

Regulatory Analysis Form

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REGULATORY
REVIEW COMMISSION



(1) Agency

Insurance Department

(2) I.D. Number (Governor's Office Use)

11-206

IRRC Number: #2179

(3) Short Title

Privacy of Consumer Financial Information Regulation

(4) PA Code Cite

31 Pa. Code, Chapter 146a,
§§146a.1-146a.45

(5) Agency Contacts & Telephone Numbers

Primary Contact: Peter J. Salvatore, Regulatory Coordinator,
1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429
Secondary Contact:

(6) Type of Rulemaking (check one)

- Proposed Rulemaking
- Final Order Adopting Regulation
- Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
- Yes: By the Attorney General
- Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The purpose of this proposed rulemaking is to adopt Chapter 146a in order to implement the privacy requirements for nonpublic financial information set forth in Title V of the Gramm-Leach-Bliley Act (GLBA) (P.L. 102-106; 15 U.S.C. §§ 6801 et seq.). Title V of GLBA requires various state and federal regulators of the financial services industries to promulgate regulations for their respective regulated communities. For example, the federal banking regulators (the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS) and the Board of Governors of the Federal Reserve System (BGFRS)) have already promulgated final form regulations pertaining to the privacy of nonpublic personal financial information when such information is collected by the various federal banking entities within their regulatory jurisdiction. This regulation generally requires that initial and annual notices be provided to insurance customers and consumers that explain a licensee's privacy policies with respect to its disclosure of nonpublic personal financial information. The regulation also requires that insurance customers and consumers be given an opportunity to opt out of such disclosures.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The Insurance Department (Department) proposes to adopt §§ 146a.1-146a.45 to read as set forth in Annex A. The proposal is made under the general rulemaking authority of §§ 205, 506, 1501 and 1502 of the Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412), and under the guidance of § 648 of The Insurance Department Act of 1921 (40 P.S. §§ 288), as amended by Act 40 of 1997 (P.L. 349, No. 40). Likewise, this proposal is made pursuant to the Department's rulemaking authority under the Unfair Insurance Practices Act (40 P.S. §§ 1171.1 et seq.) (as such authority is further explained in PALU v. Insurance Department, 371 A.2d 564 (Pa. Cmwlth. 1977)).

Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Yes. This proposed rulemaking is to implement the privacy requirements for nonpublic financial information set forth in Title V of the Gramm-Leach-Bliley Act (GLBA) (P.L. 102-106; 15 U.S.C. §§ 6801 et seq.).

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The Insurance Department seeks to adopt Chapter 146a, §§146a.1-146a.45 not only to avoid federal preemption of insurance privacy and various other consumer protection issues, but also to ensure that the insurance consumers and customers of the Commonwealth have the ability to protect the privacy of their nonpublic personal financial information. Thus, it is in the public interest to adopt these regulatory requirements so that insurance consumers and customers are able to make informed judgments and decisions pertaining to the dissemination of their nonpublic personal financial information.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

There are no public health, safety, environment or general welfare risks associated with this rulemaking.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The Commonwealth's insurance consumers and customers will benefit from this regulation to the extent that it requires licensees of the Department to provide such consumers and customers with details regarding how the licensee disseminates nonpublic personal financial information, and to the extent that it requires licensees of the Department to provide insurance consumers and customers with an opportunity to opt out of certain disclosures.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

Besides the administrative costs imposed on the Department's licensees for implementing this regulation, there will be no adverse effects on any party as a result of the adoption of this regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

The regulation applies to all "licensees" of the Department which is defined in the regulation as licensed insurers, as defined in section 201-A of the act (40 P.S. § 65.1-A), insurance producers and other persons or entities licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to the act, including health maintenance organizations holding a certificate of authority pursuant to section 201 of the Health Care Facilities Act (35 P.S. § 448.201). The term "licensee" does not include: Bail Bondsmen as defined in 42 Pa.C.S.A. § 5741 (relating to definitions), Motor Vehicle Physical Damage Appraisers as defined in 63 P.S. § 852 (relating to definitions) and § 62.1 (relating to definitions), Public Adjusters as defined in 63 P.S. § 1601 (relating to definitions) and § 115.1 (relating to definitions), and an entity providing continuing care as defined in section 3 and licensed pursuant to section 4 of the Continuing-Care Provider Registration and Disclosure Act (40 P.S. §§ 3203 and 3204).

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The Department, on November 8, 2000, held an outreach meeting with various members of the Commonwealth's insurance industry that could be affected by this rulemaking. The purpose of the meeting was to discuss the NAIC model and the Department's intent to base its privacy rulemaking on such model, as well as to solicit comments from these groups. Written comments were submitted by the following entities and, where applicable, were considered during the design of this proposed rulemaking: the National Association of Independent Insurers (NAII), American Family Life Assurance Company of Columbus (AFLAC), Pennsylvania Association of Health Underwriters (PAHU), Independent Insurance Agents of Pennsylvania/Pennsylvania Association of Insurance and Financial Advisors (IIAP/PAIFA), Managed Care Association of Pennsylvania (MCAP), Capital Blue Cross (CBC), Pennsylvania Bankers Association (PBA), Blue Cross of Northeastern Pennsylvania (BCNP), Alliance of American Insurers (AAI), Pennsylvania Association of Mutual Insurers (PAMIC), Independence Blue Cross (IBC), and the Insurance Federation of Pennsylvania, Inc. (IFP). These groups submitted pre-proposal comments to the Department, and their comments and the Department's reaction to those comments are included in the Preamble to the proposed rulemaking.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures, which may be required.

With respect to the licensees covered by the regulation, such entities will have costs associated with the implementation and administration of the notice and opt out requirements included in this regulation. The Department is unable to provide a specific estimate of the costs associated with compliance with this regulation, as such costs can vary dramatically depending upon the number of insurance consumers and customers serviced by the licensee.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures, which may be required.

There are no costs or savings to local governments associated with this rulemaking.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures, which may be required.

There are no costs or savings associated to state government associated with this rulemaking.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years. N/A

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

N/A.

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(20b) Provide the past three-year expenditure history for programs affected by the regulation.
N/A.

Program	FY -3	FY -2	FY -1	Current FY

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

This regulation implements and further explains the statutory financial information privacy requirements set forth in Title V of the GLBA (P.L. 102-106; 15 U.S.C. §§ 6801 *et seq.*). Thus, all insurers would have to comply with the general privacy requirements of the GLBA, regardless of this regulation. Also, the benefits provided to insurance consumers and customers with regard to the augmented protection of their financial information privacy outweigh any administrative and implementation costs that might be borne by licensees of the Department.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

No nonregulatory alternatives were considered by the Department because Title V of the GLBA explicitly requires state insurance agencies to promulgate privacy regulations or risk federal preemption of insurance privacy issues and certain consumer protection matters. Because the Department is implementing the NAIC model, this regulation represents the most efficient and consistent method to implement the general privacy requirements of the GLBA.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No other regulatory schemes were considered because the various state insurance regulators have expressed a commitment to adopting and implementing the NAIC model. Therefore, in the interest of uniformity among the various state insurance regulators, no alternative regulatory schemes were considered.

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(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

Yes. Because of the existing privacy standards found in Act 40 of 1997 (40 P.S. § 288), the Department was required to modify the NAIC model and the federal standards found in the regulations adopted by the federal banking regulators for financial institutions. These modifications include a requirement that an opt out be obtained from consumers and customers before nonpublic personal financial information may be shared with both affiliates and nonaffiliates. Also, because banks are required to provide two opt-out notices pursuant to 40 P.S. § 288, this additional requirement was replicated in the regulation. However, both of these modifications provide greater privacy protection to the Commonwealth's insurance consumers and customers.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

This rulemaking will not put Pennsylvania at a competitive disadvantage with other states. In fact, besides the few changes that were required in order to avoid running afoul of the statutory privacy requirements found at 40 P.S. § 288, this rulemaking closely follows the NAIC model that most state insurance regulators have expressed a commitment to implementing.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No. At this time, the adoption of the regulation does not affect existing or proposed regulations of this agency or any other state agency.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No public hearings or informational meetings are anticipated.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports, which will be required as a result of implementation, if available.

The adoption of the regulation does impose additional paperwork and record keeping requirements on the Department's licensees. However, as mentioned above, this additional requirement would also be required under Title V of the Gramm-Leach-Bliley Act (GLBA) (P.L. 102-106; 15 U.S.C. §§ 6801 et seq.), regardless of the promulgation of this regulation. The additional paperwork and record keeping would entail providing annual and initial notices to insurance consumers and processing and tracking any opt out requests.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The rulemaking will have no effect on special needs of affected parties.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

In order to avoid the threat of federal preemption of insurance privacy and consumer protection matters, this rulemaking will have an effective date of July 1, 2001, as previously stated in Department Bulletin No. 2000-08.

(31) Provide the schedule for continual review of the regulation.

The Department reviews each of its regulations for continued effectiveness on a triennial basis.

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Copy below is hereby approved as to
form and legality. Attorney General

By: 
(Deputy Attorney General)

MAR 20 2001

Date of Approval

→ Check if applicable.
Copy not approved. Objections
attached.

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copy of a document issued, prescribed or promulgated
by:

Insurance Department

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 11-206

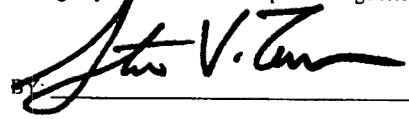
DATE OF ADOPTION: _____

BY: 
M. Diane Koken

Insurance Commissioner

TITLE: _____
(EXECUTIVE OFFICER, CHAIRMAN OR
SECRETARY)

Copy below is hereby approved as to form and
legality. Executive or Independent Agencies

By: 

2/26/01

DATE OF APPROVAL

(DEPUTY GENERAL COUNSEL)
~~(CHIEF COUNSEL, INDEPENDENT AGENCY)~~
(STRIKE INAPPLICABLE TITLE)

→ Check if applicable. No Attorney General
approval or objection within 30 days after
submission.

NOTICE OF PROPOSED RULEMAKING

INSURANCE DEPARTMENT

31 Pa. Code, Chapter 146a
§§146a.1-146a.45

Privacy of Consumer Financial Information Regulation

Preamble

The Insurance Department (Department) proposes to adopt §§ 146a.1-146a.45 to read as set forth in Annex A. The proposal is made under the general rulemaking authority of §§ 205, 506, 1501 and 1502 of the Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412), and under the guidance of § 648 of The Insurance Department Act of 1921 (40 P.S. §§ 288), as amended by Act 40 of 1997 (P.L. 349, No. 40). Likewise, this proposal is made pursuant to the Department's rulemaking authority under the Unfair Insurance Practices Act (40 P.S. §§ 1171.1 et seq.) (as such authority is further explained in PALU v. Insurance Department, 371 A.2d 564 (Pa. Cmwlth. 1977)), because the Insurance Commissioner of the Commonwealth of Pennsylvania has determined that the improper disclosure and/or marketing of nonpublic personal financial information by members of the insurance industry constitutes an unfair method of competition and an unfair or deceptive act or practice.

Purpose

The purpose of this proposed rulemaking is to adopt Chapter 146a in order to implement the privacy requirements for nonpublic financial information set forth in Title V of the Gramm-Leach-Bliley Act (GLBA) (P.L. 102-106; 15 U.S.C. §§ 6801 et seq.). Title V of GLBA requires various state and federal regulators of the financial services industries to promulgate regulations for their respective regulated communities. For example, the federal banking regulators (the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS) and the Board of Governors of the Federal Reserve System (BGFRS)) have already promulgated final form regulations pertaining to the privacy of nonpublic personal financial information when such information is collected by the various federal banking entities within their regulatory jurisdiction. See e.g. 12 C.F.R. §§ 40.1 et seq. (OCC regulations) and 12 C.F.R. §§ 216.1 et seq. (BGFRS regulations).

As with the federal banking regulators, state insurance authorities are required by Title V of the GLBA to establish appropriate consumer privacy standards for various entities in the insurance industry. The failure of a state to adopt such privacy regulations will result in the state's inability to override the federal insurance consumer protection regulations that were issued by the federal banking agencies in final form on December 4, 2000 pursuant to § 305 of the GLBA. See 65 Fed. Reg. 233, 75821 (to be codified at 12 C.F.R. Parts 14, 208, 343 and 536). These regulations will become effective on April 1, 2001, and they pertain generally to the sale of insurance by financial institutions and specifically to such matters as referral fees, separation of banking and insurance sales areas and disclosures regarding the nature of insurance products that are sold by banks.

Background

This proposed regulation is modeled from the Privacy of Consumer Financial and Health Information Regulation that was adopted by the National Association of Insurance Commissioners (NAIC) on September 26, 2000. For purposes of this rulemaking, the Department will make available a copy of the NAIC model to the Standing Committees of the Senate and the House, and to the IRRC. Otherwise, this material is copyrighted and is available

from the NAIC upon request. For further information, see the NAIC website at <http://www.naic.org>. In general, the NAIC model resembles the federal banking privacy regulations by utilizing a notice and opt out structure for the protection of customer financial information from disclosure. The NAIC model, however, does vary from the federal banking privacy regulations. Because of the nature of insurance products and their inherent differences from banking products and services, the NAIC model extends its privacy protections to persons who do not have a direct relationship with a regulated entity, namely insurance policy beneficiaries and claimants. Otherwise, the NAIC model and the federal privacy regulations generally share a common ideological framework for the protection of financial information privacy.

In addition to achieving a level of parity with the federal regulations in order to place the insurance industry on an equal footing in the financial services industry with other banking and securities counterparts, another primary goal of the NAIC model is achieving a level of uniformity among the states. Because each state is responsible for the promulgation of its own privacy regulation for the implementation of Title V of the GLBA, uniformity among such regulations is of central importance. The insurance industry generally views uniformity of the states' privacy regulations as crucial because activities in the insurance marketplace essentially transcend state boundaries and compliance with privacy regulations with dramatically differing approaches and schemes could result in significant administrative burden and impede the transaction of the business of insurance.

For these reasons and in the interest of uniformity, the Department has attempted to implement the NAIC model as closely as possible. However, because of the statutory framework established by Act 40 of 1997, the Department was required to make certain substantive variations of that model regulation for this proposed rulemaking. For example, this proposed regulation requires an opt out for the sharing of information between both affiliates and non-affiliates, while the NAIC model allows the sharing of information among affiliates without providing consumers with an opportunity to opt out of such sharing. Also, because of the standing requirements in Act 40 of 1997, this rulemaking requires a financial institution to send a second opt out notice to any consumer or customer who does not respond to the first notice. There is no such requirement in the NAIC model. These and other substantive differences between the NAIC Model and the proposed rulemaking are explained in greater detail below.

Pre-Proposal Comments

The Department, on November 8, 2000, held an outreach meeting with various members of the Commonwealth's insurance industry that could be affected by this rulemaking. The purpose of the meeting was to discuss the NAIC model and the Department's intent to base its privacy rulemaking on such model, as well as to solicit comments from these groups. Written comments were submitted by the following entities and, where applicable, were considered during the design of this proposed rulemaking: the National Association of Independent Insurers (NAII), American Family Life Assurance Company of Columbus (AFLAC), Pennsylvania Association of Health Underwriters (PAHU), Independent Insurance Agents of Pennsylvania/Pennsylvania Association of Insurance and Financial Advisors (IIAP/PAIFA), Managed Care Association of Pennsylvania (MCAP), Capital Blue Cross (CBC), Pennsylvania

Bankers Association (PBA), Blue Cross of Northeastern Pennsylvania (BCNP), Alliance of American Insurers (AAI), Pennsylvania Association of Mutual Insurers (PAMIC), Independence Blue Cross (IBC), and the Insurance Federation of Pennsylvania, Inc. (IFP).

Copies of the written comments submitted by these groups in the pre-proposal period are available upon request. The following is a synopsis of the most important comments raised by the industry, and the Department's reaction thereto:

Health Information Privacy

As mentioned above, the NAIC model tracks very closely the privacy regulations of the federal banking agencies in most aspects, with some obvious modifications to tailor the regulation for application to the insurance industry. However, one point of departure between the NAIC model and the federal banking regulations is their differing approaches for the treatment of health information privacy. On one hand, the federal banking regulations treat health information in the same manner as financial information by requiring that an institution refrain from disclosing consumer health information to nonaffiliated third parties only when the consumer opts-out of such disclosure. On the other hand, the NAIC model takes a different approach by requiring an affirmative opt in of the consumer before health information may be disclosed by an insurance entity. Thus, the NAIC model establishes an entirely different scheme of regulation for health information.

Also, it is important to note that federal regulations pertaining to health information privacy pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191 (August 21, 1996) were issued in final form by the United States Department of Health and Human Services (HHS) on December 28, 2000. See 65 Fed. Reg. 250, 82461-82510 (to be codified at 45 C.F.R. Parts 160 and 164). Generally, the HHS regulations require a "covered entity" to obtain an individual authorization prior to disclosing covered health information.

- Concerns regarding the inclusion of an opt in health requirement relating to health information privacy in the NAIC model were raised by: NAII, AFLAC, PAHU, IIAP/PAIFA, MCAP, CBC, PBA, BCNP, AAI, PAMIC and IBC.
- These groups oppose the inclusion of an opt in requirement for health information privacy because it allegedly exceeds the scope of the GLBA, and they assert that there is no requirement in the GLBA for states to implement such rules.
- At the time of the pre-proposal comment period, some commenters also noted that the HHS will soon be issuing health information privacy regulations in final form and the groups assert that the provisions in the NAIC model will be duplicative and confusing for entities that have to comply with both rules (*i.e.*, health insurers), and any less protective state laws will be preempted by the HHS rules.
- The comments also assert that the opt in requirement for health information in the NAIC model applies to the sharing of health information with both non-affiliated third parties and affiliated third parties for marketing purposes, so treatment of health information is inconsistent with the other federal privacy regulations for banks and securities, potentially causing an unfair disadvantage for insurance entities in the financial services

industry.

