank;
- Other information about a bank's consumer if it is disclosed in a manner that indicates the individual is or has been the bank's consumer;
- Any information that a consumer provides to the bank or that the bank or the bank's agent obtains in connection with collecting on a loan or servicing a loan;
- Any information the bank collects through an Internet "cookie;" or
- Information from a consumer report, such as a credit report.

#### **Does not include:**

- A list of names and addresses of customers of an entity that is not a financial institution. For example, the names and addresses of people who subscribe to a particular magazine fall outside the definition. However, if the bank includes those names and addresses as part of a list of the bank's customers, then those names and addresses become nonpublic personal information.

- 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.

### ***Publicly Available Information***

Includes any information that is lawfully made available to the general public that is obtained from these sources:

- Federal, state, or local government records such as government real estate records and security interest filings.
- Widely distributed media such as from a telephone book, television or radio program, newspaper, or an Internet site that is available to the general public without requiring a password or similar restriction.
- Disclosures to the general public that are required to be made by Federal, state, or local law, such as securities disclosure documents.

### ***Nonpublic Personal Information***

#### **Includes:**

- Personally identifiable financial information (see the definition of that term above); and
- 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. For example, 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.

#### **Does not include:**

- Any list of individuals' names and addresses that contains only publicly available information;
- Any information that is not derived in whole or part using personally identifiable financial information that is not publicly available; and
- Any information that is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of the bank.

## **Section 4: Recipients of Privacy Notices [12 C.F.R. § 1016.3]**

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### ***Introduction***

Recipients of privacy notices fall into two groups:

1. Customers, and
2. Consumers

The formal definitions for each of these groups are listed below.

### ***Customer***

A customer is a consumer who has a customer relationship with the bank.

### **Customer Relationship**

A continuing relationship between a consumer and the bank under which the bank provides one or more financial products or services to the consumer that are to be used primarily for personal, family, or household purposes. **A consumer has a continuing relationship with the bank if the consumer:**

- Has a deposit or investment account with the bank;
- Obtains a loan from the bank;
- Has a loan for which the bank owns the servicing rights;
- Purchases an insurance product from the bank;
- Holds an investment product through the bank, such as when the bank acts as custodian for securities or assets in an IRA account;
- Enters into an agreement or understanding with the bank whereby the bank undertakes to arrange or broker a home mortgage loan for the consumer;
- Enters into a lease of personal property with the bank; or
- Obtains financial, investment, or economic advisory services from the bank for a fee.

### **There is not a continuing customer relationship with a bank if:**

- The consumer only obtains a financial product or service in an isolated transaction, such as withdrawing cash from the bank's ATM from an account at another financial institution or purchasing a cashier's check or money order.
- The bank sells the consumer's loan and does not retain the right to service the loan.
- The bank sells the consumer airline tickets, travel insurance, or traveler's checks in an isolated transaction.



## **Consumer**

An individual who obtains or has obtained a financial product or service from the bank that is to be used primarily for personal, family, or household purposes, or that individual's legal representative. **A consumer is an individual who:**

- Applies for credit regardless of whether the credit is extended.
- Provides nonpublic personal information in order to obtain a determination about whether he or she may qualify for a loan, regardless of whether the loan is extended.
- Provides nonpublic personal information in connection with obtaining or seeking to obtain financial, investment, or economic advisory services, regardless of whether an ongoing advisory relationship is established.
- If a bank holds ownership or servicing rights to an individual's loan, the individual is the bank's consumer, even if the bank holds 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 a bank has ownership or servicing rights is the bank's consumer, even if the bank, or another institution with those rights, hires an agent to collect on the loan.

**An individual is not a bank's consumer solely because:**

- The bank acts as agent for, or provides processing or other services to, another financial institution.
- He or she has designated the bank as trustee for a trust.
- He or she is a beneficiary of a trust for which the bank is a trustee.
- He or she is a participant or a beneficiary of an employee benefit plan that the bank sponsors or for which the bank acts as a trustee or fiduciary.

## Section 5: Privacy Notice Contents [12 C.F.R. § 1016.6]

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### *Contents of Model Notice*

The privacy notice must include the following items:

- **The categories of nonpublic personal information that the bank collects.** Only list those that apply:
  - Information from the consumer;
  - Information about the consumer's transactions with the bank or its affiliates;
  - Information about the consumer's transactions with nonaffiliated third parties; and
  - Information from a consumer reporting agency.
- **The categories of nonpublic personal information that the bank discloses (see above).** Only list those that apply, along with a few examples for each category. If the bank reserves the right to disclose all of the nonpublic personal information it collects about consumers, it may simply state that fact without describing the categories or giving examples.
- **The categories of affiliates and nonaffiliated third parties to whom the bank discloses nonpublic information,** other than those parties to whom the bank discloses information under an exception. Only list those that apply, along with a few examples for each category.
  - Financial service providers;
  - Non financial companies; and
  - Others.
- **The categories of nonpublic personal information about the bank's former customers** that it discloses and the categories of affiliates and nonaffiliated third parties to whom the bank discloses nonpublic information about its former customers, other than those parties to whom the bank discloses information under an exception.
- If the bank **discloses nonpublic personal information to a nonaffiliated third party who is providing services or joint marketing** on the bank's behalf and no other exception applies, a separate description of the categories of nonpublic personal information the bank discloses and the categories of those third parties with whom the bank has contracted and state whether the third party is:
  - A service provider that performs marketing services on the bank's behalf or on behalf of the bank and another financial institution, or
  - A financial institution with whom the bank has a joint marketing agreement.
- An explanation of the **right of the consumer to opt out** of the disclosure and the methods by which the consumer can exercise that right.
- Any disclosures the bank makes **under certain parts of the Fair Credit Reporting Act** (that is, notices regarding the ability to opt out of disclosures of information among affiliates).

- The **bank's policies and practices** with respect to protecting the confidentiality and security of nonpublic personal information. The bank fulfills this requirement if it does both of the following:
  - Describes in general terms who is authorized to have access to the information; and
  - States whether the bank has security practices and procedures in place to ensure the confidentiality of the information in accordance with the bank's policy. The bank is not required to describe technical information about the safeguards it uses.
- If the **bank discloses nonpublic personal information to third parties which are subject to an exception**, the bank is not required to list those exceptions in the initial or annual privacy notices. When describing the categories with respect to those parties, it is sufficient to state that the bank makes disclosures to other nonaffiliated companies:
  - For everyday business purposes, such as [include all that apply] to process transactions, maintain account(s), respond to court orders and legal investigations, or report to credit bureaus; or
  - As permitted by law; and
  - Any other information that the bank wishes to provide that applies to the bank and to the consumers to whom the privacy notice is being sent.

#### **Future Disclosures (optional)**

The bank's notice may include the following:

- **Categories of nonpublic personal information the bank reserves the right to disclose** in the future, but does not currently disclose; and
- **Categories of affiliates or nonaffiliated third parties to whom the bank reserves the right to disclose** in the future, but to whom it does not currently disclose.

#### ***A Simplified Notice***

The regulation provides for a simplified disclosure notice for a bank that does not disclose, and does not wish to reserve the right to disclose, nonpublic personal information to affiliates or nonaffiliated third parties except as authorized in the exceptions. In this case, the bank may simply state that fact and provide the following information, as described above:

- The categories of nonpublic personal information that the bank collects;
- The bank's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and
- If the bank discloses nonpublic personal information to third parties which is subject to an exception, the bank is not required to list those exceptions in the initial or annual privacy notices. When describing the categories with respect to those parties, it is sufficient to state that the bank makes disclosures to other nonaffiliated companies:
  - For everyday business purposes, such as [include all that apply] to process transactions, maintain account(s), respond to court orders and legal investigations, or report to credit bureaus; or
  - As permitted by law.

## Section 6: Opt-Out Requirements

### [12 C.F.R. § 1016.7] and [12 C.F.R. § 1016.10]

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Most states will require this information. However, Illinois law provides an “opt-in” feature that makes this section irrelevant for Illinois banks, consumers, and customers.

### *Important Definition*

#### **Opt out**

A direction by the consumer that the bank not disclose nonpublic personal information about the consumer to a nonaffiliated third party.

### *Form of Opt-Out Notice and Opt-Out Methods*

#### **General Information**

If the bank intends to share outside of the exceptions [see Section 7], the bank must provide a “clear and conspicuous” [see formal definition, Section 2] opt-out notice to each of its consumers. The notice must state:

- That the bank discloses or reserves the right to disclose nonpublic personal information to a nonaffiliated third party;
- That the consumer has the right to opt out of that disclosure; and
- A reasonable means by which the consumer may exercise the opt-out right.

Note: While the first bullet point above expressly refers to disclosure of nonpublic personal information to a nonaffiliated third party, the revised Model form is designed to also satisfy an opt out of affiliate sharing.

#### **Adequate Opt-Out Notices**

##### **The bank provides an adequate opt-out notice if it:**

- Identifies all of the categories of nonpublic personal information it discloses or reserves the right to disclose;
- Identifies all of the categories of nonaffiliated third parties to which the bank discloses the information;
- States that the consumer can opt out of the disclosure of that information; and
- Identifies the financial products or services that the consumer obtains from the bank, either singly or jointly, to which the opt-out direction would apply.

## **Reasonable Means**

**The bank provides a reasonable means to exercise an opt-out right if it:**

- Designates check-off boxes in a prominent position on the relevant forms with the opt-out notice;
- Includes a reply form together with the opt-out notice which includes the bank's mailing address;
- Provides an electronic means to opt out, such as a form that can be sent via e-mail or a process at the bank's Web site, if the consumer agrees to the electronic delivery of information; or
- Provides a toll-free telephone number that consumers may call to opt out.

**The bank does not provide a reasonable means of opting out if the only way is:**

- For the consumer to write his or her own letter; or
- By the use of a check-off box that was provided in the initial notice but not provided with any subsequent notice.

## **Miscellaneous Provisions**

- The bank may require each consumer to opt out through a specific means, as long as it is reasonable for that consumer.
- The bank may provide the opt-out notice with or on the same written or electronic form as the initial notice.
- If the bank provides the opt-out notice later than required for the initial notice, the bank must include a copy of the initial notice with the opt-out notice in writing or, if the consumer agrees, electronically.

