

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #3 □

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2001 JUL 25 P 3:45

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY: W. Va. Code §§ 33-2-10, 33-6F-1 and 33-11A-4

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 57

TITLE OF RULE BEING PROPOSED: Privacy of Consumer Financial and
Health Information

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

\$16.20



STATE OF WEST VIRGINIA

Offices of the Insurance Commissioner

Legal Division

BOB WISE
Governor

JANE L. CLINE
Insurance Commissioner

July 25, 2001

HAND DELIVERED

Ms. Judy Cooper, Director
Administrative Law Division
Office of Secretary of State
State Capitol
Charleston, West Virginia 25305

Dear Ms. Cooper:

Enclosed please find for filing one (1) copy of the following:

- 1) Notice of Agency Approval of a Proposed Rule and Consent of Acting Secretary of Tax and Revenue;
- 2) Fiscal Note for Proposed Rule;
- 3) Brief Summary of Rule;
- 4) Statement of Circumstances;
- 5) Legislative Rule-Making Review Committee Questionnaire;
- 6) Agency approved proposed rule entitled "Privacy of Consumer Financial and Health Information" (Title 114, Series 57).

Please contact me if further information is required.

Sincerely,

A handwritten signature in cursive script that reads "Donna S. Quesenberry".

Donna S. Quesenberry
General Counsel

DSQ/jz
Enclosures

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Privacy of Consumer Financial and Health Information
Title 114, Series 57

Type of Rule: X Legislative Interpretive Procedural

Agency: Insurance Commissioner

Address: Post Office Box 50540
1124 Smith Street, Greenbrooke Building
Charleston, West Virginia 25305-0540

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1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	Increase	Decrease	Current	Next	Thereafter
ESTIMATED TOTAL COST	None	None	None	None	None
PERSONAL SERVICES	None	None	None	None	None
CURRENT EXPENSE	None	None	None	None	None
REPAIRS AND ALTERATIONS	None	None	None	None	None
EQUIPMENT	None	None	None	None	None
OTHER	None	None	None	None	None

2. Explanation of above estimates:

There is no anticipated cost for any government agency associated with this rule.

3. Objectives of these rules:

The objective of this rule is to establish policies and procedures necessary to comply with Title V of the Gramm-Leach-Bliley Act ("GLBA") (15 U.S.C. 6801, et seq.) The GLBA establishes a policy that financial institutions, including insurers, must protect the security and confidentiality of their customers' non-public personal information. This rule will establish standards for insurers in West Virginia to safeguard customer information and protect against unauthorized access to or use of such information.

Rule Title: Privacy of Consumer Financial and Health Information
Title 114, Series 57

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

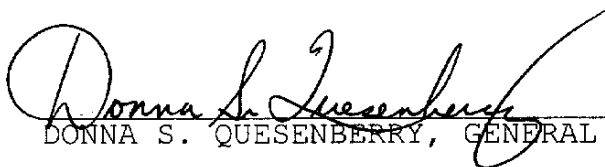
The insurance industry will be impacted with the costs associated with providing annual, initial and revised privacy notices to customers by each licensee.

C. Economic Impact on Citizens/Public at Large.

None.

Date: July 25, 2001

Signature of Agency Head or Authorized Representative



DONNA S. QUESENBERY, GENERAL COUNSEL

Insurance Commissioner
Legislative Rule
Title 114, Series 57

**PRIVACY OF CONSUMER FINANCIAL AND
HEALTH INFORMATION**

TITLE 114, SERIES 57

BRIEF SUMMARY OF RULE

This proposed rule adopts the model regulation covering privacy of consumer financial and health information adopted by the NAIC on September 26, 2000. The rule establishes policies and procedures necessary to comply with Title V of the Gramm-Leach-Bliley Act ("GLBA") (15 U.S.C. 6801, *et seq.*), requiring insurers to protect the security and confidentiality of individuals' nonpublic personal financial information and nonpublic personal health information. This rule requires that insurers maintain a privacy policy that is clearly communicated and that describes the conditions under which an insurer may disclose nonpublic personal financial information and nonpublic personal health information about individuals, and provides methods for individuals to prevent the disclosure of that information. This rule creates a new Series, designated Series 57, Title 114 of the Code of State Rules.

Insurance Commissioner
Legislative Rule
Title 114, Series 57

**PRIVACY OF CONSUMER FINANCIAL AND
HEALTH INFORMATION**

TITLE 114, SERIES 57

STATEMENT OF CIRCUMSTANCES

This proposed rule adopts the model regulation covering privacy of consumer financial and health information adopted by the NAIC on September 26, 2000. The rule establishes policies and procedures necessary to comply with Title V of the Gramm-Leach-Bliley Act ("GLBA") (15 U.S.C. 6801, et seq.). The GLBA establishes a policy that financial institutions, including insurers, must protect the security and confidentiality of their customers' nonpublic personal information. The Insurance Commissioner of the State of West Virginia is charged with enforcement of the GLBA provisions as they relate to persons engaged in providing insurance in West Virginia. Pursuant to Section 6801 of the GLBA, state insurance authorities must establish appropriate standards for insurers relating to safeguards to insure the security of customer information and to protect against unauthorized access to or use of such information which could result in harm or inconvenience to any customer. 15 U.S.C. 6801(b). Pursuant to Subsection (c) of Section 6805 of the GLBA, a State insurance authority that fails to adopt rules or regulations to carry out the provisions limiting disclosure of nonpublic personal information shall not be eligible to override Federal banking agency consumer protection regulations that relate to insurance sales by banks.

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: JULY 25, 2001

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: OFFICE OF THE INSURANCE COMMISSIONER
ATTN: Legal Division
1124 Smith Street
Post Office Box 50540
Charleston, West Virginia 25305-0540

LEGISLATIVE RULE TITLE: PRIVACY OF CONSUMER FINANCIAL AND
HEALTH INFORMATION(TITLE 114, SERIES 57)

1. Authorizing statute(s) citation:

West Virginia Code §§ 33-2-10, 33-6F-1 and 33-11A-4

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

May 25, 2001

b. What other notice, including advertising, did you give of the hearing?

None

c. Date of Public Hearing(s) or Public Comment Period ended:

Public comment period ended June 25, 2001.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 25, 2001

- f. **Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)**

Mary Jane Pickens, Associate Counsel
West Virginia Insurance Commission
Legal Division
P.O. Box 50540
Charleston, WV 25305-0540
Phone: (304) 558-0401
Fax: (304) 558-1362
E-mail: pickensm@wvnm.wvnet.edu

- g. **IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)**

Not applicable

3. **If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:**

- a. **Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.**

Not applicable

- b. **Date of hearing or comment period:**

Not applicable

- c. **On what date did you file in the State Register the findings and determinations required together with the reasons therefor?**

Not applicable

- d. **Attach findings and determinations and reasons:**

Not applicable

ATTACHMENT TO QUESTION 2(d):

Eight letters were received by the Insurance Commission concerning the Privacy Rule during the comment period. All comments set forth in the letters will be addressed below.

In a letter dated June 22, 2001, AFLAC offered two comments to the rule.

The first comment concerns the definition of "licensee" in Subsection 2.17 of the rule. AFLAC suggests that, as written, an agent representing a carrier (the principal) in a transaction would only be allowed to share nonpublic personal financial information about a consumer with the carrier that issues the policy. This interpretation means that agents would not have the benefit of the Section 12, 13 and 14 exceptions to the rule, which AFLAC contends could greatly interfere with their ability to service clients' needs. The interpretation AFLAC requests is that agents be authorized to share nonpublic personal financial information with unaffiliated third parties and their principal as long as the principal complies with the notice and opt out requirements and the agent operates within one of the rule's business exceptions in Sections 13 & 14. They suggest adding the word "unless" between "affiliates" and "in" in Paragraph 2 of Subdivision (a) of Subsection 2.17, to read as follows:

a. A licensee is not subject to the notice and opt out requirements for nonpublic personal financial information set forth in Sections 1 through 14 of this rule if the licensee is an employee, agent or other representative of another licensee ("the principal") and:

1. The principal otherwise complies with, and provides the notices required by, the provisions of this rule; and

2. The licensee does not disclose any nonpublic personal information to any person other than the principal or its affiliates unless in a manner permitted by this rule.

The Insurance Commissioner does not interpret the rule to prevent disclosures to nonaffiliated third parties by an agent licensee, who otherwise qualifies for the "agent exception" under Subsection 2.17, as long as the disclosures are pursuant to a Section 12, 13 or 14 exception to the notice and opt out requirements. This interpretation is consistent with the suggestion offered by AFLAC, however the Commissioner is in agreement that the addition of the word "unless" as suggested by AFLAC would clarify this interpretation of the rule. The Commissioner therefore adopts the suggested change and amends Subsection 2.17 as set forth above.

The second comment offered by AFLAC deals with the electronic notice provisions in Section 8. AFLAC believes that Section 8, which sets forth the methods by which notices must be delivered by licensees, is inconsistent in its treatment of the ability of a licensee to deliver electronic notices to individuals who desire to receive them electronically. AFLAC suggests that a licensee should be able to satisfy its notice requirements by sending an electronic notice to any insured that agrees to receive the notice electronically, as opposed to only those consumers that obtain an insurance product or service from the licensee electronically. The concern is that not all licensees will be selling products over the Internet, yet they should still be able to take advantage of electronic delivery of the notices and opt out forms.

The Insurance Commissioner agrees with this comment. Given the movement toward electronic commerce, the privacy rule should clearly allow licensees to deliver the notices electronically to consumers who agree to receive them in that fashion. At the same time, it is important that electronic delivery be made in such a way that the consumer can reasonably be expected to receive actual notice.

The Commissioner agrees to make amendments to Section 8, as follows:

8.3. A licensee may not, however, reasonably expect that a consumer will receive actual notice of its privacy policies and practices if it:

b. Sends the notice via electronic mail to a consumer who has not agreed to receive notices electronically.

The Commissioner further agrees to amend Subdivision a of Subsection 8.4 as follows:

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

a. The customer 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

The Commissioner further agrees to amend Paragraph 3 of Subdivision a of Subsection 8.6 as follows:

8.6. For customers only, a licensee shall provide the initial notice required by Subdivision a of Subsection 3.1, the annual notice required by Subsection 4.1, and the revised notice required by Section 7 so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

a. A licensee provides a privacy notice to the customer so that the customer can retain it or obtain it later if the licensee:

3. Makes its current privacy notice available on a web site for the customer who agrees to receive the notice at the web site.

The Commissioner received comments from six different companies or associations requesting that Section 15 of the rule, which establishes a requirement for an authorization before releasing nonpublic personal health information, be deleted in its entirety or amended. These comments were received from the National Association of Independent Insurers in a letter of June 22, 2001, the Alliance of American Insurers in a letter of June 6, 2001, the West Virginia Health Maintenance Organization Association in a letter of June 25, 2001, the American Insurance Association in a letter of June 25, 2001, State Farm Insurance Companies in a letter of May 30, 2001, and the Health Insurance Association of America in a letter of June 25, 2001. The comments concerning Section 15 suggest that the protection of consumers' health information goes beyond the scope of the Gramm-Leach-Bliley Act ("GLBA"), and that the inclusion of these protections will create confusion and error on the part of insurers due to potential inconsistent duties when federal Health and Human Services ("HHS") regulations pursuant to the Health Insurance Portability and Accountability Act (HIPAA) go into effect in April of 2003. These comments request the deletion of Section 15.

Although the Emergency Privacy Rule was filed with a Subsection 15.2, that subsection was not included in the legislative rule. Subsection 15.2 sets forth the types of activities by a licensee involving disclosure of nonpublic personal health information that may be undertaken without an authorization from the consumer or customer. As an alternative to the deletion of Section 15, which will be addressed below, State Farm Insurance Companies has commented that Subsection 15.2 should be added to Section 15 to allow orderly conduct of the insurance business. The Commissioner agrees with this comment, and therefore amends Section 15 to add Subsection 15.2 as follows:

15.2. 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; rate making 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; 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.

The Commissioner does not agree to delete Section 15. The Privacy Rule includes protections in Section 15 for nonpublic personal health information. The HHS has filed a final privacy regulation covering health plans, health care clearinghouses, and health care providers who transmit any health information electronically. Under the HHS regulation, "health plan" includes a health insurance issuer, an HMO, a group health plan, and a number of other entities. However, the HHS regulation does not apply to, and will not prevent disclosure of nonpublic personal health information by, many other types of insurers. For example, insurers offering automobile, disability, liability, or life coverage, and other insurers offering limited benefits coverage, will not be subject to the HHS regulation. In addition to protecting the privacy of health information pending the compliance date of the HHS regulation, the Privacy Rule affords greater protections to the consumers of this state because it applies to all entities required to be licensed by the West Virginia Insurance Commission, not just health insurers.

In addition, Subsection 18.1 of the privacy rule states that irrespective of whether a licensee is subject to federal HIPAA rules, if a licensee complies with all requirements of the federal rule except for its effective date provision, the licensee shall not be subject to the provisions of the privacy rule that relate to nonpublic personal health information. The intent of this subsection is to make it clear that the licensee must comply with only one set of rules - federal or state - and the choice is that of the licensee. Therefore, there should not be inconsistent requirements between the federal and state rules.

The American Council of Life Insurers and the American Insurance Association further request amendment of Section 15 to clarify that it is limited to cases involving disclosures for marketing purposes. The Commissioner believes that the exceptions to the authorization requirement are sufficiently broad to allow disclosure of nonpublic personal health information in order to effect a wide array of insurance functions by or on behalf of the licensee. The NAIC did not specifically prohibit disclosure of information without authorization for marketing purposes only. The Commissioner does not feel that it is in the best interests of consumers to limit the prohibition on disclosure without authorization to marketing purposes. The exceptions should allow licensees to take all necessary actions regarding the insurance product or service, therefore further changes to Section 15 are not

needed.

The West Virginia Health Maintenance Organization Association proposes, as an alternative to deleting Section 15, that Subsection 15.2 be amended to include "external review" as an insurance function for which an authorization for disclosure of non-public information not be required. However, the Insurance Commissioner is promulgating rules on external review pursuant to H.B. 2216, which amended article twenty-five-c of chapter thirty-three of the West Virginia Code to include the right of an enrollee to request review by an approved external review organization of a decision by a managed care plan to deny, modify, reduce, or terminate coverage for a health care service, if the decision was based upon questions of whether the proposed service is medically necessary or is experimental. The external review rule requires the enrollee to authorize the managed care plan to disclose pertinent protected health information concerning the enrollee to the external review organization as part of the request for external review. The review cannot be undertaken without the authorization being provided by the enrollee. Therefore, it would be inconsistent to amend the privacy rule to include "external review" with functions for which an authorization is not required.

In its letter of June 22, 2001, the National Association of Independent Insurers ("NAII") suggests amendment of Paragraph 1 of Subdivision b of Subsection 1.2 to add "This act does not apply to commercial insurance policies issued by a licensee," stating that the rule is ambiguous on this issue.

The Commissioner does not feel that the rule is ambiguous as to whether it applies to commercial policies. Subsection 1.2 says the "rule applies to nonpublic personal financial information about individuals who obtain or are claimants or beneficiaries of products or services 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." Therefore, the Commissioner declines to amend the rule consistent with this comment.

The NAII further suggests the insertion of language designed to clarify that notice is not required for individuals covered by the workers' compensation system, stating that this exceeds scope and intent of GLBA and is a vast unnecessary burden on licensees. Other comments concerning reference to workers' compensation plan participants were received from the American Insurance Association ("AIA") in its letter of June 25, 2001, and from Alliance of American Insurers ("AAI") in its letter of June 20, 2001. These

comments concern references to participants in a workers' compensation plan within the definition of "consumer" in Subsection 2.6 of the rule.

In response to the comments from NAI, AIA and AAI requesting deletion of references to workers' compensation plan participants in Subsection 2.6, or clarifying language that the rule does not apply to individuals covered by the workers' compensation system, the Commissioner has agreed to delete references to workers' compensation. Subdivision e of Subsection 2.6 will be amended as follows:

e. Provided that the licensee provides the initial, annual and revised notices under Sections 3, 4 and 7 of this rule to the plan sponsor, group or blanket insurance policyholder or group annuity contract holder, and further provided that the licensee does not disclose to a nonaffiliated third party nonpublic personal financial information about such an individual other than as permitted under Sections 12, 13 or 14 of this rule, an individual is not the consumer of the licensee solely because he or she is:

1. 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; or

2. Covered under a group or blanket insurance policy or group annuity contract issued by the licensee.

NAI's final comment suggests clarifying language be added to the rule whereby insurers would be able to use information in an unrestricted fashion for "claims administration," "claims adjustment and management," and for the "detection, investigation or reporting of actual or potential fraud, misrepresentation, or criminal activity."

In response to this comment, the Commissioner points out that Section 13 of the rule states that the initial notice and opt out in Sections 6 and 9 and service providers and joint marketing in Section 12 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. "Necessary to effect, administer or enforce a transaction" means that the disclosure is required, or is a usual, appropriate or acceptable method to administer or service benefits or claims relating to the product, to investigate or prevent fraud or

material misrepresentation, or to process insurance claims. In addition, Section 14 also says the initial notice, opt out, and Section 12 joint marketing do not apply when the disclosure of nonpublic personal financial information is to protect against or prevent actual or potential fraud or unauthorized transactions. Therefore, further amendment in this regard is unnecessary.

The American Council of Life Insurers ("ACLI") in its letter of June 20, 2001, states that it appreciates the opportunity to comment and that it fully supports the rule as adopted by the NAIC. ACLI supports the rule as proposed by the Insurance Commissioner.

The Alliance of American Insurers ("AAI") in its letter of June 6, 2001 put forth the proposition that portions of the privacy rule are not consistent with Title V of GLBA, and therefore they are not "necessary to carry out" the provisions of Title V. In order to conform to the authorizing statute, AAI suggests deletion or alteration of several portions of the rule. In addition to any comments from AAI previously noted, AAI requests that references to "claimants or beneficiaries" be deleted in Subdivision b of Subsection 1.2 (scope of rule), because these named individuals do not obtain an insurance product.

In response, the Commissioner states that to the extent a licensee collects nonpublic personal financial information about claimants or beneficiaries, it has been explained by a representative of the NAIC that the rule was intended to protect them. Claimants and beneficiaries are not customers, therefore are not entitled to annual notices. They are only consumers, and as such licensees are not required to provide an initial notice and opt out form to them unless the licensee plans to disclose nonpublic personal financial information about them outside of one of the Section 13 or 14 exceptions. If someone is a third party claimant and a licensee has protected health or financial information about them, that information should be protected to the same extent as information about a consumer who calls to inquire about purchasing a product. Subdivision d of Subsection 2.6, in Paragraphs 1 and 2, also make it clear that an individual is a licensee's consumer if the individual is a beneficiary of a life insurance policy underwritten by the licensee, or is a claimant under an insurance policy issued by the licensee. The Commissioner agrees with the NAIC intent and does not agree that amendment in this regard is necessary.

AAI further recommends removing the non-discrimination section, Section 21, from the rule because it infringes upon insurer underwriting practices. Section 21 prohibits a licensee from unfairly discriminating against any consumer or customer

because he/she has opted out from the disclosure of his/her financial information, or has not authorized disclosure of health information. The Insurance Commissioner does not interpret this section to interfere with underwriting. The rule would not require a licensee to sell an insurance product to a consumer who does not cooperate with the licensee in providing information necessary for underwriting.

In addition to comments previously noted, the American Insurance Association ("AIA") in its letter of June 25, 2001, has numerous suggestions. The comments, and the Commissioner's responses, are as follows:

- 1) AIA suggests adding the headings as they appear in the NAIC model rule because they serve as a helpful guide. The Commissioner has proposed the privacy rule using the required format for rules in West Virginia, which does not include headings for subsections. Therefore, no subsection headings will be added.
- 2) AIA suggests that Subdivision d of Subsection 2.6 does not track with the parallel construction of NAIC model regulation Section 4F(2)(d) on which it is based. AIA suggests that the subdivision be renumbered to more closely reflect the model rule. However, the numbering format suggested by AIA is not consistent with the required format for rules in West Virginia, and therefore the Commissioner does not agree to the amendment.
- 3) AIA recommends adding a sentence to the definition of "customer" which confirms that a consumer's status as a beneficiary or claimant does not make that consumer a licensee's "customer." The Insurance Commissioner does not believe that Subsections 2.6 and 2.9 are unclear as to whether a beneficiary or claimant is a customer of the licensee. Subsection 2.6 includes these individuals as consumers, and Subsection 2.10 specifically states in Paragraphs 4 and 5 of Subdivision b that beneficiaries and claimants do not have a continuing relationship with a licensee when a claim has been submitted choosing a settlement option involving an ongoing relationship with the licensee, or when a claim has been submitted under that policy choosing a lump sum settlement option. These provisions therefore clarify that claimants and beneficiaries will not be considered "customers" of the licensee in circumstances when it may appear that more than a consumer relationship exists. That further modification of the rule in this regard is not needed is shown by AIA when it states in its letter that the understanding it urges, which is

the same interpretation as that held by the Insurance Commissioner, is a "universally understood view."

- 4) AIA suggests deleting the word "airline" in Paragraph 2 of Subdivision b of Subsection 2.10, so that all forms of travel insurance will be considered isolated transactions in which a continuing relationship is not considered to have arisen with a consumer. The Commissioner agrees, and will amend Paragraph 2 as follows:

2. The licensee sells the consumer travel insurance in an isolated transaction;

- 5) AIA prefers that the notice format using 16-point type not be included in the proposed rule under the definition of "licensee" in Subsection 2.17. The Insurance Commissioner does not feel that this provision, which is part of the NAIC model rule, should be changed. There are valid reasons for the use of large type in the notice, which informs the consumer that the insurer that has underwritten the insurance will not disclose nonpublic personal information to nonaffiliates except as permitted by law. AIA has offered no reason why the use of 16-point type in the notice is a burden to licensees.
- 6) AIA recommends adding a new subdivision to Subsection 13.1, to be designated Subdivision e, which says "Informing a policyholder or the policyholder's producer or broker with respect to a claim asserted by, or paid to, a consumer under the policy and servicing or processing such claim." This subdivision would add another situation in which the initial notice, opt out, and joint marketing do not apply to the disclosure of nonpublic personal financial information.

The Commissioner's interpretation of the NAIC model regulation is that it protects nonpublic personal financial information of claimants equally with other consumers, unless one of the exceptions to initial notice and opt out apply. The exceptions in Section 13 clearly preserve the ability to service policyholder accounts. Subdivisions a and b of Subsection 13.1 except a disclosure from the initial notice and opt out if the disclosure is in connection with servicing or processing an insurance product or service the consumer requests or authorizes, or in connection with maintaining or servicing the consumer's account with a licensee. The policyholder or the policyholder's broker can be informed about a claim sufficient to service the account, but specific disclosure of nonpublic personal financial information about a claimant is not authorized without notice and an opportunity to opt out to the

claimant. The clear intent of the NAIC was to allow accounts to be serviced, without wholesale disclosure of nonpublic personal information about a consumer just because he or she has filed a third party claim. This intent has been adopted in the privacy rule proposed by the Insurance Commissioner.

7) AIA suggests various ministerial changes, as follows:

a. In Subdivision (e) of Subsection 2.6, changing "Sections 3, 4, and 9" to "Sections 3, 4 and 9."

The language referred to by AIA is actually "Sections 3, 4 and 11," and there is no comma before the word "and." Sections 3, 4 and 11 were intended to refer to the initial, annual, and revised privacy notices. However, Section 7 is the correct reference for revised notices, and this reference must therefore be amended to read "Sections 3, 4 and 7." No further changes to this part of Subdivision e of Subsection 2.6 are necessary.

b. In Subsection 2.20, Subdivision c refers to what nonpublic personal financial information does not include, yet it is a subdivision of the subsection describing what "nonpublic personal financial information" means. AIA feels that renumbering of this Subsection is needed.

The Insurance Commissioner does not believe that the subsection is unclear or ambiguous as written, and changes in subsection numbering are not needed.

c. AIA suggests adding the connector "or" to the end of Subdivision c of Subsection 8.2.

The Commissioner points out that the privacy rule in this regard mirrors the NAIC model rule. However, the Commissioner is in agreement with this comment, and amends Subdivision c of Subsection 8.2 as follows:

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

d. AIA states that the reference to "Subdivision a" in Subparagraph A of Paragraph 2 of Subdivision d of Subsection

9.1 is not the same as "Paragraph (1) of this subsection" used in same part of the NAIC model regulation.

The Commissioner is in agreement that this could be more clearly stated, and therefore Subparagraph A of Paragraph 2 of Subdivision d of Subsection 9.1 will be amended as follows:

A. The licensee mails the notices required in Subdivisions a and b of this subsection to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free number or any other reasonable means within thirty (30) days from the date the licensee mailed the notices.

e. Similarly, AIA comments that the references to "this subsection" in Subparagraphs B and C of Paragraph 2 of Subdivision d of Subsection 9.1 is not the same as "Paragraph 1 of this Subsection" used in the NAIC model regulation. The Commissioner is in agreement, and Subparagraphs B and C of Paragraph 2 of Subdivision d of Subsection 9.1 will each be amended to refer to "Subdivisions a and b of this Subsection," as stated in response to AIA's previous comment.

f. AIA suggests that the section reference in Subsection 12.3 to "Subsection 12.1" should be amended to "Subsections 12.1 and 12.2." The Commissioner points out that Subsection 12.2 of the privacy rule was included in the NAIC model regulation as an example under the previous subsection. The example became a separate subsection in the privacy rule. To more accurately reflect the intent of the NAIC model regulation, the following amendment will be made to Subsection 12.3:

12.3. The services a nonaffiliated third party performs for a licensee under Subsections 12.1 and 12.2 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.

g. AIA suggests revising the section letter "l" in Subdivision (1) of Subsection 14.1 so that it is not italicized. The Commissioner states that the use of italics in this situation is standard in West Virginia's rule making procedures, and this amendment will not be made.

h. AIA suggests that the section references that replace the NAIC model regulation's use of "Article V" should be reviewed. These references appear in Subsections 16.1, 16.2, and in Sections 18 and 19. In response to this comment, the Commissioner points out that Article V of the NAIC model rule includes the sections referred to in the privacy rule as Sections 15 through 19. The prescribed format for rules in West Virginia does not include the use of "Articles." Where the NAIC model regulation referred to Article V, which encompassed five different sections, effort was made to refer in the privacy rule to the specific section or subsection among those five different sections that was applicable. These references have been reviewed, and the references reflect the intent of the NAIC model regulation. Therefore, amendment of these references will not be made.

In addition to its comments requesting deletion or amendment of Section 15 concerning the protection of nonpublic personal health information which are addressed above, State Farm Insurance Companies ("State Farm") in its letter of May 30, 2001 comments that there is language in Subsection 15.2 that would prohibit the sharing of nonpublic personal health information between affiliated companies. Subsection 15.2 begins "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:" State Farm states that this would prohibit an automobile insurance company from disclosing medical information to an affiliated fire company in connection with a claim filed with the fire company.

The Commissioner agrees with this interpretation of Subsection 15.2, and points out that the solution is authorization from the insured to share the information with the affiliated company. This is the intent of the rule, and is not unduly burdensome. The Commissioner does not believe that amendment of the rule to include affiliates of the licensee in the introductory sentence of Subsection 15.2 would be in keeping with the intent of the model regulation.

State Farm further requests that the rule's definition of "consumer" be amended by striking Paragraph 2 of Subdivision d of Subsection 2.6. This amendment would remove from the definition of consumer those individuals who file a claim under an insurance policy issued by the licensee. State Farm believes that the

inclusion of claimants and beneficiaries will present a multitude of practical problems for insurers. In addition, the inclusion of third party claimants will be difficult to monitor where agents are involved because agents are typically allowed to view the claims of their insureds.

The Commissioner does not believe that the inclusion of claimants and beneficiaries as consumers is a burden to licensees, as discussed previously in these responses. The agent, also a licensee, may service the account and inform the insured as necessary. However, any information that is nonpublic personal health or financial information may not be disclosed to the insured by the agent or the insurer without notification to the third party claimant and an opportunity to opt out of the disclosure. For example, it is not necessary to share medical records or employment records of the claimant with the insured in order to service the account, and a claimant should not worry that such sharing of nonpublic information has occurred just because he or she has filed a claim. This is the clear intent of the NAIC model regulation that is adopted by the Commissioner.

Finally, State Farm comments that the inclusion of claimants and beneficiaries as consumers goes beyond GLBA because Title V requires opt out solely from the sharing of information that is related to personal, family or household purposes, yet the privacy rule seems to extend to any claimant under an insurance policy issued by the licensee. The Commissioner does not agree with this comment. Paragraph 1 of Subdivision b of Subsection 1.2 very clearly states that the rule applies to 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. The rule does not affect other kinds of policies or services. The duties owed to claimants and beneficiaries are therefore not ambiguous.

The Health Insurance Association of America ("HIAA") in its letter of June 15, 2001, requests only that the privacy rule be adopted in West Virginia without the current provisions relating to the privacy of personally identifiable health information, citing the possibility of inconsistencies with the federal HHS regulation. The Commissioner's response to this comment is set forth above.

A letter from Farmers Insurance Group, dated June 26, 2001, was received by the Commissioner on July 6, 2001. The letter is dated and was received after the comment period closed on June 25, 2001, therefore the comments of the Farmers Insurance Group letter have not been considered.



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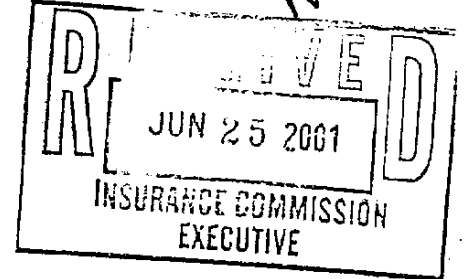
Jeffery A. Link, HIA
Vice President
Deputy Director
Compliance Department

June 22, 2001

Commissioner Jane Cline
Office of the Commissioner of Insurance
West Virginia Insurance Department
P.O. Box 50540
1124 Smith Street
Charleston, West Virginia 25305-0540

RECEIVED

JUN 29 2001
LEGAL DIVISION
W.VA. INS. DEPT.



**Re: West Virginia's Proposed Emergency Legislative Rule 114 CSR 57
Privacy of Consumer Financial and Health Information**

Dear Commissioner Cline,

We understand that West Virginia is considering promulgating rules based on the privacy model put out by the National Association of Insurance Commissioners (NAIC) and that your rule will include both the financial and health information sections.

In an effort to assist you in developing your privacy rules, we would like to briefly summarize the changes that we believe are needed to ensure that the proper consumer protections are in place, to minimize the compliance cost for licensees and to minimize confusion to consumers.

American Family Life Assurance Company (AFLAC) has a strong interest in uniform and workable rules in privacy and addresses this letter to those concerns.

AFLAC strongly supports the principles of customer privacy embodied in Title V of the Gramm-Leach-Bliley Act and hopes that all states, including West Virginia, will enact rules consistent with those principles.

Treatment of Agents

The language in Section 114.57.2a is unclear. This confusion could result in various interpretations and unintended negative consequences among agents, consumer/customers and insurance companies. A literal reading would allow agents to share information covered by the rule only with their principal insurance company. They would not be allowed to provide routine policyholder service functions, such as claims assistance, without providing a duplicative privacy notice and opt out opportunity.

Ms. Cline
Page 2

Our understanding is that the Insurance Department does interpret this provision such that agents would be authorized to share nonpublic personal information with unaffiliated third parties and their principal so long as the principal complies with the notice and opt out requirements and the agent operates within one of the rules business exceptions of Sections 114-57-14 and 15.

Assuming this does represent the Department's interpretation of the 114.57.2,a language, perhaps no further action is required. However, should the Commissioner decide to amend the rule to eliminate possible confusion down the line, a solution would be to add the word "unless" between "affiliates" and "in" within Section 114.57.2,a,2. The resulting language would be:

2. *The licensee does not disclose any nonpublic personal Information to any person other than the principal or its affiliates unless in a manner permitted by this rule.*

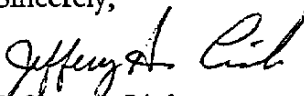
Electronic Notices

The rule does not appear to be consistent in its treatment of the ability of a licensee to deliver electronic notices to individuals who desire to receive them electronically. We believe a licensee should be able to satisfy its notice requirements by sending an electronic notice to any insured that agrees to receive the notice electronically. Our concern is with the language highlighted below in each of the following subsections of Section 114-57-8 Delivery:

- 1) 8.3, b. "sends the notice via electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically"
- 2) 8.4, a. "uses the licensee's web site to access insurance products and services electronically and,"
- 3) 8.6,a.,3. "obtains an insurance product or service electronically and."

Once again, we greatly appreciate the opportunity to share our comments and thoughts with you, and thank you for your kind consideration of our comments and suggestions. We hope you find them helpful.

Sincerely,


Jeffery A. Link

Cc: Ms. J. Bonham



**National Association
of Independent Insurers**

2600 River Road, Des Plaines, IL 60018-3286

June 22, 2001

Donna Quesenberry, Esq.
General Counsel
West Virginia Insurance Department
P.O. Box 50540
Charleston, West Virginia 25305-0540

Re: Proposed Rule 114 CSR 57 Privacy of Consumer Financial and Health Information

Dear Ms. Quesenberry:

Please find attached the comments of the National Association of Independent Insurers regarding the caption proposed rule. We appreciate this opportunity to comment, and hope you will consider our suggestions.

We look forward to working with you on this important issue. Please feel free to contact the undersigned should you have any questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Hurns", is written over the word "Sincerely,". The signature is stylized and somewhat cursive.

Robert J. Hurns

CC: Larry Swann

H:/legal/hurns/wv/quesenberryltr.doc



**STATEMENT OF
THE NATIONAL ASSOCIATION OF INDEPENDENT INSURERS
REGARDING
PROPOSED NEW RULE 114 CSR 57
PRIVACY OF CONSUMER FINANCIAL
AND HEALTH INFORMATION**

The NAII respectfully submits this statement regarding the captioned proposed new rule, which encompasses the privacy of consumer financial and health information. The NAII and its member companies appreciate the opportunity to comment throughout this rulemaking process.

The NAII's approximately 690 members produce and service nearly twenty-six percent (26%) of all the property and casualty insurance consumers in the nation, thirty percent (30%) of all property and casualty insurance business in West Virginia, thirty-four percent (34%) of all private passenger automobile coverage in West Virginia, and forty percent of all homeowners coverage in West Virginia.

We would urge the Department to make several changes to the proposed regulation that would more closely track the requirements of the GLBA. The NAII supports the model regulation promulgated by the National Conference of Insurance Legislators (NCOIL) as opposed to the model created by the National Association of Insurance Commissioners (NAIC). We firmly believe the NCOIL model would meet the requirements of the GLBA without exceeding those requirements.

We would strongly recommend the removal of any requirements concerning health information. Health information is not explicitly included or defined in the Gramm-Leach-Bliley Act (hereinafter "GLBA"). Therefore, any regulation including health information goes far beyond the scope of the GLBA.

We would suggest the amendment of section 114-57-1.2.b.1 by adding the following language: "This act does not apply to commercial insurance policies issued by a licensee." Arguably, section 114-57-1.2.b.1 excludes any notice requirements for commercial policyholders, but the addition of the suggested language would avoid any ambiguity.

We would also recommend the insertion of language designed to clarify that notice would not be required for individuals covered by the workers' compensation system. Requiring insurers to provide notice to workers' compensation plan participants vastly exceeds the scope and intent of the GLBA, and would place a vast, unnecessary burden

on insurers.

Despite the fact that notice is not required if the insurer does not have a "customer relationship with the consumer," we would strongly urge the Department to add language that clarifies no notice is required, under any circumstance, for third party claimants. To include third-party claimants, either directly or by implication, would place an enormous burden on carriers to provide notice of privacy policies and practices as well as the opportunity to "opt-out" of disclosure.

We would also suggest that clarifying language be added whereby insurers would be able to use information in an unrestricted fashion for the purpose of "claims administration," "claims adjustment and management," and for the "detection, investigation or reporting of actual or potential fraud, misrepresentation, or criminal activity." This would ensure that insurers could provide prompt claims-related services.

The NAII thanks the Department for this opportunity to comment on the proposed regulation, and we hope the Department adopts our suggestions.



**National Association
of Independent Insurers**

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Robert J. Hurns

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D copy: D.Q.
J.B.
6/11/01 mJP

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JUN 11 2001

LEGAL DIVISION
W.VA. INS. DEPT.

June 6, 2001

Jenny Bonham
Associate Counsel
Insurance Department
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Charleston, WV 25305-0540

Dear Ms. Bonham:

**Consumer Financial and Health Information Privacy
114 CSR 57**

The Alliance of American Insurers is a national trade association with 326 property/casualty insurance company members. Alliance member companies write both personal and commercial lines policies in West Virginia. Our member companies wish to comply with both the letter and spirit of the Gramm-Leach-Bliley (GLB) Act.

New Section 33-6f-1 of the West Virginia Code (SB 507) prohibits the disclosure of "nonpublic personal information" contrary to Title V of GLB, and also requires the Commissioner to propose rules "necessary to carry out" the provisions of Title V. The Department has chosen to use the 2000 National Association of Insurance Commissioners (NAIC) model regulation for purposes of this emergency legislative rule.

Portions of this emergency rule are clearly not consistent with Title V, and are also more restrictive than Title V. Thus, they are not *necessary*. In order to conform to the authorizing statute, these portions of the rule need to be deleted or altered. Failure to do so could subject your emergency rule to administrative and/or judicial challenges.

The following portions of the emergency legislative rule are *not necessary*. In some cases, these portions are also internally inconsistent. We respectfully urge the Department to join other state insurance departments and amend the NAIC model as follows:

- Delete references to "claimants or beneficiaries" from Section 114-57-1.2b on scope.
- Delete references to "claimant", "workers compensation plan participant", and "beneficiary in a workers compensation plan" from the definition of "consumer" in Section 114-57-2.6.
- Delete Sections 114-57-16 through 19 dealing with health information. In the alternative, we recommend limiting the application of these sections to cases involving disclosures for marketing purposes. The effective date of any health information mandates should be delayed until April 14, 2003, in order to promote harmonization and avoid conflicts with U.S. Department of Health and Human Services (HHS) rules.

- Delete Section 114-57-21 on non-discrimination. In the alternative, the section can be amended to exclude “usual, appropriate, or acceptable methods for insurance underwriting.”

Claimants and Beneficiaries

Title V's mandates apply only to consumers or customers who *obtain* products or services. The customer who *obtains* the product (i.e. insurance policy) is the policyholder. The consumer who seeks to *obtain* the policy is the applicant. Under Sections 502(e)(1) and 509(7), Congress explicitly excluded “processing insurance claims” from the scope of Title V.

Merely receiving a benefit or payment is not the same as obtaining an insurance policy; otherwise Congress would have included the receipt of benefits or payments. Thus, neither claimants nor beneficiaries are covered by GLB.

Unlike policyholders and applicants, claimants typically have no ongoing financial relationship with an insurer. A third-party property/casualty claim usually involves a stranger as to both the policyholder and the insurer. Third-party claims, particularly liability claims, are inherently confrontational. Potential fraud is often involved. To attempt to expand GLB to claimants ignores these inherent problems.

Three state insurance departments have deleted claimants from their regulations: *District of Columbia, Idaho, and Illinois*. Further, *New Mexico enabling legislation is limited to insured persons, thus excluding claimants. More are expected.*

Workers Compensation

Title V applies only to consumers and customers obtaining products or services for “personal, family, or household purposes.” In the property/casualty context, the “product” is clearly a personal lines insurance policy. Even Section 2B of the NAIC model logically states that the regulation “does not apply to information about companies or about *individuals* who obtain products or services for *business, commercial or agricultural* purposes.”

Thus, it is both legally and logically inconsistent to attempt to apply these regulations to commercial insurance in general, and workers compensation insurance in particular.

The workers compensation system in West Virginia is administered by the Bureau of Employment Programs. With all due respect, there is no indication in the authorizing statute that the Legislature intended for the Insurance Department to become involved. Since the Bureau has jurisdiction over *all* of the stakeholders in the workers compensation system, it would be inappropriate for the Insurance Department to impose mandates upon its licensees, while other stakeholders remain unregulated.

Seven state insurance departments have deleted workers compensation from their regulations: *District of Columbia, Idaho, Illinois, Indiana, Louisiana, Oklahoma, and Rhode Island*. Recently enacted *Hawaii* legislation excludes workers compensation. *Alabama* legislation providing rulemaking authority has also excluded workers compensation. Legislation advancing swiftly through the *Michigan* Legislature has deleted “workers compensation plan participant” language. Further, *Montana, North Carolina, Oregon, and Virginia* have declined to amend their existing laws to expand into workers compensation. The *Georgia* and *Minnesota* Legislatures have also adjourned without expanding their laws. More are expected to avoid these pitfalls.

Health Information

Title V applies only to the privacy of *financial* information. Section 509(4) defines “nonpublic personal information” as meaning “personally identifiable *financial* information.” It makes no mention of *health* information. Senate Bill 507 adopted the same terminology. Thus, any inclusion of health information privacy mandates is *not necessary*. It was inappropriate for the NAIC to include such language in their model. Fourteen state insurance departments have either dropped health from their regulations or are running them on a separate track: *Connecticut, Delaware, District of Columbia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Pennsylvania, and Rhode Island*. More are expected.

If the Department feels obligated to issue regulations covering health information, we strongly urge a delayed effective date of April 14, 2003. This will help to avoid costly conflicts and duplications and facilitate harmonizing any West Virginia regulations with the HHS rules in the future.

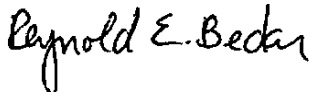
Non-Discrimination

Under Sections 502(e)(1) and 509(7), Congress explicitly excluded a “usual, appropriate, or acceptable method for insurance underwriting” from the scope of Title V. Thus, insurance underwriting practices are not subject to GLB. Section 23 of the NAIC model infringes upon insurer underwriting practices. *Both the NCOIL model bill and proposed Wisconsin regulations exempt underwriting from this section.*

Conclusion

Legislation has also been enacted in *Missouri* and *Tennessee* providing that department privacy regulations may be no more restrictive than GLB. We urge the Department to consider the actions of other departments, and join the growing number of states refusing to impose the costly mandates created by portions of the NAIC model regulation. Keeping these costly mandates will place West Virginia at a competitive disadvantage in the region. We welcome the opportunity to work with the Department to address these concerns.

Sincerely,



Reynold E. Becker

Copy to: Neil Malady
Heather Heiskell Jones - WVIF

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June 25, 2001

VIA HAND DELIVERY

RECEIVED

Office of the West Virginia Insurance Commissioner
Att'n: Donna S. Quesenberry, General Counsel
1124 Smith Street
Charleston, WV 25305

JUN 25 2001

LEGAL DIVISION
W.VA. INS. DEPT.

**RE: Comments to 114CSR 57
Privacy of Consumer Financial and Health Information**

Dear Ms. Quesenberry:

This letter outlines my client's, the West Virginia Health Maintenance Organization Association's ("WVHMOA") position on the proposed West Virginia Rules Governing Privacy of Consumer Financial and Health Information (Title 114, Series 57). The WVHMOA is an association representing the three HMO's that are licensed to do business in West Virginia.

This letter outlines the direction my client believes the Insurance Commissioner should take in addressing the necessary issues raised by Title V of the Gramm-Leach-Bliley Act (PL 102-106).

The WVHMOA supports a strong uniform standard for protecting the confidentiality of personally identifiable information. However, WVHMOA has two key concerns to the regulations proposed by the Commissioner.

The WVHMOA advocates that the National Association of Insurance Commissioner's ("NAIC") Model regulation be adopted in West Virginia without the current provisions relating to the privacy of personally identifiable health information. While the WVHMOA agrees that health information deserves strong privacy protection, the WVHMOA is concerned that any health privacy standards adopted throughout the country be uniform in nature.

SPILMAN THOMAS & BATTLE, PLLC

June 25, 2001

Page 2

On December 28, 2000, the Department of Health and Human Resources ("HHR") published its final standards for privacy of individually identifiable health information. When finalized, health insurers will be subject to these very comprehensive privacy standards. If the West Virginia Department of Insurance adopts the NAIC Model regulation with the current health information privacy provisions, conflicts and concerns are bound to arise within the health insurance industry from the implementation of competing requirements. For this reason, the HIAA proposes that the Department of Insurance move forward with the Model Regulations for Financial Information and omit the health information privacy standards from the West Virginia regulation.

In the alternative, the WVHMOA proposes that subsection 15.2 of the regulations be amended to include "external review" as an insurance function for which an authorization for disclosure of non-public personal health information not be required.

Sincerely yours,



T. Randolph Cox, on behalf of the
West Virginia Health Maintenance
Organization Association

TRC/lb

167653

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June 25, 2001

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JUN 25 2001

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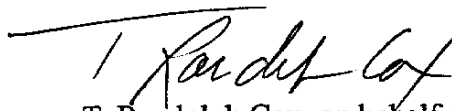
**RE: Comments to 114CSR 57
Privacy of Consumer Financial and Health Information.**

Dear Ms. Quesenberry:

Enclosed for your information and handling are the comments of the American Insurance Association to the above-referenced regulations.

If you have any questions, please contact me.

Sincerely yours,



T. Randolph Cox, on behalf of the
American Insurance Association

TRC/lb
Encl.

167741



American Insurance Association

June 21, 2001

**Re: AIA Comments on West Virginia Proposed Emergency Insurance Rule:
114CSR57, "Privacy of Consumer Financial and Health Information"**

Background Information on AIA

The American Insurance Association ("AIA") is a national trade association representing more than 370 property and casualty insurers that write insurance in every jurisdiction in the United States. The U.S. premiums for AIA's member companies exceed \$75 billion each year. AIA member companies offer all types of property and casualty insurance including personal and commercial automobile insurance, commercial property and liability coverage, workers' compensation, homeowners' insurance, medical malpractice coverage, and product liability insurance. AIA represents companies writing both personal and commercial lines of business in the State of West Virginia. In 1999, AIA member companies wrote over \$220 million in premiums in West Virginia.

AIA Goals and Support for Functional Uniformity

AIA supports state efforts to protect consumer information pursuant to Title V of GLBA while preserving critical business use of such information. It is essential that state regulatory efforts in this area be uniform and consistent in order to avoid the disparate treatment and confusion among consumers and the regulated community that will inevitably result should different states adopt differing regulatory standards. The sheer potential variety and volume of dissonant laws and regulations among the 51 insurance regulatory jurisdictions would frustrate consumer realization of meaningful protections, impede compliance with privacy standards, prevent consumers from accessing the full range of insurance products and services enjoyed by consumers elsewhere, place carriers doing business in particular states at a competitive disadvantage vis-à-vis those operating in other states, and potentially invite federal preemption of state law in the privacy area.

For AIA member companies, many of which operate regionally and nationally, uniformity and consistency are necessary for three overriding reasons: (1) compliance implementation; (2) reduction in cost burden; and (3) leveling the competitive playing field. Generally, the effective date for implementing GLBA privacy standards is July 1, 2001. With little time remaining before that date, companies need rules and regulations that are consistent and operationally uniform in order to achieve any reasonable measure of compliance. The delays inherent in the legislative and regulatory processes shorten an already-abbreviated implementation period. Further, the costs of ensuring compliance increase with differing regulation. Those costs will inevitably increase where a company guesses incorrectly about a legislative or regulatory outcome and must re-tool its privacy compliance program. Finally, an uneven insurance regulatory playing field in the area of privacy may tip the competitive balance in favor of federally regulated financial institutions (which are regulated by one standard instead of by 51 standards).

AIA welcomes the opportunity to comment on the West Virginia Insurance Rule. For your

convenience, this memorandum is organized in the order in which items appear in the proposed rule.

Headings

(See provisions throughout the rule.)

AIA suggests adding the headings as they appear in the NAIC Model Regulation.

Headings serve as a helpful guide, both for licensees experienced with reviewing privacy regulations and seeking to comply with requirements countrywide (where the section numbers vary from state to state) as well as for those who are less familiar with the NAIC Model Regulation and who are trying to identify their obligations under the West Virginia rule.

Consumer Definition

(See §2.6(d)(1)-(5).)

Section 2.6(d) of the proposed regulations does not track with the parallel construction of NAIC Model Regulation § 4F(2)(d), on which it is based. That section only makes an individual a "consumer" under the Model Regulation where two distinct requirements are met: (1) the individual falls within one of the categories identified in Subsection 4F(2)(d)(i)(I)-(IV) (i.e., the individual is a beneficiary of a life insurance policy issued by the licensee or is a claimant under an insurance policy issued by the licensee, etc.) and (2) "the licensee discloses nonpublic personal financial information about the individual to a nonaffiliated third party other than as permitted" under the exceptions in the NAIC Model Regulation. NAIC Model Regulation §§ 4F(2)(d)(i) & (ii). As presently drafted, the parallel provision of the proposed regulations would require an individual to meet five separate requirements for that individual to qualify as a licensee's consumer (e.g., the individual would have to be a life insurance beneficiary, claimant, insured, and mortgagor and the licensee would need to share nonpublic personal financial information outside the exceptions to qualify as a licensee's consumer). The easiest way to fix this anomaly in the proposed regulations would be to amend §2.6(d) as follows:

"(d) An individual is a licensee's consumer if:

- (1) ~~(A)~~ **(A)** the individual is a beneficiary of a life insurance policy underwritten by the licensee,
- ~~(2)~~ **(B)** the individual is a claimant under an insurance policy issued by the licensee,
- ~~(3)~~ **(C)** the individual is an insured or an annuitant under an insurance policy or an annuity, respectively, issued by the licensee; or
- ~~(4)~~ **(D)** the individual is a mortgagor of a mortgage covered under a mortgage insurance policy, and

- (2) ~~(5)~~ the licensee discloses nonpublic personal financial information about the individual to a nonaffiliated third party other than as permitted under Sections 12, 13 and 14 of this rule."

Workers' Compensation

(See §2.6(e), §2.6(e)(3), §14.1(o).)

AIA recommends as follows: (1) explicitly stating that the rule does not apply to workers' compensation coverage; (2) completely deleting §2.6(e)(3); and (3) inserting a reference to "a workers' compensation policy" in §14.1(o).

Some states that have determined that their regulations should not apply in the context of workers' compensation coverage have made a specific statement to this effect. For example, Indiana's privacy regulation provides, "This rule does not apply to information about companies or about individuals who (1) obtain products or services for business, commercial, or agricultural purposes; or (2) are claiming benefits under a policy described in subsection (1)." The fact that "workers' compensation plan participant" has been deleted under §2.6(e) of this proposed regulation leads one to believe that West Virginia intends to develop a comparable regulatory structure; if so, a similar provision could be added to §1.2.

Despite deletion of the reference to workers' compensation "plan participants" in §2.6(e) of the proposed regulation, the reference to workers' compensation "beneficiaries" has been retained in §2.6(e)(iii). If the Commission intends to retain this reference in §2.6(e)(iii), we would strongly urge amending this subsection to change the reference from workers' compensation "beneficiary" to workers' compensation "claimant" and to insert an appropriate reference to workers' compensation "policyholders" in §2.6(e). We note that references to workers' compensation "plans," "plan participants", and "beneficiaries" create compliance confusion, as these are not recognized terms in the workers' compensation industry. Alternatively, if the Commission intends to carve out workers' compensation insurance from the scope of the proposed regulation, we would advocate eliminating §2.6(e)(iii) in its entirety.

In addition, the presence of the exception under §14.1o for replacement of a workers' compensation policy would be useful to the extent it provides further support for the interpretation that these practices are exempted under the proposed regulation. AIA recommends re-inserting the exclusion relating to the replacement of a workers' compensation "policy" (the term "plan" is confusing since it is not a term of art used in the workers' compensation industry) in §14.1o.

Status of Claimants and Definition of "Customer"

(See §2.9.)

AIA recommends adding a sentence to the definition of "customer" under §2.9, which confirms that a consumer's mere status as a beneficiary or claimant does not make that consumer a licensee's "customer" under the proposed rule. The new sentence would read: "In no event, however, shall a beneficiary or a claimant under a policy of insurance, solely by virtue of their status as a beneficiary or claimant, be deemed to be a customer for purposes of this regulation."

The additional clarifying sentence is consistent with the NAIC Model Regulation (see §§ 4F(2)(d) & 4J(2)(b)(iv), (v)) and the FAQs released by the NAIC. Furthermore, it is *identical* to the confirming sentence added to the final version of the NCOIL Privacy Model. All of these sources validate the view that beneficiaries and claimants only attain privacy status as "consumers" when a licensee discloses nonpublic personal financial information about the beneficiary or claimant outside all of the exceptions identified in the proposed regulation. Further, even where beneficiaries or claimants are treated as "consumers" under the proposed regulation, their status as beneficiaries or claimants does not make them a licensee's "customer" for purposes of the proposed regulation. AIA's recommended sentence would confirm the universally understood view of the privacy treatment of claimants and beneficiaries.

Isolated Transaction and Definition of “Customer relationship”

(See §2.10(b)(2).)

AIA recommends deleting the word “airline” in §2.10(b)(2), so the provision would read as follows: “The licensee sells the consumer travel insurance in an isolated transaction.”

The term “airline” appears in §2.10(b) where it is specified that a “consumer does not have a continuing relationship with a licensee if “[2] the “licensee sells the consumer airline travel insurance in an isolated transaction.” As it exists, this provision does not contemplate other forms of travel insurance that are equally isolated transactions. Moreover, by making this change, the isolated transaction example will parallel the provision found in §8.2(d) (which refers generally to “travel insurance”).

Notice Format

(See §2.17(b)(1)(B).)

AIA prefers that the specific “16-point type” requirement not be included in the proposed regulation under the definition of “licensee” (see §2.17(b)(1)(B)). AIA also suggests reviewing whether the NAIC Model Regulation provides this notice in bold type.

Policyholder Service

(See §13.1.)

AIA recommends adding a new section, 13.1(e), containing the following text: “Informing a policyholder or the policyholder’s producer or broker with respect to a claim asserted by, or paid to, a consumer under the policy and servicing or processing such claim.”

In §17B of the NAIC Model Regulation (as well as in §15.2 of the proposed regulation), the exceptions center on “insurance functions”, including policyholder service functions. Some of the exceptions in sections 14, 15, and 16 also seek to allow disclosure in these circumstances, but are phrased differently. The NAIC Model Regulation intended for exceptions to be functionally consistent with one another, not based on whether a licensee is sharing nonpublic personal financial or health information. At their core, the exceptions were meant to preserve business operational disclosures. The recommendation here simply clarifies the regulator’s intent to preserve the ability to service policyholder accounts.

Health Information (Marketing Authorization; Affiliates)

(See §15.1 & §15.2.)

If the Department promulgates a health privacy regulation (see comments that follow), AIA suggests revising §15.1 to be specifically targeted at marketing (i.e., per the NCOIL Privacy Model, the general rule should be that an authorization is required from customers or consumers before their nonpublic personal health information is disclosed by a licensee for marketing purposes only). Section 15.1 of the proposed regulation would be revised as follows: “A licensee shall not disclose nonpublic personal health information about a consumer or customer for the marketing of products or services for personal, family, or household purposes unless an authorization is obtained from the consumer or

customer whose nonpublic personal health information is sought to be disclosed."

The authorization requirement was aimed at marketing disclosures of nonpublic personal health information. To further that intent, §15.1 should identify the specific type of disclosure for which an authorization must be sought.

AIA further suggests adding "or affiliate" in §15.2 after "by or on behalf of the licensee". Section 15.2 should also be slightly amended as follows: "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 or affiliate:".

Since one of the objectives of GLBA is to allow greater flexibility in working with affiliates, adding "or affiliate" brings consistency and clarity to this part of the proposed regulation.

Health Information Removal

(See §15 through §19 and §21.2.)

AIA suggests not promulgating privacy restrictions regarding health information at this time.

First, Title V of GLBA was not meant to address nonpublic personal health information. It only explicitly addresses nonpublic personal financial information. (See, 15 U.S.C. §6809(4)(A), "The term 'nonpublic personal information' means personally identifiable **financial** information ..." (emphasis added)). As a result, there is no need to promulgate health information privacy regulations (which were not contemplated by GLBA).

Second, even assuming arguendo that GLBA might be interpreted to encompass nonpublic personal health information, companies would need additional time to incorporate privacy standards applicable to the handling of such information, and to review their business operations to determine informational needs while balancing consumer privacy concerns. Both the NCOIL and the NAIC model provisions relating to health information require authorization before a licensee discloses nonpublic personal health information of consumers for marketing purposes. This is different from the "opt out" mechanism for consumers' nonpublic personal financial information set out in GLBA, and therefore must be analyzed completely by carriers.

Third, there may be conflicting federal obligations governing the handling of such information, including the federal Health Insurance Portability and Accountability Act (HIPAA) privacy rules released by the U.S. Department of Health and Human Services. Since the HHS "health information" regulations have just been finalized and are not effective for some time, it makes sense for the Department to exercise caution in this area of regulation. While the property and casualty insurance sector is not covered by those regulations, the health insurance sector has been engaged in ongoing compliance efforts with respect to the HHS regulations and GLBA. Interposing different health information regulations now would only increase the compliance burden on health insurers and might subject consumers to inconsistent standards when the HHS regulations are finalized.

Ministerial Changes

AIA recommends making the following ministerial changes, as indicated below:

1. Reviewing whether the section reference in §2.6(e) should be "Sections 3, 4 and 9" instead of "Sections 3, 4, and 9".
2. Reviewing whether the numbering in §2.20 is correct. In particular, should "c" showing what "nonpublic personal financial information" does not include fall under the list of what "'nonpublic personal financial information' means"?
3. Adding the connector "or" to the end of §8.2(c).
4. Reviewing the reference to "Subdivision a" in §9.1(d)(2)(A); it is not the same as "Paragraph (1) of this subsection" used in the NAIC Model Regulation.
5. Reviewing the references to "this Subsection" in §9.1(d)(2)(B) and in §9.1(d)(2)(C); it is not the same as "Paragraph (1) of this subsection" used in the NAIC Model Regulation.
6. Reviewing whether the section reference in §12.3 should be "Subsections 12.1 and 12.2".
7. Revising the section letter "l" in §14.1(i) so that it does not appear in italics.
8. Reviewing the section references that replace the model's use of "Article V", which correspond to §15.1 through §19. (See the following sections: 16.1, 16.2, 18, and 19.)

Conclusion

In conclusion, on behalf of our member companies, AIA respectfully asks that the above comments be taken into consideration when assessing the proposed regulation. We reserve the right to supplement our comments as the process moves forward. Thank you for your attention. If you have any questions or comments, please contact Brenda O'Connor, Director of Public Affairs, at 410-267-9581.

State Farm Insurance Companies



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6/5/01 J.B.
M.P.

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May 30, 2001

JUN 05 2001

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Donna S. Quesenberry
General Counsel
West Virginia Insurance Commission
1124 Smith Street
Charleston, WV 25305

LEGAL DIVISION
W.VA. INS. DEPT.

RE: Series 57: Privacy of Consumer Financial and Health Information

Dear Ms. Quesenberry:

This letter represents the comments of the State Farm Insurance Companies related to proposed rule "Series 57: Privacy of Consumer Financial and Health Information."

We ask that the definition of "consumer" be amended by striking section 2.6(d)(2), "the individual is a claimant under an insurance policy issued by the licensee." This directly conflicts with Title V of the Gramm-Leach-Bliley Act (PL 102-106) since claimants and beneficiaries do not "obtain" any product from an insurer, since they are not policyholders. In addition to not being covered by Title V, inclusion of claimants and beneficiaries will present a multitude of practical problems for providing the notices and opt-out/opt-in opportunities required by the rule. Title V requires opt-out solely from the sharing of information that is related to personal, family or household purposes. Yet, the draft extends to any claimant under an insurance policy issued by the licensee. That extension of Title V privacy coverage to any and every claimant places unpredictable duties upon insurers toward unidentified individuals.

In addition, the inclusion of third party claimants will cause insurers undue hardship in attempting to prohibit disclosure of non-public personal information to insurance agents. Many insurance companies have claims systems that allow their agents to view the claims of their insureds and those claims filed by third party claimants against their insured's policies. Typically, insurers do not proactively send or disclose claimant information to agents, but rather allow the agent to take the initiative when they feel they are providing a service to the insured or claimant. But under the NAIC model regulation, prior to allowing an agent to service his or her insured, the insurer would be required to send out a privacy notice to the third party claimant and to provide a reasonable time for the claimant to opt-out from allowing the agent to receive this information. This not

only inhibits the agent's ability to service their insured who has had a claim filed against them, but also requires insurers to make massive system changes. Insurers would have to build into existing systems the ability to block any inquiries into a claim, if the claimant has opted out. Removing third party claimants from the definition of "consumer" will allow agents to service their accounts, and allow insurers to place their emphasis on making system enhancements necessary for sending out the privacy notice, and tracking opt-out notices. We recommend that reference to claimants and beneficiaries be deleted, as has already been done in Washington D.C. and Illinois.

Most importantly we ask that Section 15 be deleted. The main reasons for our objection to the inclusion of Section 15 on health information are as follows:

1. We believe that it is premature for states to set health information privacy standards in light of the prospect of modifications in the final federal Department of Health and Human Services HIPPA health information privacy regulation. The HIPPA regulations provide three years for compliance. Any attempt to impose a state standard that might be inconsistent with HIPPA or to require compliance with a state standard before the three year time frame would pose significant problems for all insurers. The result would be differing standards in many states, which is clearly burdensome and makes compliance most difficult.
2. We are concerned that the imposition of a state privacy standard might be inconsistent with changes in the insurance industry mandated by Congress in Gramm Leach Bliley Act of 1999, including the involvement of banks in insurance. GLB provided an opportunity for establishment of a financial information privacy standard, while similar efforts to establish a federal standard for health information have not gone forward.
3. We are concerned that despite the exception in Section 17 (b) of the NAIC Model, allowing for exchange of information by a licensee for stated purposes, there is subtle language that poses a problem for our multi-line operation. Section 17 (b) states that "Nothing in this section shall prohibit, restrict or require an authorization for disclosure of non-public personal health information by a licensee for the performance of the following insurance function by or on behalf of the licensee...."

For example, the language implies that information held by an automobile insurance company could be disclosed only for the performance of insurance functions by or on behalf of the licensee, i.e., that specific named insurance company. That would mean that if the automobile company held the information and there was a claim in an affiliated fire company involving the needed medical information, the exception to the authorization requirement would not apply.

The clearest example of this would be when a company's customer response center representative take information, they do so as employees of the specific named insurance company, but they may also receive claim information on a claim from an affiliated company's policy. For example an auto company employee of the customer response center may receive a call from a policyholder on a homeowner's claim; the homeowner's policy is a product of a separate licensee, the affiliated property/casualty company. Under the model language, an authorization would likely have to be obtained, thus slowing the processing of the transaction. The problem is subtle, but could pose significant problems. In a time when the industry as a whole is working to simplify customers' interactions and provide the fastest possible resolution of claims and other policyholder concerns, this issue causes us great concern.

In summary, we believe the more prudent approach to avoid significant compliance and practical concerns is to hold off on adopting a comprehensive health privacy standard until the issues surrounding the federal HIPPA regulation and other potential Congressional action have been resolved.

As you may know, a number of other states have agreed to defer action on the issue of personal health information. To date Connecticut, Washington, Delaware, D.C., Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, and Pennsylvania have all deferred action on this issue.

We hope that you will agree these changes will allow for a meaningful regulation, that will be consistent with existing federal mandates, yet flexible enough to allow insurers to comply with revised HIPPA rules that are to be released soon.

If Section 15 must remain in the proposed regulation, then we request that section 17(b) of the NAIC model be added to section 15 of the proposed rule. Section 17(b) was omitted from the proposed rule. The "safe-harbors" contained in section 17(b) are essential to the orderly conduct of the insurance business. We understand that the Insurance Commission is in the process of filing an amendment to add section 17(b) to the proposed rule.

I am available at your convenience to discuss these matters in greater detail. Please feel free to call on me at (309) 766-3534. Thank you.

Sincerely,



John D. Stuckemeyer,
Counsel
State Farm Insurance Companies

CC: Vincent J. King, Deputy Commissioner
John Canfield, State Farm
Ned Rose, Rose and Atkinson

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June 25, 2001

VIA HAND DELIVERY

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JUN 25 2001

LEGAL DIVISION
W.VA. INS. DEPT.

Office of the West Virginia Insurance Commissioner
Att'n: Donna S. Quesenberry, General Counsel
1124 Smith Street
Charleston, WV 25305

**RE: Comments to 114CSR 57
Privacy of Consumer Financial and Health Information**

Dear Ms. Quesenberry:

This letter outlines my client's, the Health Insurance Association of America's ("HIAA") position on the proposed West Virginia Rules Governing Privacy of Consumer Financial and Health Information (Title 114, Series 57). The HIAA is a trade association representing approximately 300 commercial health insurance companies. These companies provide health, long term care, dental, disability and supplemental coverage to approximately 123 million Americans.

This letter outlines the direction my client believes the Insurance Commissioner should take in addressing the necessary issues raised by Title V of the Gramm-Leach-Bliley Act (PL 102-106).

The HIAA supports a strong uniform standard for protecting the confidentiality of personally identifiable information. Particularly, HIAA supports the model privacy regulation promulgated by the National Association of Insurance Commissioners ("NAIC") which the Commissioner has adopted. However, HIAA has one key exception to the adoption of the NAIC Model regulations.

The HIAA advocates that the NAIC Model regulation be adopted in West Virginia without the current provisions relating to the privacy of personally identifiable health information. While the HIAA agrees that health information deserves strong privacy protection,

SPILMAN THOMAS & BATTLE, PLLC


June 25, 2001

Page 2

the HIAA is concerned that any health privacy standards adopted throughout the country be uniform in nature.

On December 28, 2000, the Department of Health and Human Resources ("HHR") published its final standards for privacy of individually identifiable health information. When finalized, health insurers will be subject to these very comprehensive privacy standards. If the West Virginia Department of Insurance adopts the NAIC Model regulation with the current health information privacy provisions, conflicts and concerns are bound to arise within the health insurance industry from the implementation of competing requirements. For this reason, the HIAA proposes that the Department of Insurance move forward with the Model Regulations for Financial Information and omit the health information privacy standards from the West Virginia regulation.

Sincerely yours,



T. Randolph Cox, on behalf of the
Health Insurance Association of America

TRC/lb

167537



Douglas Breitenbach
Legislative Director
douglasbreitenbach@accli.com

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JUN 22 2001

LEGAL DIVISION
W.VA. INS. DEPT.

June 20, 2001

VIA FACSIMILE (304) 558-0412 AND REGULAR MAIL

The Honorable Jane Cline
Insurance Commissioner
West Virginia Insurance Commission
1124 Smith Street
Charleston, WV 25305-0540

Re: 114 CSR 57-Privacy of Consumer Financial and Health Information

Dear Commissioner Cline:

This statement is submitted on behalf of the American Council of Life Insurers (ACLI) whose 435 member companies account for 73.2% of the life insurance in force in the United States. Of this total, 331 of our members are licensed to do business in West Virginia and account for a corresponding percentage of the life insurance in force in the state.

We appreciate the opportunity to comment on the above emergency rule relating to privacy of consumer financial and health information. The ACLI fully supports the Privacy of Consumer Financial and Health Information Regulation as adopted by the NAIC on September 26, 2000. Since the above emergency rule is almost identical to the NAIC Privacy Regulation, we support its approval by the Secretary of State.

Again, thank you for the opportunity to submit these brief comments.

Respectfully submitted by American Council of Life Insurers by

Douglas L. Breitenbach

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FACSIMILE



1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2599

to: *The Honorable Jane Cline*
company: *West Virginia Insurance Commission*
phone: *(304) 558-3354*
fax: *(304) 558-0412*

from: *Douglas Brietenbach*
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date: *June 21, 2001*

pages: *2*
(including cover)

comments:

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FARMERS

June 26, 2001

Department of Insurance
State of West Virginia
Jane Cline
P.O. Box 50540
Charleston, West Virginia 25305-0540

RE: West Virginia 114CSR57 – Privacy
of Consumer Financial and Health Information

Dear Mr. Cline:

On behalf of Farmers Insurance Group of Companies, the fifth-largest Property & Casualty insurance group in the United States and the third-largest auto and home insurer, we would like to thank you for the opportunity to comment on the proposed Privacy of Consumer Financial and Health Information regulations. We support the NAIC consumer privacy model regulation and look forward to working with you in this regard.

Specifically, Farmers would like to comment on Chapter § 114-57-2. Definitions of the Privacy of Consumer Financial and Health Information Regulation. We respectfully request that Section 2.6 (d)(2) which states “an individual is a licensee’s consumer if the individual is a claimant under an insurance policy issued by the licensee,” be removed from the definition of “consumer.” Other states have removed this provision from their GLB regulation and we respectfully request you do the same.

Additionally, Farmers would like to comment on Section 2.8 which defines “control.” This definition is necessary because Definitions Section 2.1 defines “Affiliates” as a company that controls, is controlled by or is under common control with another company, and uses the word “control.” Under Section 2.8, control is defined as (i) 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; (ii) 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 (iii) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the commissioner determines. This definition is taken not from the definition of control contained in the Insurance Holding Company Act, but rather repeats the language from the FTC and banking regulations. The Insurance Holding Company Act includes control through contract. This is critical to an organization such as Farmers, wherein the insuring entities, known as Exchanges, contract with an attorney-in-fact to perform administrative functions. These administrative functions include underwriting, policy processing, actuarial services and accounting. The attorney-in-fact/management company

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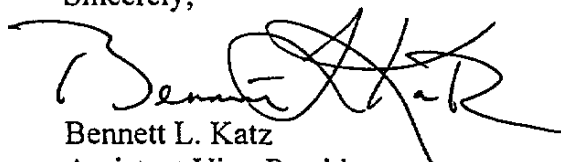
has no ownership control or even a seat on the Board of Directors. Exchanges are owned by their policyholders. However, Exchanges do not have traditional "back office" insurance administration. Thus, they generally contract with a management company for these services. The Management Company, in turn, then "controls" certain administrative aspects of the insuring enterprise. With this in mind, the preferred language from Farmers under the control section would read: "or if any person by contract or agreement is designated as an attorney-in-fact for a Lloyd's Plan insurer (as defined in Section...) or for a reciprocal or inter-insurance exchange (as defined in Section...)." This language can generally be found in the Insurance Holding Company System Regulatory Act.

While permitting the Commission to determine what constitutes control under (h) possibly provides the opportunity to import the concept of control adopted in the Insurance Holding Company Act, we believe clarification is necessary to make certain that contractual control is included in the proposed regulations.

Current practices in the insurance industry and language in existing insurance laws provide support that Exchanges and management companies are affiliates. To minimize our risks while developing a structure that permits non-personal public information to be disclosed between an Exchange and its administrative manager, we would like to see the regulation confirm that through management contracts, control can be established.

Thank you for the opportunity to comment on the Department's proposed regulation. We look forward to working with you on these proposed regulations, especially with regard to the definition of control and the other provisions concerning the standards for determining which parties are affiliates. Please feel free to call on us at any time should you have any questions, or if we can provide you with additional information.

Sincerely,



Bennett L. Katz
Assistant Vice-President
Regulatory Affairs and Compliance
Chief Compliance Officer

BK:js

114CSR57

**WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER**

SERIES 57

**PRIVACY OF CONSUMER FINANCIAL AND
HEALTH INFORMATION**

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

Section

- 114-57-1. General.
- 114-57-2. Definitions.
- 114-57-3. Initial Privacy Notice to Consumers Required.
- 114-57-4. Annual Privacy Notice to Customers Required.
- 114-57-5. Information to be Included in Privacy Notices.
- 114-57-6. Form of Opt Out Notice to Consumers and Opt Out Methods.
- 114-57-7. Revised Privacy Notices.
- 114-57-8. Delivery.
- 114-57-9. Limitation on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties.
- 114-57-10. Limits on Redisclosure and Reuse of Nonpublic Personal Financial Information.
- 114-57-11. Limits on Sharing Account Number Information for Marketing Purposes.
- 114-57-12. Exception to Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing.
- 114-57-13. Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions.
- 114-57-14. Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information.

- 114-57-15. When Authorization Required for Disclosure of Nonpublic Personal Health Information.
 - 114-57-16. Authorizations.
 - 114-57-17. Authorization Request Delivery.
 - 114-57-18. Relationship to Federal Rules.
 - 114-57-19. Relationship to State Laws.
 - 114-57-20. Protection of Fair Credit Reporting Act.
 - 114-57-21. Nondiscrimination.
 - 114-57-22. Construction.
- Appendix A. Sample Clauses.

**TITLE 114
WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER**

**SERIES 57
PRIVACY OF CONSUMER FINANCIAL AND HEALTH INFORMATION**

§ 114-57-1. General.

1.1. Scope. -- This rule governs the treatment of nonpublic personal health information and nonpublic personal financial information about individuals by all licensees of the West Virginia Insurance Commission.

1.2. Authority. -- This rule is promulgated pursuant to the authority granted by W. Va. Code §§ 33-2-10, 33-6F-1 and 33-11A-4.

a. This rule:

1. Requires a licensee to provide notice to individuals about its privacy policies and practices;

2. 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

3. Provides methods for individuals to prevent a licensee from disclosing that information.

b. This rule applies to:

1. 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

2. All nonpublic personal health information.

c. A licensee domiciled in this state that is in compliance with this rule in a state that has not enacted laws or rules or regulations 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 the other state.

1.3. Filing Date. --

**Insurance Commissioner
Legislative Rule
Title 114, Series 57**

1.4. Effective Date. --

a. By July 1, 2001, a licensee shall provide an initial notice, as required by Section 5, to consumers who are the licensee's customers on July 1, 2001.

1. A licensee provides an initial notice to consumers who are its customers on July 1, 2001, if, by that date, the licensee has established a system for providing an initial notice to all new customers and has mailed the initial notice to all the licensee's existing customers.

b. 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 Subsection 12.1 of this rule, 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.

§ 114-57-2. Definitions.

2.1. "Affiliate" means a company that controls, is controlled by or is under common control with another company.

2.2. "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.

a. A licensee makes its notice reasonably understandable if it:

1. Presents the information in the notice in clear, concise sentences, paragraphs and sections;
2. Uses short explanatory sentences or bullet lists whenever possible;
3. Uses definite, concrete, everyday words and active voice whenever possible;
4. Avoids multiple negatives;
5. Avoids legal and highly technical business terminology whenever possible; and

**Insurance Commissioner
Legislative Rule
Title 114, Series 57**

6. Avoids explanations that are imprecise and readily subject to different interpretations.

b. A licensee designs its notice to call attention to the nature and significance of the information in it if the licensee:

1. Uses a plain-language heading to call attention to the notice;
2. Uses a typeface and type size that are easy to read;
3. Provides wide margins and ample line spacing;
4. Uses boldface or italics for key words; and

5. 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.

c. 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 ensure 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:

1. Places the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or
2. 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.

2.3. "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.

2.4. "Commissioner" means the Insurance Commissioner of the State of West Virginia.

2.5. "Company" means a corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship or similar organization.

**Insurance Commissioner
Legislative Rule
Title 114, Series 57**

2.6. "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.

a. 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.

b. An applicant for insurance prior to the inception of insurance coverage is a licensee's consumer.

c. 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.

d. An individual is a licensee's consumer if:

1. the individual is a beneficiary of a life insurance policy underwritten by the licensee;

2. the individual is a claimant under an insurance policy issued by the licensee;

3. the individual is an insured or an annuitant under an insurance policy or an annuity, respectively, issued by the licensee; or

4. the individual is a mortgagor of a mortgage covered under a mortgage insurance policy; and

5. the licensee discloses nonpublic personal financial information about the individual to a nonaffiliated third party other than as permitted under Sections 12, 13 and 14 of this rule.

e. Provided that the licensee provides the initial, annual and revised notices under Sections 3, 4 and 7 of this rule to the plan sponsor, group or blanket insurance policyholder or group annuity contract holder, and further provided that the licensee does not disclose to a nonaffiliated third party nonpublic personal financial information about such an individual other than as permitted under Sections 12, 13 and 14 of this rule, an individual is not the consumer of the licensee solely because he or she is:

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1. 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; or

2. Covered under a group or blanket insurance policy or group annuity contract issued by the licensee.

f. The individuals described in Paragraphs 1 through 3 of Subdivision e of this Subsection are consumers of a licensee if the licensee does not meet all the conditions of Subdivision e.

g. In no event shall the individuals, solely by virtue of the status described in Paragraphs 1 through 3 of Subdivision e of this Subsection be deemed to be customers for purposes of this rule.

h. 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.

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

2.7. "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)).

2.8. "Control" means:

a. Ownership, control or power to vote twenty-five percent (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.

2.9. "Customer" means a consumer who has a customer relationship with a licensee.

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2.10. "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.

a. A consumer has a continuing relationship with a licensee if:

1. The consumer is a current policyholder of an insurance product issued by or through the licensee; or

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

b. A consumer does not have a continuing relationship with a licensee if:

1. The consumer applies for insurance but does not purchase the insurance;

2. The licensee sells the consumer travel insurance in an isolated transaction;

3. The individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee;

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

5. 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;

6. 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 twelve (12) consecutive months, other than annual privacy notices, material required by law or regulation, communication at the direction of a state or federal authority, or promotional materials;

7. 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

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8. 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.

2.11. "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)). Financial institution does not include:

a. 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.*);

b. 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

c. 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.

2.12. "Financial product or service" means a 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)). 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.

2.13. "Health care" means:

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

1. Relates to the physical, mental or behavioral condition of an individual;

or

2. 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

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

2.14. "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.

2.15. "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.

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

2.17. "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 Chapter 33 of the West Virginia Code.

a. A licensee is not subject to the notice and opt out requirements for nonpublic personal financial information set forth in Sections 1 through 14 of this rule if the licensee is an employee, agent or other representative of another licensee ("the principal") and:

1. The principal otherwise complies with, and provides the notices required by, the provisions of this rule; and
2. The licensee does not disclose any nonpublic personal information to any person other than the principal or its affiliates unless in a manner permitted by this rule.

b. Subject to Paragraph 1 of this Subdivision, "licensee" shall also include an unlicensed insurer that accepts business placed through a licensed excess lines broker in this

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state, but only in regard to the excess lines placements placed pursuant to W. Va. Code § 33-12-10.

1. An excess lines broker or excess 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 14 of this rule provided:

A. The broker or insurer does not disclose nonpublic personal information of a consumer or a customer to nonaffiliated third parties for any purpose, including joint servicing or marketing under Section 12 of this rule, except as permitted by Sections 13 or 14 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.”

2.18. “Nonaffiliated third party” means any person except:

- a. A licensee’s affiliate; or
- b. 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).
- c. 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)).

2.19. “Nonpublic personal information” means nonpublic personal financial information and nonpublic personal health information.

2.20. “Nonpublic personal financial information” means:

- a. Personally identifiable financial information; and

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b. 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.

c. Nonpublic personal financial information does not include:

1. Health information;

2. Publicly available information, except as included on a list described in Subdivision b of this Subsection; or

3. 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.

d. 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.

e. 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.

2.21. "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.

2.22. "Personally identifiable financial information" means any information:

a. A consumer provides to a licensee to obtain an insurance product or service from the licensee;

b. About a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer; or

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c. The licensee otherwise obtains about a consumer in connection with providing an insurance product or service to that consumer.

d. Personally identifiable financial information includes, but is not limited to:

1. Information a consumer provides to a licensee on an application to obtain an insurance product or service;
2. Account balance information and payment history;
3. 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;
4. 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;
5. 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;
6. Any information the licensee collects through an Internet cookie (an information-collecting device from a web server); and
7. Information from a consumer report.

e. Personally identifiable financial information does not include:

1. Health information;
2. A list of names and addresses of customers of an entity that is not a financial institution; and
3. 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.

2.23. "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;

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- b. Widely distributed media; or
- c. Disclosures to the general public that are required to be made by federal, state or local law.
- d. 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:
 - 1. That the information is of the type that is available to the general public; and
 - 2. 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.
- e. Publicly available information in government records includes information in government real estate records and security interest filings.
- f. 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.
- g. 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.
- h. 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.

§ 114-57-3. Initial Privacy Notice to Consumers Required.

3.1. A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to:

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a. An individual who becomes the licensee's customer, not later than when the licensee establishes a customer relationship, except as provided in Subsection 3.5 of this Section; and

b. 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 13 and 14.

3.2. A licensee is not required to provide an initial notice to a consumer under Subdivision b of Subsection 3.1 of this Section 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 13 and 14, 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.

3.3. A licensee establishes a customer relationship at the time the licensee and the consumer enter into a continuing relationship.

a. A licensee establishes a customer relationship when the consumer:

1. 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

2. Agrees to obtain financial, economic or investment advisory services relating to insurance products or services for a fee from the licensee.

3.4. 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 3.1 of this Section as follows:

a. The licensee may provide a revised policy notice, under Section 7, that covers the customer's new insurance product or service; or

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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 3.1 of this Section.

3.5. A licensee may provide the initial notice required by Subdivision a of Subsection 3.1 of this Section within a reasonable time after the licensee establishes a customer relationship if:

- a. Establishing the customer relationship is not at the customer's election; or
- b. Providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.
- c. 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.
- d. 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.
- e. 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.

3.6. When a licensee is required to deliver an initial privacy notice by this Section, the licensee shall deliver it according to Section 8. If the licensee uses a short-form initial notice for non-customers according to Subsection 5.3, the licensee may deliver its privacy notice according to Subdivision b of Subsection 5.3.

§ 114-57-4. Annual Privacy Notice to Customers Required.

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

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a. A licensee provides a notice annually if it defines the twelve-consecutive-month period as a calendar year and provides the annual notice to the customer once in each calendar year following the calendar year in which the licensee provided the initial notice. For example, if a customer opens an account on any day of year 1, the licensee shall provide an annual notice to that customer by December 31 of year 2.

4.2. 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.

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

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

c. For the purposes of this 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.

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

4.3. When a licensee is required by this Section to deliver an annual privacy notice, the licensee shall deliver it according to Section 8.

§ 114-57-5. Information to be Included in Privacy Notices.

5.1. The initial, annual and revised privacy notices that a licensee provides under Sections 3, 4 and 7 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:

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- 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 13 and 14;
- 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 13 and 14;
- e. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under Section 12 (and no other exception in Sections 13 and 14 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 9.1 of Section 9 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 5.2 of this Section.

5.2. If a licensee discloses nonpublic personal financial information as authorized under Sections 13 and 14, the licensee is not required to list those exceptions in the initial or annual privacy notices required by Sections 3 and 4. 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.

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a. 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:

1. Information from the consumer;
2. Information about the consumer's transactions with the licensee or its affiliates;
3. Information about the consumer's transactions with nonaffiliated third parties; and
4. Information from a consumer reporting agency.

b. 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 Subdivision a of this Subsection, as applicable, and provides a few examples to illustrate the types of information in each category. These might include:

1. Information from the consumer, including application information, such as assets and income and identifying information, such as name, address and social security number;
2. Transaction information, such as information about balances, payment history and parties to the transaction; and
3. Information from consumer reports, such as a consumer's creditworthiness and credit history.

c. 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.

d. 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.

e. 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.

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1. 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.

2. 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.

f. If a licensee discloses nonpublic personal financial information under the exception in Section 12 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 Subdivision e of Subsection 5.1 of this Section if it:

1. Lists the categories of nonpublic personal financial information it discloses, using the same categories and examples the licensee used to meet the requirements of Subdivision b of Subsection 5.1 of this Section, as applicable; and

2. 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.

g. 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 13 and 14, the licensee may simply state that fact, in addition to the information it shall provide under Subdivisions a, h, and i of Subsection 5.1 and Subsection 5.2 of this Section.

h. 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:

1. Describes in general terms who is authorized to have access to the information; and

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2. 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.

5.3. A licensee may satisfy the initial notice requirements in Subdivision b of Subsection 3.1 and Subsection 6.7 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 6.

a. A short-form initial notice shall:

1. Be clear and conspicuous;
2. State that the licensee's privacy notice is available upon request; and
3. Explain a reasonable means by which the consumer may obtain that notice.

b. The licensee shall deliver its short-form initial notice according to Section 8. 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 8.

1. Examples of obtaining privacy notice. The licensee provides a reasonable means by which a consumer may obtain a copy of its privacy notice if the licensee:

A. Provides a toll-free telephone number that the consumer may call to request the notice; or

B. For a consumer who conducts business in person at the licensee's office, maintains copies of the notice on hand that the licensee provides to the consumer immediately upon request.

5.4. 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

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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.

5.5. Sample clauses illustrating some of the notice content required by this Section are included in Appendix A of this rule.

§ 114-57-6. Form of Opt Out Notice to Consumers and Opt Out Methods.

6.1. If a licensee is required to provide an opt out notice under Subsection 9.1, 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:

- a. That the licensee discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a nonaffiliated third party;
- b. That the consumer has the right to opt out of that disclosure; and
- c. A reasonable means by which the consumer may exercise the opt out right.

6.2. 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 Subdivisions b and c of Subsection 5.1, 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.