The Department has reviewed these comments, the NAIC model, the GLBA and the Department's statutory authority for the promulgation of this rulemaking. While the Department believes that it has statutory authority to include an opt in requirement for health information and that § 507 of the GLBA clearly preserves the ability of states to enact more rigorous consent requirements for health information, it has decided to remove the opt in requirement for health information for the purpose of this proposed rulemaking. Rather, the Department will defer the implementation of health privacy regulations until a later date. It is the intent of the Department to develop health privacy regulations that will supplement rather than duplicate the HHS health information privacy regulations that were issued in final form on December 28, 2000.

Workers' Compensation Insurance Coverage Inclusion in NAIC Model

The NAIC model includes workers' compensation insurance coverage within the scheme for regulating privacy of consumer information.

- Concerns regarding the inclusion of workers' compensation insurance coverage in the proposed rulemaking were raised by: NAI, IIAP/PAIFA, PAMIC and AAI.
- These groups oppose the inclusion of workers' compensation insurance coverage in the privacy regulation because the GLBA was intended to cover only products for personal, family or household use.

The Department considered these comments while developing the proposed rulemaking. Although workers' compensation insurance is not necessarily purchased for household purposes, carriers of this product collect and maintain nonpublic personal financial information pertaining to individuals, and the protection of such information is consistent with the purposes of this proposed regulation. Also, to the extent possible, the Department is committed to uniformity, so it will retain this provision of the NAIC model. Therefore, because nonpublic personal financial information is obtained as a regular part of the underwriting process in issuing workers' compensation policies and because of the interest in uniformity, the provisions pertaining to the inclusion of workers' compensation insurance remain in this proposed regulation as § 146a.2 (definition of *consumer*, subsection (v)).

In addition, because worker's compensation insurance issues generally fall within the dual jurisdiction of both the Insurance Department and the Department of Labor and Industry (DLI), the Department has met and consulted with the DLI Bureau of Workers' Compensation in order to discuss the applicability and effect of this proposed regulation to workers' compensation insurance. As a result of these meetings, the DLI Bureau of Workers' Compensation has commented that they are supportive of the Department's privacy regulation.

Producer Issues

The NAIC model states that insurance producers are generally subject to this proposed rulemaking as licensees of the Department. However, an exception in the NAIC model states that insurance producers acting as an agent from another licensee covered by the regulation will

not be subject to the notice and opt out requirements of the regulation, if the principle licensee otherwise complies with the NAIC model. Also, the NAIC model contains numerous exceptions to the notice and opt out requirements that are generally intended to preserve the ability of an insurance entity to engage in the daily operations of their businesses with minimal interference.

- Concerns regarding certain insurance producer issues were raised by: NAI and AFLAC.
- These groups believe that producers will be subject to liability because they will be unable to determine if the insurers for which they act as agents will be in compliance.
- Also, these commenters are concerned that the NAIC model does not allow independent producers to perform certain functions on behalf an insurer (*e.g.*, communications to resolve claims that require the disclosure of personally identifiable information) unless they individually comply with the opt out and notice requirements.

The Department has retained the exception to the opt out and notice requirements for insurance producers acting as agents for another licensee covered by the regulation when the principal licensee otherwise complies with the requirements of this proposed regulation at proposed § 146a.2 (definition of *licensee*, subparagraph (iii)). Without this exception, consumers would receive notices and opt out forms from both insurers and producers, and such multiple notices might be confusing to consumers, especially when they relate to the same information from the same insurance transactions. Imposing such a requirement on insurance producers who are acting on behalf of an entity that is required to comply with this rulemaking is duplicative and serves no purpose toward the ultimate goal of consumer protection.

The Department further believes that the concern that independent producers acting as agents on behalf of another licensee will be unable to perform certain functions on behalf of their principals is unfounded. Sections 146a.31, 146a.32 and 146a.33 contain numerous “business” exceptions to general opt out and notice requirements set forth in the proposed rulemaking. Since it is not the intent of the Department or this proposed rulemaking to hinder the transaction of the business of insurance, these exceptions were carefully crafted in the NAIC model to allow insurance producers and insurers to conduct their daily business with minimal interference, while maintaining the necessary protection for the privacy of consumer information.

Definition of “Consumer”

The NAIC Model includes individuals within the definition of consumer, and therefore extends privacy protections to, persons who do not necessarily have a direct or contractual relationship with an insurer, producer or other licensee covered by the regulation. These individuals include claimants and beneficiaries under insurance policies or workers’ compensation benefits.

- Concerns regarding the definition of consumer in the NAIC model were raised by NAI, AFLAC, MCAP, AAI, PAMIC and IBC.
- As mentioned above, the definition of consumer in the NAIC model includes beneficiaries and third party claimants to an insurance policy, participants and beneficiaries of an employee benefit plan, individuals covered under a group or blanket insurance plan and beneficiaries of workers’ compensation plans. The NAI, AFLAC,

MCAP, AAI, PAMIC and IBC have asserted that they believe it is appropriate to extend the protections of the privacy regulation to such persons, thereby requiring that an entity satisfy the notice and opt out requirements of the privacy regulation before information about such persons may be disclosed. These commenters base their comments on the fact that the protections of the privacy regulation will then be extended beyond persons who have a direct contractual relationship with a licensee.

The Department has carefully considered these comments, but believes that beneficiaries and third party claimants to an insurance policy, participants and beneficiaries of an employee benefit plan, individuals covered under a group or blanket insurance plan, and beneficiaries of workers' compensation plans are properly included in the definition of consumer. Licensees regularly collect and maintain nonpublic personal financial information pertaining to such individuals, so these beneficiaries, claimants, plan and group policy participants, and beneficiaries of workers' compensation plans should be afforded protection of their privacy in that information, despite the fact that they do not have a direct contractual relationship with the licensee. Consequently, these persons have been retained in the definition of consumer in this proposed rulemaking as § 146a.2 (definition of consumer, subparagraphs (iv) and (v)), and the protections set forth therein will extend to them. Also, in the interest of uniformity, the Department wants to remain as consistent as possible with the NAIC model, especially with regard to its fundamental principles and definitions.

“Unclear” Unfair Discrimination Provisions

The NAIC model contains an “unfair discrimination” provision that prohibits insurance entities from discriminating against consumers on the basis of a consumer’s exercising his/her opt out rights or otherwise directing an institution from disclosing his/her nonpublic personal information.

- Concerns regarding an alleged lack of clarity in the “unclear” unfair discrimination provisions of the NAIC model were raised by: NAII and AAI.
- These groups believe that the unfair discrimination provision of the NAIC model is unclear and does not provide sufficient information as to what activities fall within this term.

Contrary to these comments, the Department believes that the unfair discrimination provisions of the NAIC model are adequately clear and has retained them in this proposed regulation at § 146a.42. As with any regulation, the Department is unable to provide an exhaustive list of activities that might constitute unfair discrimination against persons who chose to exercise their opt out rights. Rather, in the interest of consumer protection, the Department believes that it should not limit its enforcement authority on this issue in the proposed regulation. Rather, potential violations will be considered on a case-by-case basis

NCOIL Model

Besides the NAIC, the National Conference of Insurance Legislators (NCOIL) has also

developed a model for the protection of nonpublic personal information that is applicable to insurance entities. The NCOIL model is available from the NCOIL website at: <http://www.ncoil.org/>.

- AFLAC has raised a concern that it prefers the NCOIL privacy model over the NAIC model, especially with respect to the treatment of health information, insurance producers and the electronic delivery of notices.

The Department has reviewed the NCOIL model and because the Department has decided not to require an opt in for health information, the concern raised by ALFAC in that regard has been eliminated. However, with regard to the treatment of independent producers and electronic delivery of notices, the NAIC model and the NCOIL model are very similar. Both models provide that independent producers need not provide an opportunity to opt out or notices when their principals otherwise comply with the regulation, and the independent producers do not otherwise disclose information beyond the exceptions identified in the regulation. Also, both models allow for the electronic delivery of notices when a consumer consents to such delivery. Therefore, in the interest of uniformity and because there is little substantive difference in the models, the Department has based this proposed rulemaking on the NAIC model. Finally, numerous other states have expressed a commitment to implementing the NAIC model, and some states have already introduced the NAIC model through legislation or regulation. Thus, the Department is committed to implementing the NAIC model over the NCOIL model.

Electronic Notices

The NAIC model generally allows insurance entities to provide consumers with notices through electronic means, provided that the consumer has consented to receiving notices through such means. The NAIC model also contains several examples of situations where a consumer may be deemed to have consented to receiving notices through electronic means.

- AFLAC has raised a concern that the NAIC model does not appear to be consistent in its treatment of the ability of a licensee to deliver electronic notices because the proposed rulemaking at §§ 146a.16(b)(1)(iii) and 146a.16(b)(2)(ii) seem to suggest that a consumer must conduct electronic transactions or purchase insurance electronically in order to be eligible for receipt electronic notices. AFLAC believes that this is contrary to the general rule that consumers may receive notices electronically if they chose.

The Department believes that there is no inconsistency in the proposed rulemaking with regard to electronic notices. Rather, §§ 146a.16(b)(1)(iii) and 146a.16(b)(2)(ii) are only included as examples of compliant and non-compliant activities with regard to electronic notices, and do not otherwise limit the general rule set forth in the proposed rulemaking § 146a.16(a) which allows consumers to consent to the electronic delivery of notices, regardless of the means through which the consumer obtained the insurance product. Finally, Pennsylvania has adopted the Electronic Transactions Act (73 P.S. §§2260.101 *et seq.*) (ETA), and the provisions of this proposed regulation are consistent with the ETA in that consumers are not required to conduct transactions electronically, but are free to consent to the transaction of business through electronic means.

Delivery of Notices Through Policyholder

The NAIC model includes a provision that allows for the satisfaction of the notice requirements when notices are delivered to a main policyholder, as opposed to providing notices to each individual that obtains a certificate of coverage under a group policy.

- AFLAC has also commented that it would like a new subsection added to the proposed rulemaking that clarifies that a licensee may satisfy the delivery requirements to insurance beneficiaries, account insureds or claimants by delivering the notice to the policyholder.

The Department believes that the delivery requirements for insurance beneficiaries, account insureds or claimants is abundantly clear in the proposed rulemaking § 146a.2 (definition of *licensee*, subparagraph (v)) and has not made any changes to the NAIC model in that regard.

Compliance Date

Both the NAIC model and §146a.45 provide that the effective date of the regulation will be July 1, 2001, especially since such date is of central importance in avoiding the loss of the Commonwealth's ability to override the federal insurance consumer protection regulations that were issued in final form on December 4, 2000. See 65 Fed. Reg. 233, 75821 (to be codified at 12 C.F.R. Parts 14, 208, 343 and 536).

- Concerns relating to the compliance date for the proposed rulemaking were raised by: AFLAC, IIAP/PAIFA, MCAP, PBA and BCNP.
- These groups assert that there is insufficient time to comply with the privacy regulations by July 1, 2001, especially if the regulations are not promulgated in final form until after that date.

The Department previously issued Insurance Department Notice 2000-08 in order to provide guidance to all insurers authorized to do business in the Commonwealth of Pennsylvania in regard to the compliance date for the privacy provisions of the GLBA.

Pursuant to the Insurance Department Act, 40 P.S. §§ 1 et seq., and the Insurance Company Law, 40 P.S. §§ 341 et seq., the Insurance Commissioner and the Department are charged with the regulation and oversight of insurers and insurance producers within the Commonwealth of Pennsylvania. 40 P.S. §§ 1, 341; 71 P.S. § 66, 186, 411, 412. The GLBA recognizes the Pennsylvania Insurance Department's jurisdiction by re-affirming the McCarran-Ferguson Act, 15 U.S.C. §§ 1011 et seq., which provides for the functional regulation of insurance by the states. GLBA § 301.

As mentioned above, the GLBA recognizes that states are the functional regulators of the insurance industry and directs state insurance regulators to promulgate privacy regulations for its regulated community. In addition, state insurance regulators are also charged with the duty of

enforcing the customer privacy requirements contained in the federal statute. Although there is no requirement that state insurance regulators promulgate their regulations prior to a specific date, the GLBA's general statutory privacy requirements would have become effective on November 12, 2000, and all relevant insurance entities would have been required to comply with these statutory provisions by that time. However, because enforcement of the GLBA's statutory privacy provisions is within the jurisdiction of state insurance regulators, it was clear that the Department was authorized to extend the date on which all relevant insurance entities must comply with the GLBA's statutory privacy requirements.

As also discussed above, while enforcement of the GLBA's statutory privacy requirements for insurers and insurance producers is within the jurisdiction of the state insurance regulators, enforcement for banking entities is within the jurisdiction of the federal banking agencies. Like the state insurance regulators, the federal banking agencies are authorized to extend the compliance date for enforcement of the GLBA's statutory privacy requirements. However, unlike the state insurance regulators, the federal banking agencies were required to develop their "appropriate standards" in the form of a final regulation by May 12, 2000. In this regulation, the federal banking agencies determined that the compliance date should be extended to July 1, 2001.

In order to achieve a sense of parity between insurance entities and other members of the financial services industry, the Department joined other members of the NAIC in a June 11, 2000 resolution which details that it was the intent of state insurance regulators to extend the GLBA privacy requirements compliance date to July 1, 2001 for entities within their respective jurisdictions.

Therefore, under its regulatory authority pursuant to the Insurance Department Act and the Insurance Company Law, as recognized by the § 505 of GLBA, the Department issued Insurance Department Bulletin No. 2000-08, which stated that the compliance date for the GLBA's statutory privacy requirements as they apply to insurers and insurance producers shall be extended until July 1, 2001. The bulletin also informed the Commonwealth's insurance industry that prior to this date, no action to enforce the GLBA's statutory privacy requirements would be taken against an insurer or insurance producer subject to the Department's jurisdiction. For these reasons, the Department intends to have this proposed rulemaking become effective on July 1, 2001 in order to avoid the potential loss of its authority to override the federal insurance consumer protection regulations discussed above.

Although the Department intends to make this proposed rulemaking effective on July 1, 2001, it intends to remain flexible with regard to its initial enforcement of the regulation and the privacy provisions of the GLBA. For approximately six months after the promulgation of the privacy regulations, the Department intends to utilize its Market Surveillance Unit to monitor the insurance industry's implementation of the privacy regulation and provide assistance to the industry. The Department believes that this enforcement approach will best serve both the insurance industry and the Commonwealth's insurance consumers, especially since implementation of the privacy regulation may prove to be a time consuming and complex undertaking for some insurance entities.

Uniformity

As explained above, because each state is responsible under the GLBA to enact privacy regulations for its regulated community, uniformity of such regulations is of central importance to the insurance industry.

- Concerns regarding uniformity of insurance privacy regulations implemented pursuant to the GLBA among all 50 states were raised by: PAHU, IIAP/PAIFA, and PBA.
- These groups assert that there is a need for uniformity among the states with regard to the privacy regulations, which they must implement pursuant to the GLBA.

The Department agrees that uniformity is of central importance in the promulgation of privacy regulations by the various states. Each state must enact either legislation or regulation to be in compliance with GLBA or it could lose its regulatory authority over certain consumer protection issues addressed in the federal regulations on this subject. However, as do other states, Pennsylvania has an existing statutory framework for privacy of insurance information in section 648 of the Insurance Department Act (40 P.S. § 288). Therefore, the Department has adhered to the NAIC model to every extent possible, but certain changes were required to ensure compliance with section 648.

Explanation of Regulatory Changes

Subchapter A. General provisions

§ 146a.1 (relating to purpose) contains the purpose, scope and compliance requirements needed to govern the treatment of nonpublic personal information about individuals in this Commonwealth by all licensees of the Department.

§ 146a.2 (relating to definitions) contains the definitions as they are used in this chapter and gives examples that, to the extent applicable, constitute compliance and non-compliance with this proposed rulemaking.

Subchapter B. Privacy And Opt Out Notices For Financial Information

§ 146a.11 (relating to initial privacy notice to consumers required) contains the requirements for the provision of an initial privacy notice to consumers and customers by a licensee. It also contains the exceptions, pursuant to which subsequent notice is permissible.

§ 146a.12 (relating to annual privacy notice to customers requires) contains the general rule and provides examples for the provision of annual privacy notice to customers.

§ 146a.13 (relating to information to be included in privacy notices) describes the information that must be included in initial, annual and revised privacy notices. It also contains the exceptions to the inclusion of the required information. The situations when the use of simplified and short-form initial notice is permissible is set forth.

§ 146a.14 (relating to form of opt out notice to consumers and opt out methods) describes the form of the opt out notice and specifies the information that must be contained in such notice. It also specifies reasonable opt out means and gives examples of what would be unreasonable. It also contains the means for treating joint consumers of an insurance product or service.

§ 146a.15 (relating to revised privacy notices) contains the requirements imposed on licensees for providing revised privacy notices.

§ 146a.16 (relating to delivery) describes how notices shall be delivered and provides examples of when a licensee may reasonable expect that a consumer has received actual notice. It also describes when a licensee may reasonably expect that a customer will receive actual notice of a licensee's annual privacy notice.

