

**INDEPENDENT REGULATORY
REVIEW COMMISSION**

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<h2 style="margin: 0;">Regulatory Analysis Form</h2> <p style="margin: 0;">(Completed by Promulgating Agency)</p> <p style="margin: 0; font-size: small;">(All Comments submitted on this regulation will appear on IRRC's website)</p>		<p>IRRC Number: 3207</p>
<p>(1) Agency</p> <p>Pennsylvania Insurance Department</p>		
<p>(2) Agency Number:</p> <p>Identification Number: 11-257</p>		
<p>(3) PA Code Cite:</p> <p>31 Pa. Code Chapter 146a</p>		
<p>(4) Short Title:</p> <p>Privacy of Consumer Financial Information</p>		
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact:</p> <p>John Lacek, Department Counsel Jodi Frantz, Deputy Chief Counsel 1341 Strawberry Square, Harrisburg, PA 17120 (717) 787-2567 <u>jlacek@pa.gov</u> <u>jodfrantz@pa.gov</u></p> <p>Secondary Contact:</p> <p>Bridget Burke, Regulatory Coordinator 1341 Strawberry Square, Harrisburg, PA 17120 (717) 787-2567 <u>briburke@pa.gov</u></p>		
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input checked="" type="checkbox"/> Proposed Regulation</p> <p><input type="checkbox"/> Final Regulation</p> <p><input type="checkbox"/> Final Omitted Regulation</p>	<p><input type="checkbox"/> Emergency Certification Regulation;</p> <p><input type="checkbox"/> Certification by the Governor</p> <p><input type="checkbox"/> Certification by the Attorney General</p>	
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p>		

The Pennsylvania Insurance Department (Department) seeks to amend 31 Pa. Code Ch. 146a (relating to Privacy of Consumer Financial Information) in accordance with changes made to the National Association of Insurance Commissioners (NAIC) Model Regulation #672 entitled "Privacy of Consumer Financial and Health Information Regulation." The amendments contained in the proposed rulemaking provide that a licensee's use of the federal "Model Privacy Form," codified at 16 CFR Part 313, Appendix A, would constitute compliance with the requirements of Chapter 146a. Additionally, the proposed rulemaking would exempt certain licensees from providing an annual privacy notice if the licensee has not changed its policies and practices from those described in the most recent disclosure.

(8) State the statutory authority for the regulation. Include specific statutory citation.

This rulemaking is proposed pursuant to the Department's general rulemaking authority as set forth in sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412) and the Department's rulemaking authority under the Unfair Insurance Practices Act (40 P. S. §§ 1117.1—1171.15). See *PALU v. Insurance Department*, 371 A.2d 564 (Pa. Cmwlth. 1977) (further explaining the Commissioner's authority to promulgate regulations pursuant to the Unfair Insurance Practices Act).

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

While this proposed rulemaking is not mandated by federal law, the proposed amendments would promote consistency between the requirements of Chapter 146a and the requirements of the Gramm-Leach-Bliley Act (GLBA), Pub. L. No. 106-102, 15 U.S.C.A §§ 6801-6827, and corresponding federal regulations (16 CFR Part 313).

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The regulation is needed to promote consistency with federal and other states' privacy requirements, reduce licensees' costs, and reduce consumer confusion regarding receiving multiple and duplicative privacy notices. Additionally, the amendments are necessitated by changes to federal law. Specifically, on December 4, 2015, President Obama signed the Fixing America's Surface Transportation (FAST) Act into law. Pub. L. No. 114-94.

The FAST Act contains an amendment entitled "Eliminate Privacy Notice Confusion," which amended section 503 of the GLBA (15 U.S.C.A. § 6803) to provide for exceptions to the requirement that financial institutions provide annual privacy notices to customers. *See* section 75001 of Pub. L. No. 114-94. In response to the changes to the GLBA, the NAIC amended NAIC Model Regulation #672 (Privacy of Consumer Financial and Health Information Regulation).

