SUBCHAPTER A. INSURANCE CONSUMER FINANCIAL INFORMATION PRIVACY
28 TAC §§22.2, 22.3, 22.10, 22.11, 22.22, 22.26, and 22.27

1. INTRODUCTION. The Texas Department of Insurance adopts amendments to 28 TAC §§22.2, 22.3, 22.10, 22.11, 22.22, and 22.26, concerning the treatment of nonpublic personal financial information about individuals who obtain products or services primarily for personal, financial, or household purposes from covered entities. TDI also adopts new 28 TAC §22.27, concerning general instructions for a covered entity to complete the federal model privacy form. The amendments and new sections are adopted with changes to the proposed text published in the August 15, 2014, issue of the *Texas Register* (39 TexReg 6147).

2. REASONED JUSTIFICATION. The amendments and new section are necessary to provide that a covered entity may use the federal model privacy form, consistent with its instructions in new 28 TAC §22.27, to meet the notice content requirements of 28 TAC §22.10 and §22.11. This adoption replaces the existing sample forms under 28 TAC §22.26(b) with three versions of the optional federal model privacy form and an optional federal mail-in opt out form that conforms with amendments in federal law and regulations concerning notice to consumers about their nonpublic personal financial information.

The amendments and new section are also necessary to remain consistent with federal law and regulations concerning the disclosure of nonpublic personal financial information adopted under the Gramm-Leach-Bliley Act, 15 U.S.C. §6801 et seq., as

amended, and in accord with Insurance Code §601.051. This adoption implements Insurance Code §601.002(a), which requires a covered entity to comply with 15 U.S.C. §6802 and §6803, as amended, in the same manner as a financial institution is required to comply under those sections. Title 15 U.S.C. §6802 concerns a financial institution's obligations with respect to disclosures of personal information. Title 15 U.S.C. §6803 concerns the disclosure of a financial institution's privacy policy. Section 601.002(a) does not apply to a covered entity to the extent the entity is acting solely as an insurance agent, employee, or other authorized representative for another covered entity as provided under Insurance Code §601.003.

Insurance Code §601.051(a)(1) and (2) requires the commissioner to adopt rules to implement Chapter 601 and any other rules necessary to carry out Subtitle A, Title V, Gramm-Leach-Bliley Act under 15 U.S.C. §6801 et seq., as amended, to make this state eligible to override federal regulations described by 15 U.S.C. §6805(c), as amended. In adopting rules under Chapter 601, Insurance Code §601.051(b) requires the commissioner to keep state privacy requirements consistent with federal regulations adopted under 15 U.S.C. §6801 et seq., as amended. Insurance Code §601.052 further requires TDI to implement standards as required by 15 U.S.C. §6805(b), as amended. TDI also adopts amendments to update statutory references, amend existing text for clarification and consistency with agency writing style, and update internal references. Additionally, TDI adopts amendments due to SB 951, passed during the 83rd Legislative Session, Regular Session (2013), to clarify that Insurance Code Chapter 981 applies to surplus lines for transactions where Texas is the home state of the insured to

the extent the insurer accepts business through a person subject to Insurance Code Chapter 981.

Insurance Code §601.001(3) defines a "covered entity" to mean an individual or entity that receives an authorization from TDI. Insurance Code §82.001 provides that in Chapter 82, "authorization" means a permit, license, certificate of authority, certificate of registration, or other authorization issued or existing under the commissioner's authority of the Insurance Code. The term includes an individual or entity described by Insurance Code §82.002(a), which provides that Chapter 82 applies to each company regulated by the commissioner, including:

(1) a domestic or foreign, stock or mutual, life, health, or accident insurance company;

(2) a domestic or foreign, stock or mutual, fire or casualty insurance company;

(3) a Mexican casualty company;

(4) a domestic or foreign Lloyd's plan insurer;

(5) a domestic or foreign reciprocal or interinsurance exchange;

(6) a domestic or foreign fraternal benefit society;

(7) a domestic or foreign title insurance company;

(8) an attorney's title insurance company;

(9) a stipulated premium insurance company;

(10) a nonprofit legal service corporation;

(11) a health maintenance organization;

(12) a statewide mutual assessment company;

(13) a local mutual aid association;

(14) a local mutual burial association;

(15) an association exempt under Insurance Code §887.102;

(16) a nonprofit hospital, medical, or dental service corporation, including a company subject to Insurance Code Chapter 842;

(17) a county mutual insurance company; and

(18) a farm mutual insurance company.

Insurance Code Chapter 82 applies to an individual or entity that is required to register with TDI or that is otherwise regulated under the commissioner's authority in the Insurance Code as provided by Insurance Code §82.001. Specifically, Insurance Code §82.002(b) provides that Chapter 82 also applies to:

(1) an agent of an entity described by §82.002(a); and

(2) an individual or a corporation, association, partnership, or other artificial person who:

(A) is engaged in the business of insurance;

(B) holds an authorization; or

(C) is regulated by the commissioner.

Additionally, Insurance Code §82.002(c) provides that the commissioner's authority under Chapter 82 applies to each form of authorization and each person or entity holding an authorization.

Under 15 U.S.C. §6803(e)(1), certain federal agencies were required to jointly develop a model form that a financial institution may use, at its option, to comply with

the disclosure requirements under the section. The agencies were required to develop a model form that is comprehensible to consumers with a clear format and design, provide for clear and conspicuous disclosures, enable consumers to easily identify the information-sharing practices of a financial institution and compare privacy practices among financial institutions, be succinct, and use an easily readable type font in accord with 15 U.S.C. §6803(e)(2). The Office of the Comptroller of Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury; National Credit Union Administration; Federal Trade Commission; Commodity Future Trading Commission; and the Securities and Exchange Commission (the Agencies) jointly adopted a model privacy form, which appeared in the December 1, 2009, publication of the *Federal Register* at 74 FR 62890, that a financial institution may use, at its option, to meet the requirements for disclosure to consumers.

The Agencies explained that a financial institution may use the model privacy form to notify consumers about its information-sharing practices and to inform consumers of the right to opt out of certain sharing practices. The Agencies adopted a model form with no opt out; a model form with an opt out by telephone, online, or both; a model form with a mail-in opt out form; and an optional mail-in opt out form. Use of the model privacy form is voluntary. However, the Agencies explained that a financial institution that chooses to provide the model privacy form to its consumers complies with the disclosure requirements for privacy notices in accord with 15 U.S.C. §6803(e)(4).

Prior to the adoption of the model privacy form, a financial institution could choose to use sample clauses in its privacy notices to comply with the disclosure requirements. The Agencies, other than the SEC, eliminated the safe harbor permitted for notices based on the sample clauses contained in the federal privacy rules for notices provided after December 31, 2010. Similarly, the SEC eliminated the guidance associated with the use of notices based on the sample clauses in its privacy rule for notices provided after December 31, 2010. The Agencies explained that while the model privacy form provides the legal safe harbor of compliance with the disclosure requirements, financial institutions may continue to use other types of notices that vary from the model privacy form, including notices that use the sample clauses, so long as the notices comply with the requirements of the privacy rule.

The Agencies eliminated the sample clauses and related safe harbor, or guidance, from the privacy rule, following a one-year transition period. The initial public and media complaints about the privacy notices; the plain-language experts' guidance; and a consumer research project, known as the Notice Project, all examined the problems with the financial institutions' privacy notices, including their extensive use of the sample clauses, and found the need to develop a usable consumer notice.

