ARTICLE 45-14
CONSUMER PRIVACY

Chapter
45-14-01 Privacy of Consumer Financial and Health Information
45-14-02 Information Security Program

CHAPTER 45-14-01
PRIVACY OF CONSUMER FINANCIAL AND HEALTH INFORMATION

Section
45-14-01-01 Authority
45-14-01-02 Purpose and Scope
45-14-01-03 Rule of Construction
45-14-01-04 Definitions
45-14-01-05 Initial Privacy Notice to Consumers Required
45-14-01-06 Annual Privacy Notice to Customers Required
45-14-01-07 Information to Be Included in Privacy Notices
45-14-01-08 Notice to Consumers Regarding Request for Authorization
45-14-01-09 Revised Privacy Notices
45-14-01-10 Delivery
45-14-01-11 Limits on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties
45-14-01-12 Limits on Redisclosure and Reuse of Nonpublic Personal Financial Information
45-14-01-13 Limits on Sharing Account Number Information for Marketing Purposes
45-14-01-14 Exception to Authorization Requirements for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing
45-14-01-15 Exceptions to Notice and Authorization Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions
45-14-01-16 Other Exceptions to Notice and Authorization Requirements for Disclosure of Nonpublic Personal Financial Information
45-14-01-17 When Authorization Required for Disclosure of Nonpublic Personal Health Information
45-14-01-18 Authorizations
45-14-01-19 Authorization Request Delivery
45-14-01-20 Relationship to Federal Rules
45-14-01-21 Relationship to State Laws
45-14-01-22 Protection of Fair Credit Reporting Act
45-14-01-23 Nondiscrimination
45-14-01-24 Severability
45-14-01-25 Effective Date

45-14-01-01. Authority.

This rule is adopted under North Dakota Century Code section 26.1-02-27.

History: Effective December 1, 2001.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-02-27

45-14-01-02. Purpose and scope.

1. **Purpose.** This chapter governs the treatment of nonpublic personal health information and nonpublic personal financial information about individuals by all licensees of the state insurance department. This chapter:

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

b. Describes the conditions under which a licensee may disclose nonpublic personal health information and nonpublic personal financial information about individuals to affiliates and nonaffiliated third parties; and

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

2. **Scope.** This chapter applies to:

a. Nonpublic personal financial information about individuals who obtain or are claimants or beneficiaries of products or services primarily for personal, family, or household purposes from licensees. This chapter does not apply to information about companies or about individuals who obtain products or services for business, commercial, or agricultural purposes; and

b. All nonpublic personal health information.

3. **Compliance.** A licensee domiciled in this state that is in compliance with this regulation in a state that has not enacted laws or rules that meet the requirements of title V of the Gramm-Leach-Bliley Act [Pub. L. 102-106] may nonetheless be deemed to be in compliance with title V of the Gramm-Leach-Bliley Act in the other state.

History: Effective December 1, 2001.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-02-27

45-14-01-03. Rule of construction.

The examples in this chapter and the sample clauses in appendix A are not exclusive. Compliance with an example or use of sample clause, to the extent applicable, constitutes compliance with this chapter.

History: Effective December 1, 2001.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-02-27

45-14-01-04. Definitions.

As used in this chapter, unless the context requires otherwise:

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

2. a. "Clear and conspicuous" means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

b. Examples:

(1) Reasonably understandable. A licensee makes its notice reasonably understandable if it:

(a) Presents the information in the notice in clear, concise sentences, paragraphs, and sections;

(b) Uses short explanatory sentences or bullet lists whenever possible;

(c) Uses definite, concrete, everyday words and active voice whenever possible;

(d) Avoids multiple negatives;

(e) Avoids legal and highly technical business terminology whenever possible; and

(f) Avoids explanations that are imprecise and readily subject to different interpretations.

(2) Designed to call attention. A licensee designs its notice to call attention to the nature and significance of the information in it if the licensee:

(a) Uses a plain-language heading to call attention to the notice;

(b) Uses a typeface and type size that are easy to read;

(c) Provides wide margins and ample line spacing;

(d) Uses boldface or italics for key words; and

(e) In a form that combines the licensee's notice with other information, uses distinctive type size, style, and graphic devices, such as shading or sidebars.

(3) Notices on web sites. If a licensee provides a notice on a web page, the licensee designs its notice to call attention to the nature and significance of the information in it if the licensee uses text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the web site such as text, graphics, hyperlinks, or sound do not distract attention from the notice, and the licensee either:

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

(b) Places a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature, and relevance of the notice.

3. "Collect" means to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol, or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

4. "Commissioner" means the insurance commissioner of the state.

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

6. a. "Consumer" means an individual who seeks to obtain, obtains, or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family, or household purposes, and about whom the licensee has nonpublic personal information, or that individual's legal representative.

b. Examples:

(1) An individual who provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment, or economic advisory services relating to an insurance product or service is a consumer regardless of whether the licensee establishes an ongoing advisory relationship.

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

(3) An individual who is a consumer of another financial institution is not a licensee's consumer solely because the licensee is acting as agent for, or provides processing or other services to, that financial institution.

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

(a) [1] The individual is a beneficiary of a life insurance policy underwritten by the licensee;

[2] The individual is a claimant under an insurance policy issued by the licensee;

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

[4] The individual is a mortgagor of a mortgage covered under a mortgage insurance policy; and

(b) The licensee discloses nonpublic personal financial information about the individual to a nonaffiliated third party other than as permitted under sections 45-14-01-14, 45-14-01-15, and 45-14-01-16.

(5) Provided that the licensee provides the initial, annual, and revised notices under sections 45-14-01-05, 45-14-01-06, and 45-14-01-09 to the plan sponsor, group or blanket insurance policyholder, or group annuity contractholder, and further provided that the licensee does not disclose to a nonaffiliated third party nonpublic personal financial information about such an individual other than as permitted under sections 45-14-01-14, 45-14-01-15, and 45-14-01-16, an individual is not the consumer of the licensee solely because the individual is:

(a) A participant or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer, or fiduciary; or

(b) Covered under a group or blanket insurance policy or group annuity contract issued by the licensee.