The NAIC Model amendments incorporate the FAST Act's exceptions to the privacy notice requirement and provide that if a licensee uses a sample of a privacy form as set forth in Appendix A to 16 CFR Part 313, the licensee would be deemed compliant with the state model regulation. As such, this proposed rulemaking would promote consistency between the requirements of Chapter 146a and the requirements of the NAIC model, the Gramm-Leach-Bliley Act (GLBA), Pub. L. No. 106-102, 15 U.S.C.A §§ 6801-6827, and corresponding federal regulations. 16 CFR Part 313.

Adoption of the amendments in the proposed rulemaking will promote consistency in how licensees are regulated throughout the country and may reduce licensees' administrative costs. Although the Department cannot quantify the exact savings to the regulated community, licensees likely will save postage and printing costs associated with the mailing of the annual disclosure. Additionally, the proposed amendments will create consistency in how consumers are notified of licensees' privacy practices and eliminate duplicative and multiple notices.

(11) 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 regulations.

No. The proposed amendments mirror federal standards.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

Fifty-two states and territories have adopted or partially adopted the previous version of NAIC Model Regulation #672. At least two states have adopted the amendments to NAIC Model Regulation #672 through bulletin and at least five states have commenced the regulatory process. Because the amendments are designed to reduce licensees' costs and reduce consumer confusion regarding receipt of multiple and duplicative notices, Pennsylvania's failure to adopt these changes may hinder Pennsylvania's ability to compete with other states in that licensees doing business in Pennsylvania would be subject to additional and inconsistent regulatory requirements.

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

This proposed rulemaking will not affect any other Department regulations or the regulations of other state agencies.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Department circulated exposure drafts of this proposed rulemaking to several industry participants including the Insurance Federation of Pennsylvania, the Pennsylvania Association of Mutual Insurance Companies, Insurance Agents and Brokers, and the American Insurance Association. The Department received six responses, four of which contained editorial comments that were carefully considered before initiating the regulatory process.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

This proposed rulemaking will affect consumers who receive privacy notices in that it will eliminate the confusion caused by multiple and duplicative privacy notices. Additionally, this proposed rulemaking will affect each entity that falls within the definition of a "licensee" in 31 Pa. Code § 146a.2, in that it would provide for exceptions to the requirement that licensees provide annual privacy notices to consumers. The Department has identified approximately 272,184 licensees that fall within this definition including:

- 2312 licensed insurers as defined in section 201-A of the Insurance Department Act of 1921 (40 P.S. § 65.1-A) and entities doing the business of insurance pursuant to The Insurance Company Law of 1921 (40 P.S. §§ 341-999).
- 53 Fraternal Benefit Societies licensed pursuant to 40 P.S. §§ 991.2401-991.2466.
- 252,104 producers licensed pursuant to 40 P.S. §§ 310.1-310.99a.
- 83 reinsurance intermediaries licensed pursuant to 40 P.S. §§ 321.1-321.10; 521 Insurance Administrators licensed pursuant to 40 P.S. §§ 324.1-324.13; and 16,902 other miscellaneous persons or entities licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered under the Insurance Department Act of 1921 (40 P.S. §§ 1-321).
- 24 health maintenance organizations holding a certificate of authority under section 201 of the Health

Care Facilities Act (35 P. S. § 448.201).

- 185 nonadmitted insurers that accept business placed through a surplus lines licensee (as defined in 40 P. S. § 991.1602 (relating to definition of surplus lines licensee)) in this Commonwealth with regard to surplus lines placements placed under Article XVI of The Insurance Company Law (40 P. S. §§ 991.1601—991.1625).

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

As stated in the response to question 15, approximately 272,184 licensees will be required to comply with the proposed rulemaking.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

The proposed rulemaking is based upon the recently-amended version of NAIC Model Regulation #672. The amendments are likely to be adopted by most, if not all, states and territories. Adoption of the amendments in the proposed rulemaking will promote consistency in how licensees are regulated throughout the country and may reduce licensees' administrative costs. Although the Department cannot quantify the exact savings to the regulated community, licensees likely will save postage and printing costs associated with the mailing of the annual privacy notice. Additionally, the proposed amendments will create consistency in how consumers are notified of licensees' privacy practices and eliminate consumer confusion caused by duplicative and multiple notices.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The proposed rulemaking will not impose any costs or cause any adverse effects. The benefits of the proposed rulemaking are set forth in response to question #17 above.