For those institutions that had privacy notices based on the sample clauses, the Agencies implemented a transition period that started 30 days after the date of publication of the adoption of the model privacy form and ended on December 31, 2010. The Agencies stated that financial institutions would not be able to rely on the safe harbor by using the sample clauses in notices delivered or posted on or after January 1,

2011. Institutions relying on the sample clauses appended to the SEC's privacy rule would not be able to rely on them for guidance in notices delivered or posted on or after January 1, 2011. The Agencies stated that the sample clauses would be removed from codification on January 1, 2012, one year after the transition period ends. The SEC, whose privacy rule provides only guidance and not a safe harbor for financial institutions that use the sample clauses, stated that the sample clauses would also be removed from codification on January 1, 2012.

To remain consistent with federal law and regulations, this adoption permits a covered entity to use the model privacy form, consistent with its instructions in 28 TAC §22.27, to meet the notice content requirements of 28 TAC §22.10 and §22.11. Additionally, this adoption deletes the sample forms under §22.26(b) and, as a replacement, the commissioner adopts by reference the three versions of the optional federal model privacy form and the federal mail-in opt out form that appears at 74 *Federal Register* 62890 (December 1, 2009). While the optional model privacy form would provide a legal safe harbor, a covered entity may continue to use other types of notices that vary from the model privacy form, including notices that use the sample forms and clauses, so long as the notices comply with Insurance Code Chapter 601, 28 TAC Chapter 22 Subchapter A, and the notice content requirements of 28 TAC §22.10 and §22.11. This adoption will become effective 20 days after the date on which the adoption order is filed in the office of the Secretary of State in accord with Government Code §2001.036(a).

TDI has made nonsubstantive changes to some of the proposed language in the text of the rule as adopted. The changes, however, do not introduce new subject matter or affect persons in addition to those subject to the proposal as published. TDI has replaced *forth* with *out* in 28 TAC §22.2(2) and (3). In 28 TAC §22.2(4), TDI has deleted *that is*. In 28 TAC §22.2(13), TDI has deleted *that are*. In 28 TAC §22.2(14), TDI has inserted a comma after *institution* and deleted *such.* TDI has deleted *such* in 28 TAC §22.2(15). TDI has deleted *that is* in 28 TAC §22.2(19) and (21)(A)(ii) and (iii). In 28 TAC §22.2(21)(B)(ii), TDI has deleted *it i*s. In 28 TAC §22.2(21)(B)(iii), TDI has deleted *that is.* TDI has deleted *if it is* in 28 TAC §22.2(23)(A)(vi) and *that* in 28 TAC §22.2(23)(A)(vii). In TDI 28 TAC §22.2(24), TDI has deleted *that a*. TDI inserted a comma after *state* in 28 TAC §22.2(24)(A) and deleted *that are* in 28 TAC §22.2(24)(C).

TDI has replaced *forth* with *out* in 28 TAC §22.3(a) and (c). TDI has deleted *a* in 28 TAC §22.3(c)(1).

TDI has deleted *that* in 28 TAC §22.10(b), (b)(1), (b)(2), (b)(2)(B), (b)(2)(C), (b)(7), (b)(9), (e), (g)(1). TDI has deleted *of* in 28 TAC §22.10(b)(2)(C). TDI has deleted *such* in §22.10(d)(2).

TDI has deleted *that* in 28 TAC §21.11(b)(1) and (2), (c)(4), and (m). TDI has replaced *accordance* with *accord* in 28 TAC §22.11(f) for consistency with the agency writing style. TDI has replaced *forth* with *out* in 28 TAC §22.11(h). TDI has deleted *of* in 28 TAC §22.11(h)(3).

TDI has replaced *forth* with *out* in 28 TAC §22.27(a). TDI has replaced *the* with *legal* in 28 TAC §22.27(b). TDI has inserted a comma after *(FCRA)* in 28 TAC §22.27(c)

and after *example* in 28 TAC §22.27(f)(4). In response to a comment, TDI has revised 28 TAC §22.27(d) to provide that a covered entity may replace the term *customer* with another appropriate term as provided under 28 TAC §22.4(c)-(e). TDI has deleted the quotation marks inside the parentheses in new 28 TAC §22.27(e)(1)(D). TDI has deleted *that* in 28 TAC §22.27(g)(2)(B)(i). Additionally, TDI has replaced *appear* with *appears* in new 28 TAC §22.27(g)(2)(F).

3. HOW THE SECTIONS WILL FUNCTION.

§22.2. Definitions. Section 22.3 provides the definitions for the words and terms used in 28 TAC Chapter 22. Amendments to §22.2 update statutory references in the Insurance Code and update existing text for clarification and consistency with agency writing style.

§22.3. Exceptions to Applicability of Subchapter. Section 22.3 explains the applicable exceptions to the requirements of 28 TAC Chapter 22, Subchapter A. Amendments to §22.3 bring the notice from the former Figure 8 under §22.26(b) into §22.3 because it is not a model privacy form, so, it is necessary to retain the language from former Figure 8 under §22.26(b) and place it as a Figure under 28 TAC §22.3(c)(2). Amendments to §22.3 also update statutory references in the Insurance Code and update existing text for clarification and consistency with agency writing style.

§22.10. Information to be Included in Privacy Notices. Section 22.10 provides the information that a covered entity must disclose in privacy notices.

§22.11. Form of Opt Out Notice to Consumers and Opt Out Methods. Section 22.11 explains the requirements for an opt out notice to consumers and the opt out methods.

Amendments to §22.10 and the addition of subsection (o) to §22.11 are necessary to remain consistent with the federal law and regulations adopted by the Agencies in the December 1, 2009, publication of the *Federal Register* at 74 FR 62890. Amendments to §22.10 and §22.11 update existing text for clarification and consistency with agency writing style. Amendments to add subsection catch lines in §22.11 are necessary to remain consistent with *Texas Register* requirements.

§22.22. Violations. Section 22.22 provides that a violation of any section of 28 TAC Chapter 22 Subchapter A will subject the covered entity to the disciplinary and enforcement sanctions and penalties provided in Insurance Code Chapters 82, 83, and 601. Amendments to §22.22 update statutory references in the Insurance Code and update existing text for clarification and consistency with agency writing style.

§22.26. Model Privacy Notice Form and Examples. Section 22.26 provides that use of Version 1, 2, or 3 of the model privacy form in 74 *Federal Register* 62890 (December 1, 2009), or Version 4 for the optional mail-in opt out form, consistent with the instructions in 28 TAC §22.27, complies with the notice content requirements of 28 TAC §22.10 and §22.11, but use of the model privacy form is not required. Although proper use of the optional model privacy form would provide a legal safe harbor, a covered entity may continue to use other types of notices that vary from the model privacy form, including notices that use the sample clauses, so long as the notices comply with

Insurance Code Chapter 601, 28 TAC Chapter 22, and the notice content requirements of 28 TAC §22.10 and §22.11. Amendments to §22.26 update existing text for clarification and consistency with agency writing style. Amendments to §22.26 are also consistent with the federal law and regulations adopted by the Agencies.

§22.27. General Instructions. Section 22.27 provides general instructions to complete the model privacy form.

4. SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Comment. A commenter appreciates that the proposed amendments, particularly the amendments to 28 TAC §22.26, clarify that use of the model privacy form is not required, permitting insurers to continue to use notices with sample clauses, so long as the notices comply with the notice content requirements in 28 TAC §22.10 and §22.11. Permitting continued use of forms other than the model privacy form is important, particularly since insurers may wish to use the same privacy notice across the country and only a few other states currently permit use of the model privacy form to meet their Gramm-Leach-Bliley Act notice requirements.