Subchapter C. Limits On Disclosures Of Financial Information

§ 146a.21 (relating to limitation on disclosure of nonpublic personal financial information to nonaffiliated third parties) contains the limits on disclosure of nonpublic personal financial information to nonaffiliated third parties. It lists the conditions for disclosure and describes the opt out direction. It includes examples of when a licensee must provide a consumer with a reasonable opportunity to opt out.

§ 146a.22 (relating to limits on redisclosure and reuse of nonpublic personal financial information) contains the limits on redisclosure and reuse of nonpublic personal financial information in situations where the licensee receives the information under one of the exceptions contained in this proposed rulemaking, as well as where the licensee receives the information outside of an exception.

§ 146a.23 (relating to limits on sharing account number information for marketing purposes) contains a prohibition of sharing certain account number information and the exceptions to this prohibition.

Subchapter D. Exceptions To Limits On Disclosures Of Financial Information

§ 146a.31 (relating to exception to opt out requirements for disclosure of nonpublic personal financial information for service providers and joint marketing) describes when the opt out requirements contained in §§ 146a.13 and 146a.20 do not apply for service providers and joint marketing.

§ 146a.32 (relating to exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information for processing and servicing transactions) contains the exceptions to the notice and opt out requirements for disclosure of nonpublic personal financial information for certain processing and servicing transactions.

§ 146a.33 (relating to other exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information) contains certain other exceptions to the notice and opt out requirements contained in §§ 146a.10, 146a.13, 146a.20 and 146a.30 of this proposed

rulemaking.

Subchapter E. Additional Provisions

§ 146a.41 (relating to protection of fair credit reporting act) provides that nothing in this proposed rulemaking should be construed to modify, limit or supersede the Federal Fair Credit Reporting Act (15 U.S.C. §§1681-1681u).

§ 146a.42 (relating to nondiscrimination) prohibits a license from discriminating against a consumer or customer because the consumer or customer has opted out from the disclosure of his or her nonpublic personal financial information.

§ 146a.43 (relating to violation) provides that a contravention of this proposed rulemaking shall be deemed to be an unfair or deceptive act and practice in the conduct of the business of insurance and shall be deemed to be a determined violation, as defined in § 2 of the Unfair Insurance Practices Act (40 P.S. §1171.2).

§ 146a.44 (relating to severability) provides that if any section or a portion of a section of this proposed rulemaking is held invalid by a court, the remainder of the regulation or the applicability of the provision to another person or circumstance will not be affected.

§ 146a.45 (relating to effective date) provides that this proposed rulemaking will become effective on July 1, 2001.

In order to provide guidance to licensees that are covered by the regulation, Appendix A of this proposed rulemaking provides numerous examples of sample clauses that may be used in Appendix A for the privacy notices that are required by the regulation.

Fiscal Impact

There will be a fiscal impact as a result of the proposed rulemaking. However, Federal statute requires that this provision be mandated, therefore, the adoption of this regulation should not have a significant cost impact over what is currently being required.

Paperwork

Unless specifically executed under § 146a.2 definition of licensee of the proposed rulemaking, the rulemaking will affect all licensees doing the business of insurance in this Commonwealth by imposing additional paperwork requirements pertaining to the delivery and treating of opt out notices.

Effectiveness/Sunset Date

The proposed rulemaking will become effective July 1, 2001, as previously provided in Insurance Department Notice 2000-08.

Contact Person

Questions or comments regarding the proposed rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, within 30 days following the publication of this notice in the *Pennsylvania Bulletin*. Questions and comments may also be e-mailed to psalvatore@state.pa.us or faxed to (717) 772-1969.

Regulatory Review

Under § 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 21, 2001, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee. In addition to the submitted proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of that material is available to the public upon request.

Under § 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Department within 10 days after the close of the Committee's review. The notification shall specify the regulatory review criteria that have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Department, the Governor, and the General Assembly to review these objections before final publication of the regulations.

M. DIANE KOKEN
Insurance Commissioner

Adopted by the NAIC on September 26, 2000

**PRIVACY OF CONSUMER FINANCIAL AND HEALTH INFORMATION
REGULATION**

Table of Contents

ARTICLE I. GENERAL PROVISIONS

- Section 1. Authority
- Section 2. Purpose and Scope
- Section 3. Rule of Construction
- Section 4. Definitions

ARTICLE II. PRIVACY AND OPT OUT NOTICES FOR FINANCIAL INFORMATION

- Section 5. Initial Privacy Notice to Consumers Required
- Section 6. Annual Privacy Notice to Customers Required
- Section 7. Information to be Included in Privacy Notices
- Section 8. Form of Opt Out Notice to Consumers and Opt Out Methods
- Section 9. Revised Privacy Notices
- Section 10. Delivery

ARTICLE III. LIMITS ON DISCLOSURES OF FINANCIAL INFORMATION

- Section 11. Limitation on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties
- Section 12. Limits on Redisclosure and Reuse of Nonpublic Personal Financial Information
- Section 13. Limits on Sharing Account Number Information for Marketing Purposes

**ARTICLE IV. EXCEPTIONS TO LIMITS ON DISCLOSURES OF FINANCIAL
INFORMATION**

- Section 14. Exception to Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing
- Section 15. Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions
- Section 16. Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information

ARTICLE V. RULES FOR HEALTH INFORMATION

- Section 17. When Authorization Required for Disclosure of Nonpublic Personal Health Information
- Section 18. Authorizations
- Section 19. Authorization Request Delivery
- Section 20. Relationship to Federal Rules
- Section 21. Relationship to State Laws

ARTICLE VI. ADDITIONAL PROVISIONS

- Section 22. Protection of Fair Credit Reporting Act
- Section 23. Nondiscrimination
- Section 24. Violation
- Section 25. Severability
- Section 26. Effective Date

Appendix A –Sample Clauses

ARTICLE I. GENERAL PROVISIONS

Section 1. Authority

This regulation is promulgated pursuant to the authority granted by Sections [insert applicable sections] of the Insurance Law.

Section 2. Purpose and Scope

- A. Purpose. This regulation governs the treatment of nonpublic personal health information and nonpublic personal financial information about individuals by all licensees of the state insurance department. This regulation:
- (1) Requires a licensee to provide notice to individuals about its privacy policies and practices;
 - (2) Describes the conditions under which a licensee may disclose nonpublic personal health information and nonpublic personal financial information about individuals to affiliates and nonaffiliated third parties; and
 - (3) Provides methods for individuals to prevent a licensee from disclosing that information.
- B. Scope. This regulation applies to:
- (1) Nonpublic personal financial information about individuals who obtain or are claimants or beneficiaries of products or services primarily for personal, family or household purposes from licensees. This regulation does not apply to information about companies or about individuals who obtain products or services for business, commercial or agricultural purposes; and
 - (2) All nonpublic personal health information.
- C. Compliance. A licensee domiciled in this state that is in compliance with this regulation in a state that has not enacted laws or regulations that meet the requirements of Title V of the Gramm-Leach-Bliley Act (PL 102-106) may nonetheless be deemed to be in compliance with Title V of the Gramm-Leach-Bliley Act in such other state.

Drafting Note: Subsection 2C is intended to give licensees some guidance for complying with Title V of the Gramm-Leach-Bliley Act in those states that do not have laws or regulations that meet GLBA's privacy requirements.

Section 3. Rule of Construction

The examples in this regulation and the sample clauses in Appendix A of this regulation are not exclusive. Compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this regulation.

Section 4. Definitions

As used in this regulation, unless the context requires otherwise:

- A. "Affiliate" means any company that controls, is controlled by or is under common control with another company.

- B. (1) "Clear and conspicuous" means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.
 - (2) Examples.
 - (a) Reasonably understandable. A licensee makes its notice reasonably understandable if it:
 - (i) Presents the information in the notice in clear, concise sentences, paragraphs, and sections;
 - (ii) Uses short explanatory sentences or bullet lists whenever possible;
 - (iii) Uses definite, concrete, everyday words and active voice whenever possible;
 - (iv) Avoids multiple negatives;
 - (v) Avoids legal and highly technical business terminology whenever possible; and
 - (vi) Avoids explanations that are imprecise and readily subject to different interpretations.
 - (b) Designed to call attention. A licensee designs its notice to call attention to the nature and significance of the information in it if the licensee:
 - (i) Uses a plain-language heading to call attention to the notice;

- (ii) Uses a typeface and type size that are easy to read;
 - (iii) Provides wide margins and ample line spacing;
 - (iv) Uses boldface or italics for key words; and
 - (v) In a form that combines the licensee's notice with other information, uses distinctive type size, style, and graphic devices, such as shading or sidebars.
- (c) Notices on web sites. If a licensee provides a notice on a web page, the licensee designs its notice to call attention to the nature and significance of the information in it if the licensee uses text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the web site (such as text, graphics, hyperlinks or sound) do not distract attention from the notice, and the licensee either:
- (i) Places the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or
 - (ii) Places a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature and relevance of the notice.
- C. "Collect" means to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol or other identifying particular assigned to the individual, irrespective of the source of the underlying information.
- D. "Commissioner" means the insurance commissioner of the state.

Drafting Note: Use the title of the chief insurance regulatory official wherever the term "commissioner" appears. If the jurisdiction of certain health licensees, such as health maintenance organizations, lies with some state agency other than the insurance department, or if there is dual regulation, a state should add language referencing that agency to ensure the appropriate coordination of responsibilities.

- E. "Company" means a corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship or similar organization.

- F. (1) “Consumer” means an individual who seeks to obtain, obtains or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, and about whom the licensee has nonpublic personal information, or that individual’s legal representative.
- (2) Examples.
- (a) An individual who provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment or economic advisory services relating to an insurance product or service is a consumer regardless of whether the licensee establishes an ongoing advisory relationship.
- (b) An applicant for insurance prior to the inception of insurance coverage is a licensee’s consumer.
- (c) An individual who is a consumer of another financial institution is not a licensee’s consumer solely because the licensee is acting as agent for, or provides processing or other services to, that financial institution.
- (d) An individual is a licensee’s consumer if:
- (i) (I) the individual is a beneficiary of a life insurance policy underwritten by the licensee;
- (II) the individual is a claimant under an insurance policy issued by the licensee;
- (III) the individual is an insured or an annuitant under an insurance policy or an annuity, respectively, issued by the licensee; or
- (IV) the individual is a mortgagor of a mortgage covered under a mortgage insurance policy;
- and
- (ii) the licensee discloses nonpublic personal financial information about the individual to a nonaffiliated third party other than as permitted under Sections 14, 15 and 16 of this regulation.
- (e) Provided that the licensee provides the initial, annual and revised notices under Sections 5, 6 and 9 of this regulation to the plan

sponsor, group or blanket insurance policyholder or group annuity contractholder, workers' compensation plan participant, and further provided that the licensee does not disclose to a nonaffiliated third party nonpublic personal financial information about such an individual other than as permitted under Sections 14, 15 and 16 of this regulation, an individual is not the consumer of the licensee solely because he or she is:

- (i) A participant or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer or fiduciary;
- (ii) Covered under a group or blanket insurance policy or group annuity contract issued by the licensee; or
- (iii) A beneficiary in a workers' compensation plan.

Drafting Note: Regulators may wish to urge their workers' compensation state insurance fund (or other applicable agency) to promulgate a regulation similar to this regulation in order to ensure parity in treatment of workers' compensation plans and to ensure that all workers covered by such plans have privacy protections.

- (f)
 - (i) The individuals described in Subparagraph (e)(i) through (iii) of this Paragraph are consumers of a licensee if the licensee does not meet all the conditions of Subparagraph (e).
 - (ii) In no event shall the individuals, solely by virtue of the status described in Subparagraph (e)(i) through (iii) above, be deemed to be customers for purposes of this regulation.
 - (g) An individual is not a licensee's consumer solely because he or she is a beneficiary of a trust for which the licensee is a trustee.
 - (h) An individual is not a licensee's consumer solely because he or she has designated the licensee as trustee for a trust.
- G. "Consumer reporting agency" has the same meaning as in Section 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(f)).
- H. "Control" means:
- (1) Ownership, control or power to vote twenty-five percent (25%) or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

- (2) Control in any manner over the election of a majority of the directors, trustees or general partners (or individuals exercising similar functions) of the company; or
 - (3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the commissioner determines.
- I. “Customer” means a consumer who has a customer relationship with a licensee.
- J. (1) “Customer relationship” means a continuing relationship between a consumer and a licensee under which the licensee provides one or more insurance products or services to the consumer that are to be used primarily for personal, family or household purposes.
- (2) Examples.
- (a) A consumer has a continuing relationship with a licensee if:
 - (i) The consumer is a current policyholder of an insurance product issued by or through the licensee; or
 - (ii) The consumer obtains financial, investment or economic advisory services relating to an insurance product or service from the licensee for a fee.
 - (b) A consumer does not have a continuing relationship with a licensee if:
 - (i) The consumer applies for insurance but does not purchase the insurance;
 - (ii) The licensee sells the consumer airline travel insurance in an isolated transaction;
 - (iii) The individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee;
 - (iv) The consumer is a beneficiary or claimant under a policy and has submitted a claim under a policy choosing a settlement option involving an ongoing relationship with the licensee;

- (v) The consumer is a beneficiary or a claimant under a policy and has submitted a claim under that policy choosing a lump sum settlement option;
- (vi) The customer's policy is lapsed, expired, or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve (12) consecutive months, other than annual privacy notices, material required by law or regulation, communication at the direction of a state or federal authority, or promotional materials;
- (vii) The individual is an insured or an annuitant under an insurance policy or annuity, respectively, but is not the policyholder or owner of the insurance policy or annuity; or
- (viii) For the purposes of this regulation, the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

- K. (1) "Financial institution" means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in Section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).
- (2) Financial institution does not include:
- (i) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);
 - (ii) The Federal Agricultural Mortgage Corporation or any entity charged and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*); or
 - (iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as the institutions do not

sell or transfer nonpublic personal information to a nonaffiliated third party.

- L. (1) “Financial product or service” means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under Section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).
- (2) Financial service includes a financial institution’s evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.
- M. “Health care” means:
- (1) Preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, procedures, tests or counseling that:
- (a) Relates to the physical, mental or behavioral condition of an individual; or
- (b) Affects the structure or function of the human body or any part of the human body, including the banking of blood, sperm, organs or any other tissue; or
- (2) Prescribing, dispensing or furnishing to an individual drugs or biologicals, or medical devices or health care equipment and supplies.
- N. “Health care provider” means a physician or other health care practitioner licensed, accredited or certified to perform specified health services consistent with state law, or a health care facility.
- O. “Health information” means any information or data except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or the consumer that relates to:
- (1) The past, present or future physical, mental or behavioral health or condition of an individual;
- (2) The provision of health care to an individual; or
- (3) Payment for the provision of health care to an individual.
- P. (1) “Insurance product or service” means any product or service that is offered by a licensee pursuant to the insurance laws of this state.

- (2) Insurance service includes a licensee's evaluation, brokerage or distribution of information that the licensee collects in connection with a request or an application from a consumer for a insurance product or service.

Q. (1) "Licensee" means all licensed insurers, producers and other persons licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to the Insurance Law of this state, [and health maintenance organizations holding a certificate of authority pursuant to Section [insert section] of this state's Public Health Law].

Drafting Note: Add bracketed language if HMOs are licensed under other than insurance statutes, and cite appropriate state law.

- (2) A licensee is not subject to the notice and opt out requirements for nonpublic personal financial information set forth in Articles I, II, III and IV of this regulation if the licensee is an employee, agent or other representative of another licensee ("the principal") and:
 - (a) The principal otherwise complies with, and provides the notices required by, the provisions of this regulation; and
 - (b) The licensee does not disclose any nonpublic personal information to any person other than the principal or its affiliates in a manner permitted by this regulation.
- (3)
 - (a) Subject to Subparagraph (b), "licensee" shall also include an unauthorized insurer that accepts business placed through a licensed excess lines broker in this state, but only in regard to the excess lines placements placed pursuant to Section [insert section] of this state's laws.
 - (b) An excess lines broker or excess lines insurer shall be deemed to be in compliance with the notice and opt out requirements for nonpublic personal financial information set forth in Articles I, II, III and IV of this regulation provided:
 - (i) The broker or insurer does not disclose nonpublic personal information of a consumer or a customer to nonaffiliated third parties for any purpose, including joint servicing or marketing under Section 14 of this regulation, except as permitted by Section 15 or 16 of this regulation; and

- (ii) The broker or insurer delivers a notice to the consumer at the time a customer relationship is established on which the following is printed in 16-point type:

PRIVACY NOTICE

“NEITHER THE U.S. BROKERS THAT HANDLED THIS INSURANCE NOR THE INSURERS THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL INFORMATION CONCERNING THE BUYER TO NONAFFILIATES OF THE BROKERS OR INSURERS EXCEPT AS PERMITTED BY LAW.

Drafting Note: References to “excess lines broker” and “excess lines insurer” should be changed as necessary to correspond with the applicable terms used in each state.

