

Public Comments
Privacy of Consumer Financial and Health Information Regulation (#672)
Article VI - Exceptions to Limits on Disclosures of Nonpublic Personal Information

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Regulator Comments:

Virginia Bureau of Insurance

The Bureau supports the proposed language found in Article VI setting forth the exceptions to the limits on disclosing nonpublic personal information. The Bureau offers suggested edits in the attached seeking to clarify that the exceptions apply to the opt-out requirements in Sections 25 and 26 to be consistent with prior drafting on initial notice requirements.

ARTICLE VI. EXCEPTIONS TO LIMITS ON DISCLOSURES OF NONPUBLIC PERSONAL INFORMATION

Section 24. Exception to Opt Out Requirements for Disclosure of Nonpublic Personal Information for Service Providers and Joint Marketing

A. General rule.

(1) The opt out requirements in Sections 12 and 16 do not apply when a licensee provides nonpublic personal information to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee:

(a) Provides the initial notice in accordance with Section 9; and

(b) Enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in Sections 25 or 26 in the ordinary course of business to carry out those purposes.

(2) Example. If a licensee discloses nonpublic personal information under this section to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with that institution meets the requirements of Paragraph (1)(b) of this subsection if it prohibits the institution from disclosing or using the nonpublic personal information except as necessary to carry out the joint marketing or under an exception in Sections 25 or 26 in the ordinary course of business to carry out that joint marketing.

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

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

Section 25. Exceptions to Opt Out Requirements for Disclosure of Nonpublic Personal Information

for Processing and Servicing Transactions

- A. Exceptions for processing transactions at consumer's request. The requirements for opt out in Sections 12 and 16 do not apply if the licensee discloses nonpublic **personal** information as necessary to effect, administer or enforce a transaction that a consumer requests or authorizes, or in connection with:
- (1) Servicing or processing an insurance product or service that a consumer requests or authorizes;
 - (2) Maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity;
 - (3) A proposed or actual securitization, secondary market sale (including sales of servicing rights) or similar transaction related to a transaction of the consumer; or
 - (4) Reinsurance or stop loss or excess loss insurance.
- B. "Necessary to effect, administer or enforce a transaction" means that the disclosure is:
- (1) Required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or
 - (2) Required, or is a usual, appropriate or acceptable method:
 - (a) To carry out the transaction or the product or service business of which the transaction is a part, and record, service or maintain the consumer's account in the ordinary course of providing the insurance product or service;
 - (b) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;
 - (c) To provide a confirmation, statement or other record of the transaction, or information on the status or value of the insurance product or service to the consumer or the consumer's agent or broker;
 - (d) To accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party;
 - (e) To underwrite insurance at the consumer's request or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review

activities), participating in research projects or as otherwise required or specifically permitted by federal or state law; or

- (f) In connection with:
 - (i) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited or otherwise paid using a debit, credit or other payment card, check or account number, or by other payment means;
 - (ii) The transfer of receivables, accounts or interests therein; or
 - (iii) The audit of debit, credit or other payment information.

Section 26. Other Exceptions to Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information

A. Exceptions to opt out requirements. The requirements for opt out in Sections 12 and 16 do not apply when a licensee discloses nonpublic personal financial information:

- (1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;
- (2)
 - (a) To protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product or transaction;
 - (b) To protect against or prevent actual or potential fraud or unauthorized transactions;
 - (c) For required institutional risk control or for resolving consumer disputes or inquiries;
 - (d) To persons holding a legal or beneficial interest relating to the consumer; or
 - (e) To persons acting in a fiduciary or representative capacity on behalf of the consumer;
 - (f) To prevent, detect, and investigate security incidents that compromise the availability, authenticity, integrity, or confidentiality of stored or transmitted nonpublic personal information.
- (3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants and auditors;
- (4) To the extent specifically permitted or required under other provisions of law and

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

- (5)
 - (a) To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); or
 - (b) From a consumer report reported by a consumer reporting agency;
- (6) In connection with a proposed or actual sale, merger, transfer or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business or unit;
- (7)
 - (a) To comply with federal, state or local laws, rules and other applicable legal requirements;
 - (b) To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local authorities; or
 - (c) To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance or other purposes as authorized by law; or
- (8) For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan or a workers' compensation plan.

- B. Example of revocation of consent. A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under Section 12F.

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

Industry Comments:

American Council of Life Insurers (ACLI)

Existing laws continue to enable an essential balance between consumers' growing demand for convenience and personalized service and their valid privacy concerns about the collection, use, and sharing of their personal information. Continuing to include key exceptions to limits on disclosures of nonpublic personal information, allows licensees to continue offering affordable and readily available products and services to consumers while still allowing consumers control over their information. To maintain this level of service to consumers, licensees must maintain appropriate circumstances under which a licensee can disclose a consumer's information. Where possible, we encourage consistency with the current GLBA framework to encourage uniformity with opt-out approaches and exceptions. The exceptions in this Article are of paramount importance to consumers in accessing crucial products.

Further, changes to these longstanding exceptions or inconsistency with GLBA could lead to consumer confusion and practical problems for licensees such as the inability to promote products to consumers readily, more hoops consumers would have to jump through in order to find information about products, and more documents for consumers to review with little benefit and a detriment to the insurance industry within the financial services market. With the above considerations in mind, we provide the following suggestions.