(19) 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. Explain how the dollar estimates were derived.

The proposed rulemaking will not impose any costs upon the regulated community. Although the Department cannot quantify the exact savings to the regulated community, licensees likely will save postage and printing costs associated with the mailing of the annual privacy notice.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

This proposed rulemaking will not impose any costs upon or result in any savings to local governments.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

This proposed rulemaking will not impose any costs upon or result in any savings to state government.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

This proposed rulemaking does not impose any new reporting, recordkeeping, or paperwork requirements upon the regulated community. To the contrary, it sets forth exceptions to the requirement that licensees provide annual privacy notices to customers.

(22a) Are forms required for implementation of the regulation?

Yes.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here**. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

A copy of the forms required for implementation of this proposed rulemaking are attached hereto. The forms are substantively identical to those set forth in Appendix A to 16 CFR Part 313, and Appendix B to the NAIC Model Regulation #672.

(23) 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.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	Not quantifiable	Not quantifiable	Not quantifiable	Not quantifiable	Not quantifiable	Not quantifiable
Regulated Community	Not quantifiable	Not quantifiable	Not quantifiable	Not quantifiable	Not quantifiable	Not quantifiable
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Savings	Not quantifiable	Not quantifiable	Not quantifiable	Not quantifiable	Not quantifiable	Not quantifiable
COSTS:	0	0	0	0	0	0
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Costs	0	0	0	0	0	0
REVENUE LOSSES:	0	0	0	0	0	0
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State	0	0	0	0	0	0

Government						
Total Revenue Losses	0	0	0	0	0	0

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
None.	0	0	0	0

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

The proposed rulemaking is not expected to have any adverse impact on small business. However, the Department has reviewed the standards set forth by 13 CFR 12.201 and the U.S. Small Business Administration Table of Small Business Size Standards Matched to North American Industry Classification System Code to determine the applicability of this rulemaking to small businesses. These standards vary by entity type. To qualify as a small business, the entity must fall within the following thresholds:

- Direct Life Insurance Carriers (annual receipts of less than \$38.5 million).
- Direct Health and Medical Insurance Carriers (annual receipts of less than \$38.5 million).
- Direct Property and Casualty Insurance Carriers (less than 1500 employees).
- Direct Title Insurance Carriers (annual receipts of less than \$38.5 million).
- Other Direct Insurance (except Life, Health and Medical) (annual receipts of less than \$38.5 million).
- Producers a/k/a Agents and Brokers (less than \$7.5 million in annual receipts).

Based upon the limited information available to the Department, the Department has identified the following numbers of domestic companies that may meet the definition of "small business:" five Direct Life Insurance Carriers, six Direct Health and Medical Insurance Carriers, 112 Direct Property and Casualty Insurance Carriers and one Direct Title Insurance Carrier.

The Department does not collect information regarding the annual receipts collected by producers. However, because of the high threshold of annual receipts for producers, the Department estimates that most, if not

all, Pennsylvania-based insurance producers would fall within the definition of “small business.”

There are no projected reporting, recordkeeping or other administrative costs required for compliance with the proposed rulemaking. There will be no negative effect on impacted small businesses. As such, no alternative methods of achieving the purpose of the proposed rulemaking have been considered.

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

No provisions have been developed to meet the needs of minorities, the elderly, small businesses or farmers.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

Because the amendments in this proposed rulemaking do not impose a burden upon the regulatory community, no alternative regulatory provisions have been considered.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

The amendments to Chapter 146a contained in this proposed rulemaking do not contain compliance or reporting requirements or specify performance standards that must be met. As such, the proposed rulemaking does not impose any adverse effects on small business or any other regulated entity. As noted in response to question 19 above, the proposed rulemaking likely will result in cost savings to the regulatory community.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic

format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Data is not the basis for this proposed rulemaking.