(6) (a) The individuals described in subparagraphs a and b of paragraph 5 are consumers of a licensee if the licensee does not meet all the conditions of paragraph 5.

(b) In no event shall the individuals, solely by virtue of the status described in subparagraphs a and b of paragraph 5, be deemed to be customers for purposes of this rule.

(7) An individual is not a licensee's consumer solely because the individual is a beneficiary of a trust for which the licensee is a trustee.

(8) An individual is not a licensee's consumer solely because the individual has designated the licensee as trustee for a trust.

7. "Consumer reporting agency" has the same meaning as in section 603(f) of the federal Fair Credit Reporting Act [15 U.S.C. 1681a(f)].

8. "Control" means:

a. Ownership, control, or power to vote twenty-five percent or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

b. Control in any manner over the election of a majority of the directors, trustees, or general partners, or individuals exercising similar functions, of the company; or

c. The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the commissioner determines.

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

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

b. Examples:

(1) A consumer has a continuing relationship with a licensee if:

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

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

(2) A consumer does not have a continuing relationship with a licensee if:

(a) The consumer applies for insurance but does not purchase the insurance;

(b) The licensee sells the consumer travel insurance in an isolated transaction;

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

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

(e) The consumer is a beneficiary or a claimant under a policy and has submitted a claim under that policy choosing a lump sum settlement option;

(f) The customer's policy is lapsed, expired, or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve consecutive months, other than annual privacy notices, material required by law or regulation, communication at the direction of a state or federal authority, or promotional materials;

(g) The individual is an insured or an annuitant under an insurance policy or annuity, respectively, but is not the policyholder or owner of the insurance policy or annuity; or

(h) For the purposes of this chapter, the individual's last-known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the

postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

11. a. "Financial institution" means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 [12 U.S.C. 1843(k)].

    b. Financial institution does not include:

        (1) 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 [U.S.C. 1 et seq.];

        (2) 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

        (3) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales, including sales of servicing rights, or similar transactions related to a transaction of a consumer, as long as the institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

12. a. "Financial product or service" means a product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under section 4(k) of the Bank Holding Company Act of 1956 [12 U.S.C. 1843(k)].

    b. 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.

13. "Health care" means:

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

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

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

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

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

15. "Health information" means any information or data except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or the consumer that relates to:

    a. The past, present, or future physical, mental, or behavioral health or condition of an individual;

    b. The provision of health care to an individual; or

    c. Payment for the provision of health care to an individual.

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

    b. Insurance service includes a licensee's evaluation, brokerage, or distribution of information that the licensee collects in connection with a request or an application from a consumer for an insurance product or service.

17. a. "Licensee" means all licensed insurers, producers, and other persons licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to the insurance law of this state and health maintenance organizations holding a certificate of authority pursuant to North Dakota Century Code chapter 26.1-18.1. As used herein, the term "licensee" does not include either of the following:

        (1) North Dakota life and health insurance guaranty association created pursuant to North Dakota Century Code chapter 26.1-38; or

        (2) North Dakota insurance guaranty association created pursuant to North Dakota Century Code chapter 26.1-42.1.

    b. A licensee is not subject to the notice and authorization requirements for nonpublic personal financial information set forth in this chapter if the licensee is an employee, agent, or other representative of another licensee ("the principal") and:

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

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

    c. (1) Subject to paragraph 2, "licensee" also includes an unauthorized insurer that accepts business placed through a licensed excess lines broker in this state, but only in regard to the excess lines placements placed pursuant to North Dakota Century Code chapter 26.1-44.

        (2) An excess lines broker or excess lines insurer shall be deemed to be in compliance with the notice and authorization requirements for nonpublic personal financial information set forth in this rule provided:

            (a) The broker or insurer does not disclose nonpublic personal information of a consumer or a customer to nonaffiliated third parties for any purpose, including joint servicing or marketing under section 45-14-01-14, except as permitted by section 45-14-01-15 or 45-14-01-16; and

            (b) The broker or insurer delivers a notice to the consumer at the time a customer relationship is established on which the following is printed in sixteen-point type:

                PRIVACY NOTICE

                "Neither the U.S. brokers that handled this insurance nor the insurers that have underwritten this insurance will disclose nonpublic personal information concerning the buyer to nonaffiliates of the brokers or insurers except as permitted by law."

18. a. "Nonaffiliated third party" means any person except:

(1) A licensee's affiliate; or

(2) A person employed jointly by a licensee and any company that is not the licensee's affiliate, but nonaffiliated third party includes the other company that jointly employs the person.

b. Nonaffiliated third party includes any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in section 4(k)(4)(H) or insurance company investment activities of the type described in section 4(k)(4)(I) of the federal Bank Holding Company Act [12 U.S.C. 1843(k)(4)(H) and (I)].

19. "Nonpublic personal information" means nonpublic personal financial information and nonpublic personal health information.

20. a. "Nonpublic personal financial information" means:

(1) Personally identifiable financial information; and

(2) Any list, description, or other grouping of consumers, and publicly available information pertaining to them, that is derived using any personally identifiable financial information that is not publicly available.

b. Nonpublic personal financial information does not include:

(1) Health information;

(2) Publicly available information, except as included on a list described in paragraph 2 of subsection a; or

(3) Any list, description, or other grouping of consumers, and publicly available information pertaining to them, that is derived without using any personally identifiable financial information that is not publicly available.

c. Examples of lists:

(1) Nonpublic personal financial information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.

(2) Nonpublic personal financial information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

21. "Nonpublic personal health information" means health information:

a. That identifies an individual who is the subject of the information; or

b. With respect to which there is a reasonable basis to believe that the information could be used to identify an individual.