- R. (1) “Nonaffiliated third party” means any person except:
- (a) A licensee’s affiliate; or
 - (b) A person employed jointly by a licensee and any company that is not the licensee’s affiliate (but nonaffiliated third party includes the other company that jointly employs the person).
- (2) Nonaffiliated third party includes any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in Section 4(k)(4)(H) or insurance company investment activities of the type described in Section 4(k)(4)(I) of the federal Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) and (I)).
- S. “Nonpublic personal information” means nonpublic personal financial information and nonpublic personal health information.
- T. (1) “Nonpublic personal financial information” means:
- (a) Personally identifiable financial information; and

- (b) Any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.
- (2) Nonpublic personal financial information does not include:
 - (a) Health information;
 - (b) Publicly available information, except as included on a list described in Subsection T(1)(b) of this section; or
 - (c) Any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information that is not publicly available.
- (3) Examples of lists.
 - (a) Nonpublic personal financial information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.
 - (b) Nonpublic personal financial information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.
- U. "Nonpublic personal health information" means health information:
 - (1) That identifies an individual who is the subject of the information; or
 - (2) With respect to which there is a reasonable basis to believe that the information could be used to identify an individual.
- V. (1) "Personally identifiable financial information" means any information:
 - (a) A consumer provides to a licensee to obtain an insurance product or service from the licensee;

- (b) About a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer; or
 - (c) The licensee otherwise obtains about a consumer in connection with providing an insurance product or service to that consumer.
- (2) Examples.
- (a) Information included. Personally identifiable financial information includes:
 - (i) Information a consumer provides to a licensee on an application to obtain an insurance product or service;
 - (ii) Account balance information and payment history;
 - (iii) The fact that an individual is or has been one of the licensee's customers or has obtained an insurance product or service from the licensee;
 - (iv) Any information about the licensee's consumer if it is disclosed in a manner that indicates that the individual is or has been the licensee's consumer;
 - (v) Any information that a consumer provides to a licensee or that the licensee or its agent otherwise obtains in connection with collecting on a loan or servicing a loan;
 - (vi) Any information the licensee collects through an Internet cookie (an information-collecting device from a web server); and
 - (vii) Information from a consumer report.
 - (b) Information not included. Personally identifiable financial information does not include:
 - (i) Health information;
 - (ii) A list of names and addresses of customers of an entity that is not a financial institution; and
 - (iii) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names or addresses.

- W. (1) “Publicly available information” means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from:
- (a) Federal, state or local government records;
 - (b) Widely distributed media; or
 - (c) Disclosures to the general public that are required to be made by federal, state or local law.
- (2) Reasonable basis. A licensee has a reasonable basis to believe that information is lawfully made available to the general public if the licensee has taken steps to determine:
- (a) That the information is of the type that is available to the general public; and
 - (b) Whether an individual can direct that the information not be made available to the general public and, if so, that the licensee’s consumer has not done so.
- (3) Examples.
- (a) Government records. Publicly available information in government records includes information in government real estate records and security interest filings.
 - (b) Widely distributed media. Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.
 - (c) Reasonable basis.
 - (i) A licensee has a reasonable basis to believe that mortgage information is lawfully made available to the general public if the licensee has determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

- (ii) A licensee has a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if the licensee has located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

ARTICLE II. PRIVACY AND OPT OUT NOTICES FOR FINANCIAL INFORMATION

Section 5. Initial Privacy Notice to Consumers Required

- A. Initial notice requirement. A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to:
 - (1) Customer. An individual who becomes the licensee's customer, not later than when the licensee establishes a customer relationship, except as provided in Subsection E of this section; and
 - (2) Consumer. A consumer, before the licensee discloses any nonpublic personal financial information about the consumer to any nonaffiliated third party, if the licensee makes a disclosure other than as authorized by Sections 15 and 16.
- B. When initial notice to a consumer is not required. A licensee is not required to provide an initial notice to a consumer under Subsection A(2) of this section if:
 - (1) The licensee does not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party, other than as authorized by Sections 15 and 16, and the licensee does not have a customer relationship with the consumer; or
 - (2) A notice has been provided by an affiliated licensee, as long as the notice clearly identifies all licensees to whom the notice applies and is accurate with respect to the licensee and the other institutions.
- C. When the licensee establishes a customer relationship.
 - (1) General rule. A licensee establishes a customer relationship at the time the licensee and the consumer enter into a continuing relationship.
 - (2) Examples of establishing customer relationship. A licensee establishes a customer relationship when the consumer:
 - (a) Becomes a policyholder of a licensee that is an insurer when the insurer delivers an insurance policy or contract to the consumer, or in the case of a licensee that is an insurance producer or insurance broker, obtains insurance through that licensee; or

- (b) Agrees to obtain financial, economic or investment advisory services relating to insurance products or services for a fee from the licensee.
- D. Existing customers. When an existing customer obtains a new insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, the licensee satisfies the initial notice requirements of Subsection A of this section as follows:
 - (1) The licensee may provide a revised policy notice, under Section 9, that covers the customer's new insurance product or service; or
 - (2) If the initial, revised or annual notice that the licensee most recently provided to that customer was accurate with respect to the new insurance product or service, the licensee does not need to provide a new privacy notice under Subsection A of this section.
- E. Exceptions to allow subsequent delivery of notice.
 - (1) A licensee may provide the initial notice required by Subsection A(1) of this section within a reasonable time after the licensee establishes a customer relationship if:
 - (a) Establishing the customer relationship is not at the customer's election; or
 - (b) Providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.
 - (2) Examples of exceptions.
 - (a) Not at customer's election. Establishing a customer relationship is not at the customer's election if a licensee acquires or is assigned a customer's policy from another financial institution or residual market mechanism and the customer does not have a choice about the licensee's acquisition or assignment.
 - (b) Substantial delay of customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would substantially delay the customer's transaction when the licensee and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the insurance product or service.

- (c) No substantial delay of customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at the licensee's office or through other means by which the customer may view the notice, such as on a web site.
- F. Delivery. When a licensee is required to deliver an initial privacy notice by this section, the licensee shall deliver it according to Section 10. If the licensee uses a short-form initial notice for non-customers according to Section 7D, the licensee may deliver its privacy notice according to Section 7D(3).

Section 6. Annual Privacy Notice to Customers Required

- A.
 - (1) General rule. A licensee shall provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship. Annually means at least once in any period of twelve (12) consecutive months during which that relationship exists. A licensee may define the twelve-consecutive-month period, but the licensee shall apply it to the customer on a consistent basis.
 - (2) Example. A licensee provides a notice annually if it defines the twelve-consecutive-month period as a calendar year and provides the annual notice to the customer once in each calendar year following the calendar year in which the licensee provided the initial notice. For example, if a customer opens an account on any day of year 1, the licensee shall provide an annual notice to that customer by December 31 of year 2.
- B.
 - (1) Termination of customer relationship. A licensee is not required to provide an annual notice to a former customer. A former customer is an individual with whom a licensee no longer has a continuing relationship.
 - (2) Examples.
 - (a) A licensee no longer has a continuing relationship with an individual if the individual no longer is a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee.
 - (b) A licensee no longer has a continuing relationship with an individual if the individual's policy is lapsed, expired or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve (12) consecutive months, other

than to provide annual privacy notices, material required by law or regulation, or promotional materials.

- (c) For the purposes of this regulation, a licensee no longer has a continuing relationship with an individual if the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.
- (d) A licensee no longer has a continuing relationship with a customer in the case of providing real estate settlement services, at the time the customer completes execution of all documents related to the real estate closing, payment for those services has been received, or the licensee has completed all of its responsibilities with respect to the settlement, including filing documents on the public record, whichever is later.

- D. Delivery. When a licensee is required by this section to deliver an annual privacy notice, the licensee shall deliver it according to Section 10.

Section 7. Information to be Included in Privacy Notices

- A. General rule. The initial, annual and revised privacy notices that a licensee provides under Sections 5, 6 and 9 shall include each of the following items of information, in addition to any other information the licensee wishes to provide, that applies to the licensee and to the consumers to whom the licensee sends its privacy notice:
 - (1) The categories of nonpublic personal financial information that the licensee collects;
 - (2) The categories of nonpublic personal financial information that the licensee discloses;
 - (3) The categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information, other than those parties to whom the licensee discloses information under Sections 15 and 16;
 - (4) The categories of nonpublic personal financial information about the licensee's former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about the licensee's former

customers, other than those parties to whom the licensee discloses information under Sections 15 and 16;

- (5) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under Section 14 (and no other exception in Sections 15 and 16 applies to that disclosure), a separate description of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted;
- (6) An explanation of the consumer's right under Section 11A to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time;
- (7) Any disclosures that the licensee makes under Section 603(d)(2)(A)(iii) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates);
- (8) The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and
- (9) Any disclosure that the licensee makes under Subsection B of this section.

B. Description of parties subject to exceptions. If a licensee discloses nonpublic personal financial information as authorized under Sections 15 and 16, the licensee is not required to list those exceptions in the initial or annual privacy notices required by Sections 5 and 6. When describing the categories of parties to whom disclosure is made, the licensee is required to state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

C. Examples.

- (1) Categories of nonpublic personal financial information that the licensee collects. A licensee satisfies the requirement to categorize the nonpublic personal financial information it collects if the licensee categorizes it according to the source of the information, as applicable:
 - (a) Information from the consumer;
 - (b) Information about the consumer's transactions with the licensee or its affiliates;
 - (c) Information about the consumer's transactions with nonaffiliated third parties; and

- (d) Information from a consumer reporting agency.
- (2) Categories of nonpublic personal financial information a licensee discloses.
- (a) A licensee satisfies the requirement to categorize nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in Paragraph (1), as applicable, and provides a few examples to illustrate the types of information in each category. These might include:
 - (i) Information from the consumer, including application information, such as assets and income and identifying information, such as name, address and social security number;
 - (ii) Transaction information, such as information about balances, payment history and parties to the transaction; and
 - (iii) Information from consumer reports, such as a consumer's creditworthiness and credit history.
 - (b) A licensee does not adequately categorize the information that it discloses if the licensee uses only general terms, such as transaction information about the consumer.
 - (c) If a licensee reserves the right to disclose all of the nonpublic personal financial information about consumers that it collects, the licensee may simply state that fact without describing the categories or examples of nonpublic personal information that the licensee discloses.
- (3) Categories of affiliates and nonaffiliated third parties to whom the licensee discloses.
- (a) A licensee satisfies the requirement to categorize the affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information about consumers if the licensee identifies the types of businesses in which they engage.
 - (b) Types of businesses may be described by general terms only if the licensee uses a few illustrative examples of significant lines of business. For example, a licensee may use the term financial

products or services if it includes appropriate examples of significant lines of businesses, such as life insurer, automobile insurer, consumer banking or securities brokerage.

- (c) A licensee also may categorize the affiliates and nonaffiliated third parties to which it discloses nonpublic personal financial information about consumers using more detailed categories.
- (4) Disclosures under exception for service providers and joint marketers. If a licensee discloses nonpublic personal financial information under the exception in Section 14 to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee satisfies the disclosure requirement of Subsection A(5) of this section if it:
- (a) Lists the categories of nonpublic personal financial information it discloses, using the same categories and examples the licensee used to meet the requirements of Subsection A(2) of this section, as applicable; and
 - (b) States whether the third party is:
 - (i) A service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution; or
 - (ii) A financial institution with whom the licensee has a joint marketing agreement.
- (5) Simplified notices. If a licensee does not disclose, and does not wish to reserve the right to disclose, nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under Sections 15 and 16, the licensee may simply state that fact, in addition to the information it shall provide under Subsections A(1), A(8), A(9), and Subsection B of this section.
- (6) Confidentiality and security. A licensee describes its policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if it does both of the following:
- (a) Describes in general terms who is authorized to have access to the information; and
 - (b) States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance

with the licensee's policy. The licensee is not required to describe technical information about the safeguards it uses.

D. Short-form initial notice with opt out notice for non-customers.

- (1) A licensee may satisfy the initial notice requirements in Sections 5A(2) and 8C for a consumer who is not a customer by providing a short-form initial notice at the same time as the licensee delivers an opt out notice as required in Section 8.
- (2) A short-form initial notice shall:
 - (a) Be clear and conspicuous;
 - (b) State that the licensee's privacy notice is available upon request; and
 - (c) Explain a reasonable means by which the consumer may obtain that notice.
- (3) The licensee shall deliver its short-form initial notice according to Section 10. The licensee is not required to deliver its privacy notice with its short-form initial notice. The licensee instead may simply provide the consumer a reasonable means to obtain its privacy notice. If a consumer who receives the licensee's short-form notice requests the licensee's privacy notice, the licensee shall deliver its privacy notice according to Section 10.
- (4) Examples of obtaining privacy notice. The licensee provides a reasonable means by which a consumer may obtain a copy of its privacy notice if the licensee:
 - (a) Provides a toll-free telephone number that the consumer may call to request the notice; or
 - (b) For a consumer who conducts business in person at the licensee's office, maintains copies of the notice on hand that the licensee provides to the consumer immediately upon request.

E. Future disclosures. The licensee's notice may include:

- (1) Categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future, but does not currently disclose; and

- (2) Categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom the licensee does not currently disclose, nonpublic personal financial information.

F. Sample clauses. Sample clauses illustrating some of the notice content required by this section are included in Appendix A of this regulation.

Section 8. Form of Opt Out Notice to Consumers and Opt Out Methods

A. (1) Form of opt out notice. If a licensee is required to provide an opt out notice under Section 11A, it shall provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out under that section. The notice shall state:

- (a) That the licensee discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a nonaffiliated third party;
- (b) That the consumer has the right to opt out of that disclosure; and
- (c) A reasonable means by which the consumer may exercise the opt out right.

(2) Examples.

(a) Adequate opt out notice. A licensee provides adequate notice that the consumer can opt out of the disclosure of nonpublic personal financial information to a nonaffiliated third party if the licensee:

- (i) Identifies all of the categories of nonpublic personal financial information that it discloses or reserves the right to disclose, and all of the categories of nonaffiliated third parties to which the licensee discloses the information, as described in Section 7A(2) and (3), and states that the consumer can opt out of the disclosure of that information; and
- (ii) Identifies the insurance products or services that the consumer obtains from the licensee, either singly or jointly, to which the opt out direction would apply.

(b) Reasonable opt out means. A licensee provides a reasonable means to exercise an opt out right if it:

- (i) Designates check-off boxes in a prominent position on the relevant forms with the opt out notice;

- (ii) Includes a reply form together with the opt out notice;
 - (iii) Provides an electronic means to opt out, such as a form that can be sent via electronic mail or a process at the licensee's web site, if the consumer agrees to the electronic delivery of information; or
 - (iv) Provides a toll-free telephone number that consumers may call to opt out.
- (c) Unreasonable opt out means. A licensee does not provide a reasonable means of opting out if:
- (i) The only means of opting out is for the consumer to write his or her own letter to exercise that opt out right; or
 - (ii) The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that the licensee provided with the initial notice but did not include with the subsequent notice.
- (d) Specific opt out means. A licensee may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.
- B. Same form as initial notice permitted.** A licensee may provide the opt out notice together with or on the same written or electronic form as the initial notice the licensee provides in accordance with Section 5.
- C. Initial notice required when opt out notice delivered subsequent to initial notice.** If a licensee provides the opt out notice later than required for the initial notice in accordance with Section 5, the licensee shall also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.
- D. Joint relationships.**
- (1) If two (2) or more consumers jointly obtain an insurance product or service from a licensee, the licensee may provide a single opt out notice. The licensee's opt out notice shall explain how the licensee will treat an opt out direction by a joint consumer (as explained in Paragraph (5) of this subsection).
 - (2) Any of the joint consumers may exercise the right to opt out. The licensee may either:

- (a) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or
 - (b) Permit each joint consumer to opt out separately.
- (3) If a licensee permits each joint consumer to opt out separately, the licensee shall permit one of the joint consumers to opt out on behalf of all of the joint consumers.
- (4) A licensee may not require all joint consumers to opt out before it implements any opt out direction.
- (5) Example. If John and Mary are both named policyholders on a homeowner's insurance policy issued by a licensee and the licensee sends policy statements to John's address, the licensee may do any of the following, but it shall explain in its opt out notice which opt out policy the licensee will follow:
- (a) Send a single opt out notice to John's address, but the licensee shall accept an opt out direction from either John or Mary.
 - (b) Treat an opt out direction by either John or Mary as applying to the entire policy. If the licensee does so and John opts out, the licensee may not require Mary to opt out as well before implementing John's opt out direction.
 - (c) Permit John and Mary to make different opt out directions. If the licensee does so:
 - (i) It shall permit John and Mary to opt out for each other;
 - (ii) If both opt out, the licensee shall permit both of them to notify it in a single response (such as on a form or through a telephone call); and
 - (iii) If John opts out and Mary does not, the licensee may only disclose nonpublic personal financial information about Mary, but not about John and not about John and Mary jointly.
- E. Time to comply with opt out. A licensee shall comply with a consumer's opt out direction as soon as reasonably practicable after the licensee receives it.
- F. Continuing right to opt out. A consumer may exercise the right to opt out at any time.

- G. Duration of consumer's opt out direction.
- (1) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.
 - (2) When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal financial information that the licensee collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt out direction that applied to the former relationship does not apply to the new relationship.
- H. Delivery. When a licensee is required to deliver an opt out notice by this section, the licensee shall deliver it according to Section 10.

Section 9. Revised Privacy Notices

- A. General rule. Except as otherwise authorized in this regulation, a licensee shall not, directly or through an affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice that the licensee provided to that consumer under Section 5, unless:
- (1) The licensee has provided to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;
 - (2) The licensee has provided to the consumer a new opt out notice;
 - (3) The licensee has given the consumer a reasonable opportunity, before the licensee discloses the information to the nonaffiliated third party, to opt out of the disclosure; and
 - (4) The consumer does not opt out.
- B. Examples.
- (1) Except as otherwise permitted by Sections 14, 15 and 16, a licensee shall provide a revised notice before it:
 - (a) Discloses a new category of nonpublic personal financial information to any nonaffiliated third party;
 - (b) Discloses nonpublic personal financial information to a new category of nonaffiliated third party; or

- (c) Discloses nonpublic personal financial information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.
 - (2) A revised notice is not required if the licensee discloses nonpublic personal financial information to a new nonaffiliated third party that the licensee adequately described in its prior notice.
- C. **Delivery.** When a licensee is required to deliver a revised privacy notice by this section, the licensee shall deliver it according to Section 10.