## **Examples of Reasonable Opportunity to Opt Out**

- **By mail.** The bank mails the required notices to the consumer and allows the consumer to opt out by mailing a form, calling a toll free telephone number, or any other reasonable means within 30 days from the date the notices were mailed.
- **By electronic means.** A customer opens an online account with the bank and agrees to receive the required notices electronically. The bank allows the customer to opt out by any reasonable means within 30 days after the date the customer acknowledges receipt of the notices.

## ***Joint Relationships***

If two or more consumers jointly obtain a financial product or service from the bank, a single opt-out notice may be provided. The opt-out notice must explain how the bank will treat an opt-out direction by a joint consumer.

- Any of the joint consumers may exercise the right to opt out. The bank may either:

- Treat an opt-out direction by a joint consumer as applying to all of the joint consumers, or
- Permit each joint consumer to opt out separately and allow one of the joint consumers to opt out on behalf of all of the joint consumers.
- The bank may not require all joint consumers to opt out before it implements any opt-out direction.

For example, if John and Mary have a joint checking account with a bank and arrange for the bank to send statements to John's address, the bank may do any of the following, but it must explain in its opt-out notice which opt-out policy the bank will follow:

- Send a single opt-out notice to John's address, but the bank must accept an opt-out direction from either John or Mary.
- 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.
- Permit John and Mary to make different opt-out directions. If the bank does so:
  - It must permit John and Mary to opt out for each other;
  - If both opt out, the bank must permit both of them to notify the bank in a single response (such as on a form or through a telephone call); and
  - If John opts out and Mary does not, the bank may only disclose nonpublic personal information about Mary, but not about John and not about John and Mary jointly.

## ***Miscellaneous Opt-Out Issues***

### **Isolated Transactions**

For an isolated transaction, such as the purchase of a cashier's check by a consumer who is not a "customer," it is sufficient when the bank provides a reasonable opportunity to opt out by providing the required notices at the time of the transaction and requesting that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

### **Scope of Opt Out**

The opt out applies regardless of whether a consumer has established a customer relationship with the bank. Additionally, the bank must comply with the opt-out disclosure requirements and cannot, directly or through any affiliate, disclose any nonpublic personal information about a consumer that the bank has collected, regardless of whether it collected the information before or after receiving the consumer's direction to opt out.

### **Partial Opt Out**

The bank may allow the consumer to opt out of certain nonpublic personal information or certain nonaffiliated third party sharing. Note: The use of this option would obviously present significant recordkeeping challenges to the bank, keeping track on a consumer-by-consumer basis of what information and/or what third parties are subject to an opt out.

## ***Complying with an Opt Out***

The bank must comply with the following opt-out rules:

- Comply with a consumer's opt-out direction as soon as reasonably practicable after the bank receives it.
- A consumer may exercise the right to opt out at any time.
- A consumer's direction to opt out is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

## ***Termination of Customer Relationship***

When a customer relationship terminates, the opt-out direction continues to apply to the nonpublic personal information that the bank collected during or related to that relationship. If a new customer relationship is established with the bank, the opt-out direction that applied to the former relationship does not apply to the new relationship.

## **Section 7: Exceptions [12 C.F.R. § 1016.13], [12 C.F.R. § 1016.14] and [12 C.F.R. § 1016.15]**

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### ***Exceptions to the Opt-Out Requirements for Service Providers and Joint Marketing***

#### **General Rule**

The opt-out requirements 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:

- Provides the initial notice to the consumer; and
- 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 listed below in the ordinary course of business.

For example, if the 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 stated above if it prohibits the institution from disclosing or using the nonpublic personal information except as necessary to carry out the joint marketing or under an exception listed below in the ordinary course of business to carry out that joint marketing.

#### **Service May Include Joint Marketing**

The services a nonaffiliated third party performs for a bank under 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.

### ***Exceptions to Notice and Opt-Out Requirements for Processing and Servicing Transactions***

#### **Processing Transactions at Customer's Request**

The requirements for initial notice, opt out, and for service providers and joint marketing 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 the following:

- Servicing or processing a financial product or service requested or authorized by the consumer;
- Maintaining or servicing the consumer's account with the 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



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

**Definition – “necessary to effect, administer, or enforce a transaction”**

The term “necessary to effect, administer, or enforce a transaction” means that the disclosure is:

- 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
- Required, or is a usual, appropriate, or acceptable method:
  - To carry out the transaction or the product or service business of which the transaction is a part, and record, service, or maintain the consumer’s account in the ordinary course of providing the financial service or financial product;
  - To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;
  - To provide a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product to the consumer or the consumer’s agent or broker;
  - To accrue or recognize incentives or bonuses associated with the transaction that are provided by the bank or any other party;
  - To underwrite insurance at the consumer’s request, for reinsurance purposes, or for any of the following purposes as they relate to a consumer’s insurance: account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects, or as otherwise required or specifically permitted by Federal or state law; or
  - In connection with:
    - The authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card, check or account number, or by other payment means;
    - The transfer of receivables, accounts, or interests therein; or
    - The audit of debit, credit, or other payment information.

## ***Other Exceptions to Notice and Opt-Out Requirements***

The requirements for the initial notice, opt out, and for service providers and joint marketing do not apply when the bank discloses nonpublic personal information in the following circumstances:

- With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction. For example:
- A consumer may specifically consent to a bank's disclosure to a nonaffiliated insurance company of the fact that the consumer has applied to the bank for a mortgage so that the insurance company can offer homeowner's insurance to the consumer.

A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic information.

- For the following protective or legal reasons:
  - To protect the confidentiality or security of the bank's records pertaining to the consumer, service, product, or transaction;
  - To protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability;
  - For required institutional risk control or for resolving consumer disputes or inquiries;
  - To persons holding a legal or beneficial interest relating to the consumer; or
  - To persons acting in a fiduciary or representative capacity on behalf of the consumer.
- To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating the bank, persons that are assessing the bank's compliance with industry standards, and the bank's attorneys, accountants, and auditors.
- To the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 USC 3401), to law enforcement agencies (including government regulators), self-regulatory organizations, or for an investigation on a matter related to public safety.
- To a consumer reporting agency in accordance with the Fair Credit Reporting Act (15 USC1681) or from a consumer report reported by a consumer reporting agency.
- In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of that business or unit.
- To comply with Federal, state, or local laws, rules, and other applicable legal requirements, specifically:
  - To comply with a properly authorized civil, criminal, or regulatory investigation, or subpoena or summons by Federal, state, or local authorities; or
  - To respond to judicial process or government regulatory authorities having jurisdiction over the bank for examination, compliance, or other purposes as authorized by law.

## **Section 8: Overview of the Model Privacy Form**

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### ***Introduction***

The following is a synopsis of the information that was produced in the *Federal Register* dated December 1, 2009, when the final announcement was made by the Federal Agencies regarding the model privacy form (herein after referred to as “Form”).

The Form utilizes a standardized format and provides a legal safe harbor for banks which choose to use it. Since the use of the Form is voluntary, banks may continue to use other types of notices as long as they comply with the privacy rule; however, they will no longer receive a safe harbor. For instance, a bank may still utilize a “simplified notice” [see Section 5] if it does not have affiliates and does not intend to share nonpublic personal information with nonaffiliated third parties outside of the exceptions noted in Section 7 of this manual. It should be noted that the Agencies “online form builder” Web site does not accommodate this simplified notice, however.

In order to obtain the benefit of the safe harbor, banks are not permitted to include any additional information in the Form other than what is specifically permitted by the rule. The Form may be incorporated into another document as long as it meets the specific requirements of the rule for content and presentation.

The Form may be provided in other languages to accommodate the bank’s non-English speaking consumers.

### ***Effective Date***

This final rule was effective on December 31, 2009. In order to have the legal safe harbor, banks had to utilize the New Model Privacy Form for notices delivered to consumers on or after January 1, 2011.

### ***Format of the Form***

The Form contains two (2) pages and may be printed on a single piece of paper. As noted in footnote 9 in the final rule, the Appendix provides three versions of the final model form:

1. model form with no opt out;
2. model form with telephone and Web opt out only; and
3. model form that includes a mail-in opt-out form. An alternative mail-in form (version 4) may be substituted for the mail-in portion of the model form in version 3.

For those institutions that use the model form and need to provide a mail-in opt-out form, the reverse side to that opt-out form must not include any content of the model form.

The Form addresses the legal requirements of the privacy law and are designed to increase consumer comprehension.

**Paper Size:** To allow for greater flexibility, a specific paper size is not required; however, it must be sufficient to accommodate the layout and minimum font size, spacing, and content requirements, with sufficient white space on the top, bottom, and sides of the content. As noted in footnote 82 of the final rule, the Agencies understand that most privacy policies provide for opting out by toll-free telephone or on the Internet. The paper size for those policies will likely be about 8 ½ x 11 inches. However, for those institutions that provide a mail-in opt-out form, the paper size will likely need to be longer, around 8 ½ x 14 inches, in order to accommodate the mail-in form.

**Orientation:** The Form must be printed in “portrait” orientation.

**Number of Pages:** The Form may be printed on two sides of a single piece of paper or on two single sided sheets.

**Page one** contains the Background Information, the Disclosure Table, and Opt-Out Information. There are five parts to this page:

1. the title;
2. an introductory section called the “key frame” which helps the consumer understand the required disclosure;
3. a disclosure table that describes the types of sharing used by the bank, which of those types of sharing the bank actually does, and whether the consumer can limit or opt out of any of the bank’s sharing;
4. a box titled “To limit our sharing” for opt-out information (only if needed); and
5. the bank’s customer service contact information. If the bank provides a mail-in opt-out form, it will appear at the bottom of this page. In order for consumers to determine how recently a bank’s notice was changed, this page also includes a “revised [month/year]” notation in the upper right-hand corner. This date must be in a minimum of 8-point font and is the date the policy was last revised.

**Page two** contains supplemental information for the consumer. This additional information ensures that the notice includes all elements described in the Gramm-Leach Bliley Act as implemented by the privacy rule. This page contains supplemental information in the form of Frequently Asked Questions (FAQs), definitions, and a box titled “Other important information” which can only be used to:

1. discuss state and / or international privacy law requirements; and
2. provide an acknowledgement of receipt of the Form.

## ***Appearance of the Form***

**Type size:** The minimum font size is 10-point, unless otherwise specified in the instructions.

**Spacing between lines:** A specific amount is not given; however, there should be sufficient spacing between the lines. For instance, the upward line in the letter “h” and the downward line in the letter “g” should not touch between lines.