ACLI's Comments and Questions on Article VI

General Concerns

- The absence of a new definition for “nonpublic personal information” makes it difficult to provide thorough feedback on this section. The previous use of “nonpublic personal financial information” suggested alignment with GLBA and a common understanding of the scope of information. We will provide further comments on this Article upon review of this definition in Article I. Further, references to “notice” implicate this definition and would be helpful in assessing if the exceptions outlined in Article VI cover the necessary information.
- Outside of clarification on definitions, we are concerned that as currently drafted, the Article VI exceptions would not apply to the proposed opt-in requirements in Article V. In addition, the exceptions found in Article VI should apply to all non-public personal information and not just nonpublic personal financial information. Please see the suggested language noted below.
 - **Suggested Redline:** Section 24(A)(1) The opt out requirements in Sections ~~12 14~~ and ~~16 18 and the opt in requirements in Sections 13, 22 and 23~~ do not apply when a licensee provides nonpublic personal information to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee:
 - **Suggested Redline:** Section 24(A)(2) Example. If a licensee discloses nonpublic personal information under this section to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with that institution meets the requirements of Paragraph (1)(b) of this subsection if it prohibits the institution from disclosing or using the nonpublic personal ~~financial~~

information except as necessary to carry out the joint marketing or under an exception in Sections 25 or 26 in the ordinary course of business to carry out that joint marketing.

- **Suggested Redline:** Section 25(A) Exceptions for processing transactions at consumer's request. The requirements for initial notice in Section ~~9A(2) 9A~~, the opt out ~~requirements~~ in Sections ~~12 14~~ and ~~16 18~~, ~~the opt in requirements~~ in Sections 13, 22 and 23, and service providers and joint marketing requirements in Section 24 do not apply if the licensee discloses nonpublic personal information as necessary to effect, administer or enforce a transaction that a consumer requests or authorizes, or in connection with:

Section 25 Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Information for Processing and Servicing Transactions

- Group customers and individual participants in group plans have an expectation that licensees are able to provide information about their employee's claims without individual authorization. Group plans are a strong benefit to consumers, allowing individuals the ability, cost benefit, and ease of participating in a group plan. Addressing group plans in the exceptions will better assist licensees in meeting consumer needs. We suggest the below language be added to the exceptions in paragraph 25(A).
 - **Suggested Redline:** Section 25(A) ~~(5) Plan administration activities for a group benefits plan of which the consumer is a participant, if the nonpublic personal information is reasonably necessary to administer or service benefits or claims relating to the group benefits plan.~~

Section 26 Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information

- Exceptions to the notice and opt out requirements for disclosure of nonpublic personal information should also include processing of this information. Processing allows for the full scope of use for the intended exceptions outlined in Section 26. The following suggestions are intended to cover the full scope of exceptions to notice, opt out, and opt in requirements and include edits for the cross-references within the Chair's Draft.
 - **Suggested Redline:** Section 26 Other Exceptions to Notice, ~~and~~ Opt Out, ~~and~~ Opt In Requirements for Disclosure of Nonpublic Personal ~~Financial~~ Information ~~and Use of Sensitive Personal Information~~
 - **Suggested Redline:** Section 26(A) Exceptions to ~~initial notice~~, opt out, ~~and opt in~~ requirements. The requirements for initial notice to consumers in Section ~~9A(2) 9A~~, the opt out ~~requirements~~ in Sections ~~12-14~~ and ~~16-18~~, ~~the opt in requirements in Sections 13, 22 and 23~~, and service providers and joint marketing in Section 24 do not apply when a licensee discloses ~~or processes~~ nonpublic personal ~~financial~~ information:
 - **Suggested Redline:** Section 26(A)(6) In connection with a proposed or actual sale, merger, transfer or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal ~~financial~~ information concerns

- solely consumers of the business or unit;
 - **Suggested Redline:** Section 26(B) Example of revocation of consent. A consumer may revoke consent by subsequently exercising the right to opt out of or revoke opt in consent to future disclosures of nonpublic personal information as permitted under Section 12F Sections 14F and 13E.
- We appreciate the inclusion of Section 26(A)(2)(f). Addressing security incidents is paramount to the security and protection of consumer information and including this important exception will further aid licensees in administering crucial services.
- Exceptions currently in Article V pertaining to health information will be necessary to address in Article VI if the definitions of nonpublic financial information and nonpublic health information are combined into a single definition of “nonpublic personal information.” In the event that the definitions do distinguish between the two, these terms should be examined in the context of the entire document when a final revised Chair’s Draft is complete.
- Further exceptions in the suggestions below should be added so that licensees are able to carry out services for customers without undue delay or cost.
 - **Suggested Redline:** Section 26(A)(9) For short-term, transient use, including but not limited to non-personalized advertising shown as part of a consumer's current interaction with the licensee, provided that the consumer's nonpublic personal information is not disclosed to another third party and is not used to build a profile about the consumer or otherwise alter the consumer's experience outside the current interaction with the licensee;
 - **Suggested Redline:** Section 26(A)(10) For purposes of undertaking activities to verify or maintain the quality or safety of a service or device that is owned, manufactured, manufactured for, or controlled by the licensee, and to improve, upgrade, or enhance the service or device that is owned, manufactured, manufactured for, or controlled by the licensee;
 - **Suggested Redline:** Section 26(A)(11) For purposes of performing services on behalf of the licensee including maintaining or servicing accounts, providing customer service, processing or fulfilling transactions, verifying consumer information, processing payments, providing analytic services, providing storage, or providing similar services on behalf of the licensee;