22. a. "Personally identifiable financial information" means any information:

(1) A consumer provides to a licensee to obtain an insurance product or service from the licensee;

(2) About a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer; or

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

b. Examples:

(1) Information included. Personally identifiable financial information includes:

(a) Information a consumer provides to a licensee on an application to obtain an insurance product or service;

(b) Account balance information and payment history;

(c) The fact that an individual is or has been one of the licensee's customers or has obtained an insurance product or service from the licensee;

(d) Any information about the licensee's consumer if it is disclosed in a manner that indicates that the individual is or has been the licensee's consumer;

(e) Any information that a consumer provides to a licensee or that the licensee or its agent otherwise obtains in connection with collecting on a loan or servicing a loan;

(f) Any information the licensee collects through an internet cookie, an information-collecting device from a web server; and

(g) Information from a consumer report.

(2) Information not included. Personally identifiable financial information does not include:

(a) Health information;

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

(c) 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.

23. a. "Publicly available information" means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from:

(1) Federal, state, or local government records;

(2) Widely distributed media; or

(3) Disclosures to the general public which are required to be made by federal, state, or local law.

b. Reasonable basis. A licensee has a reasonable basis to believe that information is lawfully made available to the general public if the licensee has taken steps to determine:

(1) That the information is of the type that is available to the general public; and

(2) Whether an individual can direct that the information not be made available to the general public and, if so, that the licensee's consumer has not done so.

c. Examples:

(1) Government records. Publicly available information in government records includes information in government real estate records and security interest filings.

(2) Widely distributed media. Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper, or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely because an internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

(3) Reasonable basis.

(a) A licensee has a reasonable basis to believe that mortgage information is lawfully made available to the general public if the licensee has determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

(b) A licensee has a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if the licensee has located the telephone number in the telephone book or the consumer has informed the licensee that the telephone number is not unlisted.

History: Effective December 1, 2001; amended effective November 1, 2004.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-02-27

45-14-01-05. Initial privacy notice to consumers required.

1. **Initial notice requirement.** A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to:

a. Customer. An individual who becomes the licensee's customer, not later than when the licensee establishes a customer relationship, except as provided in subsection 5; and

b. Consumer. A consumer, when the licensee requests authorization to disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party, if the licensee makes a disclosure other than as authorized by sections 45-14-01-15 and 45-14-01-16.

2. **When initial notice to a consumer is not required.** A licensee is not required to provide an initial notice to a consumer under subdivision b of subsection 1 if:

a. The licensee does not request authorization to disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party, other than as authorized by sections 45-14-01-15 and 45-14-01-16, and the licensee does not have a customer relationship with the consumer; or

b. A notice has been provided by an affiliated licensee, as long as the notice clearly identifies all licensees to whom the notice applies and is accurate with respect to the licensee and the other institutions.

3. **When the licensee establishes a customer relationship.**

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

b. Examples of establishing customer relationship. A licensee establishes a customer relationship when the consumer:

(1) Becomes a policyholder of a licensee that is an insurer when the insurer delivers an insurance policy or contract to the consumer, or in the case of a licensee that is an insurance producer or insurance broker, obtains insurance through that licensee; or

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

4. **Existing customers.** When an existing customer obtains a new insurance product or service from a licensee that is to be used primarily for personal, family, or household purposes, the licensee satisfies the initial notice requirements of subsection 1 as follows:

a. The licensee may provide a revised policy notice, under section 45-14-01-09, that covers the customer's new insurance product or service; or

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

5. **Exceptions to allow subsequent delivery of notice.**

a. A licensee may provide the initial notice required by subdivision a of subsection 1 within a reasonable time after the licensee establishes a customer relationship if:

(1) Establishing the customer relationship is not at the customer's election; or

(2) Providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

b. Examples of exceptions:

(1) Not at customer's election. Establishing a customer relationship is not at the customer's election if a licensee acquires or is assigned a customer's policy from another financial institution or residual market mechanism and the customer does not have a choice about the licensee's acquisition or assignment.

(2) Substantial delay of customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would substantially delay the customer's transaction when the licensee and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the insurance product or service.

(3) No substantial delay of customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at the licensee's office or through other means by which the customer may view the notice, such as on a web site.

6. **Delivery.** When a licensee is required to deliver an initial privacy notice by this section, the licensee shall deliver it according to section 45-14-01-10. If the licensee uses a short-form initial notice for noncustomers according to subsection 4 of section 45-14-01-07, the licensee may deliver its privacy notice according to subdivision c of subsection 4 of section 45-14-01-07.

History: Effective December 1, 2001; amended effective November 1, 2004.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-02-27

45-14-01-06. Annual privacy notice to customers required.

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

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

2. a. Termination of customer relationship. A licensee is not required to provide an annual notice to a former customer. A former customer is an individual with whom a licensee no longer has a continuing relationship.

   b. Examples:

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

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

      (3) For the purposes of this rule, a licensee no longer has a continuing relationship with an individual if the individual's last-known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

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

3. Delivery. When a licensee is required by this section to deliver an annual privacy notice, the licensee shall deliver it according to section 45-14-01-10.

History: Effective December 1, 2001.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-02-27

45-14-01-07. Information to be included in privacy notices.

1. **General rule.** The initial, annual, and revised privacy notices that a licensee provides under sections 45-14-01-05, 45-14-01-06, and 45-14-01-09 shall include each of the following items of information, in addition to any other information the licensee wishes to provide, that applies to the licensee and to the consumers to whom the licensee sends its privacy notice:

   a. The categories of nonpublic personal financial information that the licensee collects;

   b. The categories of nonpublic personal financial information that the licensee discloses;

   c. The categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information, other than those parties to whom the licensee discloses information under sections 45-14-01-15 and 45-14-01-16;

   d. The categories of nonpublic personal financial information about the licensee's former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about the licensee's former customers, other than those parties to whom the licensee discloses information under sections 45-14-01-15 and 45-14-01-16;

   e. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under section 45-14-01-14, and no other exception in sections 45-14-01-15 and 45-14-01-16 applies to that disclosure, a separate description of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted;

   f. An explanation of the consumer's right under subsection 1 of section 45-14-01-11 to authorize or not to authorize the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time;

   g. Any disclosures that the licensee makes under section 603(d)(2)(A)(iii) of the federal Fair Credit Reporting Act [15 U.S.C. 1681a(d)(2)(A)(iii)] (that is, notices regarding the ability to opt out of disclosures of information among affiliates);

   h. The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

   i. Any disclosure that the licensee makes under subsection 2.