## ***Optional General Guidance for Easily Readable Type***

The following chart was provided as guidance for those banks who design their own forms. The chart was taken directly from the *Federal Register*:

<b>If</b>	<b>Then use</b>	<b>And use</b>	<b>And use font with</b>
Font is 10-point	1–3 points leading	2–4 points leading	Large x-height sans serif (around .66 ratio).
Font is 11-point	1–3 points leading	Monoweight typeface	Smaller x-height is acceptable; either serif or sans serif (less than .66 ratio is acceptable).
Font is 12-point	2–4 points leading	Monoweight or variable typeface	Smaller x-height is acceptable; either serif or sans serif (less than .66 ratio is acceptable).

### **Printing, Color, and Logos**

A bank may include its corporate logo on any of the pages, as long as the logo design does not interfere with the readability of the Form or space constraints of each page. The color of the papers should be white or a light color (such as cream) with black or suitable contrasting color ink. Spot color is permitted to achieve visual interest to the model form, so long as the color contrast is distinctive and the color does not detract from the Form's readability. The Agencies are not prohibiting the use of more than one color in a logo. The Form does not permit banks to use slogans or images (other than logos) on the Form.

### ***Jointly-Provided Notices***

If a bank does not provide the notice jointly with another entity, the FAQ titled "Who is providing this notice?" on page two of the Form may be omitted.

### ***Use of the Form by Differently-Regulated Entities***

Different regulated entities may use the Form to provide a single joint notice to their consumers.

### ***Online Form Builder***

The Agencies have developed an online downloadable version of the Form that banks can use to create their own customized notice. Refer to Section 9 of this manual for further information.

## ***Web-Based Design***

The Board of Governors of the Federal Reserve System and the Federal Trade Commission agreed to undertake the development of a Web-based version of the Form due to the increased number of consumers who transact business via the Web (i.e., online banking). When completed, it was made available to all banks.

## **Electronic Delivery**

When a consumer agrees to receiving the notice electronically, banks may send the notice via e-mail either by attaching the notice or providing a link to the notice. The format may either be PDF or HTML.

## ***Limiting Sharing: Opt Out Information***

Telephone and online opt outs should closely match the options provided in the Form. Consistent with the direction provided in the affiliate marketing rule, the Agencies also contemplate that a toll-free telephone number would be adequately designed and staffed to enable consumers to opt out in a single telephone call. In setting up a toll-free telephone number that consumers may use to exercise their opt-out rights, institutions should minimize extraneous messages directed to consumers who are in the process of opting out.

## ***Additional Opt Outs in the Model Form***

The final model form permits institutions to provide for voluntary or state law-required opt-outs. For example, if an institution elects to offer its customers the opportunity to opt out of its marketing, it can do so by saying “yes” in the third column. Similarly, an institution can offer its customers a right to opt out of joint marketing, if it chooses.

Institutions that must comply with various state law requirements, depending on their practices and the choices they offer, may be able to do so in one of two ways using the model form. For example, Vermont law requires institutions to obtain opt-in consent from Vermont consumers for affiliate sharing. The disclosure table permits institutions to do one of two things:

- it can provide a notice directed to its Vermont customers that answers “no” to the question about whether it shares creditworthiness information with its affiliates, or
- it can provide a generalized notice for consumers across a number of states including Vermont and answer “yes” to the question about sharing creditworthiness information with its affiliates and include a discussion on the application of Vermont law in the “Other important information” box on page two of the Form.

*Note:* The footnote in the final rule for the second bullet point above states “California provides that a consumer can opt out of joint marketing. Cal. Fin. Code div. 1.2 § 4053(b)(2). Thus, an institution can provide a generalized notice offering no opt out, with California-specific information in the “Other important information” box. Alternatively, an institution can provide a separate notice to its California customers. Institutions cannot use the model form to offer opt-in consent. See Instruction C.2(g)(5) to the Model Privacy Form.”

To obtain the safe harbor for use of the proposed model form, an institution that uses the disclosure table to show any additional opt-out choices (beyond what is required under Federal law) must make that opt out available through the same opt-out options the institution provides in the notice, whether by telephone, Internet, or a mail-in opt-out form.

### ***Contact Information for Questions***

Like the proposed form, the final model form provides contact information at the bottom of page one. In revising the proposed model form to include the opt-out information on page one, the Agencies have modified the “Contact Us” box to label it “Questions” (to more clearly distinguish between the two) and clarified in the Instructions that this box is for customer service contact information, either by telephone or the Internet or both, at the institution’s option.

Customer service contact information is for consumers who may have questions about the institution’s privacy policy and may be the same contact information for consumers’ questions relating to the institution’s products or services. The Agencies are not requiring a separate customer service number solely to answer questions about the institution’s privacy policy. The customer service contact information is different from the opt-out contact information, unless the customer service number is made available for consumers to opt out. The contact information should give consumers a way to communicate directly with the institution.

# Section 9: The Model Privacy Forms

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## ***Introduction***

This section includes the model form and the form's instructions. The following discussion on how to complete the form considers each portion of the form, as applicable to the institution. Following some of the individual portions of the form, we have included Young & Associates, Inc. comments, which appear in text boxes. These comments relate to the applicability of that portion of the form given a bank's particular circumstances. Other than our comments in the text boxes, all of the language in the balance of this section is a direct quote of the instructions.

## ***General Instructions***

### **How the Model Privacy Form Is Used**

The model form may be used, at the option of a financial institution, including a group of financial institutions that use a common privacy notice, to meet the content requirements of the privacy notice and opt-out notice set forth in §§ 1016.6 and 1016.7 of this part.

The model form is a standardized form, including page layout, content, format, style, pagination, and shading. Institutions seeking to obtain the safe harbor through use of the model form may modify it only as described in these Instructions.

Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act [15 U.S.C. 1681–1681x] (FCRA), such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.

The word “customer” may be replaced by the word “member” whenever it appears in the model form, as appropriate.

### **The Contents of the Model Privacy Form**

The model form consists of two pages, which may be printed on both sides of a single sheet of paper, or may appear on two separate pages. Where an institution provides a long list of institutions at the end of the model form in accordance with Instruction C.3(a)(1), or provides additional information in accordance with Instruction C.3(c), and such list or additional information exceeds the space available on page two of the model form, such list or additional information may extend to a third page.

***Page One.*** The first page consists of the following components:

- Date last revised (upper right-hand corner).
- Title.
- Key frame (Why?, What?, How?).
- Disclosure table (“Reasons we can share your personal information”).



- “To limit our sharing” box, as needed, for the financial institution’s opt-out information.
- “Questions” box, for customer service contact information.
- Mail-in opt-out form, as needed.

**Page Two.** The second page consists of the following components:

- Heading (Page 2).
- Frequently Asked Questions (“Who we are” and “What we do”).
- Definitions.
- “Other important information” box, as needed.

### **The Format of the Model Privacy Form**

The format of the model form may be modified only as described below.

**Easily readable type font.** Financial institutions that use the model form must use an easily readable type font. While a number of factors together produce easily readable type font, institutions are required to use a minimum of 10-point font (unless otherwise expressly permitted in these Instructions) and sufficient spacing between the lines of type.

**Logo.** A financial institution may include a corporate logo on any page of the notice, so long as it does not interfere with the readability of the model form or the space constraints of each page.

**Page size and orientation.** Each page of the model form must be printed on paper in portrait orientation, the size of which must be sufficient to meet the layout and minimum font size requirements, with sufficient white space on the top, bottom, and sides of the content.

**Color.** The model form must be printed on white or light color paper (such as cream) with black or other contrasting ink color. Spot color may be used to achieve visual interest, so long as the color contrast is distinctive and the color does not detract from the readability of the model form. Logos may also be printed in color.

**Languages.** The model form may be translated into languages other than English.

### **Privacy Model Form – Opt-Out Version**

We will begin our review of the model forms with step-by-step walk through of the optout version (with a “mail-in” form option). The complete version begins on the next page with a section-by-section analysis following.

<b>FACTS</b>		<b>WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?</b>
<b>Why?</b>	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.	
<b>What?</b>	The types of personal information we collect and share depend on the product or service you have with us. This information can include: <ul style="list-style-type: none"> <li>■ Social Security number and [income]</li> <li>■ [account balances] and [payment history]</li> <li>■ [credit history] and [credit scores]</li> </ul>	
<b>How?</b>	All financial companies need to share <b>customers'</b> personal information to run their everyday business. In the section below, we list the reasons financial companies can share their <b>customers'</b> personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.	
	<b>Reasons we can share your personal information</b>	<b>Does [name of financial institution] share?</b>
	<b>For our everyday business purposes—</b> such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus	
	<b>For our marketing purposes—</b> to offer our products and services to you	
	<b>For joint marketing with other financial companies</b>	
	<b>For our affiliates' everyday business purposes—</b> information about your transactions and experiences	
	<b>For our affiliates' everyday business purposes—</b> information about your creditworthiness	
	<b>For our affiliates to market to you</b>	
	<b>For nonaffiliates to market to you</b>	
<b>To limit our sharing</b>	<ul style="list-style-type: none"> <li>■ Call [phone number]—our menu will prompt you through your choice(s)</li> <li>■ Visit us online: [website] or</li> <li>■ Mail the form below</li> </ul> <p><b>Please note:</b></p> <p>If you are a <i>new</i> customer, we can begin sharing your information [30] days from the date we sent this notice. When you are <i>no longer</i> our customer, we continue to share your information as described in this notice.</p> <p>However, you can contact us at any time to limit our sharing.</p>	
<b>Questions?</b>	Call [phone number] or go to [website]	



<b>Mail-in Form</b>										
<p><b>Leave Blank OR</b>                      [If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below.]</p> <p><input type="checkbox"/> Apply my choices only to me]</p>	<p>Mark any/all you want to limit:</p> <p><input type="checkbox"/> Do not share information about my creditworthiness with your affiliates for their everyday business purposes.</p> <p><input type="checkbox"/> Do not allow your affiliates to use my personal information to market to me.</p> <p><input type="checkbox"/> Do not share my personal information with nonaffiliates to market their products and services to me.</p> <table border="1"> <tr> <td><b>Name</b></td> <td></td> <td rowspan="4"><b>Mail to:</b> [Name of Financial Institution] [Address1] [Address2] [City], [ST] [ZIP]</td> </tr> <tr> <td><b>Address</b></td> <td></td> </tr> <tr> <td><b>City, State, Zip</b></td> <td></td> </tr> <tr> <td><b>[Account #]</b></td> <td></td> </tr> </table>	<b>Name</b>		<b>Mail to:</b> [Name of Financial Institution] [Address1] [Address2] [City], [ST] [ZIP]	<b>Address</b>		<b>City, State, Zip</b>		<b>[Account #]</b>	
<b>Name</b>		<b>Mail to:</b> [Name of Financial Institution] [Address1] [Address2] [City], [ST] [ZIP]								
<b>Address</b>										
<b>City, State, Zip</b>										
<b>[Account #]</b>										