ACLI Appendix A

ARTICLE VI. EXCEPTIONS TO LIMITS ON DISCLOSURES OF NONPUBLIC PERSONAL INFORMATION

Section 24. Exception to Opt Out Requirements for Disclosure of Nonpublic Personal Information for Service Providers and Joint Marketing

A. General rule.

(1) The opt out requirements in Sections ~~12-14~~ and ~~16-18~~ and the opt in requirements in Sections 13, 22 and 23 do not apply when a licensee provides nonpublic personal information to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee:

(a) Provides the initial notice in accordance with Section 9; and

(b) Enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in Sections 25 or 26 in the ordinary course of business to carry out those purposes.

(2) Example. If a licensee discloses nonpublic personal information under this section to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with that institution meets the requirements of Paragraph (1)(b) of this subsection if it prohibits the institution from disclosing or using the nonpublic personal ~~financial~~ information except as necessary to carry out the joint marketing or under an exception in Sections 25 or 26 in the ordinary course of business to carry out that joint marketing.

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

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

Section 25. Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Information for Processing and Servicing Transactions

A. Exceptions for processing transactions at consumer's request. The requirements for initial notice in Section ~~9A(2)-9A~~, the opt out requirements in Sections ~~12-14~~ and ~~16-18~~, the opt in requirements in Sections 13, 22 and 23, and service providers and joint marketing requirements in Section 24 do not apply if the licensee discloses nonpublic personal

information as necessary to effect, administer or enforce a transaction that a consumer requests or authorizes, or in connection with:

- (1) Servicing or processing an insurance product or service that a consumer requests or authorizes;
- (2) Maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity;
- (3) A proposed or actual securitization, secondary market sale (including sales of servicing rights) or similar transaction related to a transaction of the consumer; or
- (4) Reinsurance or stop loss or excess loss insurance.
- (5) Plan administration activities for a group benefits plan of which the consumer is a participant, if the nonpublic personal information is reasonably necessary to administer or service benefits or claims relating to the group benefits plan.

B. "Necessary to effect, administer or enforce a transaction" means that the disclosure is:

- (1) Required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or
- (2) Required, or is a usual, appropriate or acceptable method:
 - (a) To carry out the transaction or the product or service business of which the transaction is a part, and record, service or maintain the consumer's account in the ordinary course of providing the insurance product or service;
 - (b) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;
 - (c) To provide a confirmation, statement or other record of the transaction, or information on the status or value of the insurance product or service to the consumer or the consumer's agent or broker;
 - (d) To accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party;
 - (e) To underwrite insurance at the consumer's request or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review

activities), participating in research projects or as otherwise required or specifically permitted by federal or state law; or

- (f) In connection with:
 - (i) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited or otherwise paid using a debit, credit or other payment card, check or account number, or by other payment means;
 - (ii) The transfer of receivables, accounts or interests therein; or
 - (iii) The audit of debit, credit or other payment information.

Section 26. Other Exceptions to Notice, ~~and~~ Opt Out, and Opt In Requirements for Disclosure of Nonpublic Personal ~~Financial~~ Information and Use of Sensitive Personal Information

A. Exceptions to initial notice, opt out, and opt in requirements. The requirements for initial notice to consumers in Section ~~9A(2)~~ 9A, the opt out requirements in Sections ~~12-14~~ and ~~16-18~~, the opt in requirements in Sections 13, 22 and 23, and service providers and joint marketing in Section 24 do not apply when a licensee discloses or processes nonpublic personal ~~financial~~ information:

- (1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;
- (2)
 - (a) To protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product or transaction;
 - (b) To protect against or prevent actual or potential fraud or unauthorized transactions;
 - (c) For required institutional risk control or for resolving consumer disputes or inquiries;
 - (d) To persons holding a legal or beneficial interest relating to the consumer; or
 - (e) To persons acting in a fiduciary or representative capacity on behalf of the consumer;
 - (f) To prevent, detect, and investigate security incidents that compromise the availability, authenticity, integrity, or confidentiality of stored or transmitted nonpublic personal information.
- (3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys,

accountants and auditors;

- (4) To the extent specifically permitted or required under other provisions of law and in accordance with the federal Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.), to law enforcement agencies (including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping), a state insurance authority, and the Federal Trade Commission), self-regulatory organizations or for an investigation on a matter related to public safety;
- (5)
 - (a) To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); or
 - (b) From a consumer report reported by a consumer reporting agency;
- (6) In connection with a proposed or actual sale, merger, transfer or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal ~~financial~~ information concerns solely consumers of the business or unit;
- (7)
 - (a) To comply with federal, state or local laws, rules and other applicable legal requirements;
 - (b) To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local authorities; or
 - (c) To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance or other purposes as authorized by law; or
- (8) For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan or a workers' compensation plan.
- (9) For short-term, transient use, including but not limited to non-personalized advertising shown as part of a consumer's current interaction with the licensee, provided that the consumer's nonpublic personal information is not disclosed to another third party and is not used to build a profile about the consumer or otherwise alter the consumer's experience outside the current interaction with the licensee;
- (10) For purposes of undertaking activities to verify or maintain the quality or safety of a service or device that is owned, manufactured, manufactured for, or controlled by the licensee, and to improve, upgrade, or enhance the service or device that is owned, manufactured, manufactured for, or controlled by the licensee;

(11) For purposes of performing services on behalf of the licensee including maintaining or servicing accounts, providing customer service, processing or fulfilling transactions, verifying consumer information, processing payments, providing analytic services, providing storage, or providing similar services on behalf of the licensee;

- B. Example of revocation of consent. A consumer may revoke consent by subsequently exercising the right to opt out of or revoke opt in consent to future disclosures of nonpublic personal information as permitted under ~~Section 12F~~ Sections 14F and 13E.