2. **Description of parties subject to exceptions.** If a licensee discloses nonpublic personal financial information as authorized under sections 45-14-01-15 and 45-14-01-16, the licensee is not required to list those exceptions in the initial or annual privacy notices required by sections 45-14-01-05 and 45-14-01-06. When describing the categories of parties to whom disclosure is made, the licensee is required to state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

3. **Examples:**

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

      (1) Information from the consumer;

(2) Information about the consumer's transactions with the licensee or its affiliates;

(3) Information about the consumer's transactions with nonaffiliated third parties; and

(4) Information from a consumer reporting agency.

b. Categories of nonpublic personal financial information a licensee discloses.

(1) A licensee satisfies the requirement to categorize nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in subdivision a, as applicable, and provides a few examples to illustrate the types of information in each category. These might include:

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

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

(c) Information from consumer reports, such as a consumer's creditworthiness and credit history.

(2) A licensee does not adequately categorize the information that it discloses if the licensee uses only general terms, such as transaction information about the consumer.

(3) If a licensee reserves the right to disclose all of the nonpublic personal financial information about consumers that it collects, the licensee may simply state that fact without describing the categories or examples of nonpublic personal information that the licensee discloses.

c. Categories of affiliates and nonaffiliated third parties to whom the licensee discloses.

(1) A licensee satisfies the requirement to categorize the affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information about consumers if the licensee identifies the types of businesses in which they engage.

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

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

d. Disclosures under exception for service providers and joint marketers. If a licensee discloses nonpublic personal financial information under the exception in section 45-14-01-14 to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee satisfies the disclosure requirement of subdivision e of subsection 1 if it:

(1) Lists the categories of nonpublic personal financial information it discloses, using the same categories and examples the licensee used to meet the requirements of subdivision b of subsection 1, as applicable; and

(2) States whether the third party is:

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

(b) A financial institution with whom the licensee has a joint marketing agreement.

e. Simplified notices. If a licensee does not disclose, and does not wish to reserve the right to disclose, nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under sections 45-14-01-15 and 45-14-01-16, the licensee may simply state that fact, in addition to the information it shall provide under subdivisions a, h, and i of subsection 1 and subsection 2.

f. Confidentiality and security. A licensee describes its policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if it does both of the following:

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

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

4. **Short-form initial notice regarding request for authorization for noncustomers.**

a. A licensee may satisfy the initial notice requirements in subdivision b of subsection 1 of section 45-14-01-05 and subsection 3 of section 45-14-01-08 for a consumer who is not a customer by providing a short-form initial notice at the same time as the licensee delivers a notice regarding request for authorization as required in section 45-14-01-08.

b. A short-form initial notice shall:

(1) Be clear and conspicuous;

(2) State that the licensee's privacy notice is available upon request; and

(3) Explain a reasonable means by which the consumer may obtain that notice.

c. The licensee shall deliver its short-form initial notice according to section 45-14-01-10. The licensee is not required to deliver its privacy notice with its short-form initial notice. The licensee instead may simply provide the consumer a reasonable means to obtain its privacy notice. If a consumer who receives the licensee's short-form notice requests the licensee's privacy notice, the licensee shall deliver its privacy notice according to section 45-14-01-10.

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

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

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

5. **Future disclosures.** The licensee's notice may include:

   a. Categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future, but does not currently disclose; and

   b. Categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom the licensee does not currently disclose, nonpublic personal financial information.

6. **Sample clauses.** Sample clauses illustrating some of the notice content required by this section are included in appendix A.

History: Effective December 1, 2001; amended effective November 1, 2004.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-02-27

45-14-01-08. Notice to consumers regarding request for authorization.

1. a. Form of notice. If a licensee is required to provide notice under subsection 1 of section 45-14-01-11, it shall provide a clear and conspicuous notice to each of its consumers that accurately explains the right to authorize disclosures under that section. The notice shall state:

   (1) That the licensee may only disclose nonpublic personal financial information about its consumer to a nonaffiliated third party if the licensee first obtains authorization from the consumer; and

   (2) That the consumer has the right to authorize or not to authorize that disclosure.

   b. Examples: Adequate notice. A licensee provides adequate notice that the consumer has the right to authorize or not to authorize the disclosure of nonpublic personal financial information to a nonaffiliated third party if the licensee:

   (1) Identifies all of the categories of nonpublic personal financial information that it will disclose if authorization is obtained, and all of the categories of nonaffiliated third parties to which the licensee discloses the information, as described in subdivisions b and c of subsection 1 of section 45-14-01-07, and states that the consumer has the right to authorize or not to authorize the disclosure of that information; and

   (2) Identifies the insurance products or services that the consumer obtains from the licensee, either singly or jointly, to which the authorization would apply.

2. Same form as initial notice permitted. A licensee may provide the request for authorization together with or on the same written or electronic form as the initial notice the licensee provides in accordance with section 45-14-01-05.

3. Initial notice required when request for authorization delivered subsequent to initial notice. If a licensee provides the notice to consumers regarding request for authorization later than required for the initial notice in accordance with section 45-14-01-05, the licensee shall also include a copy of the initial notice with the notice regarding request for authorization in writing or, if the consumer agrees, electronically.

4. Joint relationships:

   a. If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may provide a single notice to the joint consumers. The licensee's notice shall explain how the licensee will treat an authorization by a joint consumer, as explained in subdivision b.

   b. Example. If John and Mary are both named policyholders on a homeowner's insurance policy issued by a licensee and the licensee sends policy statements to John's address, the licensee may:

      (1) Send a single authorization notice to John's address.

      (2) Permit John and Mary to make different authorizations, provided if John provides authorization and Mary does not, the licensee may only disclose nonpublic personal financial information about John, but not about Mary and not about John and Mary jointly.

