

Commonwealth of Puerto Rico
OFFICE OF THE INSURANCE COMMISSIONER

RULE NO. 75

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Commonwealth of Puerto Rico
OFFICE OF THE COMMISSIONER OF INSURANCE
San Juan, Puerto Rico

RULE NO. 75

RULE GOVERNING THE PRIVACY
AND DISCLOSURE OF THE FINANCIAL
AND HEALTH INFORMATION OF THE CONSUMER

ARTICLE 1. - GENERAL PROVISIONS

SECTION 1. - AUTHORITY

The Office of the Commissioner of Insurance of the Commonwealth of Puerto Rico hereby adopts Rule No. 75 of the Regulations of the Puerto Rico Insurance Code, pursuant to the provisions of Article 2.040 and Article 27.131 of Law No. 77, of June, 19, 1957, as amended, commonly known as the Puerto Rico Insurance Code; of the Gramm-Leach-Bliley Act of 1999, Public Law 106-102, enacted on November 12, 1999, 113 Stat. 1338 (1999) as amended, and Law No. 170, of August 12, 1988, 3 L.P.R.A. § § 2101 *et seq.*, commonly known as the Uniform Administrative Procedures Act.

SECTION 2. - PURPOSE AND SCOPE

This Rule is adopted in order to:

1. establish the rules that govern the collection, use and disclosure of personal financial and personal health information about customers or consumers, obtained in the course of insurance transactions carried out by natural or legal persons, regulated by the Office of the Commissioner of Insurance of Puerto Rico and any other natural or legal person who may have a business relationship with said regulated persons;
2. establish rules for the formulation and disclosure of policies regarding privacy and flow of non-public personal financial and health information by natural or legal persons regulated by the Office of the Commissioner of Insurance;
3. ensure that a balance is maintained between the needs of natural or legal persons, regulated by the Office of the Commissioner of Insurance, to collect, share and disclose non-public personal financial and health information about

customers or consumers and protect their right to maintain the privacy of their non-public personal information;

4. provide a guide for compliance with the provisions of Title V of the Gramm-Leach-Bliley Act of 1999.

This Rule shall be applicable to:

1. non-public personal financial information about individuals who obtain or seek to obtain, or are claimants or beneficiaries of insurance products or services primarily for personal, family or household purposes.
2. all non-public personal health information.

This Rule does not apply to information about natural or legal persons who obtain insurance products or services for business, commercial or agricultural purposes.

In addition, this Rule does not apply to natural or legal persons who are authorized by the Office of the Commissioner of Insurance to provide service contracts under Article 21.260 of the Puerto Rico Insurance Code, 26 L.P.R.A., Section 2126, nor does it govern the management of the information provided to said providers of service contracts by applicants for, or holders of, such contracts.

For purposes of compliance with the provisions of Title V of the Gramm-Leach-Bliley Act of 1999, any *licensee* engaged in the insurance business in a state where laws or regulations to such effect have not been enacted, shall comply with the provisions of this Rule.

SECTION 3. - EXAMPLES

For purposes of compliance with this Rule, a *licensee* may use as a guideline the examples and model clauses provided in the Model Regulation approved in October 2000 by the National Association of Insurance Commissioners ("NAIC"), titled "Privacy of Consumer Financial and Health Information Regulation," provided that they do not contravene the provisions of the Puerto Rico Insurance Code and its Regulations. The above mentioned examples and model clauses may not be construed as a limitation to the authority of the Commissioner of Insurance to consider other examples and clauses that are not included in said Model Regulation.

ARTICLE 2. - DEFINITIONS

The following terms and phrases shall have the meanings set forth below:

- (a) "Affiliate" - means a corporation that controls, is controlled by or is under common control with another corporation.
- (b) "Clear and conspicuous" - means that a notice of the policy regarding privacy and flow of information is *reasonably understandable* and *designed to call or draw attention* to the clients or consumers about the nature and meaning of the information provided therein, as said terms are defined in paragraphs (o) and (g) of this Article.

When a *licensee* provides a notice of its policy regarding privacy and flow of information on a Web page, said notice shall be deemed to be *reasonably understandable* and *designed to call or draw attention*, if it uses text or visual cues that draw the client's or consumer's attention, and motivate him or her to examine the contents of the page. Furthermore, the *licensee* must ensure that other elements on the Web site, such as text, graphics or sound, do not distract the attention of said client or consumer from the contents of the notice. The *licensee* shall also:

- 1) place the notice on a Web page that the clients or consumers frequently access, such as a page on which transactions are conducted; or
 - 2) place a link on an access page that the clients or consumers frequently access, that connects directly to the notice and is prominently labeled.
- (c) "Client" - means a consumer who has established a client relationship with the *licensee* as such term is defined in paragraph (q) of this Article, that is, a continuing relationship, in which the *licensee* provides an insurance product or service, primarily for personal, family or household purposes.
 - (d) "Code" - means the Puerto Rico Insurance Code, Law No. 77, of June 19, 1957, as amended, 26 P.R. Laws Ann., et seq.

