

**ARTICLE IV. NOTICE OF INFORMATION PRACTICES AND OPT OUT AND OPT IN NOTICES FOR NONPUBLIC PERSONAL INFORMATION**

**Section 9. Initial and Subsequent Delivery Notice of Information Practices to Consumers Required**

- A. Initial Delivery of Notice. A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to all consumers no later than when the licensee obtains access to the consumer's Nonpublic Personal Information, except that a licensee may provide the initial notice within a reasonable time after access to the consumer's Nonpublic Personal Information if:
- (1) Obtaining access to the consumer's Nonpublic Personal Information is not at the consumer's election and the licensee follows the Notice of Information Practices previously sent to the consumer; or
  - (2) Providing notice when the licensee obtains access to the consumer's Nonpublic Personal Information would substantially delay the consumer's transaction and the consumer agrees to receive the notice at a later time.
- B. Subsequent Delivery of Notice
- When a consumer with an existing relationship with a licensee 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 notice, under Section 14, that covers the consumer's new insurance product or service; or
  - (2) If the initial, revised or annual notice that the licensee most recently provided to that consumer was accurate with respect to the new insurance product or service, the licensee does not need to provide a new notice of information practices under Subsection A of this section.
- C. For purposes of this section:
- (1) "Not at consumer's election" includes the scenario where a licensee acquires or is assigned a consumer's policy from another financial institution or residual market mechanism and the consumer does not have a choice about the licensee's acquisition or assignment.
  - (2) "Substantially delay the consumer's transaction" includes the scenario where the licensee and the individual agree over the telephone or electronically to enter into a consumer relationship involving prompt delivery of the insurance product or service but does not include the scenario where the relationship is initiated in person at the licensee's office or through other means by which the consumer may view the notice, such as on a website.

## **Section 10. Annual Notice of Information Practices to Customers Required**

General rule. A licensee shall provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices at least once in any period of twelve (12) consecutive months. A licensee may define the twelve-consecutive-month period, but the licensee shall apply it to the customer on a consistent basis.

- A. 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. Exceptions
  - (1) A licensee that provides Nonpublic Personal Information to nonaffiliated third parties only in accordance with Sections 19, 20, or 21 and has not changed its policies and practices with regard to disclosing Nonpublic Personal Information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with this section or Section 5 shall not be required to provide an annual disclosure under this section until such time as the licensee fails to comply with any criteria described in this paragraph.
  - (2) A licensee is not required to provide notice if the licensee no longer has access to the consumer's Nonpublic Personal Information.
  - (3) For the purposes of this Act, a licensee no longer has an obligation to continue to notify a consumer if the licensee's records do not contain a valid address. An address is deemed invalid if electronic or regular mail sent to that address by the licensee has been returned as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

## **Section 11. Information to be Included in Notices of Information Practices**

- A. General rule. The initial, annual and revised Notice of Information Practices that a licensee provides under Sections 9 and 10, 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 Notice of Information Practices:
  - (1) In specific terms and by the source of information, the categories of Nonpublic Personal Information that the licensee collects, including, but not limited to, whether information is collected from the consumer, through the consumer's transactions with affiliates or nonaffiliated third parties, or consumer reporting agencies;
  - (2) In specific terms and by the source of information, the categories of Nonpublic Personal Information that the licensee discloses, including at least one example in each category. Categories may include, but are not limited to, application information, transaction information, or consumer reports;

- (3) The categories of affiliates and nonaffiliated third parties, and the types of business in which they engage, to whom the licensee discloses Nonpublic Personal Information, other than those parties to whom the licensee discloses information under Sections 20 and 21. The types of businesses may be described in general terms only if the licensee uses illustrative examples of each significant line of business;
- (4) An explanation of the consumer's right under Section 13A to opt out of the disclosure of Nonpublic Personal Information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time;
- (5) An explanation of the consumer's rights with regard to the sale of Nonpublic Personal Information and disclosure of Sensitive Personal Information and the consumer's opt-in right pursuant to Section 12;
- (6) A description of the consumer's ability to request access, correction, or deletion of Nonpublic Personal Information about the consumer as established under this Act and the instructions for exercising such options;
- (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; by:
  - (a) Describing in general terms who is authorized to have access to the information; and
  - (b) Stating 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; and
- (9) Any disclosure that the licensee makes as authorized under Section 21, except that the licensee is not required to list those exceptions in the initial or annual privacy notices required by Sections 9 and 10. 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.

B. The licensee's notice may include:

- (1) Categories of Nonpublic Personal 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 Information.

C. Exceptions:

If a licensee does not disclose, and does not wish to reserve the right to disclose, Nonpublic Personal Information about consumers to affiliates or nonaffiliated third parties except as authorized under Sections 20 and 21, 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.

D. Sample Clauses and Federal Model Privacy Form.

- (1) Licensees are not required to use any prescribed clauses or model form.
- (2) The commissioner may determine that a Licensee's use of any of the following constitutes compliance with this Act:
  - (a) Sample clauses illustrating some of the notice content required by this section which is developed by the National Association of Insurance Commissioners or the commissioner;
  - (b) Model forms illustrating notice content required by this section, which is developed by the National Association of Insurance Commissioners or the commissioner; or
  - (c) The Federal Model Privacy Form are included in Appendix A and Appendix B, respectively, of this regulation.

