

SUMMARY OF CONTENTS

Volume 1

- Chapter 1** Fair Credit Reporting Act
- Chapter 2** The Financial Privacy Act
- Chapter 3** Third-Party Summons Provisions of the Internal Revenue Code

Volume 2

- Chapter 4** The Bank Secrecy Act
 - Chapter 5** State Financial Privacy Laws
 - Chapter 6** Fair Credit Reporting Act
 - Chapter 7** International Aspects of Financial Privacy
 - Chapter 8** Financial Institutions and the Freedom of Information Act
 - Chapter 9** Federal Financial Institution Privacy Law
- Table of Cases**
- Index**

TABLE OF CONTENTS

VOLUME 1

Preface.....	iii
Summary of Contents	vii

Chapter 1

Fair Credit Reporting Act

§ 1.01	Background and Purpose	1-1
§ 1.02	Overview	1-2
	[1] Consumer Financial Protection Act	1-5
	[a] Enforcement Overview	1-5
	[b] Rulemaking Overview	1-6
	[c] Withdrawal of FTC Commentary and Issuance of FTC Staff Report	1-6
§ 1.03	Coverage	1-7
	[1] The Consumer Report	1-9
	[a] Information Bearing on a Consumer’s Creditworthiness	1-9
	[b] Information Used or Expected to Be Used as a Factor in Establishing the Consumer’s Eligibility	1-10
	[c] Exceptions to the Definition of “Consumer Report”	1-11
	[d] Special Exception for Sharing of Information Among Affiliates	1-14
	[e] Investigative Consumer Reports	1-16
	[2] Application to Business Transactions	1-17
	[3] Reports Used in Connection With Employment or Government Benefits	1-21
	[4] The Consumer Reporting Agency	1-22
	[a] Financial Institutions as Inadvertent Consumer Reporting Agencies	1-23
	[b] The Joint-User, or Consummation of Transaction, Exception	1-25
	[c] Dissemination of Information Among Holding Company Subsidiaries	1-27
	[d] Cooperative Deposit Account Experience System as a Consumer Reporting Agency	1-27
	[e] CFPA Credit Scoring Studies	1-29
	[5] Case Summaries	1-31
	[a] Test for Consumer Report Depends on Consumer Reporting Agency Expectation Regarding Use	1-31
	[b] Claims Report as a Consumer Report	1-32
	[c] Report for Employment Purposes as a Consumer Report	1-32
	[d] Bad-Check Lists Are Consumer Reports	1-33
	[e] Information Not a Consumer Report Under the FCRA	1-33
	[f] Information Collected to Be Used for a Permissible Purpose Under the FCRA Is a Consumer Report	1-34
	[g] Report Prepared by Commercial Reporting Company Is Not a Consumer Report	1-35
	[h] Personal-Experience Information Not a Consumer Report	1-35
	[i] Landlord Service Report as a Consumer Report	1-37
	[j] Report Used to Qualify for Business-Related Insurance Is Not a Consumer Report	1-37
	[k] Users of Consumer Reports	1-37
	[l] Whether Report to Evaluate Claim Under an Existing Policy Is a Consumer Report	1-38
	[m] OFAC Alert as a Consumer Report	1-39
	[n] Federal Agencies Are Not Consumer Reporting Agencies	1-39

	[o] Investigative Firm as a Consumer Reporting Agency	1-39
	[p] Nonprofit Organization as a Consumer Reporting Agency	1-40
¶ 1.04	Limitations on the Contents, Use, and Disclosure of Consumer Reports	1-40
	[1] Restrictions on the Content of Consumer Reports	1-40
	[2] Restrictions on the Use and Disclosure of Consumer Reports	1-44
	[a] Permissible Purposes for Disclosure	1-45
	[b] Credit and Related Account Purposes	1-46
	[c] Insurance Underwriting Purposes	1-52
	[d] Credit Transaction Not Initiated by the Consumer	1-52
	[e] Insurance Transaction Not Initiated by the Consumer	1-65
	[f] Consumer Reports for Employment Purposes	1-65
	[g] Consumer Reports on Existing Loan Customers	1-68
	[h] Legitimate Business Need for the Information	1-68
	[i] Government License or Benefit	1-70
	[j] Obtaining Consumer Reports Through Agents	1-70
	[k] Limiting the Use of Medical Information	1-71
	[l] Judicial Analysis of Permissible-Purpose Provisions	1-72
	[m] Policing the Permissible-Purpose Restrictions	1-75
	[3] Disclosure Under Court Orders and Subpoenas	1-77
	[4] Disclosure Under Consumer's Written Instructions	1-79
	[5] Disclosure for Counterintelligence and Counterterrorism Purposes	1-80
	[a] Disclosure to FBI for Counterintelligence Purposes	1-80
	[b] Disclosure to Government Agencies for Counterterrorism Purposes	1-81
	[6] Case Summaries	1-82
	[a] Grand Jury Subpoena Is Not a Court Order	1-82
	[b] The FTC Can Obtain Records Without a Court Order	1-83
	[c] Consumer Reports May Be Transferred From One Consumer Reporting Agency to Another	1-83
	[d] No Automatic Liability for Releasing Report Without Permissible Purpose	1-83
	[e] Breach of Contract to Only Obtain Reports for Permissible Purposes	1-83
	[f] Collection of an "Involuntary" Debt as a Permissible Purpose	1-84
	[g] Permissible Prescreening Does Not Require Consent	1-84
	[h] Firm Offer of Credit or Insurance	1-84
	[i] The Prescreening Disclosure Requirement	1-88
	[j] Prescreened "Trigger" Lists	1-88
	[k] Consumer Report on a Spouse	1-89
	[l] Consumer Report to Collect Child Support Payments	1-89
	[m] Consumer Report on Existing Customer	1-90
	[n] Consumer Report on Prospective Son-in-Law	1-90
	[o] Consumer Report on Corporate Cardholder	1-90
	[p] Consumer Report on a Delinquent Debtor	1-91
	[q] Consumer Report for Insurance Quotation	1-91
¶ 1.05	Consumer Rights and Obligations of Consumer Reporting Agencies	1-92
	[1] Consumer Access to Files	1-92
	[2] Consumer's Rights to Reinvestigation and Correction of Disputed Information	1-97
	[3] Consumer's Statement of Dispute	1-102
	[4] Other Obligations of Consumer Reporting Agencies	1-103
	[5] Case Summaries	1-108
	[a] Consumer Reporting Agency Not Required to Update Information in All Cases	1-108
	[b] It Is Permissible to Report Data Regarding Conviction	1-108

	[c]	Balancing Test on Procedures for Assuring Accuracy of Consumer Reports	1-108
	[d]	Correction of Inaccurate Information	1-109
	[e]	No Obligation of Consumer Reporting Agency to Issue Consumer Reports or of Creditor to Use Such Reports	1-110
	[f]	Lease as Credit Transaction Under FCRA	1-111
	[g]	Consumer Need Not Provide Social Security Number to Obtain Consumer Report	1-111
	[h]	Consumer Report Obtained for Discovery Not Permissible	1-111
¶ 1.06		Obligations of Furnishers of Information	1-112
	[1]	Duty to Provide Accurate Information	1-112
	[a]	Furnishing Information With Accuracy and Integrity	1-112
	[b]	Reporting Information With Knowledge of Errors	1-115
	[c]	Ability of Consumer to Dispute Information Directly With Furnisher	1-116
	[d]	Duty to Correct and Update Information	1-119
	[e]	Duty to Provide Notice of Dispute	1-120
	[f]	Duty to Provide Notice of Closed Accounts	1-120
	[g]	Duty to Provide Notice of Account Delinquency	1-120
	[h]	Duty to Provide Notice of Negative Information	1-121
	[i]	Confidentiality of Medical Contact Information in Consumer Reports	1-122
	[j]	Federal Banking Agencies Guidance on Reporting to Consumer Reporting Agencies	1-123
	[2]	Furnisher Reinvestigation Responsibilities	1-123
	[3]	Limitation on Liability and Enforcement	1-125
	[4]	Case Summaries	1-126
	[a]	Duty to Reinvestigate Under the FCRA	1-126
	[b]	Private Rights of Action Against Furnishers	1-127
¶ 1.07		Obligations of Users of Consumer Reports	1-129
	[1]	Adverse Action Based on Information From a Consumer Report	1-129
	[a]	Definitions of Adverse Action	1-130
	[b]	The Adverse Action Notice	1-135
	[c]	CFPA Credit Score Disclosure Amendments to the FCRA	1-136
	[d]	Interface Between FCRA and ECOA Adverse Action Requirements	1-137
	[e]	Amendments to Regulation B regarding Disclosure of Credit Scores in Adverse Action Notices	1-139
	[2]	Adverse Action Based on Information Obtained From Third Parties	1-140
	[3]	Adverse Action Based on Information Provided by Affiliates	1-140
	[4]	Risk-Based Pricing Notice	1-142
	[a]	Material Terms That Are Materially Less Favorable	1-144
	[b]	Determining When Notice Is Required	1-144
	[c]	Form, Content, and Timing of Notice	1-146
	[d]	Rules of Construction and Exceptions	1-147
	[e]	Rules to Implement CFPA Credit Score Disclosure Requirements	1-148
	[5]	Limitation on the Use of Information, Shared Among Affiliates, for Marketing Purposes	1-149
	[a]	Effective Date and Compliance Date	1-150
	[b]	The Notice and Opt-Out Requirement	1-150
	[c]	Exceptions to the Notice and Opt-Out Requirement	1-152
	[d]	Who Must Provide Notice	1-155
	[e]	Scope of Opt-Out	1-156
	[f]	Combined Notices	1-156
	[g]	Grandfathered Information	1-157
	[h]	Preemption	1-157
	[6]	Investigative Consumer Reports	1-157

