

Red Tape Review Rule Report (Due: September 1, 2023)

Department Name:	Department of Insurance and Financial Services- Insurance Division	Date:	8/31/2023	Total Rule Count:	30
IAC #:	191	Chapter/ SubChapter/ Rule(s):	90.2-90.6	Iowa Code Section Authorizing Rule:	CH. 505
Contact Name:	Angela Burke Boston	Email:	angela.burke.boston@iid.iowa.gov	Phone:	(515) 654-6543

PLEASE NOTE, THE BOXES BELOW WILL EXPAND AS YOU TYPE

What is the intended benefit of the rule?

The National Association of Insurance Commissioners (NAIC) model law provides for sample privacy notices to be consistent with the privacy model notice form issued by federal regulatory agencies for use by financial institutions as a safe harbor of compliance with the privacy notification requirements of the federal Gramm-Leach-Bliley Act (GLBA).

Is the benefit being achieved? Please provide evidence.

Yes. This rule making is being proposed pursuant to Executive Order 10.

What are the costs incurred by the public to comply with the rule?

There are no known costs.

What are the costs to the agency or any other agency to implement/enforce the rule?

There are no known costs.

Do the costs justify the benefits achieved? Please explain.

The proposed rules remove duplicative language.

Are there less restrictive alternatives to accomplish the benefit? YES NO

If YES, please list alternative(s) and provide analysis of less restrictive alternatives from other states, if applicable. If NO, please explain.

The Division did not find any less restrictive alternatives. This is NAIC model law and is critical to maintaining the Division’s national accreditation.

Does this chapter/rule(s) contain language that is obsolete, outdated, inconsistent, redundant, or unnecessary language, including instances where rule language is duplicative of statutory language? [list chapter/rule number(s) that fall under any of the above categories]

PLEASE NOTE, THE BOXES BELOW WILL EXPAND AS YOU TYPE

191—90.2
191—90.3
191—90.4
191—90.5
191—90.6

RULES PROPOSED FOR REPEAL (list rule number[s]):

None.

RULES PROPOSED FOR RE-PROMULGATION (list rule number[s] or include rule text if available):

The following rulemaking action proposed:

ITEM 1. Amend rule 191—90.2(505) as follows:

191—90.2 (505) Definitions. For the purpose of these rules, the following definitions shall apply:

“Affiliate” means any company that controls, is controlled by or is under common control with another company.

“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.

“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 article assigned to the individual, irrespective of the source of the underlying information.

“Commissioner” means the insurance commissioner.

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

“Consumer” means an individual, or that individual’s legal representative, who seeks to obtain, obtains or has obtained from a licensee an insurance product or service that is to be used primarily for personal, family or household purposes and about whom the licensee has nonpublic personal information. Consumer includes any of the following:

1. 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.

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

3. An individual is a licensee’s consumer if:

- The individual is a beneficiary of a life insurance policy underwritten by the licensee;
- The individual is a claimant under an insurance policy issued by the licensee;
- The individual is an insured or an annuitant under an insurance policy or an annuity, respectively, issued by the licensee; or

- The individual is a mortgagor of a mortgage covered under a mortgage insurance policy; and

- The licensee discloses nonpublic personal financial information about the individual to a nonaffiliated third party other than as permitted under rules 90.12(505), 90.13(505) and 90.14(505) of this chapter.

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.

An individual is not the consumer of the licensee provided that the licensee provides the initial, annual and revised notices required under rules 90.3(505), 90.4(505), and 90.7(505) to the plan sponsor, group or blanket insurance policyholder or group annuity contract holder, workers' compensation plan participant, or 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 rules 90.12(505), 90.13(505) and 90.14(505) and solely due to any of the following:

a. The consumer is a participant in or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer or fiduciary,

b. The consumer is covered under a group or blanket insurance policy or group annuity contract issued by the licensee, or

c. The consumer is a beneficiary in a workers' compensation plan.

However, an individual described in "a" through "c" is a consumer of a licensee if the licensee does not meet all the above conditions. In no event shall an individual solely by virtue of the status described in "a" through "c" above be deemed a customer for purposes of this chapter.