Agency Response: TDI appreciates the supportive comment. A covered entity is not required to use the model privacy form. Instead, new 28 TAC §22.26 permits a covered entity to use the model privacy form, consistent with its instructions in 28 TAC §22.27, to meet the notice content requirements of 28 TAC §22.10 and §22.11. While the optional model privacy form would provide a legal safe harbor, a covered entity may continue to use other types of notices that vary from the model privacy form, including notices that use the sample clauses, so long as the notices comply with Insurance Code Chapter

601 and 28 TAC Chapter 22, Subchapter A, specifically, the notice content requirements of 28 TAC §22.10 and §22.11.

Comment: A commenter states that proposed new §22.27(d) allows the word "customer" to be replaced with the word "member," but a similar substitution does not appear to cover communications or transactions between a workers' compensation insurance carrier and an injured employee or claimant.

Agency Response: TDI agrees that new 28 TAC §22.27(d) allows a covered entity to replace "customer" with "member." Because of the special requirements for employee benefit plans, group insurance policies, blanket insurance policies, group annuity contracts, and workers' compensation policies, TDI has changed 28 TAC §22.27(d) to permit a covered entity to replace the term "customer" with another appropriate term as provided under 28 TAC §22.4(c)-(e).

Comment: A commenter states that there are several references to "affiliate" in the model notice, but the instructions do not appear to allow a company that does not have an affiliate to remove all references to the term "affiliate."

Agency Response: TDI disagrees that the instructions do not appear to allow a company that does not have an affiliate to remove all references to the term "affiliate." When applicable, the general instructions under 28 TAC §§ 22.27(g)(2)(C)(iii), 22.27(g)(2)(D)(vi), and 22.27.27(g)(3)(B)(i)(1) allow omission of references to the term "affiliate."

In relevant part, 28 TAC §22.27(g)(2)(C)(iii) provides that "[o]nly the sixth row, 'For our affiliates to market to you,' may be omitted at the option of the covered entity as described in the instructions in subparagraph (D)(vi) of this paragraph." Title 28 TAC §22.27(g)(2)(D)(vi) provides that the statement "[f]or our affiliates to market to you..." "may be omitted from the disclosure table when the covered entity does not have affiliates…" Additionally, 28 TAC §22.27.27(g)(3)(B)(i)(1) provides that when the covered entity does not have affiliates the notice may state, "[name of covered entity] has no affiliates..."

Comment: A commenter commends TDI for issuing the proposed amendments to 28 TAC §§22.2, 22.3, 22.10, 22.11, 22.22, and 22.26, and proposed new 28 TAC §22.27 to permit insurers to use the model privacy form, which appeared in the December 1, 2009, publication of the *Federal Register*, to meet the notice requirements of 28 TAC §22.10 and §22.11. The clear format and design of the model privacy form will enable Texas consumers to easily identify the sharing practices of an insurer and to compare the insurer's privacy practices with those of other financial institutions. Another commenter states that the federal model privacy form is a valuable choice in meeting privacy notice requirements and appreciates and supports TDI's proposal to provide a safe harbor for the use of the model form.

Agency Response: TDI appreciates the supportive comments.

Comment: A commenter recommends that TDI maintain the existing safe harbor for the sample clauses so that safe harbor status exists for both the privacy form and sample clauses. The commenter explains that a number of states are still operating under regulations similar to the NAIC's "Privacy of Consumer Financial and Health Information Regulation" and have not moved toward formally acknowledging the model privacy form.

The commenter elaborates that the NAIC's "Privacy of Consumer Financial and Health Information Regulation," first adopted in September 2000, created a set of sample clauses to illustrate the privacy notice content required by the regulation. Use of the sample clauses constitutes compliance with the regulation. A majority of states adopted the model regulations and, in so doing, many of them, including Texas, adopted safe harbor status for the sample clauses.

The commenter further explains that in 2009, eight federal agencies adopted a federal model privacy form for guidance with the notice requirements of the Gramm-Leach-Bliley Act. This model privacy form is voluntary and provides entities that choose to use the model form a legal safe harbor. However, state legislatures and insurance regulators have been slow to incorporate this model privacy form into insurance statutes or regulations. The NAIC drafted a model bulletin in 2010 for insurance regulators to establish the model privacy form as a voluntary safe harbor for insurance licensees. The bulletin does not mention elimination of the sample clauses and in fact notes that "[i]nsurers may rely on use of the attached Model Privacy Form, consistent with the attached instructions, as *a* safe harbor of compliance with the privacy notice content

requirements of insert title and citation for statute or regulation that tracks the NAIC Model Privacy of Consumer Financial and Health Information Regulation" (emphasis added).

The commenter states that it is only aware of four states that have adopted the NAIC's bulletin: Kentucky, Maine, Nebraska, and Virginia. In addition, the commenter states that New York has not adopted the NAIC model bulletin but has placed a notice on its web page that acknowledges the federal privacy form and its ability to satisfy the notice requirements of New York Insurance Regulation 169. While it does not appear that Maine, Nebraska, or Virginia ever adopted the sample clause provisions, New York Regulation 169 and Kentucky Administrative Regulations §3:210 both allow the sample clauses to serve as a safe harbor, and neither state eliminated this safe harbor with the adoption of the model bulletin or website notification providing safe harbor to the model privacy form.

For these reasons, there is a strong presence of a safe harbor framework for the use of the sample clauses by the insurance industry and, as such, the commenter recommends that Texas provide a safe harbor for both the model form and sample clauses.

Agency Response: TDI declines to maintain a safe harbor for sample forms containing sample clauses that the Agencies and the SEC removed from codification on January 1, 2012. The amendments and new section are necessary to remain consistent with federal law and regulations concerning the disclosure of nonpublic personal financial information adopted under the Gramm-Leach-Bliley Act, 15 U.S.C.

§6801 et seq., as amended, and are in accord with Insurance Code §601.051. Insurance Code §601.051(b) requires the commissioner to keep state privacy requirements consistent with federal regulations adopted under 15 U.S.C. §6801 et seq., as amended.

Although proper use of the voluntary model privacy form would provide a legal safe harbor, a covered entity may continue to use other types of notices that vary from the model privacy form, including notices that use the sample forms and clauses, so long as the notices comply with the requirements of Insurance Code Chapter 601, 28 TAC Chapter 22 Subchapter A, and the notice content requirements of 28 TAC §22.10 and §22.11. If a covered entity complies with these provisions, it would provide sufficient notice.

TDI agrees that the NAIC drafted a bulletin on August 3, 2010, that states that "insurance companies that do business in this state may use the new Federal Model Privacy Form or continue to use other types of privacy notices that differ from the Federal Model Privacy Form to meet notice content requirements of…" the applicable statute or regulation. However, for rulemaking, TDI must comply with the Administrative Procedure and Practice Act under Government Code Chapter 2001 and provide notice of proposed rules.

5. NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For with changes: American Council of Life Insurers, American Insurance Association, Texas Mutual Insurance Company

6. STATUTORY AUTHORITY. TDI adopts the amendments and new section under Insurance Code §§82.002(c), 82.003, 601.051, 601.052, and 36.001; 15 U.S.C. §6801(b); 15 U.S.C. §6801(b); 15 U.S.C. §6805(b)(2); and 15 U.S.C. §6805(c). Section 82.002(c) provides that the commissioner's authority under Chapter 82 applies to each form of authorization and each person or entity holding an authorization. Section 82.003 provides that the commissioner's authority under Chapter 82 is in addition to any other authority to enforce a sanction, penalty, fine, forfeiture, denial, suspension, or revocation otherwise authorized by law. Section 601.051(a)(1) and (2) provides that the commissioner must adopt rules to implement Chapter 601 and any other rules necessary to carry out Subtitle A, Title V, Gramm-Leach-Bliley Act, 15 U.S.C. §6801 et seq., as amended, to make this state eligible to override federal regulations as described by 15 U.S.C. §6805(c), as amended. Section 601.051(b) provides that in adopting rules under Chapter 601, the commissioner must attempt to keep state privacy requirements consistent with federal regulations adopted under Subtitle A, Title V, Gramm-Leach-Bliley Act, 15 U.S.C. §6801 et seq., as amended. Section 601.052 provides that TDI must implement standards as required by 15 U.S.C. §6805(b), as amended. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

Title 15 U.S.C. §6801(b) provides that, in furtherance of the policy in subsection (a) of Section 6801, each agency or authority described in Section 6805(a) of this title must establish appropriate standards for the financial institutions subject to their

jurisdiction relating to administrative, technical, and physical safeguards to insure the security and confidentiality of customer records and information; to protect against any anticipated threats or hazards to the security or integrity of the records; and to protect against unauthorized access to or use of the records or information that could result in substantial harm or inconvenience to any customer. Title 15 U.S.C. §6805(b)(2) provides that the agencies and authorities described in paragraphs (3), (4), (5), (6), and (7) of subsection (a) of §6805 must implement the standards prescribed under §6801(b) of Title 15 by rule with respect to the financial institutions and other persons subject to their respective jurisdictions under subsection (a) of Section 6805. Title 15 U.S.C. §6805(c) provides that if a state insurance agency fails to adopt regulations to carry out this subchapter, that state will not be eligible to override, under 12 USC §1831x(g)(2)(B)(iii), the insurance consumer protection regulations prescribed by a federal banking agency under §1831x(a) of Title 12.

7. TEXT.

§22.2. Definitions

The following words and terms, when used in this chapter, will have the following meanings, unless the context clearly indicates otherwise.

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

(2) Agent--As set out in Insurance Code §§2651.002 - 2651.011, 2651.051 - 2651.059, 4001.002, 4001.051, and 4001.053.

(3) Authorization--As set out in Insurance Code §82.001.

(4) Clear and conspicuous--A notice reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(5) Collect--To obtain information that the covered entity organizes or can retrieve by the name of an individual or by identifying number, symbol, or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(6) Commissioner--The commissioner of insurance.

(7) Company--A corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship, or other similar organization.

(8) Consumer--An individual or that individual's representative who seeks to obtain, obtains, or has obtained an insurance product or service from a covered entity that is to be used primarily for personal, family, or household purposes, and about whom the covered entity has nonpublic personal financial information.

(9) Consumer reporting agency--As defined in §603(f) of the federal Fair Credit Reporting Act (FCRA) (15 U.S.C. §1681a(f)).

(10) Control--Includes the terms "controls," "controlled by," and "under common control," and has the meaning assigned that term by Insurance Code §823.005 and §823.151.

(11) Covered entity--An individual or entity that receives an authorization from the Texas Department of Insurance. The term includes any individual or entity described by Insurance Code, §82.002.

(12) Customer--A consumer who has a customer relationship with a covered entity.

(13) Customer relationship--A continuing relationship, as described in §22.5 of this subchapter (relating to Determination of Continuing Relationship), between a consumer and a covered entity under which the covered entity provides one or more insurance products or services to the consumer to be used primarily for personal, family, or household purposes.

(14) Financial institution--Any institution, the business of which is engaging in activities that are financial in nature or incidental to financial activities as described in §4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. §1843(k)). Financial institution does not include:

(A) any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. §1 et seq.);

(B) the Federal Agricultural Mortgage Corporation or any entity charged and operating under the Farm Credit Act of 1971 (12 U.S.C. §2001 et seq.); or

(C) institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights), or similar

transactions related to a transaction of a consumer, as long as the institutions do not sell or transfer nonpublic personal financial information to a nonaffiliated third party.

(15) Financial product or service--Any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to a financial activity under §4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. §1843(k)). Financial service includes a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

(16) Health care--

(A) preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, procedures, tests, or counseling that:

(i) relates to the physical, mental, or behavioral condition of an individual; or

(ii) affects the structure or function of the human body or any part of the human body, including the banking of blood, sperm, organs, or any other tissue; or

(B) prescribing, dispensing, or furnishing drugs or biologicals, medical devices, or health care equipment and supplies to an individual.

(17) Health care provider--A physician or other health care practitioner licensed, accredited, or certified to perform specified health services consistent with state law, or a health care facility.

(18) Health information--Any information or data, except age or gender, whether oral or recorded, in any form or medium, that is created by or derived from a health care provider or the consumer that relates to:

(A) the past, present, or future physical, mental, or behavioral health or condition of an individual;

(B) the provision of health care to an individual; or

(C) payment for the provision of health care to an individual.

(19) Insurance product or service--Any product or service offered by a covered entity under the Insurance Code and other insurance laws of this state. Insurance service includes a covered entity's evaluation, brokerage, or distribution of information that the covered entity collects in connection with a request or an application from a consumer for an insurance product or service.

(20) Nonaffiliated third party--An entity that is not an affiliate of, related to by common ownership, or affiliated by corporate control with the covered entity. The term does not include a joint employee of the entity.

(21) Nonpublic personal financial information--Information that:

(A) includes:

(i) personally identifiable financial information;

(ii) any list, description, or other grouping of consumers (and publicly available information pertaining to them) derived using any personally identifiable financial information not publicly available; and

(iii) any list of individuals' names and street addresses derived in whole or in part using personally identifiable financial information not publicly available, such as account numbers;

(B) does not include:

(i) health information;

(ii) publicly available information unless derived from a nonpublic source as described in subparagraphs (A)(ii) and (A)(iii) of this paragraph;

(iii) any list, description, or other grouping of consumers (and publicly available information pertaining to them) derived without using any personally identifiable financial information not publicly available; and

(iv) any list of individuals' names and addresses that:

(I) contains only publicly available information;

(II) is wholly derived using personally identifiable financial information that is publicly available; and

(III) does not disclose that any of the individuals on the list is a consumer of a financial institution.

(22) Opt out--A direction by the consumer that the covered entity not disclose nonpublic personal financial information about that consumer to a nonaffiliated third party, other than as permitted by §22.17 of this title, §22.18 of this title (relating to Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions), and §22.19 of this title

(relating to Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information).

(23) Personally identifiable financial information--

(A) The term includes:

(i) any information a consumer provides to a covered entity to obtain an insurance product or service from the covered entity;

(ii) any information about a consumer resulting from a transaction involving an insurance product or service between a covered entity and a consumer;

(iii) any information the covered entity otherwise obtains about a consumer in connection with providing an insurance product or service to that consumer;

(iv) account balance information and payment history;

(v) the fact that an individual is or has been one of the covered entity's customers or has obtained an insurance product or service from the covered entity;

(vi) any information about the covered entity's consumer disclosed in a manner that indicates that the individual is or has been the covered entity's consumer;

(vii) any information a consumer provides to a covered entity or that the covered entity or its agent otherwise obtains in connection with collecting on a loan or servicing a loan;

(viii) any information the covered entity collects through an information-collecting device from an Internet web server; and

(ix) information from a consumer report.

(B) The term does not include:

(i) health information;

(ii) a list of names and addresses of customers of an entity that is not a financial institution; and

(iii) information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(24) Publicly available information--Any information a covered entity has a reasonable basis to believe is lawfully made available to the general public from:

(A) federal, state, or local government records;

(B) widely distributed media; or

(C) disclosures to the general public required to be made by federal, state or local law.

