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**IDAPA 18
TITLE 01
Chapter 48**

18.01.48 - PRIVACY OF CONSUMER FINANCIAL INFORMATION

000. LEGAL AUTHORITY.

The statutory authority for this chapter is Title 67, Chapter 52, Idaho Code, and Sections 41-211 and 41-1302, Idaho Code. (7-1-01)T

001. TITLE AND SCOPE.

01. Title. This chapter shall be cited in full as IDAPA 18.01.48, "Privacy of Consumer Financial Information". (7-1-01)T

02. Scope. The purpose of this chapter is to:

a. Implement Title V of the Gramm-Leach-Bliley Act of 1999 ("GLBA") (15 U.S.C. 6801 et seq.), that requires financial institutions, including insurers, to respect the privacy of their customers and to protect the security and confidentiality of those customers' nonpublic personal financial information; (7-1-01)T

b. Establish appropriate consumer privacy standards for insurance licensees; (7-1-01)T

c. Ensure, pursuant to Title V and Section 505 of GLBA (15 U.S.C. Section 6805), that the Director of the Idaho Department of Insurance shall be eligible to override the insurance customer protections prescribed by a federal banking agency; and (7-1-01)T

d. Require, pursuant to 15 U.S.C. Sections 6802 and 6803 of GLBA, that insurers maintain a privacy policy that is clearly communicated to customers and, under certain circumstances to consumers, and that, subject to appropriate exceptions, no "nonpublic personal information" be disclosed to nonaffiliated third parties unless a consumer has been given a chance to "opt out" of having his information disclosed, and that no specific account information be given to direct marketing firms, as provided within the provisions of this rule. (7-1-01)T

03. Applicability. This chapter shall apply only to nonpublic personal information about individuals who obtain financial products or services in this state for personal, family or household purposes. These rules do not apply to information about companies or individuals who obtain financial products or services for business, commercial, or agricultural purposes. If an individual obtains both personal, family or household related products and also products that are for business, commercial, or agricultural purposes, then these rules apply only to the nonpublic personal information obtained or provided in relation to the personal, family or household products. (7-1-01)T

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements which pertain to the interpretation of the rules of the chapter, or to the documentation of compliance with the rules of this chapter. These documents will be available for public inspection and copying at cost in the main office and each regional or district office of this agency. (7-1-01)T

003. ADMINISTRATIVE APPEALS.

All hearings before the Director of the Department of Insurance will be held pursuant to Chapter 2, Title 41 and Chapter 52, Title 67, Idaho Code. Any appeal from a decision of the Director can be taken to district court pursuant to Chapter 52, Title 67, Idaho Code and the Idaho Rules of Civil Procedure. (7-1-01)T

004. INCORPORATION BY REFERENCE.

The following documents are herein incorporated by reference and are available at any law library or at the Department of Insurance: (7-1-01)T

01. United States Code. The following portions of the United States Code: (7-1-01)T

a. 12 U.S.C. Section 1843(k); (7-1-01)T

- b. 12 U.S.C. Chapter 21; (7-1-01)T
- c. 12 U.S.C. Section 3401 et seq.; (7-1-01)T
- d. 15 U.S.C. Section 1681a(f) and (d); (7-1-01)T
- e. 15 U.S.C. Sections 6801, 6802, 6803, and 6805; and (7-1-01)T
- f. 31 U.S.C. Chapter 53, Subchapter 11. (7-1-01)T

02. Federal Acts By Popular Name. The following federal popular name acts are referenced generally with or without reference to a specific code provision. (7-1-01)T

- a. Commodity Exchange Act; (7-1-01)T
- b. Farm Credit Act of 1971; and (7-1-01)T
- c. Gramm-Leach-Bliley Act of 1999. (7-1-01)T

005. OFFICE – OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS.

The Idaho Department of Insurance main office is open Monday through Friday excluding legal holidays from 8 a.m. until 5 p.m. and is located at: Joe R. Williams Building, 3rd Floor; 700 W. State Street, Boise Idaho. The mailing address is: P.O. Box 83720; Boise, Idaho 83720-0043. The main telephone number for the Department is 208-334-4250 or 800-721-3272 (in state only). The Department homepage is at www.doi.state.id.us. (7-1-01)T

006. PUBLIC RECORDS ACT COMPLIANCE.

This rule is subject to and in compliance with the Idaho Public Records Act, Sections 9-337 through 9-350, Idaho Code. (7-1-01)T

007. -- 009. (RESERVED).