Who we are	
Who is providing this notice?	[insert]
What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.  [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you <ul style="list-style-type: none"> <li>■ [open an account] or [deposit money]</li> <li>■ [pay your bills] or [apply for a loan]</li> <li>■ [use your credit or debit card]</li> </ul> [We also collect your personal information from other companies.] OR [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only <ul style="list-style-type: none"> <li>■ sharing for affiliates' everyday business purposes—information about your creditworthiness</li> <li>■ affiliates from using your information to market to you</li> <li>■ sharing for nonaffiliates to market to you</li> </ul> State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]
What happens when I limit sharing for an account I hold jointly with someone else?	[Your choices will apply to everyone on your account.] OR [Your choices will apply to everyone on your account—unless you tell us otherwise.]
Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. <ul style="list-style-type: none"> <li>■ [affiliate information]</li> </ul>
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. <ul style="list-style-type: none"> <li>■ [nonaffiliate information]</li> </ul>
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. <ul style="list-style-type: none"> <li>■ [joint marketing information]</li> </ul>
Other important information	
[insert other important information]	

## Section-by-Section Analysis (Opt-Out Version) – Page 1

### Revision Date / Title

Rev. [insert date]

#### FACTS

WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?

### Last Revised Date (Rev. [Insert Date])

The financial institution must insert in the upper right-hand corner the date on which the notice was last revised. The information shall appear in minimum 8-point font as “rev. [month/year]” using either the name or number of the month, such as “rev. March 2012” or “rev. 3/12”

*Y&A Commentary – We have routinely recommended to client institutions to document revision dates on various disclosures, brochures, etc. This information makes it easy for institutions to quickly identify the latest version without a “text for text” comparison. As stated above, the model privacy form requires a revision date.*

### Institution’s Name [Name of Financial Institution]

Insert the name of the financial institution providing the notice or a common identity of affiliated institutions jointly providing the notice on the form wherever [name of financial institution] appears.

### Key Frame

#### Why?

#### Why?

Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.

Describes the purpose of the privacy notice. There are no entries required for this part.

#### What?

#### What?

The types of personal information we collect and share depend on the product or service you have with us. This information can include:

- Social Security number and [income]
- [account balances] and [payment history]
- [credit history] and [credit scores]

When you are *no longer* our customer, we continue to share your information as described in this notice.

The bulleted list identifies the types of personal information that the institution collects and shares. All institutions must use the term “Social Security number” in the first bullet.

Institutions must use five (5) of the following terms to complete the bulleted list. The sample form has preset five of these as a guide, but they may be overwritten with the five selected by the institution as it relates to the information it collects and shares in its privacy practices.

- income;
- account balances;
- payment history;
- transaction history;
- transaction or loss history;
- credit history;
- credit scores;
- assets;
- investment experience;
- credit-based insurance scores;
- insurance claim history;
- medical information;
- overdraft history;
- purchase history;
- account transactions;
- risk tolerance;
- medical-related debts;
- credit card or other debt;
- mortgage rates and payments;
- retirement assets;
- checking account information;
- employment information;
- wire transfer instructions.

*Y&A Commentary – As noted in the Instructions, institutions shall identify and disclose five of the items included in the list above as it relates to the types of information the institution collects and shares. Prior to creating your privacy form, you will need to determine which of above-mentioned items best belong in your list of five. Note that social security number is hard coded into the form and must be used.*

**How?**

<b>How?</b>	All financial companies need to share <b>customers'</b> personal information to run their everyday business. In the section below, we list the reasons financial companies can share their <b>customers'</b> personal information; the reasons <b>[name of financial institution]</b> chooses to share; and whether you can limit this sharing.
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As noted in the general instructions above, financial institutions may substitute the term “customer” with the term “member” if appropriate.

The name of the financial institution will again appear in the “How?” box.

**Disclosure Table (“Reasons we can share your personal information”)**

The left column (below) lists reasons for sharing or using personal information. Each reason correlates to a specific legal provision described in this Instruction.

In the middle column, each institution must provide a “Yes” or “No” response that accurately reflects its information sharing policies and practices with respect to the reason listed on the left.

In the right column, each institution must provide in each box one of the following three (3) responses, as applicable, that reflects whether a consumer can limit such sharing:

- “Yes” if it is required to or voluntarily provides an opt out;
- “No” if it does not provide an opt out; or
- “We don’t share” if it answers “No” in the middle column.

Only the sixth row (“For our affiliates to market to you”) may be omitted at the option of the institution. See paragraph C.2(d)(6) of this Instruction.

**Specific Disclosures and Corresponding Legal Provisions**

The following is a complete representation of this portion of the form. To simplify the step-by-step review, we have then reproduced each question for ease of illustration through the discussion of this section.

Reasons we can share your personal information	Does <b>[name of financial institution]</b> share?	Can you limit this sharing?
<b>For our everyday business purposes—</b> such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
<b>For our marketing purposes—</b> to offer our products and services to you		
<b>For joint marketing with other financial companies</b>		
<b>For our affiliates' everyday business purposes—</b> information about your transactions and experiences		
<b>For our affiliates' everyday business purposes—</b> information about your creditworthiness		
<b>For our affiliates to market to you</b>		
<b>For nonaffiliates to market to you</b>		

**For our everyday business purposes**

<p>For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus</p>		
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This reason incorporates sharing information under §§ 1016.14 and 1016.15 and with service providers pursuant to § 1016.13 of this part other than the purposes “For our marketing purposes” or “For joint marketing with other financial companies” specified below in these Instructions.

*Y&A Commentary – For most institutions, the answers to middle and right columns will be “Yes,” and “No,” respectively. This is because this type of sharing is permitted without an opt out and routinely used to effectuate transactions.*

**For our marketing purposes**

<p>For our marketing purposes— to offer our products and services to you</p>		
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This reason incorporates sharing information with service providers by an institution for its own marketing pursuant to § 1016.13 of this part. An institution that shares for this reason may choose to provide an opt out.

*Y&A Commentary – For institutions that share customer information with service providers to market the institution’s products / services, the regulation does not require an opt out as long as the institution discloses this type of sharing and has entered into a contractual relationship with the third party. Therefore, the answers to middle and right columns will be “Yes” and “No,” respectively. However, at the institution’s option, it could offer an opt out for this type of sharing. In that case, the answer to the right column would then be “Yes.”*

*For institutions that do not share customer information with service providers, the answers to middle and right columns will be “No,” and “We don’t share,” respectively.*

**For joint marketing with other financial companies**

<p>For joint marketing with other financial companies</p>		
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This reason incorporates sharing information under joint marketing agreements between two or more financial institutions and with any service provider used in connection with such agreements pursuant to § 1016.13 of this part. An institution that shares for this reason may choose to provide an opt out.

*Y&A Commentary – Essentially, the answers / guidance to the “marketing purpose” question above apply in the “joint marketing” as well, as follows:*

*For institutions that share customer information under a joint marketing relationship, the regulation does not require an opt out as long as the institution discloses this type of sharing and has entered into a contractual relationship with the third-party. Therefore, the answers to middle and right columns will be “Yes” and “No,” respectively. However, at the institution’s option, it could offer an opt out for this type of sharing. In that case, the answer to the right column would then be “Yes.”*

*For institutions that do not share customer information with service providers, the answers to middle and right columns will be “No,” and “We don’t share,” respectively.*

**For our affiliates’ everyday business purposes—information about transactions and experiences**

For our affiliates’ everyday business purposes— information about your transactions and experiences		
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This reason incorporates sharing information specified in sections 603(d)(2)(A)(i) and (ii) of the FCRA. An institution that shares for this reason may choose to provide an opt out.

*Y&A Commentary – This question is directed to whether the institution shares information about a customer’s transactions or experiences with the institution’s affiliate(s).*

*For institutions that have affiliates and do share transaction or experience information with the affiliates, then the answers to the middle and right columns would be “Yes” and “No,” respectively, if the institution chooses not to provide an opt out. This type of sharing is governed by the Fair Credit Reporting Act (FCRA) under the definition of an exclusion to a “consumer report” as defined in the FCRA. Specifically, the following is one of the consumer report exclusions: “a report containing information solely as to transactions or experiences between the consumer and the person making the report and communication of that information among persons related by common ownership or affiliated by corporate control.”*

*However, if the institution chooses to provide an opt out for this type of sharing, the answers for the middle and right columns would each be “Yes.”*

*Institutions that do not share with affiliates would answer by entering in “No” and “We don’t share” in both columns.*

**For our affiliates’ everyday business purposes—information about creditworthiness.**

For our affiliates’ everyday business purposes— information about your creditworthiness		
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This reason incorporates sharing information pursuant to section 603(d)(2)(A)(iii) of the FCRA. An institution that shares for this reason must provide an opt out.

Within the preamble to the final rule, the Agencies also provided guidance for institutions choosing to include or exclude the affiliate marketing notice and related opt out within the privacy form. Specifically, they state the following:

“Including the affiliate marketing notice and opt out in the model form is optional. Institutions that are required to provide this notice, and elect not to include it in their GLB Act privacy notice, must separately send an affiliate marketing notice that complies fully with the affiliate marketing rule requirements.

For those institutions that elect to incorporate this provision in the model form, the Agencies believe that it is simpler and less confusing to consumers for the affiliate marketing opt out to be of indefinite duration, consistent with the opt out required under the GLB Act.

If an institution elects to limit the time period for which the opt out is effective, as permitted under the affiliate marketing rule, it must not include the affiliate marketing opt out in the model form. Instead, the institution must comply separately with the specific affiliate marketing rule requirements.”