§22.3. Exceptions to Applicability of Subchapter.

(a) A covered entity is not subject to the notice and opt out requirements for nonpublic personal financial information set out in this subchapter if the covered entity is an employee, agent, or other representative of another covered entity (a principal) and:

(1) the principal otherwise complies with, and provides the notices required by, the provisions of this subchapter; and

(2) the covered entity does not disclose any nonpublic personal financial information to any person other than the principal or its affiliates in a manner permitted by this subchapter.

(b) Subject to subsection (c) of this section, covered entity includes an eligible surplus lines insurer for transactions where Texas is the home state of the insured to the extent the insurer accepts business placed through a person subject to Insurance Code Chapter 981.

(c) A person transacting surplus lines business will be deemed to be in compliance with the notice and opt out requirements for nonpublic personal financial information set out in this subchapter provided:

(1) the person does not disclose nonpublic personal financial information of a consumer or customer to nonaffiliated third parties for any purpose, including joint servicing or marketing under §22.17 of this title (relating to Exception to Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing), except as permitted by §22.18 of this title (relating to Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions), and §22.19 of this title (relating to Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information); and

(2) the person delivers a notice to the consumer at the time a customer relationship is established on which the following is printed in at least 16-point type:

Figure: 28 TAC §22.3(c)(2):

PRIVACY NOTICE

NEITHER THE U.S. AGENTS THAT HANDLED THIS INSURANCE NOR THE INSURERS THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL FINANCIAL INFORMATION CONCERNING THE BUYER TO NONAFFILIATES OF THE AGENTS OR INSURERS EXCEPT AS PERMITTED BY LAW.

§22.10. Information to be Included in Privacy Notices.

(a) Simplified nondisclosure notice requirements. A covered entity that does not disclose, and does not reserve the right to disclose, nonpublic personal financial information about customers or former customers to nonaffiliated third parties except as authorized under §22.18 of this title (relating to Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions) and §22.19 of this title (relating to Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information), may comply with this subchapter by providing a simplified notice that expresses:

(1) the nondisclosure policy stated in this subsection, and

(2) the information required by subsections (b)(1), (b)(8), (b)(9), and (c) of this section.

(b) Disclosure notice requirements. The initial, annual, and revised privacy notices a covered entity provides under §22.8 of this title (relating to Initial Privacy

Notice), §22.9 of this title (relating to Annual Privacy Notice), and §22.12 of this title (relating to Revised Privacy Notices) must include the following items of information, in addition to any other information the covered entity wishes to provide, that applies to the covered entity and to the consumers to whom the covered entity sends its privacy notice.

(1) The categories of nonpublic personal financial information the covered entity collects. A covered entity satisfies the requirement to categorize the nonpublic personal financial information it collects when the covered entity categorizes it according to the source of the information, as applicable, including:

(A) information from the consumer;

(B) information about the consumer's transactions with the covered entity or its affiliates;

(C) information about the consumer's transactions with nonaffiliated third parties; and

(D) information from a consumer reporting agency.

(2) The categories of nonpublic personal financial information the covered entity discloses.

(A) A covered entity satisfies the requirement to categorize nonpublic personal financial information it discloses when the covered entity categorizes the information according to source, as described in paragraph (1) of this subsection, as applicable, and provides examples to illustrate the types of information in each category, such as:

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

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

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

(B) A covered entity does not adequately categorize the information it discloses when the covered entity uses only general terms (such as transaction information about the consumer).

(C) A covered entity that reserves the right to disclose all the nonpublic personal financial information about consumers it collects may state that fact without describing the categories or examples of nonpublic personal financial information the covered entity discloses.

(3) The categories of affiliates and nonaffiliated third parties to whom the covered entity discloses nonpublic personal financial information, other than those parties to whom the covered entity discloses information under §22.18 and §22.19 of this title.

(4) The categories of nonpublic personal financial information about the covered entity's former customers that the covered entity discloses and the categories of affiliates and nonaffiliated third parties to whom the covered entity discloses nonpublic personal financial information about the covered entity's former customers,

other than those parties to whom the covered entity discloses information under §22.18 and §22.19 of this title.

(5) A separate description of the categories of information the covered entity discloses and the categories of third parties with whom the covered entity has contracted, if the covered entity discloses nonpublic personal financial information to a nonaffiliated third party under §22.17 of this title (relating to Exception to Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing) and no other exception in §22.18 and §22.19 of this title applies to that disclosure.

(6) An explanation of the consumer's right under §22.14(a) of this title (relating to Limits on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties) 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.

(7) Any disclosures the covered entity makes under § 603(d)(2)(A)(iii) of the federal FCRA (15 U.S.C. §1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates).

(8) The covered entity's policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information. A covered entity provides an adequate description of 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 covered entity has security practices and procedures in place to ensure the confidentiality of the information under the covered entity's policy. The covered entity is not required to describe technical information about the safeguards it uses.

(9) Any disclosure the covered entity makes under subsection (c) of this section.

(c) Description of nonaffiliated third parties subject to exceptions. A covered entity that discloses nonpublic personal financial information to third parties as authorized under §22.18 and §22.19 of this title is not required to list those exceptions in the initial or annual privacy notices required by §22.8 and §22.9 of this title. When describing the categories of parties to whom the covered entity makes disclosures, it is sufficient for the covered entity to state that it makes disclosures to other nonaffiliated companies:

(1) for the covered entity's everyday business purposes, such as (include all that apply) to process account transactions, maintain accounts, respond to court orders and legal investigations, or report to credit bureaus; or

(2) as permitted by law.

(d) Appropriate methods of categorizing affiliates and nonaffiliated third parties.

(1) A covered entity satisfies the requirement to categorize the affiliates and nonaffiliated third parties to which the covered entity discloses nonpublic personal

financial information about consumers if the covered entity identifies the types of businesses in which they engage.

(2) Types of businesses may be described by general terms only if the covered entity uses illustrative examples of significant lines of business. For example, a covered entity may use the term “financial products or services” if the notice includes appropriate examples of significant lines of businesses or services, such as life insurer, automobile insurer, consumer banking, or securities brokerage.

(3) A covered entity also may categorize the affiliates and nonaffiliated third parties to which it discloses nonpublic personal financial information about consumers using more detailed categories.

(e) Disclosures under exception for service providers and joint marketers. A covered entity that discloses nonpublic personal financial information under the exception in §22.17 of this title to a nonaffiliated third party to market products or services it offers alone or jointly with another financial institution satisfies the disclosure requirement of subsection (b)(5) of this section if it:

(1) lists the categories of nonpublic personal financial information it discloses, using the same categories and examples the covered entity used to meet the requirements of subsection (a)(2) of this section, as applicable; and

(2) states whether the third party is:

(A) a service provider that performs marketing services on the covered entity’s behalf or on behalf of the covered entity and another financial institution; or

(B) a financial institution with whom the covered entity has a joint marketing agreement.

(f) Short-form initial notice with opt out notice for noncustomers.

(1) A covered entity may satisfy the initial notice requirements in §22.8(a)(2) and §22.11(c) of this title (relating to Form of Opt Out Notice to Consumers and Opt Out Methods) for a consumer who is not a customer by providing a short-form initial notice at the same time as the covered entity delivers an opt out notice as required in §22.11 of this title.

(2) A short-form initial notice must:

(A) be clear and conspicuous;

(B) state that the covered entity's privacy notice is available on request; and

(C) explain a reasonable means by which the consumer may obtain that notice.