(e) "Commissioner" - means the Commissioner of Insurance of the Commonwealth of Puerto Rico.

(f) "Consumer" - means any individual, or his or her legal representative, who seeks to obtain, obtains or has obtained an insurance product or service from a *licensee* primarily for personal, family or household purposes, and about whom the *licensee* has non-public personal information.

It shall be construed that in regards to group policies, the term "consumer" shall be limited to the holder or owner of said group policy.

(g) "Designed to call or draw attention" - means that the notice designed by the *licensee* to provide notice of the *licensee's* confidentiality and flow of information policy shall:

(1) use a plain-language heading to call the attention of the client or consumer;

(2) use a typeface and type size that is easy to read;

(3) provide wide margins and ample line spacing;

(4) use boldface or italics for key words or concepts; and

(5) use a distinctive type size or style, if the notice in which the licensee provides notice of the licensee's policy on confidentiality and flow of information includes information on any other matter.

(h) "Personally identifiable financial information" - means information that the consumer provides to the *licensee* for the purpose of obtaining an insurance product or service; or information about the consumer that the *licensee* obtains as a result of one or several insurance transactions between a consumer and said *licensee*; or information the *licensee* collects about a consumer in connection with providing an insurance service or product.

(i) "Non-public personal financial information" - means any personally identifiable financial information, and any list, description or other grouping (classification) of consumers prepared by using personally identifiable financial information.

that is not publicly available. Said information does not include health information, publicly available information, or any list, description or grouping (classification) of consumers prepared without using personally identifiable financial information that is not publicly available.

By way of an example, *non-public personal financial information* includes any listing of names and addresses of persons that is created using, partially or in its entirety, personally identifiable financial information that is not publicly available, such as account numbers.

- (j) "Public personal information" - means any personal information that a *licensee* has a reasonable basis to believe is publicly available through government agencies such as the Property Registry and other federal, state and local registries, or information that has been transmitted or is available from widely distributed media, such as telephone books, radio or television programs, newspapers or Web sites accessible to the general public on an unrestricted basis, or any such information that, pursuant to the provisions of federal, state or local law, is disclosed to the general public.
- (k) "Health information" - means any information or data, except age or gender, whether oral, written or reproduced by any means, prepared by and or derived from a health care provider or the consumer that relates to: (1) the past, present or future physical, mental or behavioral 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.
- (l) "Gramm-Leach-Bliley Act" - means the federal law entitled "Gramm-Leach-Bliley Financial Modernization Act of 1999," Public Law 106-102, 113, Stat. 1338 (1999) as amended.
- (m) "Person" - means an individual or legal entity.
- (n) "Health care provider" - means any physician or other health care professional, authorized, certified or accredited to provide any health care service authorized by law, or any institution that provides health care services.

(o) "Reasonably understandable" - means that the notice in which the *licensee* provides notice of the *licensee's* confidentiality and flow of information policy:

- (1) presents the information in clear and concise sentences, paragraphs and sections;
- (2) uses short explanatory sentences whenever possible;
- (3) uses definite, concrete and easily understandable words, and active voice, whenever possible;
- (4) avoids the use of highly technical or legal terminology, whenever possible;
- (5) avoids explanations that are imprecise and readily subject to different interpretations; and
- (6) avoids the use of multiple negatives in the same sentence.

(p) "Collect" - means to obtain information that the *licensee* organizes or can retrieve by an individual's name or by an identifying number, symbol or any other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(q) "Licensee" - means any insurer, health maintenance organization or nonprofit association, which has been duly authorized by the Office of the Commissioner of Insurance, or any person, partnership or corporation holding a duly issued license or authorization pursuant to the Code.

For purposes of complying with the provisions set forth in Articles 3 and 4 of this Rule, the term *licensee* will not include those license holders that are employees, agents or representatives of a *licensee* that complies with the above mentioned provisions, as long as said license holder does not disclose any non-public personal information, except to the *licensee* or its affiliates in the fashion set forth in this Rule.

On the other hand, it shall be understood that an excess lines broker or insurer is in compliance with the provisions of Articles 3 and 4 of this Rule, if the excess lines broker or insurer does not disclose non-public personal financial

information of a consumer or client to non-affiliated third parties, except for the provisions set forth in Sections 5 and 6 of Article 6 of this Rule, and delivers a notice to the consumer or client that states the following:

"Notice Regarding Disclosure of Non-Public Personal Financial Information"

Neither the brokers that handled this insurance policy nor the insurers that have underwritten said policy will disclose non-public personal financial information of the client or consumer to nonaffiliated third parties, except as permitted by Rule No. 75 of the Regulation of the Puerto Rico Insurance Code."

- (r) "Health care" - means (1) all medical attention, service, procedure, preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, examination or visit, related to any physical, mental or behavioral condition of a person, or related to any condition that affects the structure or functioning of the human body, including the banking of blood, sperm, organs or tissues; (2) prescribing, dispensing or furnishing an individual drugs, biological or medical devices, and health care equipment or supplies.
- (s) "Non-affiliated third party" - means any individual or legal entity, except an affiliate of the licensee or a person jointly employed by the licensee and a corporation not affiliated with the licensee.