[7]	Consumer Reports for Employment Purposes	1-158
[8]	Establishing Reasonable Procedures	1-159
[9]	Limitation on Liability and Enforcement	1-159
[10]	Case Summaries	1-161
[a]	Confusion in Bank Terminal Access to Consumer Reporting Agency Files	1-161
[b]	User of Report Must Give FCRA Disclosure at Time of Denial; Lack of Information Is Adverse if It Results in a Credit Denial	1-161
[c]	Bank's Request to Discuss Application Delayed Obligation to Provide Adverse Action Notice	1-162
[d]	Adverse Action in Insurance Context	1-162
[e]	Adverse Action Not Preconditioned on Formal Written Application	1-165
[f]	Litigation Evaluation Report Is Not an Investigative Consumer Report	1-165
[g]	No Liability if No Investigative Consumer Report Is Prepared	1-166
[h]	Reasonable Procedures	1-166
[i]	Adverse Action Applied to Wireless Service	1-167
[j]	Adverse Action on Loan Prequalification	1-168
[k]	An Accepted Counteroffer Is Not Adverse Action	1-169
[l]	Private Rights of Action Under Section 615	1-169
§ 1.08	Identity Theft Prevention and Mitigation	1-170
[1]	Fraud Alerts and Active Duty Alerts	1-170
[2]	Obligation of Users Upon Receipt of Alerts	1-172
[3]	Truncation of Credit Card and Debit Card Account Numbers	1-173
[4]	Duties Regarding the Detection, Prevention, and Mitigation of Identity Theft	1-173
[a]	Effective Date and Compliance Date	1-174
[b]	Scope	1-174
[c]	Assessment of "Covered Accounts"	1-175
[d]	Establishing a Program	1-175
[e]	Red Flag Guidelines	1-176
[f]	Administration of a Program	1-177
[5]	Duties of Card Issuers Regarding Changes of Address	1-178
[6]	Address Discrepancies	1-179
[a]	Verification Requirement	1-180
[b]	Confirmation Requirement	1-181
[7]	Authority to Truncate Social Security Numbers	1-181
[8]	Summary of Rights of Identity Theft Victims	1-181
[9]	Obligation to Provide Identity Theft-Related Records to Victims	1-182
[10]	Blocking Information Resulting From Identity Theft	1-183
[11]	Prevention of Repollution of Consumer Reports	1-184
[12]	Prohibition on Sale or Transfer of Debt Caused by Identity Theft	1-184
[13]	Notice by Debt Collectors of Fraudulent Information	1-184
[14]	Disposal of Consumer Report Information	1-184
[15]	Coordination of Consumer Complaints	1-185
[16]	Case Summaries	1-185
[a]	Truncation of Credit Card and Debit Card Account Numbers	1-185
§ 1.09	Enforcement	1-186
[1]	Administrative Enforcement	1-186
[2]	Civil Liability	1-188
[3]	Vicarious Liability for Employers	1-197
[4]	Defenses to Liability	1-199
[5]	Qualified Immunity for Furnishers, Users, and Consumer Reporting Agencies	1-204

[6]	Criminal Liability	1-205
[7]	Case Summaries	1-206
[a]	Scope of Damages for Violation of FCRA	1-206
[b]	Large Punitive Damage Awards Rejected	1-208
[c]	Civil Liability for Obtaining Information Under False Pretenses	1-209
[d]	Punitive Damages and Attorney Fees	1-211
[e]	Removal of FCRA Case to Federal Court	1-212
[f]	Both Husband and Wife Could Sue for Violation of FCRA	1-212
[g]	User Liable, but Not Consumer Reporting Agency	1-213
[h]	Consumer Reporting Agency Negligent for Failure to Correct File After Consumer Request	1-213
[i]	Informal FTC Letter Does Not Prevent Civil Liability	1-214
[j]	Statute of Limitations Under FCRA	1-214
[k]	“Unreasonable” Proposed Settlement	1-216
[l]	Calculation of Attorney Fees	1-216
[m]	Liability of Government Agencies	1-218
[n]	Financial Institution Liable for Failure to Limit Access to Consumer Reporting Agency Files	1-218
[o]	No Strict Liability for Consumer Reporting Agency	1-219
[p]	Qualified Immunity	1-220
[q]	Fraud Does Not Preclude FCRA Action	1-220
[r]	FCRA Imposes Civil Liability Only for Dissemination of Consumer Reports, Not for Furnishing Information	1-220
[s]	Personal Liability of Corporate Officer	1-221
[t]	No Jurisdiction for Private Injunctive Relief	1-221
[u]	Consumer Must Request Correction Before Filing Suit	1-222
[v]	No Duty to Correct Public Record Information	1-222
¶ 1.10	State Laws and Federal Preemption	1-222
[1]	State Fair Credit Reporting Laws	1-222
[2]	Federal Preemption	1-223
[a]	Preemption of Inconsistent State Laws	1-223
[b]	Limited Preemption of State Defamation and Privacy Invasion Laws	1-225
[c]	Broad FCRA Preemption in Specific Areas	1-226
[3]	Case Summaries	1-231
[a]	State Statute May Prohibit Charges Authorized by Federal FCRA	1-231
[b]	Court Preempts Some Provisions of State Law While Upholding Others	1-232
[c]	FCRA Does Not Preempt All State Law Rights	1-233
[d]	FCRA Does Not Circumscribe Common-Law Privilege	1-234
[e]	Preemption of Defamation Actions	1-234
[f]	Removal Is Not Precluded Under the FCRA	1-235
[g]	FCRA Preempts State Law Claims Against Furnisher of Information	1-235
[h]	Home Owners’ Loan Act Does Not Preempt State FCRA Claims	1-236
[i]	FCRA Prescreening Preemption	1-236
[j]	FCRA Preempts Some State Statute Provisions Limiting Affiliate Sharing	1-237

Chapter 1 Forms and Appendixes

Selected Forms	F1-1
FORM 1.1 Federal Reserve Board—Sample Notice of Action Taken and Statement of Reasons	F1-1

FORM 1.2	Federal Reserve Board—Sample Notice of Action Taken and Statement of Reasons	F1-3
FORM 1.3	Federal Reserve Board—Sample Notice of Action Taken and Statement of Reasons	F1-4
FORM 1.4	Federal Reserve Board—Sample Notice, Statement of Reasons, and Counteroffer	F1-5
FORM 1.5	Federal Reserve Board—Sample Disclosure of Right to Request Specific Reasons for Credit Denial	F1-6
FORM 1.6	Federal Trade Commission—Summary of Consumer Rights	F1-7
FORM 1.7	Federal Trade Commission—Notice to Furnishers of Information	F1-9
FORM 1.8	Federal Trade Commission—Notice to Users of Consumer Reports	F1-13
FORM 1.9	Disclosure of Investigative Consumer Report	F1-22
FORM 1.10	Dealer-Finance Company Agreement	F1-23
FORM 1.11	Example Provisions of Credit Bureau Agreement	F1-24
FORM 1.12	Remedying the Effects of Identity Theft	F1-28
FORM 1.13	Model Forms for Risk-Based Pricing Notice	F1-30
Appendixes: Regulatory and Other Resource Material		A1-1
APPENDIX 1.1	FCRA FTC Staff Report	A1-1
APPENDIX 1.2	Federal Trade Commission—FCRA Staff Report	A1-84.33
APPENDIX 1.3	Federal Trade Commission—Consumer Reports— What Information Providers Need to Know	A1-84.37
APPENDIX 1.4	Federal Trade Commission—Using Consumer Reports— What Employers Need to Know	A1-84.40
APPENDIX 1.5	Federal Trade Commission—Fair Credit Reporting Questions and Answers	A1-84.43
APPENDIX 1.6	Federal Trade Commission Guide on Readable Credit Forms	A1-84.47
APPENDIX 1.7	Federal Financial Institutions Examination Council Policy Statement on Prescreening	A1-84.58
APPENDIX 1.8	Federal Trade Commission—Frequently Asked Questions: Identify Theft Red Flags and Address Discrepancies	A1-84.61
APPENDIX 1.9	Federal Trade Commission Consent Agreement With Consumer Reporting Agency for FCRA Violations	A1-84.75
APPENDIX 1.10	Comptroller Interpretive Letter (Byrd on Providing Application Information to Consumer Reporting Agency)	A1-92
APPENDIX 1.11	Comptroller Interpretive Letter (Liebesman on Providing Application Information to Bank Holding Company Subsidiaries)	A1-94
APPENDIX 1.12	Federal Reserve Board Interpretive Letter (Garwood on Providing Application Information to Consumer Reporting Agency)	A1-96
APPENDIX 1.13	Comptroller Interpretive Letter (Glidden on Prescreening Under the Fair Credit Reporting Act)	A1-98
APPENDIX 1.14	Federal Trade Commission Interpretive Letter (Isaac on Joint User Exception)	A1-104
APPENDIX 1.15	Federal Trade Commission Interpretive Letter (Lamb on Employment Authorization)	A1-106
APPENDIX 1.16	Federal Trade Commission Interpretive Letter (Kane on Merged Consumer Reports)	A1-108
APPENDIX 1.17	Federal Trade Commission Interpretive Letter (Medine on Permissible Purposes)	A1-111
APPENDIX 1.18	Comptroller Interpretive Letter (Bylsma on Joint Marketing/Prescreening)	A1-113