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

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(2) Example. If a licensee discloses nonpublic personal information under this section to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with that institution meets the requirements of Paragraph (1)(b) of this subsection if it prohibits the institution from disclosing or using the nonpublic personal financial information except as necessary to carry out the joint marketing or under an exception in Sections 25 or 26 in the ordinary course of business to carry out that joint marketing.

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

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- (1) Servicing or processing an insurance product or service that a consumer requests or authorizes;
- (2) Maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity;
- (3) A proposed or actual securitization, secondary market sale (including sales of servicing rights) or similar transaction related to a transaction of the consumer; or
- (4) Reinsurance or stop loss or excess loss insurance.

B. "Necessary to effect, administer or enforce a transaction" means that the disclosure is:

- (1) Required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or
- (2) Required, or is a usual, appropriate or acceptable method:
 - (a) To carry out the transaction or the product or service business of which the transaction is a part, and record, service or maintain the consumer's account in the ordinary course of providing the insurance product or service;
 - (b) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;
 - (c) To provide a confirmation, statement or other record of the transaction, or information on the status or value of the insurance product or service to the consumer or the consumer's agent or broker;
 - (d) To accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party;
 - (e) To underwrite insurance at the consumer's request or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects or as otherwise required or specifically permitted by federal or state law; or
 - (f) In connection with:
 - (i) The authorization, settlement, billing, processing, clearing,

transferring, reconciling or collection of amounts charged, debited or otherwise paid using a debit, credit or other payment card, check or account number, or by other payment means;

- (ii) The transfer of receivables, accounts or interests therein; or
- (iii) The audit of debit, credit or other payment information.

Section 26. Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information

A. Exceptions to opt out requirements. The requirements for initial notice to consumers in Section 9A(2), the opt out in Sections 12 and 16, and service providers and joint marketing in Section 24 do not apply when a licensee discloses nonpublic personal financial information:

- (1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;
- (2)
 - (a) To protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product or transaction;
 - (b) To protect against or prevent actual or potential fraud or unauthorized transactions;
 - (c) For required institutional risk control or for resolving consumer disputes or inquiries;
 - (d) To persons holding a legal or beneficial interest relating to the consumer; or
 - (e) To persons acting in a fiduciary or representative capacity on behalf of the consumer;
 - (f) To prevent, detect, and investigate security incidents that compromise the availability, authenticity, integrity, or confidentiality of information systems or of stored or transmitted nonpublic personal information.
- (3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants and auditors;
- (4) To the extent specifically permitted or required under other provisions of law and in accordance with the federal Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.), to law enforcement agencies (including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities

and Exchange Commission, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping), a state insurance authority, and the Federal Trade Commission), self-regulatory organizations or for an investigation on a matter related to public safety;

- (5)
 - (a) To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); or
 - (b) From a consumer report reported by a consumer reporting agency;
- (6) In connection with a proposed or actual sale, merger, transfer or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business or unit;
- (7)
 - (a) To comply with federal, state or local laws, rules and other applicable legal requirements;
 - (b) To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local authorities; or
 - (c) To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance or other purposes as authorized by law; or
- (8) For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan or a workers' compensation plan.

- B. Example of revocation of consent. A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under Section 12F.

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

JOINT -- American Property Casualty Insurance Association (APCIA) and National Association of Mutual Insurance Companies (NAMIC)

The **Appendix** to this letter compiles a list of some questions regarding Article VI. We would like to reserve the opportunity to alter and expand comments on the exceptions going forward as more complete information becomes available. We are very interested in providing even more robust and constructive feedback as we see how the pieces fit together.

The property-casualty insurance trades, APCIA and NAMIC, have been part of the discussions on this issue since its inception. We very much appreciate that this is a large project and are **grateful** that opportunities have been provided for interested parties to share input with regulators on the drafting group. We also recognize the investment regulators have made into understanding existing model provisions, possible areas for enhanced privacy-related requirements, as well as the context of insurance and broader financial services customer relationships.

Recognizing that the drafting group asks for feedback about substance rather than process, please understand that at this stage the current approach is posing a **practical dilemma**. As many of you who work closely with laws and regulations can appreciate, it is difficult to assess how compliance might function when only part of a framework is available. Providing meaningful input on potential requirements or restrictions without knowing their scope, such as related definitions or exceptions, places those who would ultimately need to comply in a challenging position. Similarly, commenting on exception language without a clear understanding of the corresponding requirements or limitations is inherently difficult.