**Section 12. Short Form Initial Notice of Information Practices**

A. A licensee may satisfy the initial notice requirements in Sections 9A and 14C for a consumer by providing a Short Form Initial Notice of Information Practices at the same time the licensee delivers an opt-out notice as required in Section 17, if:

- (1) The licensee provides the consumer a reasonable means to obtain its Notice of Information Practices;
- (2) The licensee provides the Notice of Information Practices upon request.

B. A Short Form Initial Notice of Information Practices shall meet all the following requirements.

- (1) Be clear and conspicuous;
- (2) State that the licensee's Notice of Information Practices is available upon request;
- (3) Explain the reasonable means to obtain the licensee's Notice of Information Practices;
- (4) Contain contact information for the commissioner;
- (5) Describe how the consumer can request access to or correction of the information.

C. For purposes of this section "reasonable means to obtain the licensee's Notice of Information Practices" include:

- (1) Providing a toll-free telephone number that the consumer may call to request the notice;
- (2) Providing a website or other electronic medium that is easily accessible by the consumer;
- (3) For a consumer who conducts business in person at the licensee's office, maintaining copies of the notice on hand that the licensee provides to the consumer immediately upon request.

**Section 13. Form of Opt-In Notice to Consumers and Opt-In Methods**

- A. If a licensee is required to provide an opt in notice under Sections 22 or 23, it shall provide a clear and conspicuous notice to each of its consumers that accurately explains the exact information proposed to be disclosed, the use of that information, and the right to opt in to that use. The notice shall state:
  - (1) The licensee discloses or reserves the right to disclose Nonpublic Personal information about its consumer to a nonaffiliated third party;
  - (2) The consumer has the right to opt in to that disclosure; and
  - (3) A reasonable means by which the consumer may exercise the opt-in right.
- B. The licensee will not be able to use the information proposed for any consumer that does not affirmatively opt in to the use.
- C. The opt in must be an affirmative act by the consumer. The licensee cannot deem a failure to respond as an opt-in or use prechecked boxes.
- D. Consent should be obtained separately from any other communication or consent.
- E. Consent may be revoked at any time by the consumer.

**Section 14. Form of Opt-Out Notice to Consumers and Opt-Out Methods**

- A. (1) If a licensee is required to provide an opt-out notice, it shall provide a clear and conspicuous notice to each consumer that accurately explains the right to opt out under that section. To the extent applicable, the notice shall state:
  - (a) The licensee discloses or reserves the right to disclose Nonpublic Personal Information about its consumer to a nonaffiliated third party;
  - (b) 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) Requirements
  - (a) A licensee provides adequate notice that the consumer can opt out of the disclosure of Nonpublic Personal Information to a nonaffiliated third party if the licensee:

- (i) Identifies all of the categories of Nonpublic Personal Information 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 11A(2) and (3), and states the consumer can opt out of the disclosure of that information; and
    - (ii) Identifies the insurance products or services the consumer obtains from the licensee, either singly or jointly, to which the opt-out direction would apply.
  - (b) 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 website, 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) 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) A licensee may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.
- B. 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 9.
- C. If a licensee provides the opt-out notice later than required for the initial notice in accordance with Section 9, 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 the joint consumers.
- (4) A licensee may not require all joint consumers to opt out before it implements any opt-out direction.
- E. A licensee shall comply with a consumer's opt-out direction as soon as reasonably practicable but no later than 10 days after the licensee receives it.
- F. A consumer may exercise the right to opt out at any time. 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.

## **Section 15. Revised Notice of Information Practices**

- A. Except as otherwise authorized in this Act, a licensee shall not, directly or through an affiliate, disclose any Nonpublic Personal 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 19, 20, and 21, a licensee shall provide a revised notice before it:
    - (a) Discloses a new category of Nonpublic Personal Information to any nonaffiliated third party;
    - (b) Discloses Nonpublic Personal Information to a new category of nonaffiliated third party; or
  - (2) A revised notice is not required if the licensee discloses Nonpublic Personal Information to a new nonaffiliated third party that the licensee adequately described in its prior notice.

## **Section 16. Notice of Information Practices to Group Policyholders**

Unless a licensee is providing privacy notices directly to covered individuals described in Section 4F(2)(e)(i), (ii) or (iii), a licensee shall provide initial, annual and revised notices to the plan sponsor, group or blanket insurance policyholder or group annuity contractholder, or workers' compensation policyholder, in the manner described in Sections 9 through 13 of this Act, describing the licensee's privacy practices with respect to nonpublic personal information about individuals covered under the policies, contracts or plans. Compliance with this section satisfies the licensee's initial, annual and renewal Notice of Information Practices as required by Sections 9 and 10 and delivery provisions of Section 16.

## **Section 17. Delivery**

- A. A licensee shall provide any notices that this Act requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer interacts with the licensee online or in some other electronic fashion, electronically.
- B. (1) 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, in accordance with UETA or similar state statute, 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;
    - (i) The notice should be posted in a manner that enables a consumer to print or save it using programs or apps that are widely available and free of charge.
    - (ii) Notice is available electronically as long as it is in force.
  - (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.
  - (e) Provides the notice by any other means authorized by the commissioner.
- (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 otherwise communicate with the licensee electronically.



- C. A licensee may reasonably expect that a customer will receive actual notice of the licensee's Notice of Information Practices 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 notice remains available to the customer upon request.
- D. A licensee may not provide any notice required by this Act solely by orally explaining the notice, either in person or over the telephone.
- E. 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.
- F. 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 9A, 10A and 14A, respectively, by providing one notice to those consumers jointly.