(29) Include a schedule for review of the regulation including:

- | | |
|-----------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|
| A. The length of the public comment period: | <u>30 days</u> |
| B. The date or dates on which any public meetings or hearings will be held: | <u>No hearings will be held</u> |
| C. The expected date of delivery of the final-form regulation: | <u>10/5/18</u> |
| D. The expected effective date of the final-form regulation: | <u>Upon publication of the final-form regulation in the PA Bulletin</u> |
| E. The expected date by which compliance with the final-form regulation will be required: | <u>Upon publication of the final-form regulation in the PA Bulletin</u> |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | <u>None are required</u> |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

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

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

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2018 JUL 11 A 11: 37

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<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>BY: <u><i>David E. Lemas</i></u> (DEPUTY ATTORNEY GENERAL)</p> <p><u>July 6, 2018</u> DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached</p>	<p>Copy below is here by certified to be a true and correct copy of a document issued, prescribed or promulgated by</p> <p><u>Insurance Department</u> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>11-257</u></p> <p>DATE OF ADOPTION: _____</p> <p>BY: <u><i>Jessica K. Altman</i></u> Jessica K. Altman Insurance Commissioner</p> <p>TITLE _____ (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies</p> <p>BY: <u><i>Marisa H. Z. Lehr</i></u></p> <p><u>JUN 01 2018</u> DATE OF APPROVAL Deputy General Counsel (Chief Counsel-Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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NOTICE OF PROPOSED RULEMAKING
INSURANCE DEPARTMENT

31 Pa. Code Chapter 146a

PRIVACY OF CONSUMER FINANCIAL INFORMATION

PROPOSED RULEMAKING

INSURANCE DEPARTMENT

31 Pa. CODE CH. 146a

Privacy of Consumer Financial Information

[__ Pa.B. ____]

[Saturday, _____, 201_]]

Preamble

The Insurance Department (Department) proposes to amend Chapter 146a of the Insurance Department's regulations ((31 Pa. Code §§ 146a.1-146a.44) (relating to privacy of consumer financial information)) to read as set forth in Annex A. This rulemaking is proposed pursuant to the Department's general rulemaking authority as set forth in sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412) and the Department's rulemaking authority under the Unfair Insurance Practices Act (40 P.S. §§ 1171.1-1171.15). *See PALU v. Insurance Department*, 371 A.2d 564 (Pa. Cmwlth. 1977) (further explaining the Commissioner's authority to promulgate regulations pursuant to the Unfair Insurance Practices Act).

Purpose

Chapter 146a of Title 31 of the Pennsylvania Code governs the treatment of nonpublic personal financial information by various licensees of the Department. Among other requirements, Chapter 146a requires a licensee to provide notice to individuals about its privacy policies and practices; describes the conditions under which a licensee may disclose nonpublic personal financial information about individuals to affiliated and nonaffiliated parties; and provides methods for individuals to prevent a licensee from disclosing that information. Chapter 146a, originally adopted in 2001, is based upon the National Association of Insurance Commissioners (NAIC) Model Regulation #672 entitled "Privacy of Consumer Financial and Health Information Regulation." NAIC Model Regulation #672 was originally designed to satisfy the minimum standards for financial information privacy set forth in the Gramm-Leach-Bliley Act (GLBA), Pub. L. No. 106-102, 15 U.S.C.A §§ 6801-6827. As such, the NAIC Model was largely based upon privacy regulations promulgated by federal banking regulatory agencies and sets forth similar standards for notice and opt out requirements.

On December 4, 2015, President Obama signed the Fixing America's Surface Transportation (FAST) Act into law. Pub. L. No. 114-94. The FAST Act contains an amendment entitled "Eliminate Privacy Notice Confusion," which amended section 503 of the GLBA (15 U.S.C.A. § 6803) to provide for exceptions to the requirement that financial institutions provide annual privacy notices to customers. *See* section 75001 of Pub. L. No. 114-94. In response to the changes to the GLBA, the NAIC amended NAIC Model Regulation #672. The amendments incorporate the exceptions to the privacy notice requirement and provide that if a licensee uses a

sample privacy form as set forth in 16 CFR Part 313, the licensee would be deemed compliant with the state's model regulation.