6.3. 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;

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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.

6.4. 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.

6.5. A licensee may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

6.6. 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 3.

6.7. If a licensee provides the opt out notice later than required for the initial notice in accordance with Section 3, the licensee shall also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

6.8. If two (2) or more consumers jointly obtain an insurance product or service from a licensee, the licensee may provide a single opt out notice. The licensee's opt out notice shall explain how the licensee will treat an opt out direction by a joint consumer (as explained in Subdivision d of this Subsection).

a. The licensee may either:

1. Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

2. Permit each joint consumer to opt out separately.

b. 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.

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

d. The following exemplifies permissible opt out for joint relationships:

1. If John and Mary are both named policyholders on a homeowner's insurance policy issued by a licensee and the licensee sends policy statements to John's address, the licensee may do any of the following, but it shall explain in its opt out notice which opt out policy the licensee will follow:

A. Send a single opt out notice to John's address, but the licensee shall accept an opt out direction from either John or Mary.

B. Treat an opt out direction by either John or Mary as applying to the entire policy. If the licensee does so and John opts out, the licensee may not require Mary to opt out as well before implementing John's opt out direction.

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

1. It shall permit John and Mary to opt out for each other;

2. 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

3. 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.

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

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

6.11. 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.

a. 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

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relationship with the licensee, the opt out direction that applied to the former relationship does not apply to the new relationship.

6.12. When a licensee is required to deliver an opt out notice by this Section, the licensee shall deliver it according to Section 8.

§ 114-57-7. Revised Privacy Notices.

7.1. 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 3, 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.

7.2. Except as otherwise permitted by Sections 12, 13 and 14, a licensee shall provide a revised notice before it:

- a. Discloses a new category of nonpublic personal financial information to any nonaffiliated third party;
- b. Discloses nonpublic personal financial information to a new category of nonaffiliated third party; or
- c. Discloses nonpublic personal financial information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.

7.3. 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.

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7.4. When a licensee is required to deliver a revised privacy notice by this Section, the licensee shall deliver it according to Section 8.

§ 114-57-8. Delivery.

8.1. 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.

8.2. A licensee may reasonably expect that a consumer will receive actual notice if the licensee:

- a. Hand-delivers a printed copy of the notice to the consumer;
- b. Mails a printed copy of the notice to the last known address of the consumer separately, or in a policy, billing or other written communication;
- c. For a consumer who conducts transactions electronically, posts the notice on the electronic site and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service; or
- d. For an isolated transaction with a consumer, such as the licensee providing an insurance quote or selling the consumer travel insurance, posts the notice and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular insurance product or service.

8.3 A licensee may not, however, reasonably expect that a consumer will receive actual notice of its privacy policies and practices if it:

- a. Only posts a sign in its office or generally publishes advertisements of its privacy policies and practices; or
- b. Sends the notice via electronic mail to a consumer who has not agreed to receive notices electronically.

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

- a. The customer 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

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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.

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

8.6. For customers only, a licensee shall provide the initial notice required by Subdivision a of Subsection 3.1, the annual notice required by Subsection 4.1, and the revised notice required by Section 7 so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

a. A licensee provides a privacy notice to the customer so that the customer can retain it or obtain it later if the licensee:

1. Hand-delivers a printed copy of the notice to the customer;
2. Mails a printed copy of the notice to the last known address of the customer; or
3. Makes its current privacy notice available on a web site for the customer who agrees to receive the notice at the web site.

8.7. 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.

8.8. If two (2) or more consumers jointly obtain an insurance product or service from a licensee, the licensee may satisfy the initial, annual and revised notice requirements of Subsections 3.1, 4.1, and 7.1, respectively, by providing one notice to those consumers jointly.

§ 114-57-9. Limits on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties.

9.1. 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:

a. The licensee has provided to the consumer an initial notice as required under Section 3;

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b. The licensee has provided to the consumer an opt out notice as required in Section 6;

c. 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

d. The consumer does not opt out.

1. 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 12, 13 and 14.

2. A licensee provides a consumer with a reasonable opportunity to opt out if:

A. The licensee mails the notices required in Subdivisions a and b of this Subsection 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 thirty (30) days from the date the licensee mailed the notices.

B. A customer opens an on-line account with a licensee and agrees to receive the notices required in Subdivisions a and b of this Subsection electronically, and the licensee allows the customer to opt out by any reasonable means within thirty (30) days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

C. 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 Subdivisions a and b 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.

9.2. A licensee shall comply with this Section, regardless of whether the licensee and the consumer have established a customer relationship.

9.3. 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.

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9.4. 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.

§ 114-57-10. Limits on Rediscovery and Reuse of Nonpublic Personal Financial Information.

10.1. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception in Sections 13 or 14 of this rule, 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 Sections 13 or 14 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.

10.2. 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.

10.3. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in Sections 13 or 14 of this rule, the licensee may disclose the information only:

- a. To the affiliates of the financial institution from which the licensee received the information;
- b. To its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and
- c. 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.

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10.4. If a licensee obtains a customer list from a nonaffiliated financial institution outside of the exceptions in Sections 13 or 14:

- a. The licensee may use that list for its own purposes; and
- b. 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 13 or 14, such as to the licensee's attorneys or accountants.

10.5. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in Sections 13 or 14 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 13 or 14 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

10.6. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party other than under an exception in Sections 13 or 14 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.

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§ 114-57-11. Limits on Sharing Account Number Information for Marketing Purposes.

11.1. 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.

11.2. Subsection 11.1 of this Section 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.

11.3. 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.

11.4. 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.

§ 114-57-12. Exception to Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing.

12.1. The opt out requirements in Sections 6 and 9 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:

a. Provides the initial notice in accordance with Section 3; and

b. Enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the

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licensee disclosed the information, including use under an exception in Sections 13 or 14 in the ordinary course of business to carry out those purposes.

12.2. 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 Subdivision b of Subsection 12.1 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 13 or 14 in the ordinary course of business to carry out that joint marketing.

12.3. The services a nonaffiliated third party performs for a licensee under Subsection 12.1 and 12.2 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.

12.4. 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.

§ 114-57-13. Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions.

13.1. The requirements for initial notice in Subdivision b of Subsection 3.1, the opt out in Sections 6 and 9, and service providers and joint marketing in Section 12 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.

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13.2. "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:

1. 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;

2. To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;

3. To provide a confirmation, statement or other record of the transaction, or information on the status or value of the insurance product or service to the consumer or the consumer's agent or broker;

4. To accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party;

5. 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

6. 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.

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§ 114-57-14. Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information.

14.1. The requirements for initial notice to consumers in Subdivision b of Subsection 3.1, the opt out in Sections 6 and 9, and service providers and joint marketing in Section 12 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. To protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product or transaction;
- c. To protect against or prevent actual or potential fraud or unauthorized transactions;
- d. For required institutional risk control or for resolving consumer disputes or inquiries;
- e. To persons holding a legal or beneficial interest relating to the consumer; or
- f. To persons acting in a fiduciary or representative capacity on behalf of the consumer;
- g. 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;
- h. 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;
- i. To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); or

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- j. From a consumer report reported by a consumer reporting agency;
- k. 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;
- l. To comply with federal, state or local laws, rules and other applicable legal requirements;
- m. To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local authorities; or
- n. 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
- o. For purposes related to the replacement of a group benefit plan, a group health plan or a group welfare plan.

14.2. A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under Subsection 6.10.

§ 114-57-15. When Authorization Required for Disclosure of Nonpublic Personal Health Information.

15.1. 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.

15.2. 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

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inquiries; external accreditation standards; the replacement of a group benefit plan; 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.

§ 114-57-16. Authorizations.

16.1. A valid authorization to disclose nonpublic personal health information pursuant to Subsection 15.1 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.

16.2. An authorization for the purposes of Subsections 15.1 and 16.1 shall specify a length of time for which the authorization shall remain valid, which in no event shall be for more than twenty-four (24) months.

16.3. A consumer or customer who is the subject of nonpublic personal health information may revoke an authorization to disclose nonpublic personal health information at

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any time, subject to the rights of an individual who acted in reliance on the authorization prior to notice of the revocation.

16.4. 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.

§ 114-57-17. Authorization Request Delivery.

17.1. A request for authorization and an authorization form may be delivered to a consumer or a customer as part of an opt-out notice pursuant to Section 8, 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 15.1.

§ 114-57-18. Relationship to Federal Rules.

18.1. 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 [65 Fed. Reg. 82461-82829 (Dec. 28, 2000) (to be codified at 45 C.F.R. Parts 160 through 164)] (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 the provisions of Sections 15, 16, and 17.

§ 114-57-19. Relationship to State Laws.

19.1. Nothing in Sections 15, 16, and 17 shall preempt or supercede existing state law related to medical records, health or insurance information privacy.

§ 114-57-20. Protection of Fair Credit Reporting Act.

20.1. 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.

§ 114-57-21. Nondiscrimination.

21.1. 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.

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21.2. 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.

§ 114-57-22. Construction.

22.1. Rule of Construction. -- The examples in this rule and the sample clauses in Appendix A of this rule are not exclusive. Compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this rule.

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 Subdivision a of Subsection 5.1 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.

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 Subdivision b of Subsection 5.1 to describe the categories of nonpublic personal information the licensee

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discloses. The licensee may use these clauses if it discloses nonpublic personal information other than as permitted by the exceptions in Sections 12, 13 and 14.

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 “your creditworthiness and credit history”].

Sample Clause A-2, Alternative 2:

We may disclose all of the information that we collect, as described [describe location in the notice, such as “above” or “below”].

A-3—Categories of information a licensee discloses and parties to whom the licensee discloses (institutions that do not disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirements of Subdivisions b, c, and d of Subsection 5.1 to describe the categories of nonpublic personal information about customers and former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses. A licensee may use this clause if the licensee does not disclose nonpublic personal information to any party, other than as permitted by the exceptions in Sections 13 and 14.

Sample Clause A-3:

We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law.

A-4—Categories of parties to whom a licensee discloses (institutions that disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirement of Subdivision c of Subsection 5.1 to describe the categories of affiliates and nonaffiliated third parties to whom the

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licensee discloses nonpublic personal information. This clause may be used if the licensee discloses nonpublic personal information other than as permitted by the exceptions in Sections 12, 13 and 14, as well as when permitted by the exceptions in Sections 13 and 14.

Sample Clause A-4:

We may disclose nonpublic personal information about you to the following types of third parties:

- Financial service providers, such as [provide illustrative examples, such as “life insurers, automobile insurers, mortgage bankers, securities broker-dealers, and insurance agents”];
- Non-financial companies, such as [provide illustrative examples, such as “retailers, direct marketers, airlines, and publishers”]; and
- Others, such as [provide illustrative examples, such as “non-profit organizations”].

We may also disclose nonpublic personal information about you to nonaffiliated third parties as permitted by law.

A-5–Service provider/joint marketing exception

A licensee may use one of these clauses, as applicable, to meet the requirements of Subdivision e of Subsection 5.1 related to the exception for service providers and joint marketers in Section 12. If a licensee discloses nonpublic personal information under this exception, the licensee shall describe the categories of nonpublic personal information the licensee discloses and the categories of third parties with which the licensee has contracted.

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 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, premium, and payment history”]; and

- Information we receive from a consumer reporting agency, such as [provide illustrative examples, such as “your creditworthiness and credit history”].

Sample Clause A-5, Alternative 2:

We may disclose all of the information we collect, as described [describe location in the notice, such as “above” or “below”] to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements.

A-6—Explanation of opt out right (institutions that disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirement of Subdivision f of Subsection 5.1 to provide an explanation of the consumer’s right to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right. The licensee may use this clause if the licensee discloses nonpublic personal information other than as permitted by the exceptions in Sections 12, 13 and 14.

Sample Clause A-6:

If you prefer that we not disclose nonpublic personal information about you to nonaffiliated third parties, you may opt out of those disclosures, that is, you may direct us not to make those disclosures (other than disclosures permitted by law). If you wish to opt out of disclosures to nonaffiliated third parties, you may [describe a reasonable means of opting out, such as “call the following toll-free number: (insert number)].

A-7—Confidentiality and security (all institutions)

A licensee may use this clause, as applicable, to meet the requirement of Subdivision h of Subsection 5.1 to describe its policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

Sample Clause A-7:

We restrict access to nonpublic personal information about you to [provide an appropriate description, such as “those employees who need to know that information to provide products or services to you”]. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.