For the purposes of this Rule, any company that is affiliated with the licensee, or with affiliates of the licensee, for the sole purpose of conducting the activities described in Sections 4(k) 4(H) and 4(k) (I) of the Bank Holding Company Act, 12 U.S.C., Section 1843 (k) (4) (H) and (I), and with regard to whom the licensee has control or ownership, shall be considered a non-affiliated third party.

ARTICLE 3. - NOTICES OF PRIVACY AND FLOW OF FINANCIAL INFORMATION POLICIES AND RIGHT TO OPT OUT

SECTION 1. - NOTICE OF PRIVACY AND FLOW OF FINANCIAL INFORMATION POLICIES

All licensees shall provide a clear and conspicuous notice that advises clients or consumers as to the licensee's privacy and flow of non-public personal financial information policies and their right to opt out.

SECTION 2. - INITIAL NOTICE

1. All licensees shall provide an initial notice of their privacy and flow of non-public personal financial information policies as described below:

a. *Clients*: the licensee shall have the obligation to provide an initial notice to any person immediately when such person establishes a continuing relationship with the licensee.

b. *Consumers*: the licensee shall have the obligation to provide a notice to all consumers, as this term is defined in paragraph (f) of Article 2 of this Rule, of its privacy and flow of non-public personal financial information policies before disclosing any non-public personal financial information pertaining to such consumer to a non-affiliated third party.

2. A licensee shall not be required to provide an initial notice of the licensee's privacy and flow of non-public personal financial information policy to a consumer when:

a. the licensee does not disclose non-public personal financial information of the consumer to a non-affiliated third party, other than as provided in Sections 4 and 5 of Article 6 of this Rule, and said licensee has not established a continuing relationship with the consumer;

b. the consumer received a notice from a licensee's affiliate regarding the policy on privacy and flow of non-public personal financial information, in which all licensees to whom the notice applies are clearly identified.

3. When a client obtains from the licensee a new insurance product or service primarily destined for personal, family or household purposes, it shall be deemed that the licensee has satisfied the requirement to provide initial notice if: (1) provides the client with a notice that covers the new insurance product or service; or (2) if the initial notice or the most recent annual notice is applicable to the new product.

4. As an exception, the licensee may provide the initial notice within a reasonable time, which would not exceed thirty (30) days, after establishing the client relationship, when: (i) the establishment of the client relationship is not at the client's election, or (ii) providing initial notice at the time the client relationship is established significantly delays

the transaction and the client agrees to receive the notice at a later date.

SECTION 3. - ANNUAL NOTICE

1. As long as the client relationship exists, all licensees shall provide clients with a clear and conspicuous annual notice, in which the policies and practices regarding privacy and flow of non-public personal financial information are specifically described. The term "annual" means that the notice shall be given at least one (1) time within a period of twelve (12) consecutive months, during which a client relationship exists with the licensee. The licensee may define the twelve (12) month period, but the licensee shall apply it to the client on a consistent basis.

2. The licensee shall not be required to provide an annual notice to a previous client with whom the licensee no longer has a client relationship. The term "previous client" means any person with whom the licensee had a client relationship, but with who at the present said relationship does not exist.

SECTION 4. - INFORMATION THAT SHOULD BE INCLUDED IN NOTICES REGARDING PRIVACY AND FLOW OF NON-PUBLIC PERSONAL FINANCIAL INFORMATION POLICIES

1. All notices advising the policies regarding privacy and flow of non-public personal financial information shall include the following information:

- a. The type of non-public personal financial information that the licensee collects.
- b. The type of non-public personal financial information that the licensee discloses.
- c. The categories of affiliates and non-affiliated third parties to whom the licensee discloses non-public personal financial information, excluding those exempted under this Rule.
- d. The type of non-public personal financial information of previous clients of the licensee that is disclosed, including the categories of affiliates and non-affiliated third parties to whom the licensee discloses non-public personal financial information, excluding those exempted under this Rule.

- e. When the licensee discloses personal financial information to a non-affiliated third party whom it has contracted for processing services or joint marketing, it shall separately include a description of the types of information that are disclosed and the categories of the non-affiliated third parties the licensee contracted for such purposes.
- f. A statement advising the client or consumer of their right to opt out of the disclosure of non-public personal financial information to non-affiliated third parties, including a description of the mechanisms available to the client or consumer to exercise such right.
- g. Any disclosures that the licensee makes pursuant to Section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act [15 USC 1681a(d)(2)(A)(iii)].
- h. A description of the policies and practices utilized by the licensee with respect to the protection of the privacy and security of non-public personal financial information collected by the licensee.

2. The licensee shall not be required to provide a description of the non-affiliated third parties to whom non-public personal financial information is disclosed, if said non-affiliated third parties are included among those exempted by this Rule. With regards to said parties, the licensee shall only be required to indicate that they disclose personal financial information to affiliates and non-affiliated third parties, to whom the law allows disclosure of said information.