The purpose of this proposed rulemaking is to update Pennsylvania's requirements for the treatment of nonpublic financial information in accordance with the changes made to the GLBA and the corresponding provisions of NAIC Model Regulation #672.

A copy of the copyrighted NAIC Model was provided to the legislative standing committees, the Independent Regulatory Review Commission (IRRC), the Governor's Office of Policy and Planning, the Governor's Office of General Counsel and the Attorney General to assist in their analysis of this proposed rulemaking. Copies of the NAIC Model are available to the general public by contacting the NAIC.

Explanation of Regulatory Requirements

Section 146a.1 is proposed to be amended to remove subsection (d) to accommodate changes made to the NAIC Model that would provide for a safe harbor for compliance for licensees who use the Federal model privacy form.

Section 146a.2 is proposed to be amended to define "Federal model privacy form" to promote readability throughout the regulation.

Section 146a.3 is proposed to be added in accordance with changes to the NAIC Model. Specifically, subsection (a) would provide that a licensee would be considered compliant with the Chapter if the licensee uses an example, a sample clause or the Federal model privacy form. Subsection (a) also provides that licensees may rely on the Federal model privacy form used consistently with its attached instructions as a safe harbor for compliance with the requirements of the Chapter related to privacy notice content. Subsection (b) clarifies that the use of the examples in Chapter 146a, the sample clauses in Appendix A, or the Federal model privacy form would not be the exclusive means of compliance with the requirements of the regulation. Additionally, subsection (c) provides that licensees may not rely on use of privacy notices containing the sample clauses in Appendix A as a safe harbor for compliance with the privacy notice content requirements of this regulation after July 1, 2019.

Section 146a.12 is proposed to be amended to add a new subsection (b) and renumber subsections (b) and (c) accordingly. The new subsection (b) would provide for an exemption from the annual privacy notice provisions if a licensee has not changed its policies and practices relating to nonpublic personal information for certain types of disclosures.

Section 146a.13 is proposed to be amended to add language to subsection (f) referencing the Federal model privacy form.

External Comments

The Department circulated an exposure draft substantially similar to this proposed rulemaking to several industry participants including the Insurance Federation of Pennsylvania,

the Pennsylvania Association of Mutual Insurance Companies, Insurance Agents and Brokers, and the American Insurance Association. The Department received six responses, four of which contained editorial comments containing suggested edits that were carefully considered before initiating the regulatory process.

Affected Parties

This proposed rulemaking applies to all entities that fall within the definition of a “licensee” in 31 Pa. Code § 146a.2 including:

- Licensed insurers as defined in section 201-A of the Insurance Department Act of 1921 (40 P.S. § 65.1-A) and entities doing the business of insurance pursuant to The Insurance Company Law of 1921 (40 P.S. §§ 341-999).
- Fraternal Benefit Societies licensed pursuant to 40 P.S. §§ 991.2401-991.2466.
- Producers licensed pursuant to 40 P.S. §§ 310.1-310.99a.
- Reinsurance intermediaries licensed pursuant to 40 P.S. §§ 321.1-321.10; Insurance Administrators licensed pursuant to 40 P.S. §§ 324.1-324.13; and other miscellaneous persons or entities licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered under the Insurance Department Act of 1921 (40 P.S. §§ 1-321).
- Health maintenance organizations holding a certificate of authority under section 201 of the Health Care Facilities Act (35 P. S. § 448.201).
- Nonadmitted insurers that accept business placed through a surplus lines licensee (as defined in 40 P. S. § 991.1602 (relating to definition of surplus lines licensee)) in this Commonwealth with regard to surplus lines placements placed under Article XVI of The Insurance Company Law (40 P. S. §§ 991.1601—991.1625).

Fiscal Impact

State Government

There will not be any fiscal impact to the Department as a result of this proposed rulemaking.

General Public

The proposed rulemaking will have no fiscal impact upon the general public.

Political Subdivisions

The proposed rulemaking will have no fiscal impact upon political subdivisions.