APPENDIX 1.19	Federal Trade Commission Interpretive Letter (Brinckerhoff on Adverse Action)	A1-115
APPENDIX 1.20	Federal Trade Commission Press Release (FTC Charges Against Trans Union Upheld: Administrative Law Judge Orders Credit Bureau Stop Using Credit Data to Create Target Marketing Lists)	A1-117
APPENDIX 1.21	Federal Trade Commission Interpretive Letter (Isaac on Definition of Person; Disclosures When Obtaining an Investigative Consumer Report; Definition of Employment Purposes; Consumer Reports for Employment Purposes; Required Notice of Adverse Action Based on a Consumer Report)	A1-120
APPENDIX 1.22	Federal Trade Commission Interpretive Letter (Brinckerhoff on Definition of Consumer Report; Definition of Consumer Reporting Agency; Procurement of Reports for Resale)	A1-122
APPENDIX 1.23	Federal Trade Commission Interpretive Letter (Haynes on General Definition of Consumer Report; Reports for Non-Consumer-Initiated Credit or Insurance Transactions; Permissible Purposes for Which an Agency May Furnish a Consumer Report)	A1-125
APPENDIX 1.24	Federal Trade Commission Interpretive Letter (Haynes on General Definition of Consumer Report; Disclosures When Obtaining an Investigative Consumer Report; Consumer Reports for Employment Purposes; Procurement of Reports for Resale; Disclosures to Consumers; Conditions and Form of Disclosures to Consumers)	A1-128
APPENDIX 1.25	Federal Trade Commission Interpretive Letter (Brinckerhoff on General Definition of Consumer Report; Definition of Consumer Reporting Agency; Consumer Reports for Employment Purposes; Disclosure to Consumer for Employment; Use of Public Record Information for Employment Purposes)	A1-132
APPENDIX 1.26	Federal Trade Commission Interpretive Letter (Brinckerhoff on Exclusions to Consumer Reports; Disclosures When Obtaining an Investigative Consumer Report; Definition of Consumer Reporting Agency; Consumer Reports for Employment Purposes; Required Notice of Adverse Action Based on a Consumer Report)	A1-134
APPENDIX 1.27	Federal Trade Commission Interpretive Letter (Haynes on Definition of Consumer Reporting Agency; Notice to Users and Furnishers; Procurement of Reports for Resale; Required Identification of Each End User; Summary of Rights to Be Included With Disclosure)	A1-136
APPENDIX 1.28	Federal Trade Commission Interpretive Letter (Medine on Permissible Purposes for Which an Agency May Furnish a Consumer Report; Legitimate Business Need; Employment-Pre-Report Disclosure to Consumer; Employer-Pre-Adverse Action Report Copy and Summary of Rights to Consumer)	A1-139
APPENDIX 1.29	Federal Trade Commission Interpretive Letter (Haynes on Records of Arrest, Indictment, or Conviction; Consumer Reports for Employment Purposes; Procurement of Reports for Resale; Required Identification of Each End User; Employer-Pre-Adverse Action Report Copy and Summary of Rights to Consumer)	A1-141
APPENDIX 1.30	Federal Trade Commission Interpretive Letter (Isaac on Disclosure of Preparation of Investigative Consumer Report; Disclosure of Nature and Scope of Request; Disclosure to Consumer for Employment; Employer-Pre-Adverse Action Report Copy and Summary of Rights to Consumer)	A1-144
APPENDIX 1.31	Federal Trade Commission Interpretive Letter (Haynes on Written Disclosure Required; Required Statement Informing Consumer of Right	

	to Request Disclosure; Consumer Reports for Employment Purposes; Employment-Pre-Report Disclosure to Consumer)	A1-146
APPENDIX 1.32	Federal Trade Commission Interpretive Letter (Haynes on Definition of Excluded Communications; Communications to a Prospective Employer)	A1-149
APPENDIX 1.33	Federal Trade Commission Interpretive Letter (Brinckerhoff on Use of Consumer Report in a Credit Transaction)	A1-151
APPENDIX 1.34	Federal Trade Commission Interpretive Letter (Haynes on Information to Be Disclosed; Employer-Pre-Adverse Action Report Copy and Summary of Rights to Consumer)	A1-153
APPENDIX 1.35	Federal Trade Commission Interpretive Letter (Foster on Use of Consumer Report for Employment Purposes)	A1-155
APPENDIX 1.36	Federal Trade Commission Interpretive Letter (Kane on Use of Consumer Reports for Employment Purposes)	A1-156
APPENDIX 1.37	Federal Trade Commission Interpretive Letter (Keller on Definition of Investigative Consumer Report)	A1-159
APPENDIX 1.38	Federal Trade Commission Interpretive Letter (Medine on Definition of Investigative Consumer Report)	A1-161
APPENDIX 1.39	Federal Trade Commission Interpretive Letter (Brinckerhoff on Definition of Investigative Consumer Report)	A1-163
APPENDIX 1.40	Federal Trade Commission Interpretive Letter (Haynes on Definition of Consumer Reporting Agency)	A1-165
APPENDIX 1.41	Federal Trade Commission Interpretive Letter (Foster on Joint User Exception)	A1-167
APPENDIX 1.42	Federal Trade Commission Interpretive Letter (Stires on Use of Consumer Reports for Insurance Underwriting Purposes)	A1-169
APPENDIX 1.43	Federal Trade Commission Interpretive Letter (Isaac on Prescreening)	A1-172
APPENDIX 1.44	Federal Financial Institutions Examination Council Advisory Letter on Reporting Practices to Consumer Reporting Agencies	A1-175
APPENDIX 1.45	Fair Credit Reporting Act Uniform Examination Procedures	A1-178
APPENDIX 1.46	Office of the Comptroller of the Currency Advisory Letter 2001-6, Fair Credit Reporting Act (July 6, 2001)	A1-239

Chapter 2

The Financial Privacy Act

§ 2.01	Background and Purpose	2-1
§ 2.02	Overview	2-3
§ 2.03	Coverage	2-4
	[1] Government Authority	2-4
	[2] Financial Institution	2-6
	[a] Card Issuers	2-7
	[b] Agents	2-8
	[3] Customer	2-9
	[a] Consumer or Business Use by “Customer”	2-11
	[b] Other Requirements of “Customer”	2-12
	[4] Exceptions	2-13
	[5] Case Summaries	2-13
	[a] Financial Privacy Act Does Not Preclude Discovery in Civil Suit	2-13

	[b]	Financial Privacy Act Does Not Apply to IRS Summons	2-14
	[c]	Financial Privacy Act and Government Authority	2-15
	[d]	Definition of “Customer”	2-16
	[e]	Privacy Rights May Still Apply to Subsequent Disclosure by Government Agent	2-19
	[f]	Oral Disclosure Violates Financial Privacy Act	2-20
	[g]	Financial Privacy Act Does Not Create Expectation of Privacy Under Fourth Amendment	2-20
¶ 2.04		Restrictions on Disclosure and Disclosure Procedures	2-21
	[1]	Customer Authorization	2-22
		[a] Deficient Authorizations	2-22
		[b] Recordkeeping Requirements	2-23
	[2]	Administrative Subpoena and Summons	2-23
		[a] Authority for Subpoena or Summons	2-23
		[b] Substantive Standards for Disclosure	2-24
		[c] Procedural Requirements for Disclosure	2-26
	[3]	Search Warrant	2-28
		[a] Prerequisites for a Search Warrant	2-28
		[b] Requirements Under the Financial Privacy Act	2-29
	[4]	Judicial Subpoenas	2-30
	[5]	Formal Written Request	2-32
		[a] Procedures for Disclosure Under a Formal Written Request	2-33
		[b] Authorization for Use of a Formal Written Request	2-33
	[6]	Challenge Procedures	2-34
		[a] Challenge by Customer to Demand	2-35
		[b] Challenge by Financial Institution to Demand	2-38
	[7]	Delayed Notice to the Customer	2-38
	[8]	Certificate of Compliance	2-40
	[9]	Interagency Transfers	2-42
	[10]	Case Summaries	2-44
		[a] Prima Facie Case Necessary to Quash Administrative Subpoena	2-44
		[b] Legitimate and Reasonable Investigation to Support Subpoena or Formal Written Request ...	2-44
		[c] IRS Need Not Furnish a Certificate of Compliance	2-45
		[d] Administrative Subpoena for Legitimate Inquiry—No Requirement to Provide Customer With Sufficient Information to Make a Defense	2-46
		[e] Grand Jury Subpoena Not Quashed Because of Burden on Bank	2-46
		[f] Administrative Subpoenas Are Not Self-Enforcing	2-46
		[g] New Notification Required for Additional Information	2-46
		[h] The FBI and Bank Records	2-47
		[i] Foreign Investigations	2-47
		[j] Relevancy Standard for Administrative Subpoena	2-47
		[k] Requirements for Delayed Notice	2-48
		[l] Basis for Quashing Subpoena	2-48
		[m] Judicial Subpoena in Military Proceedings	2-50
¶ 2.05		Exceptions	2-50
	[1]	Disclosures That Do Not Identify the Customer	2-51
	[2]	Disclosures in the Financial Institution’s Interest	2-52
		[a] Security Interest or Bankruptcy Claim	2-52
		[b] Loan Information	2-52
		[c] Violation of Law	2-53
	[3]	Disclosures in Connection With Supervisory Investigations and Proceedings	2-57
	[4]	Disclosures Under the Tax Privacy Provisions	2-60

	[5]	Exemptions for Other Disclosures	2-62
		[a] Determining Whether an Exception Applies	2-62
		[b] Blanket Exceptions	2-63
	[6]	Disclosures to the Consumer Financial Protection Bureau	2-64
	[7]	Case Summary	2-64
		[a] Exceptions Do Not Apply Without Certificate of Compliance in Court-Martial Proceedings	2-64
¶ 2.06		Special Procedures	2-65
	[1]	Locator Information	2-65
	[2]	Government Loan Assistance	2-66
	[3]	Requests by Intelligence Agencies and Secret Service	2-68
	[4]	Emergency Access	2-70
	[5]	Federal Grand Juries	2-71
		[a] Special Procedures for Grand Jury Subpoenas	2-71
		[b] Rule 6(e) and Grand Jury Subpoenas	2-73
		[c] Exceptions to Disclosure Prohibitions	2-76
	[6]	The Securities and Exchange Commission	2-77
		[a] Conditions for SEC Access to Customer Records	2-77
		[b] SEC Liability for Improper Disclosure	2-81
		[c] Transfer of Records to Other Agencies	2-81
		[d] Procedures for Financial Institutions	2-82
	[7]	Investigations Directed at the Financial Institution or Noncustomer Entities	2-83
		[a] Provisions Excepted	2-84
		[b] Consequences for the Financial Institution	2-85
	[8]	Foreign Government Requests for Financial Information	2-86
	[9]	Case Summaries	2-87
		[a] Injunction Granted Against SEC	2-87
		[b] Scope of Grand Jury Subpoenas	2-88
		[c] Gag Orders and Grand Jury Subpoenas	2-88
		[d] Agency Promise of Confidentiality Ineffective	2-90
		[e] Financial Regulator's Access to Private Records Commingled With Bank Records	2-90
		[f] Availability of Documents Obtained by Grand Jury Subpoena to Other Federal Agencies	2-91
		[g] Banking Agency Exemption	2-91
¶ 2.07		Civil Liability	2-92
	[1]	Liability of the Financial Institution	2-92
	[2]	Liability of Financial Institution Employees	2-96
	[3]	Other Available Relief	2-97
	[4]	Case Summaries	2-98
		[a] Statute Limits Judicial Remedies to Fines for Noncompliance	2-98
		[b] Remedies in Act Are Exclusive	2-99
		[c] Actual Damages Not Required to Recover Under Act	2-100
		[d] Financial Institution Not Liable Under Act	2-100
		[e] Determination of Attorney Fees Under Act	2-101
		[f] Financial Institution Cannot Join the Government in a Financial Privacy Act Suit by Cross-Complaint	2-101
¶ 2.08		Federal Preemption	2-102
	[1]	Case Summaries	2-104
		[a] Connecticut Privacy Statute Preempted by Financial Privacy Act	2-104
		[b] Federal Grand Jury Subpoenas and State Constitutional Privacy Requirements	2-104

