PRIVACY OF CONSUMER FINANCIAL AND HEALTH INFORMATION REGULATION

Table of Contents

ARTICLE I. GENERAL PROVISIONS

Section 1. Authority
Section 2. Purpose and Scope
Section 3. Rule of Construction
Section 4. Definitions

ARTICLE II. PRIVACY AND OPT OUT NOTICES FOR FINANCIAL INFORMATION

Section 9. Revised Privacy Notices
Section 10. Privacy Notices to Group Policyholders
Section 11. Delivery

ARTICLE III. LIMITS ON DISCLOSURES OF FINANCIAL INFORMATION

Section 12. Limitation on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties
Section 13. Limits on Redisclosure and Reuse of Nonpublic Personal Financial Information
Section 14. Limits on Sharing Account Number Information for Marketing Purposes

ARTICLE IV. EXCEPTIONS TO LIMITS ON DISCLOSURES OF FINANCIAL INFORMATION

Section 15.

© 2017 National Association of Insurance Commissioners

ARTICLE VI. ADDITIONAL PROVISIONS

Section 23. Protection of Fair Credit Reporting Act
Section 24. Nondiscrimination
Section 25. Violation
Section 26. Severability
Section 27. Effective Date
Appendix A Sample Clauses
Appendix B Federal Model Privacy Form

ARTICLE I. GENERAL PROVISIONS

Section 1. Authority

This regulation is promulgated pursuant to the authority granted by Sections [insert applicable sections] of the Insurance Law.

Section a f5C Tw - 4.295 0 Td( )Tj-0.9 (9Tw 2.262 Puo)0.5 (rp)0.8 (h)-6 (s)0.7 (ie-2.22 (t)0. (I.n)-5.8 (3.4 ([4 TD[Sc.2 (pleope1.7

© 2017 National Association of Insurance Commissioners

Section 3. Rule of Construction

The examples in this regulation, the sample clauses in Appendix A, and the Federal Model Privacy Form in Appendix B of this regulation are not exclusive. Compliance with an example, use of a sample clause, or the Federal Privacy Model Form, to the extent applicable, constitutes compliance with this regulation.

Licensees may rely on use of the Federal Privacy Form in Appendix B, consistent with the attached instructions, as a safe harbor of compliance with the privacy notice content requirements of this regulation.

Use of the Federal Model Privacy Form 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 regulation. However, while Licensees may continue to use privacy notices that contain the examples in this regulation and/or the sample clauses in Appendix A, Licensees may not rely on use of privacy notices Hp.5to12x9irnueetf prx9ira, L6 (ho)-4.1Tn855 (t)1.7 (l)-1.5 (a)-8.4 t 6 (c)1.2 (l)-88 (e)-58(s)-4-3.5 (e)8 (e)-5

© 2017 National Association of Insurance Commissioners

Drafting Note: In states where the workers' compensation self-insurance or workers' compensation state fund coverage is outside the commissioner's jurisdiction, regulators may wish to urge the applicable agency or agencies to promulgate a regulation similar to this regulation in order to ensure parity in treatment of workers' compensation plans and to ensure that all workers covered by such plans have privacy protections.

(f) (i) The individuals described in Subparagraph (e)(i) through (iii) of this paragraph are consumers of a licensee if the licensee does not meet all the conditions of Subparagraph (e).

(ii) In no event shall the individuals, solely by virtue of the status described in Subparagraph (e)(i) through (iii) above, be deemed to be customers for purposes of this regulation.

(g) 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.

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

G. (e

Q. (1) "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 Law of this state, [and health maintenance organizations holding a certificate of authority pursuant to Section [insert section] of this state's Public Health Law].

© 2017 National Association of Insurance Commissioners

(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.

W. (1) "Publicly available information" means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from:

(a) Federal, state or local government records;

(b) Widely distributed media; or

(c) Disclosures (s o)-0.6T (t)1.6 (he)-4.7 (e)-4.1 (e)0.7 (e)0.7 (r)-0.7 (a)-1.9 e)

© 2017 National Association of Insurance Commissioners

(ii) 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.

23 ((o)a)-2.(u)-0.6 (s)-3.5 ts l(-5 (ha)-1.9 e)0.8 (ia)-10.6 n; (n)75.9 n Tw 18.525 4.962 unlis

ARTICLE II. PRIVACY AND OPT OUT NOTICES FOR FINANCIAL INFORMATION

Section 5. Initial Privacy Notice to Consumers Required

A. Initial notice requirement. A licensee shall provide a clear and conspicuous noo N

© 2017 National Association of Insurance Commissioners

B. 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.

C. Examples.

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

(a) Information from the consumer;

(b) Information about the consumer's transactions with the licensee or its affiliates;

(c) Information about the consumer's transactions with nonaffiliated third parties; and

(d) Information from a consumer reporting agency.

(2) Categories of nonpublic personal financial information a licensee discloses.

(a) A licensee satisfies the requirement to categorize nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in Paragraph (1), as applicable, and provides a few examples to illustrate the types of information in each category. These might include:

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

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

(iii) Information from consumer reports, such as a consumer's creditworthiness and credit history.

(b) A licensee does not adequately categorize the information that it discloses if the licensee uses only general terms, such as transaction information about the consumer.

(c) If a licensee reserves the right to disclose all of the nonpublic personal financial information about consumers that it collects, the licensee may simply state that fact without describing the categories or examples of nonpublic personal information that the licensee discloses.

© 2017 National Association of Insurance Commissioners

(b) States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy. The licensee is not required to describe technical information about the safeguards it uses.

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

(1) A licensee may satisfy the initial notice requirements in Sections 5A(2) and 8C for a consumer who is not a customer by providing a short-form initial notice at the same time as the licensee delivers an opt out notice as required in Section 8.

(2) A short-form initial notice shall:

(a) Be clear and conspicuous;

(b) State that the licensee's privacy notice is available upon request; and

(c)

© 2017 National Association of Insurance Commissioners

(c) Permit John and Mary to make different opt out directions. If the licensee does so:

(i) It shall permit John and Mary to opt out for each other;

(ii) If both opt out, the licensee shall permit both of them to notify it in a single response (such as on a form or through a telephone call); and

(iii) If John opts out and Mary does not, the licensee may only disclose nonpublic personal financial information about Mary, but not about John and not about John and Mary jointly.

E. Time to comply with opt out. A licensee shall comply with a consumer's opt out direction as soon as reasonably practicable after the licensee receives it.

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

G. Duration of consumer's opt out direction.

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

(2) When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal financial information that the licensee collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt out direction that applied to the former relationship does not apply to the new relationship.

H. Delivery. When a licensee is required to deliver an opt out notice by this section, the licensee shall deliver it according to Section 11.

Section 9. Revised Privacy Notices

A. General rule. Except as otherwise authorized in this regulation, a licensee shall not, directly or through an affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice that the licensee provided to that consumer under Section 5, unless:

(1) The licensee has provided to the consumer a clear and conspicuous revised notice that

© 2017 National Association of Insurance Commissioners

F. Joint notice with other financial institutions. A licensee may provide a joint notice from the licensee and one or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the licensee and the other institutions. A licensee also may provide a notice on behalf of another financial institution.

G. Joint relationships. If two (2) or more consumers jointly obtain an insurance product or service

© 2017 National Association of Insurance Commissioners

(c) 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 Paragraph (1) of this subsection 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.

B. Application of opt out to all consumers and all nonpublic personal financial information.

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

(2) 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.

C. 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.

Section 13. Limits on Redisclosure and Reuse of Nonpublic Personal Financial Information

A. (1) 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 or 17 of this regulation, the licensee's disclosure and use of that information is limited as follows:

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

(b) 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

(c) The licensee may disclose and use the information pursuant to an exception in

© 2017 National Association of Insurance Commissioners

Section 14. Limits on Sharing Account Number Information for Marketing Purposes

A.

© 2017 National Association of Insurance Commissioners

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

(2) 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 Paragraph (1)(b) of this subsection if it prohibits the institution from disclosing or using the nonpublic personal financial information except as necessary to carry out the joint marketing or under an exception in Sections 16 or 17 in the ordinary course of business to carry out that joint marketing.

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

C.

© 2017 National Association of Insurance Commissioners

© 2017

ARTICLE VI. ADDITIONAL PROVISIONS

Section 23. Protection of Fair Credit Reporting Act

Nothing in this regulation 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 regulation regarding whether information is transaction or experience information under Section 603 of that Act.

Section 24. Nondiscrimination

A. A licensee shall not unfairly discriminate against any consumer or cusernd (s)-3.5 4..6 (sn(n)-6.1 Tf-

© 2017 National Association of Insurance Commissioners

C. Two-year grandfathering of service agreements. Until July 1, 2002, a contract that a licensee has entered into with a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf satisfies the provisions of Section 15A(1)(b) of this regulation, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as the licensee entered into the agreement on or before July 1, 2000.

APPENDIX A – SAMPLE CLAUSES

Licensees, including a group of financial holding company affiliates that use a common privacy notice, may use the following sample clauses, if the clause is accurate for each institution that uses the notice. (Note that disclosure of certain information, such as assets, income and information from a consumer reporting agency, may give rise to obligations under the federal Fair Credit Reporting Act, such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.)

A-1–Categories of information a licensee collects (all institutions)
A licensee may use this clause, as applicable, to meet the requirement of Section 7A(1) to describe the categories of nonpublic personal information the licensee collects.

Sample Clause A-1:

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates or others; and
- Information we receive from a consumer reporting agency.

Drafting Note: The safe harbor of compliance for use of sample clause A-1 expires on July 1, 2019.

A-2–Categories of information a licensee discloses (institutions that disclose outside of the exceptions)
A licensee may use one of these clauses, as applicable, to meet the requirement of Section 7A(2) to describe the categories of nonpublic personal information the licensee discloses. The licensee may use these clauses if it discloses nonpublic personal information other than as permitted by the exceptions in Sections 15, 16 and 17.

Sample Clause A-2, Alternative 1:

We may disclose the following kinds of nonpublic personal information about you:

- Information we receive from you on applications or other forms, such as [provide illustrative examples, such as "your name, address, social security number, assets, income, and beneficiaries"];

- Information about your transactions with us, our affiliates or others, such as [provide illustrative examples, such as "your policy coverage, premiums, and payment history"]; and

- Information we receive from a consumer reporting agency, such as [provide illustrative examples, such as

© 2017 National Association of Insurance Commissioners

Sample Clause A-5, Alternative 1:

We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements:

- Information we receive from you on applications or other forms, such as [provide illu323Ovrof.9 (e r)-1.7e]2y32er /Te(o

© 2017 National Association of Insurance Commissioners

Drafting Note: The safe harbor of compliance for use of sample clause A-7 expires on July 1, 2019.

APPENDIX B – FEDERAL MODEL PRIVACY FORM

Licensees, including a group of financial holding company affiliates that use a common privacy notice, may use the Federal Model Privacy Form, if the Form is accurate for each institution that uses the Form. (Note that disclosure of certain information, such as assets, income and information from a consumer reporting agency, may give rise to obligations under the federal Fair Credit Reporting Act, such as a requirement to permit a consumer to opt of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.)

A. General Instructions

1. How the Model Privacy Form is used.

   (a) The Model Form may be used, at the option of a "licensee"), including a group of licensees or other financial institutions that use a common privacy notice, to meet the content requirements of the privacy notice and opt-out notice set forth in [insert citation for sections of statute or regulation sections that parallel Sections 7 and 8 of the *NAIC Privacy of Consumer Financial and Health Information R*

© 2017 National Association of Insurance Commissioners

(

© 2017 National Association of Insurance Commissioners

2. Page One

(a) Last revised date. The licensee must insert in the upper right-hand corner the date on which the notice was last revised. The informati

© 2017 National Association of Insurance Commissioners

(ii) For our marketing purposes. This reason incorporates sharing information with service providers

© 2017 National Association of Insurance Commissioners

(e) To limit our shar

© 2017 National Association of Insurance Commissioners

(ii) FCRA Section 603(d)(2)(A)(iii) opt-out. If the licensee shares personal informatio

© 2017 National Association of Insurance Commissioners

(i) "Who is providing this notice?" This question may be omitted where only one licensee provides the Model Form and that licensee is clearly identified in the title on Page One. Two or more licensees or financial institutions that jointly provide the Model Form must use this question to identify themselves as required by [insert citation for section of statute or regulation that parallels Section 11(F) of NAIC model *Privacy of Consumer Financial and Health Information Regulation*]. Where the list of licensees or financial institutions exceeds four (4) lines, the licensee must describe in the response to this question the general types of licensees or financial institutions jointly providing the notice and must separately identify those licensees or financial institutions, in minimum 8-point font, directly following the "Other important information" box, or, if that box is not included in the licensee's form, directly following the "Definitions." The list may appear in a m

0 Tc 0 Tw 0.005 Tc 0.005 Tw 13(o)Tj19j0.3

© 2017 National Association of Insurance Commissioners

(iii) Joint Marketing. As required by [insert citation for section of statute or regulation that parallels Section 15 of *NAIC Privacy of Consumer Financial and Health Information Regulation*], where [joint marketing] appears, the licensee must:

(a) If it does not engage in joint marketing, state: "[name of licensee] doesn't jointly market"; or

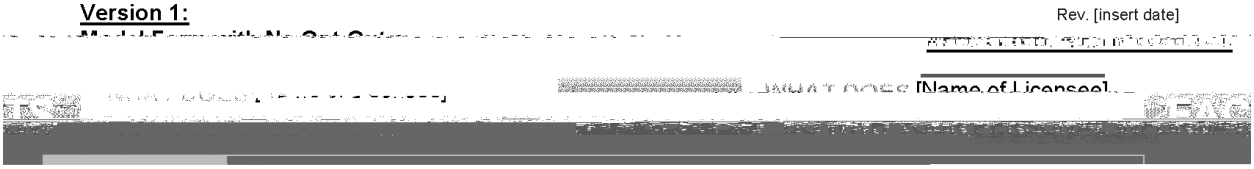
(b) If it shares personal information for joint marketing, state, as applicable: "Our joint marketing partners include [list categories of companies such as credit card companies]."