5. Duration of consumer's authorization. An authorization must specify the length of time for which the authorization is valid.

6. Delivery. When a licensee is required to deliver a notice by this section, the licensee shall deliver it according to section 45-14-01-10.

History: Effective December 1, 2001; amended effective November 1, 2004.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-02-27

45-14-01-09. Revised privacy notices.

1. **General rule.** Except as otherwise authorized in this rule, a licensee shall not, directly or through an affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice that the licensee provided to that consumer under section 45-14-01-05, unless:

   a. The licensee has provided to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;

   b. The licensee has provided a new notice to the consumer regarding requests for authorization and a new authorization; and

   c. The licensee has obtained authorization from the consumer whose nonpublic personal financial information is sought to be disclosed.

2. **Examples.**

   a. Except as otherwise permitted by sections 45-14-01-14, 45-14-01-15, and 45-14-01-16, a licensee shall provide a revised notice if it requests authorization to disclose:

      (1) A new category of nonpublic personal financial information to any nonaffiliated third party;

      (2) Nonpublic personal financial information to a new category of nonaffiliated third party; or

      (3) Nonpublic personal financial information about a former customer to a nonaffiliated third party, if that former customer has not authorized the disclosure.

b. A revised notice is not required if the licensee discloses nonpublic personal financial information to a new nonaffiliated third party that the licensee adequately described in its prior notice.

3. **Delivery.** When a licensee is required to deliver a revised privacy notice by this section, the licensee shall deliver it according to section 45-14-01-10.

History: Effective December 1, 2001; amended effective November 1, 2004.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-02-27

45-14-01-10. Delivery.

1. How to provide notices. A licensee shall provide any notices that this rule requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

2. a. Examples of reasonable expectation of actual notice. A licensee may reasonably expect that a consumer will receive actual notice if the licensee:

   (1) Hand delivers a printed copy of the notice to the consumer;

   (2) Mails a printed copy of the notice to the last-known address of the consumer separately, or in a policy, billing, or other written communication;

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

   (4) For an isolated transaction with a consumer, such as the licensee providing an insurance quote or selling the consumer travel insurance, posts the notice and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular insurance product or service.

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

   (1) Only posts a sign in its office or generally publishes advertisements of its privacy policies and practices; or

   (2) Sends the notice via electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.

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

   a. The customer uses the licensee's web site to access insurance products and services electronically and agrees to receive notices at the web site and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the web site; or

   b. The customer has requested that the licensee refrain from sending any information regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request.

4. Oral description of notice insufficient. A licensee may not provide any notice required by this rule solely by orally explaining the notice, either in person or over the telephone.

5. Retention or accessibility of notices for customers.

   a. For customers only, a licensee shall provide the initial notice required by subdivision a of subsection 1 of section 45-14-01-05, the annual notice required by subsection 1 of section 45-14-01-06, and the revised notice required by section 45-14-01-09 so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

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

      (1) Hand delivers a printed copy of the notice to the customer;

      (2) Mails a printed copy of the notice to the last-known address of the customer; or

      (3) Makes its current privacy notice available on a web site or a link to another web site for the customer who obtains an insurance product or service electronically and agrees to receive the notice at the web site.

6. Joint notice with other financial institutions. A licensee may provide a joint notice from the licensee and one or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the licensee and the other institutions. A licensee may also provide a notice on behalf of another financial institution.

7. Joint relationships. If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may satisfy the initial, annual, and revised notice requirements of subsection 1 of section 45-14-01-05, subsection 1 of section 45-14-01-06, and subsection 1 of section 45-14-01-09, respectively, by providing one notice to those consumers jointly.

History: Effective December 1, 2001.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-02-27

45-14-01-11. Limits on disclosure of nonpublic personal financial information to nonaffiliated third parties.

1. a. Conditions for disclosure. Except as otherwise authorized in this rule, a licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party unless:

      (1) The licensee has provided to the consumer an initial notice as required under section 45-14-01-05;

      (2) The licensee has provided to the consumer a notice as required in section 45-14-01-08; and

      (3) An authorization is obtained from the consumer whose nonpublic personal information is sought to be disclosed.

   b. A valid authorization to disclose nonpublic personal information pursuant to section 45-14-01-11 shall be in written or electronic form separate from that used for any other purpose and shall contain all of the following:

      (1) The identity of the consumer or customer who is the subject of the nonpublic personal information;

      (2) A specific description of the types of nonpublic personal information to be disclosed;

(3) Specific descriptions of the parties to whom the licensee discloses nonpublic personal information, the purpose of the disclosure, and how the information will be used;

(4) The signature of the consumer or customer who is the subject of the nonpublic personal information or the individual who is legally empowered to grant authority and the date signed; and

(5) Notice of the length of time for which the authorization is valid and that the consumer or customer may revoke the authorization at any time and the procedure for making a revocation.

2. Application to all consumers and all nonpublic personal financial information.

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

b. Unless a licensee complies with this section, the licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer that the licensee has collected, regardless of whether the licensee collected it before or after receiving the authorization from the consumer.

3. Partial authorization. A licensee may allow a consumer to select certain nonpublic personal financial information or certain nonaffiliated third parties with respect to which the consumer wishes to authorize disclosure.

History: Effective December 1, 2001; amended effective November 1, 2004.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-02-27

45-14-01-12. Limits on redisclosure and reuse of nonpublic personal financial information.

1. a. Information the licensee receives under an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception in section 45-14-01-15 or 45-14-01-16, the licensee's disclosure and use of that information is limited as follows:

(1) The licensee may disclose the information to the affiliates of the financial institution from which the licensee received the information;

(2) The licensee may disclose the information to its affiliates, but the licensee's affiliates may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and

(3) The licensee may disclose and use the information pursuant to an exception in section 45-14-01-15 or 45-14-01-16, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

b. Example. If a licensee receives information from a nonaffiliated financial institution for claims settlement purposes, the licensee may disclose the information for fraud prevention, or in response to a properly authorized subpoena. The licensee may not disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.

