

PROPOSED RULES

**NORTH DAKOTA ADMINISTRATIVE CODE
ARTICLE 45-14
CONSUMER PRIVACY**

Chapter	
45-14-01	Privacy of Consumer Financial and Health Information
<u>45-14-02</u>	<u>Information Security Program</u>

**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	Form of Opt Out Notice to Consumers and Opt Out Methods <u>Regarding Request for Authorization</u>
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 Opt Out <u>Authorization</u> Requirements for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing
45-14-01-15	Exceptions to Notice and Opt Out <u>Authorization</u> Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions
45-14-01-16	Other Exceptions to Notice and Opt Out <u>Authorization</u> 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 ~~Compliance~~ Effective Date
Appendix A

Section 45-14-01-04(17)(b), relating to the definition of “licensee”, is amended as follows:

- b. A licensee is not subject to the notice and ~~opt-out~~ 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.

History: Effective December 1, 2001; amended effective _____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-02-27

Section 45-14-01-05(1)(b), relating to Initial Privacy Notice to Consumers Required, is amended as follows:

- b. Consumer. A consumer, ~~before~~ when the licensee requests authorization to ~~discloses~~ 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.

Section 45-14-01-05(2)(a), relating to Initial Privacy Notice to Consumers Required, is amended as follows:

- 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

History: Effective December 1, 2001; amended effective _____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-02-27

Section 45-14-01-07, relating to Information to be Included in Privacy Notices, is amended as follows:

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 ~~opt out of~~ 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 ~~with opt-out 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 an ~~opt-out~~ 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 _____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-02-27

Section 45-14-01-08, relating to Form of Opt Out Notice to Consumers and Opt Out Methods, is amended as follows:

45-14-01-08. Form of opt out notice Notice to consumers and opt out methods regarding request for authorization.

- 1. a. Form of ~~opt out~~ notice. If a licensee is required to provide ~~an opt out~~ 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 ~~opt out~~ authorize disclosures under that section. The notice shall state:
 - (1) That the licensee ~~discloses or reserves the right to~~ 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 ~~opt out of~~ authorize or not to authorize that disclosure; ~~and.~~

~~(3) A reasonable means by which the consumer may exercise the opt out right.~~

b. Examples:

(1) Adequate ~~opt out~~ notice. A licensee provides adequate notice that the consumer ~~can opt out of~~ has the right to authorize or not to authorize the disclosure of nonpublic personal financial information to a nonaffiliated third party if the licensee:

(a) Identifies all of the categories of nonpublic personal financial information that it ~~discloses or reserves the right to~~ 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 ~~can opt out of~~ has the right to authorize or not to authorize the disclosure of that information; and

(b) Identifies the insurance products or services that the consumer obtains from the licensee, either singly or jointly, to which the ~~opt out direction~~ authorization would apply.

~~(2) Reasonable opt out means. A licensee provides a reasonable means to exercise an opt out right if it:~~

~~(a) Designates checkoff boxes in a prominent position on the relevant forms with the opt out notice;~~

~~(b) Includes a reply form together with the opt out notice;~~

~~(c) Provides an electronic means to opt out, such as a form that can be sent via electronic mail or a process at the licensee's web site, if the consumer agrees to the electronic delivery of information; or~~

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

~~(3) Unreasonable opt out means. A licensee does not provide a reasonable means of opting out if:~~

~~(a) The only means of opting out is for the consumer to write his or her own letter to exercise that opt out right; or~~

~~(b) The only means of opting out as described in any notice subsequent to the initial notice is to use a checkoff box that~~

~~the licensee provided with the initial notice but did not include with the subsequent notice.~~

- ~~(4) — Specific opt out means. A licensee may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.~~
2. Same form as initial notice permitted. A licensee may provide the ~~opt-out notice~~ 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 ~~opt-out notice~~ request for authorization delivered subsequent to initial notice. If a licensee provides the ~~opt-out~~ 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 ~~opt-out~~ 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 ~~opt-out~~ notice to the joint consumers. The licensee's ~~opt-out~~ notice shall explain how the licensee will treat an ~~opt-out~~ authorization direction by a joint consumer, as explained in subdivision eb.
- ~~b. — Any of the joint consumers may exercise the right to opt out. The licensee may either:~~
- ~~(1) — Treat an opt-out direction by a joint consumer as applying to all of the associated joint consumers; or~~
- ~~(2) — Permit each joint consumer to opt out separately.~~
- ~~c. — If a licensee permits each joint consumer to opt out separately, the licensee shall permit one of the joint consumers to opt out on behalf of all of the joint consumers.~~
- ~~d. — A licensee may not require all joint consumers to opt out before it implements any opt-out direction.~~
- e. 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 ~~do any of the following, but it shall explain in its opt-out notice which opt-out policy the licensee will follow:~~
- (1) Send a single ~~opt-out~~ authorization notice to John's address, ~~but the licensee shall accept an opt-out direction from either John or Mary.~~

- (2) ~~Treat an opt out direction by either John or Mary as applying to the entire policy. If the licensee does so and John opts out, the licensee may not require Mary to opt out as well before implementing John's opt out direction.~~
- (3) (2) Permit John and Mary to make different ~~opt out directions. If the licensee does so:~~
- (a) ~~It shall permit John and Mary to opt out for each other:~~
- (b) ~~If both opt out, the licensee shall permit both of them to notify it in a single response, such as on a form or through a telephone call; and~~
- (c) ~~If authorizations, provided if John ~~opts out~~ provides authorization and Mary does not, the licensee may only disclose nonpublic personal financial information about Mary John, but not about ~~John Mary~~ and not about John and Mary jointly.~~
5. ~~Time to comply with opt out. A licensee shall comply with a consumer's opt out direction as soon as reasonably practicable after the licensee receives it.~~
6. ~~Continuing right to opt out. A consumer may exercise the right to opt out at any time.~~
7. 5. Duration of consumer's opt out direction: authorization. An authorization must specify the length of time for which the authorization is valid.
- a. ~~A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.~~
- b. ~~When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal financial information that the licensee collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt out direction that applied to the former relationship does not apply to the new relationship.~~
8. 6. Delivery. When a licensee is required to deliver an ~~opt out~~ notice by this section, the licensee shall deliver it according to section 45-14-01-10.

