
Maine Creditor Update

Office of Consumer Credit Regulation

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Special "Privacy Notice" Issue

In 1999, Congress passed a law called the Gramm-Leach-Bliley Act, which contained certain privacy standards for the collecting and sharing of consumer information.

Those same standards have now been incorporated into Maine Law.

Under those state and federal laws, any company which collects personal, financial information from its customers is required to give those customers a privacy notice.

In the notice, the company must tell those customers how it collects personal, financial information, and how it intends to use that information.

In addition, if a company wishes to share that information with other, unaffiliated companies, the privacy notice must offer the customer a way to "opt out," in order to prohibit the sharing of the information.

The notices must be provided at two different times: first, a consumer must be given a copy when he or she first becomes a customer; and second, the notice must be sent once each year to all existing customers.

If you have received this special edition of the *Maine Creditor Update*, then you are a company regulated by the Maine Office of Consumer Credit Regulation and it is very likely that these new requirements apply to you. During all upcoming routine compliance exams, our examiners will be making certain that you have drafted these notices, that you are distributing them correctly, and if applicable, that you are honoring consumers' requests to opt out. Failure to have such forms, and to use them properly, will be cited as violations in the written Report of Examination.

The Maine law on privacy notices, is identical to the federal law, so if you are in compliance with the federal requirements, you are also in compliance with the state statutes.

The laws affect a wide variety of financial businesses. In addition to banks and credit unions, many other types of businesses must provide privacy notices: mortgage companies; collection agencies which purchase delinquent accounts; auto dealerships; retail creditors; money transmitters; rent-to-own stores; pawn shops; check cashers; foreign currency exchangers; non-bank ATM operations; real estate settlement agents; and most other providers or financial services to consumers.

To assist companies to comply with the new requirements, we have enclosed the following information for your review:

- 1) A new booklet published by the Department of Professional & Financial Regulation, titled "A Consumer's Guide to Financial Privacy Rights under the Gramm-Leach-Bliley Act";
- 2) "Frequently Asked Questions" about privacy notices, designed for consumers' information and found on our agency's website at www.MaineCreditReg.org; and
- 3) Sample language developed by federal regulators, which you can use to draft a notice for your business.

If you have any questions, you should speak with your own attorney, trade association, or other source of compliance information. In addition, although our agency cannot draft privacy notices for your business, to the extent possible we will provide general advice and assistance.

SAMPLE LANGUAGE FOR PRIVACY NOTICES

Several federal agencies, including the Federal Trade Commission, have issued regulations regarding financial privacy notices. These regulations include sample language designed to help financial service companies disclose to consumers the different ways they gather and share consumer information. Suggested opt-out language is also provided. Since the requirements of Maine law are identical to the federal standards, the sample language from the Federal Trade Commission’s regulation is reprinted below for your review. You and your legal advisor may find the suggested language helpful as you draft a privacy notice *based on your own company’s actual practices*. Use of this sample language is not a substitute for gaining a complete understanding of your company’s responsibilities under the privacy laws.

Source: 16 CFR Part 313, Federal Trade Commission, “Privacy of Consumer Financial Information: Final Rule”; Pages 33688 – 33689

Appendix A to Part 313—Sample Clauses *

Financial institutions, including a group of financial holding company affiliates that use a common privacy notice, may use the following sample clauses, if the clause is accurate for each institution that uses the notice. (Note that disclosure of certain information, such as assets and income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act, 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.)

A–1—Categories of Information You Collect (All Institutions)

You may use this clause, as applicable, to meet the requirement of § 313.6(a)(1) to describe the categories of nonpublic personal information you collect.

Sample Clause A–1

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates, or others; and *examples, such as “your creditworthiness and credit history”*].

- Information we receive from a consumer reporting agency.

A–2—Categories of Information You Disclose (Institutions That Disclose Outside of the Exceptions)

You may use one of these clauses, as applicable, to meet the requirement of § 313.6(a)(2) to describe the categories of nonpublic personal information you disclose. You may use these clauses if you disclose nonpublic personal information other than as permitted by the exceptions in §§ 313.13, 313.14, and 313.15.

Sample Clause A–2, Alternative 1

We may disclose the following kinds of nonpublic personal information about you:

- Information we receive from you on applications or other forms, such as [*provide illustrative examples, such as “your name, address, social security number, assets, and income”*];
- Information about your transactions with us, our affiliates, or others, such as [*provide illustrative examples, such as “your account balance, payment history, parties to transactions, and credit card usage”*]; and
- Information we receive from a consumer reporting agency, such as [*provide illustrative*

Sample Clause A–2, Alternative 2

* All citations in Appendix A refer to sections in the Federal Trade Commission’s Final Rule on Privacy of Consumer Financial Information, available on the FTC’s website, www.ftc.gov/privacy/glbact/index.html.