010. DEFINITIONS.

01. Affiliate. Any company that controls, is controlled by, or is under common control with another company. (7-1-01)T

02. Agent. An individual, firm or corporation appointed by an insurer to solicit applications for insurance or annuity contracts or to negotiate for such contracts on its behalf, and if authorized to do so by the insurer, to effectuate, issue and countersign insurance contracts. (7-1-01)T

03. Clear And Conspicuous. That a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice. (7-1-01)T

04. Collect. 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. (7-1-01)T

05. Company. Any corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship or similar organization. (7-1-01)T

06. Consumer. An individual who seeks to obtain, obtains, or has obtained an insurance policy, product, or service covering subjects of insurance resident, located, or expressly to be performed in this state 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, including, but not limited to: (7-1-01)T

- a. An individual who provides nonpublic personal information to a licensee in connection with

seeking to obtain or obtaining financial, insurance, investment or economic advisory services regardless of whether the licensee establishes an ongoing relationship; (7-1-01)T

- b.** An applicant for insurance prior to the inception of insurance coverage; (7-1-01)T
- c.** An individual who provides nonpublic personal information to a licensee in order to obtain a determination about whether he may qualify for a loan to be used primarily for personal, family, or household purposes, regardless of whether the loan is extended; (7-1-01)T
- d.** A certificate holder under a group insurance policy; and (7-1-01)T
- e.** An individual is not a licensee's consumer solely because the individual:

 - i. Is a participant or a beneficiary of an employee welfare benefit plan that the licensee sponsors, provides services to, or for which the licensee acts as a trustee or fiduciary; (7-1-01)T
 - ii. Is a beneficiary of a trust for which the licensee is a trustee; (7-1-01)T
 - iii. Has designated the licensee as trustee for a trust; or (7-1-01)T
 - iv. Is a consumer of another financial institution to which the licensee acts as producer for, or provides processing or other services. (7-1-01)T

07. Consumer Reporting Agency. The same meaning as in Section 603(f) of the Federal Fair Credit Reporting Act (15 U.S.C. Section 1681a(f)). (7-1-01)T

08. Control. For purposes of this chapter, any of the following: (7-1-01)T

- 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 (1) or more other persons; (7-1-01)T
- 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 (7-1-01)T
- c.** The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the director determines. (7-1-01)T

09. Customer. A consumer who has a customer relationship with a licensee. In no event, however, shall a beneficiary or a claimant under a policy of insurance, solely by virtue of his status as a beneficiary or claimant, be deemed to be a customer for the purposes of these rules. (7-1-01)T

10. Customer Relationship. A continuing relationship between a consumer and a licensee under which the licensee provides a financial product or service to the consumer that is to be used primarily for personal, family, or household purposes, including, but not limited to, if the consumer: (7-1-01)T

- a.** Is a current policyholder or owner of another product from or through a licensee; (7-1-01)T
- b.** Holds an investment product through a licensee; or (7-1-01)T
- c.** Obtains financial, insurance, investment or economic advisory services from a licensee for a fee. (7-1-01)T

11. Financial Product Or Service. Any product or service that is offered by a licensee pursuant to Title 41, Idaho Code, including, but not limited to a licensee's evaluation or brokerage of information that the licensee collects in connection with a request or an application from a consumer for a financial product or service. (7-1-01)T

12. Financial Institution. Any institution the business of which is engaging in financial activities as described in Section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. Section 1843(k)). (7-1-01)T

a. Notwithstanding Subsection 010.12.a., the term financial institution does not include 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. (7-1-01)T

b. Notwithstanding Subsection 010.12.a., the term financial institution does not include the Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971. (7-1-01)T

c. Notwithstanding Subsection 010.12.a., the term financial institution does not include institutions chartered by the United States Congress specifically to engage in transactions described in Section 502(e)(1)(C) of the GLBA, as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party. (7-1-01)T

13. Licensee. A person licensed, or required to be licensed, or authorized, or required to be authorized, or registered, or required to be registered pursuant to Title 41, Idaho Code; or an unauthorized insurer in regard to the surplus line business conducted pursuant to Title 41, Idaho Code or other covered entities. A licensee who is a producer is subject to all the requirements of these rules, except when the producer is acting as agent for a licensee. In that case, the producer acting as an agent for a licensee is exempt only from the notice requirements, of these rules, and only if such producer does not disclose nonpublic personal information. (7-1-01)T

a. Subject to Subsection 010.13.b., “covered entities” shall include unauthorized insurers who place business through licensed surplus line brokers in this state, but only in regard to the surplus line placements placed pursuant to Chapter 12, Title 41, Idaho Code. (7-1-01)T

b. Licensed surplus line brokers placing business underwritten by covered entities and those covered entities shall be deemed to be in compliance with the notice and opt out requirements for nonpublic personal financial information set forth in this chapter provided: (7-1-01)T

i. Such licensed surplus line brokers and covered entities do not disclose nonpublic personal information of a consumer or a customer to nonaffiliated third parties for any purpose, including joint servicing or marketing under Sections 065 and 066 of this chapter, except as permitted by Sections 068, 069, 071, or 072 of this chapter; and (7-1-01)T

ii. At the time the customer relationship is established, a single notice is delivered to the consumer on behalf of all such licensed surplus line brokers and covered entities involved in the provision of a financial product or service to a consumer or customer on which the following is printed in sixteen (16) point type:

PRIVACY NOTICE.