2. a. Information a licensee receives outside of an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution other than under an

exception in section 45-14-01-15 or 45-14-01-16, the licensee may disclose the information only:

(1) To the affiliates of the financial institution from which the licensee received the information;

(2) To its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and

(3) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which the licensee received the information.

b. Example. If a licensee obtains a customer list from a nonaffiliated financial institution outside of the exceptions in section 45-14-01-15 or 45-14-01-16:

(1) The licensee may use that list for its own purposes; and

(2) The licensee may disclose that list to another nonaffiliated third party only if the financial institution from which the licensee purchased the list could have lawfully disclosed the list to that third party. That is, the licensee may disclose the list in accordance with the privacy policy of the financial institution from which the licensee received the list, and the licensee may disclose the list in accordance with an exception in section 45-14-01-15 or 45-14-01-16, such as to the licensee's attorneys or accountants.

3. Information a licensee discloses under an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in section 45-14-01-15 or 45-14-01-16, the third party may disclose and use that information only as follows:

a. The third party may disclose the information to the licensee's affiliates;

b. The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

c. The third party may disclose and use the information pursuant to an exception in section 45-14-01-15 or 45-14-01-16 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

4. Information a licensee discloses outside of an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party other than under an exception in section 45-14-01-15 or 45-14-01-16, the third party may disclose the information only:

a. To the licensee's affiliates;

b. To the third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

c. To any other person, if the disclosure would be lawful if the licensee made it directly to that person.

History: Effective December 1, 2001; amended effective November 1, 2004.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-02-27

45-14-01-13. Limits on sharing account number information for marketing purposes.

1. **General prohibition on disclosure of account numbers.** A licensee shall not, directly or through an affiliate, disclose, other than to a consumer reporting agency, a policy number or similar form of access number or access code for a consumer's policy or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

2. **Exceptions.** Subsection 1 does not apply if a licensee discloses a policy number or similar form of access number or access code:

   a. To the licensee's service provider solely in order to perform marketing for the licensee's own products or services, as long as the service provider is not authorized to directly initiate charges to the account;

   b. To a licensee who is a producer solely in order to perform marketing for the licensee's own products or services; or

   c. To a participant in an affinity or similar program when the participants in the program are identified to the customer when the customer enters into the program.

3. **Examples.**

   a. Policy number. A policy number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as the licensee does not provide the recipient with a means to decode the number or code.

   b. Policy or transaction account. For the purposes of this section, a policy or transaction account is an account other than a deposit account or a credit card account. A policy or transaction account does not include an account to which third parties cannot initiate charges.

History: Effective December 1, 2001.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-02-27

45-14-01-14. Exception to authorization requirements for disclosure of nonpublic personal financial information for service providers and joint marketing.

1. **General rule.**

   a. The notice and authorization requirements in sections 45-14-01-08 and 45-14-01-11 do not apply when a licensee provides nonpublic personal financial information to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee provides the initial notice in accordance with section 45-14-01-05 and enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in section 45-14-01-15 or 45-14-01-16 in the ordinary course of business to carry out those purposes.

   b. Example. If a licensee discloses nonpublic personal financial information under this section to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with that institution meets the requirements of subdivision a if it prohibits the institution from disclosing or using the nonpublic personal financial information except as necessary to carry out the joint marketing or under an

exception in section 45-14-01-15 or 45-14-01-16 in the ordinary course of business to carry out that joint marketing.

2. **Service may include joint marketing.** The services a nonaffiliated third party performs for a licensee under subsection 1 may include marketing of the licensee's own products or services or marketing of financial products or services offered pursuant to joint agreements between the licensee and one or more financial institutions.

3. **Definition of joint agreement.** For purposes of this section, "joint agreement" means a written contract pursuant to which a licensee and one or more financial institutions jointly offer, endorse, or sponsor a financial product or service.

History: Effective December 1, 2001; amended effective November 1, 2004.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-02-27

45-14-01-15. Exceptions to notice and authorization requirements for disclosure of nonpublic personal financial information for processing and servicing transactions.

1. Exceptions for processing transactions at consumer's request. The requirements for initial notice in subdivision b of subsection 1 of section 45-14-01-05, for notice and authorization in sections 45-14-01-08 and 45-14-01-11 and for service providers and joint marketing in section 45-14-01-14 do not apply if the licensee discloses nonpublic personal financial information as necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes, or in connection with:

   a. Servicing or processing an insurance product or service that a consumer requests or authorizes;

   b. Maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity;

   c. A proposed or actual securitization, secondary market sale, including sales of servicing rights, or similar transaction related to a transaction of the consumer;

   d. Reinsurance or stop-loss or excess loss insurance;

   e. Informing a policyholder or the policyholder's producer or broker with respect to a claim asserted by, or paid to, a consumer under the policy and servicing and processing such claim; or

   f. Maintaining or servicing a customer's account as authorized by the customer, orally or otherwise, or as necessary to replace an insurance product or service that is nonrenewed as a result of the withdrawal of an insurer from a market.

2. "Necessary to effect, administer, or enforce a transaction" means that the disclosure is:

   a. Required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

   b. Required, or is a usual, appropriate, or acceptable method:

      (1) To carry out the transaction or the product or service business of which the transaction is a part, and record, service, or maintain the consumer's account in the ordinary course of providing the insurance product or service;

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

(3) To provide a confirmation, explanation, 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 producer or a policyholder or the policyholder's agent, producer, or broker with respect to a claim asserted by, or paid to, a consumer under a policy;

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

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

(6) In connection with:

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

(b) The transfer of receivables, accounts, or interests therein; or

(c) The audit of debit, credit, or other payment information.

History: Effective December 1, 2001; amended effective November 1, 2004.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-02-27

45-14-01-16. Other exceptions to notice and authorization requirements for disclosure of nonpublic personal financial information.

