

§716.5

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(i) Establishing the member relationship is not at the member's election;

(ii) Providing notice not later than when you establish a member relationship would substantially delay the member's transaction and the member agrees to receive the notice at a later time.

(2) *Examples of exceptions.* (i) *Not at member's election.* Establishing a member relationship is not at the member's election if you acquire a member's deposit liability from another financial institution and the member does not have a choice about your acquisition.

(ii) *Substantial delay of member's transaction.* Providing notice not later than when you establish a member relationship would substantially delay the member's transaction when:

(A) You and the individual agree over the telephone to enter into a member relationship involving prompt delivery of the financial product or service; or

(B) You establish a member relationship with an individual under a program authorized by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*) or similar student loan programs where loan proceeds are disbursed promptly without prior communication between you and the member.

(iii) *No substantial delay of member's transaction.* Providing notice not later than when you establish a member relationship would not substantially delay the member's transaction when the relationship is initiated in person at your office or through other means by which the member may view the notice, such as on a web site.

(f)(1) *Joint relationships.* If two or more consumers jointly obtain a financial product or service, other than a loan, from you, you may satisfy the requirements of paragraph of this section by providing one initial notice to those consumers jointly.

(2) *Special rule for loans.* (i) You are required to provide an initial notice to a borrower or guarantor on a loan if you share his or her nonpublic personal information with nonaffiliated third parties other than for purposes under §§716.13, 716.14 and 716.15. (ii) You may satisfy the annual notice requirements of §716.5 by providing one notice to those borrowers and guarantors jointly.

(g) *Delivery.* When you are required to deliver an initial privacy notice by this section, you must deliver it according to the methods in §716.9. If you use a short-form initial notice for non-member consumers according to §716.6(c), you may deliver your privacy notice according to §716.6(c)(3).

[65 FR 31740, May 18, 2000, as amended at 65 FR 36783, June 12, 2000]

§716.5 Annual privacy notice to members required.

(a)(1) *General rule.* You must provide a clear and conspicuous notice to members that accurately reflects your privacy policies and practices not less than annually during the continuation of the member relationship. *Annually* means at least once in any period of 12 consecutive months during which that relationship exists. You may define the 12-consecutive-month period, but you must apply it to the member on a consistent basis.

(2) *Example.* You provide a notice annually if you define the 12-consecutive-month period as a calendar year and provide the annual notice to the member once in each calendar year following the calendar year in which you provide the initial notice. For example, if a member opens an account on any day of year one, you must provide an annual notice to that member by December 31 of year two.

(b) (1) *Termination of member relationship.* You are not required to provide an annual notice to a former member.

(2) *Examples.* Your member becomes your former member when:

(i) An individual is no longer your member as defined in your bylaws;

(ii) In the case of a nonmember's share or share draft account, the account is inactive under the credit union's policies;

(iii) In the case of a nonmember's closed-end loan, the loan is paid in full, you charge off the loan, or you sell the loan without retaining servicing rights;

(iv) In the case of a credit card relationship or other open-end credit relationship with a nonmember, you no longer provide any statements or notices to the nonmember concerning that relationship or you sell the credit

card receivables without retaining servicing rights; or

(v) You have not communicated with the nonmember about the relationship for a period of twelve consecutive months, other than to provide annual privacy notices or promotional material.

(c) *Delivery.* When you are required to deliver an annual privacy notice by this section, you must deliver it according to the methods in § 716.9.

§ 716.6 Information to be included in initial and annual privacy notices.

(a) *General rule.* The initial and annual privacy notices under §§ 716.4 and 716.5 must include each of the following items of information that applies to you or to the consumers to whom you send your privacy notice, in addition to any other information you wish to provide:

(1) The categories of nonpublic personal information that you collect;

(2) The categories of nonpublic personal information that you disclose;

(3) The categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information, other than those parties to whom you disclose information under §§ 716.14 and 716.15;

(4) The categories of nonpublic personal information about your former members that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose it, other than those parties to whom you disclose information under §§ 716.14 and 716.15;

(5) If you disclose nonpublic personal information to a nonaffiliated third party under § 716.13 (and no other exception applies to that disclosure), a separate statement of the categories of information you disclose and the categories of third parties with whom you have contracted;

(6) An explanation of the consumer's right under § 716.10(a) to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time;

(7) Any disclosures that you make under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act (15 U.S.C.

1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosure of information among affiliates);

(8) Your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

(9) Any disclosures you make under paragraph (b) of this section.

(b) *Description of nonaffiliated third parties subject to exceptions.* If you disclose nonpublic personal information to third parties as authorized under §§ 716.14 and 716.15, you are not required to list those exceptions in the initial or annual privacy notices required by §§ 716.4 and 716.5. When describing the categories with respect to those parties, you are required to state only that you make disclosures to other nonaffiliated third parties as permitted by law.

(c) *Short-form initial notice with opt out notice for nonmember consumers.* (1) You may satisfy the initial notice requirements in §§ 716.4(a)(2), 716.7(b), and 716.7(c) for a consumer who is not a member by providing a short-form initial notice at the same time as you deliver an opt out notice as required in § 716.7.

(2) A short-form initial notice must:

(i) Be clear and conspicuous;

(ii) State that your privacy notice is available upon request; and

(iii) Explain a reasonable means by which the consumer may obtain that notice.

(3) You must deliver your short-form initial notice according to § 716.9. You are not required to deliver your privacy notice with your short form initial notice. You instead may simply provide the consumer a reasonable means to obtain your privacy notice. If a consumer who receives your short-form notice requests your privacy notice, you must deliver your privacy notice according to § 716.9.

(4) *Examples of obtaining privacy notice.* You provide a reasonable means by which a consumer may obtain a copy of your privacy notice if you:

(i) Provide a toll-free telephone number that the consumer may call to request the notice; or

(ii) For a consumer who conducts business in person at your office, maintain copies of the notice on hand that