As the Working Group is nearing the end of its current phase of the project and is **setting the stage** for further model-related efforts, in the spirit of collaboration, we ask the group to please:

- ✓ For section/article exposures, provide a **comment period** consistent with a more typical NAIC response time of 30 days, which would allow stakeholders to offer more meaningful and constructive feedback.
- ✓ For multiple article exposures, provide a **comment period** of at least 60 days. Considering the increased complexity and the importance of ensuring internal consistency across provisions, this additional time would be both appropriate and necessary to support a thorough and constructive review. As we understand it, the group plans to compile its various article/section-by-article/section products into a single document and then open that document to public comment. This will be a significant review and a crucial stage to begin to see how the different pieces – from definitions to substantive requirements and limitations to exceptions – work together. Close review will take time; and it is worthwhile so that over the long-term confusion is reduced to the benefit of consumers, regulators, and licensees.
- ✓ For re-assembled exposures, that bring together the various components, we encourage an **iterative approach** to ensure the pieces fit together cohesively. Given the model's complexity and importance, continued refinement before a consolidated review would help avoid internal inconsistencies and maintain the strength of what has been an NAIC success story in Model 672.

As the Working Group looks ahead, we urge that care be taken to ensure that the **full document** receives sufficient review opportunities to resolve issues – major topics, operational items, workable and clear definitions, inconsistencies where the provisions do not function cohesively – as leaving them unresolved may mean practical implementation problems. We appreciate the opportunity to remain engaged in this important effort and will continue to offer constructive feedback as the drafting process moves forward. Thank you in advance for your thoughtful consideration.

APPENDIX: WORKING QUESTIONS

Members offer some questions for the Working Group’s consideration, consistent with the thoughts shared in the above/attached statement, with the hope that these bulleted points help the Working Group as it evaluates potential revisions or additions. These questions are presented in no particular order and should not be interpreted as reflecting any prioritization or relative level of importance. We also want to emphasize that getting the exceptions right is essential, as they play a critical role in ensuring the model functions as intended and does not inadvertently disrupt existing practices or create unintended compliance challenges.

➤ Parity & Context

Where new requirements/limitations elsewhere in the proposal include approaches that echo aspects of states’ general **comprehensive privacy laws**, have the exclusions contained in those laws been incorporated to apply to insurers for the same activity?

➤ New Choices/Requirements & Practical Exceptions

To the extent that the drafting group seeks to add **new substantive requirements** (the scope of which are uncertain for interested parties at this time), has consideration been given to whether some additional exceptions may be necessary for practical operational and legal reasons? Among such areas that would benefit from very close review might be items that may be contained in a new Article III about new consumer requests. For some of these items, it may be helpful to refer to the 672-Plus proof of concept document and other earlier communications which have noted the importance of ensuring that the exceptions apply.

➤ Different Choice Mechanism

If the Working Group plans to add any substantive requirements or limitations that would necessitate an **opt-in**, has consideration been given to the kinds of additional exceptions that would be needed? It would be unworkable to have no exceptions – and the current wording dated September 25, 2025, contains no such exceptions. For example, consider various business purposes and uses of service providers as well as other minimum major exceptions that would be needed for workability. Perhaps there are no exceptions because the Working Group has decided not to include an outlier opt-in approach. This sensible and mainstream approach would be welcome news. If this is not the case, we continue to encourage the Working Group not to use any opt-in approaches in their drafting; we encourage additional discussion and review of previous substantive comments articulating strong concerns about this topic.

➤ Additional Online Choices

If the Working Group plans to add requirements regarding **advertising cookies** has adequate consideration been given to how that would need to be framed? Have CCPA and other

comprehensive privacy laws been reviewed to ensure alignment (or at least not inconsistent requirements)? Between exceptions, substantive provisions, and definitions, the scope will need to be clear and – provided no information is shared - implied consent should be able to be established where obvious from a consumer’s actions. As with many topics, the wording is important to get right; we encourage the Working Group members to refer to previous material and to be receptive to additional discussion.

➤ Internal Consistency & Dovetailing TPSP Provisions

With respect to **third party service providers**, has consideration been given to how the existing contract-related wording in Sec. 24(A) connects with what may be the new section of the working draft on TPSPs (perhaps Sec. 5)? Should there be a cross-reference or other approach? Contractual restrictions are a meaningful safeguard. We understand that this connection may be refined later in the process, but it serves as a good example of why adequate time will be necessary to carefully evaluate how all components integrate, especially with respect to scope and definitions, which are critical across many areas of the model.

➤ NPFI Change & TPSP Exclusion

Under Sec. 24(A)(1)(b) the **TPSP-related opt-out** requirements do not apply if a licensee provides notice and has a contract with the third party that limits use to the purpose of the contract, including use under an exception. While historically the exceptions there have been relatively narrow and focus on things like legal requirements for disclosure and processing the insurance transaction/related back office activities, this has not been a concern because under existing Model #672 the wording was limited to nonpublic personal financial information (NPFI). However, revising the underlying substantive sections to refer to nonpublic personal information (NPI) more broadly creates workability problems.

For example, as drafted, consider a licensee using Amazon Web Services and the ability to share data with AWS to host claims and to use that data to troubleshoot or offer new products. This illustrates that there may be legitimate uses for NPI by our service providers that do not fall into the same narrow buckets that a licensee uses to control the use of NPFI. As drafted, the concern may be that the proposal would allow consumers to opt-out of back-office processing that is required for licensees to function efficiently. These are not areas where an individual consumer should be able to direct.