3. The licensee may satisfy the initial notice requirement for a consumer by providing a short form initial notice along with the notice regarding the right to opt out. The short form initial notice shall be clear and conspicuous, state that the notice regarding its privacy and flow of personal financial information policies is available, and explain the reasonable method available to the consumer to obtain the notice regarding its privacy and flow of personal financial information policies.

4. The licensee may include the type of personal financial information that licensee reserves the right to disclose in the future, but does not disclose at the present time. Likewise, the licensee may include the categories of affiliates and non-affiliated third parties to whom the licensee reserves the right to disclose personal financial information in the future, but to whom the licensee does not disclose information at present time.

ARTICLE 4. - RIGHT TO OPT OUT

SECTION 1. - GENERAL PROVISIONS

All of the licensee's clients and consumers have the right to prevent the disclosure of their non-public personal financial information to non-affiliated third parties, except for those exceptions provided for in this Rule.

SECTION 2. - NOTICE OF REQUEST TO EXERCISE THE RIGHT TO OPT OUT

1. To all licensees that disclose non-public personal financial information to non-affiliated third parties, except as provided in Article 6 of this Rule, all licensees are required to provide their clients or consumers, along with the notice required under this Rule, a request form to exercise their right to opt out, in which they are advised in a clear and conspicuous manner of the right to prevent the disclosure of their non-public personal financial information. Said opt out request form shall indicate that:
 - a. the licensee will disclose, or will reserve the right to disclose, the non-public personal financial information of its clients or consumers to non-affiliated third parties;
 - b. the client or consumer has the right to request an opt out of said disclosure; and
 - c. the procedure to be followed in order to exercise the right to opt out.
2. The licensee may provide the request to exercise the right to opt out along with the initial notice or on the same printed or electronic form.
3. If the licensee provides the request to exercise the right to opt out at a date later than that required for the initial notice, the licensee shall include, along with the opt

out request form, a copy of the initial notice, either in writing, or, if so agreed with the client or consumer, electronically.

4. If two (2) or more clients or consumers jointly acquire an insurance product or service, the licensee may provide only one (1) opt out request form for all clients or consumers who participate in the transaction. The request form shall explain how the licensee will process the joint client's or consumer's opt out request form. If any of the joint clients or consumers exercise the right to opt out related to the disclosure of non-public personal financial information to non-affiliated third parties, the licensee may do any of the following:

- (a) may extended the scope of the request to opt out of one of the joint clients or consumers to all of the joint clients or consumers; or
- (b) allow each joint client or consumer to exercise the right to opt out individually, also allowing one of them to exercise the right to opt out in representation of the remaining joint clients or consumers.
- (c) The licensee may not require all joint clients or consumers to exercise their right to opt out before implementing any instruction the licensee may have received from any of said joint clients or consumers regarding their right to opt out.

SECTION 3. - TERM IN WHICH THE LICENSEE MUST COMPLY WITH THE REQUEST TO EXERCISE THE RIGHT TO OPT OUT

The licensee shall comply with a client's or consumer's request to opt out within a reasonable term that should not exceed thirty (30) days, counted from the receipt of said request.

SECTION 4. - CONTINUING RIGHT

The client or consumer may exercise the right to opt out at any time.

SECTION 5. - DURATION OF THE REQUEST TO OPT OUT

The opt out request shall remain in effect for as long as it is not expressly revoked by the client or consumer, either in writing or electronically. When the client relationship ends, the opt out right exercised by said client will remain in effect with regard to all non-public personal financial information as that the licensee may have collected during said

client relationship. If the previous client reestablishes a client relationship with the licensee, the opt out right exercised in the previous relationship shall not extend to the new client relationship.

SECTION 6. - REVISED NOTICE

A licensee shall not, directly or through an affiliate, disclose any non-public personal financial information about a client or consumer to a non-affiliated third party that was not mentioned in the initial notice, unless the licensee:

1. provides the client or consumer with a revised notice in which the licensee advises of its policy regarding privacy and flow of non-public personal financial information; or
2. provides the client or consumer with a new opt out request form; or
3. provides the client or consumer with an opportunity to exercise their right to opt out prior to disclosing their non-public personal financial information to a non-affiliated third party; or
4. the consumer does not exercise the right to opt out.

ARTICLE 5. - METHODS FOR THE DELIVERY OF THE NOTICES AND THE RIGHT TO OPT OUT REQUEST FORM

1. The licensee shall provide any notices required by this Rule using a method that provides the licensee with a reasonable expectation that the client or consumer will receive the notice in printed form, or if the client or consumer so consents, electronically. The licensee may have a reasonable expectation that the client or consumer will receive adequate delivery of notices when the licensee uses the following methods:

- a. Hand delivery.
- b. Delivery by mail at the client's or consumer's last known address, separately and individually, or along with any policy or billing or other written communication.
- c. When the client or consumer carries out an electronic transaction, by publishing the notice on the Web site and requiring said client or consumer to confirm receipt of the notice, as a prior condition to obtaining the insurance product or service.

d. When dealing with an isolated transaction with a consumer, by providing the notice at the moment the transaction takes place and requiring the consumer to state whether he or she will exercise his or her right to opt out, as a condition for the completion of the transaction.