(c) General in0 0 0 rg( )-253 1 0o(r)-25c)(c8) Tc -0.3e35 Tw

© 2017 National Association of Insurance Commissioners

Version 1:

Rev. [insert date]



© 2017 National Association of Insurance Commissioners

© 2017

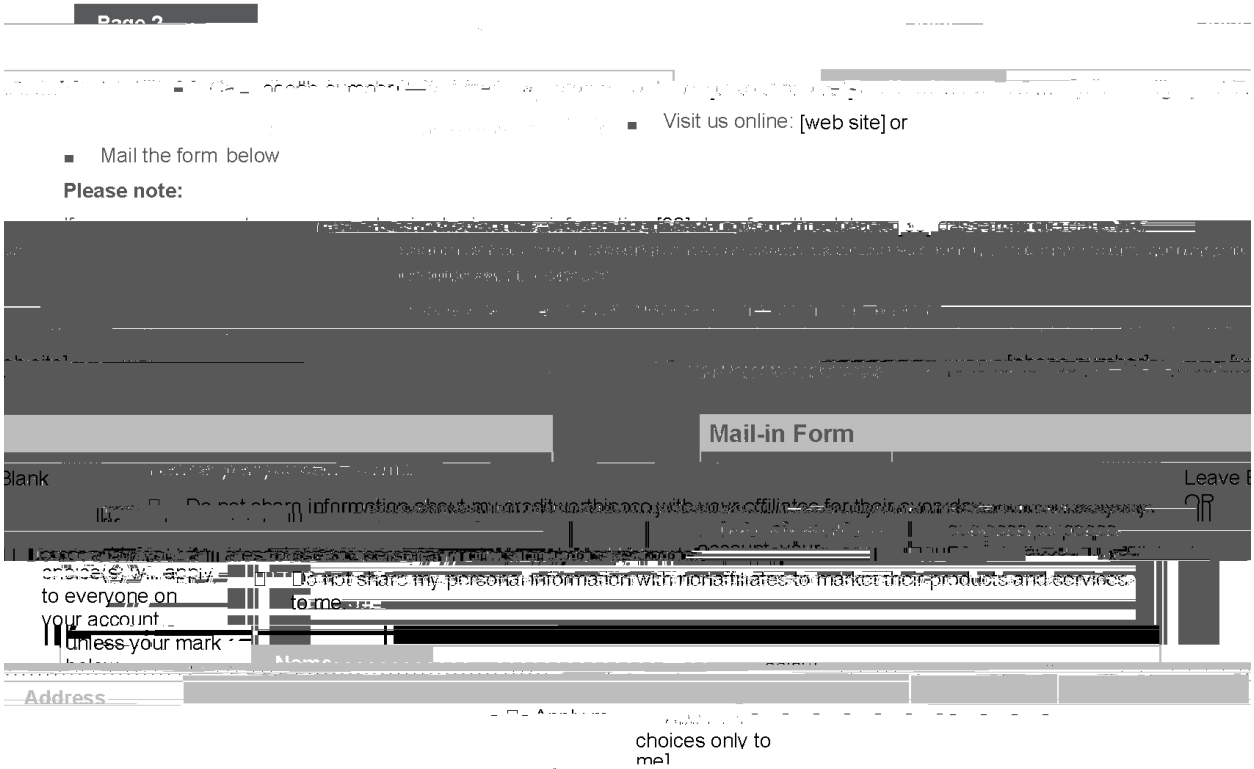
Version 2: Model Form with Opt-Out by Telephone and/or Online

Rev. [insert date]

© 2017 National Association of Insurance Commissioners

Rev. [insert date

Mail-in Opt-Out Form



Mail To:

[Name of Licensee]
[Address]
[City], [ST] [ZIP]

© 2017 National Association of Insurance Commissioners

© 2017 National Association of Insurance Commissioners

Version 4: Optional Mail-in Form

© 2017 National Association of Insurance Commissioners