As you continue to refine Article VI, keep in mind that broad exceptions are needed to allow sharing nonpublic information (financial or otherwise) with TPSPs to conduct services. Operationally, consumer choices about such services/sharing – when the TPSP’s activities are within the scope of the exclusive purpose of providing the contracted services (and not for its own or other purposes) – do not make sense on either an opt out or consent basis.

➤ NPFI Change & Notice/Opt-Out Exclusion

Is further consideration being given to where **“financial”** is and is not included in the working draft, including in the exceptions? This gets at the distinction between NPI and NPFI. Please consider whether Sec. 26 should apply to NPI, removing “financial.” [At the same time, there may be questions about whether removing financial from many aspects of the model more broadly might introduce possible challenges for aligning with GLBA. We will continue to review these questions.]

- Outside TPSP Agreement
Are additional provisions needed to address **digital advertising**, for example in instances where there would not be an agreement with a service provider?
- Security Incidents
Is the drafting group receptive to further refining the draft's wording addressing **security**? Our organizations strongly support the addition of an exception provision in the "Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information" (Sec. 23) on this topic. Our members may have some additional thoughts and suggestions with respect to adding further language regarding exceptions and we ask for an opportunity to offer suggestions in this regard as the drafting group's work continues.
- Carve Outs for Physically Protecting People
When it comes to **safety**, has consideration been given to including wording that would explicitly allow taking these steps? For example, at the end of Sec. 26(A)(4), the drafting could insert language like "or to aid in taking steps to protect the life and physical safety of the consumer or of another natural person." This would follow the reference to "public safety" and provide greater certainty in such situations. As we understand it, similar wording has been used in CCPA and other comprehensive privacy laws.
- Incorporating "Process" Into Exceptions
Has consideration been given to where to insert **"process"** into the exceptions? For example, it would make sense to insert "or processes" before "nonpublic personal financial information" in Sec. 26(A) relating to "Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information."
- Technical & Connecting Definitions
Has serious consideration been given to how the definitions and exceptions interact, including with respect to **group and employee coverage**? We recognize that the connection between definitions and exceptions may be addressed later in the drafting process, but we believe it is important to raise this point now in case it has not yet been considered. Although this is not a new item, the model could benefit from additional clarity, as references to group, blanket, and workers' compensation appear under an example of the 'consumer' definition (see current MDL #672 Sec. 4(F)), even though such coverage is not necessarily offered or purchased on a personal lines basis. The scope of the exceptions may be an area to clarify going forward, such as under working draft Sec. 25.
- Technical & "At Consumer's Request"
Has consideration been given to revising the Sec. 25(A) **title** – "Exceptions for processing transactions at consumer's request" – to better align with the content? While not new, the items listed in this section appear to include processing activities that a consumer would not specifically request, such as reinsurance.
- Modernizing
Are there sections where some additional examples could serve as useful context given evolving technology? For example, in Section 25(B)(f)(iii) reference is made to **"other payment means."** The question has been asked about whether new wording should be added to more

directly reference evolving payment methods (and Venmo was referenced as a potential example that could be included in the type of “including but not limited to” wording).

➤ Technical & Section Numbers

Are all **referenced section numbers** correct? We understand that technical alignment and section numbering may be addressed later in the process, but we want to emphasize how critical this step will be. Ensuring that all referenced sections are correct is essential, as any misalignment could unintentionally narrow exceptions or create significant implications.

Committee of Annuity Insurers (CAI)

As requested, our comments below focus on issues raised by revised Article VI of the Chair's Draft. However, there are also related issues raised by Article VI that necessarily impact other sections of the Chair's Draft, such as Article V, for which the public comment period ended June 18, 2025. Accordingly, we are also commenting on Article V to the extent relevant to issues raised by Article VI. Please note that depending on how the Working Group proposes to define certain terms or further revises other sections of the Chair's Draft, there may be considerable additional issues and concerns that arise with respect to Article VI that will necessitate further comment. As the Working Group proceeds through the comment and drafting process, we urge the Working Group to keep an eye toward ensuring the revised draft ultimately works as a whole.

The Committee appreciates that the proposed revisions to Article VI preserve the current Article VI exemptions, which were thoughtfully crafted and are time-tested. However, it is important that these exemptions be extended to the new opt-in (consent) approach for limiting the sale of nonpublic personal information (NPI) or disclosure of sensitive personal information (SPI) proposed in Article V.

COMMENTS

1. Apply the Article VI exceptions to the proposed new opt-in requirements related to the sale of NPI and the disclosure of SPI.

As the Committee has previously commented, the Committee continues to be very concerned about an opt-in (consent) approach, which would put annuity insurers at a competitive disadvantage compared to competing non-insurance retirement products that are not subject to privacy rules under state insurance laws. If revised Model 672 subjects annuity insurers to materially more limiting and burdensome standards than the standards applicable to traditional retirement savings products, it will hamstring insurers from effectively competing in the broader financial services marketplace; financial advisors would be less likely to recommend annuity products and consumers who would benefit from an annuity would be less likely to have access to them. While the Committee strongly believes an opt-out approach is the best way to ensure annuity insurers can remain competitive in marketing their products to consumers who could benefit from them, a limited opt-in approach could be workable if (and *only* if) it is narrowly tailored and appropriate exemptions are in place.

