

PRIVACY OF CONSUMERS' FINANCIAL INFORMATION PART 8 EXCEPTIONS TO THE RULE

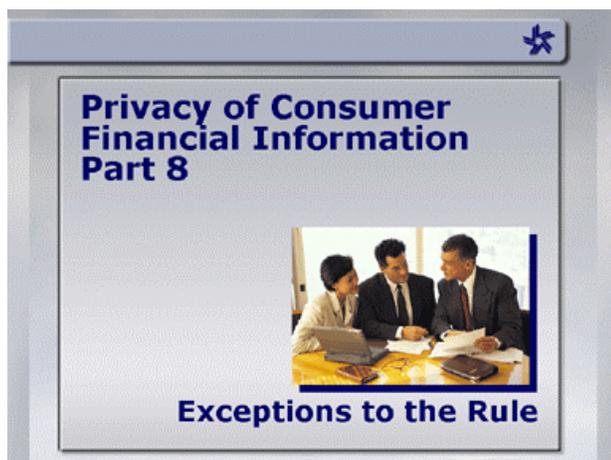
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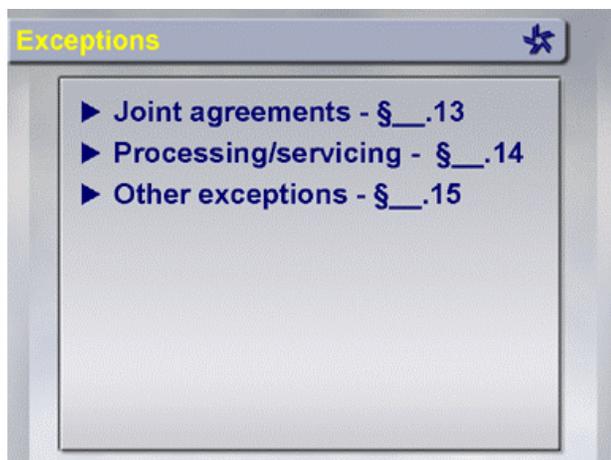
Narration



Earlier presentations in this series covered various definitions and notification requirements in the privacy regulation.



This presentation outlines some exceptions set forth in the reg. These exceptions relate to the provision in the regulation that permits a bank to share information with nonaffiliated third parties.



Specifically, we'll look at three types of exceptions:

- Exceptions for joint agreements, as defined in section thirteen,
- Exceptions for processing and servicing, as defined in section fourteen, and
- Other exceptions, as defined in section fifteen.

At any point, you can pause this presentation and open a PDF file of any of these three sections. Just click on the document title shown on the right side of your screen.

Exceptions

- ▶ Joint agreements - §__.13
- ▶ Processing/servicing - §__.14
- ▶ Other exceptions - §__.15
- ▶ Reuse of Information - §__.11

Then in the next presentation, we'll discuss some of the limits the regulation puts on an organization's reuse of nonpublic personal information.

Exceptions to Opt Out Rights

- ▶ §__.13

Joint servicing or joint marketing exceptions



The first exception relates to opt out rights outlined in section 13 of the regulation. This exception applies to banks that have contractual agreements with a nonaffiliated third party to perform services for the institution.

These services may include marketing of the bank's own products or marketing of financial products offered under a joint agreement between the bank and another financial institution.

Joint Agreements

- ▶ Offer
- ▶ Endorse
- ▶ Sponsor



As defined in the privacy regulation, a joint agreement is a written contract between a bank and one or more financial institutions to jointly offer, endorse, or sponsor a financial product or a financial service.

Joint Financial Products**Examples:**

- ▶ Investment opportunities
- ▶ Insurance



This would include any financially related items such as investment opportunities and insurance.

Joint Marketing and Servicing**Possible arrangement:**

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For example, assume that a bank wishes to join forces with an insurance company to provide a product—in this case life insurance—to bank customers.

Joint Marketing and Servicing**Possible arrangement:**

- ▶ Bank provides list of customers
- ▶ Insurance company mails advertising
- ▶ Bank gets percent of profit

The arrangement might be established so that the bank provides a list of customers; the insurance company mails advertising literature to that list; and the bank gets a certain percent of the profit from each policy sold to one of its customers.

Intent of § __.13



The intent of section thirteen is to allow small banks, which are not part of a holding company and have no affiliates, the opportunity to offer some of the products and/or services that larger banks can provide their customers without involving nonaffiliated third parties.

Requirements Under § __.13

Bank must:

- ▶ Provide initial notice to consumers and customers
- ▶ Enter into contractual confidentiality agreement



This type of joint marketing/servicing arrangement is acceptable under privacy regulations as long as the bank includes information about such disclosures in its privacy notices,

Requirements Under § __.13

Bank must:

- ▶ Provide initial notice to consumers and customers
- ▶ Enter into contractual confidentiality agreement



and the two financial institutions enter into a contractual, confidentiality agreement.

While consumers and customers cannot opt out of this type of information sharing, they must receive an initial notice that describes joint marketing agreements

Requirements Under § __.13 

Contractual agreement:

- ▶ Limit information sharing
- ▶ Market particular product or service

The contractual confidentiality agreement must limit the financial institution's right to use the information the bank shares. The third party may use nonpublic personal information that it obtains only for marketing the particular product or service that is covered in the agreement. For example, if the joint agreement was to offer life insurance, the financial institution would not have the legal right to use the customer list to sell supplemental health insurance.