Private Sector

While the Department cannot quantify the exact savings to the private sector, the Department believes that the private sector will see savings due to a reduction in postage and printing costs associated with the annual disclosure.

Paperwork

The proposed rulemaking would not impose additional paperwork on the Department, because no filing is required to be made by licensees. The proposed rulemaking would reduce paperwork for the private sector because it would reduce the need to provide duplicative disclosures.

Effectiveness/Sunset Date

The rulemaking will become effective immediately upon publication in the *Pennsylvania Bulletin* as final-form rulemaking. The Department continues to monitor the effectiveness of regulations on a triennial basis; therefore, no sunset date has been assigned.

Contact Person

Questions or comments regarding the proposed rulemaking may be addressed in writing to Bridget Burke, Regulatory Coordinator, Insurance Department, 1341 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 briburke@pa.gov or faxed to (717) 772-1969.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on July 11, 2018, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to IRRC and to the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final delivery of the rulemaking, by the Department, the General Assembly and the Governor for comments, recommendations or objections raised.

Jessica K. Altman
Insurance Commissioner

Annex A
TITLE 31. INSURANCE
PART VIII. MISCELLANEOUS PROVISIONS
CHAPTER 146a. PRIVACY OF CONSUMER FINANCIAL INFORMATION

Subchapter A. General Provisions

Sec.

146a.1. Purpose.

146a.2. Definitions.

146a.3. Examples and Safe Harbor.

Subchapter B. Privacy and Opt Out Notices for Financial Information

Sec.

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

Sec.

146a.21. Limitation on disclosure of nonpublic personal financial information to nonaffiliated 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 Nonpublic Personal Financial Information

Sec.

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

Sec.

146a.41. Effect on other laws.

146a.42. Nondiscrimination.

146a.43. Violation.

146a.44. Effective Date.

§ 146a.1. Purpose.

* * * * *

(c) *Compliance.* A licensee domiciled in this Commonwealth that is in compliance with this chapter in a state that has not enacted laws or regulations that meet the requirements of Title V of the act of November 12, 1999 (Pub. L. No. 106-102, 113 Stat. 1338) known as the Gramm-Leach-Bliley Act (Financial Services Modernization Act of 1999) (15 U.S.C.A. §§ 6801—6827) may nonetheless be deemed to be in compliance with Title V of the Gramm-Leach-Bliley Act in the other state.

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

§ 146a.2. Definitions.

* * * * *

Department—The Insurance Department of the Commonwealth.

Federal model privacy form – The model form as set forth in Appendix A to 16 CFR Part 313, or a successor provision, which is determined by federal regulation to be compliant with the requirements of Title V of the Gramm-Leach-Bliley Act (15 U.S.C.A. §§ 6801-6827).

* * * * *

§ 146a.3. Examples and Safe Harbor.

(a) *Compliance.* If a licensee uses an example, sample clause or Federal model privacy form, the licensee shall be considered compliant with a corresponding requirement of this Chapter to the extent applicable. Licensees may rely on the Federal model privacy form used in accordance with its attached instructions as a safe harbor for compliance with the requirements of this regulation related to privacy notice content.

(b) *Non-exclusive means of compliance.* The examples in this Chapter, the sample clauses in Appendix A, and the Federal model privacy form are not the exclusive means of compliance with the requirements of this Chapter. Licensees may continue to use other types of privacy notices, including notices that contain examples or the sample clauses in Appendix A, or both, provided that the notices accurately describe the licensee’s privacy practices and otherwise meet the privacy notice content requirements of this Chapter.

(c) *Sunset of safe-harbor for sample clauses in Appendix A.* While licensees may continue to use privacy notices that contain examples and the sample clauses in Appendix A, licensees may not rely on the use of privacy notices containing the sample clauses in Appendix A as

a safe harbor for compliance with the privacy notice content requirements of this Chapter after July 1, 2019.

§ 146a.12. Annual privacy notice to customers required.

(a) Notice.

(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 12-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 12-consecutive-month period as a calendar year and provides the annual notice to the customer once in each 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 annual notice to that customer by December 31 of year 2.