An individual is not a licensee's consumer solely because the individual is a beneficiary of a trust for which the licensee is a trustee or because the individual has designated the licensee as trustee for a trust.

"Consumer reporting agency" means "consumer reporting agency" as defined in Section 603(f) of the federal Fair Credit Reporting Act.

"Control" means any of the following:

1. Ownership, control or power to vote 25 percent 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;
2. 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
3. The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the commissioner determines.

“Customer” means a consumer who has a customer relationship with a licensee.

“Customer information” means nonpublic personal information about a customer, whether the information is in paper, electronic or other form, that is maintained by or on behalf of the licensee.

“Customer information systems” means the electronic or physical methods used to access, collect, store, use, transmit, protect or dispose of customer information.

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

A consumer has a continuing relationship with a licensee if the consumer is a current policyholder of an insurance product issued by or through the licensee or if the consumer obtains financial, investment or economic advisory services relating to an insurance product or service from the licensee for a fee.

A consumer does not have a continuing relationship with a licensee under the following examples:

1. The consumer applies for insurance but does not purchase the insurance;
2. The licensee sells the consumer airline 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 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

8. ~~For the purposes of these rules, the individual's last known address according to the licensee's record 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.

"Designed to call attention" means a licensee designs to call attention to the nature and significance of the information in a notice if the licensee does the following:

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. Is 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.

"Financial institution" means any institution the business of which is engaging in activities that are financial in nature or incidental to the financial activities described in Section 4(k) of the Bank Holding Company Act of 1956. Financial institution does not include the following:

1. Any person or entity with respect to any financial activity that is subject to the jurisdiction of the commodity futures trading commissioner under the Commodity Exchange Act.

2. The Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971.

3. 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.

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

“Health care” means preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, procedures, tests or counseling that relates to the physical, mental or behavioral condition of an individual or 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 tissues. “Health care” also means prescribing, dispensing or furnishing to an individual drugs or biologicals, or medical devices or health care equipment and supplies.

“Health care provider” means a physician or health care practitioner licensed, accredited or certified to perform specified health services consistent with state law, or a health care facility.

“Health information” means any information or data except age, gender or nonmedical identifying information, whether oral or recorded in any form or medium, created by or derived from a health care provider or the consumer that relates to the following:

1. The past, present or future physical, mental or behavioral health or condition of an individual;
2. The provision of health care to an individual; or
3. Payment for the provision of health care to an individual.

“Insurance product or service” means any product or service that is offered by a licensee pursuant to the insurance laws of Iowa. 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 an insurance product or service.

“Licensee” means all licensed carriers, producers and other persons licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to the insurance laws of the state or by the department of public health. Licensee shall also include an unauthorized insurer that accepts business placed through a licensed excess lines broker but only in regard to the excess lines placements pursuant to state rules.

“Nonaffiliated third party” means any person except a licensee’s affiliate or a person employed jointly by a licensee and any company that is not a licensee’s affiliate. 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) of the federal Bank Holding Company Act or insurance company investment activities of the type described in Section 4(k)(4)(I) of the federal Bank Holding Company Act.

“Nonpublic personal health information” means health information that identifies an individual who is the subject of the information or with respect to which there is a reasonable basis to believe that the information could be used to identify an individual.

“Nonpublic personal information” or *“nonpublic personal financial information”* means personally identifiable financial information and any list, description or other groupings of consumers and publicly available information pertaining to them that is derived using any personally identifiable financial information that is not publicly available.

Nonpublic personal financial information does not include health information, publicly available information, except as included on a list as described above or any list or description pertaining to consumers that is derived without using any personally identifiable financial information that is not publicly available.

“*Opt out*” means a direction by the consumer that the licensee not disclose nonpublic personal financial information about the consumer to a nonaffiliated third party other than as permitted by rules 90.12(505), 90.13(505), and 90.14(505).

“*Personally identifiable financial information*” means any information a consumer provides to a licensee to obtain an insurance product or service from the licensee, information about a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer or information the licensee otherwise obtains about a consumer in connection with providing an insurance product or service to that consumer.

Examples of “personally identifiable financial information” include:

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

Personally identifiable financial information does not include health information, a list of names and addresses of customers of an entity that is not a financial institution and 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, and addresses.

“Publicly available information” means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from federal, state, or local government records, widely distributed media sources or disclosures to the general public that are required to be made by federal, state or local law.

~~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 that the information is the type that is available to the general public and 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.~~

Examples of “publicly available information” include:

- Publicly available information in government records which includes information in government real estate records and security interest filings.
- Publicly available information from widely distributed media which 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.
- 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.

“Reasonably understandable” means the licensee’s notice is presented in the following form:

1. Uses clear, concise sentences, paragraphs, and sections;
2. Uses short explanatory sentences or bullet lists whenever possible;
3. Uses definite, concrete, plain language and active voice whenever possible;
4. Avoids multiple negatives;
5. Avoids legal or highly technical business terminology whenever possible; and
6. Avoids explanations that are imprecise and readily subject to different interpretations.

“*Service provider*” means a person that maintains, processes or otherwise is permitted access to customer information through the person’s provision of services directly to the licensee.

ITEM 2. Amend rule 191—90.3(505) as follows:

191—90.3 (505) Initial privacy notice to consumers required.

90.3(1) A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to the following persons and at the following times:

a. An individual who becomes the licensee’s customer, not later than when the licensee establishes a customer relationship, except as provided in subrule 90.3(5); 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 rules 90.13(505) and 90.14(505).

90.3(2) A licensee is not required to provide an initial notice to a consumer under subrule 90.3(1) 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 rules 90.13(505) and 90.14(505) 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.

c. ~~The licensee has a customer relationship with the consumer and the consumer consents to the licensee’s searching for insurance coverage to replace existing coverage or the licensee is selling the agency expiration lists or the agency contract is canceled and the licensee is required to move the existing coverage to a new carrier.~~

90.3(3) A licensee establishes a customer relationship at the time the licensee and the consumer enter into a continuing relationship.

A licensee establishes a customer relationship when the consumer does either of the following:

a. 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

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

90.3(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 subrule 90.3(1) as follows:

a. The licensee provides a revised policy notice under rule 90.7(505) that covers the customer's new insurance product or service; or

b. If the initial, revised or annual notice that the licensee most recently provided to that customer was accurate with respect to the new insurance product or service, the licensee does not need to provide a new privacy notice under subrule 90.3(1).

90.3(5) A licensee may provide the initial notice required by paragraph 90.3(1) "a" within a reasonable time after the licensee establishes a customer relationship if:

a. Establishing the customer relationship is not at the customer's election; 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.

Examples of notice within a reasonable time are as follows:

- The establishment of the customer relationship is not at the customer's election. Establishing the 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.

- There is substantial delay in the customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would substantially delay the customer's transaction when the

licensee and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the insurance product or service.

- 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.

90.3(6) When a licensee is required by this rule to deliver an initial privacy notice, the licensee shall deliver it according to rule 90.8(505). If the licensee uses a short-form initial notice for noncustomers according to subrule 90.5(6), the licensee may deliver its privacy notice according to subrule 90.5(6).

ITEM 3. Amend rule 191—90.4(505) as follows:

191—90.4 (505) Annual privacy notice to customers required.

90.4(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 12 consecutive months during which that relationship exists. A licensee may define the 12-consecutive-month period, but the licensee shall apply it to the customer on a consistent basis.

A licensee provides a notice annually if it defines the 12-consecutive-month period as a calendar year and provides the annual notice to the customer once in each calendar year following the calendar year in which the licensee provided the initial notice. For example, if a customer opens an account on any day of year 1, the licensee shall provide an annual notice to that customer by December 31 of year 2.

90.4(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 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.

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

For 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.~~

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.

90.4(3) When a licensee is required by this rule to deliver an annual privacy notice, the licensee shall deliver it according to rule 90.8(505).

90.4(4) A licensee is not required to provide an annual privacy notice if both of the following are true: the licensee has not changed the privacy policies and practices that the licensee disclosed to the consumer in the privacy notice that the licensee most recently delivered to the consumer in accordance with rule 191—90.3(505) or this rule; and the licensee does not disclose any nonpublic personal information about the consumer to any nonaffiliated third party except as authorized by rules 191—90.12(505), 191—90.13(505) and 191—90.14(505). If a licensee at any time fails to comply with the criteria of this subrule, the licensee shall immediately provide to the consumer the annual privacy notice required under this chapter.

ITEM 4. Amend rule 191—90.5(505) as follows:

191—90.5 (505) Information to be included in privacy notices.

90.5(1) The initial annual and revised privacy notices that a licensee provides under rules 90.3(505), 90.4(505) and 90.7(505) shall include each of the following items of information in addition to any other information the licensee wants to provide and that apply to the licensee and to the consumers to whom the licensee sends its privacy notice:

- a.* The categories of nonpublic personal financial information that the licensee collects;
- b.* The categories of nonpublic personal financial information that the licensee discloses;
- c.* The categories of affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information, other than those parties to which the licensee discloses information under rules 90.13(505) and 90.14(505);
- 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 which the licensee discloses nonpublic personal financial information about the licensee's former customers, other than those parties to which the licensee discloses information under rules 90.13(505) and 90.14(505);
- e.* A separate description of the categories of information the licensee discloses and the categories of third parties with which the licensee has contracted if a licensee discloses nonpublic personal financial information to a nonaffiliated third party under rule 90.12(505) and no other exception in rules 90.13(505) and 90.14(505) applies to that disclosure;
- f.* An explanation of the consumer's right under subrule 90.9(1) to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time;
- g.* Any disclosures that the licensee makes under Section 603(d)(2)(A)(iii) of the federal Fair Credit Reporting Act;
- h.* The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information; and

i. Any disclosure that the licensee makes under subrule 90.5(2).

90.5(2) If a licensee discloses nonpublic personal financial information as authorized under rules 90.13(505) and 90.14(505), the licensee is not required to list those exceptions in the initial or annual privacy notices required by rules 90.3(505) and 90.4(505). ~~When describing the categories of parties to which disclosure is made, the licensee is required to state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable and permitted by law.~~

90.5(3) Examples of nonpublic personal financial information are as follows:

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

- (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. *Categories of nonpublic personal financial information a licensee discloses.* A licensee satisfies the requirement to categorize nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in paragraph "a," as applicable, and provides examples to illustrate the types of information in each category. ~~These might include the following:~~

- ~~(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.~~

~~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.~~

~~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.~~

c. Categories of affiliates and nonaffiliated third parties to which the licensee discloses. 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 the affiliate and nonaffiliated third parties engage.

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 business, such as life insurer, automobile insurer, consumer banking or securities brokerage.

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.

90.5(4) If a licensee discloses nonpublic personal financial information under the exception in rule 90.12(505) 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 paragraph 90.5(1) “e” if it does the following:

a. Lists the categories of nonpublic personal financial information it discloses using the same categories and examples the licensee used to meet the requirements of paragraph 90.5(1) “b” as applicable; and

b. States whether the third party is a service provider that performs marketing services on the licensee’s behalf or on behalf of the licensee and another financial institution or a financial institution with which the licensee has a joint marketing agreement.

90.5(5) 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 rules 90.13(505) and 90.14(505), the licensee may simply state that fact, in addition to the information it shall provide under paragraphs 90.5(1) “a,” “h,” and “i” and subrule 90.5(2).

90.5(6) A licensee shall describe its policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if it does both of the following:

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

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

90.5(7) A licensee may satisfy the initial notice requirements in 90.3(1) “b” and 90.6(4) 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 rule 90.6(505).

a. The short-form initial notice shall be clear and conspicuous, state that the licensee’s privacy notice is available upon request and explain a reasonable means by which the consumer may obtain that notice.

b. The licensee shall deliver its short-form initial notice according to rule 90.8(505). 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 rule 90.8(505).

c. The licensee provides a reasonable means by which a consumer may obtain a copy of its privacy notice if the licensee provides a toll-free telephone number that the consumer may call to request the notice or, 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.

90.5(8) The licensee’s notice may include categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future but does not currently disclose and categories of affiliates or nonaffiliated third parties to which the licensee reserves the right in the future to disclose, but to which the

licensee does not currently disclose, nonpublic personal financial information. Sample clauses are found in Appendix A.

ITEM 5. Amend rule 191—90.6(505) as follows:

191—90.6 (505) Form of opt-out notice to consumers and opt-out methods.

90.6(1) A licensee required to provide an opt-out notice under subrule 90.9(1) shall provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out under that rule. The notice shall state the following:

a. The licensee discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a nonaffiliated third party;

b. 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.

90.6(2) Examples of the opt-out notice include the following:

a. Adequate opt-out notice. A licensee provides adequate notice that the consumer can opt out of the disclosure of nonpublic personal financial information to a nonaffiliated third party if the licensee does the following:

(1) 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 paragraphs 90.5(1) “*b*” and “*c*,” and states that the consumer can opt out of the disclosure of that information; and

(2) Identifies the insurance products or services that the consumer obtains from the licensee, either singly or jointly, to which the opt-out direction applies.

b. Reasonable opt out. A licensee provides a reasonable means to exercise an opt-out right if it provides the following:

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

(2) Includes a reply form together with the opt-out notice;

(3) 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

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

c. Unreasonable opt out. A licensee does not provide a reasonable means of opting out in the following circumstances:

(1) The only means of opting out is for the consumer to write the consumer's own letter to exercise that opt-out right; or

(2) 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.

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

90.6(3) 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 rule 90.3(505).

90.6(4) If a licensee provides the opt-out notice later than required for the initial notice in accordance with rule 90.3(505), the licensee shall also include in writing or, if the consumer agrees, electronically a copy of the initial notice with the opt-out notice.

90.6(5) If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may provide a single opt-out notice. The licensee's opt-out notice shall explain how the licensee will treat an opt-out direction by a joint consumer.

a. Any of the joint consumers may exercise the right to opt out. The licensee may do either of the following:

(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. The licensee shall permit one of the joint consumers to opt out on behalf of all the joint consumers if a licensee permits each joint consumer to opt out separately.

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

d. ~~Examples of opt-out notice requirements for joint consumers. If John and Mary are both names of 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 of the following opt-out policies the licensee will follow:~~

~~(1) Send a single opt-out notice to John's address, but the licensee shall accept an opt-out direction from either John or Mary.~~

~~(2) 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.~~

~~(3) Permit John and Mary to make different opt-out directions. If the licensee does so, it shall provide for the following:~~

~~1. Permit John and Mary to opt out for each other;~~

~~2. Permit both of them to notify the licensee in a single response such as on a form or through a telephone call if both opt out; and~~

~~3. Allow the licensee to disclose nonpublic personal financial information about one of them such as Mary but not about John if John opts out and Mary does not and not about John and Mary jointly.~~

90.6(6) A licensee shall comply with a consumer's opt-out direction as soon as reasonably practicable after the licensee receives it.

90.6(7) A consumer may exercise the right to opt out at any time.

90.6(8) A consumer's direction to opt out under this rule is effective until the consumer revokes it in writing or electronically, if the consumer agrees to revoke electronically.

90.6(9) When a customer relationship terminates, the customer's opt-out direction continues to apply to the nonpublic personal financial information that the licensee collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt-out direction that applied to the former relationship does not apply to the new relationship.

90.6(10) When a licensee is required to deliver an opt-out notice by this rule, the licensee shall deliver it according to rule 90.8(505).

****For rules being re-promulgated with changes, you may attach a document with suggested changes.***

METRICS

Total number of rules repealed:	0
Proposed word count reduction after repeal and/or re-promulgation	544
Proposed number of restrictive terms eliminated after repeal and/or re-promulgation	6

ARE THERE ANY STATUTORY CHANGES YOU WOULD RECOMMEND INCLUDING CODIFYING ANY RULES?

None.