	[c] Court Discusses Interaction of State and Federal Privacy Acts	2-105
¶ 2.09	Extraterritorial Reach of Government Subpoenas	2-105
	[1] Geographic Scope of Government Subpoena	2-105
¶ 2.10	Cost Reimbursement	2-109
	[1] Exceptions to Cost Reimbursement	2-110
	[2] Reimbursement Regulation	2-111
	[3] Case Summaries	2-114
	[a] No Cost Reimbursement Where the Financial Institution Is the Target of the Investigation	2-114
	[b] Reimbursement Ordered Where Bank Is Not the Subject of the Investigation	2-114
	[c] No Cost Reimbursement for Corporate Records	2-114
	[d] Bank May Recover Costs Exceeding Those Provided in Government Regulation	2-114

Chapter 2 Forms and Appendixes

Selected Forms	F2-1
FORM 2.1 Administrative Subpoena	F2-1
FORM 2.2 Customer Notice—Administrative Subpoena	F2-3
FORM 2.3 Search Warrant	F2-4
FORM 2.4 Return of Search Warrant	F2-5
FORM 2.5 Customer Notice—Search Warrant	F2-6
FORM 2.6 Judicial Subpoena	F2-7
FORM 2.7 Customer Notice—Judicial Subpoena	F2-10
FORM 2.8 Formal Written Request for Financial Records	F2-11
FORM 2.9 Customer Notice—Formal Written Request	F2-12
FORM 2.10 Certificate of Compliance	F2-13
FORM 2.11 Notice of Transfer to Another Agency or Department	F2-14
FORM 2.12 Customer Notification by Financial Institution	F2-15
FORM 2.13 Customer Privacy Access Log and Information Sheet	F2-16
FORM 2.14 Reimbursement Form	F2-17
FORM 2.15 Affidavit—Custodian of Records	F2-18
FORM 2.16 Cover Letter—Submission of Records	F2-19
FORM 2.17 Sample Instructions for Delivery of Documents to Grand Jury	F2-20
Appendixes: Regulatory and Other Resource Materials	A2-1
APPENDIX 2.1 Protective Agreement	A2-1
APPENDIX 2.2 Regulation S—Cost Reimbursement	A2-3
APPENDIX 2.3 Regulation S Final Rule	A2-9
APPENDIX 2.4 Federal Reserve Board’s Proposed Statement of Customer Rights	A2-13

Chapter 3

Third-Party Summons Provisions of the Internal Revenue Code

¶ 3.01	Background and Purpose	3-1
¶ 3.02	Overview	3-2
¶ 3.03	Coverage	3-2
	[1] General Considerations	3-2
	[2] Customers Protected	3-5
	[3] Coverage of Specific Recordkeepers	3-6
	[a] Credit Card Processors	3-7
	[b] Merchants	3-7

[c]	Consumer Reporting Agencies	3-7
[d]	Accountants	3-8
[4]	Types of Summonses Covered and Permissible Use	3-8
[5]	Types of Summonses Not Covered	3-11
[6]	Informal Access to Information From “Third-Party Recordkeepers”	3-12
[7]	IRS Summons and Foreign Government Investigations	3-14
[8]	Uncertainties in Coverage	3-16
[9]	Alternative Actions When Coverage Is Uncertain	3-16
[10]	Compliance With IRS Summons	3-17
[11]	Case Summaries	3-18
[a]	Determination of Coverage as Third-Party Recordkeeper	3-18
[b]	Limitation on Scope of Third-Party Recordkeeper Definition	3-19
[c]	Corporation Held Not to Be a Third-Party Recordkeeper	3-20
[d]	Holder of Records Not Within Definition of “Third-Party Recordkeeper”	3-20
[e]	Neither Financial Privacy Act Nor Freedom of Information Act Restricts Enforcement of IRS Summons	3-21
[f]	Financial Privacy Act Does Not Restrict Enforcement of IRS Summons	3-22
[g]	Fair Debt Collection Practices Act Does Not Restrict Enforcement of IRS Summons	3-22
[h]	Investigation of Individual Partner Includes Right to Investigate Partnership Records	3-23
[i]	Court Restricts Use of Summons to Actions Involving Certain Individuals	3-23
[j]	Only Subject of Summons Can Raise Objections	3-23
[k]	Court Enforces Summons for Records of Taxpayer’s Wife and Former Wife	3-25
[l]	Criminal Prosecutions and the Enforcement of IRS Summonses	3-25
[m]	Summons Enforced Despite Argument That Records Were Already in Possession of IRS	3-26
[n]	Enforcement of Summons for Safe Deposit Box Records	3-27
[o]	Court Enforces Summons Despite Use for Research Purposes	3-27
[p]	Court Rejects Claims of Noncoverage	3-27
[q]	Summons “In Aid of Collection”	3-28
[r]	Attorney-Client Privilege Defense and IRS Summons	3-30
[s]	Constitutional Challenge to IRS Summons	3-32
[t]	Cannot Enjoin IRS Summons Through FCRA	3-32
[u]	Court Enforces Summons Despite Procedural Challenge	3-33
[v]	IRS Summons Violated Bankruptcy Stay	3-34
[w]	IRS Summons Too Broad	3-35
[x]	Summons Quashed Because of Procedural Errors	3-35
[y]	Recordkeeper Is Also One of Taxpayers	3-35
[z]	Application to Offshore Banks	3-35
[aa]	Sanctions Imposed for Frivolous Appeal	3-36
[bb]	IRS Cannot Compel Taxpayer to Execute Consent Directives	3-37
[cc]	Taxpayer Despite Nonpayment of Taxes	3-37
[dd]	Court Only Has Jurisdiction Over Parties Found in District	3-37
[ee]	IRS Agent Has Authority to Issue Summons	3-38
[ff]	Summons Need Not State Actual or Ostensible Liability	3-38
¶ 3.04	Statutory Procedure for Disclosure	3-39
[1]	Notice of the Summons	3-40
[2]	Staying Compliance With Summons	3-45
[a]	Content and Address of Customer Notification	3-48
[b]	Receipt of Customer Notification	3-50
[c]	Receipt of Oral Response From Customer	3-50
[d]	Customer’s Rights When Not Notified	3-51

	[e] Who May Send Customer Notification	3-51
	[f] Financial Institution's Actions During Waiting Period	3-52
[3]	Failure of IRS to Provide Notice	3-52
[4]	Disclosures by Third Parties	3-53
[5]	Third-Party Service Organizations	3-53
[6]	Case Summaries	3-54
	[a] Summons Enforced Despite Disclosure During Waiting Period	3-54
	[b] Stays of Enforcement of Summons Pending Appeal	3-54
	[c] Failure to Provide Notification Deprived Court of Jurisdiction	3-55
	[d] No Requirement for Disclosure of the Purpose for Which Records Are Sought	3-56
	[e] Compliance Provisions After TEFRA	3-56
	[f] Geographic Scope of Summons	3-59
	[g] Once the Government Establishes Prima Facie Case, the Burden Shifts to Taxpayer	3-60
	[h] Compliance With IRS Summons Renders Motion to Quash Moot	3-63
	[i] Notice Mailed to Last Known Address	3-64
	[j] Petition to Quash Must Be Commenced Where Recordkeeper Resides or Is Found	3-64
	[k] Twenty-Day Filing Period	3-65
	[l] Taxpayer Cannot Contest Underlying Merits of Tax Investigation	3-67
	[m] Court Can Consider Enforceability of Summons Despite Failure of Taxpayer to File Timely Petition	3-67
	[n] Suit Against Commissioner Is Suit Against the IRS	3-67
	[o] Summons Enforced Despite Failure of IRS to Comply With Timing Requirements	3-67
	[p] Application of Laches to IRS	3-67
	[q] Summons Enforced Despite Procedural Issue	3-68
	[r] IRS Demand for Extensive Translation of Document Summoned	3-68
	[s] Request for Injunction Treated as Motion to Quash	3-68
	[t] Possible Sanctions for Frivolous Appeal	3-68
	[u] Taxpayer Cannot Raise Objections Personal to Financial Institution	3-69
	[v] Taxpayers Do Not Need to Be Served Attested Copies of Summons	3-69
	[w] Summons Enforceable Due to Institutional Posture of IRS	3-69
	[x] Date of Service Triggers Three-Day Notice Period	3-70
	[y] IRS Agent and IRS Not Proper Parties in Suit	3-70
¶ 3.05	Exceptions	3-71
	[1] How to Determine Whether an Exception Applies	3-72
	[2] Special Exception for John Doe Summonses	3-72
	[3] Special Exception for Emergencies	3-75
	[4] Case Summaries	3-75
	[a] Enforcement of John Doe Summons	3-75
	[b] Court Refuses to Delay Enforcement of John Doe Summons	3-76
	[c] John Doe Summons—Not Sufficient Likelihood of Tax Liability	3-76
	[d] Hearing for John Doe Summons Is Ex Parte, Not Adversarial	3-76
	[e] Summons to Determine Identity of Person With Account	3-77
	[f] Summons in Aid of Collection	3-78
	[g] John Doe Summons Not Necessary for Dual Purpose Summons	3-78
¶ 3.06	Recovery of Costs	3-78
	[1] Case Summaries	3-82
	[a] Section 7610 Does Not Cover Costs for Judicial Proceedings to Enforce Summons	3-82
	[b] Recovery of Costs Greater Than That Authorized by IRS Regulations	3-82
	[c] Failure to Tender Witness Fees Does Not Preclude Enforcement	3-83
	[d] No Attorney Fees in Premature Action to Recover Costs	3-83