(3) The covered entity must deliver its short-form initial notice according to §22.13 of this title (relating to Delivery). The covered entity is not required to deliver its privacy notice with its short-form initial notice. The covered entity may instead provide the consumer with a reasonable means to obtain its privacy notice. If a consumer who receives the covered entity's short-form notice requests the covered entity's privacy notice, the covered entity must deliver its privacy notice according to §22.13 of this title.

(4) The covered entity provides a reasonable means by which a consumer may obtain a copy of its privacy notice if the covered entity:

(A) provides a toll-free telephone number that the consumer may call to request the notice; or

(B) for a consumer who conducts business in person at the covered entity's office, maintains copies of the notice on hand that the covered entity provides to the consumer immediately on request.

(g) Reservation of right to disclose. The covered entity's notice may include:

(1) categories of nonpublic personal financial information the covered entity reserves the right to disclose in the future, but does not currently disclose; and

(2) categories of affiliates or nonaffiliated third parties to whom the covered entity reserves the right in the future to disclose, but to whom the covered entity does not currently disclose, nonpublic personal financial information.

(h) Model privacy form. A model privacy form that meets the notice content requirements of this section appears in 74 *Federal Register* 62890 (December 1, 2009). A covered entity may use the applicable model privacy form, consistent with the instructions in §22.27 of this title (relating to General Instructions).

§22.11. Form of Opt Out Notice to Consumers and Opt Out Methods.

(a) Clear and conspicuous notice. If a covered entity is required to provide an opt out notice under §22.14(a) of this title (relating to Limits on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties), it must provide a clear

and conspicuous notice to each of its consumers that accurately explains the right to opt out. The notice must state:

(1) that the covered entity discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a nonaffiliated third party;

(2) that the consumer has the right to opt out of that disclosure; and

(3) a reasonable means by which the consumer may opt out.

(b) Adequate opt out notice. A covered entity provides adequate notice that the consumer can opt out of the disclosure of nonpublic personal financial information to a nonaffiliated third party if the covered entity:

(1) identifies all of the categories of nonpublic personal financial information it discloses or reserves the right to disclose, and all of the categories of nonaffiliated third parties to which the covered entity discloses the information, as described in §22.10(a)(2) and (3) of this title (relating to Information to be Included in Privacy Notices), and states that the consumer can opt out of the disclosure of that information; and

(2) identifies the insurance products or services the consumer obtains from the covered entity, either singly or jointly, to which the opt out direction would apply.

(c) Reasonable opt out means. A covered entity provides a reasonable means to exercise an opt out right if it:

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

(2) includes the reply form together with the opt out notice; or

(3) provides an electronic means to opt out, such as a form that can be sent by electronic mail or a process on the covered entity's website, if the consumer agrees to the electronic delivery of information; or

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

(d) Unreasonable opt out means. A covered entity does not provide a reasonable means of opting out if:

(1) the only means of opting out is for the consumer to write his or her 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 covered entity provided with the initial notice but did not include with the subsequent notice.

(e) Specific opt out means. A covered entity may require each consumer to opt out through a specific means, so long as that means is reasonable for that consumer.

(f) Opt out notice with or on a written or electronic form. A covered entity may provide the opt out notice together with, or on the same written or electronic form as, the initial notice the covered entity provides in accord with §22.8 of this title (relating to Initial Privacy Notice).

(g) Opt out notice later than initial notice. If a covered entity provides the opt out notice later than required for the initial notice in accord with §22.8 of this title, the covered entity must also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

(h) Joint relationships. A covered entity must use the procedures set out in paragraphs (1) - (4) of this subsection when joint relationships between consumers are involved.

(1) If two or more consumers jointly obtain or seek to obtain an insurance product or service from a covered entity, the covered entity may provide a single opt out notice. The covered entity's opt out notice must explain how the covered entity will treat an opt out direction by a joint consumer (as explained in subsection (i) of this section).

(2) Any of the joint consumers may exercise the right to opt out. The covered entity may either:

(A) treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(B) permit each joint consumer to opt out separately.

(3) If a covered entity permits each joint consumer to opt out separately, the covered entity must permit one of the joint consumers to opt out on behalf of all the joint consumers.

(4) A covered entity may not require all joint consumers to opt out before it implements any opt out direction.

(i) Examples. The following are examples of how a covered entity should treat a joint relationship. If John and Mary are both named policyholders on a homeowner's insurance policy issued by a covered entity and the covered entity sends policy statements to John's address, the covered entity may do any of the following, but it must explain in its opt out notice which opt out policy the covered entity will follow:

(1) Send a single opt out notice to John's address, but the covered entity must 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 covered entity does so and John opts out, the covered entity 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 covered entity does so:

(A) it must permit John and Mary to opt out for each other;

(B) if both opt out, the covered entity must permit both of them to notify it in a single response (such as on a form or through a telephone call); and

(C) if John opts out and Mary does not, the covered entity may only disclose nonpublic personal financial information about Mary, but not about John, and not about John and Mary jointly.

(j) Opt out direction. A covered entity must comply with a consumer's opt-out direction as soon as reasonably practicable after the covered entity receives it.

(k) Consumer's right to opt out. A consumer may exercise the right to opt out at any time.

(l) A consumer's direction. A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer has agreed to conduct business electronically, electronically.

(m) Customer relationship. When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal financial

information the covered entity collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the covered entity, the opt out direction that applied to the former relationship does not apply to the new relationship.

(n) Opt out delivery. When a covered entity is required to deliver an opt out notice by this section, the covered entity must deliver it according to §22.13 of this title (relating to Delivery).

(o) Notice content requirements. A model privacy form that meets the notice content requirement of this section appears in 74 *Federal Register* 62890 (December 1, 2009). A covered entity may use the applicable model privacy form, consistent with the instructions in §22.27 of this title (relating to General Instructions).

§22.22. Violation

A violation of any section of this subchapter will subject the covered entity to the disciplinary and enforcement sanctions and penalties provided in Insurance Code, Chapters 82, 83, 84, and 601.

§22.26. Model Privacy Notice Form and Examples.

Use of Version 1, 2, or 3 of the model privacy form in 74 *Federal Register* 62890 (December 1, 2009), or Version 4 for the optional mail-in opt out form, consistent with the instructions in §22.27 of this title (relating to General Instructions), complies with the notice content requirements of §22.10 and §22.11 of this title (relating to Information to

be Included in Privacy Notices and Form of Opt Out Notice to Consumers and Opt Out Methods), although use of the model privacy form is not required. The examples are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance. Covered entities, including a group of financial holding company affiliates that use a common privacy notice, may use the model privacy form, if the information in the model privacy form is accurate for each institution that uses the notice. Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the federal FCRA, such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if a covered entity makes disclosures to nonaffiliated third parties.

§22.27. General Instructions.

(a) A covered entity, including a group of covered entities or financial institutions that use a common privacy notice, may use the model form, at its option, to meet the content requirements of the privacy notice and opt out notice set out in §22.10 and §22.11 of this title (relating to Information to be Included in Privacy Notices and Form of Opt Out Notice to Consumers and Opt Out Methods).

(b) The model form is a standardized form, including page layout, content, format, style, pagination, and shading. Covered entities seeking to obtain legal safe harbor through use of the model form may modify it only as described in these instructions.

(c) Disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act (15 U.S.C. §§1681 - 1681x) (FCRA), for example, a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.

(d) The word “customer” may be replaced by the word “member” whenever it appears in the model form, as appropriate. A covered entity may replace the term “customer” with another appropriate term as provided under 28 TAC §22.4(c)-(e).

