

State of Utah
Administrative Rule Analysis
Revised May 2023

NOTICE OF PROPOSED RULE

TYPE OF FILING: Repeal and Reenact

Title No. - Rule No. - Section No.

Rule or Section Number:

R590-206

Filing ID: Office Use Only

Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room number:	Suite 2300	
Building:	Taylorsville State Office Building	
Street address:	4315 S. 2700 W.	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact persons:		
Name:	Phone:	Email:
Steve Gooch	801-957-9322	sgooch@utah.gov

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R590-206. Privacy of Consumer Financial and Health Information Rule

3. Purpose of the new rule or reason for the change:

The rule is being changed in compliance with Executive Order 2021-12. During the review of this rule, the department discovered a number of minor issues that needed to be amended.

4. Summary of the new rule or change:

The most significant change is the incorporation of language from R590-210 into this rule. The language is being incorporated to create a single rule that regulates privacy information related to insurance. The majority of the changes are being done to fix style issues to bring the rule text more in line with current rulewriting standards. Other changes make the language of the rule more clear, remove the Violations section, and update the Severability section to use the department's current language.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature, and will not change how the department functions.

B) Local governments:

There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.

C) Small businesses ("small business" means a business employing 1-49 persons):

There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature, and will not affect small businesses.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature, and will not affect non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Commissioner of Insurance, Jonathan T. Pike, has reviewed and approved this regulatory impact analysis.

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 31A-2-201	Section 31A-23a-417	15 U.S.C. Sec. 6801 through 6820

Incorporations by Reference Information

7. Incorporations by Reference (if this rule incorporates more than two items by reference, please include additional tables):

A) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

Official Title of Materials Incorporated (from title page)	
Publisher	
Issue Date	
Issue or Version	

B) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

Official Title of Materials Incorporated (from title page)	
Publisher	
Issue Date	

Issue or Version	
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Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)		
A) Comments will be accepted until:		11/14/2023
B) A public hearing (optional) will be held:		
Date (mm/dd/yyyy):	Time (hh:mm AM/PM):	Place (physical address or URL):
To the agency: If more space is needed for a physical address or URL, refer readers to Box 4 in General Information. If more than two hearings will take place, continue to add rows.		

9. This rule change MAY become effective on:	11/21/2023
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 63G-3-302, 63G-3-303, and 63G-3-402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> and delaying the first possible effective date.			
Agency head or designee and title:	Steve Gooch, Public Information Officer	Date:	09/28/2023

R590. Insurance, Administration.

R590-206. Privacy of Consumer Financial and Health Information Rule.

~~R590-206 1. Authority.~~

~~This rule is promulgated pursuant to Subsections 31A-2-202(1), 31A-2-201(2) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce Title 31A, to perform duties imposed by Title 31A and to make administrative rules to implement the provisions of Title 31A. Furthermore, Title V, Section 505 (15 United States Code (U.S.C.) 6805) empowers the Utah Insurance Commissioner to enforce Subtitle A of Title V of the Gramm Leach Bliley Act of 1999 (15 U.S.C. 6801 through 6820). Title V, Section 505 (15 U.S.C. 6805(b)(2)) authorizes the commissioner to issue rules to implement the requirements of Title V, Section 501(b) of the federal act. The commissioner is also authorized under Subsection 31A-23a-417(3) to adopt rules implementing the requirements of Title V, Section 501(b) of the federal act.~~

~~R590-206 2. Purpose and Scope.~~

- ~~(1) Purpose. This rule governs the treatment of nonpublic personal health information and nonpublic personal financial information about individuals by all licensees of the Utah Insurance Department. This rule:~~
- ~~(a) Requires a licensee to provide notice to individuals about its privacy policies and practices;~~
 - ~~(b) Describes the conditions under which a licensee may disclose nonpublic personal health information and nonpublic personal financial information about individuals to affiliates and nonaffiliated third parties; and~~
 - ~~(c) Provides methods for individuals to prevent a licensee from disclosing that information.~~
- ~~(2) Scope. This rule applies to:~~
- ~~(a) Nonpublic personal financial information about individuals who obtain or are claimants or beneficiaries of products or services primarily for personal, family or household purposes from licensees. This rule does not apply to information about companies or about individuals who obtain products or services for business, commercial or agricultural purposes; and~~
 - ~~(b) All nonpublic personal health information.~~
- ~~(3) Compliance. A licensee domiciled in this state that is in compliance with this rule in a state that has not enacted laws or rules that meet the requirements of Title V of the Gramm Leach Bliley Act (PL 102-106) may nonetheless be deemed to be in compliance with Title V of the Gramm Leach Bliley Act in such other state.~~
- ~~(4) This rule does not apply to a financial institution, securities broker or dealer, or a credit union that engages in activities or functions that do not require a license from the Utah insurance commissioner.~~

~~R590-206 3. Rule of Construction.~~

- ~~(1)(a) The examples in this rule, the sample clauses in Appendix A, and the Federal Model Privacy Form in Appendix B are not exclusive.~~
- ~~(b) Appendix A—Sample Clauses, of the Model Rule entitled, "Privacy of Consumer Financial and Health Information Regulation," and Appendix B—Federal Model Privacy Form, of the Model Rule entitled, "Privacy of Consumer Financial and Health Information Regulation," adopted April 11, 2017, by the National Association of Insurance Commissioners, are incorporated by~~

reference and available for inspection at the Insurance Department and the Office of Administrative Rules.

~~_____ (c) Compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this rule.~~

~~_____ (2)(a) Licensees may rely on use of the Federal Privacy Form in Appendix B, consistent with the form's instructions, as a safe harbor of compliance with the privacy notice content requirements of this rule.~~

~~_____ (b) Use of the Federal Model Privacy Form in Appendix B is not required. Licensees may continue to use other types of privacy notices, including notices that contain the examples in this regulation and/or the sample clauses in Appendix A, provided that such notices accurately describe the licensee's privacy practices and otherwise meet the notice content requirements of this rule.~~

~~_____ (3)(a) Subjection to Subsection (b), licensees may continue to use privacy notices that contain the examples in this rule and the sample clauses in Appendix A.~~

~~_____ (b) Licensees may not rely on the use of privacy notices with the sample clauses in Appendix A as a safe harbor of compliance with the notice content requirements of this regulation after July 1, 2019.~~

R590-206-4. Definitions.

~~_____ As used in this rule, unless the context requires otherwise:~~

~~_____ (1) "Affiliate" means any company that controls, is controlled by or is under common control with another company.~~

~~_____ (2)(a) "Clear and conspicuous" means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.~~

~~_____ (b) Examples.~~

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

~~_____ (A) Presents the information in the notice in clear, concise sentences, paragraphs, and sections;~~

~~_____ (B) Uses short explanatory sentences or bullet lists whenever possible;~~

~~_____ (C) Uses definite, concrete, everyday words and active voice whenever possible;~~

~~_____ (D) Avoids multiple negatives;~~

~~_____ (E) Avoids legal and highly technical business terminology whenever possible; and~~

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

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

~~_____ (A) Uses a plain language heading to call attention to the notice;~~

~~_____ (B) Uses a typeface and type size that are easy to read;~~

~~_____ (C) Provides wide margins and ample line spacing;~~

~~_____ (D) Uses boldface or italics for key words; and~~

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

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

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

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

~~_____ (3) "Collect" means to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol or other identifying particular assigned to the individual, irrespective of the source of the underlying information.~~

~~_____ (4) "Commissioner" means the Utah insurance commissioner.~~

~~_____ (5) "Company" means a corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship or similar organization.~~

~~_____ (6)(a) "Consumer" means an individual who seeks to obtain, obtains or has obtained an insurance product or service, from a licensee that is to be used primarily for personal, family or household purposes, and about whom the licensee has nonpublic personal information, or that individual's legal representative.~~

~~_____ (b) Examples.~~

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

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

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

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

~~_____ (A)(I) the individual is a beneficiary of a life insurance policy underwritten by the licensee;~~

~~_____ (II) the individual is a claimant under an insurance policy issued by the licensee;~~

~~_____ (III) the individual is an insured or an annuitant under an insurance policy or an annuity, respectively, issued by the licensee;~~

~~_____ or~~
~~_____ (IV) the individual is a mortgagor of a mortgage covered under a mortgage insurance policy; and~~

_____ (B) the licensee discloses nonpublic personal financial information about the individual to a nonaffiliated third party other than as permitted under Sections 15, 16 and 17 of this rule.

_____ (v) Provided that the licensee provides the initial, annual and revised notices under Section 10 of this rule to the plan sponsor, group or blanket insurance policyholder or group annuity contract holder, or workers' compensation policyholder, and further provided that the licensee does not disclose to a nonaffiliated third party nonpublic personal financial information about such an individual described in (A), (B), or (C), other than as permitted under Sections 15, 16 and 17 of this rule, such an individual is not the consumer of the licensee solely because he or she is:

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

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

_____ (C) A claimant covered by a workers' compensation plan.

_____ (vi)(A) The individuals described in Subsection R590 206 4(6)(b)(v)(A) through (C) of this Paragraph are consumers of a licensee if the licensee does not meet all the conditions of Subsection R590 206 4(6)(b)(v).

_____ (B) In no event shall the individuals, solely by virtue of the status described in Subsection R590 206 4(6)(b)(v)(A) through (C) above, be deemed to be customers for purposes of this rule.

_____ (vii) An individual is not a licensee's consumer solely because he or she is a beneficiary of a trust for which the licensee is a trustee.

_____ (viii) An individual is not a licensee's consumer solely because he or she has designated the licensee as trustee for a trust.

_____ (7) "Consumer reporting agency" has the same meaning as in Section 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

_____ (8) "Control" means:

_____ (a) Ownership, control or power to vote 25% or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

_____ (b) Control in any manner over the election of a majority of the directors, trustees or general partners, or individuals exercising similar functions, of the company; or

_____ (c) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the commissioner determines.

_____ (9) "Customer" means a consumer who has a customer relationship with a licensee.

_____ (10)(a) "Customer relationship" means a continuing relationship between a consumer and a licensee under which the licensee provides one or more insurance products or services to the consumer that are to be used primarily for personal, family or household purposes.