Section 10. Delivery

- A. **How to provide notices.** A licensee shall provide any notices that this regulation requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.
- B. (1) **Examples of reasonable expectation of actual notice.** A licensee may reasonably expect that a consumer will receive actual notice if the licensee:
 - (a) Hand-delivers a printed copy of the notice to the consumer;
 - (b) Mails a printed copy of the notice to the last known address of the consumer separately, or in a policy, billing or other written communication;
 - (c) For a consumer who conducts transactions electronically, posts the notice on the electronic site and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service;
 - (d) For an isolated transaction with a consumer, such as the licensee providing an insurance quote or selling the consumer travel insurance, posts the notice and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular insurance product or service.
- (2) **Examples of unreasonable expectation of actual notice.** A licensee may not, however, reasonably expect that a consumer will receive actual notice of its privacy policies and practices if it:
 - (a) Only posts a sign in its office or generally publishes advertisements of its privacy policies and practices; or

- (b) Sends the notice via electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.
- C. Annual notices only. A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if:
 - (1) The customer uses the licensee's web site to access insurance products and services electronically and agrees to receive notices at the web site and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the web site; or
 - (2) The customer has requested that the licensee refrain from sending any information regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request.
- D. Oral description of notice insufficient. A licensee may not provide any notice required by this regulation solely by orally explaining the notice, either in person or over the telephone.
- E. Retention or accessibility of notices for customers.
 - (1) For customers only, a licensee shall provide the initial notice required by Section 5A(1), the annual notice required by Section 6A, and the revised notice required by Section 9 so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.
 - (2) Examples of retention or accessibility. A licensee provides a privacy notice to the customer so that the customer can retain it or obtain it later if the licensee:
 - (a) Hand-delivers a printed copy of the notice to the customer;
 - (b) Mails a printed copy of the notice to the last known address of the customer; or
 - (c) Makes its current privacy notice available on a web site (or a link to another web site) for the customer who obtains an insurance product or service electronically and agrees to receive the notice at the web site.
- F. Joint notice with other financial institutions. A licensee may provide a joint notice from the licensee and one or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the licensee and the other institutions. A licensee also may provide a notice on behalf of another financial institution.

- G. Joint relationships. If two (2) or more consumers jointly obtain an insurance product or service from a licensee, the licensee may satisfy the initial, annual and revised notice requirements of Sections 5A, 6A and 9A, respectively, by providing one notice to those consumers jointly.

ARTICLE III. LIMITS ON DISCLOSURES OF FINANCIAL INFORMATION

Section 11. Limits on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties

- A. (1) Conditions for disclosure. Except as otherwise authorized in this regulation, a licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party unless:
- (a) The licensee has provided to the consumer an initial notice as required under Section 5;
 - (b) The licensee has provided to the consumer an opt out notice as required in Section 8;
 - (c) The licensee has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third party, to opt out of the disclosure; and
 - (d) The consumer does not opt out.
- (2) Opt out definition. Opt out means a direction by the consumer that the licensee not disclose nonpublic personal financial information about that consumer to a nonaffiliated third party, other than as permitted by Sections 14, 15 and 16.
- (3) Examples of reasonable opportunity to opt out. A licensee provides a consumer with a reasonable opportunity to opt out if:
- (a) By mail. The licensee mails the notices required in Paragraph (1) of this subsection to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone number or any other reasonable means within thirty (30) days from the date the licensee mailed the notices.
 - (b) By electronic means. A customer opens an on-line account with a licensee and agrees to receive the notices required in Paragraph (1) of this subsection electronically, and the licensee allows the customer to opt out by any reasonable means within thirty (30)

days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

- (c) Isolated transaction with consumer. For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt out if the licensee provides the notices required in Paragraph (1) of this subsection at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.
- B. Application of opt out to all consumers and all nonpublic personal financial information.
- (1) A licensee shall comply with this section, regardless of whether the licensee and the consumer have established a customer relationship.
 - (2) Unless a licensee complies with this section, the licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer that the licensee has collected, regardless of whether the licensee collected it before or after receiving the direction to opt out from the consumer.
- C. Partial opt out. A licensee may allow a consumer to select certain nonpublic personal financial information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

Section 12. Limits on Redisclosure and Reuse of Nonpublic Personal Financial Information

- A. (1) Information the licensee receives under an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception in Sections 15 or 16 of this regulation, the licensee's disclosure and use of that information is limited as follows:
- (a) The licensee may disclose the information to the affiliates of the financial institution from which the licensee received the information;
 - (b) The licensee may disclose the information to its affiliates, but the licensee's affiliates may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and

- (c) The licensee may disclose and use the information pursuant to an exception in Sections 15 or 16 of this regulation, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.
 - (2) Example. If a licensee receives information from a nonaffiliated financial institution for claims settlement purposes, the licensee may disclose the information for fraud prevention, or in response to a properly authorized subpoena. The licensee may not disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.
- B. (1) Information a licensee receives outside of an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in Sections 15 or 16 of this regulation, the licensee may disclose the information only:
- (a) To the affiliates of the financial institution from which the licensee received the information;
 - (b) To its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and
 - (c) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which the licensee received the information.
- (2) Example. If a licensee obtains a customer list from a nonaffiliated financial institution outside of the exceptions in Sections 15 or 16:
- (a) The licensee may use that list for its own purposes; and
 - (b) The licensee may disclose that list to another nonaffiliated third party only if the financial institution from which the licensee purchased the list could have lawfully disclosed the list to that third party. That is, the licensee may disclose the list in accordance with the privacy policy of the financial institution from which the licensee received the list, as limited by the opt out direction of each consumer whose nonpublic personal financial information the licensee intends to disclose, and the licensee may disclose the list in accordance with an exception in Sections 15 or 16, such as to the licensee's attorneys or accountants.
- C. Information a licensee discloses under an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an

exception in Sections 15 or 16 of this regulation, the third party may disclose and use that information only as follows:

- (1) The third party may disclose the information to the licensee's affiliates;
- (2) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and
- (3) The third party may disclose and use the information pursuant to an exception in Sections 15 or 16 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

D. Information a licensee discloses outside of an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party other than under an exception in Sections 15 or 16 of this regulation, the third party may disclose the information only:

- (1) To the licensee's affiliates;
- (2) To the third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and
- (3) To any other person, if the disclosure would be lawful if the licensee made it directly to that person.

Section 13. Limits on Sharing Account Number Information for Marketing Purposes

A. General prohibition on disclosure of account numbers. A licensee shall not, directly or through an affiliate, disclose, other than to a consumer reporting agency, a policy number or similar form of access number or access code for a consumer's policy or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.

B. Exceptions. Subsection A of this section does not apply if a licensee discloses a policy number or similar form of access number or access code:

- (1) To the licensee's service provider solely in order to perform marketing for the licensee's own products or services, as long as the service provider is not authorized to directly initiate charges to the account;
- (2) To a licensee who is a producer solely in order to perform marketing for the licensee's own products or services; or

- (3) To a participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

C. Examples.

- (1) Policy number. A policy number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as the licensee does not provide the recipient with a means to decode the number or code.
- (2) Policy or transaction account. For the purposes of this section, a policy or transaction account is an account other than a deposit account or a credit card account. A policy or transaction account does not include an account to which third parties cannot initiate charges.

ARTICLE IV. EXCEPTIONS TO LIMITS ON DISCLOSURES OF FINANCIAL INFORMATION

Section 14. Exception to Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing

A. General rule.

- (1) The opt out requirements in Sections 8 and 11 do not apply when a licensee provides nonpublic personal financial information to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf; if the licensee:
 - (a) Provides the initial notice in accordance with Section 5; and
 - (b) Enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in Sections 15 or 16 in the ordinary course of business to carry out those purposes.
- (2) Example. If a licensee discloses nonpublic personal financial information under this section to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with that institution meets the requirements of Paragraph (1)(b) of this subsection if it prohibits the institution from disclosing or using the nonpublic personal financial information except as necessary to carry out the joint marketing

or under an exception in Sections 15 or 16 in the ordinary course of business to carry out that joint marketing.

- B. Service may include joint marketing. The services a nonaffiliated third party performs for a licensee under Subsection A of this section may include marketing of the licensee's own products or services or marketing of financial products or services offered pursuant to joint agreements between the licensee and one or more financial institutions.
- C. Definition of "joint agreement." For purposes of this section, "joint agreement" means a written contract pursuant to which a licensee and one or more financial institutions jointly offer, endorse or sponsor a financial product or service.

Section 15. Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions

- A. Exceptions for processing transactions at consumer's request. The requirements for initial notice in Section 5A(2), the opt out in Sections 8 and 11, and service providers and joint marketing in Section 14 do not apply if the licensee discloses nonpublic personal financial information as necessary to effect, administer or enforce a transaction that a consumer requests or authorizes, or in connection with:
 - (1) Servicing or processing an insurance product or service that a consumer requests or authorizes;
 - (2) Maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity;
 - (3) A proposed or actual securitization, secondary market sale (including sales of servicing rights) or similar transaction related to a transaction of the consumer; or
 - (4) Reinsurance or stop loss or excess loss insurance.
- B. "Necessary to effect, administer or enforce a transaction" means that the disclosure is:
 - (1) Required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or
 - (2) Required, or is a usual, appropriate or acceptable method:

- (a) To carry out the transaction or the product or service business of which the transaction is a part, and record, service or maintain the consumer's account in the ordinary course of providing the insurance product or service;
- (b) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;
- (c) To provide a confirmation, statement or other record of the transaction, or information on the status or value of the insurance product or service to the consumer or the consumer's agent or broker;
- (d) To accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party;
- (e) To underwrite insurance at the consumer's request or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects or as otherwise required or specifically permitted by federal or state law; or
- (f) In connection with:
 - (i) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited or otherwise paid using a debit, credit or other payment card, check or account number, or by other payment means;
 - (ii) The transfer of receivables, accounts or interests therein; or
 - (iii) The audit of debit, credit or other payment information.

Section 16. Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information

- A. Exceptions to opt out requirements. The requirements for initial notice to consumers in Section 5A(2), the opt out in Sections 8 and 11, and service providers and joint marketing in Section 14 do not apply when a licensee discloses nonpublic personal financial information:

- (1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;
- (2)
 - (a) To protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product or transaction;
 - (b) To protect against or prevent actual or potential fraud or unauthorized transactions;
 - (c) For required institutional risk control or for resolving consumer disputes or inquiries;
 - (d) To persons holding a legal or beneficial interest relating to the consumer; or
 - (e) To persons acting in a fiduciary or representative capacity on behalf of the consumer;
- (3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants and auditors;
- (4) To the extent specifically permitted or required under other provisions of law and in accordance with the federal Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.), to law enforcement agencies (including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping), a state insurance authority, and the Federal Trade Commission), self-regulatory organizations or for an investigation on a matter related to public safety;
- (5)
 - (a) To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); or
 - (b) From a consumer report reported by a consumer reporting agency;
- (6) In connection with a proposed or actual sale, merger, transfer or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business or unit;

- (7) (a) To comply with federal, state or local laws, rules and other applicable legal requirements;
 - (b) To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local authorities;
 - (c) To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance or other purposes as authorized by law; or
 - (8) For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan or a workers' compensation plan.
- B. Example of revocation of consent. A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under Section 8F.

Drafting Note: Because the notice requirements of this regulation could be a financial burden on a company in liquidation or receivership and negatively impact the ability of the liquidator or receiver to pay claims, regulators may want to consider adding an additional exception providing that licensees in liquidation or receivership are not subject to the notice provisions of this regulation.

ARTICLE V. RULES FOR HEALTH INFORMATION

Section 17. When Authorization Required for Disclosure of Nonpublic Personal Health Information

- A. A licensee shall not disclose nonpublic personal health information about a consumer or customer unless an authorization is obtained from the consumer or customer whose nonpublic personal health information is sought to be disclosed.
- B. Nothing in this section shall prohibit, restrict or require an authorization for the disclosure of nonpublic personal health information by a licensee for the performance of the following insurance functions by or on behalf of the licensee: claims administration; claims adjustment and management; detection, investigation or reporting of actual or potential fraud, misrepresentation or criminal activity; underwriting; policy placement or issuance; loss control; ratemaking and guaranty fund functions; reinsurance and excess loss insurance; risk management; case management; disease management; quality assurance; quality improvement; performance evaluation; provider credentialing verification; utilization review; peer review activities; actuarial, scientific, medical or public policy research; grievance procedures; internal administration of compliance, managerial, and information systems; policyholder service functions; auditing; reporting; database security; administration of consumer disputes and inquiries;

external accreditation standards; the replacement of a group benefit plan or workers compensation policy or program; activities in connection with a sale, merger, transfer or exchange of all or part of a business or operating unit; any activity that permits disclosure without authorization pursuant to the federal Health Insurance Portability and Accountability Act privacy rules promulgated by the U.S. Department of Health and Human Services; disclosure that is required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out a transaction or providing a product or service that a consumer requests or authorizes; and any activity otherwise permitted by law, required pursuant to governmental reporting authority, or to comply with legal process. Additional insurance functions may be added with the approval of the commissioner to the extent they are necessary for appropriate performance of insurance functions and are fair and reasonable to the interest of consumers.

Section 18. Authorizations

- A. A valid authorization to disclose nonpublic personal health information pursuant to this Article V shall be in written or electronic form and shall contain all of the following:
- (1) The identity of the consumer or customer who is the subject of the nonpublic personal health information;
 - (2) A general description of the types of nonpublic personal health information to be disclosed;
 - (3) General descriptions of the parties to whom the licensee discloses nonpublic personal health information, the purpose of the disclosure and how the information will be used;
 - (4) The signature of the consumer or customer who is the subject of the nonpublic personal health information or the individual who is legally empowered to grant authority and the date signed; and
 - (5) Notice of the length of time for which the authorization is valid and that the consumer or customer may revoke the authorization at any time and the procedure for making a revocation.
- B. An authorization for the purposes of this Article V shall specify a length of time for which the authorization shall remain valid, which in no event shall be for more than twenty-four (24) months.
- C. A consumer or customer who is the subject of nonpublic personal health information may revoke an authorization provided pursuant to this Article V at

any time, subject to the rights of an individual who acted in reliance on the authorization prior to notice of the revocation.

- D. A licensee shall retain the authorization or a copy thereof in the record of the individual who is the subject of nonpublic personal health information.

Section 19. Authorization Request Delivery

A request for authorization and an authorization form may be delivered to a consumer or a customer as part of an opt-out notice pursuant to Section 10, provided that the request and the authorization form are clear and conspicuous. An authorization form is not required to be delivered to the consumer or customer or included in any other notices unless the licensee intends to disclose protected health information pursuant to Section 17A.

Section 20. Relationship to Federal Rules

Irrespective of whether a licensee is subject to the federal Health Insurance Portability and Accountability Act privacy rule as promulgated by the U.S. Department of Health and Human Services [insert cite] (the "federal rule"), if a licensee complies with all requirements of the federal rule except for its effective date provision, the licensee shall not be subject to the provisions of this Article V.

Drafting Note: The drafters note that the effective date of this regulation is July 1, 2001. The HHS regulation is anticipated to be promulgated in late 2000, thereby becoming effective in late 2002. As of July 1, 2001, if the licensee is in compliance with all requirements of the HHS regulation except its effective date provision, the licensee is not subject to the provisions of this article. If the licensee comes into compliance with the HHS regulation after that date, the licensee is no longer subject to the provisions of this article as of the date the licensee comes into compliance with the HHS regulation.

Section 21. Relationship to State Laws

Nothing in this article shall preempt or supersede existing state law related to medical records, health or insurance information privacy.

ARTICLE VI. ADDITIONAL PROVISIONS

Section 22. Protection of Fair Credit Reporting Act

Nothing in this regulation shall be construed to modify, limit or supersede the operation of the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), and no inference shall be drawn on the basis of the provisions of this regulation regarding whether information is transaction or experience information under Section 603 of that Act.

Section 23. Nondiscrimination

- A. A licensee shall not unfairly discriminate against any consumer or customer because that consumer or customer has opted out from the disclosure of his or her nonpublic personal financial information pursuant to the provisions of this regulation.
- B. A licensee shall not unfairly discriminate against a consumer or customer because that consumer or customer has not granted authorization for the disclosure of his or her nonpublic personal health information pursuant to the provisions of this regulation.

Section 24. Violation

Drafting Note: Cite state unfair trade practices act or other applicable state law.

Section 25. Severability

If any section or portion of a section of this regulation or its applicability to any person or circumstance is held invalid by a court, the remainder of the regulation or the applicability of the provision to other persons or circumstances shall not be affected.

Section 26. Effective Date

- A. Effective date. This regulation is effective November 13, 2000. In order to provide sufficient time for licensees to establish policies and systems to comply with the requirements of this regulation, the commissioner has extended the time for compliance with this regulation until July 1, 2001.
- B. (1) Notice requirement for consumers who are the licensee's customers on the compliance date. By July 1, 2001, a licensee shall provide an initial notice, as required by Section 5, to consumers who are the licensee's customers on July 1, 2001.