(e) The model form consists of two pages, which may appear on both sides of a single sheet of paper, or may appear on two separate pages. Where a covered entity provides a long list of covered entities or financial institutions at the end of the model form in accord with the instructions in subsection (g)(3)(A)(i) of this section, or provides additional information in accord with the instructions in subsection (g)(3)(C) of this section, and the list or additional information exceeds the space available on page two of the model form, the list or additional information may extend to a third page.

(1) Page one contents. The first page consists of the following components:

(A) date last revised in the upper right-hand corner;

(B) title;

(C) key frame (Why?, What?, How?);

(D) disclosure table (Reasons we can share your personal information);

(E) "To limit our sharing" box, as needed, for the covered entity's opt out information;

(F) "Questions" box, for customer service contact information; and

(G) mail-in opt out form, as needed.

(2) Page two contents. The second page consists of the following components:

(A) heading (page 2);

(B) frequently asked questions("Who we are" and "What we do";

(C) definitions; and

(D) "Other important information" box, as needed.

(f) The format of the model privacy form may be modified only as described in paragraphs (1) - (5) of this subsection.

(1) Easily readable type font. Covered entities that use the model form must use an easily readable type font. While a number of factors together produce easily readable type font, covered entities must use a minimum of 10-point font, unless otherwise expressly permitted in these instructions, and sufficient spacing between the lines of type.

(2) Logo. A covered entity may include a corporate logo on any page of the notice, so long as it does not interfere with the readability of the model form or the space constraints of each page.

(3) Page size and orientation. Each page of the model form must appear on paper in portrait orientation, the size of which must meet the layout and minimum font size requirements.

(4) Color. The model form must appear on white or light color paper, for example, cream, with black or other contrasting ink color. Spot color may be used to achieve visual interest, so long as the color contrast is distinctive and the color does not detract from the readability of the model form. Logos may also appear in color.

(5) Languages. The model form may be translated into languages other than English.

(g) The information required in the model form may be modified only as described in this subsection.

(1) Name of the covered entity or group of affiliated covered entities or institutions providing the notice. Insert the name of the covered entity providing the notice or a common identity of affiliated covered entities or institutions jointly providing the notice on the form wherever name of covered entity appears.

(2) Page one instruction.

(A) Last revised date. The covered entity must insert in the upper right-hand corner the date on which it last revised the notice. The information must appear in minimum 8-point font as “rev. (month/year)” using either the name or number of the month, for example “rev. July 2009” or “rev. 7/09.”

(B) General instructions for the “What?” box.

(i) The bulleted list identifies the types of personal information the covered entity collects and shares. All covered entities must use the term “Social Security number” in the first bullet.

(ii) Covered entities must use at least five of the following terms to complete the bulleted list: income, account balances, payment history, transaction history, transaction or loss history, credit history, credit scores, assets, investment experience, credit-based insurance scores, insurance claim history, medical information, overdraft history, purchase history, account transactions, risk tolerance, medical-related debts, credit card or other debt, mortgage rates and payments, retirement assets, checking account information, employment information, and wire transfer instructions.

(C) General instructions for the disclosure table. The left column lists reasons for sharing or using personal information. Each reason correlates to a specific legal provision described in the instructions in subparagraph (D) of this paragraph. In the middle column, each covered entity must provide a “Yes” or “No” response that accurately reflects its information-sharing policies and practices with respect to the reason listed on the left. In the right column, each covered entity must provide in each box one of the following three responses, as applicable, that reflects whether a consumer can limit such sharing:

(i) “Yes” if it is required to or voluntarily provides an opt out;

(ii) “No” if it does not provide an opt out; or

(iii) “We don’t share” if it answers “No” in the middle column. Only the sixth row, “For our affiliates to market to you,” may be omitted at the option of the covered entity as described in the instructions in subparagraph (D)(vi) of this paragraph.

(D) Specific disclosures and corresponding legal provisions.

(i) For our everyday business purposes. This reason incorporates sharing information under §22.18 and §22.19 of this title (relating to Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial information for Processing and Servicing Transactions and Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information) and with service providers under §22.17 of this title (relating to Exception to Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing), other than the purposes specified in the instructions in clause (ii) or (iii) of this subparagraph.

(ii) For our marketing purposes. This reason incorporates sharing information with service providers by a covered entity for its own marketing under §22.17 of this title. A covered entity that shares for this reason may choose to provide an opt out.

(iii) For joint marketing with other financial companies. This reason incorporates sharing information under joint marketing agreements between two or more covered entities or financial institutions and with any service provider used in

connection with such agreements under §22.17 of this title. A covered entity that shares for this reason may choose to provide an opt out.

(iv) For our affiliates' everyday business purposes – information about transactions and experiences. This reason incorporates sharing information specified in §603(d)(2)(A)(i) and §603(d)(2)(A)(ii) of the FCRA. A covered entity that shares for this reason may choose to provide an opt out.

(v) For our affiliates' everyday business purposes – information about creditworthiness. This reason incorporates sharing information under §603(d)(2)(A)(iii) of the FCRA. A covered entity that shares for this reason must provide an opt out.

(vi) For our affiliates to market to you. This reason incorporates sharing information specified in §624 of the FCRA. This reason may be omitted from the disclosure table when the covered entity does not have affiliates, or does not disclose personal information to its affiliates; the covered entity's affiliates do not use personal information in a manner that requires an opt out; or the covered entity provides the affiliate marketing notice separately. Covered entities that include this reason must provide an opt out of indefinite duration. A covered entity that must provide an affiliate marketing opt out, but does not include that opt out in the model form under this clause, must comply with §624 of the FCRA and Insurance Code Chapter 601 and 28 TAC Subchapter A, including §§22.8 - 22.12 of this title (relating to Initial Privacy Notice, Annual Privacy Notice, Information to be Included in Privacy Notices, Form of Opt Out Notice to Consumers and Opt Out Methods, and Revised Privacy

Notices, respectively), with respect to the initial notice and opt out and any subsequent renewal notice and opt out. A covered entity not required to provide an opt out under this subparagraph may elect to include this reason in the model form.

(vii) For nonaffiliates to market to you. This reason incorporates sharing described in §22.11 and §22.12(a)(1) - (4) of this title. A covered entity that shares personal information for this reason must provide an opt out.

(E) To limit our sharing. A covered entity must include this section of the model form only if it provides an opt out. The word “choice” may be written in either the singular or plural, as appropriate. Covered entities must select one or more of the applicable opt out methods described: telephone, for example, by a toll-free number; a website; or use of a mail-in opt out form. Covered entities may include the words “toll-free” before telephone, as appropriate. A covered entity that allows consumers to opt out online must provide either a specific web address that takes consumers directly to the opt out page or a general web address that provides a clear and conspicuous direct link to the opt out page. The opt out choices made available to the consumer who contacts the covered entity through these methods must correspond accurately to the “Yes” responses in the third column of the disclosure table. In the part titled “Please note,” covered entities may insert a number that is 30 or greater in the space marked “(30).” Instructions on voluntary or state privacy law opt out information are in the instructions in subparagraph (G)(v) of this paragraph.

(F) Questions box. Customer service contact information must appear, as appropriate, where “phone number” or “website” appears. Covered entities

may elect to provide either a phone number, such as a toll-free number, or a web address, or both. Covered entities may include the words “toll-free” before the telephone number, as appropriate.