As currently drafted, the Article VI exceptions would not apply to the proposed opt-in requirements in Article V. It is important that the exceptions to the opt-out requirements, which are well established and allow licensees to conduct normal operations, are equally applicable to the proposed opt-in requirements. While the exact parameters of what constitutes the "sale" of NPI for purposes of Section 22 remain unclear, if the "sale" of NPI is defined broadly, it could include many of the essential functions that are covered by the Article VI exceptions, such as reinsurance transactions, mergers and acquisitions. Licensees should under no circumstances be required to obtain affirmative consent from consumers to conduct these basic business transactions. Further, it appears the Working Group intended for the Article VI exceptions to apply to the limits on the use and disclosure of SPI under Section 23, which includes an express cross-

reference to Article VI, but that is not reflected in the revised draft of Article VI.

In addition, the Committee notes that certain of the section references throughout Article VI do not align with the most recent sections of the Chair's Draft that have been exposed for public comment. The Committee's recommended revisions below include section references consistent with the most recent exposure drafts.

CAI Recommendation. Article VI should be revised as set forth below.

2. Clarify that the exceptions in Section 26 apply to all NPI, not just nonpublic personal financial information (NPFI).

Section 26 provides important exceptions from the notice and opt-out requirements where information is disclosed for certain essential purposes, including to protect against fraud, for institutional risk control, to protect against security incidents, for legal compliance purposes, and in connection with a merger or acquisition. The Committee fully supports the addition of the proposed exemption for information sharing around security incidents in this section.

As the Committee previously noted in response to proposed revisions to Section 5, while Sections 24 and 25 were revised to apply to NPI broadly, Section 26 was not. As drafted, the exceptions under Section 26 would apply only to the subset of NPI that also constitutes NPFI. If not corrected, this would limit the ability of licensees to use NPI for fraud prevention and other essential purposes.

CAI Recommendation. Article VI should be revised as follows:

Section 24. Exception to Opt Out and Opt In Requirements for Disclosure of Nonpublic Personal Information for Service Providers and Joint Marketing

- (1) The opt out requirements in Sections ~~12~~14 and ~~16~~18 and the opt in requirements in Sections 13, 22 and 23 do not apply when a licensee provides nonpublic personal information to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee:
...
- (2) Example. If a licensee discloses nonpublic personal information under this section to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with that institution meets the requirements of Paragraph (1)(b) of this subsection if it prohibits the institution from disclosing or using the nonpublic personal ~~financial~~ information except as necessary to carry out the joint marketing or under an exception in Sections 25 or 26 in the ordinary course of business to carry out that joint marketing.
...

Section 25 – Exceptions to Notice, ~~and~~ Opt Out and Opt In Requirements for Disclosure of Nonpublic Personal Information for Processing and Servicing Transactions

- A. *Exceptions for processing transactions at consumer's request. The requirements for initial notice in Section ~~9A(2)~~9A, the opt out [requirements](#) in Sections ~~12~~14 and ~~16~~18, [the opt in requirements in Sections 13, 22 and 23](#), and service providers and joint marketing requirements in Section 24 do not apply if the licensee discloses nonpublic personal information as necessary to effect, administer or enforce a transaction that a consumer requests or authorizes, or in connection with:*
- ...

Section 26 – Other Exceptions to Notice, ~~and~~ Opt Out [and Opt In](#) Requirements for Disclosure of Nonpublic Personal ~~Financial~~ Information

- A. *Exceptions to [initial notice](#), opt out [and opt in](#) requirements. The requirements for initial notice to consumers in Section ~~9A(2)~~9A, the opt out [requirements](#) in Sections ~~12~~14 and ~~16~~18, [the opt in requirements in Sections 13, 22 and 23](#), and service providers and joint marketing in Section 24 do not apply when a licensee discloses nonpublic personal ~~financial~~ information:*
- ...
- (6) *In connection with a proposed or actual sale, merger, transfer or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal ~~financial~~ information concerns solely consumers of the business or unit;*
- ...
- B. *Example of revocation of consent. A consumer may revoke consent by subsequently exercising the right to opt out of [or revoke opt in consent to](#) future disclosures of nonpublic personal information as permitted under ~~Section 12F~~[Sections 14F and 13E](#).*

Overall, our members have some general comments and feedback on how these sections function in conjunction with others in the Exposure Draft. To start, “Nonpublic Personal Information” is a new defined term that has not been discussed yet with stakeholders. As such, it’s challenging for our members to weigh in on the implications of including a new term at this time.

Additionally, this article references requirements in sections 9, 12 and 16, which have all been substantively revised since the last comment exposure and not yet re-exposed. As expressed in previous comments, we continue to be very concerned about an opt-in approach generally, which would place insurers in a different position than other regulated entities, such as banks. We believe an opt-out approach is the best way to ensure consistency with other privacy laws and to avoid placing insurers at a competitive disadvantage, and we continue to urge the Working Group to keep the opt-out approach as the default throughout the Model. Because it is still unclear what the notice requirements and overarching approach will be, it is difficult to provide feedback on whether exceptions are appropriate. That being said, any exceptions should also apply to any proposed opt-in requirements, and this Section should be amended to make that clear.