	[e] Rate of Compensation Discussed	3-83
	[f] Certain Costs Permitted, Others Denied	3-83
¶ 3.07	Compliance Challenges by Financial Institutions	3-84
	[1] Objections on Behalf of the Financial Institution	3-84
	[a] Overbreadth	3-84
	[b] Insufficient Description of Customer	3-85
	[c] Insufficient Description of Records	3-85
	[d] Undue Burden on the Financial Institution	3-85
	[2] Obligation to Raise Objections on Customer's Behalf	3-86
	[3] Case Summaries	3-87
	[a] Court Enforces Summons for Records Already in IRS Possession and Indicates That IRS Willingness to Make Copies Removes Burden on Banks	3-87
	[b] Court Refuses to Enforce Show-Cause Order or to Require Bank Employee to Travel Great Distance; Court Also Provides Model Show-Cause Order	3-87
	[c] Court Provides Guidance for Raising Objections on Behalf of Financial Institution	3-88
	[d] Court Can Limit Summons to Avoid Hardship	3-88
	[e] No Attorney Fees if IRS Position Is Substantially Justified	3-88
	[f] Burden of Compliance Insufficient to Block Summons	3-89
¶ 3.08	Potential Liability of Financial Institutions	3-89
	[1] Case Summaries	3-91
	[a] No Liability for Complying With IRS Summons	3-91
	[b] Liability for Informally Providing Information to the IRS	3-92
¶ 3.09	IRS Summonses: General Considerations	3-92
	[1] Powell Tests for Enforceability	3-92
	[a] The Four Tests	3-93
	[b] Civil Investigative Purpose	3-95
	[2] Relationship to Financial Privacy Act	3-96
	[3] Relationship to Foreign Privacy Laws	3-96
	[4] Case Summaries	3-100
	[a] Relevance and Third-Party Summonses	3-100
	[b] Summons Permissible if No Justice Department Referral in Effect	3-101
	[c] Standards for Enforcement	3-101

Chapter 3 Forms and Appendices

Forms and Related Documents	F3-1
FORM 3.1 IRS Summons—IRS Copy	F3-1
FORM 3.2 Certificate of Service and Compliance	F3-2
FORM 3.3 IRS Summons—Recordkeeper Copy	F3-3
FORM 3.4 IRS Summons—Taxpayer Copy	F3-7
FORM 3.5 Taxpayer Notice	F3-9
FORM 3.6 Customer Notification by Financial Institution	F3-11
FORM 3.7 Affidavit—Custodian of Records	F3-12
FORM 3.8 Cover Letter—Submission of Records	F3-13
FORM 3.9 Customer Privacy Access Log and Information Sheet	F3-14
FORM 3.10 Reimbursement Form for Internal Revenue Service	F3-15
FORM 3.11 Contractual Language Restricting Disclosure of Customer Information	F3-16
Appendices: Regulatory and Other Resource Material	A3-1
APPENDIX 3.1 IRS Legal Reference Guide for Summonses	A3-1
APPENDIX 3.2 Final IRS Regulations for Administrative Summons	A3-19
APPENDIX 3.3 IRS Regulations on Exhaustive Administrative Remedies	A3-25

APPENDIX 3.4	IRS Nonacquiescence Statement	A3-29
APPENDIX 3.5	IRS Regulations on Designated IRS Officer or Employee Under Section 7602(a)(2) of the Internal Revenue Code	A3-31

VOLUME 2

Summary of Contents	iii
---------------------------	-----

Chapter 4

The Bank Secrecy Act

§ 4.01	Background	4-1
§ 4.02	Overview	4-5
	[1] Types of Reporting Requirements	4-7
	[2] Mechanisms for Enforcing the Bank Secrecy Act	4-12
	[3] Case Summaries	4-22
	[a] Purpose of Act Is to Make Records Available for Criminal and Tax Investigations	4-22
	[b] Primary Purpose of Reports Is to Trace White Collar Criminals	4-22
	[c] The Act Does Not Mandate That Banks Bear Retrieval Costs	4-22
	[d] Banks Can Be Required to Produce Documents Without Reimbursement	4-22
	[e] Defendant's Currency Exchange Activities Made Him a Financial Institution	4-23
	[f] Individual as Financial Institution Under Act	4-23
	[g] Currency Transaction Report Must Identify Real Party in Interest	4-23
	[h] Gift as Money Laundering Transaction	4-24
	[i] Administrative Procedure Act Violation Not Bar to Conviction	4-24
	[j] Safe Harbor Does Not Provide Complete Immunity to Financial Institutions	4-24
	[k] Bank Customers Have No Private Right of Action Under Bank Secrecy Act	4-25
	[l] Intent to Commit Crime Is Sufficient Proof of Violation	4-25
	[m] Safe Harbor Does Not Provide Immunity to Communications Between Financial Institution and Private Entities	4-26
§ 4.03	Foreign Accounts	4-26
	[1] Reporting Requirements for Foreign Accounts	4-26
	[2] Reporting Requirements for International Financial Transactions	4-28
	[3] Case Summaries	4-30
	[a] Definition of Foreign Financial Account	4-30
	[b] Enforcement of Account Disclosure Requirement	4-30
§ 4.04	Imports and Exports of Currency and Monetary Instruments	4-31
§ 4.05	Wire Transfer Requirements	4-33
§ 4.06	Transaction Recordkeeping Requirements	4-35
§ 4.07	Currency Transaction Reporting Requirements	4-36
	[1] Compliance With Currency Transaction Reporting Requirements	4-42
	[2] Efforts to Ease Compliance Burdens	4-46
	[3] Case Summaries	4-47
	[a] Customer Need Not Be Notified of, or Sign, Currency Transaction Report	4-47
	[b] Court Imposes Fine for Bank Secrecy Violations	4-48
	[c] Multiple Transactions Aggregated to Constitute Violations	4-48
	[d] Brokerage Firm Executive Violated Act	4-49
	[e] Bank Liable for Bank Secrecy Violations of Acquired Bank Prior to Merger	4-49
§ 4.08	Suspicious Activity Reports	4-49

	[1] Case Summaries	4-57
	[a] SAR Filers Are Protected by Safe Harbor Provision	4-57
	[b] Bank Designated a Party in the Transaction	4-59
	[c] SARs Exempt from FOIA Disclosure	4-59
§ 4.09	Bank Records	4-60
	[1] The “Know Your Customer” Requirement	4-60
	[a] Records Required	4-60
	[b] Exceptions to the “Know Your Customer” Requirement	4-61
	[c] Private Banking Activities	4-61
	[d] The “Know Your Customer” Debacle	4-63
	[e] Customer Verification Procedures	4-63
	[2] Comprehensive Recordkeeping	4-68
	[a] Copies of Checks and Drafts	4-68
	[b] Other Records	4-69
	[3] Case Summary	4-70
	[a] Bank Cannot Use Multiple Loans to Avoid Reporting	4-70
§ 4.10	Recordkeeping by Brokers and Dealers in Securities	4-70
	[1] Identification of Customer	4-70
	[2] Other Records	4-71
§ 4.11	Enforcement	4-71
	[1] Civil Penalties	4-71
	[2] Forfeiture	4-73
	[3] Criminal Penalties	4-75
	[4] Money Laundering and Structured Transactions	4-76
	[5] Administrative Penalties	4-81
	[6] Case Summaries	4-83
	[a] Reporting Requirement Must Be Brought to Individual’s Attention	4-83
	[b] Failure to File a Required Report Subjects an Individual to Criminal Penalties	4-83
	[c] Bank Secrecy Act Violation Leads to Forfeiture	4-84
	[d] An Individual Must Knowingly and Willfully Violate the Act	4-85
	[e] Pattern of Illegal Activity May Lead to Felony	4-85
	[f] Delay in Filing Complaint Seeking Forfeiture Does Not Violate Due Process	4-85
	[g] A Series of Violations May Be Prosecuted as Separate Felonies	4-86
	[h] Mere Transportation of Currency Is Not a Crime	4-87
	[i] “Innocent Property” Subject to Forfeiture	4-87
	[j] Degree of Knowledge Necessary for Forfeiture	4-88
	[k] Splitting Transactions to Avoid Reporting Requirements Not a Crime Under Prior Statute	4-88
	[l] Defendant Was a Financial Institution Under the Act	4-90
	[m] Structuring Constitutes a Crime Under the Act	4-90
	[n] Bank Officers Criminally Liable	4-92
	[o] Each Deposit Not Separate Crime in Structuring	4-93
	[p] Illegal Structuring Without Financial Institution	4-94
	[q] Criminal Conviction Not Double Jeopardy	4-94
	[r] Proof Required for Bank Secrecy Forfeiture	4-94
	[s] Purpose of Structuring Immaterial	4-95
	[t] Causing Institution Not to File CTR	4-95
	[u] Seizure of Funds From Interbank Account	4-96
§ 4.12	Privacy Considerations	4-96

	[1] Reports to the Secretary	4-96
	[2] Other Records	4-96
¶ 4.13	Constitutionality of the Bank Secrecy Act	4-98
	[1] Supreme Court Challenge	4-98
	[2] Case Summaries	4-99
	[a] Cash Transaction Reporting Requirement Does Not Invade Customer's Constitutional Rights	4-99
	[b] Court Upholds Constitutionality of Reporting Requirements of the Act	4-100
	[c] Supreme Court Upholds Constitutionality of Disclosure Under the Act	4-100
	[d] Bank Secrecy Act and Money Laundering Control Act Not Unconstitutionally Vague	4-100