_____ (b) Examples:

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

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

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

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

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

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

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

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

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

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

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

_____ (H) For the purposes of this rule, 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.

_____ (11)(a) "Financial institution" means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in Section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

_____ (b) Financial institution does not include:

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

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

_____ (iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of

servicing rights) or similar transactions related to a transaction of a consumer, as long as the institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

_____ (12)(a) "Financial product or service" means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under Section (4)(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

_____ (b) Financial service includes a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

_____ (13) "Health care" means:

_____ (a) Preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, procedures, tests or counseling that:

_____ (i) Relates to the physical, mental or behavioral condition of an individual; or

_____ (ii) Affects the structure or function of the human body or any part of the human body, including the banking of blood, sperm, organs or any other tissue; or

_____ (b) Prescribing, dispensing or furnishing to an individual drugs or biologicals, or medical devices or health care equipment and supplies.

_____ (14) "Health care provider" means a physician or other health care practitioner licensed, accredited or certified to perform specified health services consistent with state law, or a health care facility.

_____ (15) "Health information" means any information or data except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or the consumer that relates to:

_____ (a) The past, present or future physical, mental or behavioral health or condition of an individual;

_____ (b) The provision of health care to an individual; or

_____ (c) Payment for the provision of health care to an individual.

_____ (16)(a) "Insurance product or service" means any product or service that is offered by a licensee pursuant to the insurance laws of this state.

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

_____ (17)(a) "Licensee" means all licensed insurers, producers and other persons licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to the insurance laws of this state.

_____ (b) A licensee is not subject to the notice and opt out requirements for nonpublic personal financial information set forth in Sections 1 through 17 of this rule if the licensee is an employee, agent or other representative of another licensee, "the principal," and:

_____ (i) The principal otherwise complies with, and provides the notices required by, the provisions of this rule; and

_____ (ii) The licensee does not disclose any non public personal information to any person other than the principal or its affiliates in a manner permitted by this rule.

_____ (c)(i) Subject to Subsection R590 206 4(17)(c)(ii), "licensee" shall also include an unauthorized insurer that accepts business placed through a licensed surplus lines broker in this state, but only in regard to the surplus lines placements placed pursuant to Section 31A 15 103 of this state's laws.

_____ (ii) A surplus lines broker or surplus lines insurer shall be deemed to be in compliance with the notice and opt out requirements for nonpublic personal financial information set forth in Sections 1 through 17 of this rule provided:

_____ (A) The broker or insurer does not disclose nonpublic personal financial information of a consumer or a customer to nonaffiliated third parties for any purpose, including joint servicing or marketing under Section 15 of this rule, except as permitted by Section 16 or 17 of this rule; and

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

_____ **PRIVACY NOTICE**

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

_____ (18)(a) "Nonaffiliated third party" means any person except:

_____ (i) A licensee's affiliate; or

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

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

_____ (19) "Nonpublic personal information" means nonpublic personal financial information and nonpublic personal health information.

_____ (20)(a) "Nonpublic personal financial information" means:

_____ (i) Personally identifiable financial information; and

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

_____ (b) Nonpublic personal financial information does not include:

- ~~_____ (i) Health information;~~
- ~~_____ (ii) Publicly available information, except as included on a list described in Subsection R590 206 4(20)(a)(ii); or~~
- ~~_____ (iii) Any list, description or other grouping of consumers, and publicly available information pertaining to them, that is derived without using any personally identifiable financial information that is not publicly available.~~
- ~~_____ (e) Examples of lists:~~
 - ~~_____ (i) Nonpublic personal financial information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.~~
 - ~~_____ (ii) Nonpublic personal financial information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.~~
- ~~_____ (21) "Nonpublic personal health information" means health information:~~
 - ~~_____ (a) That identifies an individual who is the subject of the information; or~~
 - ~~_____ (b) With respect to which there is a reasonable basis to believe that the information could be used to identify an individual.~~
- ~~_____ (22)(a) "Personally identifiable financial information" means any information:~~
 - ~~_____ (i) A consumer provides to a licensee to obtain an insurance product or service from the licensee;~~
 - ~~_____ (ii) About a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer; or~~
 - ~~_____ (iii) The licensee otherwise obtains about a consumer in connection with providing an insurance product or service to that consumer.~~
- ~~_____ (b) Examples:~~
 - ~~_____ (i) Information included. Personally identifiable financial information includes:~~
 - ~~_____ (A) Information a consumer provides to a licensee on an application to obtain an insurance product or service;~~
 - ~~_____ (B) Account balance information and payment history;~~
 - ~~_____ (C) The fact that an individual is or has been one of the licensee's customers or has obtained an insurance product or service from the licensee;~~
 - ~~_____ (D) Any information about the licensee's consumer if it is disclosed in a manner that indicates that the individual is or has been the licensee's consumer;~~
 - ~~_____ (E) Any information that a consumer provides to a licensee or that the licensee or its agent otherwise obtains in connection with collecting on a loan or servicing a loan;~~
 - ~~_____ (F) Any information the licensee collects through an Internet cookie, an information collecting device from a web server;~~
 - ~~_____ (G) Information from a consumer report.~~
- ~~_____ (ii) Information not included. Personally identifiable financial information does not include:~~
 - ~~_____ (A) Health information;~~
 - ~~_____ (B) A list of names and addresses of customers of an entity that is not a financial institution; and~~
 - ~~_____ (C) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names or addresses.~~
- ~~_____ (23)(a) "Publicly available information" means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from:~~
 - ~~_____ (i) Federal, state or local government records;~~
 - ~~_____ (ii) Widely distributed media; or~~
 - ~~_____ (iii) Disclosures to the general public that are required to be made by federal, state or local law.~~
- ~~_____ (b) Reasonable basis. A licensee has a reasonable basis to believe that information is lawfully made available to the general public if the licensee has taken steps to determine:~~
 - ~~_____ (i) That the information is of the type that is available to the general public; and~~
 - ~~_____ (ii) Whether an individual can direct that the information not be made available to the general public and, if so, that the licensee's consumer has not done so.~~
- ~~_____ (c) Examples:~~
 - ~~_____ (i) Government records. Publicly available information in government records includes information in government real estate records and security interest filings.~~
 - ~~_____ (ii) Widely distributed media. Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.~~
 - ~~_____ (iii) Reasonable basis:~~
 - ~~_____ (A) A licensee has a reasonable basis to believe that mortgage information is lawfully made available to the general public if the licensee has determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.~~
 - ~~_____ (B) A licensee has a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if the licensee has located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.~~

R590-206-5. Initial Privacy Notice to Consumers Required.

~~_____ (1) Initial notice requirement. A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to:~~

~~_____ (a) Customer. An individual who becomes the licensee's customer, not later than when the licensee establishes a customer relationship, except as provided in Subsection R590-206-5(5); and~~

~~_____ (b) Consumer. A consumer, before the licensee discloses any nonpublic personal financial information about the consumer to any nonaffiliated third party, if the licensee makes a disclosure other than as authorized by Sections 16 and 17.~~

~~_____ (2) When initial notice to a consumer is not required. A licensee is not required to provide an initial notice to a consumer under Subsection R590-206-5(1)(b) if:~~

~~_____ (a) The licensee does not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party, other than as authorized by Sections 16 and 17, and the licensee does not have a customer relationship with the consumer; or~~

~~_____ (b) 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.~~

~~_____ (3) When the licensee establishes a customer relationship.~~

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

~~_____ (b) Examples of establishing customer relationship. A licensee establishes a customer relationship when the consumer:~~

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

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

~~_____ (4) 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 R590-206-5(1) as follows:~~

~~_____ (a) The licensee may provide a revised policy notice, under Section 9, that covers the customer's new insurance product or service; or~~

~~_____ (b) 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 R590-206-5(1).~~

~~_____ (5) Exceptions to allow subsequent delivery of notice.~~

~~_____ (a) A licensee may provide the initial notice required by Subsection R590-206-5(1)(a) within a reasonable time after the licensee establishes a customer relationship if:~~

~~_____ (i) Establishing the customer relationship is not at the customer's election; or~~

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

~~_____ (b) Examples of exceptions.~~

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

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

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

~~_____ (6) Delivery. When a licensee is required to deliver an initial privacy notice by this section, the licensee shall deliver it according to Section 11. If the licensee uses a short form initial notice for non-customers according to Subsection R590-206-7(4) the licensee may deliver its privacy notice according to Subsection R590-206-7(4)(e).~~

R590-206-6. Annual Privacy Notice to Customers Required.

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

~~_____ (b) Example. A licensee provides a notice annually if it defines the 12 consecutive month period as a calendar year and provides the annual notice to the customer once in each calendar year 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 two.~~

~~_____ (2) Exception to General Rule. A licensee that provides nonpublic personal information to nonaffiliated third parties only in accordance with Sections 15, 16, or 17 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.~~

~~———— (3)(a) 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.~~

~~———— (b) Examples.~~

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

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

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

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

~~———— (4) Delivery. When a licensee is required by this section to deliver an annual privacy notice, the licensee shall deliver it according to Section 11.~~

R590-206-7. Information to be Included in Privacy Notices.