NAIC Consumer Representatives

Brenda Cude, Brent Walker, Erica Eversman, Harold Ting, Kenneth Klein, Richard Weber, and Silvia Yee

You will see that we recommend the drafting note at the end of Article VI should be removed. Protecting consumer's nonpublic personal information (NPI) should not be compromised, just because a licensee is in receivership/reorganization or liquidation. Otherwise a receiver or liquidator could have an incentive to sell consumer NPI to data brokers or other non-covered companies. This could impose substantial harm to consumers associated with the licensee, and it would be unfair to other licensees who must follow this act.

The sale of the company 23&me, when it was under bankruptcy, illustrates the danger that exempting a failing company from privacy protection laws could create. In that case, recognizing the danger of selling a company that had the DNA of seven million people, the "U.S. Federal Trade Commission weighed in, writing a letter to the agency that oversees bankruptcies saying that whoever buys 23andMe should be bound by the same privacy agreement as the company's existing policy."

¹ Lila MacClellan, *These Are the People Who Want to Buy 23andme*, Fortune Magazine, April 1, 2025 at <https://fortune.com/2025/04/01/23andme-for-sale-interested-buyers-nucleus-sei-foundation/>

NAIC CONSUMER REPRESENTATIVE RECOMMENDED REVISIONS TO

ARTICLE VI. EXCEPTIONS TO LIMITS ON DISCLOSURES OF NONPUBLIC PERSONAL INFORMATION

Section 24. Exceptions to Opt Out Requirements for Disclosure of Nonpublic Personal Information for Service Providers and Joint Marketing

A. General rule.

- (1) The opt out requirements in Sections 12 and 16 do not apply when a licensee provides nonpublic personal information to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee:
 - (a) Provides the initial notice in accordance with Section 9; and
 - (b) Enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in Sections 25 or 26 in the ordinary course of business to carry out those purposes.
- (2) Example. If a licensee discloses nonpublic personal information under this section to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with that institution meets the requirements of Paragraph (1)(b) of this subsection if it prohibits the institution from disclosing or using the nonpublic

personal information except as necessary to carry out the joint marketing or under an exception in Sections 25 or 26 in the ordinary course of business to carry out that joint marketing.

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

Section 25. Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Information for Processing and Servicing Transactions

- A. Exceptions for processing transactions at consumer's request. The requirements for initial notice in Section 9A(2), the opt out in Sections 12 and 16, and service providers and joint marketing in Section 24 do not apply if the licensee discloses nonpublic personal information as necessary to effect, administer or enforce a transaction that a consumer requests or authorizes, or in connection with:
 - (1) Servicing or processing an insurance product or service that a consumer requests or authorizes;
 - (2) Maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity;
 - (3) A proposed or actual securitization, secondary market sale (including sales of servicing rights) or similar transaction related to a transaction of the consumer; or
 - (4) Reinsurance or stop loss or excess loss insurance.
- B. "Necessary to effect, administer or enforce a transaction" means that the disclosure is:
 - (1) Required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or
 - (2) Required, or is a usual, appropriate or acceptable method:
 - (a) To carry out the transaction or the product or service business of which the transaction is a part, and record, service or maintain the consumer's account in the ordinary course of providing the insurance product or service;
 - (b) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;
 - (c) To provide a confirmation, statement or other record of the transaction, or information on the status or value of the insurance product or service to the consumer or the consumer's agent or broker;

- (d) To accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party;
- (e) To underwrite insurance at the consumer's request or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects or as otherwise required or specifically permitted by federal or state law; or
- (f) In connection with:
 - (i) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited or otherwise paid using a debit, credit or other payment card, check or account number, or by other payment means;
 - (ii) The transfer of receivables, accounts or interests therein; or
 - (iii) The audit of debit, credit or other payment information.

Section 26. Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal ~~Financial~~ Information

- A. Exceptions to opt out requirements. The requirements for initial notice to consumers in Section 9A(2), the opt out in Sections 12 and 16, and service providers and joint marketing in Section 24 do not apply when a licensee discloses nonpublic personal ~~financial~~ information:
 - (1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;
 - (2)
 - (a) To protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product or transaction;
 - (b) To protect against or prevent actual or potential fraud or unauthorized transactions;
 - (c) For required institutional risk control or for resolving consumer disputes or inquiries;
 - (d) To persons holding a legal or beneficial interest relating to the consumer; or
 - (e) To persons acting in a fiduciary or representative capacity on behalf of the consumer;
 - (f) To prevent, detect, and investigate security incidents that compromise the availability, authenticity, integrity, or confidentiality of stored or transmitted nonpublic personal information.
 - (3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants and

auditors;

- (4) To the extent specifically permitted or required under other provisions of law and in accordance with the federal Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.), to law enforcement agencies (including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping), a state insurance authority, and the Federal Trade Commission), self-regulatory organizations or for an investigation on a matter related to public safety;
- (5)
 - (a) To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); or
 - (b) From a consumer report reported by a consumer reporting agency;
- (6) In connection with a proposed or actual sale, merger, transfer or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal ~~financial~~ information concerns solely consumers of the business or unit;
- (7)
 - (a) To comply with federal, state or local laws, rules and other applicable legal requirements;
 - (b) To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local authorities; or
 - (c) To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance or other purposes as authorized by law; or
- (8) For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan or a workers' compensation plan.

- B. Example of revocation of consent. A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under Section 12F.

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