Chapter 4 Forms and Appendixes

Selected Forms	F4-1
FORM 4.1 Report of Foreign Bank and Financial Accounts With Instructions (Form 90-22)	F4-1
FORM 4.2 Currency Transaction Report With Instructions (Form 104)	F4-9
FORM 4.3 Report of International Transportation of Currency or Monetary Instruments With Instructions (Form 105)	F4-13
FORM 4.4 Suspicious Activity Report	F4-15
FORM 4.5 Designation of Exempt Person	F4-20
FORM 4.6 Financial Institution Certification Form	F4-22
Appendixes: Regulatory and Other Reference Materials	A4-1
APPENDIX 4.1 Treasury Rules on Bank Secrecy Act Administrative Ruling System	A4-1
APPENDIX 4.2 Treasury Administrative Rulings	A4-6
APPENDIX 4.3 FDIC Summary of Annunzio-Wylie Anti-Money Laundering Act	A4-21
APPENDIX 4.4 Federal Reserve and Treasury Department Questions and Answers on Wire Transfer Rules	A4-24
APPENDIX 4.5 FinCEN Guidance on New CTR	A4-30
APPENDIX 4.6 Treasury Rules on Bank Secrecy Act Exemptions (Phase I)	A4-33
APPENDIX 4.7 FinCEN Advisory on “Safe Harbor” Court Decision	A4-48
APPENDIX 4.8 Federal Reserve Press Release and Guidelines on Private Banking Activities	A4-51
APPENDIX 4.9 FinCEN Advisory on FATF-VII Report on Money Laundering Typologies	A4-62
APPENDIX 4.10 FinCEN Guidance on “Travel” Rule	A4-78
APPENDIX 4.11 Treasury Rules on Bank Secrecy Act Exemptions (Phase II)	A4-86
APPENDIX 4.12 FinCEN Guidance on Reformed CTR Exemption	A4-99
APPENDIX 4.13 Comptroller Advisory Letter on Common BSA Compliance Deficiencies	A4-108
APPENDIX 4.14 Comptroller Bulletin on Guidance on Foreign Official Corruption	A4-110
APPENDIX 4.15 Treasury Interim Rule on Bank Secrecy Act Exemptions	A4-120
APPENDIX 4.16 FinCEN Answers to Frequently Asked Bank Secrecy Act Questions	A4-128
APPENDIX 4.17 FinCEN Ruling on Filing Currency Transaction Reports	A4-140
APPENDIX 4.18 Financial Crimes Enforcement Network; Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity	A4-143
APPENDIX 4.19 FinCEN Ruling 2001-2	A4-153
APPENDIX 4.20 Financial Crimes Enforcement Network; Anti-Money Laundering Programs; Special Due Diligence Programs for Certain Foreign Accounts	A4-155
APPENDIX 4.21 Bank Secrecy Act Examination Procedures for Customer Identification Programs	A4-176
APPENDIX 4.22 FAQs: Final CIP Rule	A4-187

Chapter 5

State Financial Privacy Laws

§ 5.01	Background	5-1
§ 5.02	Overview	5-1
§ 5.03	State Constitutions	5-4
	[1] Search-and-Seizure Provisions	5-4
	[2] General Privacy Guarantees	5-6
§ 5.04	State Common Law	5-9
	[1] Invasion of Privacy	5-9
	[2] Defamation	5-11
	[3] Implied Contract	5-12
	[a] The Tournier Decision	5-12
	[b] American Decisions	5-13
	[c] Scope of American Common-Law Duty of Confidentiality	5-19
	[4] Case Summaries	5-19
	[a] Reasonable Expectation of Privacy Under State Constitutions	5-19
	[b] State Constitution Requires That Bank Provide Reasonable Notice and Opportunity to Object to Disclosure	5-25
	[c] State Constitutional Provision Establishes General Privacy Protection	5-26
	[d] Constitutional Privacy Protections Provide Cause of Action Against Private Institutions	5-26
	[e] Banks Requesting Information on Noncustomer Is Not an Invasion of Privacy	5-26
	[f] No Invasion of Privacy by Person Acting Within the Scope of a Legitimate Business Interest	5-27
	[g] Lender's False Report to Credit Bureau Was Libel, Per Se	5-27
	[h] Bank Held Liable for Negligent Dissemination of Incorrect Information	5-27
	[i] Bank May Be Held Liable for Implied Duty Not to Disclose Information to Third Parties	5-27
	[j] State Privacy Provisions Preempted by IRS Tax Privacy Provisions	5-29
	[k] Publication of Financial Assets Is Not Defamation	5-30
	[l] Accurate Credit Card Bulletin Is Not Libelous	5-30
	[m] No Violation of State Constitutional Privacy Provisions	5-30
	[n] Duty of Confidentiality Does Not Extend to Debtor-Creditor Relationship	5-32
	[o] Breach-of-Confidentiality Should Be Determined by State Courts	5-33
	[p] Discovery of Records of Nonparties	5-34
	[q] State Privacy Rights Examined	5-35
	[r] Bank Employee Wrongfully Terminated for Refusing to Disclose Customer Information	5-36
	[s] Privacy Rights Can Limit Scope of Discovery	5-36
	[t] No Allegation of Harm	5-36
	[u] No Expectation of Privacy in Statements Made to Insurance Company	5-37
	[v] No Invasion of Privacy When Information Obtained Is Generally Known by Others	5-37
	[w] South Carolina Does Not Recognize Action for Negligent Enablement of Imposter Fraud	5-37
	[x] Sealed Court Records Without Analysis on a Document-by-Document Basis Is Unconstitutional	5-38
	[y] Privacy Interest in Banking Records Protected by State Constitution	5-38
	[z] Right to Financial Privacy Act Does Not Recognize a Fourth Amendment Privacy Interest in Bank Records	5-39
	[aa] No Reasonable Expectation of Privacy in Records Held by Third Parties	5-40
	[bb] Deposit Accounts Protected Under State Law	5-41
§ 5.05	Financial Privacy Statutes	5-42
	[1] Coverage of Financial Institutions	5-44

[2]	Coverage by Types of Requestors	5-45
[3]	Customers Covered by State Privacy Provisions	5-46
[4]	Methods of Access to Confidential Information	5-47
[5]	Sanctions for Violation	5-53
[6]	Cost Recovery	5-55
[7]	Overview	5-56
[8]	Case Summaries	5-56
	[a] State Financial Privacy Statute Ineffective Against Federal Agency	5-56
	[b] Customer Right to Enforce State Privacy Statute	5-57
	[c] Government Authority Under State Privacy Statute	5-57
	[d] Challenge of Subpoena Under State Privacy Statute	5-57
	[e] Challenge of Discovery Order Under State Privacy Statute	5-59
	[f] Court Conditions Enforcement of Subpoena on Government Payment of Costs	5-59
	[g] Right to Access Despite Statutory Restriction	5-59
	[h] Federal Statute Does Not Authorize Disclosure to State or Local Agency	5-60
	[i] Plaintiffs' Rights Infringed by Having Private Affairs Publicized	5-60
	[j] Oral Disclosure of Customer Phone Number and Account Number Does Not Constitute Disclosure of Financial Record Information	5-60
	[k] Privacy of Government Employee Records Under State Statute	5-61
§ 5.06	State Information Security Laws	5-61
	[1] California Law a Model for State Notification Laws	5-62
	[2] Notification Laws That Apply to Paper Records	5-66
	[3] "Data Elements" Covered by State Notification Laws	5-66
	[4] State Laws That Require Notice to Regulators	5-67
	[5] Safe-Harbor Provisions and Exemptions From Notification Requirements	5-68
	[6] California Guidance on Security Breach Notification	5-69
	[7] Other State Data Security Laws Relating to Personal Information	5-70
	[8] Laws Imposing Merchant Liability for Certain Security Breach Incidents	5-73
§ 5.07	State Statutes Permitting Security Freeze on a Credit Report File	5-74
§ 5.08	State Statutes Restricting or Prohibiting the Use of Social Security Numbers	5-79
	[1] California Guidance on Protecting Confidentiality of Social Security Numbers	5-83
	[2] Case Summary	5-83
	[a] Privacy Interest Outweighs Interest in Accessing SSNs	5-83
§ 5.09	State Laws Restricting Dissemination of Examination Reports	5-84
§ 5.10	Fair Credit Reporting Laws	5-89
	[1] Coverage	5-90
	[2] Obligations of Consumer Reporting Agencies	5-90
	[3] Obligations of Users	5-93
	[4] Obligations of Reporting Institutions	5-94
	[5] Case Summaries	5-95
	[a] Court Strikes Down Portions of State Statute on First Amendment Grounds	5-95
	[b] Free Speech vs. Privacy	5-95
	[c] Request for Spouse's Credit Information Permitted Under State Law	5-96
	[d] Statute of Limitations Is Inapplicable When There Is No Breach of Duty	5-96
§ 5.11	Credit Card Information	5-97
	[1] State Statutes Restricting Disclosure of Credit Card Information	5-97
	[2] Zip Code Information	5-97
§ 5.12	State Internet Privacy Statutes	5-98
	[1] Case Summaries	5-99

	[a] No Fourth Amendment Privacy Interest in Personal Information Provided to ISP	5-99
	[b] Identifying Data in the Possession of ISP Is Protected	5-100
§ 5.13	Federal Preemption	5-101
	[1] Preemption of Financial Privacy Laws	5-101
	[2] Preemption of Laws That Affect Credit Reporting	5-104
	[3] Case Summaries	5-105
	[a] No Preemption if Simultaneous Compliance With Federal and State Law Is Possible	5-105
	[b] Inconsistent State Restrictions Are Preempted by the FCRA	5-106
	[c] Fair Credit Reporting Act Preempts Defamation of Credit Reputation Claim	5-106
	[d] Federal Statute Precludes Liability Under State Law	5-107
	[e] FCRA Does Not Preclude Award of Attorney Fees Under State Law	5-107
	[f] Federal Statute Provides for Enforcement of State Law	5-107

Chapter 5 Forms

Selected Forms	F5-1
FORM 5.1 Sample Privacy Response Letter for Credit Card Accounts	F5-1
FORM 5.2 Sample Statement Regarding Disclosure of Customer Information: Application Form	F5-2
FORM 5.3 Sample Statement Regarding Disclosure of Customer Information: Customer Account Agreement	F5-3
FORM 5.4 Sample Statement Regarding Disclosure of Information: Commercial Loan Agreement	F5-4
FORM 5.5 Sample Nondisclosure Provisions From Confidentiality Agreement	F5-5