*Y&A Commentary – This question is directed to whether the institution shares information about a customer’s creditworthiness with the institution’s affiliate(s).*

*For institutions that have affiliates and do share customer creditworthiness information with the affiliates, then the answers to the middle and right columns would each be “Yes.” This type of sharing is governed by the Fair Credit Reporting Act (FCRA) under the definition of an exclusion to a “consumer report” as defined in the FCRA. Specifically, the following is the consumer report exclusions: “communication of other information among persons related by common ownership or affiliated by corporate control, if it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons and the consumer is given the opportunity, before the time that the information is initially communicated, to direct that such information not be communicated among such persons.”*

*Institutions that do not share with affiliates would answer by entering in “No” and “We don’t share” in both columns.*

**For our affiliates to market to you**

For our affiliates to market to you		
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This reason incorporates sharing information specified in section 624 of the FCRA. This reason may be omitted from the disclosure table when:

- the institution does not have affiliates (or does not disclose personal information to its affiliates);
- the institution’s affiliates do not use personal information in a manner that requires an opt out; or the institution provides the affiliate marketing notice separately.

Institutions that include this reason must provide an opt out of indefinite duration. An institution that is required to provide an affiliate marketing opt out, but does not include that opt out in the model form under this part, must comply with the implementing regulations with respect to the initial notice and opt out and any subsequent renewal notice and opt out. An institution not required to provide an opt out under this subparagraph may elect to include this reason in the model form.

*Y&A Commentary – As noted in the instructions, this question may be omitted from the privacy form if the institution does not share with affiliates that will market to the institution’s customers.*

*However, if the institution does have one or more affiliates to whom it will share customer information (regardless of the type of information) and the affiliate(s) may market its products or services to that customer, then this question must remain. To answer such scenarios, the answers to the middle and right columns would each be “Yes.”*

**For nonaffiliates to market to you**

<b>For nonaffiliates to market to you</b>		
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This reason incorporates sharing described in §§ 1016.7 and 1016.10(a) of this part. An institution that shares personal information for this reason must provide an opt out.

*Y&A Commentary – Institutions that do share with nonaffiliates with the intention that such entities will market to the institution’s customers, must provide an opt-out.*

*Therefore, if the institution does share customer information with a nonaffiliate and the nonaffiliate may market its products or services to that customer, then the answers to the middle and right columns would each be “Yes.”*

*For institutions that do not share outside of the exceptions, the answer for the middle and right columns would be “No” and “We don’t share,” respectively.*

**To Limit Our Sharing**

<p><b>To limit our sharing</b></p>	<ul style="list-style-type: none"> <li>■ Call <b>[phone number]</b>—our menu will prompt you through your choice(s)</li> <li>■ Visit us online: <b>[website]</b> or</li> <li>■ Mail the form below</li> </ul> <p><b>Please note:</b></p> <p>If you are a <i>new</i> customer, we can begin sharing your information <b>[30]</b> days from the date we sent this notice. When you are <i>no longer</i> our customer, we continue to share your information as described in this notice.</p> <p>However, you can contact us at any time to limit our sharing.</p>
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A financial institution must include this section of the model form only if it provides an opt out. Specifically, institutions using the model form must include the opt-out section in their notices only if they:

- share or use information in a manner that triggers an opt out, or
- choose to provide opt outs beyond what is required by law.

Financial institutions that provide opt outs are not required to provide all the opt-out choices and methods described in the model form; they should select those that accurately reflect their practices.

Institutions must select one or more of the applicable opt-out methods described:

- telephone, such as by a toll-free number;
- a Web site; or
- use of a mail-in opt-out form.

Institutions may include the words “toll-free” before telephone, as appropriate. In addition, the word “choice” may be written in either the singular or plural, as appropriate.

An institution that allows consumers to opt out online must provide either a specific Web address that takes consumers directly to the opt-out page or a general Web address that provides a clear and conspicuous direct link to the opt-out page.

The opt-out choices made available to the consumer who contacts the institution through these methods must correspond accurately to the “Yes” responses in the third column of the disclosure table. In the part titled “Please note,” institutions may insert a number that is 30 or greater in the space marked “[30].” Instructions on voluntary or state privacy law opt-out information are located elsewhere in these Instructions.

*Y&A Commentary – For institutions voluntarily or required to provide an opt-out, the privacy form must include this section of the model form. The model version appearing here in this manual is “Version 3” from the final rule and allows for the three types of opt-out methods (i.e., phone, online and mail-in). If your institution chooses not to allow the “mail-in” option, you will want to use Version 2, which only allows opt out by phone or online. Regardless, the institution allowing an opt out must state the number of days a customer has to opt out, which may not be less than 30.*

*Institutions not voluntarily or required to provide an opt out would use Version 1. This version does not include the “To limit our sharing” portion.*

## Questions Box

Questions?

Call [phone number] or go to [website]

Customer service contact information must be inserted as appropriate, where [phone number] or [Web site] appear. Institutions may elect to provide either a phone number, such as a toll-free number, or a Web address, or both. Institutions may include the words “toll-free” before the telephone number, as appropriate.

## Mail-in Form (Part of Version 3)

Mail-in Form		
<p><b>Leave Blank OR</b> [If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below.]</p> <p><input type="checkbox"/> Apply my choices only to me]</p>	<p>Mark any/all you want to limit:</p> <p><input type="checkbox"/> Do not share information about my creditworthiness with your affiliates for their everyday business purposes.</p> <p><input type="checkbox"/> Do not allow your affiliates to use my personal information to market to me.</p> <p><input type="checkbox"/> Do not share my personal information with nonaffiliates to market their products and services to me.</p>	
	Name	Mail to:
	Address	[Name of Financial Institution]
	City, State, Zip	[Address1]
	[Account #]	[Address2] [City], [ST] [ZIP]

Financial institutions must include this mail-in form only if they state in the “To limit our sharing” box that consumers can opt out by mail. The mail-in form must provide opt-out options that correspond accurately to the “Yes” responses in the third column in the disclosure table.

Institutions that require customers to provide only name and address may omit the section identified as “[account #].” Institutions that require additional or different information, such as a random opt-out number or a truncated account number, to implement an opt-out election should modify the “[account #]” reference accordingly. This includes institutions that require customers with multiple accounts to identify each account to which the opt out should apply. An institution must enter its opt-out mailing address: in the far right of this form (see version 3); or below the form (see version 4). The reverse side of the mail-in opt-out form must not include any content of the model form.

### **Joint Accountholder**

Only institutions that provide their joint accountholders the choice to opt out for only one accountholder, in accordance with these Instructions, must include in the far left column of the mail-in form the following statement:

“If you have a joint account, your choice (s) will apply to everyone on your account unless you mark below.  Apply my choice(s) only to me.”

The word “choice” may be written in either the singular or plural, as appropriate. Financial institutions that provide insurance products or services, provide this option, and elect to use the model form may substitute the word “policy” for “account” in this statement. Institutions that do not provide this option may eliminate this left column from the mail-in form.

### **FCRA Section 603(d)(2)(A)(iii) opt out**

If the institution shares personal information pursuant to section 603(d)(2)(A)(iii) of the FCRA, it must include in the mail-in opt-out form the following statement:

“ Do not share information about my creditworthiness with your affiliates for their everyday business purposes.”

### **FCRA Section 624 opt out**

If the institution incorporates section 624 of the FCRA in accordance with these Instructions, it must include in the mail-in opt-out form the following statement:

Do not allow your affiliates to use my personal information to market to me.”

### **Nonaffiliate Opt out**

If the financial institution shares personal information pursuant to § 1016.10(a) of this part, it must include in the mail-in opt-out form the following statement:

Do not share my personal information with nonaffiliates to market their products and services to me.”

### **Additional Opt Outs**

Financial institutions that use the disclosure table to provide opt-out options beyond those required by Federal law must provide those opt outs in this section of the model form. A financial institution that chooses to offer an opt out for its own marketing in the mail-in opt-out form must include one of the two following statements:

“Do not share my personal information to market to me; or  
Do not use my personal information to market to me.”

A financial institution that chooses to offer an opt out for joint marketing must include the following statement:

“Do not share my personal information with other financial institutions to jointly market to me.”

A financial institution may elect to include a barcode and/or “tagline” (an internal identifier) in 6-point font at the bottom of page one, as needed for information internal to the institution, so long as these do not interfere with the clarity or text of the form.

## **Section-by-Section Analysis (Opt-Out Version) – Page 2**

### **Frequently Asked Question - Who we are?**

<b>Page 2</b>	
<b>Who we are</b>	
<b>Who is providing this notice?</b>	[insert]

This question may be omitted where only one financial institution provides the model form and that institution is clearly identified in the title on page one. Two or more financial institutions that jointly provide the model form must use this question to identify themselves as required by § 1016.9(f) of this part. Where the list of institutions exceeds four (4) lines, the institution must describe in the response to this question the general types of institutions jointly providing the notice and must separately identify those institutions, in minimum 8-point font, directly following the “Other

important information” box, or, if that box is not included in the institution’s form, directly following the “Definitions.” The list may appear in a multi-column format.

### Frequently Asked Questions - What we do?

The following represents the portion of the form that contains the questions on what the institution does with regards to customer information. We have included the entire portion of this part of the form below for contextual purpose and then examine each question individually.

What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.  [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you <ul style="list-style-type: none"> <li>■ [open an account] or [deposit money]</li> <li>■ [pay your bills] or [apply for a loan]</li> <li>■ [use your credit or debit card]</li> </ul> [We also collect your personal information from other companies.] OR [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only <ul style="list-style-type: none"> <li>■ sharing for affiliates' everyday business purposes—information about your creditworthiness</li> <li>■ affiliates from using your information to market to you</li> <li>■ sharing for nonaffiliates to market to you</li> </ul> State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]
What happens when I limit sharing for an account I hold jointly with someone else?	[Your choices will apply to everyone on your account.] OR [Your choices will apply to everyone on your account—unless you tell us otherwise.]

### How does the institution protect personal information?

What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.  [insert]

The financial institution may only provide additional information pertaining to its safeguards practices following the designated response to this question. Such information may include information about the institution's use of cookies or other measures it uses to safeguard personal information. Institutions are limited to a maximum of 30 additional words.