(b) Exemption to general rule.

(1) A licensee is not required to provide an annual privacy notice under this section if:

(i) The licensee has not changed its policies or practices regarding disclosure of nonpublic personal financial information from those contained in the most recent notice sent to consumers.

(ii) The disclosure of nonpublic personal financial information is made to only nonaffiliated third parties and meets any of the following requirements:

(A) Is made in accordance with § 146a.31 (relating to exception to opt out requirements for disclosure of nonpublic personal financial information for service providers and joint marketing).

(B) Falls within the exceptions set forth in § 146a.32 (relating to exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information for processing and servicing transactions).

(C) Falls within the exceptions set forth in § 146a.33 (relating to other exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information).

(2) A licensee that no longer meets the criteria set forth in paragraph (b)(1) shall provide an annual privacy notice under this section.

[(b)](c) Termination.

(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.

* * * * *

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

§ 146a.13. Information to be included in privacy notices.

* * * * *

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

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

(2) 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 and Federal model privacy form.* Sample clauses illustrating some of the notice content required by this section are included in Appendix A (relating to sample clauses) **and may be found in the Federal model privacy form at 16 CFR Part 313, Appendix A.**

Insurance Department

Notice of Proposed Rulemaking

31 Pa. Code Chapter 146a

PRIVACY OF CONSUMER FINANCIAL INFORMATION

Document/Fiscal Note No. 11-257

INSURANCE COMMISSIONER'S CERTIFICATION

I, Jessica K. Altman, hereby certify that I have reviewed this Proposed Form Regulation and determined that it is consistent with the principles outlined in Executive Order 1996-1.



Jessica K. Altman
Insurance Commissioner



GOVERNOR'S OFFICE OF GENERAL COUNSEL

July 11, 2018

Mr. David Sumner
Executive Director
Independent Regulatory Review Comm.
333 Market Street, 14th Floor
Harrisburg, PA 17101

Re: Insurance Department Proposed Regulation No. 11-257, Privacy of Consumer Financial Information

Dear Mr. Sumner:

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

The purpose of these regulations is to amend 31 Pa. Code Ch. 146a (relating to Privacy of Consumer Financial Information) in accordance with changes made to the National Association of Insurance Commissioners (NAIC) Model Regulation #672 entitled "Privacy of Consumer Financial and Health Information Regulation." The amendments contained in the proposed rulemaking provide that a licensee's use of the federal "Model Privacy Form," codified at 16 CFR Part 313, Appendix A, would constitute compliance with the requirements of Chapter 146a. Additionally, the proposed rulemaking would exempt certain licensees from providing an annual privacy notice if the licensee has not changed its policies and practices from those described in the most recent disclosure.

If you have any questions regarding this matter, please contact me at (717) 787-2567.

Sincerely yours,

Bridget E. Burke
Regulatory Coordinator

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 11-257
 SUBJECT: PRIVACY OF CONSUMER FINANCIAL INFORMATION
 AGENCY: PENNSYLVANIA INSURANCE DEPARTMENT

TYPE OF REGULATION

- X 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
IRRC
2018 JUL 11 A 11:38**

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
		<i>HOUSE COMMITTEE ON INSURANCE:</i>
7-11 7-10	<i>Tina Pickett</i>	MAJORITY CHAIR – <u>REP. TINA PICKETT</u>
7-11 7-10	<i>Anthony DeLuca</i>	MINORITY CHAIR – <u>REP. ANTHONY DELUCA</u>
		<i>SENATE COMMITTEE ON BANKING & INSURANCE:</i>
7-11 7-10	<i>Donald C. White</i>	MAJORITY CHAIR: <u>SEN. DONALD C. WHITE</u>
7-11 7-10	<i>Sharif Street</i>	MINORITY CHAIR: <u>SEN. SHARIF STREET</u>
7-11	<i>K. Cooper</i>	<i>INDEPENDENT REGULATORY REVIEW COMMISSION</i>
		ATTORNEY GENERAL (for Final Omitted Only)
7/11/18	<i>Beth Pappas</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed Only)

July 11, 2018