Chapter 6

Fair Credit Reporting Act

§ 6.01	Overview	6-1
§ 6.02	The Electronic Fund Transfer Act	6-1
	[1] Disclosure Requirements	6-3
	[2] Drafting Disclosures	6-4
	[3] Case Summary	6-4
	[a] Consumer Defined	6-4
§ 6.03	Technology-Related State Privacy Laws	6-4
	[1] Case Summary	6-7
	[a] California Privacy Act	6-7
§ 6.04	Computer Privacy	6-8
	[1] Comprehensive Crime Control Act of 1984	6-8
	[2] Computer Fraud and Abuse Act of 1986	6-9
	[3] Identity Theft and Assumption Deterrence Act of 1998	6-11
	[4] Child Online Protection Act of 1998	6-16
	[5] Children's Online Privacy Protection Act of 1998	6-17
	[6] Case Summaries	6-21
	[a] Federal Interest Computer	6-21
	[b] Computer Fraud and Abuse Act	6-22
	[c] Internet Privacy	6-31
	[d] Identity Theft	6-32
	[e] Child Online Protection Act	6-33
§ 6.05	Electronic Communications Privacy	6-34

[1]	Interception of Communications	6-35
[2]	Access to Storage Facilities	6-38
[3]	Government Access to Electronic Communication Facilities	6-40
[4]	Case Summaries	6-41
[a]	Cellular Phone System Did Not Violate ECPA	6-41
[b]	Interception of Cordless Phone Calls	6-42
[c]	Telephone Company Was “Other Party” Entitled to Immunity	6-43
[d]	Communication Taped by Confederates	6-43
[e]	Willful Interception of Communication	6-43
[f]	Conversations Overheard Orally Not Intercepted	6-43
[g]	Seizure of Electronic Wire Transfers Does Not Violate Act	6-43
[h]	Standing Under the Electronic Communications Privacy Act	6-43
[i]	Civil Suits Against Government Entities	6-44
[j]	Statutory Penalties	6-44
[k]	No First Amendment Right to Send E-Mail	6-44
[l]	Copying E-Mail Not a Violation Under ECPA	6-44
[m]	Protection of Electronic Communications Under the Wiretap Act	6-45
[n]	Personal Information Collected by Cookies Does Not Violate ECPA	6-46
[o]	Information Collected by Third-Party Monitoring Service Violates ECPA	6-47
[p]	Third-Party Monitoring Service Did Not Intentionally Collect Information	6-47
[q]	ECPA Protects How Information Is Obtained, Not How It Is Used	6-48
[r]	Pre-Trial Subpoenas Barred by ECPA	6-49
[s]	Employer Monitoring of Personal Phone Calls Violates ECPA	6-50
[t]	Video Surveillance Not Covered by ECPA	6-50
[u]	No Contractual Agreement Needed for Claims Under ECPA	6-50
[v]	No Private Right of Action Under ECPA	6-51
[w]	Private Right of Action Under ECPA	6-52
[x]	Release of Information Was Intentional Because It Was Not Inadvertent	6-52
[y]	ISP’s Retention of E-Mail Sent to Closed Account Is Not Unlawful ECPA Interception	6-53
[z]	Wiretap Act Does Not Provide Suppression for E-Mail Obtained Illegally	6-53
[aa]	Access to an Employee’s Electronic Communications	6-54
[bb]	ECPA Provision Violates Fourth Amendment Rights	6-55
[cc]	Cell Site Data is Subject to Probable Cause Standard	6-56
[dd]	Damage Is Necessary for Claim Under the CFAA	6-57
[ee]	Files E-Mailed With Intent to Misuse Data May Violate CFAA	6-57
[ff]	Unauthorized Access to Web Site Protected by Hypertext Link Does Not Violate SCA	6-58
[gg]	Lost Profits and Commercial Advantage Not Covered Under CFAA	6-59
[hh]	Liability Limited to Communications Service Providers	6-60
[ii]	Account Holders May Quash Subpoenas Served on Social Network	6-60
¶ 6.06	Cable Communications Act	6-61
[1]	Case Summaries	6-63
¶ 6.07	Privacy Rights in Electronic Commerce and the National Information Infrastructure	6-63
¶ 6.08	Regulatory Guidance and Initiatives Relating to Online Privacy and Security	6-67
[1]	Federal Trade Commission	6-67
[2]	Federal Deposit Insurance Corporation	6-90
[3]	Office of the Comptroller of the Currency (OCC) and the Department of the Treasury	6-98
[4]	The Board of Governors of the Federal Reserve System (FRB)	6-103
[5]	Office of Thrift Supervision (OTS)	6-104
[6]	Federal Financial Institutions Examination Council	6-104
[7]	Government Accountability Office (GAO)	6-111

Chapter 6 Appendixes

Appendixes: Regulatory and Other Resource Material	A6-1
APPENDIX 6.1 Board of Governors of the Federal Reserve System, Letter of Chairman Alan Greenspan in Response to Questions Relating to Cross-Marketing by The Honorable Edward J. Markey (July 28, 1998)	A6-1
APPENDIX 6.2 Federal Trade Commission Announces ID Theft Affidavit (February 5, 2002)	A6-6
APPENDIX 6.3 Federal Deposit Insurance Corporation Financial Institution Letter FIL-8-2002, Wireless Networks and Customer Access (February 1, 2002)	A6-15
APPENDIX 6.4 Federal Deposit Insurance Corporation Financial Institution Letter FIL-30-2003, Weblinking (April 23, 2003)	A6-21

Chapter 7

International Aspects of Financial Privacy

§ 7.01 Overview	7-1
§ 7.02 OECD Privacy Guidelines	7-2
§ 7.03 EU Privacy Directive	7-3
§ 7.04 Safe Harbor Arrangement	7-5
§ 7.05 Canada	7-8
§ 7.06 Japan	7-9
§ 7.07 Implications for Global Financial Institutions	7-10

Chapter 7 Appendixes

Appendixes: Regulatory and Other Resource Material	A7-1
APPENDIX 7.1 OECD Guidelines for the Security of Information Systems and Networks	A7-1
APPENDIX 7.2 Council of Europe Treaty	A7-15
APPENDIX 7.3 OECD Privacy Guidelines	A7-22
APPENDIX 7.4 Directive of the European Parliament and of the Council on Personal Data Privacy	A7-40
APPENDIX 7.5 European Commission Decision on Standard Contractual Clauses for Controllers	A7-62
APPENDIX 7.6 European Commission Decision on Standard Contractual Clauses for Processors	A7-75
APPENDIX 7.7 Department of Commerce International Safe Harbor Privacy Principles (July 21, 2000)	A7-86
APPENDIX 7.8 European Commission Decision on Alternative Standard Contractual Clauses	A7-89
APPENDIX 7.9 Working Document Setting Up a Framework for the Structure of Binding Corporate Rules	A7-100
APPENDIX 7.10 Working Document Setting Up a Table With the Elements and Principles to Be Found in Binding Corporate Rules	A7-111
APPENDIX 7.11 Working Document on Frequently Asked Questions (FAQs) Related to Binding Corporate Rules	A7-118

Chapter 8

Financial Institutions and the Freedom of Information Act

§ 8.01 The Freedom of Information Act	8-1
[1] Background	8-1

[2]	FOIA Exemptions	8-2
[3]	Case Summaries	8-4
[a]	Film Is a Record for Purposes of FOIA	8-4
[b]	Personnel Records of Two Convicted Federal Inspectors Released Despite FOIA Exception	8-4
[c]	Confidential Financial Records of Park Commissioners Not Produced Because of Competition	8-4
[d]	NLRB Memoranda Producing in Decided or Closed Labor Practices Disputes	8-4
[e]	Air Force Ethics Case Summaries Produced With Names Removed	8-5
[f]	Exemption 2: Internal Records	8-5
[g]	Exemption 4: Trade Secrets and Commercial and Financial Information	8-5
[h]	Exemption 5: Interagency or Intra-Agency Documents	8-8
[i]	The IRS Code and FOIA	8-9
[j]	Exemption 6: Personal Privacy	8-9
[k]	Exemption 7: Investigatory Records	8-14
[l]	Proper Venue for FOIA Suit	8-16
[m]	Description of Agency Required Under FOIA	8-16
[n]	Attorney Fees Under FOIA	8-16
[o]	Congressional Savings Clause	8-17
¶ 8.02	Access to Banking Information Under FOIA	8-17
[1]	Exemptions From Disclosure	8-18
[a]	Specific Statutory Exemptions	8-18
[b]	Trade Secrets and Other Confidential Information	8-18
[c]	Privileged Agency Memoranda	8-19
[d]	Invasion of Personal Privacy	8-20
[e]	Information From Examination Reports	8-20
[2]	Release of Information Despite FOIA Exemption	8-26
[3]	Case Summaries	8-26
[a]	Exemption 8 Was Broadly Designed by Congress to Protect the Financial Industry	8-26
[b]	Records on Closed Banks Withheld Because of Potential Adverse Impact on Financial Industry	8-27
[c]	State Records in FDIC Possession Fall Within Exemption 8	8-27
[d]	Agency Regulations Cannot Authorize Release of Records Exempted by FOIA	8-28
[e]	FOIA Exemptions Are Not an Absolute Bar to Release	8-28
[f]	FOIA Does Not Enjoin Agency Disclosure of Records	8-28
[g]	SEC Is Financial Institution Under FOIA	8-29
[h]	Partial Release in Other Proceedings Does Not Eliminate FOIA Exemption	8-29
[i]	Disclosure of Examination Reports and Related Information	8-29
[j]	Request for Testimony and Documents Not Covered by OCC FOIA Request	8-33
[k]	FOIA Access Denied for SBA Documents for Guaranteed Bank Loan	8-33
[l]	Court Protects Examination Report but Not Related Materials	8-33
[m]	Investigatory Records Exemption and Banking Agency Information	8-34
[n]	Personal Privacy Exemption and Agency Records	8-34
[o]	Examination Report Prepared by Agency Falls Within Eighth FOIA Exemption	8-34
[p]	Fact of Loans Are Not Protected by Exemption 4	8-35
¶ 8.03	FOIA and the Privacy Act of 1974	8-35
[1]	Background	8-35
[2]	Coverage	8-36
[3]	Privacy Protections	8-36
[4]	Restrictions on Information Collection	8-37