### How does the institution collect personal information?

<p>How does [name of financial institution] collect my personal information?</p>	<p>We collect your personal information, for example, when you</p> <ul style="list-style-type: none"> <li>■ [open an account] or [deposit money]</li> <li>■ [pay your bills] or [apply for a loan]</li> <li>■ [use your credit or debit card]</li> </ul> <p>[We also collect your personal information from other companies.]</p> <p>OR</p> <p>[We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]</p>
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Institutions must use five (5) of the following terms to complete the bulleted list for this question:

- open an account;
- deposit money;
- pay your bills;
- apply for a loan;
- use your credit or debit card;
- seek financial or tax advice;
- apply for insurance;
- pay insurance premiums;
- file an insurance claim;
- seek advice about your investments;
- buy securities from us;
- sell securities to us;
- direct us to buy securities;
- direct us to sell your securities;
- make deposits or withdrawals from your account;
- enter into an investment advisory contract;
- give us your income information;
- provide employment information;
- give us your employment history;

- tell us about your investment or retirement portfolio;
- tell us about your investment or retirement earnings;
- apply for financing;
- apply for a lease;
- provide account information;
- give us your contact information;
- pay us by check;
- give us your wage statements;
- provide your mortgage information;
- make a wire transfer;
- tell us who receives the money;
- tell us where to send the money;
- show your government-issued ID;
- show your driver's license;
- order a commodity futures or option trade.

*Y&A Commentary – As noted in the Instructions, institutions shall identify and disclose five of the items included in the list above as it relates to how the institution collects customer information. Prior to creating your privacy form, you will need to determine which of above-mentioned items best belong in your list of five.*

Institutions that collect personal information from their affiliates and/or credit bureaus must include after the bulleted list the following statement:

“We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.”

Institutions that do not collect personal information from their affiliates or credit bureaus but do collect information from other companies must include the following statement instead:

“We also collect your personal information from other companies.”

Only institutions that do not collect any personal information from affiliates, credit bureaus, or other companies can omit both statements.



## Why can't consumer limit all sharing?

<p><b>Why can't I limit all sharing?</b></p>	<p>Federal law gives you the right to limit only</p> <ul style="list-style-type: none"> <li>■ sharing for affiliates' everyday business purposes—information about your creditworthiness</li> <li>■ affiliates from using your information to market to you</li> <li>■ sharing for nonaffiliates to market to you</li> </ul> <p>State laws and individual companies may give you additional rights to limit sharing. <i>[See below for more on your rights under state law.]</i></p>
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Institutions that describe state privacy law provisions in the “Other important information” box must use the bracketed sentence:

“See below for more on your rights under state law.”

Other institutions must omit this sentence.

## What happens when consumer limits sharing of joint account?

<p><b>What happens when I limit sharing for an account I hold jointly with someone else?</b></p>	<p><i>[Your choices will apply to everyone on your account.]</i>  <b>OR</b>  <i>[Your choices will apply to everyone on your account—unless you tell us otherwise.]</i></p>
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Only financial institutions that provide opt-out options must use this question. Other institutions must omit this question. Institutions must choose one of the following two statements to respond to this question:

“Your choices will apply to everyone on your account.”

or

“Your choices will apply to everyone on your account—unless you tell us otherwise.”

Financial institutions that provide insurance products or services and elect to use the model form may substitute the word “policy” for “account” in these statements.

## Definitions

Definitions	
<b>Affiliates</b>	<p>Companies related by common ownership or control. They can be financial and nonfinancial companies.</p> <ul style="list-style-type: none"> <li>■ <i>[affiliate information]</i></li> </ul>
<b>Nonaffiliates</b>	<p>Companies not related by common ownership or control. They can be financial and nonfinancial companies.</p> <ul style="list-style-type: none"> <li>■ <i>[nonaffiliate information]</i></li> </ul>
<b>Joint marketing</b>	<p>A formal agreement between nonaffiliated financial companies that together market financial products or services to you.</p> <ul style="list-style-type: none"> <li>■ <i>[joint marketing information]</i></li> </ul>

The financial institution must customize the space below the responses to the three definitions in this section. This specific information must be in italicized lettering to set off the information from the standardized definitions.

***Affiliates.*** As required by § 1016.6(a)(3) of this part, where [affiliate information] appears, the financial institution must:

- If it has no affiliates, state:
  - “[name of financial institution]has no affiliates”;
- If it has affiliates but does not share personal information, state:
  - “[name of financial institution] does not share with our affiliates”; or
- If it shares with its affiliates, state, as applicable:
  - “Our affiliates include companies with a [common corporate identity of financial institution] name; financial companies such as [insert illustrative list of companies]; nonfinancial companies, such as [insert illustrative list of companies;] and others, such as [insert illustrative list].”

***Nonaffiliates.*** As required by § 1016.6(c)(3) of this part, where [nonaffiliate information] appears, the financial institution must:

- If it does not share with nonaffiliated third-parties, state:
  - “[name of financial institution]does not share with nonaffiliates so they can market to you”; or
- If it shares with nonaffiliated third-parties, state, as applicable:
  - “Nonaffiliates we share with can include [list categories of companies such as mortgage companies, insurance companies, direct marketing companies, and nonprofit organizations].”

***Joint Marketing.*** As required by § 1016.13 of this part, where [joint marketing] appears, the financial institution must:

- If it does not engage in joint marketing, state:
  - “[name of financial institution] doesn’t jointly market”; or
- If it shares personal information for joint marketing, state, as applicable:
  - “Our joint marketing partners include [list categories of companies such as credit card companies].”

**“Other Important Information” box, as needed**

Other important information
[insert other important information]

This box is optional. The space provided for information in this box is not limited. Only the following types of information can appear in this box.

- State and/or international privacy law information; and/or
- Acknowledgment of receipt form.

### ***Online Form Builder***

On April 15, 2010, the Federal functional regulators, including the FRB, FDIC, OCC and OTS announced the released of their “Model Consumer Privacy Notice Online Form Builder.” The following text is taken directly from the announcement:

“The Online Form Builder, based on the model form regulation published in the *Federal Register* on December 1, 2009, under the Gramm-Leach-Bliley Act, is available with several options. Easy-to-follow instructions for the form builder will guide an institution to select the version of the model form that fits its practices, such as whether the institution provides an opt out for consumers.

To obtain a legal “safe harbor” and so satisfy the law’s disclosure requirements, institutions must follow the instructions in the model form regulation when using the Online Form Builder.

The model privacy form was developed jointly by the Board of Governors of the Federal Reserve System, Commodity Futures Trading Commission, Federal Deposit Insurance Corporation, Federal Trade Commission, National Credit Union Administration, Office of the Comptroller of the Currency, Office of Thrift Supervision, and Securities and Exchange Commission.

The Online Form Builder is available at:

[http://www.federalreserve.gov/bankinfo/privacy\\_notice\\_instructions.pdf](http://www.federalreserve.gov/bankinfo/privacy_notice_instructions.pdf)

The Agencies will post a link to this site on their websites.”

The following page is what you will see when accessing the link above.

## Instructions for using the Privacy Notice Online Form Builder

1. Select your form, based on (1) whether you provide an opt out , (2) whether you include affiliate marketing, and (3) whether you use a mail-back form:

If you provide an opt out and you want to include affiliate marketing, use [Form 1](#).

If you provide an opt out and you do not want to include affiliate marketing, use [Form 2](#).

If you do not provide an opt out and you want to include affiliate marketing, use [Form 3](#).

If you do not provide an opt out and you do not want to include affiliate marketing, use [Form 4](#).

If you provide an opt out, you want to include affiliate marketing, and you have a mail-back form, use [Form 5](#).

If you provide an opt out, you do not want to include affiliate marketing, and you have a mail-back form, use [Form 6](#).

2. The PDF forms have fillable areas, indicated by the shaded boxes outlined in red. Place your cursor in the box and fill in the appropriate text.

The mail-back forms also include shaded boxes for optional text. These forms are designed to be printed on 8½ x 14 inch paper. To create the square for the opt-out provisions in the mail back form, use the square bracket and underline keys, followed by the text as provided in the rule. For example:

Do not share my personal information with nonaffiliates to market their products and services to me.

To learn more about the required text for each section, see the final rule notice published in the *Federal Register* on December 1, 2009 (pp. 62890–62994). The notice is available in PDF format at [www.ftc.gov/privacy/privacyinitiatives/PrivacyModelForm\\_FR.pdf](http://www.ftc.gov/privacy/privacyinitiatives/PrivacyModelForm_FR.pdf) or in HTML format at [www.gpo.gov/fdsys/pkg/FR-2009-12-01/html/E9-27882.htm](http://www.gpo.gov/fdsys/pkg/FR-2009-12-01/html/E9-27882.htm).

For institutions supervised by the following agencies, information required to fill in the forms is detailed beginning on the *Federal Register* page number specified below:

<u>Supervising Agency</u>	<u>Page</u>
Office of the Comptroller of the Currency	62916
Federal Reserve System	62925
Federal Deposit Insurance Corporation	62935
Office of Thrift Supervision	62945
National Credit Union Administration	62955
Federal Trade Commission	62965
Commodity Futures Trading Commission	62974
Securities and Exchange Commission	62984

3. If you have questions about the forms or any of the information required to fill in the designated areas, contact your federal regulator listed on p. 62890 of the *Federal Register* Notice.

4. If you have technical problems accessing these forms, please use the [Contact Us](#) link at the bottom of the page. Please provide a phone number where we can reach you.