2. The licensee may have a reasonable expectation that the client or consumer will receive adequate delivery of the annual notice when:

- a. the client or consumer uses the licensee's Web site to electronically access the insurance products or services offered by the licensee; the client or consumer agrees to receive the annual notice through this Web site; and the licensee publishes continuously in a clear and conspicuous manner its policy regarding privacy and flow of non-public personal financial information; or
- b. the licensee maintains its policy regarding privacy and flow of non-public personal financial information available to be provided at the client's or consumer's request, even when said client or consumer has requested that the licensee stop sending any related information.

3. A licensee shall not be deemed to be in compliance with the delivery requirement established by this Rule, when the licensee or the licensee's authorized representative explains the details of the notice orally to the client or consumer, in person or by telephone.

4. When dealing with a client, the licensee shall ensure that the initial notice, the annual notice, and the revised notice required under this Rule are provided in a format that the client can keep or obtain in writing, or when the client so agrees, electronically.

5. A licensee may provide the notices jointly with one or more of its affiliates or with another financial institution identified in said notices, provided that in said notices the licensee and the other institutions are accurately identified. The licensee may also provide notice on behalf of another financial institution.

6. When two or more clients or consumers jointly obtain an insurance product or service offered by the licensee, the licensee may satisfy the initial, annual and revised notice

requirements of this Rule, by providing notice to those clients or consumers jointly.

ARTICLE 6. - RULES GOVERNING THE DISCLOSURE OF FINANCIAL INFORMATION

SECTION 1. - LIMITS ON DISCLOSURE OF NON-PUBLIC PERSONAL FINANCIAL INFORMATION TO A NON-AFFILIATED THIRD PARTY

1. A licensee shall not, directly or through an affiliate, disclose non-public personal financial information of a client or consumer to a non-affiliated third party, unless the licensee has provided said client or consumer with an initial notice, a right to opt out request form, and a reasonable opportunity, consisting of a term that should not exceed fifteen (15) days, counted from the mailing date of the initial notice and the opt out request form, to exercise said right prior to the disclosure of the information to the non-affiliated third party.

If after providing all of the opportunities described herein, the client or consumer does not exercise the right to opt out, the licensee may disclose the non-public personal financial information of said client or consumer to non-affiliated third parties, until said client or consumer specifies otherwise, pursuant to the provisions of this Rule.

2. The licensee shall provide the consumer with an opt out request form, regardless of whether a continues relationship is established between the consumer and the licensee, converting the consumer into a client. If the licensee does not provide the consumer with said request form, it shall not, directly or through an affiliate, disclose any non-public personal financial information of the consumer that it has collected, regardless of whether the information was collected before or after receiving, from the consumer, an instruction, whether orally or by any other means, as to their interest in exercising their right to opt out.

3. The licensee shall allow the client or consumer to select the type of non-public personal financial information that he or she does not want to be disclosed, and the categories of non-affiliated third parties to whom said client or consumer does not want to disclose his o her information.

SECTION 2. - LIMITS ON THE DISCLOSURE AND USE OF NON-PUBLIC PERSONAL FINANCIAL INFORMATION OBTAINED THROUGH A NON-AFFILIATED THIRD PARTY

1. If a licensee receives non-public personal financial information of its clients or

consumers from a non-affiliated financial institution, under any of the exceptions provided in this Article, the disclosure and use of said information shall be limited as follows:

- a. The licensee may disclose the information received to the affiliates of the financial institution from which it received the information.
- b. The licensee may disclose the information received to its affiliates, but the affiliates may only disclose and use the information to the extent that the licensee may disclose and use the information.
- c. The licensee may disclose and use the information received in the ordinary course of business, pursuant to the exceptions in Sections 4 and 5 of this Article, in order to perform the activity covered by the exceptions under which the licensee received the information.

2. If a licensee receives non-public personal financial information of any of its clients or consumers from a non-affiliated financial institution, which was not obtained pursuant to the exceptions contained in Sections 4 and 5 of this Article, the licensee may disclose said information only to:

- a. The affiliates of the non-affiliated financial institution from which the information was received.
- b. Its affiliates, but the affiliates shall only disclose such information in the same manner as the licensee may disclose said information.
- c. Any other person who has a lawful right to obtain the information directly from the non-affiliated financial institution that provided the information to the licensee.

3. If a licensee discloses non-public personal financial information of its clients or consumers to a non-affiliated third party, under the exceptions provided in Sections 4 and 5 of this Article, said non-affiliated third party may use and disclose the information only as follows:

- a. The non-affiliated third party may disclose the information to the licensee's affiliates.

- b. The non-affiliated third may disclose the information to its affiliates, but said affiliates may only use and disclose the information in the same manner as the non-affiliated third party may use and disclose said information.
- c. The non-affiliated third party may use and disclose the information, pursuant to the exceptions provided in Sections 4 and 5 of this Article, as long as it is in the ordinary course of business in order to perform the activity covered by the exceptions under which the non-affiliated third party received the information.