	[5] Restrictions on Information Use and Disclosure	8-37
	[6] Accuracy of Information	8-38
	[7] Access to Records	8-38
	[8] Case Summaries	8-39
	[a] The Privacy Act and Grand Jury Information	8-39
	[b] Privacy Act Exemption and FOIA	8-40
	[c] Meaning of “Disclose” in Privacy Act	8-40
¶ 8.04	The Computer Matching and Privacy Protection Act of 1988	8-40
¶ 8.05	Preserving Confidentiality When Submitting Records	8-42
	[1] Procedures in Submitting Records	8-42
	[2] Fees for Requests Under FOIA	8-43
	[3] Types of Requesters	8-43
	[4] Waiving Fees	8-44
¶ 8.06	Using FOIA to Obtain Records From Agencies	8-44
	[1] Federal Deposit Insurance Corporation	8-47
	[2] The Office of the Comptroller of the Currency	8-49
	[3] Federal Reserve Board	8-51
	[4] Office of Thrift Supervision	8-52
	[5] National Credit Union Administration	8-53
¶ 8.07	Attorney Fees Under FOIA	8-54

Chapter 8 Forms and Appendixes

Forms and Related Documents	F8-1
FORM 8.1 Sample Justice Department FOIA Request Letter	F8-1
FORM 8.2 Sample Federal Deposit Insurance Corporation FOIA Request Letter	F8-2
FORM 8.3 Sample Federal Reserve Board FOIA Request Letter	F8-3
FORM 8.4 Sample HUD FOIA Request Letter	F8-4
FORM 8.5 Sample Comptroller of the Currency FOIA Request Letter	F8-5
FORM 8.6 Sample Office of Thrift Supervision FOIA Request Letter	F8-6
FORM 8.7 Sample FOIA Request Letter	F8-7
FORM 8.8 Sample FOIA Appeal Letter	F8-8
FORM 8.9 Sample Privacy Act Request for Access Letter	F8-9
FORM 8.10 Sample Privacy Act Denial of Access Appeal Letter	F8-10
FORM 8.11 Sample Privacy Act Request to Amend Records Letter	F8-11
FORM 8.12 Sample Privacy Act Appeal of Refusal to Amend Records Letter	F8-12
Appendixes: Regulatory and Other Resource Material	A8-1
APPENDIX 8.1 Federal Deposit Insurance Corporation Regional Offices	A8-1
APPENDIX 8.2 Office of Thrift Supervision Regional Offices	A8-2
APPENDIX 8.3 Federal Reserve Banks	A8-3
APPENDIX 8.4 National Credit Union Administration Regional Offices	A8-5
APPENDIX 8.5 District Offices of the Comptroller of the Currency	A8-6
APPENDIX 8.6 Justice Department Letter—New Fee Waiver Policy Guidance	A8-7
APPENDIX 8.7 Executive Order on FOIA Predislosure Notification	A8-14
APPENDIX 8.8 Federal Reserve Board Bank Holding Company Application— Confidentiality Statement (FRB Form FR Y-3)	A8-16
APPENDIX 8.9 OTS Regulation on Release of Unpublished Information	A8-17
APPENDIX 8.10 Executive Order on Improving Agency Disclosure of Information	A8-35

Chapter 9

Federal Financial Institution Privacy Law

§ 9.01	Disclosure of Nonpublic Personal Information	9-1
[1]	Key Definitions	9-1
	[a] Financial Institution	9-1
	[b] Nonpublic Personal Information	9-7
	[c] Affiliate	9-9
	[d] Consumer	9-9
	[e] Customer	9-10
[2]	Dual Notice Obligations for Sharing of Information With Nonaffiliated Third Parties	9-11
	[a] Affiliated Financial Institutions	9-13
	[b] Joint Accounts	9-13
	[c] Opt-Out Notice Not Required for Each Disclosure of Information	9-13
[3]	Mandatory Disclosure of Privacy Policy	9-13
	[a] Information to Be Included in Disclosure	9-14
	[b] Clear and Conspicuous Manner	9-19
	[c] Method of Delivery	9-20
	[d] Differing Disclosures	9-21
	[e] Affiliated Financial Institutions	9-21
	[f] Time of Establishing a Customer Relationship	9-21
	[g] Annual Privacy Policy Requirement	9-25
	[h] Revised Privacy Policies	9-26
	[i] Improving Privacy Policies	9-26
[4]	Key Exceptions to Privacy Requirements	9-31
	[a] Servicers and Processors	9-31
	[b] Joint Agreements	9-31
	[c] Necessary to Effect, Administer, or Enforce a Transaction	9-32
	[d] Consent of Customer	9-32
	[e] Private Label Programs	9-32
	[f] Other Statutory Exceptions	9-33
	[g] Additional Regulatory Exceptions	9-33
[5]	Redisclosure and Reuse Restriction	9-33
[6]	Disclosure of Account Numbers for Marketing Purposes	9-35
[7]	Enforcement of Privacy Requirements	9-36
[8]	Rulemaking Under the Financial Privacy Law	9-37
	[a] FCRA Rules	9-37
	[b] Implementing Rules for the Financial Privacy Law	9-38
	[c] Case Law on Financial Privacy Rules	9-39
[9]	FCRA Examination Amendment	9-40
[10]	Relationship of the FCRA and the Financial Privacy Law	9-40
	[a] FCRA Affiliate Marketing Limitations	9-41
[11]	Relationship of the Financial Privacy Law to State Law	9-42
	[a] FTC Determinations on State Laws	9-47
[12]	Extensive Information Sharing Study	9-48
[13]	Case Summaries	9-49
	[a] Limitation on Redislosure of Information	9-49
	[b] Bank Must Disclose “Blind Data” in Response to Discovery Request	9-50
	[c] OCC Preemption Determination Does Not Create a Regulatory Conflict Under the GLBA	9-51

- [d] State Law Is Preempted 9-51
- [e] Definition of “Financial Institution” 9-54
- [f] Attorneys Are Not “Financial Institutions” Under the Financial Privacy Law 9-54
- [g] Consumer Credit Agencies Are “Financial Institutions” Under the Financial Privacy Law 9-55
- [h] Disclosure of Information Permitted for Discovery Purposes 9-56
- [i] Enforcement of Subpoena Under the Financial Privacy Law 9-58
- [j] Damage Required for Data Breach Negligence Claim 9-59
- [k] Permitting Employee to Keep Unencrypted Data on Laptop Does Not Violate GLBA 9-60
- [l] No Private Right of Action Under the Financial Privacy Law 9-61
- § 9.02 Data Security Standards** 9-61
 - [1] Standards for Safeguarding Customer Information 9-61
 - [a] Enforcement Actions 9-66
 - [b] FCRA Red-Flags Requirements 9-75
 - [2] Guidance on Response Programs for Unauthorized Access to Customer Information 9-76
 - [3] Interagency Guidance on Establishing Information Security Standards 9-78
 - [4] Additional Agency Guidance 9-78
 - [5] Executive Guidance Relating to Identity Theft and Data Security 9-83
- § 9.03 Fraudulent Access to Customer Financial Information** 9-85
 - [1] Definitions 9-85
 - [a] Financial Institution 9-85
 - [b] Customer and Customer Information of a Financial Institution 9-86
 - [2] Criminal Prohibitions 9-86
 - [a] No Intent Standard 9-87
 - [3] Exceptions 9-87
 - [4] Criminal Penalties 9-88
 - [5] Enforcement and Agency Review 9-88
 - [6] Relationship to State Law 9-89
 - [7] Study of the Effectiveness of the Information Broker Fraud Law 9-89

Chapter 9 Forms and Appendixes

- Forms and Related Documents** F9-1
 - FORM 9.1 Agencies’ Final Model Privacy Form F9-1
- Appendixes: Regulatory and Other Resource Material** A9-1
 - APPENDIX 9.1 House Banking and Financial Services Committee Statement on HR10 A9-1
 - APPENDIX 9.2 House Banking and Financial Services Committee Statement on Consumer Privacy Protections A9-3
 - APPENDIX 9.3 House Press Release on Approval of Roukema Privacy Provisions A9-4
 - APPENDIX 9.4 Senate Banking Committee Statement on Passage of Financial Services Modernization A9-5
 - APPENDIX 9.5 House Banking and Financial Services Committee Statement on Major Provisions of the Gramm-Leach-Bliley Act of 1999 A9-6
 - APPENDIX 9.6 Senate Banking Committee Statement on Time Line of the Gramm-Leach-Bliley Act A9-8
 - APPENDIX 9.7 Sections 502 through 527 of Title V—Privacy (GLB Act) A9-9
 - APPENDIX 9.8 Colloquy on Title V A9-20
 - APPENDIX 9.9 Colloquy on Title V, Section 502(B) A9-21
 - APPENDIX 9.10 Excerpts from November 3 and 4, 1999, Congressional Record on Title V Privacy Provisions A9-22
 - APPENDIX 9.11 Colloquy on Privacy Title A9-26

APPENDIX 9.12	Excerpts From the Joint Committee on Conference— Title V—Privacy	A9-27
APPENDIX 9.13	Colloquy on Title V, Section 502(d)	A9-30
APPENDIX 9.14	Colloquy on Title V, Section 507	A9-31
APPENDIX 9.15	Comptroller of the Currency Advisory Letter on Privacy Preparedness	A9-32
APPENDIX 9.16	Comptroller of the Currency Bulletin on Guidelines Establishing Standards for Safeguarding Customer Information	A9-39
APPENDIX 9.17	Agencies' Questions and Answers on Privacy Regulation Compliance	A9-42
APPENDIX 9.18	Agencies' Letter Regarding Limits on Disclosing Account Numbers	A9-77
APPENDIX 9.19	Federal Reserve Examiner Guidance on Standards for Safeguarding Customer Information	A9-79
APPENDIX 9.20	Agencies' Brochure on Privacy Choices for Your Personal Financial Information	A9-85
APPENDIX 9.21	Agencies' Letter on Disclosing Loan Numbers on Recorded Documents	A9-92

Table of Cases

Index