We may disclose all of the information that we collect, as described [*describe location in the notice, such as “above” or “below”*].

A-3—Categories of Information You Disclose and Parties to Whom You Disclose (Institutions That Do Not Disclose Outside of the Exceptions)

You may use this clause, as applicable, to meet the requirements of §§ 313.6(a)(2), (3), and (4) to describe the categories of nonpublic personal information about customers and former customers that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose. You may use this clause if you do not disclose nonpublic personal information to any party, other than as permitted by the exceptions in §§ 313.14, and 313.15.

Sample Clause A-3

We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law.

A-4—Categories of Parties to Whom You Disclose (Institutions That Disclose Outside of the Exceptions)

You may use this clause, as applicable, to meet the requirement of § 313.6(a)(3) to describe the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information. You may use this clause if you disclose nonpublic personal information other than as permitted by the exceptions in §§ 313.13, 313.14, and 313.15, as well as when permitted by the exceptions in §§ 313.14, and 313.15.

Sample Clause A-4

We may disclose nonpublic personal information about you to the following types of third parties:

- Financial service providers, such as [*provide illustrative examples, such as “mortgage bankers, securities broker-dealers, and insurance agents”*];
- Non-financial companies, such as our behalf or to other financial institutions with whom we have joint marketing agreements.

[*provide illustrative examples, such as “retailers, direct marketers, airlines, and publishers”*]; and

- Others, such as [*provide illustrative examples, such as “non-profit organizations”*]. We may also disclose nonpublic personal information about you to nonaffiliated third parties as permitted by law.

A-5—Service Provider/Joint Marketing Exception

You may use one of these clauses, as applicable, to meet the requirements of § 313.6(a)(5) related to the exception for service providers and joint marketers in § 313.13. If you disclose nonpublic personal information under this exception, you must describe the categories of nonpublic personal information you disclose and the categories of third parties with whom you have contracted.

Sample Clause A-5, Alternative 1

We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements:

- Information we receive from you on applications or other forms, such as [*provide illustrative examples, such as “your name, address, social security number, assets, and income”*];
- Information about your transactions with us, our affiliates, or others, such as [*provide illustrative examples, such as “your account balance, payment history, parties to transactions, and credit card usage”*]; and
- Information we receive from a consumer reporting agency, such as [*provide illustrative examples, such as “your creditworthiness and credit history”*].

Sample Clause A-5, Alternative 2

We may disclose all of the information we collect, as described [*describe location in the notice, such as “above” or “below”*] to companies that perform marketing services on

A-6—Explanation of Opt Out Right

* All citations in Appendix A refer to sections in the Federal Trade Commission’s Final Rule on Privacy of Consumer Financial Information, available on the FTC’s website, www.ftc.gov/privacy/glbact/index.html.

(Institutions that Disclose Outside of the Exceptions)

You may use this clause, as applicable, to meet the requirement of § 313.6(a)(6) to provide an explanation of the consumer’s right to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right. You may use this clause if you disclose nonpublic personal information other than as permitted by the exceptions in §§ 313.13, 313.14, and 313.15.

Sample Clause A–6

If you prefer that we not disclose nonpublic personal information about you to nonaffiliated third parties, you may opt out of those disclosures, that is, you may direct us not to make those disclosures (other than disclosures permitted by law). If you wish to opt out of disclosures to nonaffiliated third parties, you may [*describe a reasonable means of opting out,*

such as “call the following toll-free number: (insert number)”].

A–7—Confidentiality and Security (All Institutions)

You may use this clause, as applicable, to meet the requirement of § 313.6(a)(8) to describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

Sample Clause A–7

We restrict access to nonpublic personal information about you to [*provide an appropriate description, such as “those employees who need to know that information to provide products or services to you”*]. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

NOTE: This bulletin is solely for informational purposes. It is not intended to set forth legal rights, duties or privileges, nor is it intended to provide legal advice. Readers are encouraged to consult applicable statutes and regulations and to contact the Office Consumer Credit Regulation if additional information is needed.

* All citations in Appendix A refer to sections in the Federal Trade Commission’s Final Rule on Privacy of Consumer Financial Information, available on the FTC’s website, www.ftc.gov/privacy/glbact/index.html.