[http://www.federalreserve.gov/bankinforeg/privacy\\_notice\\_instructions.pdf](http://www.federalreserve.gov/bankinforeg/privacy_notice_instructions.pdf)

September 3, 2010

Sample Completed Form – No Opt Out / No Sharing

Rev. 01/2011

<b>FACTS</b>		<b>WHAT DOES National Bank of Anytown DO WITH YOUR PERSONAL INFORMATION?</b>	
<b>Why?</b>	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.		
<b>What?</b>	<p>The types of personal information we collect and share depend on the product or service you have with us. This information can include:</p> <ul style="list-style-type: none"> <li>■ Social Security number and income</li> <li>■ account balances and payment history</li> <li>■ credit history and credit scores</li> </ul> <p>When you are <i>no longer</i> our customer, we continue to share your information as described in this notice.</p>		
<b>How?</b>	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons National Bank of Anytown chooses to share; and whether you can limit this sharing.		
		<b>Does National Bank of Anytown share?</b>	<b>Can you limit this sharing?</b>
<b>Reasons we can share your personal information</b>			
For our everyday business purposes—such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		Yes	No
For our marketing purposes—to offer our products and services to you		No	We don't share
For joint marketing with other financial companies		No	We don't share
For our affiliates' everyday business purposes—information about your transactions and experiences		No	We don't share
For our affiliates' everyday business purposes—information about your creditworthiness		No	We don't share
For nonaffiliates to market to you		No	We don't share
<b>Questions?</b>	Call 800-555-1212 or go to <a href="http://www.nationalbankofanytown.com">www.nationalbankofanytown.com</a>		

Who we are	
Who is providing this notice?	National Bank of Anytown
What we do	
How does <b>National Bank of Anytown</b> protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.
How does <b>National Bank of Anytown</b> collect my personal information?	<p>We collect your personal information, for example, when you</p> <ul style="list-style-type: none"> <li>■ open an account or deposit money</li> <li>■ pay your bills or apply for a loan</li> <li>■ use your credit or debit card</li> </ul> <p>We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.</p>
Why can't I limit all sharing?	<p>Federal law gives you the right to limit only</p> <ul style="list-style-type: none"> <li>■ sharing for affiliates' everyday business purposes—information about your creditworthiness</li> <li>■ affiliates from using your information to market to you</li> <li>■ sharing for nonaffiliates to market to you</li> </ul> <p>State laws and individual companies may give you additional rights to limit sharing.</p>
Definitions	
<b>Affiliates</b>	<p>Companies related by common ownership or control. They can be financial and nonfinancial companies.</p> <ul style="list-style-type: none"> <li>■ National Bank of Anytown has no affiliates.</li> </ul>
<b>Nonaffiliates</b>	<p>Companies not related by common ownership or control. They can be financial and nonfinancial companies.</p> <ul style="list-style-type: none"> <li>■ National Bank of Anytown does not share with nonaffiliates so they can market to you.</li> </ul>
<b>Joint marketing</b>	<p>A formal agreement between nonaffiliated financial companies that together market financial products or services to you.</p> <ul style="list-style-type: none"> <li>■ National Bank of Anytown doesn't jointly market.</li> </ul>
Other important information	

## **Section 10: Delivery of Notices [12 C.F.R. § 1016.9]**

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### ***Introduction***

All notices must be delivered so that each consumer can reasonably be expected to receive the actual notice:

- In writing; or
- Electronically (if the consumer agrees).

### **Examples of Reasonable Expectation of Actual Notice Include:**

- Hand-delivering a printed copy;
- Mailing a printed copy to the last known address of the consumer;
- Posting the notice on an electronic site and requiring the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service; or
- Posting the notice on the ATM screen and requiring the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular financial product or service.

### **Examples of Unreasonable Expectations of Actual Notice Include:**

- Only posting a sign in the bank's branch or office or generally publishing advertisements of the bank's privacy policies and practices; or
- Sending the notice via electronic mail to a consumer who does not obtain a financial product or service from the bank electronically.

### **Oral Description of Notice Insufficient**

The bank may not solely provide the notice by oral explanation, either in person or over the telephone.

### ***Retention or Accessibility of Notices for Customers***

For customers only, the bank must provide the notice so that the customer can retain it or obtain it later in writing or, if the customer agrees, electronically. Examples of retention or accessibility include:

- Hand-delivering a printed copy of the notice to the customer;
- Mailing a printed copy of the notice to the last known address of the customer; or
- Making the current privacy notice available on a Web site (or a link to another Web site) for the customer who obtains a financial product or service electronically and agrees to receive the notice at the Web site.

## ***Joint Notice with Other Financial Institutions***

The bank may provide a joint notice from the bank and one or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the bank and the other institutions.



## **Section 11: Initial Privacy Notice [12 C.F.R. § 1016.4]**

### ***General Rule***

The regulation requires that the bank provide an initial privacy notice in a “clear and conspicuous” manner [see formal definition, Section 2] that accurately reflects the bank’s privacy policies and practices to its:

- Customers [see formal definition, Section 4], and, potentially,
- Consumers [see formal definition, Section 4].

### ***Timing of the Initial Privacy Notice***

An initial privacy notice is required to be delivered to:

- **New Customers:**

- At the time a customer relationship is established.
- Exception: The initial notice may be delivered within a reasonable time after the bank establishes a customer relationship provided that the establishing of the customer relationship is not the customer’s election.

*Example:* the bank acquires the customer’s deposit liability or the servicing rights to his or her loan from another bank and the customer does not have a choice about the acquisition; or

- Providing the notice would substantially delay the customer’s transaction and the customer agrees to receive the notice at a later time.

*Example:* when the bank and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the financial product or service; or the bank establishes a customer relationship with an individual under a program authorized by Title IV of the Higher Education Act of 1965 or similar student loan programs where loan proceeds are disbursed promptly without prior communication between the bank and the customer. However, there would not be a “substantial delay” when the relationship is initiated in person at the bank’s office or through other means by which the customer may view the notice, such as on a Web site.

- **Existing Customers:**

- When an existing customer obtains a new financial product or service from the bank, the initial notice requirements are satisfied when:
  - The bank provides a revised privacy notice (see Section 13: Notice to Customers: Revised Privacy Notice) that covers the new financial product or service; or
  - The initial, annual, or revised privacy notice that the bank most recently provided to the customer was accurate with respect to the new financial product or service.

- **Consumers:**
  - Prior to disclosing nonpublic information about the consumer to a nonaffiliated third party, unless the disclosure relates to processing and servicing transactions or other miscellaneous exceptions discussed in “Section 7: Exceptions.”
  - Exception: The initial notice is not required:
    - If the bank does not disclose nonpublic personal information to a nonaffiliated third party, other than disclosures relating to processing and servicing transactions and other miscellaneous exceptions discussed in “Section 7: Exceptions;” and
    - The bank does not have a customer relationship with the consumer [see formal definition, Section 4].

### ***Short Form Initial Notice with Opt Out for Non-Customers [§ 1016.6]***

A bank may satisfy the initial notice requirements for a consumer who is not a customer by providing a short form initial notice at the same time as the bank delivers an opt out notice. The short form initial notice must:

- Be clear and conspicuous [see formal definition, Section 2];
- State that the bank’s privacy notice is available upon request; and
- Explain a reasonable means by which the consumer may obtain that notice.

The bank:

- must deliver the short-form initial notice [see delivery methods, Section 10];
- is not required to deliver its privacy notice with its short form initial notice;
- may instead provide the consumer a reasonable means to obtain its privacy notice; and
- must deliver its privacy notice if a consumer who receives the bank’s short form notice requests the bank’s privacy notice.

### **Examples of Obtaining Privacy Notice**

The bank provides a reasonable means by which a consumer may obtain a copy of its privacy notice if the bank:

- Provides a toll-free telephone number that the consumer may call to request the notice; or
- For a consumer who conducts business in person, maintains copies of the notice on hand that can be provided to the consumer immediately upon request.

In all other circumstances the bank must follow the standard delivery rules [see Section 10].

## **Section 12: Annual Privacy Notice [12 C.F.R. § 1016.5]**

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### ***General Rule***

The regulation requires that the bank provide an annual privacy notice in a “clear and conspicuous” manner that accurately reflects the bank’s privacy policies and practices. This requirement is for banks that use an opt out.

### ***Timing of the Annual Privacy Notice***

The annual notice must be provided not less than annually during the duration of the customer’s relationship with the bank. Annually means:

- At least once in any period of 12 consecutive months.
- The bank may define the 12-consecutive-month period; however, it must be applied to the customer on a consistent basis.

The bank meets the notice requirement if it defines the 12-consecutive-month period as a calendar year and provides the annual notice to the customer once in each calendar year following the calendar year in which the initial notice was provided to the customer.

*Example:* if a customer opens an account on any day of year one, you must provide an annual notice to that customer by December 31 of year two.

### **Exemption**

The bank is not required to provide an annual notice to a former customer. Examples include:

- Deposit accounts which are dormant under the bank’s policies;
- Closed-end loan in which:
  - the customer pays the loan in full,
  - the bank charges off the loan, or
  - the bank sells the loan without retaining servicing rights;
- Credit card relationship or other open-end credit relationship when the bank no longer provides statements or notices to the customer or the bank sells the credit card receivables without retaining servicing rights; or
- For other types of relationships, if the bank has not communicated with the customer about the relationship for a period of 12 consecutive months, other than to provide annual privacy notices or promotional material.

### ***Content Requirements for the Annual Privacy Notice***

The content requirements for the annual privacy notice are exactly the same as for the initial privacy notice. See Section 5 for more information.

## ***Delivery of the Annual Privacy Notice***

This notice must be delivered in writing or electronically (if the customer agrees) so that each consumer can reasonably be expected to receive the actual notice.

For further details, delivery instructions are included in Section 10.

## Section 13: Alternate Annual Privacy Notice Delivery Method

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### *Overview*

The Bureau of Consumer Financial Protection (CFPB) amended Regulation P to create an alternative delivery method for annual privacy notices. This amendment was effective on the date published in the *Federal Register*, which was October 28, 2014. This rule applies to depository institutions, but does not apply to credit unions.

The CFPB finalized rules to allow institutions to post their privacy notices on their Web sites rather than requiring annual mailing of the notice. There are a number of restrictions, however, and institutions must assure that they meet all of the criteria to take advantage of this alternate delivery method.

We will not be covering this in this session, as this form of delivery is no longer viable under the law, and soon will not be viable under the regulation.

# Section 14: Notice to Customers: Revised Privacy Notice [12 C.F.R. § 1016.8]

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## ***General Rule***

The bank must not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party other than as described in the initial notice unless the bank has:

- Provided a clear and conspicuous [see formal definition, Section 2] revised notice that accurately describes its policies and practices;
- Provided a new opt-out notice [see Section 6];
- Given the consumer a reasonable opportunity to opt out; and
- The consumer does not opt out.

## ***Timing of the Revised Privacy Notice***

Except as otherwise permitted by the exceptions in Section 7 of this manual, the bank must provide a revised notice before it:

- Discloses a new category of nonpublic personal information to any nonaffiliated third party;
- Discloses nonpublic personal information to a new category of nonaffiliated third party; or
- Discloses 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.

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.

## ***Revised Privacy Notice Contents***

The revised privacy notice content requirements are exactly the same as other privacy notice requirements. See Section 5 for more information.

## ***Form of Opt-Out Notice and Opt-Out Methods***

An opt-out notice on the revised privacy notice is required if either of the following is true:

- The bank has already been providing an opt-out notice to customers (and consumers, if required) due to the bank's previous privacy policy decisions, and the current revision will not alter the need for the opt out, or
- The new bank privacy policy decisions that are detailed in the revised disclosure now require the bank to provide an opt out.

If an opt out is required, it must follow the opt-out rules as detailed in Section 6.

### ***Delivery of the Revised Privacy Notice and Opt-Out Notice***

These notices must be delivered in writing or electronically (if the consumer agrees) so that each consumer can reasonably be expected to receive the actual notice.