4. If a licensee discloses non-public personal financial information of its clients or consumers to a non-affiliated third party, outside the exceptions provided in Sections 4 and 5 of this Article, the non-affiliated third party may disclose said information only to:

- a. The licensee's affiliates.
- b. The non-affiliated third party's affiliates, but said affiliates may disclose the information only in the same manner as the non-affiliated third party may use and disclose said information.
- c. Any other person who has a lawful right to obtain the information directly from the licensee.

SECTION 3. - LIMITS ON SHARING INFORMATION REGARDING A CLIENT'S OR CONSUMER'S POLICY NUMBER FOR MARKETING PURPOSES

1. A licensee shall not directly, or through its affiliates, disclose the policy number or any other type of number or access code regarding a client's or consumer's insurance policy or transaction account, except a deposit account or credit card, to a non-affiliated third party, other than a credit reporting agency, for telemarketing purposes, direct mail marketing or other marketing through electronic mail.

2. The provisions of paragraph 1 above, shall not apply if the licensee discloses the policy number or any other type of number or access code regarding the insurance policy to:

- a. the licensee's service provider, for the sole purpose of marketing the products and services of the licensee, and only when such service

provider is not authorized to make charges directly to the client's or consumer's account;

- b. an agent or broker for the sole purpose of marketing the licensee's products and services; or
- c. a member of an affinity program or any other program of a similar nature, in which the identity of the program's members is revealed to the client when they enter the program.

SECTION 4. - EXCEPTIONS TO THE OPT OUT REQUIREMENTS FOR DISCLOSURE OF NON-PUBLIC PERSONAL FINANCIAL INFORMATION TO SERVICE PROVIDERS AND JOINT MARKETING PURPOSES

1. The requirements about the right to opt out provided in Article 5 of this Rule, will not apply if the licensee discloses non-public personal financial information to a non-affiliated third parties to perform services on behalf of the licensee, or under its name, when the licensee:

- a. provides the client or consumer with the initial notice pursuant to Section 2 of Article 3 of this Rule; and
- b. subscribes a contractual agreement with a non-affiliated third party, prohibiting the use or disclosure of the information for purposes other than those specifically agreed to, including its use in the ordinary course of business to perform an activity, pursuant to the exceptions provided in Sections 4 and 5 of this Article.

2. The services that a non-affiliated third party may perform on behalf of the licensee under paragraph A of this Section, include the marketing of the licensee's products and services, or the marketing of financial products and services offered pursuant to joint agreements subscribed between the licensee and one or more financial institutions.

3. A joint agreement is a written agreement pursuant to which a licensee and one or more financial institutions jointly offer, endorse or sponsor a financial product or service.

SECTION 5. - EXCEPTIONS TO THE NOTICE AND OPT OUT REQUIREMENTS FOR THE DISCLOSURE OF NON-PUBLIC PERSONAL FINANCIAL INFORMATION FOR PROCESSING AND SERVICING TRANSACTIONS

1. The initial notice requirements provided in Section 2 of Article 3 of this Rule and

those related to the right to opt out in Article 5 of this Rule, as well as those provisions related to service providers and joint marketing in Section 4 of this Article, will not apply when the licensee discloses only the non-public personal financial information necessary to perform, administer, or implement the transactions expressly requested or authorized by the client or consumer, or related to:

- a. The processing or maintenance of an insurance service or product requested or authorized by a client or consumer.
- b. The maintenance or servicing of a transaction account with the licensee or with another institution as part of a private label credit card program or any other type of credit granted by said institution.
- c. The reissue of guaranteed securities, securitization or any other similar transaction related to a transaction with the consumer.
- d. Reinsurance, aggregate excess reinsurance ("stop loss"), or excess of loss insurance.

2. The phrase "necessary to effect, administer or implement a transaction" means that the disclosure is:

- a. required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons involved in the execution of the financial transaction or the offering of the product or service; or
- b. required or is a usual, appropriate or acceptable method to:
 - i. execute the transaction or the product or service of which the transaction is a part, and record, service or maintain the consumer's account in the ordinary course of providing the insurance product or service;
 - ii. administer or service the benefits or claims related to the transaction or the product or service business of which said transaction is a part;
 - iii. provide a confirmation, statement or other record of the transaction or information on the status or value of the insurance

product or service to the consumer or the consumer's agent or broker;

iv. accrue or recognize incentives or bonuses associated with the transaction and provided by the licensee or any other person;

v. underwrite an insurance policy at the client's or consumer's request or for any of the following purposes as they relate to a client's or consumer's insurance: account administration, reporting, investigating or preventing fraud or misrepresentation, processing premium payments, processing of insurance claims, administering insurance benefits (including utilization review activities), participating in research projects, or as otherwise required or specifically permitted by federal or state law; or

vi. in connection with:

(a) the authorization, settlement, collection, processing, clearing, transferring, reconciliation or billing of amounts charged, debited or otherwise paid, using a debit, credit or other kind of payment, check or account number or by other means of payment;

(b) the transfer of receivables, accounts or interest; or

(c) the audit of debits, credits or other types of payments.