1. **Exceptions to authorization requirements.** The requirements for initial notice to consumers in subdivision b of subsection 1 of section 45-14-01-05, for notice and authorization in sections 45-14-01-08 and 45-14-01-11 and for initial notice in paragraph 1 of subdivision a of subsection 1 of section 45-14-01-14 do not apply when a licensee discloses nonpublic personal financial information:

a. With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

b. (1) To protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product, or transaction;

(2) To protect against or prevent actual or potential fraud or unauthorized transactions;

(3) For required institutional risk control or for resolving consumer disputes or inquiries;

(4) To persons holding a legal or beneficial interest relating to the consumer; or

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

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

d. To the extent specifically permitted or required under other provisions of law and in accordance with the federal Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.], to law enforcement agencies, including the federal reserve board, office of the comptroller of the currency, federal deposit insurance corporation, office of thrift supervision, national credit union administration, the securities and exchange commission, the secretary of the treasury, with respect to 31 U.S.C. chapter 53, subchapter II (records and reports on monetary instruments and transactions) and 12 U.S.C. chapter 21 (financial recordkeeping), a state insurance authority, and the federal trade commission, self-regulatory organizations, or for an investigation on a matter related to public safety;

e. (1) To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act [15 U.S.C. 1681 et seq.]; or

(2) From a consumer report reported by a consumer reporting agency;

f. In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business or unit;

g. (1) To comply with federal, state, or local laws, rules, and other applicable legal requirements;

(2) To comply with a properly authorized civil, criminal, or regulatory investigation, or subpoena or summons by federal, state, or local authorities; or

(3) 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

h. For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan, or a workers' compensation plan.

2. **Revocation of authorization.** A consumer may revoke authorization by subsequently exercising the right at any time by informing the licensee in writing of the revocation.

History: Effective December 1, 2001; amended effective November 1, 2004.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-02-27

45-14-01-17. When authorization required for disclosure of nonpublic personal health information.

1. A licensee shall not disclose nonpublic personal health information about a consumer or customer unless an authorization is obtained from the consumer or customer whose nonpublic personal health information is sought to be disclosed.

2. Nothing in this section shall prohibit, restrict, or require an authorization for the disclosure of nonpublic personal health information by a licensee for the performance of the following insurance functions by or on behalf of the licensee or its affiliate: claims administration; claims adjustment and management; detection, investigation, or reporting of actual or potential fraud, misrepresentation, or criminal activity; underwriting; policy placement or issuance; loss control;

ratemaking and guaranty fund functions; reinsurance and excess loss insurance; risk management; case management; disease management; quality assurance; quality improvement; performance evaluation; provider credentialing verification; utilization review; peer review activities; actuarial, scientific, medical, or public policy research; grievance procedures; internal administration of compliance, managerial, and information systems; policyholder service functions; auditing; reporting; data base security; administration of consumer disputes and inquiries; external accreditation standards; the 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 United States department of health and human services; disclosure that is required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out a transaction or providing a product or service that a consumer requests or authorizes; and any activity otherwise permitted by law, required pursuant to governmental reporting authority, or to comply with legal process. Additional insurance functions may be added with the approval of the commissioner to the extent they are necessary for appropriate performance of insurance functions and are fair and reasonable to the interest of consumers.

History: Effective December 1, 2001.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-02-27

45-14-01-18. Authorizations.

1. A valid authorization to disclose nonpublic personal health information pursuant to sections 45-14-01-17 through 45-14-01-21 shall be in written or electronic form and shall contain all of the following:

   a. The identity of the consumer or customer who is the subject of the nonpublic personal health information;

   b. A general description of the types of nonpublic personal health information to be disclosed;

   c. General descriptions of the parties to whom the licensee discloses nonpublic personal health information, the purpose of the disclosure, and how the information will be used;

   d. The signature of the consumer or customer who is the subject of the nonpublic personal health information or the individual who is legally empowered to grant authority and the date signed; and

   e. Notice of the length of time for which the authorization is valid and that the consumer or customer may revoke the authorization at any time and the procedure for making a revocation.

2. An authorization pursuant to sections 45-14-01-17 through 45-14-01-21 shall specify a length of time for which the authorization shall remain valid, which in no event shall be for more than twenty-four months.

3. A consumer or customer who is the subject of nonpublic personal health information may revoke an authorization provided pursuant to sections 45-14-01-17 through 45-14-01-21 at any time, subject to the rights of an individual who acted in reliance on the authorization prior to notice of the revocation.

4. A licensee shall retain the authorization or a copy thereof in the record of the individual who is the subject of nonpublic personal health information.

History: Effective December 1, 2001.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-02-27

45-14-01-19. Authorization request delivery.

A request for authorization and an authorization form may be delivered to a consumer or a customer pursuant to section 45-14-01-10, provided that the request and the authorization form are clear and conspicuous. An authorization form is not required to be delivered to the consumer or customer or included in any other notices unless the licensee intends to disclose protected health information pursuant to subsection 1 of section 45-14-01-17.

History: Effective December 1, 2001; amended effective November 1, 2004.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-02-27

45-14-01-20. Relationship to federal rules.

Irrespective of whether a licensee is subject to the federal Health Insurance Portability and Accountability Act privacy rule as promulgated by the United States department of health and human services [45 CFR subtitle A, subchapter C, part 160] (the "federal rule"), if a licensee complies with all requirements of the federal rule except for its effective date provision, the licensee shall not be subject to the provisions of sections 45-14-01-17 through 45-14-01-21.

History: Effective December 1, 2001.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-02-27

45-14-01-21. Relationship to state laws.

Nothing in this rule shall preempt or supersede existing state law related to medical records, health, or insurance information privacy.

History: Effective December 1, 2001.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-02-27

45-14-01-22. Protection of Fair Credit Reporting Act.

Nothing in this rule shall be construed to modify, limit, or supersede the operation of the federal Fair Credit Reporting Act [15 U.S.C. 1681 et seq.], and no inference shall be drawn on the basis of the provisions of this rule regarding whether information is transaction or experience information under section 603 of that Act.

History: Effective December 1, 2001.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-02-27

45-14-01-23. Nondiscrimination.