(2) Example. A licensee provides an initial notice to consumers who are its customers on July 1, 2001, if, by that date, the licensee has established a system for providing an initial notice to all new customers and has mailed the initial notice to all the licensee's existing customers.
- C. Two-year grandfathering of service agreements. Until July 1, 2002, a contract that a licensee has entered into with a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf satisfies the provisions of Section 14A(1)(b) of this regulation, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as the licensee entered into the agreement on or before July 1, 2000.

APPENDIX A – SAMPLE CLAUSES

Licensees, 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, income and information from a consumer reporting agency, may give rise to obligations under the federal 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 a licensee collects (all institutions)

A licensee may use this clause, as applicable, to meet the requirement of Section 7A(1) to describe the categories of nonpublic personal information the licensee collects.

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
- Information we receive from a consumer reporting agency.

A-2–Categories of information a licensee discloses (institutions that disclose outside of the exceptions)

A licensee may use one of these clauses, as applicable, to meet the requirement of Section 7A(2) to describe the categories of nonpublic personal information the licensee discloses. The licensee may use these clauses if it discloses nonpublic personal information other than as permitted by the exceptions in Sections 14, 15 and 16.

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, income, and beneficiaries”];
- Information about your transactions with us, our affiliates or others, such as [provide illustrative examples, such as “your policy coverage, premiums, and payment history”]; and
- Information we receive from a consumer reporting agency, such as [provide illustrative examples, such as “your creditworthiness and credit history”].

Sample Clause A-2, Alternative 2:

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 a licensee discloses and parties to whom the licensee discloses (institutions that do not disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirements of Sections 7A(2), (3), and (4) to describe the categories of nonpublic personal information about customers and former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses. A licensee may use this clause if the licensee does not disclose nonpublic personal information to any party, other than as permitted by the exceptions in Sections 15 and 16.

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 a licensee discloses (institutions that disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirement of Section 7A(3) to describe the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal information. This clause may be used if the licensee discloses nonpublic personal information other than as permitted by the exceptions in Sections 14, 15 and 16, as well as when permitted by the exceptions in Sections 15 and 16.

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 “life insurers, automobile insurers, mortgage bankers, securities broker-dealers, and insurance agents”];
- Non-financial companies, such as [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

A licensee may use one of these clauses, as applicable, to meet the requirements of Section 7A(5) related to the exception for service providers and joint marketers in Section 14. If a licensee discloses nonpublic personal information under this exception, the licensee shall describe the categories of nonpublic personal information the licensee discloses and the categories of third parties with which the licensee has 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 which 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, income, and beneficiaries”];
- Information about your transactions with us, our affiliates or others, such as [provide illustrative examples, such as “your policy coverage, premium, and payment history”]; 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 our behalf or to other financial institutions with whom we have joint marketing agreements.

A-6—Explanation of opt out right (institutions that disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirement of Section 7A(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. The licensee may use this clause if the licensee discloses nonpublic personal information other than as permitted by the exceptions in Sections 14, 15 and 16.

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)

A licensee may use this clause, as applicable, to meet the requirement of Section 7A(8) to describe its 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.

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CONTINUATION SHEET FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
Pursuant to Commonwealth Documents Law

ANNEX A

**PENNSYLVANIA REGULATIONS TITLE 31. -- INSURANCE PART VIII.—
MISCELLANEOUS PROVISIONS. Chapter 146a. Privacy of Consumer Financial
Information Regulation**

Subchapter A. GENERAL PROVISIONS

Section

- 146a.1. Purpose
- 146a.2. Definitions

Subchapter B. PRIVACY AND OPT OUT NOTICES FOR FINANCIAL INFORMATION

- 146a.11. Initial Privacy Notice to Consumers Required
- 146a.12. Annual Privacy Notice to Customers Required
- 146a.13. Information to be Included in Privacy Notices
- 146a.14. Form of Opt Out Notice to Consumers and Opt Out Methods
- 146a.15. Revised Privacy Notices
- 146a.16. Delivery

Subchapter C. LIMITS ON DISCLOSURES OF FINANCIAL INFORMATION

- 146a.21. Limitation on Disclosure of Nonpublic Personal Financial Information to Third Parties
- 146a.22. Limits on Redisclosure and Reuse of Nonpublic Personal Financial Information
- 146a.23. Limits on Sharing Account Number Information for Marketing Purposes

**Subchapter D. EXCEPTIONS TO LIMITS ON DISCLOSURES OF FINANCIAL
INFORMATION**

- 146a.31. Exception to Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing
- 146a.32. Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions
- 146a.33. Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information

Subchapter E. ADDITIONAL PROVISIONS

- 146a.41. Protection of Fair Credit Reporting Act
- 146a.42. Nondiscrimination

- 146a.43. Violation
- 146a.44. Severability
- 146a.45. Effective Date

Appendix A –Sample Clauses

Subchapter A. GENERAL PROVISIONS

§ 146a.1. Purpose.

(a) *Purpose.* This regulation governs the treatment of nonpublic personal financial information about individuals by various licensees of the Commonwealth insurance department. This regulation:

(1) Requires a licensee to provide notice to individuals about its privacy policies and practices.

(2) Describes the conditions under which a licensee may disclose nonpublic personal financial information about individuals to third parties.

(3) Provides methods for individuals to prevent a licensee from disclosing that information.

(b) *Scope.* This regulation applies to nonpublic personal financial information about individuals who obtain or are claimants or beneficiaries of products or services primarily for personal, family or household purposes from licensees. Unless otherwise specified, this regulation generally does not apply to information about companies or about individuals who obtain products or services for business, commercial or agricultural purposes.

(c) *Compliance.* A licensee domiciled in this state that is in compliance with this regulation in a state that has not enacted laws or regulations that meet the requirements of Title V of the Gramm-Leach-Bliley Act (PL 102-106) may nonetheless be deemed to be in compliance with Title V of the Gramm-Leach-Bliley Act in such other state.

(d) *Examples.* The examples provided in this regulation are for illustrative purposes only and do not otherwise limit or restrict the scope of the provisions of this regulation.

§ 146a.2. Definitions.

As used in this regulation, unless the context requires otherwise:

Act - The Insurance Department Act of 1921 (40 P.S. §§ 1 - 321)

Affiliate- Any company that controls, is controlled by or is under common control with another company.

Clear and conspicuous - That a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice. Examples include:

(i) Reasonably understandable. A licensee makes its notice reasonably understandable if it:

(A) Presents the information in the notice in clear, concise sentences, paragraphs, and sections.

(B) Uses short explanatory sentences or bullet lists whenever possible.

(C) Uses definite, concrete, everyday words and active voice whenever possible.

(D) Avoids multiple negatives.

(E) Avoids legal and highly technical business terminology whenever possible.

(F) Avoids explanations that are imprecise and readily subject to different interpretations.

(ii) Designed to call attention. A licensee designs its notice to call attention to the nature and significance of the information in it if the licensee:

(A) Uses a plain-language heading to call attention to the notice.

(B) Uses a typeface and type size that are easy to read.

(C) Provides wide margins and ample line spacing.

(D) Uses boldface or italics for key words.

(E) In a form that combines the licensee's notice with other information, uses distinctive type size, style, and graphic devices, such as shading or sidebars.

(iii) Notices on web sites. If a licensee provides a notice on a web page, the licensee designs its notice to call attention to the nature and significance of the information in it if the licensee uses text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the web site (such as text, graphics, hyperlinks or sound) do not distract attention from the notice, and the licensee either:

(A) Places the notice on a screen that consumers frequently access, such as a page on which transactions are conducted.

(B) Places a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature and relevance of the notice.

Collect - To obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

Commissioner - The Insurance Commissioner of the Commonwealth.

Company - A corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship or similar organization.

Consumer - An individual who seeks to obtain, obtains or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, and about whom the licensee has nonpublic personal information, or that individual's legal representative. Examples include:

(i) An individual who provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment or economic advisory services relating to an insurance product or service is a consumer regardless of whether the licensee establishes an ongoing advisory relationship.

(ii) An applicant for insurance prior to the inception of insurance coverage is a licensee's consumer.

(iii) An individual who is a consumer of another financial institution is not a licensee's consumer solely because the licensee is acting as agent for, or provides processing or other services to, that financial institution.

(iv) An individual is a licensee's consumer if the individual is:

(A) A beneficiary of a life insurance policy underwritten by the licensee.

(B) A claimant under an insurance policy issued by the licensee.

(C) An insured or an annuitant under an insurance policy or an annuity, respectively, issued by the licensee.

(D) A mortgagor of a mortgage covered under a mortgage insurance policy.

(E) And the licensee discloses nonpublic personal financial information about the individual to a third party other than as permitted under sections 146a.31, 146a.32 and 146a.33.

(v) Provided that the licensee provides the initial, annual and revised notices under §§ 146a.11, 146a.12 and 146a.15 of this regulation to the plan sponsor, group or blanket insurance policyholder or group annuity contractholder, workers' compensation plan participant, and further provided that the licensee does not disclose to a third party nonpublic personal financial information about such an individual other than as permitted under §§ 146a.31, 146a.32 and 146a.33 of this regulation, an individual is not the consumer of the licensee solely because the individual is:

(A) A participant or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer or fiduciary.

(B) Covered under a group or blanket insurance policy or group annuity contract issued by the licensee.

(C) A beneficiary in a workers' compensation plan.

(vi) The individuals described in subparagraphs (v)(A) through (v)(C) are consumers of a licensee if the licensee does not meet all the conditions of (v).

(vii) In no event shall the individuals, solely by virtue of the status described in subparagraphs (v)(A) through (v)(C), be deemed to be customers for purposes of this regulation.

(viii) An individual is not a licensee's consumer solely because the individual is a beneficiary of a trust for which the licensee is a trustee.

(ix) An individual is not a licensee's consumer solely because the individual has designated the licensee as trustee for a trust.

Consumer reporting agency - Has the same meaning as in section 603(f) of the Federal Fair Credit Reporting Act (15 U.S.C. § 1681a(f)).

Control - As defined in section 1401 of The Insurance Company Law (40 P.S. § 991.1401).

Customer - A consumer who has a customer relationship with a licensee.

Customer relationship - A continuing relationship between a consumer and a licensee under which the licensee provides one or more insurance products or services to the consumer that are to be used primarily for personal, family or household purposes. Examples include:

(i) A consumer has a continuing relationship with a licensee if:

(A) The consumer is a current policyholder of an insurance product issued by or through the licensee.

(B) The consumer obtains financial, investment or economic advisory services relating to an insurance product or service from the licensee for a fee.

(ii) A consumer does not have a continuing relationship with a licensee if:

(A) The consumer applies for insurance but does not purchase the insurance.

(B) The licensee sells the consumer airline travel insurance in an isolated transaction.

(C) The individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee.

(D) The consumer is a beneficiary or claimant under a policy and has submitted a claim under a policy choosing a settlement option involving an ongoing relationship with the licensee.

(E) The consumer is a beneficiary or a claimant under a policy and has submitted a claim under that policy choosing a lump sum settlement option.

(F) The customer's policy is lapsed, expired, or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of 12 consecutive months, other than annual privacy notices, material required by law or regulation, communication at the direction of a state or Federal authority, or promotional materials.

(G) The individual is an insured or an annuitant under an insurance policy or annuity, respectively, but is not the policyholder or owner of the insurance policy or annuity.

(H) For the purposes of this regulation, the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

Department - The Insurance Department of the Commonwealth.

Financial institution - Any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. § 1843(k)). The term does not include the following:

(i) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. § 1 et seq.).

(ii) The Federal Agricultural Mortgage Corporation or any entity charged and operating under the Farm Credit Act of 1971 (12 U.S.C. § 2001et seq.).

(iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as the institutions do not sell or transfer nonpublic personal information to a third party.

Financial product or service - Any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. § 1843(k)). Financial service includes a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

Insurance product or service - Any product or service that is offered by a licensee pursuant to the insurance laws of this state. Insurance service includes a licensee's evaluation, brokerage or distribution of information that the licensee collects in connection with a request or an application from a consumer for an insurance product or service.

Licensee –

(i) All licensed insurers, as defined in section 201-A of the act (40 P.S. § 65.1-A), producers and other persons or entities licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to the act, including health maintenance organizations holding a certificate of authority pursuant to section 201 of the Health Care Facilities Act (35 P.S. § 448.201).

(ii) The term licensee does not include:

(A) Bail Bondsmen as defined in 42 Pa.C.S.A. § 5741 (relating to definitions).

(B) Motor Vehicle Physical Damage Appraisers as defined in 63 P.S. § 852 (relating to definitions) and § 62.1 (relating to definitions).

(C) Public Adjusters as defined in 63 P.S. § 1601 (relating to definitions) and § 115.1 (relating to definitions).

(D) An entity providing continuing care as defined in section 3 and licensed pursuant to section 4 of the Continuing-Care Provider Registration and Disclosure Act (40 P.S. §§ 3203 and 3204).

(iii) A licensee is not subject to the notice and opt out requirements for nonpublic personal financial information set forth in subchapters A, B, C and D if the licensee is an employee, agent or other representative of another licensee (“the principal”) and:

(A) The principal otherwise complies with, and provides the notices required by, the provisions of this regulation.

(B) The licensee does not disclose any nonpublic personal information to any person other than the principal in a manner permitted by this regulation.

(C) Subject to subparagraph (ii), “licensee” shall also include any unauthorized insurer that accepts business placed through a licensed surplus lines broker in this Commonwealth, but only in regard to the surplus lines placements placed pursuant to section 1601 of The Insurance Company Law (40 P.S. § 991.1601).

(D) A surplus lines broker or surplus lines insurer shall be deemed to be in compliance with the notice and opt out requirements for nonpublic personal financial information set forth in subchapters A, B, C and D provided:

(I) The broker or insurer does not disclose nonpublic personal information of a consumer or a customer to third parties for any purpose, including joint servicing or marketing under section 146a.31 of this regulation, except as permitted by section 146a.32 or section 146a.33.

(II) The broker or insurer delivers a notice to the consumer at the time a customer relationship is established on which the following is printed in 16-point type:

PRIVACY NOTICE

“NEITHER THE U.S. BROKERS THAT HAVE HANDLED THIS INSURANCE NOR THE INSURERS THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL INFORMATION CONCERNING THE BUYER TO THIRD PARTIES EXCEPT AS PERMITTED BY LAW.”

Nonaffiliated third party - any person except:

(i) A licensee’s affiliate.

(ii) A person employed jointly by a licensee and any company that is not the licensee’s affiliate (but nonaffiliated third party includes the other company that jointly employs the person).

(iii) Nonaffiliated third party includes any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in section 4(k)(4)(H) or insurance company investment activities of the type described in section 4(k)(4)(I) of the Federal Bank Holding Company Act (12 U.S.C. §§ 1843(k)(4)(H) and (I)).

Nonpublic personal information - means:

(i) Personally identifiable financial information.

(ii) Any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.

(iii) Nonpublic personal information does not include:

(A) Publicly available information, except as included on a list described in clause (i)(B).

(B) Any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information that is not publicly available.

(iv) Examples of lists.

(A) Nonpublic personal financial information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.

(B) Nonpublic personal financial information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

Personally identifiable financial information – any customer information, as defined in 601 of The Insurance Department Act (40 P.S. § 231):

(i) That a consumer provides to a licensee to obtain an insurance product or service from the licensee.

(ii) About a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer.

(iii) That the licensee otherwise obtains about a consumer in connection with providing an insurance product or service to that consumer.

(iv) Examples.

(A) Information included. Personally identifiable financial information includes:

(I) Information a consumer provides to a licensee on an application to obtain an insurance product or service.

(II) Account balance information and payment history.

(III) The fact that an individual is or has been one of the licensee's customers or has obtained an insurance product or service from the licensee.

(IV) Any information about the licensee's consumer if it is disclosed in a manner that indicates that the individual is or has been the licensee's consumer.

(V) Any information that a consumer provides to a licensee or that the licensee or its agent otherwise obtains in connection with collecting on a loan or servicing a loan.

(VI) Any information the licensee collects through an Internet cookie (an information-collecting device from a web server).

(VII) Information from a consumer report.

(B) Information not included. Personally identifiable financial information does not include:

(I) A list of names and addresses of customers of an entity that is not a financial institution.

(II) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names or addresses.

Publicly available information - any information that a licensee has a reasonable basis to believe is lawfully made available to the public from:

(i) Federal, state or local government records.

(ii) Widely distributed media.

(iii) Disclosures to the public that are required to be made by Federal, state or local law.

Reasonable basis - A licensee has a reasonable basis to believe that information is lawfully made available to the public if the licensee has taken steps to determine:

(i) That the information is of the type that is available to the public.

(ii) Whether an individual can direct that the information not be made available to the public and, if so, that the licensee's consumer has not done so.

(iii) Reasonable basis.

(A) A licensee has a reasonable basis to believe that mortgage information is lawfully made available to the public if the licensee has determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

(B) A licensee has a reasonable basis to believe that an individual's telephone number is lawfully made available to the public if the licensee has located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

(iv) Examples.

(A) Government records. Publicly available information in government records includes information in government real estate records and security interest filings.

(B) Widely distributed media. Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper or a web site that is available to the public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the public.

Subchapter B. PRIVACY AND OPT OUT NOTICES FOR FINANCIAL INFORMATION

§ 146a.11. Initial Privacy Notice to Consumers Required.

(a) *Initial notice requirement.* A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to:

(1) *Customer.* An individual who becomes the licensee's customer, not later than when the licensee establishes a customer relationship, except as provided in subsection (e) of this section.

