

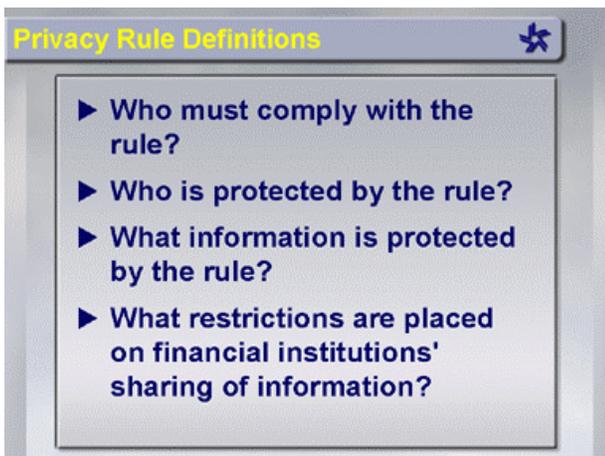
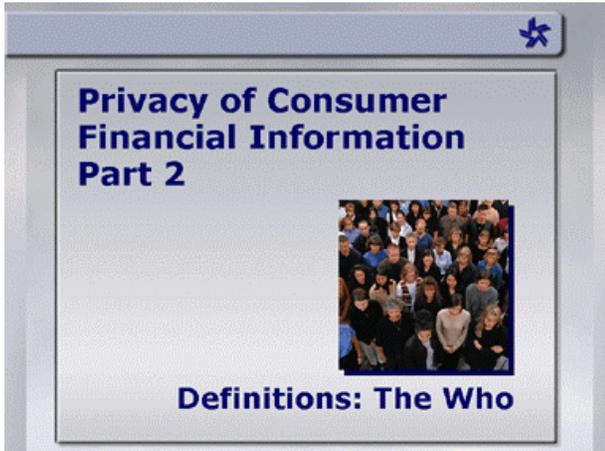
PRIVACY OF CONSUMERS' FINANCIAL INFORMATION PART 2 DEFINITIONS: THE WHO

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Slides



Narration

In order to understand how to apply the privacy rule in your examinations, you first need to understand "the who" and "the what" of the rule itself.

That is...

- Who must comply with the rule;
- Who is protected by the rule;
- What information is protected; and
- What restrictions are placed on financial institution's sharing of information?

Let's look at these questions one at a time. The first two questions we'll discuss in this presentation, and the last two in presentation three.

Let's start with "who must comply."

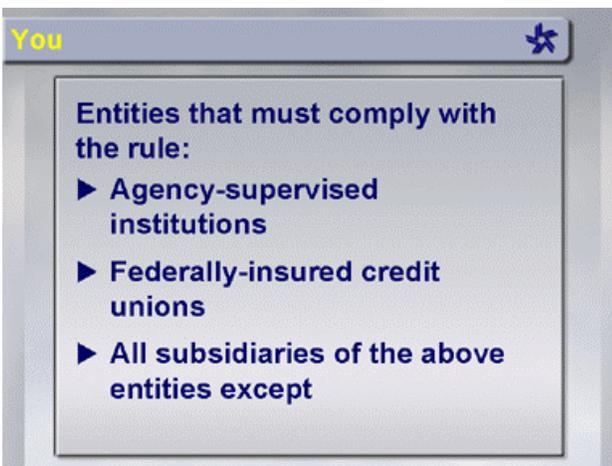
Three definitions are important in understanding the "who must comply" part of the rule—you, financial institutions, and financial products and services.

Although everyday terms, the rule uses these and other terms that are defined in this presentation and the next, in a very specific manner.



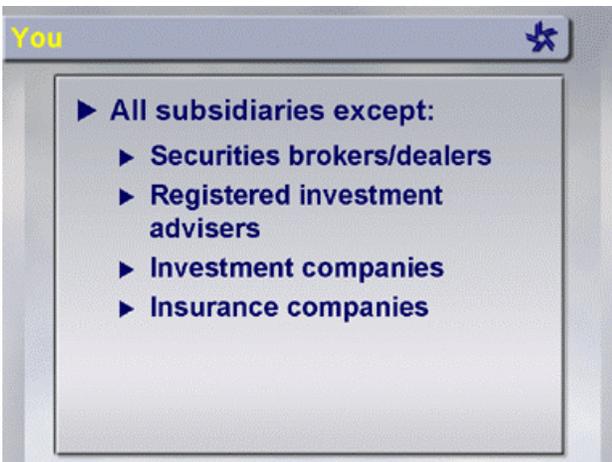
For example, the rule uses the term "you" to mean "those who have to comply with the rule."

When the rule says, "you must provide disclosures," it is saying that all entities that are subject to this rule must provide disclosures.



For purposes of your examinations, entities subject to this rule are all agency-supervised institutions and Federally-insured credit unions.

In addition, "you" includes all subsidiaries of those entities,



with the exception of:

- Securities brokers or dealers
- Registered investment advisers
- Investment companies
- Insurance companies

Similar Rules



Note that all financial institutions must comply with the privacy provisions of the Gramm-Leach-Bliley Act. Entities that do not fall under the jurisdiction of FFIEC member agencies are covered under similar privacy rules, and will be monitored by their respective regulatory agencies.

Who Must Comply Definitions

- ▶ "You"
- ▶ "Financial institutions"
- ▶ "Financial products and services"

The rule uses financial institutions to mean any institution engaged in the business of offering financial products or services.

Of course, this definition brings us to the definition of financial products and services, which is also part of the "who" of the privacy rule.

Financial Product/Service?

...any product or service that is financial in nature

as defined by:
Section 4(k)
Bank Holding Company Act

A financial product or service is any product or service of a financial nature, as defined by section 4(k) of the Bank Holding Company Act.

Financial Products/Services

- ▶ Loan
- ▶ Deposit
- ▶ Stock purchase
- ▶ Investment counseling
- ▶ Life insurance

According to this definition, financial products and services include items that a consumer would consider as such. For example, this list represents some typical financial products and services, and entities offering these types of services would be considered financial institutions.

Financial Products/Services

- ▶ Loan
- ▶ Deposit
- ▶ Stock purchase
- ▶ Investment counseling
- ▶ Life insurance
- ▶ Applications for financial products or services

The phrase "financial products and services" also includes applications.

Therefore, an institution provides a "financial service" when it evaluates or brokers information it collected in connection with an application for a financial product or service—for example, a loan application.

Financial Institutions

Under Privacy Regulation:

- ▶ Banks and savings associations
- ▶ Credit unions
- ▶ Mortgage and trust companies
- ▶ Insurance companies
- ▶ Investment and securities companies
- ▶ Tax preparation companies
- ▶ Collection agencies

The definitions of both financial institutions and their services and products are more clearly understood if we consider some examples such as the types of institutions shown here.

According to the privacy regulation, each of these examples is considered a financial institution, and therefore is subject to the requirements in the regulation.

Privacy Rule Definitions

- ▶ Who must comply with the rule?
- ▶ **Who is protected by the rule?**
- ▶ What information is protected by the rule?
- ▶ What restrictions are placed on financial institutions' sharing of information?

Now that you have an idea of who must comply with privacy rules, let's consider who's protected by the rule.

Who is Protected Definitions



- Consumer
- Customer
- Member

To understand who is protected we need to define the terms "consumer," "customer", or in the case of N-C-U-A "member."

Consumer?

...any individual who has obtained a financial product or service from a financial institution for personal, family, or household purposes

The privacy regulations define a consumer as any individual who applies for or obtains a financial product or service from a financial institution for personal, family, or household purposes.

Remember, an application for a financial product or service is, in and of itself, a financial service. Therefore, a person filling out a loan application would be considered a consumer, under the privacy rule, even though the person may not be granted the loan.

Customer ?



... the subset of consumers with whom a financial institution has a continuing relationship

The rule considers a customer to be a subset of consumers, specifically a customer with whom a financial institution has a continuing relationship.

So, the consumer who filled out the loan application, would become a customer if the financial institution accepted the application and gave the individual a loan... thus, establishing a continuing relationship.

Consumers and Customers



Consumer: Person who uses a bank's ATM



Let's look briefly at how these two categories differ. Under the definitions that we've established, a person who uses another bank's ATM machine would be considered a consumer—an individual who has obtained a financial product or service from a financial institution.

Consumers and Customers



Customer: Someone who opens a deposit account with ATM access



On the other hand, a person who opens a deposit account with ATM access would be considered a customer because this activity would initiate a continuing relationship between the person and the institution.

Consumers and Customers 

Both



Deposit holder who buys a money order

Since customers are a subset of consumers, a person could be both a customer and a consumer.

For example, while a person who purchases only a money order would be considered a consumer, if that person also has a deposit account with the institution, he or she would also be in a customer relationship with the institution.

Consumers 

Consumers who are not customers:

- ▶ A non-account holder who purchases a money order
- ▶ A non-account holder who uses an ATM
- ▶ A person who applies for but is denied a loan

On the other hand, not all consumers are customers of the institution with which they are doing business.

A few examples of that situation are listed here.

The importance of the distinction between consumers and customers is critical in understanding privacy disclosure requirements, discussed in a later presentation.

Consumers and Customers 



... for personal, family, or household purposes

Remember, the product or service must not only be financial in nature to be covered under the privacy rule, it must also be for personal, family, or household purposes.

In other words, business and commercial accounts are not covered under the privacy rule. The rule applies only to individual, "personal" interactions with financial institutions.

Special Consumer/Customer Situations 

- ▶ Applications
- ▶ Loan sales and servicing



Although simple on the surface, consumer and customer relationships can sometimes be a bit tricky to identify. This is especially true in the case of applications and loan sales and servicing.

Applications 

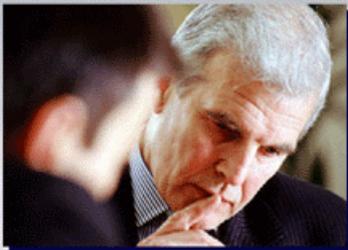
- ▶ Applicant is always a consumer.
- ▶ Applicant may also be a customer.

An applicant for a financial product or service is always a consumer.

However, an applicant may also be a customer. This is the case if the evaluation or sharing of the information in the application is the primary financial service the consumer is seeking.

For example,

Mortgage Broker 



if you go to a mortgage broker and apply for a loan, you're not really expecting that broker to give you the loan. The service that you're expecting is the institution's evaluation of your application.

Mortgage Broker



Customer Relationship



So, you would have established a customer relationship—an ongoing relationship—with this institution, even though the service is only reviewing an application.

The rule here is, when the application itself is the service, it can create a customer relationship.

Special Consumer/Customer Situations



- ▶ Applications
- ▶ Loan sales and servicing



Loan sales and servicing also required some special thought on the part of those who wrote the rule.

Loan Sales and Servicing



- ▶ One has a customer relationship with institution making a loan.
- ▶ One has a customer relationship with institution buying a loan.

So far, it's been pretty straight forward.

- An institution gives you a loan—you're their customer.
- The institution sells your loan—you become a customer of the institution buying the loan.

Loan Sales and Servicing



- ▶ Servicing = Customer
- ▶ Ownership = Consumer



But, what if the original institution sells your loan and keeps the servicing?

The rule attaches the customer relationship only to the loan servicing.

Let's look at an example. If an institution sells a loan it made directly to you but keeps the servicing rights, you would maintain your **customer relationship** with the original institution, and have only a **consumer relationship** with the institution that bought your loan.

Loan Sales and Servicing



- ▶ A single loan can create only one customer relationship.

BUT

- ▶ A single loan can create multiple consumer relationships.

We can summarize the loan sales and servicing issue as follows. According to privacy rule definitions:

- A single loan can create only one customer relationship, the one with the servicing institution.
- A single loan can create multiple consumer relationships, including one with the institution servicing the loan and one with the institution owning the loan.

Privacy Rule Definitions



- ▶ Who must comply with the rule?
- ▶ Who is protected by the rule?
- ▶ What information is protected by the rule?
- ▶ What restrictions are placed on financial institutions' sharing of information?

This concludes our discussion of the "who" part of privacy regulation definitions.

In the next presentation, we'll look at what the rule is actually designed to protect, or the "what" of privacy.