1. A licensee shall not unfairly discriminate against any consumer or customer because that consumer or customer has opted out from the disclosure of the person's nonpublic personal financial information pursuant to the provisions of this regulation.

2. A licensee shall not unfairly discriminate against a consumer or customer because that consumer or customer has not granted authorization for the disclosure of the person's nonpublic personal health information pursuant to the provisions of this rule.

3. Usual, appropriate, or acceptable insurance underwriting methods are not discriminatory practices for the purposes of this section.

History: Effective December 1, 2001.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-02-27

45-14-01-24. Severability.

If any section or portion of a section of this chapter or its applicability to any person or circumstance is held invalid by a court, the remainder of the rule or the applicability of the provision to other persons or circumstances shall not be affected.

History: Effective December 1, 2001.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-02-27

45-14-01-25. Effective date.

This chapter shall become effective November 1, 2004. As of that date, nonpublic personal information, regardless as to when the information was collected by a licensee, may not be shared with a nonaffiliated third party except as authorized by the consumer or customer, or except as permitted under subsection 2 of section 45-14-01-13 or section 45-14-01-14, 45-14-01-15, or 45-14-01-16. An initial privacy notice or an annual privacy notice issued after November 1, 2004, must comply with the revised privacy notice requirements of this chapter.

History: Effective December 1, 2001; amended effective November 1, 2004.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-02-27

APPENDIX A
SAMPLE CLAUSES

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

Licensees, including a group of financial holding company affiliates that use a common privacy notice, may use the following sample clauses, if the clause is accurate for each institution that uses the notice. Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the federal Fair Credit Reporting Act, such as a requirement to permit a consumer to authorize disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffilated third parties.

A-1-Categories of information a licensee collects (all institutions)

A licensee may use this clause, as applicable, to meet the requirement of subdivision a of subsection 1 of section 45-14-01-07 to describe the categories of nonpublic personal information the licensee collects.

Sample Clause A-1:

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates, or others; and
- Information we receive from a consumer reporting agency.

A-2-Categories of information a licensee discloses (institutions that disclose outside of the exceptions)

A licensee may use one of these clauses, as applicable, to meet the requirement of subdivision b of subsection 1 of section 45-14-01-07 to describe the categories of nonpublic personal information the licensee discloses. The licensee may use these clauses if it discloses nonpublic personal information other than as permitted by the exceptions in sections 45-14-01-14, 45-14-01-15, and 45-14-01-16.

Sample Clause A-2, Alternative 1:

We may disclose the following kinds of nonpublic personal information about you:

- Information we receive from you on applications or other forms, such as **[provide illustrative examples, such as "your name, address, social security number, assets, income, and beneficiaries"]**;
- Information about your transactions with us, our affiliates, or others, such as **[provide illustrative examples, such as "your policy coverage, premiums, and payment history"]**; and
- Information we receive from a consumer reporting agency, such as **[provide illustrative examples, such as "your creditworthiness and credit history"]**.

Sample Clause A-2, Alternative 2:

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

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

A licensee may use this clause, as applicable, to meet the requirements of subdivisions b, c, and d of subsection 1 of section 45-14-01-07 to describe the categories of nonpublic personal information about customers and former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses. A licensee may use this clause if the licensee does not disclose nonpublic personal information to any party, other than as permitted by the exceptions in sections 45-14-01-15 and 45-14-01-16.

Sample Clause A-3:

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

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

A licensee may use this clause, as applicable, to meet the requirement of subdivision c of subsection 1 of section 45-14-01-07 to describe the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal information. This clause may be used if the licensee discloses nonpublic personal information other than as permitted by the exceptions in sections 45-14-01-14, 45-14-01-15, and 45-14-01-16, as well as when permitted by the exceptions in sections 45-14-01-15 and 45-14-01-16.

Sample Clause A-4:

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

- Financial service providers, such as **[provide illustrative examples, such as "life insurers, automobile insurers, mortgage bankers, securities broker-dealers, and insurance agents"]**;
- Nonfinancial companies, such as **[provide illustrative examples, such as "retailers, direct marketers, airlines, and publishers"]**; and
- Others, such as **[provide illustrative examples, such as "nonprofit organizations"]**.

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

A-5-Service provider/joint marketing exception

A licensee may use one of these clauses, as applicable, to meet the requirements of subdivision e of subsection 1 of section 45-14-01-07 related to the exception for service providers and joint marketers in section 45-14-01-14. If a licensee discloses nonpublic personal information under this exception, the licensee shall describe the categories of nonpublic personal information the licensee discloses and the categories of third parties with which the licensee has contracted.

Sample Clause A-5, Alternative 1:

We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements:

- Information we receive from you on applications or other forms, such as **[provide illustrative examples, such as "your name, address, social security number, assets, income, and beneficiaries"]**;

- Information about your transactions with us, our affiliates, or others, such as **[provide illustrative examples, such as "your policy coverage, premium, and payment history"]**; and
- Information we receive from a consumer reporting agency, such as **[provide illustrative examples, such as "your creditworthiness and credit history"]**.

Sample Clause A-5, Alternative 2:

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

A-6-Explanation of authorization right (institutions that disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirement of subdivision f of subsection 1 of section 45-14-01-07 to provide an explanation of the consumer's right to authorize the disclosure of nonpublic personal information to nonaffiliated third parties, including the methods by which the consumer may exercise that right. The licensee may use this clause if the licensee discloses nonpublic personal information other than as permitted by the exceptions in sections 45-14-01-14, 45-14-01-15, and 45-14-01-16.

Sample Clause A-6:

We will not disclose nonpublic personal information about you to nonaffiliated third parties (other than as permitted by law), unless you authorize us to make those disclosures. Your authorization must be in writing or, if you agree, in electronic form. If you wish to authorize disclosures to nonaffiliated third parties, you may **[describe a reasonable means of authorization, such as "call the following toll-free number: (insert number)"]**.

A-7-Confidentiality and security (all institutions)

A licensee may use this clause, as applicable, to meet the requirement of subdivision h of subsection 1 of section 45-14-01-07 to describe its policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

Sample Clause A-7:

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