(2) *Consumer.* A consumer, before the licensee discloses any nonpublic personal financial information about the consumer to any third party, if the licensee makes a disclosure other than as authorized by sections 146a.32 and 146a.33.

(b) *When initial notice to a consumer is not required.* A licensee is not required to provide an initial notice to a consumer under subsection (a)(2) if:

(1) The licensee does not disclose any nonpublic personal financial information about the consumer to any third party, other than as authorized by sections 146a.32 and 146a.33, and the licensee does not have a customer relationship with the consumer.

(2) A notice has been provided by an affiliated licensee, as long as the notice clearly identifies all licensees to whom the notice applies and is accurate with respect to the licensee and the other institutions.

(c) *When the licensee establishes a customer relationship.*

(1) *General rule.* A licensee establishes a customer relationship at the time the licensee and the consumer enter into a continuing relationship.

(2) *Examples of establishing customer relationship.* A licensee establishes a customer relationship when the consumer:

(i) Becomes a policyholder of a licensee that is an insurer when the insurer delivers an insurance policy or contract to the consumer, or in the case of a licensee that is an insurance producer or insurance broker, obtains insurance through that licensee.

(ii) Agrees to obtain financial, economic or investment advisory services relating to insurance products or services for a fee from the licensee.

(d) *Existing customers.* When an existing customer obtains a new insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, the licensee satisfies the initial notice requirements of subsection (a) as follows:

(1) The licensee may provide a revised policy notice, under § 146a.15, that covers the customer's new insurance product or service.

(2) If the initial, revised or annual notice that the licensee most recently provided to that customer was accurate with respect to the new insurance product or service, the licensee does not need to provide a new privacy notice under subsection (a).

(e) *Exceptions to allow subsequent delivery of notice.*

(1) A licensee may provide the initial notice required by subsection (a)(1) within a reasonable time after the licensee establishes a customer relationship if:

(i) Establishing the customer relationship is not at the customer's election.

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

(2) Examples of exceptions.

(i) Not at customer's election. Establishing a customer relationship is not at the customer's election if a licensee acquires or is assigned a customer's policy from another financial institution or residual market mechanism and the customer does not have a choice about the licensee's acquisition or assignment.

(ii) Substantial delay of customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would substantially delay the customer's transaction when the licensee and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the insurance product or service.

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

(f) *Delivery.* When a licensee is required to deliver an initial privacy notice by this section, the licensee shall deliver it according to § 146a.16. If the licensee uses a short-form initial notice for non-customers according to § 146a.13(d), the licensee may deliver its privacy notice according to § 146a.13(d)(3).

§ 146a.12. Annual Privacy Notice to Customers Required.

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

(2) *Example.* A licensee provides a notice annually if it defines the twelve-consecutive-month period as a calendar year and provides the annual notice to the customer once in each calendar year following the calendar year in which the licensee provided the initial notice. For example, if a customer opens an account on any day of year 1, the licensee shall provide an annual notice to that customer by December 31 of year 2.

(b) (1) *Termination of customer relationship.* A licensee is not required to provide an annual notice to a former customer. A former customer is an individual with whom a licensee no longer has a continuing relationship.

(2) *Examples.*

(i) A licensee no longer has a continuing relationship with an individual if the individual no longer is a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee.

(ii) A licensee no longer has a continuing relationship with an individual if the individual's policy is lapsed, expired or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of 12 consecutive months, other than to provide annual privacy notices, material required by law or regulation, or promotional materials.

(iii) For the purposes of this regulation, a licensee no longer has a continuing relationship with an individual if the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

(iv) A licensee no longer has a continuing relationship with a customer in the case of providing real estate settlement services, at the time the customer completes execution of all documents related to the real estate closing, payment for those services has been received, or the licensee has completed all of its responsibilities with respect to the settlement, including filing documents on the public record, whichever is later.

(c) *Delivery.* When a licensee is required by this section to deliver an annual privacy notice, the licensee shall deliver it according to § 146a.16.

§ 146a.13. Information to be Included in Privacy Notices.

(a) *General rule.* The initial, annual and revised privacy notices that a licensee provides under §§ 146a.11, 146a.12 and 146a.15 shall include each of the following items of information, in addition to any other information the licensee wishes to provide, that applies to the licensee and to the consumers to whom the licensee sends its privacy notice:

- (1) The categories of nonpublic personal financial information that the licensee collects.
- (2) The categories of nonpublic personal financial information that the licensee discloses.
- (3) The categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information, other than those parties to whom the licensee discloses information under §§ 146a.32 and 146a.33.
- (4) The categories of nonpublic personal financial information about the licensee's former customers that the licensee discloses and the categories of affiliates and nonaffiliated

third parties to whom the licensee discloses nonpublic personal financial information about the licensee's former customers, other than those parties to whom the licensee discloses information under §§ 146a.32 and 146a.33.

(5) If a licensee discloses nonpublic personal financial information to a third party under § 146a.31 (and no other exception in §§ 146a.32 and 146a.33 applies to that disclosure), a separate description of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted.

(6) An explanation of the consumer's right under § 146a.21(a) to opt out of the disclosure of nonpublic personal financial information to any third parties, including the methods by which the consumer may exercise that right at that time.

(7) Any disclosures that the licensee makes under section 603(d)(2)(A)(iii) of the Federal Fair Credit Reporting Act (15 U.S.C. § 1681a(d)(2)(A)(iii)).

(8) The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

(9) Any disclosure that the licensee makes under subsection (b).

(b) *Description of parties subject to exceptions.* If a licensee discloses nonpublic personal financial information as authorized under §§ 146a.32 and 146a.33, the licensee is not required to list those exceptions in the initial or annual privacy notices required by §§ 146a.11 and 146a.12. When describing the categories of parties to whom disclosure is made, the licensee is required to state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

(c) *Examples.*

(1) *Categories of nonpublic personal financial information that the licensee collects.* A licensee satisfies the requirement to categorize the nonpublic personal financial information it collects if the licensee categorizes it according to the source of the information, as applicable:

(i) Information from the consumer.

(ii) Information about the consumer's transactions with the licensee or its affiliates.

(iii) Information about the consumer's transactions with nonaffiliated third parties.

(iv) Information from a consumer reporting agency.

(2) *Categories of nonpublic personal financial information a licensee discloses.*

(i) A licensee satisfies the requirement to categorize nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in subsection (c)(1), as applicable, and provides a few examples to illustrate the types of information in each category. These might include:

(A) Information from the consumer, including application information, such as assets and income and identifying information, such as name, address and social security number.

(B) Transaction information, such as information about balances, payment history and parties to the transaction.

(C) Information from consumer reports, such as a consumer's creditworthiness and credit history.

(ii) A licensee does not adequately categorize the information that it discloses if the licensee uses only general terms, such as transaction information about the consumer.

(iii) If a licensee reserves the right to disclose all of the nonpublic personal financial information about consumers that it collects, the licensee may simply state that fact without describing the categories or examples of nonpublic personal information that the licensee discloses.

(3) Categories of affiliates and nonaffiliated third parties to whom the licensee discloses.

(i) A licensee satisfies the requirement to categorize the affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information about consumers if the licensee identifies the types of businesses in which they engage.

(ii) Types of businesses may be described by general terms only if the licensee uses a few illustrative examples of significant lines of business. For example, a licensee may use the term financial products or services if it includes appropriate examples of significant lines of businesses, such as life insurer, automobile insurer, consumer banking or securities brokerage.

(iii) A licensee also may categorize the affiliates and nonaffiliated third parties to which it discloses nonpublic personal financial information about consumers using more detailed categories.

(4) Disclosures under exception for service providers and joint marketers. If a licensee discloses nonpublic personal financial information under the exception in § 146a.31 to a third party to market products or services that it offers alone or jointly with another financial institution, the licensee satisfies the disclosure requirement of subsection (a)(5) if it:

(i) Lists the categories of nonpublic personal financial information it discloses, using the same categories and examples the licensee used to meet the requirements of subsection (a)(2), as applicable.

(ii) States whether the third party is:

(A) A service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution.

(B) A financial institution with whom the licensee has a joint marketing agreement.

(5) *Simplified notices.* If a licensee does not disclose, and does not wish to reserve the right to disclose, nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under §§ 146a.32 and 146a.33, the licensee may simply state that fact, in addition to the information it shall provide under subsections (a)(1), (a)(8) and (a)(9), and subsection (b).

(6) *Confidentiality and security.* A licensee describes its policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if it does both of the following:

(i) Describes in general terms who is authorized to have access to the information.

(ii) States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy. The licensee is not required to describe technical information about the safeguards it uses.

(d) *Short-form initial notice with opt out notice for non-customers.*

(1) A licensee may satisfy the initial notice requirements in §§ 146a.11(a)(2) and 146a.14(c) for a consumer who is not a customer by providing a short-form initial notice at the same time as the licensee delivers an opt out notice as required in § 146a.14.

(2) A short-form initial notice shall:

(i) Be clear and conspicuous.

(ii) State that the licensee's privacy notice is available upon request.

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

(3) The licensee shall deliver its short-form initial notice according to § 146a.16. The licensee is not required to deliver its privacy notice with its short-form initial notice. The licensee instead may simply provide the consumer a reasonable means to obtain its privacy

notice. If a consumer who receives the licensee's short-form notice requests the licensee's privacy notice, the licensee shall deliver its privacy notice according to § 146a.16.

(4) Examples of obtaining privacy notice. The licensee provides a reasonable means by which a consumer may obtain a copy of its privacy notice if the licensee:

(i) Provides a toll-free telephone number that the consumer may call to request the notice.

(ii) For a consumer who conducts business in person at the licensee's office, maintains copies of the notice on hand that the licensee provides to the consumer immediately upon request.

(e) *Future disclosures.* The licensee's notice may include:

(1) Categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future, but does not currently disclose.

(2) Categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom the licensee does not currently disclose, nonpublic personal financial information.

(f) *Sample clauses.* Sample clauses illustrating some of the notice content required by this section are included in Appendix A of this regulation.

§ 146a.14. Form of Opt Out Notice to Consumers and Opt Out Methods.

(a) (1) *Form of opt out notice.* If a licensee is required to provide an opt out notice under § 146a.21(a), it shall provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out under that section. The notice shall state:

(i) That the licensee discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a third party.

(ii) That the consumer has the right to opt out of that disclosure.

(iii) A reasonable means by which the consumer may exercise the opt out right.

(2) *Examples.*

(i) *Adequate opt out notice.* A licensee provides adequate notice that the consumer can opt out of the disclosure of nonpublic personal financial information to a third party if the licensee:

(A) Identifies all of the categories of nonpublic personal financial information that it discloses or reserves the right to disclose, and all of the categories of third parties to

which the licensee discloses the information, as described in §§ 146a.13(a)(2) and (a)(3), and states that the consumer can opt out of the disclosure of that information.

(B) Identifies the insurance products or services that the consumer obtains from the licensee, either singly or jointly, to which the opt out direction would apply.

(ii) *Reasonable opt out means.* A licensee provides a reasonable means to exercise an opt out right if it:

(A) Designates check-off boxes in a prominent position on the relevant forms with the opt out notice.

(B) Includes a reply form together with the opt out notice.

(C) Provides an electronic means to opt out, such as a form that can be sent via electronic mail or a process at the licensee's web site, if the consumer agrees to the electronic delivery of information.

(D) Provides a toll-free telephone number that consumers may call to opt out.

(iii) *Unreasonable opt out means.* A licensee does not provide a reasonable means of opting out if:

(A) The only means of opting out is for the consumer to write his or her own letter to exercise that opt out right.

(B) The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that the licensee provided with the initial notice but did not include with the subsequent notice.

(iv) *Specific opt out means.* A licensee may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

(b) *Same form as initial notice permitted.* A licensee may provide the opt out notice together with or on the same written or electronic form as the initial notice the licensee provides in accordance with § 146a.11.

(c) *Initial notice required when opt out notice delivered subsequent to initial notice.* If a licensee provides the opt out notice later than required for the initial notice in accordance with § 146a.11, the licensee shall also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

(d) *Joint relationships.*

(1) If 2 or more consumers jointly obtain an insurance product or service from a licensee, the licensee may provide a single opt out notice. The licensee's opt out notice shall explain

how the licensee will treat an opt out direction by a joint consumer (as explained in subsection (d)(5)).

(2) Any of the joint consumers may exercise the right to opt out. The licensee may either:

(i) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers.

(ii) Permit each joint consumer to opt out separately.

(3) If a licensee permits each joint consumer to opt out separately, the licensee shall permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(4) A licensee may not require all joint consumers to opt out before it implements any opt out direction.

(5) Example. If John and Mary are both named policyholders on a homeowner's insurance policy issued by a licensee and the licensee sends policy statements to John's address, the licensee may do any of the following, but it shall explain in its opt out notice which opt out policy the licensee will follow:

(i) Send a single opt out notice to John's address, but the licensee shall accept an opt out direction from either John or Mary.

(ii) Treat an opt out direction by either John or Mary as applying to the entire policy. If the licensee does so and John opts out, the licensee may not require Mary to opt out as well before implementing John's opt out direction.

(iii) Permit John and Mary to make different opt out directions. If the licensee does so:

(A) It shall permit John and Mary to opt out for each other.

(B) If both opt out, the licensee shall permit both of them to notify it in a single response (such as on a form or through a telephone call).

(C) If John opts out and Mary does not, the licensee may only disclose nonpublic personal financial information about Mary, but not about John and not about John and Mary jointly.

(e) *Time to comply with opt out.* A licensee shall comply with a consumer's opt out direction as soon as reasonably practicable after the licensee receives it.

(f) *Continuing right to opt out.* A consumer may exercise the right to opt out at any time.

(g) *Duration of consumer's opt out direction.*

(1) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(2) When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal financial information that the licensee collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt out direction that applied to the former relationship does not apply to the new relationship.

(h) *Delivery.* When a licensee is required to deliver an opt out notice by this section, the licensee shall deliver it according to § 146a.16.

(i) *Written Consent Alternative.* Nothing in this section shall otherwise prohibit a licensee from directly obtaining written consent for the use of nonpublic personal information from a consumer or customer pursuant to section 648(e) of the act (40 P.S. § 288(e)), if applicable to the licensee, provided that an adequate initial and/or annual notice has been provided to the consumer or customer. A consumer or customer's refusal to provide written consent shall be dispositive until such time as the consumer or customer affirmatively permits the use of such information.

§ 146a.15. Revised Privacy Notices.

(a) *General rule.* Except as otherwise authorized in this regulation, a licensee shall not, directly or through an affiliate, disclose any nonpublic personal financial information about a consumer to a third party other than as described in the initial notice that the licensee provided to that consumer under § 146a.11, unless:

(1) The licensee has provided to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices.

(2) The licensee has provided to the consumer a new opt out notice.

(3) The licensee has given the consumer a reasonable opportunity, before the licensee discloses the information to the third party, to opt out of the disclosure.

(4) The consumer does not opt out.

(b) *Examples.*

(1) Except as otherwise permitted by §§ 146a.31, 146a.32 and 146a.33, a licensee shall provide a revised notice before it:

(i) Discloses a new category of nonpublic personal financial information to any third party.

(ii) Discloses nonpublic personal financial information to a new category of third party.

(iii) Discloses nonpublic personal financial information about a former customer to a third party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.

(2) A revised notice is not required if the licensee discloses nonpublic personal financial information to a new third party that the licensee adequately described in its prior notice.

(c) *Delivery.* When a licensee is required to deliver a revised privacy notice by this section, the licensee shall deliver it according to § 146a.16.

§ 146a.16. Delivery.

(a) *How to provide notices.* A licensee shall provide any notices that this regulation requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(b) (1) *Examples of reasonable expectation of actual notice.* A licensee may reasonably expect that a consumer will receive actual notice if the licensee:

(i) Hand-delivers a printed copy of the notice to the consumer.

(ii) Mails a printed copy of the notice to the last known address of the consumer separately, or in a policy, billing or other written communication.

(iii) For a consumer who conducts transactions electronically, posts the notice on the electronic site and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service.

(iv) For an isolated transaction with a consumer, such as the licensee providing an insurance quote or selling the consumer travel insurance, posts the notice and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular insurance product or service.

(2) *Examples of unreasonable expectation of actual notice.* A licensee may not, however, reasonably expect that a consumer will receive actual notice of its privacy policies and practices if it:

(i) Only posts a sign in its office or generally publishes advertisements of its privacy policies and practices.

(ii) Sends the notice via electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.

(c) *Annual notices only.* A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if:

(1) The customer uses the licensee's web site to access insurance products and services electronically and agrees to receive notices at the web site and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the web site.

(2) The customer has requested that the licensee refrain from sending any information regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request.

(d) *Oral description of notice insufficient.* A licensee may not provide any notice required by this regulation solely by orally explaining the notice, either in person or over the telephone.

(e) *Retention or accessibility of notices for customers.*

(1) For customers only, a licensee shall provide the initial notice required by § 146a.11(a)(1), the annual notice required by § 146a.12(a), and the revised notice required by § 146a.15 so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(2) Examples of retention or accessibility. A licensee provides a privacy notice to the customer so that the customer can retain it or obtain it later if the licensee:

(i) Hand-delivers a printed copy of the notice to the customer.

(ii) Mails a printed copy of the notice to the last known address of the customer.

(iii) Makes its current privacy notice available on a web site (or a link to another web site) for the customer who obtains an insurance product or service electronically and agrees to receive the notice at the web site.

(f) *Joint notice with other financial institutions.* A licensee may provide a joint notice from the licensee and one or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the licensee and the other institutions. A licensee also may provide a notice on behalf of another financial institution.