~~———— (1) General rule. The initial, annual and revised privacy notices that a licensee provides under Sections 5, 6 and 9 shall include each of the following items of information, in addition to any other information the licensee wishes to provide, that applies to the licensee and to the consumers to whom the licensee sends its privacy notice:~~

~~———— (a) The categories of nonpublic personal financial information that the licensee collects;~~

~~———— (b) The categories of nonpublic personal financial information that the licensee discloses;~~

~~———— (c) 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 16 and 17;~~

~~———— (d) 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 16 and 17;~~

~~———— (e) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under Section 14, and no other exception in Sections 16 and 17 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;~~

~~———— (f) An explanation of the consumer's right under Subsection R590-206-12(1) 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;~~

~~———— (g) 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);~~

~~———— (h) The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and~~

~~———— (i) Any disclosure that the licensee makes under Subsection R590-206-7(2).~~

~~———— (2) Description of parties subject to exceptions. If a licensee discloses nonpublic personal financial information as authorized under Sections 16 and 17, the licensee is not required to list those exceptions in the initial or annual privacy notices required by Sections 5 and 6. When describing the categories of parties to whom disclosure is made, the licensee is required to state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.~~

~~———— (3) Examples.~~

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

~~———— (i) Information from the consumer;~~

~~———— (ii) Information about the consumer's transactions with the licensee or its affiliates;~~

~~———— (iii) Information about the consumer's transactions with nonaffiliated third parties; and~~

~~———— (iv) Information from a consumer reporting agency.~~

~~———— (b) Categories of nonpublic personal financial information a licensee discloses.~~

~~———— (i) A licensee satisfies the requirement to categorize nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in Subsection R590-206-7(3)(a), as applicable, and provides a few examples to illustrate the types of information in each category. These might include:~~

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

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

- _____ (C) Information from consumer reports, such as a consumer's creditworthiness and credit history.
- _____ (ii) A licensee does not adequately categorize the information that it discloses if the licensee uses only general terms, such as transaction information about the consumer.
- _____ (iii) If a licensee reserves the right to disclose all of the nonpublic personal financial information about consumers that it collects, the licensee may simply state that fact without describing the categories or examples of nonpublic personal financial information that the licensee discloses.
- _____ (e) Categories of affiliates and nonaffiliated third parties to whom the licensee discloses.
- _____ (i) A licensee satisfies the requirement to categorize the affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information about consumers if the licensee identifies the types of businesses in which they engage.
- _____ (ii) Types of businesses may be described by general terms only if the licensee uses a few illustrative examples of significant lines of business. For example, a licensee may use the term financial products or services if it includes appropriate examples of significant lines of businesses, such as life insurer, automobile insurer, consumer banking or securities brokerage.
- _____ (iii) A licensee also may categorize the affiliates and nonaffiliated third parties to which it discloses nonpublic personal financial information about consumers using more detailed categories.
- _____ (d) Disclosures under exception for service providers and joint marketers. If a licensee discloses nonpublic personal financial information under the exception in Section 14 to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee satisfies the disclosure requirement of Subsection R590 206 7(1)(e) of this section if it:
- _____ (i) Lists the categories of nonpublic personal financial information it discloses, using the same categories and examples the licensee used to meet the requirements of Subsection R590 206 7(1)(b) of this section, as applicable; and
- _____ (ii) States whether the third party is:
- _____ (A) A service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution; or
- _____ (B) A financial institution with whom the licensee has a joint marketing agreement.
- _____ (e) 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 16 and 17, the licensee may simply state that fact, in addition to the information it shall provide under Subsections R590 206 7(1)(a), 7(1)(h), 7(1)(i), and 7(2).
- _____ (f) Confidentiality and security. A licensee describes its policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if it does both of the following:
- _____ (i) Describes in general terms who is authorized to have access to the information; and
- _____ (ii) States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy. The licensee is not required to describe technical information about the safeguards it uses.
- _____ (4) Short form initial notice with opt out notice for non-customers.
- _____ (a) A licensee may satisfy the initial notice requirements in Subsections R590 206 5(1)(b) and Subsection R590 206 8(3) 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.
- _____ (b) A short form initial notice shall:
- _____ (i) Be clear and conspicuous;
- _____ (ii) State that the licensee's privacy notice is available upon request; and
- _____ (iii) Explain a reasonable means by which the consumer may obtain that notice.
- _____ (c) The licensee shall deliver its short form initial notice according to Section 11. The licensee is not required to deliver its privacy notice with its short form initial notice. The licensee instead may simply provide the consumer a reasonable means to obtain its privacy notice. If a consumer who receives the licensee's short form notice requests the licensee's privacy notice, the licensee shall deliver its privacy notice according to Section 10.
- _____ (d) Examples of obtaining privacy notice. The licensee provides a reasonable means by which a consumer may obtain a copy of its privacy notice if the licensee:
- _____ (i) Provides a toll free telephone number that the consumer may call to request the notice; or
- _____ (ii) For a consumer who conducts business in person at the licensee's office, maintains copies of the notice on hand that the licensee provides to the consumer immediately upon request.
- _____ (5) Future disclosures. The licensee's notice may include:
- _____ (a) Categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future, but does not currently disclose; and
- _____ (b) 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.
- _____ (6) Sample clauses and the 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 rule.

R590 206 8. Form of Opt Out Notice to Consumers and Opt Out Methods.

- _____ (1)(a) Form of opt out notice. If a licensee is required to provide an opt out notice under Subsection R590 206 12(1), it shall provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out under that section. The

notice shall state:

- ~~_____ (i) That the licensee discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a nonaffiliated third party;~~
- ~~_____ (ii) That the consumer has the right to opt out of that disclosure; and~~
- ~~_____ (iii) A reasonable means by which the consumer may exercise the opt out right.~~
- ~~_____ (b) Examples.~~
- ~~_____ (i) Adequate opt out notice. A licensee provides adequate notice that the consumer can opt out of the disclosure of nonpublic personal financial information to a nonaffiliated third party if the licensee:~~
- ~~_____ (A) Identifies all of the categories of nonpublic personal financial information that it discloses or reserves the right to disclose, and all of the categories of nonaffiliated third parties to which the licensee discloses the information, as described in Subsections R590-206-7(1)(b) and R590-206-7(1)(c), and states that the consumer can opt out of the disclosure of that information; and~~
- ~~_____ (B) Identifies the insurance products or services that the consumer obtains from the licensee, either singly or jointly, to which the opt out direction would apply.~~
- ~~_____ (ii) Reasonable opt out means. A licensee provides a reasonable means to exercise an opt out right if it:~~
- ~~_____ (A) Designates check off boxes in a prominent position on the relevant forms with the opt out notice;~~
- ~~_____ (B) Includes a reply form together with the opt out notice;~~
- ~~_____ (C) Provides an electronic means to opt out, such as a form that can be sent via electronic mail or a process at the licensee's web site, if the consumer agrees to the electronic delivery of information; or~~
- ~~_____ (D) Provides a toll free telephone number that consumers may call to opt out.~~
- ~~_____ (iii) Unreasonable opt out means. A licensee does not provide a reasonable means of opting out if:~~
- ~~_____ (A) The only means of opting out is for the consumer to write his or her own letter to exercise that opt out right; or~~
- ~~_____ (B) The only means of opting out as described in any notice subsequent to the initial notice is to use a check off box that the licensee provided with the initial notice but did not include with the subsequent notice.~~
- ~~_____ (iv) Specific opt out means. A licensee may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.~~
- ~~_____ (2) Same form as initial notice permitted. A licensee may provide the opt out notice together with or on the same written or electronic form as the initial notice the licensee provides in accordance with Section 5.~~
- ~~_____ (3) Initial notice required when opt out notice delivered subsequent to initial notice. If a licensee provides the opt out notice later than required for the initial notice in accordance with Section 5, the licensee shall also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.~~
- ~~_____ (4) Joint relationships.~~
- ~~_____ (a) If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may provide a single opt out notice. The licensee's opt out notice shall explain how the licensee will treat an opt out direction by a joint consumer, as explained in Subsection R590-206-8(4)(c).~~
- ~~_____ (b) Any of the joint consumers may exercise the right to opt out. The licensee may either:~~
- ~~_____ (i) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or~~
- ~~_____ (ii) Permit each joint consumer to opt out separately.~~
- ~~_____ (c) 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.~~
- ~~_____ (d) A licensee may not require all joint consumers to opt out before it implements any opt out direction.~~
- ~~_____ (e) Example. If John and Mary are both named policyholders on a homeowner's insurance policy issued by a licensee and the licensee sends policy statements to John's address, the licensee may do any of the following, but it shall explain in its opt out notice which opt out policy the licensee will follow:~~
- ~~_____ (i) Send a single opt out notice to John's address, but the licensee shall accept an opt out direction from either John or Mary.~~
- ~~_____ (ii) Treat an opt out direction by either John or Mary as applying to the entire policy. If the licensee does so and John opts out, the licensee may not require Mary to opt out as well before implementing John's opt out direction.~~
- ~~_____ (iii) Permit John and Mary to make different opt out directions. If the licensee does so:~~
- ~~_____ (A) It shall permit John and Mary to opt out for each other;~~
- ~~_____ (B) If both opt out, the licensee shall permit both of them to notify it in a single response, such as on a form or through a telephone call; and~~
- ~~_____ (C) If John opts out and Mary does not, the licensee may only disclose nonpublic personal financial information about Mary, but not about John and not about John and Mary jointly.~~
- ~~_____ (5) 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.~~
- ~~_____ (6) Continuing right to opt out. A consumer may exercise the right to opt out at any time.~~
- ~~_____ (7) Duration of consumer's opt out direction.~~
- ~~_____ (a) 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.~~
- ~~_____ (b) 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.

~~_____ (8) Delivery. When a licensee is required to deliver an opt out notice by this section, the licensee shall deliver it according to Section 10.~~

~~R590-206-9. Revised Privacy Notices.~~

~~_____ (1) General rule. Except as otherwise authorized in this rule, 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:~~

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

~~_____ (b) The licensee has provided to the consumer a new opt out notice;~~

~~_____ (c) 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~~

~~_____ (d) The consumer does not opt out.~~

~~_____ (2) Examples.~~

~~_____ (a) Except as otherwise permitted by Sections 15, 16 and 17, a licensee shall provide a revised notice before it:~~

~~_____ (i) Discloses a new category of nonpublic personal financial information to any nonaffiliated third party;~~

~~_____ (ii) Discloses nonpublic personal financial information to a new category of nonaffiliated third party; or~~

~~_____ (iii) 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.~~

~~_____ (b) 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.~~

~~_____ (3) Delivery. When a licensee is required to deliver a revised privacy notice by this section, the licensee shall deliver it according to Section 11.~~

~~R590-206-10. Privacy Notices to Group Policyholders.~~

~~_____ Unless a licensee is providing privacy notices directly to covered individuals described in Subsection R590-206-4(6)(b)(v)(A), (B) or (C), a licensee shall provide initial, annual and revised notices to the plan sponsor, group, or blanket insurance policyholder or group annuity contract holder, or workers' compensation policyholder, in the manner described in Sections 5 through 9 of this rule, describing the licensee's privacy practices with respect to nonpublic personal information about individuals covered under the policies, contracts, or plans.~~

~~R590-206-11. Delivery.~~

~~_____ (1) How to provide notices. A licensee shall provide any notices that this rule requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.~~

~~_____ (2)(a) Examples of reasonable expectation of actual notice. A licensee may reasonably expect that a consumer will receive actual notice if the licensee:~~

~~_____ (i) Hand delivers a printed copy of the notice to the consumer;~~

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

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

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

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

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

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

~~_____ (3) Annual notices only. A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if:~~

~~_____ (a) 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~~

~~_____ (b) 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.~~

~~_____ (4) Oral description of notice insufficient. A licensee may not provide any notice required by this rule solely by orally explaining the notice, either in person or over the telephone.~~

~~_____ (5) Retention or accessibility of notices for customers.~~

~~_____ (a) For customers only, a licensee shall provide the initial notice required by Subsection R590-206-5(1)(a), the annual notice required by Subsection R590-206-6(1), and the revised notice required by Section 9 so that the customer can retain them or obtain~~

them later in writing or, if the customer agrees, electronically.

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

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

_____ (ii) Mails a printed copy of the notice to the last known address of the customer; or

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

_____ (6) 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.

_____ (7) Joint relationships. If two 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 Subsections R590-206-5(1), 6(1) and 9(1), respectively, by providing one notice to those consumers jointly.

R590-206-12. Limitations on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties.

_____ (1)(a) Conditions for disclosure. Except as otherwise authorized in this rule, a licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party unless:

_____ (i) The licensee has provided to the consumer an initial notice as required under Section 5;

_____ (ii) The licensee has provided to the consumer an opt out notice as required in Section 8;

_____ (iii) The licensee has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

_____ (iv) The consumer does not opt out.

_____ (b) Opt out definition. Opt out means a direction by the consumer that the licensee not disclose nonpublic personal financial information about that consumer to a nonaffiliated third party, other than as permitted by Sections 15, 16 and 17.

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

_____ (i) By mail. The licensee mails the notices required in Subsection R590-206-12(1)(a) to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone number or any other reasonable means within 30 days from the date the licensee mailed the notices.

_____ (ii) By electronic means. A customer opens an on-line account with a licensee and agrees to receive the notices required in Subsection R590-206-12(1)(a) electronically, and the licensee allows the customer to opt out by any reasonable means within 30 days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

_____ (iii) Isolated transaction with consumer. For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt out if the licensee provides the notices required in Subsection R590-206-12(1)(a) at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

_____ (2) Application of opt out to all consumers and all nonpublic personal financial information.

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

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

_____ (3) Partial opt out. A licensee may allow a consumer to select certain nonpublic personal financial information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

R590-206-13. Limits on Redisclosure and Reuse of Nonpublic Personal Financial Information.

_____ (1)(a) Information the licensee receives under an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception in Sections 16 and 17 of this rule, the licensee's disclosure and use of that information is limited as follows:

_____ (i) The licensee may disclose the information to the affiliates of the financial institution from which the licensee received the information;

_____ (ii) The licensee may disclose the information to its affiliates, but the licensee's affiliates may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and

_____ (iii) The licensee may disclose and use the information pursuant to an exception in Sections 16 and 17 of this rule, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

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

_____ (2)(a) Information a licensee receives outside of an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in Sections 16 and 17 of this rule, the licensee may disclose the information only:

_____ (i) To the affiliates of the financial institution from which the licensee received the information;

_____ (ii) To its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and

_____ (iii) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which the licensee received the information.

_____ (b) Example. If a licensee obtains a customer list from a nonaffiliated financial institution outside of the exceptions in Sections 16 and 17:

_____ (i) The licensee may use that list for its own purposes; and

_____ (ii) The licensee may disclose that list to another nonaffiliated third party only if the financial institution from which the licensee purchased the list could have lawfully disclosed the list to that third party. That is, the licensee may disclose the list in accordance with the privacy policy of the financial institution from which the licensee received the list, as limited by the opt out direction of each consumer whose nonpublic personal financial information the licensee intends to disclose, and the licensee may disclose the list in accordance with an exception in Sections 16 and 17, such as to the licensee's attorneys or accountants.

_____ (3) Information a licensee discloses under an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in Sections 16 and 17 of this rule, the third party may disclose and use that information only as follows:

_____ (a) The third party may disclose the information to the licensee's affiliates;

_____ (b) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

_____ (c) The third party may disclose and use the information pursuant to an exception in Sections 16 and 17 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

_____ (4) Information a licensee discloses outside of an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party other than under an exception in Sections 16 and 17 of this rule, the third party may disclose the information only:

_____ (a) To the licensee's affiliates;

_____ (b) To the third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

_____ (c) To any other person, if the disclosure would be lawful if the licensee made it directly to that person.

R590-206-14. Limits on Sharing Account Number Information for Marketing Purposes.

_____ (1) General prohibition on disclosure of account numbers. A licensee shall not, directly or through an affiliate, disclose, other than to a consumer reporting agency, a policy number or similar form of access number or access code for a consumer's policy or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.

_____ (2) Exceptions. R590-206-14(1) does not apply if a licensee discloses a policy number or similar form of access number or access code:

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

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

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

_____ (3) Examples.

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

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

R590-206-15. Exception to Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing.

_____ (1) General rule.

_____ (a) The opt out requirements in Sections 8 and 12 do not apply when a licensee provides nonpublic personal financial information to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee:

_____ (i) Provides the initial notice in accordance with Section 5; and

_____ (ii) Enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in Sections 16 and 17 in the ordinary course of business to carry out those purposes.

_____ (b) Example. If a licensee discloses nonpublic personal financial information under this section to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with that institution meets the requirements of Subsection R590-206-15(1)(a)(ii) 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 16 and 17 in the ordinary course of business to carry out that joint marketing.

_____ (2) Service may include joint marketing. The services a nonaffiliated third party performs for a licensee under Subsection

R590-206-15(1) 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.

_____ (3) 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.

R590-206-16. Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions.

_____ (1) Exceptions for processing transactions at consumer's request. The requirements for initial notice in Subsection R590-206-5(1)(b), the opt out in Sections 8 and 12, and service providers and joint marketing provisions in Section 15 do not apply if the licensee discloses nonpublic personal financial information as necessary to effect, administer or enforce a transaction that a consumer requests or authorizes, or in connection with:

- _____ (a) Servicing or processing an insurance product or service that a consumer requests or authorizes;
- _____ (b) 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;
- _____ (c) A proposed or actual securitization, secondary market sale (including sales of servicing rights) or similar transaction related to a transaction of the consumer; or
- _____ (d) Reinsurance or stop loss or excess loss insurance.

_____ (2) "Necessary to effect, administer or enforce a transaction" means that the disclosure is:

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

R590-206-17. Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information.

_____ (1) Exceptions to opt out requirements. The requirements for initial notice to consumers in Subsection R590-206-5(1)(b), the opt out in Sections 8 and 12, and service providers and joint marketing in Section 15 do not apply when a licensee discloses nonpublic personal financial information:

- _____ (a) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;
- _____ (b)(i) To protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product or transaction;
- _____ (ii) To protect against or prevent actual or potential fraud or unauthorized transactions;
- _____ (iii) For required institutional risk control or for resolving consumer disputes or inquiries;
- _____ (iv) To persons holding a legal or beneficial interest relating to the consumer; or
- _____ (v) To persons acting in a fiduciary or representative capacity on behalf of the consumer;
- _____ (c) 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;
- _____ (d) 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 Record keeping, a state insurance authority, and the Federal Trade Commission), self regulatory organizations or for an investigation on a matter related to public safety;
- _____ (e)(i) To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); or

- _____ (ii) From a consumer report reported by a consumer reporting agency;
- _____ (f) 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;
- _____ (g)(i) To comply with federal, state or local laws, rules and other applicable legal requirements;
- _____ (ii) To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local authorities;
- _____ (iii) 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
- _____ (h) For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan or a workers' compensation policy.
- _____ (2) A licensed or admitted insurer that is the subject of a formal delinquency proceeding under Sections 31A-27a-207, 31A-27a-301 and 31A-27a-401, is not subject to the requirements of R590-206-5(1)(b), the opt out in Sections (8) and (12), and other notice requirements of this rule.
- _____ (3) 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 Subsection R590-206-8(6).

R590-206-18. When Authorization Required for Disclosure of Nonpublic Personal Health Information.

- _____ (1) General Rule. A licensee shall not disclose nonpublic personal health information about a consumer or customer unless an authorization is obtained from the consumer or customer whose nonpublic personal health information is sought to be disclosed.
- _____ (2) Exceptions. Nothing in this section shall prohibit, restrict or require an authorization for the disclosure of nonpublic personal health information by a licensee for the performance of the following insurance functions by or on behalf of the licensee: claims administration; claims adjustment and management; detection, investigation or reporting of actual or potential fraud, misrepresentation or criminal activity; underwriting; policy placement or issuance; loss control; ratemaking and guaranty fund functions; reinsurance and excess loss insurance; risk management; case management; disease management; quality assurance; quality improvement; performance evaluation; provider credentialing verification; utilization review; peer review activities; actuarial, scientific, medical or public policy research; grievance procedures; internal administration of compliance, managerial, and information systems; policyholder service functions; auditing; reporting; database security; administration of consumer disputes and inquiries; external accreditation standards; the replacement of a group benefit plan or workers compensation policy or program; activities in connection with a sale, merger, transfer or exchange of all or part of a business or operating unit; any activity that permits disclosure without authorization pursuant to the federal Health Insurance Portability and Accountability Act privacy rules promulgated by the U.S. Department of Health and Human Services; disclosure that is required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out a transaction or providing a product or service that a consumer requests or authorizes; and any activity otherwise permitted by law, required pursuant to governmental reporting authority, or to comply with legal process. Additional insurance functions may be added with the approval of the commissioner to the extent they are necessary for appropriate performance of insurance functions and are fair and reasonable to the interest of consumers.

R590-206-19. Authorizations.

- _____ (1) A valid authorization to disclose nonpublic personal health information pursuant to Sections 18 through 22 shall be in written or electronic form and shall contain all of the following:
 - _____ (a) The identity of the consumer or customer who is the subject of the nonpublic personal health information;
 - _____ (b) A general description of the types of nonpublic personal health information to be disclosed;
 - _____ (c) General descriptions of the parties to whom the licensee discloses nonpublic personal health information, the purpose of the disclosure and how the information will be used;
 - _____ (d) The signature of the consumer or customer who is the subject of the nonpublic personal health information or the individual who is legally empowered to grant authority and the date signed; and
 - _____ (e) Notice of the length of time for which the authorization is valid and that the consumer or customer may revoke the authorization at any time and the procedure for making a revocation.
- _____ (2) An authorization for the purposes of Sections 18 through 22 shall specify a length of time for which the authorization shall remain valid, which in no event shall be for more than 24 months.
- _____ (3) A consumer or customer who is the subject of nonpublic personal health information may revoke an authorization provided pursuant to Sections 18 through 22 at any time, subject to the rights of an individual who acted in reliance on the authorization prior to notice of the revocation.
- _____ (4) A licensee shall retain the authorization or a copy thereof in the record of the individual who is the subject of nonpublic personal health information.

R590-206-20. Authorization Request Delivery.

_____ A request for authorization and an authorization form may be delivered to a consumer or a customer as part of an opt out notice pursuant to Section 11, provided that the request and the authorization form are clear and conspicuous. An authorization form is not required to be delivered to the consumer or customer or included in any other notices unless the licensee intends to disclose protected health information pursuant to Subsection R590-206-18(1).

R590-206-21. Relationship to Federal Rules.

— Irrespective of whether a licensee is subject to the federal Health Insurance Portability and Accountability Act privacy rule as promulgated by the U.S. Department of Health and Human Services, as published in the Federal Register November 3, 1999 (64 Fed. Reg. 59918-60065), the "federal rule", if a licensee complies with all requirements of the federal rule except for its effective date provision, the licensee shall not be subject to Sections 18 through 22.

R590-206-22. Relationship to State Laws.

— Nothing in Sections 18 through 22 shall preempt or supersede existing state law related to medical records, health or insurance information privacy.

R590-206-23. Protection of Fair Credit Reporting Act.

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

R590-206-24. Nondiscrimination.

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

— (2) A licensee shall not unfairly discriminate against a consumer or customer because that consumer or customer has not granted authorization for the disclosure of his or her nonpublic personal health information pursuant to the provisions of this rule.

R590-206-25. Violation.

— Pursuant to Section 31A-23a-402, the commissioner finds that the failure to observe the requirements of this rule is misleading to the public and individuals transacting business with licensees of the department or any person or individual who should be licensed by the department. The failure to observe the requirements of this rule is also an unreasonable restraint on competition.

— Violation of any provisions of the rule will result in appropriate enforcement action by the department which may include forfeiture, penalties, and revocation of license.

R590-206-26. Severability.

— If any provision of this rule or its application to any person or shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.]

R590-206-1. Authority.

— This rule is promulgated by the commissioner pursuant to Sections 31A-2-201 and 31A-23a-417, and the Gramm-Leach-Bliley Act, 15 U.S.C. Sec. 6801 through 6820.

R590-206-2. Purpose and Scope.

— (1) The purpose of this rule is to:

— (a) govern a licensee's treatment of an individual's nonpublic personal health information and nonpublic personal financial information;

— (b) require a licensee to provide notice to an individual about the licensee's privacy policies and practices;

— (c) describe the conditions under which a licensee may disclose an individual's nonpublic personal health information and nonpublic personal financial information to an affiliate or nonaffiliated third party; and

— (d) provide means by which an individual may prevent a licensee from disclosing the individual's nonpublic information.

— (2) This rule applies to a licensee who obtains nonpublic personal financial information or nonpublic personal health information regarding a customer or consumer of a product or service primarily for a personal, family, or household purpose.

— (3) This rule does not apply to:

— (a) a licensee with information about a person who obtains a product or service for a business, commercial, or agricultural purpose;

— (b) a person selling or providing:

— (i) a manufacturer warranty;

— (ii) a manufacturer service contract paid for with consideration, in addition to the consideration paid for the product; or

— (iii) a service contract for the repair or maintenance of goods, including motor vehicles, that is paid for with consideration in addition to consideration paid for the product;

— (c) a financial institution;

— (d) a securities broker or dealer; or

— (e) a credit union that engages in an activity or function that does not require a license from the commissioner.

R590-206-3. Definitions.

— Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:

— (1)(a) "Clear and conspicuous" means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

— (b) "Clear and conspicuous" includes:

- (i) presenting the information in the notice in clear, concise sentences, paragraphs, and sections;
- (ii) using short explanatory sentences or bulleted lists whenever possible;
- (iii) using definite, concrete, everyday words and active voice whenever possible;
- (iv) avoiding multiple negatives;
- (v) avoiding legal and highly technical business terminology;
- (vi) avoiding explanations that are imprecise and readily subject to different interpretations;
- (vii) using a plain-language heading to call attention to the notice;
- (viii) using a typeface and type size that are easy to read;
- (ix) providing wide margins and ample line spacing;
- (x) using boldface or italics for key words; and
- (xi) using distinctive type size, style, and graphic devices, such as shading or sidebars.
- (c) "Clear and conspicuous" also includes, if a licensee provides a notice on a web page, the following:
 - (i) calling attention to the nature and significance of the information in the notice by using text or visual cues to encourage scrolling down the web page, if necessary, to view the entire notice and ensure that other elements on the web page, such as text, graphics, hyperlinks, or sound, do not distract attention from the notice;
 - (ii) placing the notice on a screen that consumers frequently access, such as a page where transactions are conducted; or
 - (iii) placing a link that connects directly to the notice and is labeled appropriately to convey the importance, nature, and relevance of the notice.
- (2) "Collect" means to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol, or other identifying particular assigned to the individual, irrespective of the source of the underlying information.
- (3) "Company" means a corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship, or similar organization.
- (4)(a) "Consumer" means an individual who seeks to obtain, obtains, or has obtained an insurance product or service from a licensee that is used primarily for a personal, family, or household purpose, and about whom the licensee has nonpublic personal information, or that individual's legal representative.
 - (b) "Consumer" includes:
 - (i) an individual who provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment, or economic advisory services relating to an insurance product or service;
 - (ii) an applicant for insurance before the start of insurance coverage;
 - (iii) an individual who is a beneficiary of a life insurance policy underwritten by the licensee;
 - (iv) an individual who is a claimant under an insurance policy issued by a licensee;
 - (v) an individual who is an insured or an annuitant under an insurance policy or an annuity; and
 - (vi) an individual who is a mortgagor under a mortgage insurance policy.
 - (c) "Consumer" does not include:
 - (i) an individual who is a consumer of another financial institution, solely because the licensee acts as agent for, or provides processing or other services to, that financial institution;
 - (ii) a participant or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer, or fiduciary;
 - (iii) a person covered under a group or blanket insurance policy or group annuity contract;
 - (iv) a claimant covered by a workers' compensation plan;
 - (v) an individual, solely because the individual is a beneficiary of a trust for which the licensee is a trustee; or
 - (vi) an individual, solely because the individual designates the licensee as trustee for a trust.
- (5) "Consumer reporting agency" has the same meaning as in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f).
- (6) "Control," for purposes of this rule, means:
 - (a) ownership, control, or power to vote 25% or more of the outstanding shares of a class of voting security of a company, directly or indirectly, or acting through one or more other persons;
 - (b) control over the election of a majority of the directors, trustees or general partners, or individuals exercising similar functions, of a company; or
 - (c) the power to exercise, directly or indirectly, a controlling influence over the management or policies of a company, as the commissioner determines.
- (7) "Customer" means a consumer who has a customer relationship with a licensee.
- (8)(a) "Customer relationship" means a continuing relationship between a consumer and a licensee under which the licensee provides one or more insurance products or services to the consumer that are used primarily for a personal, family, or household purpose.
 - (b) "Customer relationship" includes a consumer having a continuing relationship with a licensee if:
 - (i) the consumer is a current policyholder of an insurance product issued by or through the licensee; or
 - (ii) the consumer obtains financial, investment, or economic advisory services relating to an insurance product or service from the licensee for a fee.
 - (c) "Customer relationship" does not exist if:
 - (i) a consumer applies for insurance but does not purchase the insurance;
 - (ii) a licensee sells a consumer airline travel insurance in an isolated transaction;

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

(iv) a consumer is a beneficiary or a claimant under a policy and submitted a claim under the policy choosing a settlement option involving an ongoing relationship with the licensee;

(v) a consumer is a beneficiary or a claimant under a policy and submitted a claim under the policy choosing a lump sum settlement option;

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

(vii) an individual is an insured or an annuitant under an insurance policy or annuity but is not the policyholder or owner of the insurance policy or annuity; or

(viii) mail sent to an individual's last known address according to the licensee's records is returned by the postal authorities as undeliverable, and subsequent attempts by the licensee to obtain a current valid address for the individual are unsuccessful.

(9)(a) "Financial institution" means an institution that engages in activities that are financial in nature or incidental to financial activities described in Section 4(k) of the Bank Holding Company Act of 1956, 12 U.S.C. 1843(k).

(b) "Financial institution" does not mean:

(i) a person or entity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act, 7 U.S.C. 1 et seq.;

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

(iii) an institution chartered by Congress specifically to engage in securitizations, secondary market sales, including sales of servicing rights, or a similar transaction related to a transaction of a consumer, if the institution does not sell or transfer nonpublic personal information to a nonaffiliated third party.

(10)(a) "Financial product or service" means a product or service that a financial holding company offers by engaging in an activity that is financial in nature or incidental to a financial activity under Section 4(k) of the Bank Holding Company Act of 1956, 12 U.S.C. 1843(k).

(b) "Financial product or service" includes a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

(11) "Health care," for purposes of this rule, means:

(a) any preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, service, procedure, test, or counseling that:

(i) relates to the physical, mental, or behavioral condition of an individual; or

(ii) affects the structure or function of the human body or any part of the human body, including banking of blood, sperm, organs, or any other tissue; or

(b) prescribing, dispensing, or furnishing to an individual:

(i) drugs or biologicals;

(ii) medical devices; or

(iii) health care equipment and supplies.

(12) "Health care provider," for purposes of this rule, means:

(a) a physician or other health care practitioner who is licensed, accredited, or certified to perform specified health services consistent with state law; or

(b) a health care facility.

(13) "Health information" means information or data, except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or a consumer, that relates to:

(a) the past, present, or future physical, mental, or behavioral health or condition of an individual;

(b) the provision of health care to an individual; or

(c) payment for the provision of health care to an individual.

(14)(a) "Insurance product or service" means a product or service offered by a licensee.

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

(15) "Joint agreement" means a written contract where a licensee and one or more financial institutions jointly offer, endorse, or sponsor a financial product or service.

(16)(a) "Licensee" means a licensed insurer, producer, or other person licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered, in this state.

(b) A licensee is not subject to the notice and opt out requirements for nonpublic personal financial information in Sections R590-206-4 through R590-206-17 if the licensee is an employee, agent, or other representative of another licensee, the principal, and:

(i) the principal complies with and provides the notice required by this rule; and

(ii) the licensee does not disclose nonpublic personal information to a person other than the principal or its affiliates in a manner permitted by this rule.

(c)(i) Subject to Subsection R590-206-3(16)(c)(ii), "licensee" includes an unauthorized insurer that accepts business placed through a licensed surplus lines broker in this state, but only in regard to the surplus lines placements placed pursuant to Section 31A-15-103.

(ii) A surplus lines broker or surplus lines insurer is compliant with the notice and opt out requirements for nonpublic personal financial information under Sections R590-206-4 through R590-206-17 provided:

(A) the broker or insurer does not disclose nonpublic personal financial information of a consumer or a customer to a nonaffiliated third party for any purpose, including joint servicing or marketing under Section R590-206-15, except as permitted by Section R590-206-16 or R590-206-17; and

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

PRIVACY NOTICE

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

(17)(a) "Nonaffiliated third party" means a company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities or insurance company investment activities under the Bank Holding Company Act, 12 U.S.C. 1843(k)(4)(H) and (I).

(b) "Nonaffiliated third party" does not include:

(i) an affiliate; or

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

(18) "Nonpublic personal information" means nonpublic personal financial information and nonpublic personal health information.

(19)(a) "Nonpublic personal financial information" means:

(i) personally identifiable financial information; and

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

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

(c) "Nonpublic personal financial information" does not include:

(i) health information;

(ii) publicly available information;

(iii) a list, description, or other grouping of consumer information;

(iv) publicly available information pertaining to a consumer that is derived without using personally identifiable financial information that is not publicly available; or

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

(20) "Nonpublic personal health information" means health information:

(a) that identifies an individual who is the subject of the information; or

(b) that could reasonably be used to identify an individual.

(21)(a) "Personally identifiable financial information" means any information:

(i) a consumer provides to a licensee to obtain an insurance product or service;

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

(iii) obtained by a licensee about a consumer in connection with providing an insurance product or service to that consumer.

(b) "Personally identifiable financial information" includes:

(i) information a consumer provides to a licensee on an application to obtain an insurance product or service;

(ii) account balance information and payment history;

(iii) information that an individual is or has been a customer or has obtained an insurance product or service from the licensee;

(iv) information about a consumer if it is disclosed in a manner that indicates that the individual is or has been a consumer of the licensee;

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

(vi) information the licensee collects through the internet, cookies, or an information-collecting device from a web server; and

(vii) information from a consumer report.

(c) "Personally identifiable financial information" does not include:

(i) health information;

(ii) a list of names and addresses of customers of an entity that is not a financial institution; and

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

(22)(a) "Publicly available information" means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from:

- (i) federal, state, or local government records;
- (ii) widely distributed media;
- (iii) disclosures to the public that are required to be made by federal, state, or local law;
- (iv) information that is available to the public;
- (v) information that an individual can direct to not be made available to the public, and the individual has not done so;
- (vi) government real estate records and security interest filings; and
- (vii) widely distributed media including information from:
 - (A) a telephone book;
 - (B) television;
 - (C) a radio program;
 - (D) a newspaper; or
 - (E) a website that is available to the general public.

R590-206-4. Rules of Construction.

(1)(a) The examples in this rule, the sample clauses in Appendix A, and the Federal Model Privacy Form in Appendix B are not exclusive.

(b) Appendix A, "Privacy of Consumer Financial and Health Information Regulation," and Appendix B, "Privacy of Consumer Financial and Health Information Regulation," adopted April 11, 2017, by the NAIC shall be used to comply with this rule, and are available on the department's website, <https://insurance.utah.gov>.

(c) Compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this rule.

(d) A licensee domiciled in this state that complies with this rule in a state that has not enacted laws or rules that meet the requirements of Title V of the Gramm-Leach-Bliley Act (PL 102-106) is compliant with Title V of the Gramm-Leach-Bliley Act in the other state.

(2)(a) A licensee may rely on use of the Federal Privacy Form in Appendix B, consistent with the form's instructions, as a safe harbor of compliance with the privacy notice content requirements of this rule.

(b) A licensee may continue to use a privacy notice, including a notice that contains the examples in this rule, provided that the notice accurately describes the licensee's privacy practices and complies with this rule.

(3) A licensee may not rely on a privacy notice with the sample clauses in Appendix A as a safe harbor of compliance with the notice content requirements of this rule.

R590-206-5. Required Initial Privacy Notice to Consumers.

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

(a) a customer, no later than when the licensee establishes a customer relationship, except as provided in Subsection (5); and

(b) a consumer, before a 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 R590-206-16 and R590-206-17.

(2) A licensee is not required to provide an initial notice to a consumer if:

(a) the licensee does not disclose any nonpublic personal financial information about the consumer to a nonaffiliated third party, other than as authorized by Sections R590-206-16 and R590-206-17, and the licensee does not have a customer relationship with the consumer; or

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

(3) A licensee establishes a customer relationship:

(a) at the time the licensee and the consumer enter into a continuing relationship;

(b) when the consumer becomes a policyholder following delivery of 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

(c) when the consumer agrees to obtain financial, economic, or investment advisory services relating to an insurance product or service for a fee.

(4)(a) When an existing customer obtains a new insurance product or service from a licensee that is used primarily for personal, family, or household purposes, the licensee satisfies the initial notice requirements if the licensee provides a revised policy notice, under Section R590-206-9, that covers the customer's new insurance product or service.

(b) If the initial, revised, or annual notice most recently provided to the customer was accurate with respect to the new insurance product or service, a new privacy notice is not required.

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

(a) establishing the customer relationship is not at the customer's election, such as if a licensee acquires or is assigned a customer's policy from another person and the customer does not have a choice about the acquisition or assignment; or

(b) providing notice no later than when the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice later.

(6)(a) When a licensee is required to deliver an initial privacy notice by this section, the licensee shall deliver it according to Section R590-206-11.

(b) If a licensee uses a short-form initial notice for a consumer according to Subsection R590-206-7(4), the licensee may deliver its privacy notice according to Subsection R590-206-7(4)(c).

R590-206-6. Required Annual Privacy Notice to Consumers.

(1) A licensee shall provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than once in a 12 consecutive month period during the continuation of the customer relationship.

(2) A licensee that provides nonpublic personal information to a nonaffiliated third party under Sections R590-206-15 through R590-206-17 and has not changed its policies and practices regarding its disclosure of nonpublic personal information from the policies and practices disclosed in the most recent notice sent to a consumer under Section R590-206-5 or R590-206-6 is not required to provide an annual disclosure until the licensee fails to comply with this Subsection (2).

(3) A licensee is not required to provide an annual notice to a former customer.

(4) When delivery of an annual privacy notice is required, a licensee shall deliver it according to Section R590-206-11.

R590-206-7. Information to be Included in a Privacy Notice.

(1) An initial, annual, or revised privacy notice that a licensee provides under Section R590-206-5, R590-206-6, or R590-206-9 shall include the following:

(a) the categories of nonpublic personal financial information that the licensee collects;

(b) the categories of nonpublic personal financial information that the licensee discloses;

(c) 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 Section R590-206-16 or R590-206-17;

(d) the categories of nonpublic personal financial information about 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 former customers, other than those parties to whom the licensee discloses information under Section R590-206-16 or R590-206-17;

(e) if a licensee discloses nonpublic personal financial information to a nonaffiliated third party under Section R590-206-14, and no other exception in Section R590-206-16 or R590-206-17 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 a contract;

(f) an explanation of the consumer's right under Subsection R590-206-12(1) to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods the consumer may exercise at that time;

(g) a disclosure that the licensee makes under Section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(d)(2)(A)(iii);

(h) the licensee's policies and practices regarding protecting the confidentiality and security of nonpublic personal information;

(i) any disclosure that the licensee makes under Subsection (2); and

(j) any other information the licensee chooses to provide that applies to the licensee and to the consumer to whom the licensee sends its privacy notice.

(2)(a) If a licensee discloses nonpublic personal financial information under Section R590-206-16 or R590-206-17, the licensee is not required to list those exceptions in the initial or annual privacy notices required by Sections R590-206-5 and R590-206-6.

(b) When describing the categories of parties to whom disclosure is made, a licensee shall state that it makes disclosures to other affiliated or nonaffiliated third parties, as permitted by law.

(c) A licensee shall categorize the nonpublic personal financial information it collects according to the source of the information, as follows:

(i) information from the consumer;

(ii) information about the consumer's transactions with the licensee or its affiliates;

(iii) information about the consumer's transactions with a nonaffiliated third party; and

(iv) information from a consumer reporting agency.

(d)(i) A licensee shall categorize nonpublic personal financial information it discloses according to the source of the information, as described in Subsection (2)(c), and provide examples to illustrate the types of information in each category, including:

(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.

(ii) The information that a licensee discloses is not adequately categorized if the licensee uses only general terms, such as transaction information about the consumer.

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

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

(ii) Types of businesses may be described in general terms only if a licensee uses illustrative examples of significant lines of business.

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

(f) If a licensee discloses nonpublic personal financial information under the exception in Section R590-206-14 to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee

shall:

(i) list the categories of nonpublic personal financial information it discloses, using the same categories and examples the licensee used under Subsection (1)(b); and

(ii) state whether the third party is:

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

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

(g) If a licensee does not disclose, and does not reserve the right to disclose, nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under Section R590-206-16 or R590-206-17, the licensee may state that fact, in addition to the information under Subsections (1)(a), (1)(h), (1)(i), and (2).

(h)(i) A licensee shall describe its policies and practices regarding protecting the confidentiality and security of nonpublic personal financial information as follows:

(A) describe, in general terms, who is authorized to have access to the information; and

(B) state whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy.

(ii) A licensee is not required to describe technical information about the safeguards it uses.

(3)(a) A licensee satisfies the initial notice requirements in Subsections R590-206-5(1)(b) and R590-206-8(3) for a consumer who is not a customer by providing a short-form initial notice at the time the licensee delivers an opt out notice under Section R590-206-8.

(b) A short-form notice shall:

(i) be clear and conspicuous;

(ii) state that the licensee's privacy notice is available upon request; and

(iii) explain where the consumer may obtain the notice.

(c)(i) A licensee shall deliver its short-form initial notice according to Section R590-206-11.

(ii) A licensee is not required to deliver its privacy notice with its short-form initial notice.

(iii) A licensee may provide the consumer a reasonable means to obtain its privacy notice.

(iv) If a consumer requests the privacy notice, the licensee shall deliver it according to Section R590-206-10.

(4) A licensee's notice may include:

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

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

(5) Sample clauses illustrating notice content required by this section are included in Appendix A and Appendix B.

R590-206-8. Form of Opt Out Notice to Consumers and Opt Out Methods.

(1)(a) If a licensee is required to provide an opt out notice under Subsection R590-206-12(1), it shall provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out and that states:

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

(ii) that the consumer has the right to opt out of that disclosure; and

(iii) that the consumer may exercise the right to opt out.

(b) A licensee provides an adequate opt out notice of the disclosure of nonpublic personal financial information to a nonaffiliated third party if the licensee:

(i) identifies each category of nonpublic personal financial information that it discloses or reserves the right to disclose, and each category of nonaffiliated third parties to which the licensee discloses the information, as described in Subsections R590-206-7(1)(b) and R590-206-7(1)(c), and states that the consumer can opt out of the disclosure of that information; and

(ii) identifies the insurance product or service that the consumer obtains from the licensee, either singly or jointly, to which the opt out direction applies.

(c) 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 with the opt out notice;

(iii) provides an electronic means to opt out, such as a form that can be sent via email or a process on the licensee's website, if the consumer agrees to the electronic delivery of information; or

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

(d) 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 a letter to exercise that opt out right; or

(ii) the only means of opting out is using a check-off box that the licensee provided with an initial notice but did not include with any subsequent notice.

(e) A licensee may require each consumer to opt out through a specific means if that means is reasonable for the consumer.

(2) 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 R590-206-5.

(3) If a licensee provides an opt out notice later than required for the initial notice under Section R590-206-5, the licensee

shall include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

(4)(a) If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may provide a single opt out notice.

(b) The opt out notice shall explain how the licensee will treat an opt out direction by a joint consumer under this Subsection (4).

(c) Any joint consumer may exercise the right to opt out.

(d) A licensee may:

(i) treat an opt out direction by a joint consumer as applying to all joint consumers; or

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

(e) 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 joint consumers.

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

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

(6) A consumer may exercise the right to opt out at any time.

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

(b) When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal financial information the licensee collected during or related to that relationship.

(c) If the individual 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.

(8) When a licensee is required to deliver an opt out notice by this section, the licensee shall deliver it according to Section R590-206-10.

R590-206-9. Revised Privacy Notices.

(1) Except as otherwise permitted, a licensee may not, directly or through an affiliate, disclose nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice under Section R590-206-5, unless:

(a) the licensee provides the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;

(b) the licensee provides the consumer a new opt out notice;

(c) the licensee gives the consumer a reasonable opportunity to opt out of the disclosure before the licensee discloses the information to the nonaffiliated third party; and

(d) the consumer does not opt out.

(2)(a) Except as otherwise permitted by Sections R590-206-15 through R590-206-17, a licensee shall provide a revised notice before it discloses:

(i) a new category of nonpublic personal financial information to any nonaffiliated third party;

(ii) nonpublic personal financial information to a new category of nonaffiliated third party; or

(iii) 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.

(b) 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.

(3) When a licensee is required to deliver a revised privacy notice, the licensee shall deliver it according to Section R590-206-11.

R590-206-10. Privacy Notices to Group Policyholders.

Unless a licensee is providing a privacy notice directly to a covered individual described in Subsection R590-206-3(4), a licensee shall provide initial, annual, and revised notices to the plan sponsor, group, or blanket insurance policyholder or group annuity contract holder, or workers' compensation policyholder, in the manner described in Sections R590-206-5 through R590-206-9 of this rule, describing the licensee's privacy practice with respect to nonpublic personal information about an individual covered under the policy, contract, or plan.

R590-206-11. Delivery.

(1) A licensee shall provide a notice under this rule to ensure that each consumer will receive actual notice in writing or, if the consumer agrees, electronically.

(2)(a) A consumer will receive actual notice if the licensee:

(i) hand delivers a printed copy of the notice to the consumer;

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

(iii) for a consumer who conducts transactions electronically, posts the notice on the licensee's website and requires the consumer to acknowledge receipt of the notice as a necessary step to obtain a particular insurance product or service; or

(iv) for an isolated transaction with a consumer, posts the notice and requires the consumer to acknowledge receipt of the

notice as a necessary step to obtain the particular insurance product or service.

(b) A consumer does not receive actual notice if the licensee:

(i) posts a sign in its office or generally publishes an advertisement of its privacy policies and practices; or

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

(3) A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if:

(a) the customer uses the licensee's website to access an insurance product or service electronically and agrees to receive notices at the website and the licensee posts its current privacy notice continuously, in a clear and conspicuous manner, on the website; or

(b) the customer requests 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.

(4) A licensee may not provide any notice required by this rule solely by orally explaining the notice, either in person or over the telephone.

(5) A licensee shall provide the initial notice required by Subsection R590-206-5(1)(a), the annual notice required by Subsection R590-206-6(1), and the revised notice required by Subsection R590-206-9(1) upon request, in writing or, if the customer agrees, electronically.

(6)(a) A licensee may provide a joint notice from the licensee and one or more of its affiliates or other financial institutions identified in the notice, if the notice is accurate.

(b) A licensee may provide a notice on behalf of another financial institution.

(7) If two 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 Subsections R590-206-5(1), R590-206-6(1), and R590-206-9(1) by providing one notice to the consumers jointly.

R590-206-12. Limitations on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties.

(1)(a) Except as otherwise provided, a licensee may not, directly or through any affiliate, disclose nonpublic personal financial information about a consumer to a nonaffiliated third party unless:

(i) the licensee provides the consumer an initial notice required under Section R590-206-5;

(ii) the licensee provides the consumer an opt out notice required under Section R590-206-8;

(iii) the licensee provides the consumer a reasonable opportunity to opt out of the disclosure before it discloses the information to the nonaffiliated third party; and

(iv) the consumer does not opt out.

(b) Opt out occurs when a consumer directs the licensee to not disclose the consumer's nonpublic personal financial information to a nonaffiliated third party, except as permitted under Sections R590-206-15 through R590-206-17.

(2)(a) This Section R590-206-12 applies regardless of whether the licensee and the consumer have a customer relationship.

(b) A licensee may not, directly or through any affiliate, disclose nonpublic personal financial information about a consumer regardless of whether the licensee collected it before or after receiving the direction to opt out.

(3) A consumer may select certain nonpublic personal financial information or certain nonaffiliated third parties that the consumer wishes to opt out.

R590-206-13. Limits on Reusing Nonpublic Personal Financial Information.

(1)(a) If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception in Section R590-206-16 or R590-206-17, disclosure and use of that information is limited as follows:

(i) a licensee may disclose the information to an affiliate of the financial institution from which the licensee received the information;

(ii) a licensee may disclose the information to its affiliate, but the affiliate may disclose and use the information only to the extent that the licensee may disclose and use the information; and

(iii) a licensee may disclose and use the information in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

(b) If a licensee receives information from a nonaffiliated financial institution for claims settlement purposes, the licensee may disclose the information for fraud prevention, or in response to a properly authorized subpoena.

(c) A licensee may not disclose information to a third party for marketing purposes or use the information for its own marketing purposes.

(2)(a) If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in Section R590-206-16 or R590-206-17, the licensee may disclose the information:

(i) to an affiliate of the financial institution from which the licensee received the information;

(ii) to its affiliate, but its affiliate may disclose the information only to the extent the licensee may disclose the information; and

(iii) to any other person, if the disclosure is lawful if made directly to that person by the financial institution from which the licensee received the information.

(b) If a licensee obtains a customer list from a nonaffiliated financial institution outside of the exceptions in Sections R590-206-16 and R590-206-17, a licensee may:

(i) use the list for its own purposes; and

(ii) disclose the list to a nonaffiliated third party if the financial institution from which the licensee purchased the list could have lawfully disclosed the list to that third party.

(3) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in Section R590-206-16 or R590-206-17, the third party may disclose and use the information as follows:

(a) to an affiliate of the licensee;

(b) to its affiliate, but its affiliate may disclose and use the information only to the extent that the third party may disclose and use the information; and

(c) in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(4) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party other than under an exception in Section R590-206-16 or R590-206-17, the third party may disclose the information:

(a) to an affiliate of the licensee;

(b) to its affiliate, but its affiliate may disclose the information only to the extent the third party may disclose the information; and

(c) to any other person, if the disclosure would be lawful if the licensee made it directly to that person.

R590-206-14. Limits on Sharing Account Number Information for Marketing Purposes.

(1) A licensee may not, directly or through an affiliate, disclose a consumer's policy number or similar access number or access code to a nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail.

(2) Subsection (1) does not apply if a licensee discloses a policy number or similar access number or access code to:

(a) a service provider to perform marketing for a licensee's product or service, if the service provider is not authorized to directly initiate charges to the account;

(b) a producer to perform marketing for a licensee's product or service; or

(c) a participant in an affinity or similar program if the participant in the program is identified to the customer when the customer enters into the program.

R590-206-15. Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for a Service Provider and Joint Marketing.

(1)(a) The opt out requirements under Sections R590-206-8 and R590-206-12 do not apply when a licensee provides nonpublic personal financial information to a nonaffiliated third party to perform a service for the licensee or a function on the licensee's behalf, if the licensee:

(i) provides the initial notice under Section R590-206-5; and

(ii) enters into a contractual agreement with a third party that prohibits the third party from disclosing or using the information other than to carry out the purpose for which the licensee disclosed the information, including use under an exception in Section R590-206-16 or R590-206-17.

(b) If a licensee discloses nonpublic personal financial information to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with the institution meets the requirements of Subsection (1)(a)(ii) if it prohibits the institution from disclosing or using the nonpublic personal financial information except as necessary to carry out the joint marketing or an exception under Section R590-206-16 or R590-206-17.

(2) The service a nonaffiliated third party performs for a licensee under Subsection (1) may include marketing of the licensee's product or service or marketing of a financial product or service offered pursuant to a joint agreement between a licensee and a financial institution.

R590-206-16. Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions.

(1) The initial notice requirements under Subsection R590-206-5(1)(b), the opt out requirements under Sections R590-206-8 and R590-206-12, and the service provider and joint marketing requirements under Section R590-206-15 do not apply if a licensee discloses nonpublic personal financial information necessary to cause, administer, or enforce a transaction that a consumer requests or authorizes, or is in connection with:

(a) servicing or processing an insurance product or service requested or authorized by a consumer;

(b) maintaining or servicing a consumer's account with a licensee or with another entity as part of a private label credit card program or other extension of credit;

(c) a proposed or actual securitization, secondary market sale, including sales of servicing rights, or a similar transaction; or

(d) reinsurance or stop loss insurance.

(2) A notice that is necessary to cause, administer, or enforce a transaction includes a disclosure that:

(a) is lawful or appropriate to enforce a licensee's rights or the rights of another person engaged in carrying out the financial transaction or providing the product or service; or

(b) is a usual, appropriate, or acceptable method:

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

(ii) to administer or service benefits or claims relating to a transaction or a product or service business;

(iii) to provide a confirmation, a statement, or other record of a transaction, or information on the status or value of an

insurance product or service to the consumer or the licensee:

(iv) to accrue or recognize an incentive or bonus associated with a transaction that is provided by a licensee or any other party;

(v) to underwrite insurance at the consumer's request or the following purposes:

(A) account administration;

(B) reporting;

(C) investigating or preventing fraud or material misrepresentation;

(D) processing premium payments;

(E) processing insurance claims;

(F) administering insurance benefits, including utilization review activities; and

(G) participating in research projects; or

(vi) in connection with:

(A) authorizing, settling, billing, processing, clearing, transferring, reconciling, or collecting amounts charged, debited, or otherwise paid using a debit, credit, or other payment card, check, account number, or by other payment means;

(B) transferring receivables, accounts, or interest; or

(C) auditing debit, credit, or other payment information.

R590-206-17. Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information.

(1) The initial notice requirements under Subsection R590-206-5(1)(b), the opt out requirements under Sections R590-206-8 and R590-206-12, and the service provider and joint marketing requirements under Section R590-206-15 do not apply when a licensee discloses nonpublic personal financial information:

(a) with the consent, or at the direction of, a consumer, provided the consumer has not revoked the consent or direction;

(b) to protect:

(i) the confidentiality or security of a licensee's records pertaining to a consumer, service, product, or transaction;

(ii) against, or prevent, actual or potential fraud or an unauthorized transaction;

(iii) against institutional risk control or resolving a consumer dispute or inquiry;

(iv) a person holding a legal or beneficial interest relating to the consumer; or

(v) a person acting in a fiduciary or representative capacity on behalf of the consumer;

(c) to provide information to an insurance rate advisory organization, a guaranty fund, an agency, an agency that rates a licensee, a person that assesses the licensee's compliance with industry standards, and the licensee's attorney, accountant, and auditor;

(d) to the extent permitted under the Right to Financial Privacy Act of 1978, U.S.C. 3401 et seq., to a law enforcement agency, a state insurance department, the Federal Trade Commission, a self-regulatory organization, or for an investigation on a matter related to public safety;

(e)(i) to a consumer reporting agency under the Fair Credit Reporting Act, 15 U.S.C. 1681 et seq.; or

(ii) from a consumer report from a consumer reporting agency;

(f) 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 a consumer of the business or unit;

(g)(i) to comply with a federal, state, or local law, rule, or other legal requirement;

(ii) to comply with a civil, criminal, or regulatory investigation, or a subpoena or summons by a federal, state, or local authority; or

(iii) to respond to a judicial process or government regulatory authority having jurisdiction over a licensee for examination, compliance, or another purpose, as authorized by law; or

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

(2) An insurer subject to a formal delinquency proceeding under Section 31A-27a-207, 31A-27a-301, or 31A-27a-401 is not subject to the requirements of Subsection R590-206-5(1)(b) or the opt out requirements of this rule.

(3) A consumer may revoke consent by exercising the right to opt out of future disclosures of nonpublic personal information under Subsection R590-206-8(6).

R590-206-18. Required Authorization for Disclosure of Nonpublic Personal Health Information.

(1) A licensee may not disclose nonpublic personal health information about a consumer or customer unless an authorization is obtained from the consumer or customer before the disclosure.

(2) This Section R590-206-18 does not prohibit, restrict, or require an authorization for the disclosure of nonpublic personal health information by a licensee for the performance of the following:

(a) claims administration, adjustment, or management;

(b) detecting, investigating, or reporting fraud, misrepresentation, or criminal activity;

(c) underwriting;

(d) policy placement or issuance;

(e) loss control;

(f) ratemaking or guaranty fund functions;

(g) reinsurance or excess loss insurance;

- (h) risk management;
- (i) case management;
- (j) disease management;
- (k) quality assurance or quality improvement;
- (l) performance evaluation;
- (m) provider credentialing verification;
- (n) utilization review;
- (o) peer review activities;
- (p) actuarial, scientific, medical, or public policy research;
- (q) grievance procedures;
- (r) internal administration of compliance, managerial, or information systems;
- (s) policyholder service functions;
- (t) auditing;
- (u) reporting;
- (v) database security;
- (w) administration of consumer disputes and inquiries;
- (x) external accreditation standards;
- (y) replacement of a group benefit plan or workers compensation policy or program;
- (z) activities in connection with a sale, merger, transfer, or exchange of all or part of a business or operating unit;
- (aa) an activity that permits disclosure without authorization pursuant to the Health Insurance Portability and Accountability Act;
- (bb) disclosure that is required to enforce a licensee's rights or the rights of other persons engaged in carrying out a transaction or providing a product or service that a consumer requests or authorizes; and
- (cc) an activity permitted by law, required by a governmental reporting authority, or to comply with legal process.

R590-206-19. Authorization.

(1) A valid authorization to disclose nonpublic personal health information pursuant to Sections R590-206-18 through R590-206-22 shall be in written or electronic form and contain the following:

- (a) the identity of the consumer or customer who is the subject of the nonpublic personal health information;
- (b) a general description of the type of nonpublic personal health information to be disclosed;
- (c) a general description of the party to whom the licensee discloses nonpublic personal health information, including the purpose of the disclosure and how the information will be used;
- (d) the signature of the consumer or customer who is the subject of the nonpublic personal health information or the individual who is legally authorized to grant authority, and the date signed; and
- (e) notice of:
 - (i) the length of time the authorization is valid;
 - (ii) that the consumer or customer may revoke the authorization at any time; and
 - (iii) the procedure to revoke the authorization.

(2) An authorization under Sections R590-206-18 through R590-206-22 shall specify the length of time the authorization will remain valid, but may not be valid for more than 24 months.

(3) A consumer or customer who is the subject of nonpublic personal health information may revoke an authorization under Sections R590-206-18 through R590-206-22 at any time, subject to the rights of the individual who acted in reliance on the authorization before revocation.

(4) A licensee shall retain the authorization, or a copy thereof, in the record of the individual who is the subject of nonpublic personal health information.

R590-206-20. Authorization Request Delivery.

(1) A request for authorization and an authorization form may be delivered to a consumer or a customer as part of an opt out notice under Section R590-206-11 if the request and the authorization form are clear and conspicuous.

(2) An authorization form is not required to be delivered to a consumer or customer, or included in any other notice, unless the licensee intends to disclose protected health information under Subsection R590-206-18(1).

R590-206-21. Relationship to Federal Rules.

Except for its effective date provision, if a licensee complies with all requirements of the Health Insurance Portability and Accountability Act, a licensee is not subject to Sections R590-206-18 through R590-206-22.

R590-206-22. Relationship to State Laws.

Sections R590-206-18 through R590-206-22 do not preempt or supersede existing state law related to medical records, health, or insurance information privacy.

R590-206-23. Protection of Fair Credit Reporting Act.

Nothing in this rule may be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act, 15 U.S.C.

1681 et seq., and no interference may be drawn on the basis of the provisions of this rule regarding whether information is transaction or experience information under Section 603 of that Act.

R590-206-24. Nondiscrimination.

(1) A licensee may not discriminate against a consumer or customer because the consumer or customer opted out from the disclosure of their nonpublic personal financial information.

(2) A licensee may not discriminate against a consumer or customer because the consumer or customer did not authorize the disclosure of their nonpublic personal health information.

R590-206-25. Severability.

If any provision of this rule, Rule R590-206, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

KEY: insurance law

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