Exceptions 

- ▶ Joint agreements - § __.13
- ▶ Processing/servicing - § __.14
- ▶ Other exceptions - § __.15

The second type of exception, defined in section fourteen, relates to processing and servicing of transactions.

Processing and Servicing Transactions 

§ __.14: Effect, administer, or enforce a transaction that a consumer requests or authorizes, or in connection with...

- ▶ Servicing or processing a financial product or service
- ▶ Maintaining or servicing the consumer's account
- ▶ Conducting a secondary market sale

Section fourteen states that an initial and opt out notice is not required when information sharing is "necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes, or in connection with:

- Servicing or processing a financial product or service that a consumer requests or authorizes;
- Maintaining or servicing the consumer's account with you 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"

Processing and Servicing Transactions 

§ __.14: Effect, administer, or enforce a transaction that a consumer requests or authorizes, or in connection with...

- ▶ Servicing or processing a financial product or service
- ▶ Maintaining or servicing the consumer's account
- ▶ Conducting a secondary market sale

Let's look at an example of a situation in which each of these three exceptions might apply.

We'll look at servicing or processing a financial product or service first.

Example One 



§ __.14

This type of situation occurs commonly in small town banks. We'll say that Louise Crammer wrote a check to Seven Flavors Coffee.

Example One 



§ __.14

The owner of Seven Flavors Coffee then calls the bank and says that it has a check from Louise Crammer and wants to know if the check will clear.

Since the customer wrote the check, the bank could (under section fourteen) provide the merchant with the requested nonpublic, personal information.

Processing and Servicing Transactions 

§ __.14: Effect, administer, or enforce a transaction that a consumer requests or authorizes, or in connection with...

- ▶ Servicing or processing a financial product or service
- ▶ **Maintaining or servicing the consumer's account**
- ▶ Conducting a secondary market sale

An example of maintaining or servicing the consumer's account

Example Two 



§ __.14

is a bank that hires a mail order house to send out bank statements.

Processing and Servicing Transactions 

§ __.14: Effect, administer, or enforce a transaction that a consumer requests or authorizes, or in connection with...

- ▶ Servicing or processing a financial product or service
- ▶ Maintaining or servicing the consumer's account
- ▶ **Conducting a secondary market sale**

A common example of secondary market sales covered under section fourteen

Example Three



Home-Loan Servicing Rights



§ __.14

would be a case in which a bank sells the servicing rights to a customer's home-loan mortgage. In such cases, the bank would have the right to share the customer's nonpublic personal information freely with the entity that bought the servicing rights.

Exceptions



- ▶ Joint agreements - § __.13
- ▶ Processing/servicing - § __.14
- ▶ Other exceptions - § __.15

While section fourteen covers general processing and servicing transactions, section fifteen details several exceptions for specific organizations and situations.

Let's look at a few examples here, that do not provide an opportunity for opt out.

§ __.15 Exceptions



- ▶ Consumer direction or consent
- ▶ Confidentiality or security of records
- ▶ Fraud and unauthorized transactions
- ▶ Consumer disputes or inquiries

One exception under section fifteen allows banks to share nonpublic personal information at the consent or direction of a consumer.

Sharing of information is also allowed when it's done to protect the security of records, prevent fraud, or to resolve consumer disputes.

§ 15 Exceptions (continued) 

- ▶ Institutional risk control



Under section fifteen, banks can also share information for the purpose of institutional risk control. For example, a bank can give nonpublic personal information to mystery shoppers who are anonymously testing for fair lending or other types of compliance testing.

§ 15 Exceptions (continued) 

- ▶ Institutional risk control
- ▶ Legal or beneficial interest
- ▶ Fiduciary or representative capacity



Other examples include providing information to certain individuals who have special interests or who are acting on behalf of the customer.

§ 15 Exceptions (continued) 

Organizations such as:

- ▶ Insurance rate advisory, Guaranty fund, Regulatory, and self-regulatory groups

Professionals such as:

- ▶ Attorneys, accountants and auditors

Under specifically defined circumstances, section fifteen also allows banks to share information with particular types of organizations and professionals, such as those listed here.

§ __.15 Exceptions (continued) 

Federal, state, and local agencies

- ▶ Public safety
- ▶ Fair Credit Reporting Act
- ▶ Consumer reporting
- ▶ Civil, criminal, and regulatory investigations

They can also share with Federal, state, and local agencies to protect public safety, in relation to laws (such as the Fair Credit Reporting Act and consumer-protection legislation), or in meeting civil, criminal, or regulatory investigations, when properly authorized through actions such as subpoenas and summons.

§ __.15 Exceptions (continued) 

Business unit sales and mergers



Exceptions for certain business transactions such as sales and mergers are also outlined in section fifteen.

Again, you can review a detailed list of the exceptions listed in this section by in opening the PDF file.

Exceptions 

- ▶ Joint agreements - § __.13
- ▶ Processing/servicing - § __.14
- ▶ Other exceptions - § __.15

In this presentation, we've discussed three sections of the regulation that define exceptions to the rule—instances in which banks can, in fact, share their customers' nonpublic personal information with nonaffiliated third parties.

Exceptions

- ▶ Joint agreements - §__.13
- ▶ Processing/servicing - §__.14
- ▶ Other exceptions - §__.15
- ▶ **Reuse of Information - §__.11**

The next presentation covers some of the limits the regulation sets on how those nonaffiliated third parties can reuse the nonpublic personal information they receive.