SECTION 6. - OTHER EXCEPTIONS TO NOTICE AND OPT OUT REQUIREMENTS FOR THE DISCLOSURE OF NON-PUBLIC PERSONAL FINANCIAL INFORMATION

The requirements for initial notice provided in Section 2 of Article 3 of this Rule and those related to the right to opt out in Article 5 of this Rule, as well as the provisions related to service providers and joint marketing in Section 4 of this Article, will not apply when a licensee discloses non-public personal financial information:

1. with the consent or at the direction of the client or consumer, as long as the client or consumer has not revoked the consent or direction;

2. (a) to protect the confidentiality or security of a licensee's records pertaining to

the client or consumer, services, products or transactions;

(b) to protect against or prevent fraud or unauthorized transactions;

(c) for required institutional risk control or for resolving client or consumer complaints or inquiries;

(d) to persons holding a legal or beneficial interest pertaining to the client or consumer; or

(e) to persons acting in a fiduciary or representative capacity on behalf of the consumer;

3. to provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and licensee's attorneys, accountants and auditors;

4. to the extent permitted or required by law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3410 *et seq.*), to regulatory agencies, including the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, the Securities and Exchange Commission and the Secretary of the Treasury, with respect to 31 U.S.C., Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C., Chapter 21 (Financial Recordkeeping), state insurance regulators and the Federal Trade Commission, self-regulatory organizations or for an investigation on a matter related to public safety;

5. (a) to a consumer credit reporting agency in accordance with the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*) or

(b) from a consumer report reported by a credit reporting agency;

6. in connection with a sale, merger, transfer or exchange of all or a portion of a business or operating unit if the disclosure of the non-public personal financial information concerns solely consumers of the business or unit;

7. (a) to comply with federal, state or local laws or regulations and other applicable legal requirements;

(b) to comply with a properly authorized civil, criminal or regulatory

- investigation, subpoena or summons by federal, state or local authorities; or
- (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; or
- (8) for purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan or a worker's compensation plan.

ARTICLE 7. - REGULATION OF THE FLOW AND HANDLING OF HEALTH INFORMATION

SECTION 1. - DISCLOSURE OF NON-PUBLIC PERSONAL HEALTH INFORMATION

1. A licensee shall not disclose non-public personal health information about a client or consumer without the prior authorization of said client or consumer.
2. The provisions of this Section shall not prohibit, restrict or require prior authorization from the client or consumer for the disclosure of non-public personal health information by a licensee for the performance of the following insurance functions by or on behalf of the licensee: claims administration; claims adjustment and management; detection, investigation or reporting of fraud, misrepresentation or criminal activity; underwriting; policy placement or issuance; loss control; ratemaking and guaranty fund functions; reinsurance and excess loss managements; risk management; case management; disease management; quality assurance; quality improvement; performance evaluation; provider credentialing verification; utilization review; peer review activities; actuarial, scientific, medical or public policy research; grievance procedures; internal administration of compliance, managerial, and information systems; policyholder service functions; auditing; reporting; database security; administration of consumer disputes and inquiries; external accreditation standards; replacement of a group benefit plan or workers' compensation policy or program; activities in connection with a sale, merger, transfer or exchange of all or part of a business or operating unit; any activity that permits disclosure without authorization pursuant to the federal Health Insurance

Portability and Accountability Act privacy rules promulgated by the U.S. Department of Health and Human Services; disclosures that are required or that constitute one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out a transaction or providing products or services requested or authorized by a consumer; and any activity permitted by law, required pursuant to governmental reporting authority or to comply with legal process. Additional insurance functions may be added with the approval of the Commissioner to the extent they may be necessary for the appropriate performance of said functions and that they are fair and reasonable to the interests of consumers.

SECTION 2. - AUTHORIZATION.

1. The authorization to disclose non-public personal health information pursuant to this Article 7, shall be provided by the licensee to the client or consumer in writing or electronically, and shall contain the following:
 - (a) The identity of the client or consumer who is the subject of the non-public personal health information;
 - (b) A general description of the types of non-public personal health information to be disclosed;
 - (c) A general description of the parties to whom the licensee discloses the non-public personal health information, the purpose of the disclosure and how the information will be used;
 - (d) The signature of the client or consumer who is the subject of the non-public personal health information or the individual who holds legal power of attorney and the date signed; and
 - (e) The term during which the authorization will be valid and the client's or consumer's right to revoke said authorization at any time, including the procedure to be followed for said revocation.
2. The authorization, for purposes of this Article 7, shall specify the term for which said authorization will remain valid, which shall not exceed twenty-four (24) months.

3. The client or consumer who is the subject of non-public personal health information may revoke an authorization provided pursuant to this Article 7 at any time, subject to the rights of any individual who may have acted pursuant to said authorization, prior to receiving notice of revocation.

4. The licensee shall retain the authorization or copy thereof in the record of the client or consumer who is the subject of the personal health information.

SECTION 3. - NOTICE OF REQUEST FOR AUTHORIZATION

The licensee may deliver a request for authorization form to a client or consumer along with the right to opt out request form provided under this Rule, as long as the authorization form is clear and conspicuous. The delivery of an authorization form to a client or consumer shall not be required, nor the inclusion of any other notice, unless the licensee intends to disclose non-public personal health information that is protected under the provisions of paragraph 1 of Section 1 of this Article.