(G) Mail-in opt out form. Covered entities must include this mail-in form only if they state in the “To limit our sharing” box that consumers can opt out by mail. The mail-in form must provide opt out options that correspond accurately to the “Yes” responses in the third column in the disclosure table. Covered entities that require customers to provide only name and address may omit the section identified as “account #.” Covered entities that require additional or different information, for example, a random opt out number or a truncated account number, to implement an opt out election should modify the “account #” reference accordingly. This includes covered entities that require customers with multiple accounts to identify each account to which the opt out should apply. A covered entity must enter its opt out mailing address in the far right of the Version 3: Model Form with Mail-In Opt Out Form. A covered entity must enter its opt out mailing address below the Version 4: Optional Mail-In Form. The reverse side of the mail-in opt out form must not include any content of the model form.

(i) Joint accountholder. Only covered entities that provide their joint accountholders the choice to opt out for only one accountholder, in accord with the instructions in paragraph (3)(A)(v) of this subsection, must include in the far left column of the mail-in form the following statement: “If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below. Apply my choice(s) only to me.” The word “choice” may appear in either the singular or plural, as

appropriate. Covered entities that provide insurance products or services, provide this option, and elect to use the model form may substitute the word “policy” for “account” in this statement. Covered entities that do not provide this option may eliminate this left column from the mail-in form.

(ii) FCRA §603(d)(2)(A)(iii) opt out. If the covered entity shares personal information under §603(d)(2)(A)(iii) of the FCRA, it must include in the mail-in opt out form the following statement: “Do not share information about my creditworthiness with your affiliates for their everyday business purposes.”

(iii) FCRA §624 opt out. If the covered entity incorporates §624 of the FCRA in accord with the instructions in subparagraph (D)(vi) of this paragraph, it must include in the mail-in opt out form the following statement: “Do not allow your affiliates to use my personal information to market to me.”

(iv) Nonaffiliate opt out. If the covered entity shares personal information under §22.14(a)(1) - (4) of this title (relating to Limits on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties), it must include in the mail-in opt out form the following statement: “Do not share my personal information with nonaffiliates to market their products and services to me.”

(v) Additional opt outs. Covered entities that use the disclosure table to provide opt out options beyond those required by federal law must provide those opt outs in this section of the model form. A covered entity that chooses to offer an opt out for its own marketing in the mail-in opt out form must include one of the two following statements: “Do not share my personal information to market to me.”

or “Do not use my personal information to market to me.” A covered entity that chooses to offer an opt out for joint marketing must include the following statement: “Do not share my personal information with other financial institutions to jointly market to me.”

(H) Barcodes. A covered entity may elect to include a barcode, a tagline, or both as an internal identifier in 6-point font at the bottom of page one, as needed for information internal to the institution, so long as these do not interfere with the clarity or text of the form.

(3) Page two instructions.

(A) General instructions for the questions. Certain of the questions may be customized as follows:

(i) “Who is providing this notice?” A covered entity may omit this question where only one covered entity provides the model form and that covered entity’s name clearly appears in the title on page one. Two or more covered entities or financial institutions that jointly provide the model form must use this question to identify themselves as required by §22.13(g) of this title (relating to Delivery). Where the list of covered entities or financial institutions exceeds four lines, the covered entity must describe in the response to this question the general types of covered entities or financial institutions jointly providing the notice and must separately identify those covered entities or financial institutions, in minimum 8-point font, directly following the “Other important information” box, or, if that box is not included in the covered entity’s form, directly following the “Definitions.” The list may appear in a multi-column format.

(ii) "How does (name of covered entity) protect my personal information?" The covered entity may only provide additional information about its safeguarding practices following the designated response to this question. This may include information about the covered entity's use of "cookies" or other measures it uses to safeguard personal information. Covered entities are limited to a maximum of 30 additional words.

(iii) "How does (name of covered entity) collect my personal information?" Covered entities must use at least five of the following terms to complete the bulleted list for this question: open an account, deposit money, pay your bills, apply for a loan, use your credit or debit card, seek financial or tax advice, apply for insurance, pay insurance premiums, file an insurance claim, seek advice about your investments, buy securities from us, sell securities to us, direct us to buy securities, direct us to sell your securities, make deposits or withdrawals from your account, enter into an investment advisory contract, give us your income information, provide employment information, give us your employment history, tell us about your investment or retirement portfolio, tell us about your investment or retirement earnings, apply for financing, apply for a lease, provide account information, give us your contact information, pay us by check, give us your wage statements, provide your mortgage information, make a wire transfer, tell us who receives the money, tell us where to send the money, show your government-issued ID, show us your driver's license, or order a commodity futures or option trade. Covered entities that collect personal information from their affiliates, credit bureaus, or both, must include after the bulleted list the

following statement: "We also collect your personal information from others, such as credit bureaus, affiliates, or other companies." Covered entities that do not collect personal information from their affiliates or credit bureaus but do collect information from other companies must include the following statement instead: "We also collect your personal information from other companies." Only covered entities that do not collect any personal information from affiliates, credit bureaus, or other companies can omit both statements.

(iv) "Why can't I limit all sharing?" Covered entities that describe state privacy law provisions in the "Other important information" box must use the bracketed sentence: "See below for more on your rights under state law." Other covered entities must omit this sentence.

(v) "What happens when I limit sharing for an account I hold jointly with someone else?" Only covered entities that provide opt out options must use this question. Other covered entities must omit this question. Covered entities must choose one of the following two statements to respond to this question: "Your choices will apply to everyone on your account," or "Your choices will apply to everyone on your account–unless you tell us otherwise." Covered entities that provide insurance products or services and elect to use the model form may substitute the word "policy" for "account" in these statements.

(B) General instructions for the definitions. The covered entity must customize the space below the responses to the three definitions in this area of

the form. This specific information must be in italicized lettering to set off the information from the standardized definitions.

(i) Affiliates. As required by §22.10(b)(3) of this title, where (affiliate information) appears, the covered entity must:

(I) if it has no affiliates, state: "(name of covered entity) has no affiliates";

(II) if it has affiliates but does not share personal information, state: "(name of covered entity) does not share with our affiliates"; or

(III) if it shares with its affiliates, state, as applicable: "Our affiliates include companies with a (common corporate identity of covered entity) name; financial companies such as (insert illustrative list of companies); nonfinancial companies, such as (insert illustrative list of companies); and others, such as insert illustrative list."

(ii) Nonaffiliates. As required by §22.10(d) of this title, where (nonaffiliate information) appears, the covered entity must:

(I) if it does not share with nonaffiliated third parties, state: "(name of covered entity) does not share with nonaffiliates so they can market to you"; or

(II) if it shares with nonaffiliated third parties, state, as applicable: ‘‘Nonaffiliates we share with can include (list categories of companies such as mortgage companies, insurance companies, direct marketing companies, and nonprofit organizations)."

(iii) Joint marketing. As required by §22.17 of this title, where (joint marketing appears), the covered entity must:

(I) if it does not engage in joint marketing, state: "(name of covered entity) doesn't jointly market"; or

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

(C) General instructions for the "Other important information" box. This box is optional. The space provided for information in this box is not limited. Only the following types of information may appear in this box:

(i) State, international privacy law information, or both; or

(ii) Acknowledgment of receipt form; or

(iii) Both (i) and (ii).

CERTIFICATION. This agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on November 14, 2014.

Sara Waitt
General Counsel
Texas Department of Insurance

The commissioner adopts amendments to 28 TAC §§22.2, 22.3, 22.10, 22.11, 22.22, and 22.26, and new 28 TAC §22.27.

Julia Rathgeber
Commissioner of Insurance

COMMISSIONER'S ORDER NO. **3666**