“NEITHER THE U.S. BROKER(S) THAT HANDLED THIS INSURANCE NOR THE INSURER(S) THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL INFORMATION CONCERNING THE BUYER TO NONAFFILIATES OF SUCH BROKER(S) OR SUCH INSURER(S) EXCEPT AS PERMITTED BY LAW.” (7-1-01)T

14. Nonaffiliated Third Party. Any person, including, but not limited to, any company that is an affiliate solely by virtue of the licensee’s or its affiliate’s direct or indirect ownership or control of the company conducting: (7-1-01)T

a. Merchant banking or investment banking activities of the type described in Section 4(k)(4)(H) of the Federal Bank Holding Company Act; or (7-1-01)T

b. 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. Section 1843(k)(4)(H) and (I)), except: (7-1-01)T

- i. The licensee's affiliate; (7-1-01)T
- ii. A person employed jointly by a licensee and any company that is not the licensee's affiliate. Nonaffiliated third party includes the other company that jointly employs the person; or (7-1-01)T
- iii. The licensee's agent. (7-1-01)T
- 15. Nonpublic Personal Information.** Nonpublic personal financial information. (7-1-01)T
- 16. Nonpublic Personal Financial Information.** Personally identifiable financial information; and 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. (7-1-01)T
 - a.** Nonpublic personal financial information does not include: (7-1-01)T
 - i. Publicly available information; or (7-1-01)T
 - ii. 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 information. (7-1-01)T
 - b.** Nonpublic personal financial information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as policy or contract numbers. (7-1-01)T
- 17. Opt Out.** A direction by the consumer that a licensee not disclose nonpublic personal information about that consumer to a nonaffiliated third party, other than as permitted by Sections 065, 067, 068, 069, 071 and 072 of these rules. (7-1-01)T
- 18. Personally Identifiable Financial Information.** Any information: (7-1-01)T
 - a.** A consumer provides to a licensee to obtain a financial product or service from the licensee; (7-1-01)T
 - b.** About a consumer resulting from any transaction involving a financial product or service between a licensee and a consumer; or (7-1-01)T
 - c.** A licensee otherwise obtains about a consumer in connection with providing a financial product or service to that consumer. (7-1-01)T
- 19. Producer.** A person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance. (7-1-01)T
- 20. Publicly Available Information.** Any information that the licensee has a reasonable basis to believe is lawfully made available to the general public from: (7-1-01)T
 - a.** Federal, state, or local government records; (7-1-01)T
 - b.** Widely distributed media; or (7-1-01)T
 - c.** Disclosures to the general public that are required to be made by federal, state or local law. (7-1-01)T
- 21. Reasonable Basis.** The licensee has a reasonable basis to believe that information is lawfully made available to the general public because the licensee has taken steps to determine: (7-1-01)T
 - a.** That the information is of the type that is available to the general public; and (7-1-01)T

b. Whether an individual can direct that the information not be made available to the general public and, if so, that a licensee's consumer has not done so. (7-1-01)T

22. Service Provider. A person who directly or indirectly provides, advertises, or otherwise claims to provide services. (7-1-01)T

011. ABBREVIATIONS.

The following abbreviations are used in this chapter: (7-1-01)T

01. U.S.C. United States Code. (7-1-01)T

02. GLBA. Gramm-Leach-Bliley Act of 1999. (7-1-01)T

012. INITIAL NOTICE REQUIREMENT.

A licensee must provide a clear and conspicuous notice that accurately reflects the licensee's privacy policies and practices to: (7-1-01)T

01. Customer. An individual who becomes a licensee's customer, not later than the time that the licensee establishes a customer relationship, except as provided in Section 016; and (7-1-01)T

02. Consumer. A consumer, before a licensee discloses any nonpublic personal information about the consumer to any nonaffiliated third party, if a licensee makes such a disclosure other than as authorized by Sections 065, 067, 068, 069, 071, and 072. (7-1-01)T

013. WHEN INITIAL NOTICE TO A CONSUMER IS NOT REQUIRED.

A licensee is not required to provide an initial notice to a consumer under Section 012 if the licensee does not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party, other than as authorized by Sections 065, 067, 068, 069, 071, and 072, and the licensee does not have a customer relationship with the consumer. (7-1-01)T

014. WHEN A LICENSEE ESTABLISHES A CUSTOMER RELATIONSHIP.

A licensee establishes a customer relationship at the time the licensee and the consumer enter into a continuing relationship, other than solely as a beneficiary or claimant. A licensee establishes a customer relationship under circumstances including, but not limited to, when the consumer becomes a policyholder. (7-1-01)T

015. EXISTING CUSTOMERS.

When an existing customer obtains a new financial product or service from a licensee that is to be used primarily for personal, family, or household purposes, a licensee satisfies the initial notice requirements of Section 012 as follows: (7-1-01)T

01. New Notice. A licensee may provide a revised policy notice, under Section 033 that covers the customer's new financial product or service; or (7-1-01)T

02. Prior Notice. If the initial, revised, or annual notice that a licensee most recently provided to that customer was accurate with respect to the new financial product or service, a licensee does not need to provide a new privacy notice under Section 012. (7-1-01)T

016. EXCEPTIONS TO ALLOW SUBSEQUENT DELIVERY OF NOTICE.

A licensee may provide the initial notice required by Subsection 012.01 within a reasonable time after the licensee establishes a customer relationship if: (7-1-01)T

01. Not Customer's Election. Establishing the customer relationship is not at the customer's election, including but not limited to if the licensee acquires or is assigned the insurance policy or related records from another financial institution or residual market mechanism and the customer does not have a choice about such acquisition or assignment; (7-1-01)T

02. Delay. Providing notice not later than when the licensee establishes the customer relationship would substantially delay the customer's transaction, including but not limited to when the licensee and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the financial product or service, and the customer agrees to receive the notice at a later time. (7-1-01)T

017. INITIAL NOTICE IN JOINT RELATIONSHIPS.

If two (2) or more consumers jointly obtain a financial product or service from a licensee, the licensee may satisfy the requirements of Section 012 by providing one (1) initial notice to those consumers jointly. (7-1-01)T

018. DELIVERY OF INITIAL NOTICE.

When a licensee is required to deliver an initial privacy notice by Section 012, a licensee must deliver it according to Section 035. If a licensee uses a short-form initial notice for non-customers according to Section 024, the licensee may deliver its privacy notice according to Subsection 024.02. (7-1-01)T

019. ANNUAL PRIVACY NOTICE TO CUSTOMERS REQUIRED.

A licensee must provide a clear and conspicuous notice to a customer that accurately reflects the licensee's 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 (12) consecutive-month period, but the licensee must apply it to the customer on a consistent basis. (7-1-01)T

020. TERMINATION OF CUSTOMER RELATIONSHIP.

A licensee is not required to provide an annual notice to a former customer. A former customer is an individual with whom a licensee no longer has a continuing relationship. (7-1-01)T

01. Continuing Relationship. A licensee no longer has a continuing relationship with an individual: (7-1-01)T

a. If the individual no longer is a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee; (7-1-01)T

b. 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, materials required by law or regulation, or promotional materials; (7-1-01)T

c. If the individual's last known address according to the licensee's records is deemed to be 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; or (7-1-01)T

d. 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. (7-1-01)T

021. DELIVERY.

When the licensee is required to deliver an annual privacy notice by Section 019, the licensee must deliver it according to Section 035. Such annual notice may be provided by an affiliated licensee, as long as the notice clearly identifies all licensees to which the notice applies or states that it applies to all affiliates of the named licensee, and is accurate with respect to the licensee and other institutions. (7-1-01)T

022. INFORMATION TO BE INCLUDED IN PRIVACY NOTICES.

The initial, annual, and revised privacy notices that a licensee provides under Sections 012, 019, and 033 must include each of the following items of information that applies to the licensee or to the consumers to whom the licensee sends its privacy notice, in addition to any other information the licensee wishes to provide: (7-1-01)T

01. Categories Collected. The categories of nonpublic personal financial information that the licensee collects; (7-1-01)T

02. Categories Disclosed. The categories of nonpublic personal financial information that the licensee discloses; (7-1-01)T

03. Categories Of Third Parties. 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 068, 069, 071, and 072; (7-1-01)T

04. Categories Of Former Customers. The categories of nonpublic personal financial information about the licensee's former customers that it discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about its former customers, other than those parties to whom it discloses information under Sections, 068, 069, 071, and 072; (7-1-01)T

05. Third Parties Who Perform Services For Licensee. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under Sections 065 and 067 (and no other exception applies to that disclosure), a separate statement of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted; (7-1-01)T

06. Opt Out Explanation Regarding Nonaffiliated Third Parties. An explanation of the right under Section 050 to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties for marketing purposes, including the methods by which the consumer may exercise those rights at that time; (7-1-01)T

07. Opt Out Explanation Regarding Affiliates. 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); (7-1-01)T

08. Policies For Protecting Information. The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and (7-1-01)T

09. Other Disclosures To Nonaffiliated Third Parties. A statement to the effect that the licensee makes disclosures under Section 023, if such disclosures are made. (7-1-01)T

023. DESCRIPTION OF NONAFFILIATED THIRD PARTIES SUBJECT TO EXCEPTIONS.

If a licensee discloses nonpublic personal financial information about a consumer to third parties only as authorized under Sections 068, 069, 071, and 072, the licensee is not required to list those exceptions in the initial or annual privacy notices required by these rules. When describing the categories with respect to those parties, a licensee is only required to state that it makes disclosures to other nonaffiliated third parties as permitted by law. (7-1-01)T

024. SHORT-FORM INITIAL NOTICE WITH OPT OUT NOTICE FOR NON-CUSTOMERS.

The licensee may satisfy the initial notice requirements of these rules 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 035 of these rules. (7-1-01)T

01. Form. A short form initial notice must: (7-1-01)T

a. Be clear and conspicuous; (7-1-01)T

b. State that a licensee's privacy notice is available upon request; and (7-1-01)T

c. Explain a reasonable means by which the consumer may obtain that notice, including but not limited to providing a toll-free telephone number the consumer may call to request the notice or, for a consumer who conducts business in person in the licensee's office, providing notice to the consumer immediately upon request. (7-1-01)T

02. Delivery. The licensee must deliver its short form notice according to Section 035. A licensee is not required to deliver its privacy notice with its short-form initial notice. A licensee may instead simply provide the consumer with a reasonable means to obtain the licensee's privacy notice. If a consumer who receives the licensee's short-form notice requests the licensee's privacy notice, the licensee must deliver its privacy notice according to Section 035. (7-1-01)T

025. FUTURE DISCLOSURES.

A licensee's notice may include: (7-1-01)T

01. Future Information. Categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future, but does not currently disclose; and (7-1-01)T

02. Future Parties. Categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom it does not currently disclose, nonpublic personal financial information. (7-1-01)T

026. FORM OF OPT OUT NOTICE.

If a licensee is required to provide an opt out notice under Section 050, the licensee must provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out under Section 050. The notice must state: (7-1-01)T

01. Disclosure. That the licensee discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a nonaffiliated third party; (7-1-01)T

02. Opt Out Right. That the consumer has the right to opt out of that disclosure; and (7-1-01)T

03. Reasonable Means To Opt Out. A reasonable means by which the consumer may exercise the opt out right, provided that the licensee may require the consumer to opt out through a specific means, as long as the means is reasonable for that consumer. A licensee provides a reasonable means to exercise an opt out right if it: (7-1-01)T

a. Designates check off boxes in a prominent position on the relevant forms with the opt out notice; (7-1-01)T

b. Includes a reply form together with the opt out notice; (7-1-01)T

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; (7-1-01)T

d. Provides a toll-free telephone number that consumers may call to opt out; or (7-1-01)T

e. Provides the opt out notice together with or on the same written or electronic form as the initial notice the licensee provides in accordance with Sections 012 through 018. (7-1-01)T

027. INITIAL NOTICE REQUIRED WHEN OPT OUT NOTICE DELIVERED SUBSEQUENT TO INITIAL NOTICE.

If a licensee provides the opt out notice later than required for the initial notice in accordance with Section 016, the licensee must also include a copy of the initial notice in writing, which writing can be given electronically if the consumer agrees. (7-1-01)T

028. OPT OUT NOTICE IN JOINT RELATIONSHIPS.

If two (2) or more consumers jointly obtain a financial product or service from a licensee, the licensee may provide a single opt out notice. The licensee's opt out notice must explain how the licensee will treat an opt out direction by a joint consumer. (7-1-01)T

01. Exercise Of Opt Out in Joint Relationships. Any of the joint consumers may exercise the right to opt out. If the licensee permits each joint consumer to opt out separately, the licensee must permit one (1) of the joint

consumers to opt out on behalf of all of the joint consumers. A licensee may not require all joint consumers to opt out before the licensee implements any opt out direction. The licensee may either: (7-1-01)T

- or
- a. Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; (7-1-01)T
 - b. Permit each joint consumer to opt out separately. (7-1-01)T

029. TIME TO COMPLY WITH OPT OUT.

A licensee must comply with a consumer's opt out direction as soon as reasonably practicable after the licensee receives it. (7-1-01)T

030. CONTINUING RIGHT TO OPT OUT.

A consumer may exercise the right to opt out at any time. (7-1-01)T

031. DURATION OF CONSUMER'S OPT OUT DIRECTION.

A consumer's direction to opt out under Section 026 or 028 is effective until the consumer revokes it in writing, which writing can be given electronically if the consumer agrees. When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal financial information the licensee collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt out direction that applied to the former relationship does not apply to the new relationship. (7-1-01)T

032. DELIVERY OF OPT OUT NOTICE.

When a licensee is required to deliver an opt out notice by Section 026 or 028, the licensee must deliver it according to Section 035. (7-1-01)T

033. REVISED PRIVACY NOTICES.

Except as otherwise authorized in these rules, a licensee shall not, directly, or through any 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 unless: (7-1-01)T

- 01. Revised Notice.** The licensee has provided to the consumer a revised notice that accurately describes the licensee's policies and practices; (7-1-01)T
- 02. New Opt Out Notice.** The licensee has provided to the consumer a new opt out notice; (7-1-01)T
- 03. Reasonable Opportunity.** The licensee has given the consumer a reasonable opportunity, before the licensee discloses the information to the nonaffiliated third party, to opt out of or, if appropriate, authorize the disclosure; and (7-1-01)T
- 04. Consumer Does Not Opt Out Or Authorizes Disclosure.** The consumer does not opt out or, if appropriate, the consumer authorizes the disclosure. (7-1-01)T

034. DELIVERY OF REVISED NOTICE.

When the licensee is required to deliver a revised privacy notice by Section 033, the licensee must deliver it according to Section 035. (7-1-01)T

035. DELIVERING PRIVACY AND OPT OUT NOTICES.

A licensee must provide any privacy notices and opt out notices, including short-form initial notices, that these rules require so that each consumer can reasonably be expected to receive actual notice in writing, which writing can be given electronically if the consumer agrees. (7-1-01)T

- 01. Reasonable Expectations.** The licensee may reasonably expect that a consumer will receive actual notice if the licensee: (7-1-01)T
 - a. Hand-delivers a printed copy of the notice to the consumer; (7-1-01)T

b. Mails a printed copy of the notice to the last known address of the consumer; (7-1-01)T

c. For the consumer who agrees to be provided with notice electronically, sends the notice to the consumer's most recent electronic mail address; or (7-1-01)T

d. For an isolated transaction with the consumer, such as the licensee providing an insurance quote or selling the consumer travel insurance, requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular financial product or service. (7-1-01)T

02. Unreasonable Expectations. A licensee may not reasonably expect that a consumer will receive actual notice of the licensee's privacy policies and practices if the licensee: (7-1-01)T

a. Only posts a sign in its branch or office or generally publishes advertisements of its privacy policies and practices; or (7-1-01)T

b. Sends the notice via electronic mail to a consumer who does not agree to receive the notice electronically. (7-1-01)T

036. ANNUAL NOTICES ONLY.

A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if: (7-1-01)T

01. Web Posting. 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 (7-1-01)T

02. Refrain Per Customer Request. 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. (7-1-01)T

037. ORAL DESCRIPTION OF NOTICE INSUFFICIENT.

A licensee may not provide any notice required by these rules solely by orally explaining the notice, either in person or over the telephone. (7-1-01)T

038. RETENTION OR ACCESSIBILITY OF NOTICES FOR CUSTOMERS.

For customers only, a licensee must provide the initial notice, the annual notice, and the revised notice required by these rules, so that the customer can retain them or obtain them later in writing, which writing can be given electronically if the customer agrees, including, but not limited to, hand-delivering a printed copy of the notice to the customer; mailing a printed copy of the notice to the last known address of the customer upon the request of the customer; or making the licensee's current privacy notice available on a web site (or a link to another web site) or sending the notice to the last known electronic mail address for the customer who agrees to receive the notice electronically or to obtain the notice electronically at the web site. (7-1-01)T

039. JOINT NOTICE WITH OTHER FINANCIAL INSTITUTIONS.

A licensee may provide a joint notice from the licensee and one (1) or more of the licensee's 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. (7-1-01)T

040. JOINT RELATIONSHIPS.

If two (2) or more consumers jointly obtain a financial product or service from a licensee, the licensee may satisfy the initial, annual, and revised notice requirements of Sections 012, 019, and 033 respectively, by providing one (1) notice to those consumers jointly. (7-1-01)T

041. NONDISCRIMINATION.

No licensee shall unfairly discriminate against any customer or consumer on the basis of the customer's or consumer's exercise of his right to opt out of the sharing of his nonpublic personal information in the manner provided in these rules. Nothing in Section 041 shall prohibit licensees from engaging in their usual, appropriate, or acceptable method for insurance underwriting. (7-1-01)T

042. -- 049. (RESERVED).

050. LIMITS ON DISCLOSURE OF NONPUBLIC PERSONAL INFORMATION TO NONAFFILIATED THIRD PARTIES.

Except as otherwise authorized in these rules, a licensee may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party unless: (7-1-01)T

01. Initial Notice Provided. The licensee has provided to the consumer an initial notice as required under Section 012; (7-1-01)T

02. Opt Out Notice Provided. The licensee has provided to the consumer an opt out notice as described in Section 026; (7-1-01)T

03. Reasonable Opportunity Given. 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. Methods of complying with this provision include, but are not limited to: (7-1-01)T

a. The licensee mails the notices required in Section 050 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: (7-1-01)T

b. A customer opens an on-line account with the licensee and agrees to receive the notices required in Section 050 electronically, and the licensee makes the notices available to the customer on its web site, 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; or (7-1-01)T

c. For an isolated transaction, such as providing the consumer with an insurance quote, a licensee provides a reasonable opportunity to opt out if the licensee provides the consumer the notices required in Section 050 at the time of the transaction and requests that the consumer decide, as a necessary act of the transaction, whether to opt out before completing the transaction; and (7-1-01)T

04. No Opt Out. The consumer does not opt out. (7-1-01)T

051. APPLICATION OF OPT OUT TO ALL CONSUMERS AND ALL NONPUBLIC PERSONAL FINANCIAL INFORMATION.

A licensee must comply with Section 050, regardless of whether the licensee and the consumer have established a customer relationship. Unless a licensee complies with Section 050, the licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer that it has collected, regardless of whether the licensee collected it before or after receiving the direction to opt out from the consumer. (7-1-01)T

052. LIMITS ON INFORMATION A LICENSEE RECEIVES UNDER AN EXCEPTION.

If the licensee receives nonpublic personal information from a nonaffiliated financial institution under an exception of these rules, the licensee's disclosure and use of that information is limited as follows: (7-1-01)T

01. Affiliates. The licensee may disclose the information to the affiliates of the financial institution from which the licensee received the information; (7-1-01)T

02. Limits On Affiliates' Use. The licensee may disclose the information to its affiliates and agents, but the affiliates and agents may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and (7-1-01)T

03. Applicable Exceptions. The licensee may disclose and use the information pursuant to an exception in Sections 068, 069, 071, or 072, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information. (7-1-01)T

053. LIMITS ON INFORMATION A LICENSEE RECEIVES OUTSIDE OF AN EXCEPTION.

If a licensee receives nonpublic personal information from a nonaffiliated financial institution other than under an exception in these rules, the licensee may disclose the information only: (7-1-01)T

01. Affiliates. To the affiliates of the financial institution from which the licensee received the information; (7-1-01)T

02. Limits On Affiliates' Use. To the licensee's affiliates and agents, but the licensee's affiliates and agents may, in turn, disclose the information only to the extent that the licensee can disclose the information; and (7-1-01)T

03. Others. 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. (7-1-01)T

054. LIMITS ON INFORMATION A LICENSEE DISCLOSES UNDER AN EXCEPTION.

If the licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in Sections 068, 069, 071, or 072, the third party may disclose and use that information only as follows: (7-1-01)T

01. Affiliates. The third party may disclose the information to the licensee's affiliates; (7-1-01)T

02. Limits On Affiliates' Use. 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 (7-1-01)T

03. Activity Within Exception. The third party may disclose and use the information pursuant to an exception in Sections 068, 069, 071, or 072, in the ordinary course of business to carry out the activity covered by the exception under which it received the information. (7-1-01)T

055. LIMITS ON INFORMATION A LICENSEE DISCLOSES OUTSIDE OF AN EXCEPTION.

If a licensee discloses nonpublic personal information to a nonaffiliated third party other than under an exception in Sections 068, 069, 071, or 072, the third party may disclose the information only: (7-1-01)T

01. Affiliates. To the licensee's affiliates; (7-1-01)T

02. Limits On Affiliates' Use. 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 (7-1-01)T

03. Others. To any other person, if the disclosure would be lawful if the licensee made it directly to that person. (7-1-01)T

056. GENERAL PROHIBITION ON DISCLOSURE OF POLICY, CONTRACT, OR ACCOUNT NUMBERS.

A licensee must not, directly or through an affiliate, disclose, other than to a consumer reporting agency, a policy or contract number or similar form of access number or access code for a consumer's credit card account, deposit account, or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing, electronic mail marketing, or other marketing to the consumer. (7-1-01)T

057. EXCEPTIONS TO PROHIBITION.

Section 056 does not apply if the licensee discloses a policy or contract number or similar form of access number or access code: (7-1-01)T

01. Licensee's Products. To the licensee's agent or service provider solely in order to perform marketing for the licensee's products or services, as long as the agent or service provider is not authorized to directly initiate charges to the account; (7-1-01)T

02. Special Programs. To a participant in a private label credit card program or an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the

program; or (7-1-01)T

03. Producers. To a licensee who is a producer solely in order to perform marketing for the licensee's own products or services, or to service existing products or business. (7-1-01)T

058. -- 064. (RESERVED).

065. EXCEPTION TO OPT OUT REQUIREMENTS FOR SERVICE PROVIDERS AND JOINT MARKETING.

The opt out requirements of these rules do not apply when a licensee provides nonpublic personal financial information to a nonaffiliated third party to perform services for, or functions on behalf of the licensee, if the licensee: (7-1-01)T

01. Initial Notice Provided. Provides the initial notice in accordance with these rules; and (7-1-01)T

02. Third Party Agrees Not To Disclose. Enters into a contract with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in Sections 068, 069, 071, or 072 in the ordinary course of business to carry out those purposes. (7-1-01)T

066. SERVICE MAY INCLUDE JOINT MARKETING.

The services performed for a licensee by a nonaffiliated third party under Section 065 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 (1) or more financial institutions. For purposes of Section 066, "joint agreement" means a written contract pursuant to which a licensee and one (1) or more financial institutions jointly offer, endorse, or sponsor a financial product or service. (7-1-01)T

067. DISCLOSURE FOR INSURANCE FUNCTIONS.

A licensee may use and disclose personally identifiable financial information to a person acting on behalf of or at the direction of the licensee to perform the licensee's insurance functions including, but not limited to, claims administration, claims adjustment and management, fraud investigation, underwriting, loss control, rate-making functions, reinsurance, risk management, case management, quality assessment, quality improvement, utilization review, peer review activities, grievance procedures, internal administration of compliance, managerial, and information systems, and policyholder service functions, account administration, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects, and as otherwise required or specifically permitted by federal or state law. (7-1-01)T

068. EXCEPTIONS TO NOTICE AND OPT OUT REQUIREMENTS FOR PROCESSING AND SERVICING TRANSACTIONS.

The requirements for initial notice to consumers in Subsection 012.02, the opportunity to opt out, and the application of these rules to service providers and joint marketing do not apply if a licensee discloses nonpublic personal information as necessary to effect, administer, or enforce a transaction requested or authorized by the consumer, or in connection with: (7-1-01)T

01. Financial Product. Servicing or processing a financial product or service requested or authorized by the consumer, including such products or services under consideration by a consumer; (7-1-01)T

02. Account. Maintaining or servicing the consumer's account with the licensee or with another entity; (7-1-01)T

03. Agent Who Agrees Not To Disclose. Transactions involving a person acting as agent of the licensee, provided such agent agrees not to disclose said nonpublic personal information to additional third parties; or (7-1-01)T

04. Securitization Or Secondary Market Sale. A proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer. (7-1-01)T

069. EXCEPTIONS FOR THE ADMINISTRATION OF AN EMPLOYER'S BENEFIT PLAN.

The requirements of these rules do not apply if a licensee discloses nonpublic personal financial information to a duly appointed agent of the licensee or to an employer as necessary to effect, administer, or enforce the employer's benefit plan. (7-1-01)T

070. MEANING OF NECESSARY TO EFFECT, ADMINISTER, OR ENFORCE A TRANSACTION.

As used in Sections 068 and 069, the phrase "necessary to effect, administer, or enforce a transaction" means that the disclosure is: (7-1-01)T

01. Enforce Licensee's Rights. Required, or is one (1) 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 (7-1-01)T

02. Carry Out Transaction. Required, or is a usual, appropriate, or acceptable method: (7-1-01)T

a. To carry out the transaction or the product or service business of which the transaction is a part, and record, service, or maintain the consumer's account in the ordinary course of providing the financial service or financial product; (7-1-01)T

b. To administer, adjudicate or service benefits or claims relating to the transaction or the product or service business of which it is a part; (7-1-01)T

c. To provide a confirmation, statement or other record of the transaction, or information on the status or value of the financial service or financial product to the consumer or the consumer's agent or broker; (7-1-01)T

d. To accrue or recognize incentives or bonuses associated with the transaction that are provided by the licensee or any other party; (7-1-01)T

e. To underwrite insurance at the consumer's request or for reinsurance purposes, or for any of the following purposes, as they relate to a consumer's insurance account administration: (7-1-01)T

i. Reporting, investigating, preventing fraud or material misrepresentation; (7-1-01)T

ii. Processing premium payments; (7-1-01)T

iii. Processing insurance claims; (7-1-01)T

iv. Administering insurance benefits (including utilization review activities); (7-1-01)T

v. Participating in research projects; or (7-1-01)T

vi. As otherwise required or specifically permitted by federal or state law; or (7-1-01)T

f. In connection with: (7-1-01)T

i. The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card, check, or policy or contract number, or by other payment means; (7-1-01)T

ii. The transfer of receivables, accounts, or interests therein; or (7-1-01)T

iii. The audit of debit, credit, or other payment information. (7-1-01)T

071. OTHER EXCEPTIONS TO NOTICE AND OPT OUT REQUIREMENTS.

The requirements for initial notice to consumers in Subsection 012.02, the opportunity to opt out, and the provisions applicable to service providers and joint marketing in these rules do not apply when a licensee discloses nonpublic personal information: (7-1-01)T

- 01. Consent.** With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction; (7-1-01)T
- 02. Protect Confidentiality.** To protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product or transaction; (7-1-01)T
- 03. Prevent Fraud.** To protect against or prevent actual or potential fraud, unauthorized transactions, claims or other liability; (7-1-01)T
- 04. Risk Control.** For required institutional risk control or for resolving consumer disputes or inquiries; (7-1-01)T
- 05. Beneficial Interest Holders.** To persons holding a legal or beneficial interest relating to the consumer; (7-1-01)T
- 06. Fiduciaries.** To persons acting in a fiduciary or representative capacity on behalf of the consumer; (7-1-01)T
- 07. Rate Advisory Organizations And Others.** To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating the licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants, and auditors; (7-1-01)T
- 08. As Permitted By Law.** To the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. Section 3401 et seq.), to law enforcement agencies (including a federal functional regulator, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter 11 (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping), a state insurance authority, with respect to any person that is engaged in providing insurance, and the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety; (7-1-01)T
- 09. Consumer Reporting Agency.** To a consumer reporting agency in accordance with the Federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) and the fair credit laws of this state, or from a consumer report reported by a consumer reporting agency; (7-1-01)T
- 10. Change In Business.** 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 information concerns solely consumers of such business or unit; (7-1-01)T
- 11. Comply With Law Or Legal Process.** To comply with: (7-1-01)T
- a.** Federal, state, or local laws, rules and other applicable legal requirements; (7-1-01)T
 - b.** To comply with a properly authorized civil, criminal, or regulatory investigation, or subpoena or summons by federal, state or local authorities; or (7-1-01)T
 - c.** To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance or other purposes as authorized by law; (7-1-01)T
- 12. Quality Assessment.** In connection with quality assessment evaluations or investigations; (7-1-01)T
- 13. Workers' Compensation Obligations.** Necessary to the performance of the licensee's obligations under any workers' compensation law or contract; (7-1-01)T
- 14. Reinsurer Or Similar Carrier.** To a reinsurance, stop loss or excess loss carrier for the purpose of underwriting, claims adjudication and conducting claim file audits; or (7-1-01)T

15. Regulator. To a state department of insurance that is performing an examination, investigation, or audit of the licensee or any other person. (7-1-01)T

072. LICENSEES ACTING AS EMPLOYERS OR PURCHASERS OF INSURANCE.

Nothing in these rules shall be construed as applicable to information disclosures by licensees in connection with the purchase of insurance coverage by the licensee or the arrangement of insurance coverage by the licensee for its employees. (7-1-01)T

073. -- 075. (RESERVED).

076. NOTICE REQUIREMENT FOR CONSUMERS WHO ARE A LICENSEE'S CUSTOMERS ON THE COMPLIANCE DATE.

By July 1, 2001, the licensee shall have provided an initial notice, as required by Section 012, to consumers who are the licensee's customers on July 1, 2001. (7-1-01)T

077. TWO YEAR GRANDFATHERING OF SERVICE AGREEMENTS.

Until July 1, 2002, a licensee that has entered into a contract with a nonaffiliated third party to perform services for the licensee or functions on its behalf does not need to satisfy the requirement of Subsection 065.02 which provides that the third party maintain the confidentiality of nonpublic personal information in order to be exempt from the opt out requirements, as long as the licensee entered into the agreement on or before July 1, 2000. (7-1-01)T

078. -- 999. (RESERVED).

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