SECTION 4. - RELATIONSHIP TO FEDERAL REGULATIONS

1. All licensees subject to the rules and regulations related to the confidentiality of non-public personal health information promulgated by the U.S. Department of Health in Sections 262 and 264 of the federal law known as the Health Insurance Portability and Accountability Act of 1996, PL 104-191, and who complies with all the provisions of said federal law, except for its effective date provision, shall be exempt from compliance with the provisions of this Article. Nevertheless, the licensee shall comply with all remaining provisions of this Rule, as they may be applicable. Likewise, said licensees shall demonstrate that they are acting in compliance with all the requirements of said law, particularly in regards to the drafting, implementation and notification of their policies related to the confidentiality of non-public personal health information.
2. Those licensees who are not subject to the aforementioned rules and regulations shall have the option to comply with the provisions of said law or the provisions of this Rule. If the licensee decides to comply with the provisions of the federal law, the licensee must demonstrate that it is in compliance with the legal

requirements established by said law, as indicated in paragraph (1) above.

SECTION 5. - RELATIONSHIP TO LOCAL LAWS

The provisions of this Article shall not be deemed as repealing or preempting any law, regulation or right currently in effect in Puerto Rico related to medical records or files or to the confidentiality of the content thereof.

ARTICLE 8. - PROHIBITED PRACTICES IN THE COLLECTION, FLOW AND USE OF FINANCIAL AND HEALTH INFORMATION

SECTION 1. - DISCRIMINATION

1. A licensee shall not discriminate against a client or consumer for exercising their right to opt out.

2. A licensee shall not discriminate against a client or consumer for refusing to sign an authorization form for the disclosure of non-public personal health information.

ARTICLE 9. - UNFAIR BUSINESS PRACTICES AND FRAUD

The provisions of this Rule shall not be construed to exclude other provisions of Chapter 27 of the Code that regulate the acts or commercial practices in the insurance business that constitute unfair competition, or misleading acts or practices.

ARTICLE 10. - PENALTIES

Any violation of the provisions of this Rule shall be considered an unfair practice and shall be subject to the penalty provided for under Article 27.300 of the Code.

ARTICLE 11. - COMPLAINTS AND REQUESTS FOR INVESTIGATION

Any client or consumer who may have reasons to believe that a licensee subject to the provisions of this Rule is acting or has acted in violation of the provisions of this Rule may request that the Office of the Commissioner of Insurance conduct an investigation of said situation and has at his or her disposal all of the actions and remedies provided for in the Code, the Regulations and any other rule of the Office of the Commissioner of Insurance.

ARTICLE 12. - PROTECTION UNDER THE FAIR CREDIT REPORTING ACT

Nothing in this Rule modifies limits or substitutes the application of the Fair Credit Reporting Act (15 U.S.C. 1682, *et seq.*) and no inference shall be drawn whatsoever on the basis of the provisions of this Rule, regarding whether the information is transaction or

experience information under Section 603 of said statute.

ARTICLE 13. - COMMISSIONER'S POWERS

The Commissioner shall have the power and authority, pursuant to Article 2.030 of the Code, to examine and investigate all the activities of the licensees or any other person, in connection with the flow and privacy of a client's or consumer's non-public personal financial or health information, subject to the provisions of this Rule and the Code, for purposes of overseeing the industry and protecting clients or consumers.

ARTICLE 14. - TRANSITION AND SUPPORT COMMITTEE

As established in Article 13 of Rule No. 74, of October 31, 2001, approved by the Commissioner, the Transition and Support Committee established thereby shall submit reports to the Commissioner on the progress being made in the implementation of this Rule.

Said Committee shall also be responsible for providing the following information to the Commissioner on a regular basis:

1. reports related to the administration of the implementation of the legal and regulatory measures established under this Rule;
2. observations as to the practices and methods used by entities subject to the provisions of this Rule, related to the flow and confidentiality of non-public personal financial or health information pertaining to the client or consumer;
3. any other information that the Commissioner may deem pertinent and necessary for performing the duties of his charge as regulator of the insurance industry in Puerto Rico.

ARTICLE 15. - SEVERABILITY

If any word, sentence, paragraph, section, article or portion of this Rule were to be ruled null and void or held invalid by a court of competent jurisdiction, the court order shall not affect nor render invalid the remaining provisions of this Rule and the effect of said order shall be limited to that word, sentence, paragraph, section, article or portion ruled null and void.

ARTICLE 16. -EFFECTIVE DATE

The provisions of this Rule shall be effective thirty (30) days after the Commissioner publishes a notice in a newspaper of general circulation in Puerto Rico, once a week, for two (2) consecutive weeks, announcing that the Rule has been approved.



FERMÍN M. CONTRERAS-GOMEZ
INSURANCE COMMISSIONER

Date of approval: September 26, 2002

Date Filed with the
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Date Filed with the
Legislative Library: