

**Public Comments to Revised Article IV of the**  
***Privacy of Consumer Financial and Health Information Regulation (#672)***  
**Section 9—Initial Privacy Notice to Consumers Required**  
**Section 10—Annual Privacy Notice to Customers Required**  
**Section 11—Information to be Included in Privacy Notices**  
**Section 12 Form of Opt Out Notice to Consumers and Opt Out Methods**  
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## **Regulator Comments**

### **Maine Bureau of Insurance**

**“Privacy Notice”:** A more accurate name for this notice might be “notice of information practices.” Although the notice includes some privacy rights granted by law, and some measures the licensee takes to protect privacy, the notice also warns of things the licensee might do that diminish the privacy of the consumer’s nonpublic information.

**Consumer/customer distinction:** Is this important? GLBA’s focus on “customer privacy” is one of its shortcomings – do we really want to preserve it? As long as we provide protections that equal or exceed GLBA protections to a class that includes all customers, we avoid both federal preemption and gaps in state implementation. The only purpose I can think of for caring whether the consumer has an ongoing relationship with a licensee is for periodic reminder notices, and we can describe that more directly rather than using terminology that creates two classes of consumers and requires reference to a term-of-art definition.

**“Before the licensee discloses any Nonpublic Personal Information”:** This Article begins with a really confusing distinction between “customers” and “consumers” by putting them on completely separate tracks for delivery of the initial notice, which implies that you’re either one or the other. Mere “consumers” are not entitled to notice until just before the licensee shares their information with a nonaffiliated third party – and they can share with affiliates without even providing notice. But the most important purpose of a notice of information practices is to give the consumer a chance to decide what information to provide to whom. It defeats that purpose if the licensee is allowed to collect the information before telling the consumer what they’re going to do with it. Consumers are most likely to need the notice at the point of application (which means before they are “customers”), and they should have the chance to get it then. If the trigger for notice is the collection of the nonpublic information, we don’t need different levels of service for first-class “customers” and economy-class “consumers.”

**Involuntary relationships:** Subparagraph 9(E)(1)(a) allows notice to be delayed if the relationship is “not at the customer’s election,” as when when the carrier inherits the policy from another carrier in a transaction that doesn’t require consent. If the only information the consumer has is the previous carrier’s notice, perhaps the new carrier should be bound by any restrictions in that notice until the carrier gets around to providing its own notice.

**Short-form notice:** Paragraph 11(D)(3) allows licensees to deliver short-form notices to people described as “a consumer who is not a customer” (which I believe is usually a long-winded way of referring to an applicant or a shopper), as long as there is a “reasonable means to obtain” the full privacy notice. This makes sense, but the only examples of reasonable means that are given are to keep copies on hand for consumers who are already in the licensee’s office, and to provide a toll-free phone number. We should consider this new-fangled Interwebs thing. And a toll-free call is only reasonable if the consumer can reliably be connected both quickly and easily. We should also consider whether even the short-form notice ought to include contact information for the regulator and a brief statement of the right to access and correct.

**Scope of opt-out notice:** Why are we still limiting the opt-out right to information the licensee wants to share with nonaffiliated third parties? We should include all opt-out rights that are already guaranteed by federal law. Furthermore, the precise scope of the opt-out notice should be up to the licensee. We set the minimum and maximum scope, but the company should be free to design its own opt-out opportunity as long as it clearly describes what information the consumer can restrict from disclosing to whom, and it includes all disclosures for which an opt-out right is guaranteed by law and doesn’t include any disclosures that are required by law and therefore beyond the scope of any lawful opt-out opportunity.

## Pennsylvania Insurance Department

### ARTICLE IV. PRIVACY AND OPT OUT NOTICES FOR NONPUBLIC PERSONAL FINANCIAL INFORMATION

#### Section 95. 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) , A customer, not later than when the licensee establishes a customer relationship, except as provided in Subsection E of this section; and
- (2) 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 2046 and 2147.

B. Initial notice to a consumer 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 2046 and 2147, 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. Establishment of 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 129, 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:

**Commented [FJ1]:** Should the title read "Consumers and Customers" since this section deals with disclosures as to both? Or just delete "consumers"?

**Commented [FJ2]:** There is also an exception in subsection E for when the initial notice is determined to be adequate

**Commented [FJ3]:** Since Customer and Consumer are defined terms, should this be worded to match the lead in language so it flows better i.e., "A licensee shall provide...a notice to... (1) a customer."

**Commented [FJ4]:** This is duplicative of the definition of customer and conflicts with the examples of continuing relationship in that definition, which specify what situations do and do not qualify as a continuing relationship.

**Commented [FJ5]:** Would this be more clearly portrayed as an exception instead of a means of compliance?

**Commented [FJ6]:** "Reasonable" creates vagueness concerns -- consider a specified time period?

- (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 154. If the licensee uses a short-form initial notice for non-customers according to Section 157D, the licensee may deliver its privacy notice according to Section 157D(3).

**Commented [FJ7]:** Are these intended to be examples or should this language be inserted in the body of the requirements as more detail?

**Commented [FJ8]:** Shouldn't this apply to subsequent notices under D(2) as well?

**Section 106. 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 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. Exception to general rule. A licensee that provides Nonpublic Personal Information to nonaffiliated third parties only in accordance with Sections 195, 2046, or 2147 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.
- C. (1) Termination of customer relationship. A licensee is not required to provide an annual notice to a customer with whom a licensee no longer has a continuing relationship including but not limited to situations where:
  - (a) An individual no longer is a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee.
  - (b) 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

**Commented [FJ9]:** Is this example necessary?

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) 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) Where, 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 [144](#).

**Section [117](#). Information to be Included in Privacy Notices**

A. General rule. The initial, annual and revised privacy notices that a licensee provides under Sections [59](#), [610](#) and [911](#) 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) In specific terms, the categories of Nonpublic Personal ~~financial~~ Information that the licensee collects including, 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) In specific terms, the categories of Nonpublic Personal ~~financial~~ Information that the licensee discloses including, as applicable:
  - (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; and
  - (c) Information from consumer reports, such as a consumer's creditworthiness and credit history.
- (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 [2046](#) and [2147](#) including the types of businesses in which the affiliates engage, which may be described in general terms only if the licensee uses a few illustrative examples of significant lines of business.
- (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 ~~2046~~ and ~~2147~~;

- (5) If a licensee discloses Nonpublic Personal ~~financial~~ Information to a nonaffiliated third party under Section ~~195~~ (and no other exception in Sections ~~2046~~ and ~~2147~~ 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 including:
  - (a) A list of 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) A statement as to 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.
- (6) An explanation of the consumer's right under Section ~~162A~~ 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 including:
  - (a) A description in general terms as to who is authorized to have access to the information; and
  - (b) A statement regarding 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.
- (9) Any disclosure that the licensee makes under Subsection B of this section. [A description of the consumer's ability to request to access, correct, or delete Nonpublic Personal Information about the consumer as established under this Act and the instructions for exercising such options.](#)

B. Description of parties subject to exceptions. If a licensee discloses Nonpublic Personal ~~financial~~ Information as authorized under Sections ~~2046~~ and ~~2147~~, the licensee is not required to list those exceptions in the initial or annual privacy notices required by Sections ~~95~~ and ~~106~~. 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:

**Commented [FJ10]:** Wouldn't this more clearly fit under A(3)?

**Commented [FJ11]:** This section does not read like an example. Suggest moving above.

- (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 ~~financial~~ Information that the licensee discloses.

**Commented [FJ12]:** Suggest moving above to section A(2)

**Commented [FJ13]:** Should this apply to "collect" too? Consider incorporating "in specific terms" into (a) and (b) above.

**Commented [FJ14]:** Is it still helpful for a consumer to know the general categories the licensee has even if the licensee is reserving this right?

- (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.

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.

- (b) 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 195 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 ~~20+6~~ and ~~21+7~~, 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.

**Commented [FJ15]:** Move above to section 5?

**Commented [FJ16]:** Should this be an exception and not an example?

**Commented [FJ17]:** Move above to section (a)(8)

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

- (1) A licensee may satisfy the initial notice requirements in Sections ~~95A(2)~~ and ~~128C~~ 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 ~~140~~. The licensee is not required to deliver its privacy notice with its short-form initial notice if the licensee provides 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 ~~15+~~.

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.

**Commented [FJ18]:** Re these examples necessary or should "reasonable means" be elaborated on above? If necessary, consider permitting email or other electronic requests i.e., text, chat, etc. for a means of requesting the notice.

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 and Federal Model Privacy Form. Sample clauses illustrating some of the notice content required by this section and the Federal Model Privacy Form are included in Appendix A and Appendix B, respectively, of this regulation.~~

**Commented [FJ19]:** Should the draft note that this is subject to a requirement to the revised privacy notice in section 19?

**Section 128. Form of Opt Out Notice to Consumers and Opt Out Methods**

- A. (1) Form of opt out notice. A licensee required to provide an opt out notice under Section 12A 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 117A(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 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.

**Commented [FJ20]:** Consider incorporating as specific requirements since these are not illustrative examples.

**Commented [FJ21]:** Consider including as a non-exhaustive list instead of phrasing as a safe harbor, or if intended to be exhaustive, incorporate into the requirement.

- (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 95.
- 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 95, 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.

Commented [FJ22]: Recommend deletion of example.

Commented [FJ23]: Vagueness concern.

- (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 ~~154~~.

**Section ~~139~~. Revised Privacy Notices**

A. General rule. Except as otherwise authorized in this [Act regulation](#), a licensee may 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.

B. Requirements. Before a licensee may disclose Nonpublic Personal Information inconsistently with a prior notice, the licensee must:

- (1) Provide to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;
- (2) Provide the consumer a new opt out notice and a **reasonable opportunity to opt out of the disclosure**;

D. =Examples. Except as otherwise permitted by Sections ~~195, 2046 and 2147~~, a licensee's disclosure of Nonpublic Personal Information is inconsistent with a prior notice if the licensee discloses:

- (1) A new category of Nonpublic Personal ~~financial~~ Information to any nonaffiliated third party;
  - (a) (2) Nonpublic Personal ~~financial~~ Information to a new category of nonaffiliated third parties; or
  - (b) (3) 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.

E. Exception. A revised notice is not required if the licensee's disclosure of Nonpublic Personal ~~financial~~ Information to a new nonaffiliated third party was adequately described in a prior notice.

F. Delivery. When a licensee is required to deliver a revised privacy notice by this section, the licensee shall deliver it according to Section ~~154~~.

**Section ~~140~~. Privacy Notices 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 ~~95~~ through ~~139~~ of this [Act regulation](#), describing the licensee's privacy practices with respect to Nonpublic Personal Information about individuals covered under the policies, contracts or plans.

**Section ~~154~~. Delivery**

- A. How to provide notices. A licensee shall provide any notices that this [Act regulation](#) requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically including but not limited to:
  - (a) Hand-delivery of a printed copy of the notice to the consumer;

**Commented [JF24]:** Consider a certain amount of time that is reasonable?

**Commented [JF25]:** Do we need to make it clear that an opt out notice will not be sufficient here if the information is sensitive information that an opt in is required before disclosure?

- (b) Mailing 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, posting of the notice on the electronic site and requiring 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, posting the notice and requiring the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular insurance product or service.
- B. 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.
- C. Oral description of notice insufficient. A licensee may not provide any notice required by this [Act regulation](#) solely by orally explaining the notice, either in person, over the telephone or by other means.
- D. Retention or accessibility of notices by customers.
  - (1) For customers only, a licensee shall provide the initial notice required by Section [95A\(1\)](#), the annual notice required by Section [6A](#), and the revised notice required by Section [139](#) so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically by:
    - (a) Hand-delivering a printed copy of the notice to the customer;
    - (b) Mailing a printed copy of the notice to the last known address of the customer; or
    - (c) Making 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.
- E. 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, where 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 [95A](#), [106A](#) and [139A](#), respectively, by providing one notice to those consumers jointly.

### **Virginia Bureau of Insurance**

The Bureau generally supports the notice structure found in Article IV to require initial, annual, and revised privacy notices to customers and consumers. These notices are vital for customers and consumers to know about how licensees collect, process, and disclose their Nonpublic Personal Information and what options they have to limit these practices. The Bureau has offered several edits throughout Article IV seeking to modernize the Act's language to more closely track consumer behavior and technology in use in 2025. In particular, the Bureau's edits allow for increased electronic dissemination of privacy notices to customers and consumers where they have agreed to conduct business with the licensee electronically.

The Bureau also revised Article IV to remove the differing treatment of current and former customers. The Bureau believes that if a licensee is processing Nonpublic Personal Information obtained from or about a then-current customer (now a former customer), the licensee's obligations with respect to notifying that customer about the licensee's processing and disclosure of that information, and any other Nonpublic Personal Information, should remain the same.

The Bureau offers these comments for the Working Group's consideration along with the attached redline showing the Bureau's proposed revisions to incorporate its comments, among other edits.

**ARTICLE ~~VI~~. PRIVACY AND OPT OUT NOTICES FOR ~~NONPUBLIC PERSONAL FINANCIAL~~ INFORMATION**

**Section ~~95~~. Initial Privacy Notice to Consumers Required**

- G. Initial notice requirement. A licensee shall provide a clear and conspicuous notice, in accordance with Sections 11, 12, and 15, 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 processes any Nonpublic Personal ~~financial~~ Information about the consumer.
- H. 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 process any Nonpublic Personal ~~financial~~ Information about the consumer, 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.
- I. 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.
- J. 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 ~~139~~, 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.
- K. 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.

- L. Delivery. When a licensee is required to deliver an initial privacy notice by this section, the licensee shall deliver it according to Section 154.

**Section 106. Annual Privacy Notice to Customers Required**

- E.
  - (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.
- F. Exception to general rule. A licensee that provides Nonpublic Personal Information to nonaffiliated third parties only in accordance with Sections 195, 2046, or 2147 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.
- G.
  - (1) Termination of customer relationship. A licensee is required to provide an annual notice to a former customer as long as the licensee processes the former customer's Nonpublic Personal Information. A former customer is an individual with whom a licensee no longer has a continuing relationship.
  - (2) Exceptions.
    - (a) For the purposes of this Actregulation, a licensee is no longer required to provide an annual notice to a former customer if the individual's last known address according to the licensee's records is deemed invalid and the former customer has not agreed to conduct business electronically. 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. If the former

customer had previously agreed to conduct business electronically, the licensee must continue to provide an annual notice to the former customer's valid email address.

- (b) A licensee no longer has an obligation to provide an annual notice to a former customer if 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.

- H. Delivery. When a licensee is required by this section to deliver an annual privacy notice, the licensee shall deliver it according to Section 154.

**Section 117. Information to be Included in Privacy Notices**

- G. General rule. The initial, annual and revised privacy notices that a licensee provides under Sections 59, 610 and 913 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 purposes for which the licensee collects, processes, and discloses Nonpublic Personal Information;
  - (2) The categories of Nonpublic Personal ~~financial~~ Information that the licensee collects;
  - (3) The categories of Nonpublic Personal ~~financial~~ Information that the licensee discloses;
  - (4) 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 2046 and 2147;
  - (5) 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 2046 and 2147;
  - (6) If a licensee discloses Nonpublic Personal ~~financial~~ Information to a nonaffiliated third party under Section 195 (and no other exception in Sections 2046 and 2147 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;
  - (7) An explanation of the consumer's right under Section 162A 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;
  - (8) 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);
  - (9) The licensee's policies and practices with respect to protecting the confidentiality and security of Nonpublic Personal Information; and
  - (10) Any disclosure that the licensee makes under Subsection B of this section. A description of the consumer's ability to request to access, correct, or delete Nonpublic Personal Information about the consumer, as established under this Act, and the instructions for exercising such options.
- H. Description of parties subject to exceptions. If a licensee discloses Nonpublic Personal ~~financial~~ Information as authorized under Sections 2046 and 2147, the licensee is not required to list those



exceptions in the initial or annual privacy notices required by Sections 95 and 106. 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.

I. Examples.

- (1) Purposes for which the licensee collects, processes, and discloses Nonpublic Personal Information. A licensee satisfies the requirement to provide the purposes for which the licensee collects, processes, and discloses Nonpublic Personal Information if the licensee provides examples of categories of such purposes, as applicable:
  - (a) Market, sell, and provide insurance;
  - (b) Manage claims;
  - (c) Routine business and insurance operations;
  - (d) Security and fraud detection;
  - (e) Regulatory and legal requirements;
  - (f) Analytics to identify, understand, and manage the licensee's risks and products;  
or
  - (g) Customer service and technical support.
- (2) 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.
- (3) 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 ~~financial~~ Information that the licensee discloses.
- (4) 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.

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.

- (b) 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.
- (5) Disclosures under exception for service providers and joint marketers. If a licensee discloses Nonpublic Personal ~~financial~~ Information under the exception in Section 195 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(6) 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(3) 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.
- (6) 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 2046 and 2147, the licensee may simply state that fact, in addition to the information it shall provide under Subsections A(1), A(2), A(9), A(10) and Subsection B of this section.
- (7) 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.

J. 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.

K. ~~Sample Clauses and Federal Model Privacy Form. Sample clauses illustrating some of the notice content required by this section and the Federal Model Privacy Form are included in Appendix A and Appendix B, respectively, of this regulation.~~

**Section 128. Form of Opt Out Notice to Consumers and Opt Out Methods**

- I. (1) Form of opt out notice. If a licensee is required to provide an opt out notice under Section 12A, 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.
- (3) 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 117A(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

**Commented [DB26]:** A new section describing the form of opt-in notice to consumers and opt-in methods should be added.

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.
- J. 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 95.
- K. 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 95, the licensee shall also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.
- L. Joint relationships.
  - (6) 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 that complies with the Act.
  - (7) Any of the joint consumers may exercise the right to opt out. The licensee must treat an opt out direction by a joint consumer as applying to all of the associated joint consumers.
  - (8) 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.
- M. 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.
- N. Continuing right to opt out. A consumer may exercise the right to opt out at any time.
- O. Duration of consumer's opt out direction.
  - (3) 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.
  - (4) 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.
- P. Delivery. When a licensee is required to deliver an opt out notice by this section, the licensee shall deliver it according to Section 154.

**Section 139. Revised Privacy Notices**

- E. General rule. Except as otherwise authorized in this Act regulation, a licensee shall not, directly or through an affiliate, process any Nonpublic Personal ~~financial~~ Information or 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 9, 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.

F. Examples.

- (1) Except as otherwise permitted by Sections ~~195~~, ~~2046~~ and ~~2147~~, a licensee shall provide a revised notice before it:
  - (a) Collects or processes a new category of Nonpublic Personal Information
  - (b) Discloses a new category of Nonpublic Personal ~~financial~~ Information to any nonaffiliated third party;
  - (c) Discloses Nonpublic Personal ~~financial~~ Information to a new category of nonaffiliated third party; or
  - (d) 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.

- G. Delivery. When a licensee is required to deliver a revised privacy notice by this section, the licensee shall deliver it according to Section ~~154~~.

**Section ~~140~~. Privacy Notices 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 ~~95~~ through ~~139~~ of this ~~Act regulation~~, describing the licensee's privacy practices with respect to Nonpublic Personal Information about individuals covered under the policies, contracts or plans.

**Section ~~154~~. Delivery**

- F. How to provide notices. A licensee shall provide any notices that this ~~Act regulation~~ requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees to conduct business electronically, via electronic means.
- G. (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 agreed to conduct business 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; or
  - delivers the notice to a valid, consumer-provided, email address
- (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 has not agreed to conduct business with the licensee electronically.
- H. Annual notices only. A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if:
  - (3) 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
  - (4) 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.
- I. Oral description of notice insufficient. A licensee may not provide any notice required by this ~~Act regulation~~ solely by orally explaining the notice, either in person or over the telephone.
- J. Retention or accessibility of notices.
  - (2) A licensee shall provide the initial notice required by Section ~~95A~~, the annual notice required by Section 10, and the revised notice required by Section ~~139~~ so that the consumer can retain them or obtain them later in writing or, if the customer agrees, electronically.
  - (3) Examples of retention or accessibility. A licensee provides a privacy notice to the consumer so that the consumer 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 consumer who agrees to conduct business electronically and agrees to receive the notice at the web site.
    - (d) Delivers the notice to a valid, consumer-provided, email address for a consumer who agrees to conduct business electronically and has consented to receive the notice via email.
- K. 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 [95A](#), [106A](#) and [139A](#), respectively, by providing one notice to those consumers jointly.

## **Industry Comments:**

### **American Council of Life Insurers (ACLI)**

#### **General Comments**

- Uniformity and consistency should remain at the forefront of discussions and changes to the model. Modernizing the model law will best serve consumers who are negatively impacted by the patchwork of consumer privacy laws that currently exist. Consistency across states will aid in regulation of companies and will allow companies to provide clear and effective services that allow consumers to understand the use of their data.
- The provided comments aim to modernize the model in line with current state comprehensive privacy laws. Additionally, these modernization efforts match consumer desires to efficiently have access to notices and other information concerning the use of their data.
- The insurance industry is best regulated under state Insurance Commissioners and modernizing this model in a way that is adoptable by states to retain that authority is key.
- In considering further sections, it is important to note that the provided comments are in the context of the definitions as they stand. In the event of changes to the definitions, ACLI intends to provide comments on previous sections that are impacted by those changes. Particularly, any changes to the consumer definition or the nonpublic personal information definition will have a strong impact on other previously discussed and commented on sections. The following comments are provided in chronological order of Article IV for readability.

#### **Article IV Section 11**

- Striking Section 11 (F) Sample Clauses and Federal Model Privacy Form, in the absence of any encouraged or meaningful uniformity in forms will lead to an increasingly confusing patchwork of state proposals. Because Section 3 Rules of Construction, requires individual state Commissioners to provide examples, the same lack of uniformity will still be present. In modernizing Model 672, uniformity and consistency cannot be overlooked as their impact on consumers is pertinent. Consumer ability to understand how their information is being used and how to interpret notices will be best aided by consistency in model forms. We reiterate that examples from each Commissioner would be incredibly confusing given the likelihood that examples would not be consistent state-to-state.

**Suggested Language:** We intend to provide further comments during the relevant comment period, but note that if Section 11 is stricken, Section 3 should be as well, or edited to promote uniformity.

#### **Article IV Section 12**

- It is not always applicable or appropriate for a licensee to include the (a)-(c) items in a notice to a consumer. Additionally, this would create confusion if a licensee was not intending to disclose to an unaffiliated third party, other than service providers or for legally required purposes for which an opt out would not be required.

**Suggested Language:** 12(A)(1) Form of opt out notice. If a licensee is required to provide an opt out notice under Section 1A, 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 [to the extent applicable](#):

#### **Article IV Section 14**

- For Group insurers, it is important to clarify the responsibility for distribution of privacy notices. In the past, there has been confusion amongst group insurers and consumers



regarding group insurer notice provisions. The below edits clarify that the licensee's legal obligation is distribution to the group policyholder and recognizes the unique position of group insurers in the context of Article IV, namely that Section 14 is an exception to the requirements of Sections 9, 10, and 15 for group insurers.

**Suggested Language:** 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 and annual notice of consumer information practices in Sections 9 and 10 of this Act, and the delivery provisions in Section 15.](#)

#### **Article IV Section 15**

- This section can be improved by the below suggestions. These suggestions encompass important modernization efforts that provide consumers with the most helpful information. These suggestions not only assist with cost and administrative burden, which in turn allow for companies to provide consumers with affordable products, but they also assist consumers who seek more e-delivery options. Having 5 bullets of information is much more useful to consumers than 5 pages.
- As far as "actual" notice, this phrase creates a definitional issue as to what is "actual." The word "notice" itself is sufficient to capture the message of this Section. Further, the phrase "or have access to" has been added below to indicate circumstances where the consumer has received or has the notice available but might not have read it.
- The suggested language for Section 15(B)(1)(c)-(e) modernizes the model language to accommodate e-delivery and available websites and applications. This would allow companies multiple avenues to accomplish the intended goal in an efficient manner: delivery of notice to consumers in written form. The requirements for website posting here address any outstanding concerns with website posting. Additionally, these edits do not remove the ability to issue notice via mail or hand-delivery and allows state Insurance Commissioners to determine if a different notice means is necessary within their own state.
- Because the below suggested language for Section 15(B) captures the purpose of Section 15(C), we also suggested deleting Section 15(C) in its entirety. This will provide clearer guidance on where consumers can expect to have access to notices.
- The inclusion of Section 15(E) is redundant if the goal is to pursue modernization of Model 672. The examples in Section 15(B) permit the consumer to retain the notice or to obtain it either electronically or on paper so this Section is redundant and could lead to licensee or consumer confusion.

#### **Suggested Language:**

- A. How to provide notices. A licensee shall provide any notices that this Act requires so that each consumer can reasonably be expected to receive [or have access to the actual](#) notice in writing ~~or, if the consumer agrees, electronically.~~
- B.
  - †) Examples of reasonable expectation of ~~actual~~ notice. A licensee may reasonably expect that a consumer will receive ~~actual~~ [or have access to the](#) notice if the licensee:
    - †) Hand-delivers a printed copy of the notice to the consumer;
    - †) 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;
    - †) [Posts the notice on its website, and it complies with all of the](#)

following:

1. The licensee provides the consumer with the Internet address where the notice is posted and the opportunity to request a paper copy of the notice at no charge;
2. The notice is posted in a manner that enables the consumer to print or save it using programs or applications widely available on the Internet and free of charge to use; and
3. The notice is available on the website or mobile application so long as it is in force;

- ~~(d) Delivers the notice by any electronic means permitted by law; or~~
- ~~(e) Provides the notice by any other means authorized by the commissioner.~~

~~(f) 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;~~

~~(g) 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 or have access to the 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.~~

~~(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 or have access to 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 Act 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 9A(1), the annual notice required by Section 6A, and the revised notice required by Section 13 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 9A, 10A and 13A, respectively,~~ by providing one notice to those consumers jointly.

## ACLI Appendix to Article IV Comments

### Suggested Redlines

#### ARTICLE IV. PRIVACY AND OPT OUT NOTICES FOR NONPUBLIC PERSONAL INFORMATION

##### Section 9. Initial Privacy Notice to Consumers Required

- M. 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 Information about the consumer to any nonaffiliated third party, if the licensee makes a disclosure other than as authorized by Sections 20 and 21.
- N. 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 Information about the consumer to any nonaffiliated third party, other than as authorized by Sections 20 and 21, 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.
- O. 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.
- P. 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 12, 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.

- Q. 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.
- R. Delivery. When a licensee is required to deliver an initial privacy notice by this section, the licensee shall deliver it according to Section 15. If the licensee uses a short-form initial notice for non-customers according to Section 15D, the licensee may deliver its privacy notice according to Section 15D(3).

**Section 10. Annual Privacy Notice to Customers Required**

- I. (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.
- J. Exception to general rule. 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 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.

- K. (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 Act, 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.
- L. Delivery. When a licensee is required by this section to deliver an annual privacy notice, the licensee shall deliver it according to Section 14.

**Section 11. Information to be Included in Privacy Notices**

- L. General rule. The initial, annual and revised privacy notices that a licensee provides under Sections 9, 10 and 11 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 Information that the licensee collects;
  - (2) The categories of Nonpublic Personal Information that the licensee discloses;
  - (3) The categories of affiliates and nonaffiliated third parties to whom the licensee discloses Nonpublic Personal Information, other than those parties to whom the licensee discloses information under Sections 20 and 21;
  - (4) The categories of Nonpublic Personal 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 Information about the licensee's former customers, other than those parties to whom the licensee discloses information under Sections 20 and 21;

- (5) If a licensee discloses Nonpublic Personal Information to a nonaffiliated third party under Section 19 (and no other exception in Sections 20 and 21 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 16A 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;
  - (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. A description of the consumer's ability to request to access, correct, or delete Nonpublic Personal Information about the consumer as established under this Act and the instructions for exercising such options.
- M. Description of parties subject to exceptions. If a licensee discloses Nonpublic Personal Information as authorized under Sections 20 and 21, 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.
- N. Examples.
- (1) Categories of Nonpublic Personal Information that the licensee collects. A licensee satisfies the requirement to categorize the Nonpublic Personal 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 Information a licensee discloses.
    - (a) A licensee satisfies the requirement to categorize Nonpublic Personal 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 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 Information about consumers if the licensee identifies the types of businesses in which they engage.

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.

- (b) A licensee also may categorize the affiliates and nonaffiliated third parties to which it discloses Nonpublic Personal Information about consumers using more detailed categories.
- (4) Disclosures under exception for service providers and joint marketers. If a licensee discloses Nonpublic Personal Information under the exception in Section 19 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 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 Information about customers or former customers 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.

- (6) Confidentiality and security. A licensee describes its policies and practices with respect to protecting the confidentiality and security of Nonpublic Personal 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.

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

- (1) A licensee may satisfy the initial notice requirements in Sections 9A(2) and 12C 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 14. 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 15.

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.

P. Future disclosures. 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.

**Section 12. Form of Opt Out Notice to Consumers and Opt Out Methods**

- Q. (1) Form of opt out notice. If a licensee is required to provide an opt out notice under Section 1A, 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 to the extent applicable:
- (a) That the licensee discloses or reserves the right to disclose Nonpublic Personal 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.
- (4) Examples.
- (a) Adequate opt out notice. 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 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 11A(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 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.

- R. 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 9.
- S. 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 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.
- T. Joint relationships.
- (9) 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).
  - (10) 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.
  - (11) 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.
  - (12) A licensee may not require all joint consumers to opt out before it implements any opt out direction.
  - (13) 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 Information about Mary, but not about John and not about John and Mary jointly.
- U. 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.

- V. Continuing right to opt out. A consumer may exercise the right to opt out at any time.
- W. Duration of consumer's opt out direction.
  - (5) 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.
  - (6) When a customer relationship terminates, the customer's opt out direction continues to apply to the Nonpublic Personal 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.
- X. Delivery. When a licensee is required to deliver an opt out notice by this section, the licensee shall deliver it according to Section 15.

**Section 13. Revised Privacy Notices**

- H. General rule. 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.
- I. 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
    - (c) Discloses Nonpublic Personal 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 Information to a new nonaffiliated third party that the licensee adequately described in its prior notice.
- J. Delivery. When a licensee is required to deliver a revised privacy notice by this section, the licensee shall deliver it according to Section 15.

#### Section 14. Privacy Notices 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 and annual notice of consumer information practices in Sections 9 and 10 of this Act, and the delivery provisions in Section 15.

#### Section 15. Delivery

- L. How to provide notices. A licensee shall provide any notices that this Act requires so that each consumer can reasonably be expected to receive or have access to the actual-notice in writing ~~or, if the consumer agrees, electronically.~~
- M. (1) Examples of reasonable expectation of actual-notice. A licensee may reasonably expect that a consumer will receive actual-or have access to the 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) Posts the notice on its website, and it complies with all of the following:
    - The licensee provides the consumer with the Internet address where the notice is posted and the opportunity to request a paper copy of the notice at no charge;
    - The notice is posted in a manner that enables the consumer to print or save it using programs or applications widely available on the Internet and free of charge to use; and
    - The notice is available on the website or mobile application so long as it is in force;
  - (d) Delivers the notice by any electronic means permitted by law; or
  - (e) Provides the notice by any other means authorized by the commissioner.
  - ~~(f) 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;~~
  - ~~(g) 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.~~
- (3) Examples of unreasonable expectation of actual notice. A licensee may not, ~~however~~, reasonably expect that a consumer will receive actual-or have access to the 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.~~

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

~~(5) 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~~

~~(6) 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.~~

O. Oral description of notice insufficient. A licensee may not provide any notice required by this Act solely by orally explaining the notice, either in person or over the telephone.

~~P. Retention or accessibility of notices for customers:~~

~~(4) For customers only, a licensee shall provide the initial notice required by Section 9A(1), the annual notice required by Section 6A, and the revised notice required by Section 13 so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.~~

~~(5) 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.~~

Q. 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 9A, 10A and 13A, respectively;~~ by providing one notice to those consumers jointly.

### **American Property Casualty Insurance Association (APCIA)**

We offer the following comments on Article IV of the Draft Model, including specific and constructive recommendations. Our suggestions aim to balance the Working Group's intent, consumer protections, and legitimate business practices. As definitions and objectives are refined and the draft evolves, our comments will similarly adapt to align with the final vision.

We look forward to continuing robust dialogue on the individual sections and revisiting the draft in totality at the end of this process. At that time, we urge the Working Group to provide a longer review period, preferably at least 60 days, to understand the intricacies and connections as we get closer to modernizing this complex framework in a meaningful and workable way.

#### **Article IV- Privacy and Opt-Out Notices for Nonpublic Personal Information**

APCIA is comfortable with many of the proposed changes outlined in Article IV of the Chair Draft. However, the amendments expand the scope of this section to include Nonpublic Personal Information, rather than focusing solely on Nonpublic Personal Financial Information as before. APCIA members are still evaluating the potential implications of this shift, as its impact depends significantly on how Nonpublic Personal Information is ultimately defined. This term could encompass a broad range of data, such as IP addresses, device information, and social media browsing habits—essentially any information that, alone or in combination, can directly or indirectly identify a consumer. In contrast, Nonpublic Personal Financial Information was narrowly confined to personal information used in insurance transactions. Without a clear and finalized definition, it remains challenging to fully assess or provide detailed recommendations, as even minor adjustments to the definition could substantially influence the interpretation and application of these changes.

#### **Section 9. Initial Privacy Notice to Consumers Required**

APCIA acknowledges that the Working Group will further examine potential concerns with Sections 20 and 21 (formerly Sections 16 and 17 of Model #672) as the drafting process progresses. We look forward to providing comprehensive comments at that stage. In the meantime, given that these sections address various exceptions and are referenced in Section 9A(2), we wish to preview the need for additional exemptions due to the broader application of this section to Nonpublic Personal Information compared to its prior focus on Nonpublic Personal Financial Information. For example, changing these sections to Nonpublic Personal Information without simultaneously modifying the opt-out exceptions would set up a framework where individuals could opt-out of disclosure of information to a non-affiliated third party that is necessary to run basic business operations, such as back office service providers, cloud service providers, etc.

#### **Section 10. Annual Privacy Notice to Customers Required**

Section 10(B) states that a licensee is exempt from providing an annual disclosure if it shares Nonpublic Personal Information only as permitted by specified sections, has not changed its disclosure policies since the most recent notice, and continues to meet these criteria. The proposed removal of "or Section 5" seems to impose a requirement for insurers to send at least one annual

notice ("most recent disclosure sent to consumers in accordance with this section"), in addition to the Initial Privacy Notice, before qualifying for this exemption. Under the prior language, it was clear that the Initial Privacy Notice alone was sufficient if the exemption criteria were met. This approach aligns with the Fixing America's Surface Transportation (FAST) Act, which amended the GLBA to eliminate the need for financial institutions to provide annual notices, provided certain conditions are satisfied. These FAST Act amendments reduce duplicative and costly notification requirements while maintaining the obligation to issue Initial Privacy Notices under the GLBA. To preserve clarity and consistency, APCIA recommends retaining the original language.

**Section 106. Annual Privacy Notice to Customers Required**

- M. Exception to general rule. A licensee that provides Nonpublic Personal Information to nonaffiliated third parties only in accordance with Sections 195, 2016, or 2117 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 59 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.

...

**Section 11. Information to be Included in Privacy Notices**

APCIA members have expressed disappointment over the removal of Section 11(F). This provision called for the inclusion of sample clauses and the federal model privacy form in the appendices—valuable resources that promote uniformity and consistency across jurisdictions. By standardizing language and format, these tools reduce compliance complexity for insurers while also enhancing consumer understanding. Clear, concise, and federally aligned privacy notices benefit both insurers and consumers by improving transparency and fostering trust. APCI strongly urges reconsideration of this decision to preserve a regulatory framework that supports consistency and clarity across the industry.

**Section 12. Form of Opt-Out Notice to Consumers and Opt-Out Methods**

As previously noted, the broader application of Article IV to Nonpublic Personal Information, compared to its previous focus on Nonpublic Personal Financial Information, raises potential concerns. For example, depending on how broadly Nonpublic Personal Information is defined, applying the opt-out provision under Section A1(a) could pose operational challenges due to this expanded scope.

Additionally, APCI members are increasingly concerned about Section 12(C) because of the ongoing administrative burden of providing opt-out notices to policyholders and consumers, as well as the associated recordkeeping requirements for regulatory audits. Section 12(C) requires licensees to provide an additional copy of the initial privacy notice if the opt-out notice is sent after the initial notice, along with tracking consumer consent for receiving such notices electronically—obligations



that could become even more burdensome under the proposed revisions to Model #672. Furthermore, the default delivery method of these opt-out notices should be to include the URL for the privacy notice on the website versus sending a paper copy.

### Section 13. Revised Privacy Notices

APCIA members have no comments on this section at this time but may provide recommendations in the future as definitions and objectives become clearer and the draft evolves.

### Section 14. Privacy Notice to Group Policyholders

APCIA members have no comments on this section at this time but may provide recommendations in the future as definitions and objectives become clearer and the draft evolves.

### Section 15. Delivery

APCIA encourages the Working Group to explore modernization opportunities that align with the evolving expectations of today's consumers for efficient, sustainable, and digital-first solutions. Modern customers increasingly demand clear, straightforward, and easily accessible digital experiences. As such, we recommend that the default delivery method for notices be through a website, with the option for consumers to opt-in to alternative delivery mechanisms. This approach not only caters to the preference for electronic formats but also enables quicker and more timely updates to notices. Additionally, we urge the Working Group to reassess outdated and burdensome requirements, such as the obligation to acknowledge receipt. With 25 years of experience under the GLBA privacy notice framework, consumers are well-acquainted with accessing privacy notices online. We encourage the Working Group to incorporate these recommendations into its broader modernization efforts and to consider additional updates needed to align the law with current industry practices and evolving consumer expectations.

Section 151.	Delivery
R.	How to provide notices. A licensee shall provide any notices that this <del>Act regulation</del> requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer <del>agrees</del> interacts with the licensee online or in some other electronic fashion, electronically.
S.	(1) Examples of reasonable expectation of actual notice. A licensee may reasonably expect that a consumer will receive actual notice if the licensee: <ul style="list-style-type: none"><li>(a) Hand-delivers a printed copy of the notice to the consumer;</li><li>(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;</li><li>(c) For a consumer who conducts transactions electronically, posts the notice on the electronic site; <del>and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service;</del></li><li>(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. <del>and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the</del></li></ul>

~~particular insurance product or service.~~

(e) ~~Delivers the notice by any electronic means permitted by law; or~~

(f) ~~Provides the notice by any other means authorized by the commissioner.~~

(4) 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.~~

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

T. Annual notices only. A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if:

(7) 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

(8) 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.

## Conclusion

Privacy is an important matter, and an insurance-specific approach must reconcile with the context of the industry, align with the broader landscape for financial institutions nationally, and consider certain state and federal requirements. Any privacy model law ultimately developed by the NAIC must be practical, reasonable, and workable. It must ensure that its provisions are integrated and work well together and achieve the intended objective of protecting consumers while allowing licensees to meet their business obligations.

### **American Land Title Association (ALTA)**

While the American Land Title Association (ALTA) does not have specific edits to Article IV Section 9 through 15, the reference to use of Nonpublic Personal Information once again raises the question of definitions and an exemption for publicly available records. The exemption of publicly available data is key to the title insurance industry. As outlined in early comments, any limitation of access to or use of publicly available data, including land, tax and court records, would negatively impact the industry's ability to issue title insurance policies.

We suggest the following change to the definition of Nonpublic Personal Information:

*Nonpublic Personal Information does not include publicly available information, de-identified information, aggregated data, and pseudonymous data.*

Additionally, the model should define "publicly available" as:

*"Publicly Available" means: information that is lawfully made available from federal, state, or local government records, or information that a business has a reasonable basis to believe is lawfully made available to the general public by the consumer or from widely distributed media; or information made available by a person to whom the consumer has disclosed the information if the consumer has not restricted the information to a specific audience.*

### **Insured Retirement Institute (IRI)**

Per the Working Group's request, we are only providing comments at this time on **Article IV, Section 9–Initial Privacy Notice to Consumers Required; Section 10–Annual Privacy Notice to Customers Required; Section 11–Information to be Included in Privacy Notices; Section 12–Form of Opt Out Notice to Consumers and Opt Out Methods; Section 13– Revised Privacy Notices; Section 14–Privacy Notices to Group Policyholders; and Section 15– Delivery.**

Overall, our members support the Revised Article IV, as the current notice, opt-out, and delivery processes are effective and aligned with other regulatory regimes. The current process is appropriate to provide sufficient notice to consumers about how their information is being used and to allow them an opportunity to opt out in certain circumstances.

While we generally support the Revised Article IV, we would like to offer the following comments for the Working Group's consideration:

- 1) **Section 10.B (Annual Privacy Notice to Customers Required)** – We request that the Working Groups consider adding language to make it clear that this section also applies to licensees who do not provide Nonpublic Personal Information (NPI) to nonaffiliated third parties and who have not changed their policies and practices with regard to disclosing NPI from the policies and practices that were disclosed in the most recent disclosure sent.
  
- 2) **Section 15 (Delivery)** – We request that the Working Group consider additional updates that better align with consumers' expectations of being able to conduct business electronically. For example, the Working Group could make electronic delivery the default option, with consumers "opting out" of electronic delivery if they wish to receive paper.

We understand that there will always be some consumers that want paper, and this approach will not take that away from those consumers. An electronic default approach (1) is more aligned with increasing consumer expectations that more business (beyond just insurance) be conducted electronically, (2) gives regulators and companies tools, such as detailed audit trails (which paper currently lacks), to identify and deter fraud, and (3) is more environmentally conscious. Moreover, we note that this approach would align with the actions of federal regulators and federal programs that now facilitate greater use of electronic delivery, including, for example, when the Department of Labor used its exemption authority under the Electronic Signatures in Global and National Commerce Act ("E-SIGN"), to allow employers to post retirement plan disclosures online or deliver them to workers by email as a default.<sup>2</sup> We recommend that the Working Group consider adopting this approach.

### **National Association of Mutual Insurance Companies (NAMIC)**

On behalf of the National Association of Mutual Insurance Companies (NAMIC) members, thank you for the opportunity to provide these comments on the exposure draft dated January 9, 2025. Consistent with the direction of the Working Group, this bullet-form input focuses on the aspects of the draft relating to Article IV.

NAMIC members very much appreciate the efforts of the Privacy Protections (H) Working Group (PPWG or Working Group) and the ability to provide input. This is part of broader feedback, and we look forward to continuing to share members' concerns and suggestions as the process continues. Further, NAMIC underscores the relevance and importance of the definitions for understanding the substantive provisions. To some extent, these comments assume that the definitions are going to be addressed to find reasonable solutions.

**NONPUBLIC PERSONAL FINANCIAL INFORMATION VS. NONPUBLIC PERSONAL INFORMATION:** The most recent version refers to “nonpublic personal information” in place of “nonpublic personal financial information.” Definitions, substantive provisions, and exceptions (such as in Article IV, which the drafting group may consider in the future) all will help inform whether the change is ultimately workable. To reiterate a point made in previous comments, getting the definitions right is critically important. And, as it now stands, it appears that the draft currently includes public information despite being characterized as “nonpublic.” Members will need time to continue to review the potential impacts of these changes – and how they may interconnect in these and other sections – as the process continues to move forward.

**MODERNIZATION:** A major theme of the comments offered here is to aid in streamlining processes, considering how to align with the aspects of recent waves of the **comprehensive state privacy laws** that make sense in the context of the business of insurance. Further, please also consider the **expectations of many of today's consumers** who look for business to be quick and easy.

**EASE OF DISCUSSION & “DELIVERY”:** As outlined in the delivery portion of Article IV (see Section 15 in particular), there should be ways to modernize that particular aspect of the model. If the drafting group moves in that direction, it then may make sense to then modify the “delivery” related provisions that are incorporated into the initial and revised notice provisions, etc. Without knowing if the Working Group would be willing to bring the methods up-to-date for making available privacy notices, corresponding suggestions along those lines are not shown for all provisions in these comments.

### **ANNUAL PRIVACY NOTICE – Chair Draft Sec. 10**

*[Existing Model: Section 6]*

### **CLEAR & CONSPICUOUS – GENERAL RULE EXCEPTION: §10B**

**COMPLIANCE DEEMER & OTHER NAIC ACTION ON THIS MODEL:** At the NAIC’s 2016 Spring National Meeting, the Privacy Disclosures Working Group and the Market Regulation and Consumer Affairs (D) Committee adopted a [Model Bulletin](#) – “Annual Privacy Notice – Compliance Deemer” - to improve operational efficiency and reduce consumer frustration. This step was taken in response to President Obama signing the Fixing America’s Surface Transportation Act (FAST Act) (in 2015), that included amendments to the privacy provisions of the federal Gramm Leach Bliley Act (GLBA). The change eliminated the requirement of redundant annual privacy notices. Paraphrased, the amendments provide that financial institutions shall not be required to provide annual privacy notices if the institution:

- (i) Only discloses consumers’ nonpublic personal information in accordance with the GLBA and implementing regulations; and
- (ii) Has not changed its privacy policies and practices as described in the institution’s most recent privacy notice sent to consumers.

Unfortunately, by striking the reference to the initial notice section here, it appears that before the compliance deemer would be effective both an initial notice plus at least one annual notice would need to be provided. This would be inconsistent with the approach for other financial institutions and would be contrary to the steps that many state insurance regulators have already taken in issuing the bulletin. **NAMIC strongly urges that the reference to initial notice not be removed from this provision.**

**SECTION NUMBERS:** As noted in the email seeking input on Article IV, as the draft model moves forward, referenced section numbers should continue to be reviewed throughout.

➤ **Please restore this important reference to continue to allow for this approach:**

*Exception to general rule. A licensee that provides Nonpublic Personal Information to nonaffiliated third parties only in accordance with Sections 195, 2046, or 2117 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 9 [initial notice 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.*

## NOTICE CONTENT - Chair Draft: Sec. 11

*[Existing Model: Section 7]*

### LISTED ITEMS – GENERAL RULE & ITEMS INCLUDED: §11A

**EXPANDING NOTICE TO INFORM OF ADDITIONAL OPT OUT CHOICES:** If considering expanding the menu of possible opt out selections, they could be incorporated into **Sec. 11A(6)**. Today it focuses on the disclosure of NPFI to nonaffiliated third parties (as consistent with the framework of GLBA and MDL#672). If expanding the options (and in an opt out form (kindly see NAMIC comments from November 2024 regarding Article III)), it seems that the requirement – as it relates to sensitive personal information and/or targeted advertising – for licensees to include this in notices to policyholders could be incorporated into the same provision. This seems like an important and foundational matter for the drafting group to consider (and it may have potential implications for other parts of Article IV that could be considered as well (though not necessarily all integrated into these comments at this time)).

**NEW ARTICLE ACCESS/CORRECT/DELETE REQUESTS & SEPARATE #:** As a technical matter, it seems better for the new wording now in (9) – “A description of the consumer’s ability to request to access, correct, or delete Nonpublic Personal Information about the consumer as established under this Act and the instructions for exercising such options” – to have its own number as opposed to it being added to the exemption-related disclosure from Subsection B. Also consider the **PLACEMENT** of this provision and whether organizing it to follow (6) (which relates to other choices) may make sense (as opposed to putting it at the end of the list).

#### ➤ *Please consider modifying these provisions accordingly.*

General rule. The initial, annual and revised privacy notices that a licensee provides under Sections 5 ~~9~~, 6 ~~10~~ and 9 ~~11~~ 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: ...

- (6) An explanation of the consumer’s ~~right under Section 162A~~ ability 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 under this Act, along with the methods by which the consumer may exercise that option, from the following, as applicable: [INSERT MODEL OPT OUT TYPES]~~
- (a) the disclosure of nonpublic personal financial information to nonaffiliated third parties;
  - (b) targeted advertising; and
  - (c) sensitive personal information...

(9) Any disclosure that the licensee makes under Subsection B of this section.

(#) A description of the consumer's ability to request to access, correct, or delete Nonpublic Personal Information about the consumer as established under this Act and the instructions for exercising such options. [CONSIDER MOVING AFTER (6) and before (7)].

## NOTICE CONTENT – Chair Draft Sec. 11

*[Existing Model: Section 7]*

### SAFE HARBOR WORDING: §11F

**TIMING:** Including this wording does not necessarily mean that this drafting group needs to complete the sample clauses before finalizing and adopting the model revisions.

**PRESERVING THE OPTION:** While the PPWG may be hesitant to commit to preparing sample clauses and/or model form wording, it may be helpful to insert the wording into the Model Act to have the possibility to so engage in that work.

**IMPLEMENTATION AID:** When Model #672 was rolled-out, as we understand it, the sample clauses were extremely helpful for licensees in preparing their initial notices and having some examples of the kinds of wording that would be acceptable. Where this Model adds new elements to the notice content, such samples might once again be beneficial to all involved (consumers, licensees, and regulators).

**OPERATIONAL UNIFORMITY:** While helpful to reference individual Commissioners, the from a workability standpoint, having the ability to look to national wording is ultimately more likely to provide meaningful consistency.

**RULES OF CONSTRUCTION:** Given the content, it seems relevant here to express concern with the approach in the draft's Section 3, which indicates that "The Commissioner shall provide examples on their website of privacy notices to be used by licensees as a safe harbor for compliance with this Act." While the idea of a safe harbor is useful, we suggest retaining it within this section (and also expanding it beyond a single state commissioner website posting). For sample provisions to merely be posted without necessarily having stakeholder input or consistency from jurisdiction to jurisdiction is not necessarily structuring the revised model's roll-out for the same kind of success as the initial launch of the model.

**FEDERAL MODEL PRIVACY FORM – INTEGRATED FINANCIAL INSTITUTIONS:** Insurers that also engage in other financial business may opt to develop a privacy notice approach that is consistent across the enterprise. Removing the Federal Privacy Form reference reduces certainty and make integrating approaches more challenging.



**FEDERAL MODEL PRIVACY FORM - OUTLIER:** Removing the Federal Model Privacy Form reference may make insurance an outlier as compared to other financial institutions regulated under GLBA.

**FEDERAL MODEL PRIVACY FORM – FORMAT:** Please look at the structure of this form. Some insurers (and consumers) may like the consistent format offered by the Federal Form.

**FEDERAL MODEL PRIVACY FORM – DISRUPTION:** Insurers should not have this option taken away, especially where they have already taken the steps to follow it.

➤ **Please consider this suggestion rather than striking the provision.**

Sample Clauses and ~~Federal~~ Model Privacy Form.

(a) Licensees are not required to use any prescribed clauses or model form.

(b) Licensee use of any of the following constitutes compliance with this Act:

(i) 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;

(ii) Model forms illustrating notice content required by this section, which is developed by the National Association of Insurance Commissioners or the Commissioner; or

(iii) The Federal Model Privacy Form [reference location] are included in Appendix A and Appendix B, respectively, of this regulation.

## OPT OUT NOTICE FORM & METHODS – Chair’s Draft Sec. 12

*[Existing Model: Section 8]*

### FORM OF OPT OUT NOTICE: §12A(1) – NOTICE OF OPT OUT ABILITY

**NO TRIGGERING EVENT:** If the licensee does not intend to disclose (or reserve the right to disclose) NPI/NPFI under Sec. 12A(1)(a) (which the consumer would then have an ability to opt out of), in practice it makes no sense for that licensee to be required to provide an opt out notice. This potentiality should be made clear in the lead-in language.

**AVOID CONFUSION:** To mandate notice and an opportunity to opt out where there essentially is no such opportunity may unintentionally confuse and frustrate consumers.

**INCREASING COMPLEXITY:** As the drafting continues and it becomes clearer as to whether there will be additional areas where a consumer may have an ability to opt out, it may be that this and/or other subsections could be impacted.

**SECTION NUMBER:** The email inviting stakeholder input indicated that section numbers would be reviewed as drafting continues. It appears that this [referenced subsection](#) should be updated.

#### ➤ *Kindly consider this possible clarification.*

(1) Form of opt out notice. If a licensee is required to provide an opt out notice under [Section 12A](#), it shall provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out under that section. To the extent applicable, 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.

## OPT OUT NOTICE FORM & METHODS – Chair’s Draft Sec. 12

*[Existing Model: Section 8]*

### FORM OF OPT OUT NOTICE: §12# - TARGETED ADVERTISING

**EXPECTATIONS:** To the extent that the drafting group plans to address targeted advertising (and recall that we encourage making it stand-alone in part so that the options/requirements/approach is clear to everyone involved), it may be helpful for the model to offer some indication as to how this would be accomplished as this somewhat technology-based item differs from the other aspects of the model.

**COMPLIANCE CERTAINTY & IMPLEMENTATION:** Kindly see the note on expectation. Developing approaches to address these requirements are not without costs and there should be some way to understand that what is (or has been) built is satisfactory (to all states that move forward with the model).

**OPERATIONAL UNIFORMITY:** Consistent with the other points, being able to use the same approach across jurisdictions may prove efficient and cost effective.

➤ ***If adding targeted advertising, kindly consider new opt out language.***

Targeted advertising opt out. A licensee may comply with the targeted advertising opt-out requirement by:

- (1) Providing either a cookie banner or a link on the footer of their website homepage that allows a consumer to opt-out of targeted advertising; or
- (2) Using another method, if such approach can effectively identify a person and remove them from targeted advertising

## OPT OUT NOTICE FORM & METHODS – Chair’s Draft Sec. 14

*[Existing Model: Section 8]*

### GROUP POLICYHOLDER NOTICE: §14

**CONNECTING PROVISIONS & COMPLIANCE CERTAINTY:** To reflect intent and increase legal confidence, it may be useful to insert wording that explicitly connects this provision back to the obligations for a licensee to provide notice (initial, annual, revised) under the model.

➤ ***Please consider adding clarifying wording.***

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 95 through 139 of this Act regulation, 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 licensees initial, annual, and revised notice of consumer information practices [INSERT NOTICE REQUIREMENT AND DELIVERY SECTIONS] of this Act.

## DELIVER/PROVIDE/MAKE AVAILABLE – Chair Draft Sec. 15

[Existing Model: Section 11]

### REASONABLE ACCESS/AVAILABILITY: §15(A)

**INTERNET ACCESS:** Between home internet, work internet, smart phones, libraries, engagement with independent agents, and friends/family, a vast majority of Americans have access to the internet. The [Pew Research Center Internet, Broadband Fact Sheet](#) offers some information on trends relating to internet use.

**FUTURE ORIENTED:** In 2025, when looking to learn about the companies they do business with, many people turn to the internet. If the NAIC and/or state legislators do not fully recognize this reality, they may be called upon to return to the model again in coming years. By building in wording that allows for reasonable access or that takes a “make available” approach now – along with providing easy alternatives for those who prefer a paper copy (or another alternative) – regulators/policymakers may avoid additional repeated work.

**STATE EXAMPLES & ALIGNMENT:** It appears that California allows businesses to make different methods for delivering information available. For example, see Sec. 1798.130. And it seems that at least some other **comprehensive privacy law** approaches in the states focus on website posting of notices and/or more generally on “providing” notice rather than on its “delivery.”

**UETA CONCERNS:** At the Kansas City discussion, some regulators expressed questions about satisfying notice delivery requirements by shifting to electronic methods. If questions remain (despite valid comprehensive privacy laws), please consider if there could be ways to reorient the wording throughout (whether as “make available” or otherwise) in a way that will avoid such challenges and/or satisfy these concerns.

**COST & EFFICIENCY:** The cost and administrative savings of not sending paper through the mail is not insignificant in light of the number of policyholders receiving these notices. (And with the newly added content – see Chair’s Draft Section 11A - that will be required upon passage of the model, a new massive wave of notices may not be inconceivable.)

**PAPER REDUCTION:** At many levels of government, paper reduction initiatives have been prevalent, whether for environment/climate reasons or for efficiency.

**ELECTRONICALLY REFERENCE IN GENERAL PROVISION:** Reference to “electronically” need not be included here. Rather, it is more consistent with overall format (and more flexibility can be contemplated) by dealing with it in subsection B of this section, which sketches examples.

➤ *We respectfully urge the drafting group to consider ways to revise to bolster flexibility in how to modernize making notices available [also see the brainstorming approach further below].*

How to provide notices. A licensee shall provide ~~any~~ notices that this Act regulation requires so that each consumer can reasonably be expected to receive ~~actual or have access to such~~ notice ~~in writing or, if the consumer agrees, electronically.~~

## DELIVER/PROVIDE/MAKE AVAILABLE – Chair Draft Sec. 15

*[Existing Model: Section 11]*

### REASONABLE ACCESS/AVAILABILITY – EXAMPLES: §15(B)(1)

**CONTINUATION:** Kindly review the points supporting these changes under Sec. 15A as well as other notes around the importance of making changes to address the justifiable modernization.

**EVOLVING THE LANGUAGE:** Consider possible practical ways to advance toward a “make available” approach that allows for various ways to satisfy providing the notice.

**CLARITY:** While modernizing the language, kindly consider how to do so in a way that is clear.

➤ ***Importantly, please review this brainstorming for discussion and consider ways to revise the model to modernize and bolster flexibility [also see the approach further below].***

Examples of reasonable expectation of ~~actual~~ notice. A licensee may reasonably expect that a consumer will receive ~~actual or have access to~~ the 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;
- ~~(#) Posts the notice on its Internet web site, if it complies with all of the following:~~
  - ~~(i) The licensee provides the consumer with the internet address where the notice is posted and the opportunity to request a paper copy of the notice at no charge;~~
  - ~~(ii) The notice is posted in a manner that enables the consumer to print or save it using programs or applications widely available on the Internet and free of charge to use; and~~
  - ~~(iii) The notice is easily accessible on the Internet website so long as it is in force;~~
- ~~(#) Delivers the notice by any electronic means permitted by law; or~~
- ~~(#) Provides the notice by any other means authorized by the commissioner.~~
- ~~(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.~~



## DELIVER/PROVIDE/MAKE AVAILABLE – Chair Draft Sec. 15

*[Existing Model: Section 11]*

### REASONABLE ACCESS/AVAILABILITY: §15(A)-(B)

**CONTINUATION // PREFERRED & MORE EFFICIENT APPROACH:** The suggestions sketched above on these issues reflect one possible approach. We also share what follows because it captures and may help to advance an important, more streamlined, way of making privacy notices available to consumers.

**POSTING & URLS AS DEFAULT:** For many licensees, the notion of meaningful modernization likely turns on posting as the primary means of making privacy notices available online. Then, such an approach would seem to inform those who receive paper of the relevant URL and another method for accessing notices. This is more realistic today.

**ADDITIONAL OPTIONS FOR THOSE NOT ONLINE:** Consider allowing for the licensee to convey to the consumer how they can locate the privacy notice, including via a URL and another method that involves phone, mail, etc.

**PREVIOUS BRAINSTORMING:** In response to the 2023 dialog around the feasibility of a **posting/URL default approach**, the following suggestions were among the wording prepared for additional consideration. [The mark-up may not necessarily fully correspond easily here since the notes were in response to a different draft. Regardless, we highly encourage the Working Group to please seriously consider how to bring a real modernization approach to fruition.]

- *Very importantly, we urge the drafting group to please consider possible ideas for how to potentially move toward **meaningful modernization** in this area. Brainstorming follows:*

#### **Availability of Privacy Statement**

- (1) **Posting on Website.** If the licensee [is over size threshold and] maintains a website, it shall make available the privacy notice by placing a conspicuous link on a webpage:
  - (a) Consumers frequently access, such as the introductory page of the licensee's website with a link that appears in similar manner as other similarly-posted links used by the licensee on its homepage(s); and
  - (b) On which transactions are conducted or personal information is collected.
- (2) **Consumer Privacy Notice.** A licensee or its affiliate shall make available notices developed in accordance with [Section 6] this Act so that each consumer can reasonably be expected to have access to and, if requested, receive such notice.

**Reasonable Expectation of Availability of Privacy Notice.**

- (1) A licensee may reasonably expect that the notice is available to the consumer and has satisfied the requirements of *[insert sections]* if the manner in which the notice is provided or made available contextually aligns with how a licensee does business.
- (2) A consumer is deemed to have a reasonable expectation of access to or availability of privacy notice if the licensee does any of the following:
  - (a) If a licensee collects personal information offline, if it includes the privacy statement on printed forms that collect personal information, provided to the consumer by either:
    - (i) A printed or paper version of the privacy notice by
      - (aa) Hand-delivery; or
      - (bb) Mailing a printed copy to the address of record of the consumer separately, or in a policy, billing, or other written communication; or
    - (ii) Making available the privacy notice by informing the consumer of how it may be accessed
      - (aa) Online (such as by referring to a URL or the location where the information may be found on the licensee's website); and/or
      - (bb) By at least one alternate method for requesting the information (such as by 800 telephone number, a mailing address, or an additional option the Commissioner designates).
  - (b) When a licensee collects personal information over the telephone or in person, if it includes the privacy statement either:
    - (i) Orally; or *[there should be an option for short form and follow-up]*
    - (ii) By a method acceptable for offline under *[refer to that subsection immediately above]* *[If needed, clarify that the consumer can receive the notice later]*
  - (c) For a consumer who conducts transactions electronically, when the licensee collects personal information electronically, if it:
    - (i) Posts the notice on the website in accordance with *[insert section]*;
    - (ii) Emails the notice to the consumer; or
    - (iii) If the licensee collects personal information through a webform, it may post a conspicuous link to the notice in close proximity to the fields in which the consumer inputs personal information, or in close proximity to the button by which the consumer submits personal information to the licensee.
  - (d) When a licensee collects personal information through a mobile application, if it either:
    - (i) Includes it provides a link to the privacy notice on the mobile application's download page and within the application, such as through the application's settings menu; or
    - (ii) By any method acceptable for electronic transactions under *[refer to that subsection immediately above]*.

*[The last two [(c) and (d)] may be able to be combined.]*

## DELIVER/PROVIDE/MAKE AVAILABLE – Chair Draft Sec. 15

*[Existing Model: Section 11]*

### UNREASONABLE ACCESS – EXAMPLES: §15(B)(2)

**CONTINUATION:** Kindly review the points supporting these changes under Sec. 15A as well as other notes around the importance of making changes to address the justifiable modernization.

**EMAIL:** Kindly see reference under the examples suggested in Sec. 15B(1) allowing for electronic means as permitted by law. Further, the technology comfort paradigm has shifted since 2000 and consumers interested in looking for a business' privacy notice seem likely able to navigate to their posting online.

➤ ***Consider revising or removing this provision based on the suggestion to insert additional posting and electronic notice related clarifications above.***

Examples of unreasonable expectation of actual notice. A licensee may not, ~~however,~~ reasonably expect that a consumer will receive ~~actual or have access to~~ notice of its privacy policies and practices if it:

- (c) ~~only~~ posts a sign in its office or generally publishes advertisements of its privacy policies and practices; ~~or~~
- (d) ~~Sends the notice via electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.~~

## DELIVER/PROVIDE/MAKE AVAILABLE – Chair Draft Sec. 15

*[Existing Model: Section 11]*

### ANNUAL NOTICE: §15(C)

**CONTINUATION:** Kindly review the points supporting these changes under Sec. 15A as well as other notes around the importance of making changes to address the justifiable modernization.

**PERIODIC VS CONTINUAL:** An additional potential benefit to easing a default of posting is that it may be readily available whenever the consumer is considering privacy issues.

**UNNECESSARY:** With the expanded detail suggested in Sec. 15B(1), this subsection could be removed. Having these kinds of provisions in a few places may make reading the revised model and complying with it more complicated.

➤ *Consider removing this subsection based on inserting additional clarification above.*

~~Annual notices only. A licensee may reasonably expect that a customer will receive actual or have access to notice of the licensee's annual privacy notice if:~~

- ~~(9) 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~~
- ~~(10) 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.~~

## DELIVER/PROVIDE/MAKE AVAILABLE – Chair Draft Sec. 15

*[Existing Model: Section 11]*

### RETENTION: §15(E)

**CONTINUATION:** Kindly review the points supporting these changes under Sec. 15A as well as other notes around the importance of making changes to address the justifiable modernization.

**PERIODIC VS CONTINUAL:** An additional potential benefit to easing a default of posting is that it may be readily available whenever the consumer is considering privacy issues.

**EVOLVING:** The 2000 language should evolve to reflect current times. With a more modern approach, this wording should not be necessary.

➤ **Consider removing this subsection based on inserting additional clarification above.**

#### ~~Retention or accessibility of notices for customers:~~

- ~~(6) For customers only, a licensee shall provide the initial notice required by Section 95A(1), the annual notice required by Section 6A, and the revised notice required by Section 139 so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.~~
- ~~(7) 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.~~~~

\* \* \* \* \*

Please understand that the input shared here is based on previous and quick input and that review and thought on these matters will continue and therefore feedback may evolve over time.

We urge the drafting group and the Privacy Protections Working Group not to dismiss modernization and streamlining matters (as well as other concerns shared). While the language offered for brainstorming here may not be the path regulators opt to pursue, we sincerely hope that reasons for them are considered and that helpful modern solutions are incorporated into the group's work product.

## **Consumer Comments:**

### **Consumer Rep – Harry Ting**

#### **NAIC CONSUMER REPRESENTATIVES' COMMENTS ON ARTICLE IV, SECTIONS 9-15 OF PRIVACY PROTECTIONS WORKING GROUP CHAIR DRAFT**

Thank you to the Privacy Protections Working Group (PPWG) for the opportunity to suggest revisions to Article IV, Sections 9-15 of the Working Group's Chair Draft. Per your request, we are providing our suggested changes in red-line format (in purple font). We would like to see Section 11 replaced with a model that adopts an opt-in privacy approach. Accordingly, we are submitting a substitute Section 11 that specifies the content that privacy notices and consent forms should contain in. This opt-in approach eliminates Section 12 and requires that Sections 20 and 21 be changed, because they refer to use of the opt-out approach.

An opt-in approach prioritizes protection of consumer nonpublic personal information. Adopting a standard format for a privacy notice like the one we propose also eliminates the potential problem of consumers having to deal with privacy notices that provide different information in a different format. A standard format reduces the burden on consumers who want to protect their nonpublic personal information from disclosure. This approach was endorsed by 27 NAIC Consumer Representatives in a letter to the PPWG in August 2024.

In addition, we would like to raise an issue related to sharing of NPI with licensee affiliates. We understand the desire of licensees to share customer information with their affiliates that are engaged in the business of insurance. However, we do not believe the sharing of such information with affiliates that engage in other businesses is warranted. That belief is reflected in our suggested changes. This concern could also be addressed in the future Model Law's definition of affiliates.

#### **ARTICLE ~~IV~~. PRIVACY AND OPT OUT NOTICES FOR ~~NONPUBLIC PERSONAL FINANCIAL~~ INFORMATION**

##### **Section ~~9~~5. Initial Privacy Notice to Consumers Required**

- S. 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. ~~An individual who is not yet a customer of the licensee about whom no Nonpublic Personal Information has been disclosed to any nonaffiliated third party, or any affiliate not in the business of insurance. A consumer, before the licensee discloses any Nonpublic Personal financial I nformation about the consumer to any nonaffiliated third party, or any affiliate not in the business of insurance, if the licensee makes a disclosure other than as authorized by Sections 2016 and 2117.~~

- T. 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 2016 and 2117, 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.
- U. 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.
- V. 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 129, 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.
- W. 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.

X. Delivery. When a licensee is required to deliver an initial privacy notice by this section, the licensee shall deliver it according to Section 154. ~~If the licensee uses a short form initial notice for non-customers according to Section 157D, the licensee may deliver its privacy notice according to Section 157D(3).~~

**Section 106. Annual Privacy Notice to Customers Required**

- N. (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.
- O. Exception to general rule. A licensee that provides Nonpublic Personal Information to nonaffiliated third parties only in accordance with Sections 195, 2046, or 2147 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.
- P. (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, if the customer's Nonpublic Personal Information is no longer retained.~~
- (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 [Act 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.

Q. Delivery. When a licensee is required by this section to deliver an annual privacy notice, the licensee shall deliver it according to Section [14](#).

**Section [117](#). Content of Privacy Notices Including Consumer Consent Choices**

Q. General rule. The initial, annual and revised privacy notices that a licensee provides under Sections [5 9](#), [6 10](#) and [9 11](#) shall be worded as follows:

**You Have a Right to Decide What Nonpublic Personal Information We Share**

Like all insurers, we collect and keep personal information about you. We share your personal information:

- To process your transactions and service your accounts
- To personalize your experience on our website
- To communicate with you about our products, services, and promotions
- To analyze usage trends and preferences
- To comply with legal obligations.

We value your privacy and are committed to protecting your personal information. **But unless you agree, we cannot share any of the following types of information** for any reason other than to process transactions you request, service your accounts with us, or comply with legal obligations.

Put a checkmark in the first column to indicate if you agree to share each type of information with us.

I agree that you may share this type of information	Type of Information
<input type="checkbox"/> yes <input type="checkbox"/> no	<b>Identifiers:</b> Such as name, email address, Social Security number, passport number, address, contact information
<input type="checkbox"/> yes <input type="checkbox"/> no	<b>Protected Classification Characteristics:</b> Including race, gender, gender identity, age, religion, disability
<input type="checkbox"/> yes <input type="checkbox"/> no	<b>Financial Information:</b> Such as income, assets, past financial transactions, payment history
<input type="checkbox"/> yes <input type="checkbox"/> no	<b>Commercial Information:</b> Such as purchase history, preferences, insurance coverage and claims history
<input type="checkbox"/> yes <input type="checkbox"/> no	<b>Biometric Information:</b> Including fingerprints, faceprints, voiceprints
<input type="checkbox"/> yes <input type="checkbox"/> no	<b>Internet or Other Electronic Network Activity Information:</b> Such as browsing history, search history, interactions with websites and social media activities

<input type="checkbox"/> yes <input type="checkbox"/> no	<b>Geolocation Data:</b> Including your physical location or movements
<input type="checkbox"/> yes <input type="checkbox"/> no	<b>Audio, Electronic, Visual, Thermal, Olfactory, or Similar Information:</b> Such as audio recordings, electronic communications, video recordings
<input type="checkbox"/> yes <input type="checkbox"/> no	<b>Professional or Employment-Related Information:</b> Including job history, professional qualifications
<input type="checkbox"/> yes <input type="checkbox"/> no	<b>Education Information:</b> Education information that is not publicly available
<input type="checkbox"/> yes <input type="checkbox"/> no	<b>Inferences Drawn from Other Personal Information:</b> Such as references, characteristics, criminal history, behavior patterns

**Important:** Even if you checked **no** for every item above, we may share your nonpublic personal information with the following categories of third parties:

- Service providers who help us operate our business
- Affiliates who offer complementary insurance products or insurance services
- Law enforcement or government agencies when required or permitted by law.

**We do not sell your personal information.**

#### Your Privacy Rights

Under our privacy policy, you have the following rights:

- The right to know what personal information we have about you
- The right to request deletion of your personal information
- The right to request correction of incorrect information
- The right to restrict sharing of your personal information
- The right to non-discrimination if you exercise your rights.

If you have questions about your privacy rights, please contact us at [email address, toll-free phone number, or mailing address].

~~R. — 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 2016 and 2117;~~
- ~~(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 2016 and 2117;~~
- ~~(5) — If a licensee discloses Nonpublic Personal financial Information to a nonaffiliated third party under Section 195 (and no other exception in Sections 2016 and 2117 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 162A 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. A description of the consumer's ability to request to access, correct, or delete Nonpublic Personal Information about the consumer as established under this Act and the instructions for exercising such options.
- S. — Description of parties subject to exceptions. If a licensee discloses Nonpublic Personal financial Information as authorized under Sections 2016 and 2117, the licensee is not required to list those exceptions in the initial or annual privacy notices required by Sections 95 and 106. 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.
- T. — 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 financial 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.~~

~~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.~~

- ~~(b) 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 195 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 2016 and 2117, 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.

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

- (1) — A licensee may satisfy the initial notice requirements in Sections 95A(2) and 128C 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 140. 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 151.

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.

V. — 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.

W. **Sample Clauses and Federal Model Privacy Form.** Sample clauses illustrating some of the notice content required by this section and the Federal Model Privacy Form are included in Appendix A and Appendix B, respectively, of this regulation.

**Section 128. — Form of Opt Out Notice to Consumers and Opt Out Methods**

- Y. — (1) — Form of opt out notice. If a licensee is required to provide an opt out notice under Section 12A, 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.
- (5) — 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 117A(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 provide 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.
- Z. — 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 95.
- AA. — 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 95, the licensee shall also include a copy of the initial notice with the opt-out notice in writing or, if the consumer agrees, electronically.

BB. — Joint relationships.

(14) — 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).

(15) — 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.

(16) — 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.

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

(18) — 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.

CC. — 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.

DD. — Continuing right to opt out. A consumer may exercise the right to opt out at any time.

EE. — Duration of consumer's opt-out direction.

(7) — 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.

- (8) — 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.

FF. — Delivery. When a licensee is required to deliver an opt-out notice by this section, the licensee shall deliver it according to Section 151.

### Section 139. Revised Privacy Notices

K. General rule. Except as otherwise authorized in this Act 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 the opportunity to exercise the consumer's consent rights under its latest privacy 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.

L. — Examples.

- (1) — Except as otherwise permitted by Sections 195, 2016 and 2117, 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.

M. — Delivery. When a licensee is required to deliver a revised privacy notice by this section, the licensee shall deliver it according to Section 151.

### Section 140. Privacy Notices 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 ~~95~~ through ~~139~~ of this ~~Act regulation~~, describing the licensee's privacy practices with respect to Nonpublic Personal Information about individuals covered under the policies, contracts or plans.

#### **Section 151. Delivery**

- U. How to provide notices. A licensee shall provide any notices that this ~~Act regulation~~ requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically, ~~via email or the licensee's website or app~~. ~~Electronic notices must be provided in a format that can be downloaded by consumers.~~
- V. (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 with the licensee electronically, emails the notice and requires the consumer to acknowledge receipt of the notice;~~
  - (d) ~~For a consumer who conducts transactions with the licensee electronically, posts the notice on the licensee's website or app and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service;~~
  - (e) ~~For an isolated transaction with a consumer, such as the licensee providing an insurance quote or selling the consumer travel insurance, posts the notice on the licensee's website or app and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular insurance product or service.~~
- (5) 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; or
  - (c) ~~Sends an electronic mail notice to a consumer that is not properly formatted for screen reading technology, which is used by some people with disabilities to read; or~~
  - (d) ~~Hand delivers or sends a standard print notice when the consumer has indicated to the licensee that the consumer requires accessible alternative formats such as large font, accessible electronic mail, or sign language videos, instead of standard print notices.~~
- W. Annual notices only. A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if:

- (11) The customer uses the licensee's web site or app to access insurance products and services electronically and agrees to receive notices at the web site or app and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the web site or app; ~~or~~.
  - (12) ~~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.~~
- X. Oral description of notice insufficient. A licensee may not provide any notice required by this ~~Act regulation~~ solely by orally explaining the notice, either in person or over the telephone.
- Y. Retention or accessibility of notices for customers.
- (8) For customers only, a licensee shall provide the initial notice required by Section ~~95~~A(1), the annual notice required by Section 6A, and the revised notice required by Section ~~139~~ so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.
  - (9) 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 website or app (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 website or app.
- Z. 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 ~~95~~A, ~~106~~A and ~~139~~A, respectively, by providing one notice to those consumers jointly.