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§ 3401. Definitions

For the purpose of this chapter, the term—

(1) “financial institution”, except as provided in section 3414 of this title, means any office of a bank, savings bank, card issuer as defined in section 1602(n)¹ of title 15, industrial loan company, trust company, savings association, building and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution, located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands;

(2) “financial record” means an original of, a copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer’s relationship with the financial institution;

(3) “Government authority” means any agency or department of the United States, or any officer, employee, or agent thereof;

(4) “person” means an individual or a partnership of five or fewer individuals;

(5) “customer” means any person or authorized representative of that person who utilized or is utilizing any service of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the person’s name;

(6) “holding company” means—

(A) any bank holding company (as defined in section 1841 of this title); and

(B) any company described in section 1843(f)(1) of this title;

(7) “supervisory agency” means with respect to any particular financial institution, holding company, or any subsidiary of a financial institution or holding company, any of the following which has statutory authority to examine the financial condition, business operations, or records or transactions of that institution, holding company, or subsidiary—

(A) the Federal Deposit Insurance Corporation;

(B) the Bureau of Consumer Financial Protection;

(C) the National Credit Union Administration;

(D) the Board of Governors of the Federal Reserve System;

(E) the Comptroller of the Currency;

(F) the Securities and Exchange Commission;

(G) the Commodity Futures Trading Commission;

(H) the Secretary of the Treasury, with respect to the Bank Secrecy Act (Public Law 91-508, title I) [12 U.S.C. 1951 et seq.] and subchapter II of chapter 53 of title 31; or

(I) any State banking or securities department or agency; and

(8) “law enforcement inquiry” means a lawful investigation or official proceeding inquiring into a violation of, or failure to comply with, any criminal or civil statute or any regulation, rule, or order issued pursuant thereto.

(Pub. L. 95-630, title XI, §1101, Nov. 10, 1978, 92 Stat. 3697; Pub. L. 101-73, title VII, §744(b), title IX, §941, Aug. 9, 1989, 103 Stat. 438, 496; Pub. L. 101-647, title XXV, §2596(c), Nov. 29, 1990, 104 Stat. 4908; Pub. L. 106-102, title VII, §727(b)(1), Nov. 12, 1999, 113 Stat. 1475; Pub. L. 108-177, title III, §374(b), Dec. 13, 2003, 117 Stat. 2628; Pub. L. 111-203, title X, §1099(1), July 21, 2010, 124 Stat. 2105.)

REFERENCES IN TEXT

Section 1602(n) of title 15, referred to in par. (1), was redesignated section 1602(o) of title 15 by Pub. L. 111-203, title X, §1100A(1)(A), July 21, 2010, 124 Stat. 2107.

The Bank Secrecy Act, referred to in par. (7)(H), is title I of Pub. L. 91-508, Oct. 26, 1970, 84 Stat. 1114, which is classified principally to chapter 21 (§1951 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1951 of this title and Tables.

CODIFICATION

In par. (7)(H), “the Bank Secrecy Act (Public Law 91-508, title I) [12 U.S.C. 1951 et seq.] and subchapter II of chapter 53 of title 31” substituted for “the Bank Secrecy Act [12 U.S.C. 1951 et seq.] and the Currency and Foreign Transactions Reporting Act [31 U.S.C. 1051 et seq.] (Public Law 91-508, title I and II)”, on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

2010—Par. (6). Pub. L. 111-203, §1099(1)(A), inserted “and” at end of subpar. (A), struck out “and” at end of subpar. (B), and struck out subpar. (C) which read as follows: “any savings and loan holding company (as defined in the Home Owners’ Loan Act);”.

Par. (7)(B). Pub. L. 111-203, §1099(1)(B), added subpar. (B) and struck out former subpar. (B) which read as follows: “Director, Office of Thrift Supervision;”.

2003—Par. (1). Pub. L. 108-177 inserted “, except as provided in section 3414 of this title,” before “means any office”.

1999—Par. (7)(G) to (I). Pub. L. 106-102 added subpar. (G) and redesignated former subpars. (G) and (H) as (H) and (I), respectively.

1990—Par. (6)(B). Pub. L. 101-647 substituted “section 1843(f)(1)” for “section 1842(f)(1)”.

1989—Par. (1). Pub. L. 101-73, §744(b)(1), substituted “savings association” for “savings and loan”.

Par. (6). Pub. L. 101-73, §941(3), added par. (6). Former par. (6) redesignated (7).

Par. (7). Pub. L. 101-73, §941(1), (2), redesignated former par. (6) as (7) and substituted new introductory provisions for former introductory provisions which read as follows: “‘supervisory agency’ means, with re-

¹ See References in Text note below.

spect to any particular financial institution any of the following which has statutory authority to examine the financial condition or business operations of that institution—". Former par. (7) redesignated (8).

Pub. L. 101-73, §744(b)(2), (3), redesignated subpars. (C) to (I) as (B) to (H), respectively, substituted "Director, Office of Thrift Supervision" for "the Federal Home Loan Bank Board" in subpar. (B), and struck out former subpar. (B) which read as follows: "the Federal Savings and Loan Insurance Corporation;".

Par. (8). Pub. L. 101-73, §941(1), redesignated par. (7) as (8).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the designated transfer date, see section 1100H of Pub. L. 111-203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630, set out as a note under section 375b of this title.

SHORT TITLE

Pub. L. 95-630, title XI, §1100, Nov. 10, 1978, 92 Stat. 3697, provided that: "This title [enacting this chapter] may be cited as the 'Right to Financial Privacy Act of 1978'."

§ 3402. Access to financial records by Government authorities prohibited; exceptions

Except as provided by section 3403(c) or (d), 3413, or 3414 of this title, no Government authority may have access to or obtain copies of, or the information contained in the financial records of any customer from a financial institution unless the financial records are reasonably described and—

- (1) such customer has authorized such disclosure in accordance with section 3404 of this title;
- (2) such financial records are disclosed in response to an administrative subpoena or summons which meets the requirements of section 3405 of this title;
- (3) such financial records are disclosed in response to a search warrant which meets the requirements of section 3406 of this title;
- (4) such financial records are disclosed in response to a judicial subpoena which meets the requirements of section 3407 of this title; or
- (5) such financial records are disclosed in response to a formal written request which meets the requirements of section 3408 of this title.

(Pub. L. 95-630, title XI, §1102, Nov. 10, 1978, 92 Stat. 3697.)

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630, set out as a note under section 375b of this title.

§ 3403. Confidentiality of financial records

(a) Release of records by financial institutions prohibited

No financial institution, or officer, employees, or agent of a financial institution, may provide to any Government authority access to or copies of, or the information contained in, the financial records of any customer except in accordance with the provisions of this chapter.

(b) Release of records upon certification of compliance with chapter

A financial institution shall not release the financial records of a customer until the Government authority seeking such records certifies in writing to the financial institution that it has complied with the applicable provisions of this chapter.

(c) Notification to Government authority of existence of relevant information in records

Nothing in this chapter shall preclude any financial institution, or any officer, employee, or agent of a financial institution, from notifying a Government authority that such institution, or officer, employee, or agent has information which may be relevant to a possible violation of any statute or regulation. Such information may include only the name or other identifying information concerning any individual, corporation, or account involved in and the nature of any suspected illegal activity. Such information may be disclosed notwithstanding any constitution, law, or regulation of any State or political subdivision thereof to the contrary. Any financial institution, or officer, employee, or agent thereof, making a disclosure of information pursuant to this subsection, shall not be liable to the customer under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the customer of such disclosure.

(d) Release of records as incident to perfection of security interest, proving a claim in bankruptcy, collecting a debt, or processing an application with regard to a Government loan, loan guarantee, etc.

(1) Nothing in this chapter shall preclude a financial institution, as an incident to perfecting a security interest, proving a claim in bankruptcy, or otherwise collecting on a debt owing either to the financial institution itself or in its role as a fiduciary, from providing copies of any financial record to any court or Government authority.

(2) Nothing in this chapter shall preclude a financial institution, as an incident to processing an application for assistance to a customer in the form of a Government loan, loan guaranty, or loan insurance agreement, or as an incident to processing a default on, or administering, a Government guaranteed or insured loan, from initiating contact with an appropriate Government authority for the purpose of providing any financial record necessary to permit such authority to carry out its responsibilities under a loan, loan guaranty, or loan insurance agreement.

(Pub. L. 95-630, title XI, §1103, Nov. 10, 1978, 92 Stat. 3698; Pub. L. 99-570, title I, §1353(a), Oct. 27, 1986, 100 Stat. 3207-21; Pub. L. 100-690, title VI, §6186(a), Nov. 18, 1988, 102 Stat. 4357.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100-690 inserted "corporation," after "individual".

1986—Subsec. (c). Pub. L. 99-570 inserted provisions that the disclosure of only the name or other identifying information concerning any individual or account