(g) *Joint relationships.* If 2 or more consumers jointly obtain an insurance product or service from a licensee, the licensee may satisfy the initial, annual and revised notice requirements of §§ 146a.11(a), 146a.12(a) and 146a.15(a), respectively, by providing one notice to those consumers jointly.

Subchapter C. LIMITS ON DISCLOSURES OF FINANCIAL INFORMATION

§ 146a.21. Limits on Disclosure of Nonpublic Personal Financial Information to Third Parties.

(a) *Conditions for disclosure.* Except as otherwise authorized in this regulation, a licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer to a third party unless:

(1) The licensee has provided to the consumer an initial notice as required under § 146a.11.

(2) The licensee has provided to the consumer an opt out notice as required in § 146a.14.

(3) The licensee has given the consumer a reasonable opportunity, before it discloses the information to the third party, to opt out of the disclosure.

(4) The consumer does not opt out.

(b) *Opt out definition.* Opt out means a direction by the consumer that the licensee not disclose nonpublic personal financial information about that consumer to a third party, other than as permitted by §§ 146a.31, 146a.32 and 146a.33.

(c) *Examples of reasonable opportunity to opt out.* A licensee provides a consumer with a reasonable opportunity to opt out if:

(1) *By mail.* The licensee mails the notices required in subsection (a) to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone number or any other reasonable means within 30 days from the date the licensee mailed the notices.

(2) *By electronic means.* A customer opens an on-line account with a licensee and agrees to receive the notices required in subsection (a) electronically, and the licensee allows the customer to opt out by any reasonable means within 30 days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

(3) *Second Opt Out Notice Required.* If required by section 648 of the act (40 P.S. § 288), after 30 days from the date of delivering, electronically or otherwise, a first opt out notice, a consumer or customer has not responded to such notice, a licensee must deliver to the consumer or customer a second opt out notice satisfying the same requirement and criteria as the first opt out notice. When a second notice is required, the licensee shall deliver it according to § 146a.16. Thereafter, the licensee may disclose nonpublic personal information as permitted by this chapter and section 648 of the act, if applicable.

(4) *Isolated transaction with consumer.* For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt out if the licensee provides the notices required in subsection (a) at the

time of the transaction and requests that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(d) *Application of opt out to all consumers and all nonpublic personal financial information.*

(1) A licensee shall comply with this section, regardless of whether the licensee and the consumer have established a customer relationship.

(2) Unless a licensee complies with this section, the licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer that the licensee has collected, regardless of whether the licensee collected it before or after receiving the direction to opt out from the consumer.

(e) *Partial opt out.* A licensee may allow a consumer to select certain nonpublic personal financial information or certain third parties with respect to which the consumer wishes to opt out.

§ 146a.22. Limits on Rediscovery and Reuse of Nonpublic Personal Financial Information.

(a) *Information the licensee receives under an exception.* If a licensee receives nonpublic personal financial information from a financial institution under an exception in §§ 146a.32 or 146a.33 of this regulation, the licensee's disclosure and use of that information is limited to the disclosure and use of the information pursuant to an exception in §§ 146a.32 or 146a.33 of this regulation, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

(b) *Example.* If a licensee receives information from a financial institution for claims settlement purposes, the licensee may disclose the information for fraud prevention, or in response to a properly authorized subpoena. The licensee may not disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.

(c) *Information a licensee receives outside of an exception.* If a licensee receives nonpublic personal financial information from a financial institution other than under an exception in §§ 146a.32 or 146a.33 of this regulation, the licensee may disclose the information only if the disclosure would be lawful if made directly to that person by the financial institution from which the licensee received the information.

(d) *Example.* If a licensee obtains a customer list from a financial institution outside of the exceptions in §§ 146a.32 or 146a.33:

(1) The licensee may use that list for its own purposes.

(2) The licensee may disclose that list to another third party only if the financial institution from which the licensee purchased the list could have lawfully disclosed the list to that third party. That is, the licensee may disclose the list in accordance with the privacy policy of the financial institution from which the licensee received the list, as limited by the

opt out direction of each consumer whose nonpublic personal financial information the licensee intends to disclose, and the licensee may disclose the list in accordance with an exception in §§ 146a.32 or 146a.33, such as to the licensee's attorneys or accountants.

(e) *Information a licensee discloses under an exception.* If a licensee discloses nonpublic personal financial information to a third party under an exception in §§ 146a.32 or 146a.33 of this regulation, the third party may disclose and use that information only pursuant to an exception in §§ 146a.32 or 146a.33 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(f) *Information a licensee discloses outside of an exception.* If a licensee discloses nonpublic personal financial information to a third party other than under an exception in §§ 146a.32 or 146a.33 of this regulation, the third party may disclose the information only if the disclosure would be lawful if the licensee made it directly to that person.

§ 146a.23. Limits on Sharing Account Number Information for Marketing Purposes.

(a) *General prohibition on disclosure of account numbers.* A licensee shall not, directly or through an affiliate, disclose, other than to a consumer reporting agency, a policy number or similar form of access number or access code for a consumer's policy or transaction account to any third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.

(b) *Exceptions.* Subsection (a) does not apply if a licensee discloses a policy number or similar form of access number or access code:

(1) To the licensee's service provider solely in order to perform marketing for the licensee's own products or services, as long as the service provider is not authorized to directly initiate charges to the account.

(2) To a licensee who is a producer solely in order to perform marketing for the licensee's own products or services.

(3) To a participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

(c) *Examples.*

(1) Policy number. A policy number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as the licensee does not provide the recipient with a means to decode the number or code.

(2) Policy or transaction account. For the purposes of this section, a policy or transaction account is an account other than a deposit account or a credit card account. A policy or transaction account does not include an account to which third parties cannot initiate charges.

Subchapter D. EXCEPTIONS TO LIMITS ON DISCLOSURES OF FINANCIAL INFORMATION

§ 146a.31. Exception to Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing.

(a) *General rule.*

(1) The opt out requirements in §§ 146a.14 and 146a.21 do not apply when a licensee provides nonpublic personal financial information to a third party to perform services for the licensee or functions on the licensee's behalf, if the licensee:

(i) Provides the initial notice in accordance with § 146a.11.

(ii) Enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in §§ 146a.32 or 146a.33 in the ordinary course of business to carry out those purposes.

(2) Example. If a licensee discloses nonpublic personal financial information under this section to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with that institution meets the requirements of subparagraph (1)(i) if it prohibits the institution from disclosing or using the nonpublic personal financial information except as necessary to carry out the joint marketing or under an exception in §§ 146a.32 or 146a.33 in the ordinary course of business to carry out that joint marketing.

(b) *Service may include joint marketing.* The services a third party performs for a licensee under Subsection A of this section may include marketing of the licensee's own products or services or marketing of financial products or services offered pursuant to joint agreements between the licensee and one or more financial institutions.

(c) *Definition of "joint agreement."* For purposes of this section, "joint agreement" means a written contract pursuant to which a licensee and one or more financial institutions jointly offer, endorse or sponsor a financial product or service.

§ 146a.32. Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions.

(a) *Exceptions for processing transactions at consumer's request.* The requirements for initial notice in § 146a.11(a)(2), the opt out in §§ 146a.14 and 146a.21, and service providers and joint marketing in § 146a.31 do not apply if the licensee discloses nonpublic personal financial information as necessary to effect, administer or enforce a transaction that a consumer requests or authorizes, or in connection with:

(1) Servicing or processing an insurance product or service that a consumer requests or authorizes.

(2) Maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity.

(3) A proposed or actual securitization, secondary market sale (including sales of servicing rights) or similar transaction related to a transaction of the consumer.

(4) Reinsurance or stop loss or excess loss insurance.

(b) *"Necessary to effect, administer or enforce a transaction" means that the disclosure is:*

(1) Required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service.

(2) Required, or is a usual, appropriate or acceptable method:

(i) To carry out the transaction or the product or service business of which the transaction is a part, and record, service or maintain the consumer's account in the ordinary course of providing the insurance product or service.

(ii) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part.

(iii) To provide a confirmation, statement or other record of the transaction, or information on the status or value of the insurance product or service to the consumer or the consumer's agent or broker.

(iv) To accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party.

(v) To underwrite insurance at the consumer's request or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects or as otherwise required or specifically permitted by Federal or state law.

(vi) In connection with:

(A) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited or otherwise paid using a debit, credit or other payment card, check or account number, or by other payment means.

(B) The transfer of receivables, accounts or interests therein.

(C) The audit of debit, credit or other payment information.

§ 146a.33. Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information.

(a) *Exceptions to opt out requirements.* The requirements for initial notice to consumers in § 146a.11(a)(2), the opt out in §§ 146a.14 and 146a.21, and service providers and joint marketing in § 146a.31 do not apply when a licensee discloses nonpublic personal financial information:

(1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction.

(2) To protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product or transaction.

(3) To protect against or prevent actual or potential fraud or unauthorized transactions.

(4) For required institutional risk control or for resolving consumer disputes or inquiries.

(5) To persons holding a legal or beneficial interest relating to the consumer.

(6) To persons acting in a fiduciary or representative capacity on behalf of the consumer.

(7) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants and auditors.

(8) To the extent specifically permitted or required under other provisions of law and in accordance with the Federal Right to Financial Privacy Act of 1978 (12 U.S.C. § 3401 *et seq.*), to law enforcement agencies (including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping), a state insurance authority, and the Federal Trade Commission), self-regulatory organizations or for an investigation on a matter related to public safety.

(9) To a consumer reporting agency in accordance with the Federal Fair Credit Reporting Act (15 U.S.C. § 1681 *et seq.*). From a consumer report reported by a consumer reporting agency.

(10) In connection with a proposed or actual sale, merger, transfer or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business or unit.

(11) To comply with Federal, state or local laws, rules and other applicable legal requirements.

(12) To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by Federal, state or local authorities.

(13) To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance or other purposes as authorized by law.

(14) For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan or a workers' compensation plan.

(b) *Example of revocation of consent.* A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under § 146a.14(f).

Subchapter E. ADDITIONAL PROVISIONS

§ 146a.41. Protection of Fair Credit Reporting Act.

Nothing in this regulation shall be construed to modify, limit or supersede the operation of the Federal Fair Credit Reporting Act (15 U.S.C. § 1681 *et seq.*), and no inference shall be drawn on the basis of the provisions of this regulation regarding whether information is transaction or experience information under section 603 of that act.

§ 146a.42. Nondiscrimination.

A licensee shall not unfairly discriminate against any consumer or customer because that consumer or customer has opted out from the disclosure of his or her nonpublic personal financial information pursuant to the provisions of this regulation.

§ 146a.43. Violation.

Violations of this regulation are deemed and defined by the Commissioner to be an unfair method of competition and an unfair or deceptive act or practice and shall be subject to all penalties contained in sections 9, 10 and 11 of the Unfair Insurance Practices Act (40 P.S. §§ 1171.9-11)

§ 146a.44. Severability.

If any section or portion of a section of this regulation or its applicability to any person or circumstance is held invalid by a court, the remainder of the regulation or the applicability of the provision to other persons or circumstances shall not be affected.

§ 146a.45. Effective Date.

(a) *Effective date.* This regulation shall be effective July 1, 2001.

(b) (1) Notice requirement for consumers who are the licensee's customers on the effective date. By July 1, 2001, a licensee shall provide an initial notice, as required by § 146a.11, to consumers who are the licensee's customers on July 1, 2001.

(2) Example. A licensee provides an initial notice to consumers who are its customers on July 1, 2001, if, by that date, the licensee has established a system for providing an initial notice to all new customers and has mailed the initial notice to all the licensee's existing customers.

(c) *Two-year grandfathering of service agreements.* Until July 1, 2002, a contract that a licensee has entered into with a third party to perform services for the licensee or functions on the licensee's behalf satisfies the provisions of § 146a.31(a)(1)(ii) of this regulation, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as the licensee entered into the agreement on or before July 1, 2000.

APPENDIX A – SAMPLE CLAUSES

Licenses, 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, income and information from a consumer reporting agency, may give rise to obligations under the Federal 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 a licensee collects (all institutions)

A licensee may use this clause, as applicable, to meet the requirement of § 146a.13(a)(1) to describe the categories of nonpublic personal information the licensee collects.

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.
- Information we receive from a consumer reporting agency.

A-2–Categories of information a licensee discloses (institutions that disclose outside of the exceptions)

A licensee may use one of these clauses, as applicable, to meet the requirement of § 146a.13(a)(2) to describe the categories of nonpublic personal information the licensee discloses. The licensee may use these clauses if it discloses nonpublic personal information other than as permitted by the exceptions in §§ 146a.31, 146a.32 and 146a.33.

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, income, and beneficiaries”].
- Information about your transactions with us, our affiliates or others, such as [provide illustrative examples, such as “your policy coverage, premiums, and payment history”].
- Information we receive from a consumer reporting agency, such as [provide illustrative examples, such as “your creditworthiness and credit history”].

Sample Clause A-2, Alternative 2:

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 a licensee discloses and parties to whom the licensee discloses (institutions that do not disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirements of §§ 146a.13(a)(2), (3) and (4) to describe the categories of nonpublic personal information about customers and former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses. A licensee may use this clause if the licensee does not disclose nonpublic personal information to any party, other than as permitted by the exceptions in §§ 146a.32 and 146a.33.

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 a licensee discloses (institutions that disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirement of § 146a.13(a)(3) to describe the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal information. This clause may be used if the licensee discloses nonpublic personal information other than as permitted by the exceptions in §§ 146a.31, 146a.32 and 146a.33, as well as when permitted by the exceptions in §§ 146a.32 and 146a.33.

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 “life insurers, automobile insurers, mortgage bankers, securities broker-dealers, and insurance agents”].
- Non-financial companies, such as [provide illustrative examples, such as “retailers, direct marketers, airlines, and publishers”].
- 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

A licensee may use one of these clauses, as applicable, to meet the requirements of § 146a.13(a)(5) related to the exception for service providers and joint marketers in § 146a.31. If a licensee discloses nonpublic personal information under this exception, the licensee shall describe the categories of nonpublic personal information the licensee discloses and the categories of third parties with which the licensee has 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 which 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, income, and beneficiaries”].
- Information about your transactions with us, our affiliates or others, such as [provide illustrative examples, such as “your policy coverage, premium, and payment history”].
- 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 our behalf or to other financial institutions with whom we have joint marketing agreements.

A-6—Explanation of opt out right (institutions that disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirement of § 146a.13(a)(6) to provide an explanation of the consumer’s right to opt out of the disclosure of nonpublic personal

information to third parties, including the method(s) by which the consumer may exercise that right. The licensee may use this clause if the licensee discloses nonpublic personal information other than as permitted by the exceptions in §§ 146a.31, 146a.32 and 146a.33.

Sample Clause A-6:

If you prefer that we not disclose nonpublic personal information about you to 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 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)

A licensee may use this clause, as applicable, to meet the requirement of § 146a.13(a)(8) to describe its 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.



**COMMONWEALTH OF PENNSYLVANIA
INSURANCE DEPARTMENT**

OFFICE OF SPECIAL PROJECTS
1326 Strawberry Square
Harrisburg, PA 17120

Phone: (717) 787-4429
Fax: (717) 705-3873
E-mail: psalvato@ins.state.pa.us

March 21, 2000

Mr. Robert Nyce
Executive Director
Independent Regulatory Review Comm.
333 Market Street
Harrisburg, PA 17101

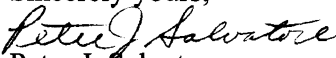
Re: Insurance Department Proposed
Regulation No. 11-206, Privacy of
Consumer Financial Information
Regulation

Dear Mr. Nyce:

Pursuant to Section 5(a) of the Regulatory Review Act, enclosed for your information and review is proposed regulation 31 Pa. Code, Chapter 146a, Privacy of Consumer Financial Information Regulation.

The purpose of this rulemaking is to implement the privacy requirements for nonpublic financial information set forth in Title V of the Gramm-Leach-Bliley Act (GLBA) (P.L. 102-106; 15 U.S.C. §§ 6801 *et seq.*). Title V of GLBA requires various state and federal regulators of the financial services industries to promulgate regulations for their respective regulated communities. For example, the federal banking regulators (the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS) and the Board of Governors of the Federal Reserve System (BGFRS)) have already promulgated final form regulations pertaining to the privacy of nonpublic personal financial information when such information is collected by the various federal banking entities within their regulatory jurisdiction. As with the federal banking regulators, state insurance authorities are required by Title V of the GLBA to establish appropriate consumer privacy standards for various entities in the insurance industry. The failure of a state to adopt such privacy regulations will result in the state's inability to override the federal insurance consumer protection regulations that were issued by the federal banking agencies in final form on December 4, 2000 pursuant to § 305 of the GLBA.

If you have any questions regarding this matter, please contact me at (717) 787-4429.

Sincerely yours,

Peter J. Salvatore
Regulatory Coordinator

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

I.D. NUMBER: 11-206
SUBJECT: Privacy of Consumer Financial Information
AGENCY: DEPARTMENT OF INSURANCE #2179

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

RECEIVED
2001 MAR 21 AM 10:27
REGULATORY
REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
3/21/01	<i>Sheila E. Carhart</i>	HOUSE COMMITTEE ON INSURANCE
3/21/01	<i>Shirley M. Mitchell</i>	SENATE COMMITTEE ON BANKING & INSURANCE
3/21/01	<i>Diana Robert</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
3/21/01	<i>C. Lee Brown</i>	LEGISLATIVE REFERENCE BUREAU