Further information regarding delivery requirements can be found in Section 10.

## **Section 15: Limits on Disclosures [12 C.F.R. § 1016.10], [12 C.F.R. § 1016.11] and [12 C.F.R. § 1016.12]**

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### ***Limitations on Disclosure of Nonpublic Information to Nonaffiliated Third Parties***

Unless otherwise authorized under specific exceptions, the bank may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party unless:

- The bank has provided an initial notice to the consumer [see Section 11];
- The bank has provided an opt-out notice to the consumer [see Section 6];
- The bank has given the consumer a reasonable opportunity to opt out of the disclosure [see Section 6]; and
- The consumer does not opt out.

### ***Limits on Redisclosure and Reuse of Information***

Throughout this section of the manual, reference is made to “exceptions.” These exceptions can be found in “Section 7: Exceptions” under processing and servicing transactions and other exceptions of this manual.

This portion of the regulation covers two situations:

- Information the bank receives from a nonaffiliated financial institution; and
- Limits on re-disclosure and reuse of information which others receive from the bank.

### **Information the Bank Receives Under an Exception**

If the bank receives nonpublic personal information from a nonaffiliated financial institution under an exception, the bank’s disclosure and use of that information is limited as follows:

- The bank may disclose the information to the affiliates of the financial institution from which the bank received the information;
- The bank may disclose the information to its affiliates, but the affiliates may, in turn, disclose and use the information only to the extent that the bank may disclose and use the information; and
- The bank may disclose and use the information pursuant to an exception in the ordinary course of business to carry out the activity covered by the exception under which the bank received the information.

For example if a bank receives a customer list from a nonaffiliated financial institution in order to provide account processing services under an exception, the bank may disclose that information under any exception 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.

### **Information the Bank Receives Outside of an Exception**

If the bank receives nonpublic personal information from a nonaffiliated financial institution other than under an exception, the bank may disclose the information only to the following:

- Affiliates of the financial institution from which the bank received the information;
- To the bank's affiliates, but the affiliates may, in turn, disclose the information only to the extent that the bank can disclose the information; and
- 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.

For example, if the bank obtains a customer list from a nonaffiliated financial institution outside of the exceptions, it may do the following:

- The bank may use the list for its own purposes; and
- 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, such as to the bank's attorneys or accountants.

### **Information the Bank Discloses Under an Exception**

If the bank discloses nonpublic personal information to a nonaffiliated third party under an exception, the third party may disclose and use that information only as follows:

- To the bank's affiliates;
- 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
- The third party may disclose and use the information pursuant to an exception in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

### **Information the Bank Discloses Outside of an Exception**

If the bank discloses nonpublic personal information to a nonaffiliated third-party other than under an exception, the third-party may disclose the information only to the following:

- To the bank's affiliates;
- 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

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

## ***Limits on Sharing Account Number Information for Marketing Purposes***

### **General Prohibition on Disclosure of Account Numbers**

The bank may 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.

### **Exceptions**

This general rule does not apply if the bank discloses an account number or similar form of access number or access code to either of the following:

- 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
- 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.

Examples include:

- **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.
- **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.

## **Section 16: Relation to Other Laws**

### **[12 C.F.R. § 1016.16] and [12 C.F.R. § 1016.17]**

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#### ***Protection of Fair Credit Reporting Act***

Nothing in this regulation shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), and no inference shall be drawn on the basis of the provisions of this part regarding whether information is transaction or experience information under section 603 of that act.

#### ***Relation to State Laws***

##### **In General**

This regulation shall not be construed as superseding, altering, or affecting any statute, regulation, order, or interpretation in effect in any state, except to the extent that such state statute, regulation, order, or interpretation is inconsistent with the provisions of this part, and then only to the extent of the inconsistency.

##### **Greater Protection under State Law**

A state statute, regulation, order, or interpretation is not inconsistent with the provisions of this regulation if the protection such statute, regulation, order, or interpretation affords any consumer is greater than the protection provided under this regulation, as determined by the Consumer Financial Protection Bureau (CFPB), after consultation with the bank's Federal regulatory agency, on the CFPB's own motion, or upon the petition of any interested party.

## **Section 17: Privacy (Regulation P Changes)**

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The Bureau of Consumer Financial Protection (Bureau) proposed to amend Regulation P, which requires, among other things, that financial institutions provide an annual notice describing their privacy policies and practices to their customers. The amendment would implement a December 2015 statutory amendment to the Gramm-Leach-Bliley Act providing an exception to this annual notice requirement for financial institutions that meet certain conditions.

### ***Summary of the Proposed Rule***

The Gramm-Leach-Bliley Act (GLBA) and Regulation P mandate that financial institutions provide their customers with annual notices regarding those institutions' privacy policies. If financial institutions share certain consumer information with particular types of third parties, the annual notices must also provide customers with an opportunity to opt out of the sharing. Regulation P sets forth requirements for how financial institutions must deliver these annual privacy notices.

In certain circumstances, Regulation P permits financial institutions to use an alternative delivery method to provide annual notices. This method requires, among other things, that the annual notice be posted on a financial institution's website.

On December 4, 2015, Congress amended the GLBA as part of the Fixing America's Surface Transportation Act (FAST Act). This amendment added new GLBA section 503(f).

The Bureau proposes to amend Regulation P to implement this GLBA amendment. As part of its implementing proposal, the Bureau also proposes to amend Regulation P to provide timing requirements for delivery of annual privacy notices if a financial institution that qualified for this annual notice exception later changes its policies or practices in such a way that it no longer qualifies for the exception. The Bureau further proposes to remove the Regulation P provision that allows for use of the alternative delivery method for annual privacy notices because the Bureau believes the alternative delivery method will no longer be used in light of the annual notice exception. Finally, the Bureau proposes to amend Regulation P to make a technical correction to one of its definitions.

### ***Background***

In 2011, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) transferred GLBA privacy notice rulemaking authority to the CFPB. The Bureau then restated the implementing regulations in Regulation P, 12 CFR part 1016, in late 2011.

GLBA and Regulation P require that financial institutions provide consumers with notices describing their privacy policies. Financial institutions are generally required to provide an initial notice of these policies when a customer relationship is established and to provide an annual notice to customers every year that the customer relationship continues. Except as otherwise authorized in the regulation, if a financial institution chooses to disclose nonpublic personal information about a consumer to a nonaffiliated third party other than as described in its initial notice, the institution is also required to deliver a revised privacy notice.

The types of information required to be included in the initial, annual, and revised notices are identical. Each notice must describe whether and how the financial institution shares consumers' nonpublic personal information with other entities. The notices must also briefly describe how financial institutions protect the nonpublic personal information they collect and maintain.

Section 502 of the GLBA and Regulation P also require that initial, annual, and revised notices provide information about the right to opt out of certain financial institution sharing of nonpublic personal information with some types of nonaffiliated third parties. For example, a mortgage customer has the right to opt out of a financial institution disclosing his or her name and address to an unaffiliated home insurance company. On the other hand, a financial institution is not required to allow a consumer to opt out of the institution's disclosure of his or her nonpublic personal information to third party service providers and pursuant to joint marketing arrangements subject to certain requirements; disclosures relating to maintaining and servicing accounts, securitization, law enforcement and compliance, and consumer reporting; and certain other disclosures described in the GLBA and Regulation P as exceptions to the opt out requirements.

In addition to opt-out rights under the GLBA, annual privacy notices also may include information about certain consumer opt-out rights under the Fair Credit Reporting Act (FCRA). The privacy notices under the GLBA/Regulation P and affiliate disclosures under the FCRA/Regulation V interact in two ways. First, section 603(d)(2)(A)(iii) of the FCRA excludes from that statute's definition of a consumer report<sup>19</sup> the sharing of certain information about a consumer with the institution's affiliates if the consumer is notified of such sharing and is given an opportunity to opt out. Section 503(c)(4) of the GLBA and Regulation P require financial institutions to incorporate into any required Regulation P notices the notification and opt-out disclosures provided pursuant to section 603(d)(2)(A)(iii) of the FCRA, if the institution provides such disclosures.

Second, section 624 of the FCRA and Regulation V's Affiliate Marketing Rule provide that an affiliate of a financial institution that receives certain information (e.g., transaction history) from the institution about a consumer may not use the information to make solicitations for marketing purposes unless the consumer is notified of such use and provided with an opportunity to opt out of that use.<sup>23</sup> Section 624 of the FCRA and Regulation V also permit (but do not require) financial institutions to incorporate any opt-out disclosures provided under section 624 of the FCRA and subpart C of Regulation V into privacy notices provided pursuant to the GLBA and Regulation P.

### **The Alternative Delivery Method for Annual Privacy Notices**

In 2014, the Bureau adopted a rule to allow financial institutions to use an alternative delivery method to provide annual privacy notices through posting the notices on their websites if they meet certain conditions. This proposal will eliminate this approach.

### **Statutory Amendment**

New GLBA section 503(f)(1) states the first condition for the annual notice exception: that a financial institution must provide nonpublic personal information only in accordance with certain exceptions in GLBA; providing nonpublic personal information under these exceptions does not trigger consumer opt-out rights. New GLBA section 503(f)(2) states the second condition for the annual notice exception: that a financial institution must not have changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with GLBA section 503. The statutory amendment became effective upon enactment in December 2015. This proposed rule would implement the statutory amendment.

## **Privacy Considerations**

In developing this proposed rule, the Bureau considered its potential impact on consumer privacy. The proposed rule would not affect the collection or use of consumers' nonpublic personal information by financial institutions. The proposal implements a new statutory exception to limit the circumstances under which financial institutions subject to Regulation P will be required to deliver annual privacy notices to their customers. Delivery of annual privacy notices is required under the proposal if financial institutions make certain types of changes to their privacy policies or if their annual notices afford customers the right to opt out of financial institutions' sharing of customers' nonpublic personal information under the GLBA. The statutory exception does not affect the requirement to deliver an initial privacy notice, and all consumers will continue to receive such notices describing the privacy policies of any financial institutions with which they do business to the extent currently required.

## ***What Should You Do?***

At the present time it would appear that there is no need to do a regular privacy notice mailing or use the alternative approach.

If you have any questions about this, we suggest that you contact your regulator to make sure what you are doing meets their requirements. There is no need to get in trouble over this rule.

Remember if you have opt-outs, you will have to do the annual notice.