History: Effective December 1, 2001; amended effective _____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-02-27

Section 45-14-01-09, relating to Revised Privacy Notices, is amended as follows:

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 ~~to the consumer~~ a new ~~opt-out~~ notice to the consumer regarding requests for authorization and a new authorization; and
 - c. The licensee has ~~given the consumer a reasonable opportunity, before the licensee discloses the information to the nonaffiliated third party, to opt out of the disclosure; and~~ obtained authorization from the consumer whose nonpublic personal financial information is sought to be disclosed.
 - d. ~~The consumer does not opt out.~~
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 ~~before~~ if it requests authorization to disclose:
 - (1) ~~Discloses a~~ A new category of nonpublic personal financial information to any nonaffiliated third party;
 - (2) ~~Discloses a~~ A nonpublic personal financial information to a new category of nonaffiliated third party; or
 - (3) ~~Discloses a~~ A nonpublic personal financial information about a former customer to a nonaffiliated third party, if that former customer has not ~~had the opportunity to exercise an opt-out right regarding that~~ 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 _____.

General Authority: NDCC 28-32-02

Section 45-14-01-11, relating to Limits on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties, is amended as follows:

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 ~~an opt-out~~ a notice as required in section 45-14-01-08; and
 - (3) ~~The licensee has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third party, to opt-out of the disclosure; and~~ An authorization is obtained from the consumer whose nonpublic personal information is sought to be disclosed.
 - ~~(4) The consumer does not opt out.~~
- b. ~~Opt out definition. Opt out means a direction by the consumer that the licensee not disclose nonpublic personal financial information about that consumer to a nonaffiliated third party, other than as permitted by sections 45-14-01-14, 45-14-01-15, and 45-14-01-16. 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.

~~e. Examples of reasonable opportunity to opt out. A licensee provides a consumer with a reasonable opportunity to opt out if:~~

~~(1) By mail. The licensee mails the notices required in subdivision a to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone number, or any other reasonable means within thirty days from the date the licensee mailed the notices.~~

~~(2) By electronic means. A customer opens an on-line account with a licensee and agrees to receive the notices required in subdivision a electronically, and the licensee allows the customer to opt out by any reasonable means within thirty days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.~~

~~(3) Isolated transaction with consumer. For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt out if the licensee provides the notices required in subdivision a at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.~~

2. ~~Application of opt out 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 ~~direction to opt out~~ authorization from the consumer.

3. ~~Partial opt out 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 ~~opt out~~ authorize disclosure.

History: Effective December 1, 2001; amended effective _____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-02-27

Section 45-14-01-12(1)(a) and (2)(b), relating to Limits on Rediscovery and Reuse of Nonpublic Personal Financial Information, is amended as follows:

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 ~~45-14-01-05~~ 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.
2. 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, ~~as limited by the opt out direction of each consumer whose nonpublic personal financial information the licensee intends to disclose~~, 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.

History: Effective December 1, 2001; amended effective _____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-02-27

Section 45-14-01-14(1), relating to Exception for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing, is amended as follows:

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

1. **General rule.**

- a. The ~~opt-out~~ 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:

(1) ~~Provides~~ provides the initial notice in accordance with section 45-14-01-05; and

(2) ~~Enters~~ 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 ~~paragraph 2 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.

History: Effective December 1, 2001; amended effective _____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-02-27

Section 45-14-01-15(1), relating to Exceptions for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions, is amended as follows:

45-14-01-15. Exceptions to notice and ~~opt-out~~ 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, ~~the opt-out~~ 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.

...

History: Effective December 1, 2001; amended effective _____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-02-27

Section 45-14-01-16, relating to Other Exceptions for Disclosure of Nonpublic Personal Financial Information, is amended as follows:

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

1. **Exceptions to ~~opt-out~~ authorization requirements.** The requirements for initial notice to consumers in subdivision b of subsection 1 of section 45-14-01-05, ~~the opt-out for notice and authorization in sections 45-14-01-08 and 45-14-01-11, and service providers and joint marketing 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:

...

2. **~~Example of revocation~~ Revocation of consent authorization.** A consumer may revoke ~~consent~~ authorization by subsequently exercising the right to ~~opt-out~~ of

~~future disclosures of nonpublic personal information as permitted under subsection 6 of section 45-14-01-08 at any time by informing the licensee in writing of the revocation.~~

History: Effective December 1, 2001; amended effective _____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-02-27

Section 45-14-01-19, relating to Authorization Request Delivery, is amended as follows:

45-14-01-19. Authorization request delivery. A request for authorization and an authorization form may be delivered to a consumer or a customer ~~as part of an opt-out notice~~ 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 _____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-02-27

Section 45-14-01-25, relating to Effective Date, is amended as follows:

45-14-01-25. Compliance Effective date.

- ~~1. — Compliance date. A company must comply with this chapter by its effective date.~~
- ~~2. — a. — Notice requirement for consumers who are the licensee's customers on the compliance date. By this chapter's effective date, a licensee shall provide an initial notice, as required by section 45-14-01-05, to consumers who are the licensee's customers on this rule's effective date.~~
 - ~~b. — Example. A licensee provides an initial notice to consumers who are its customers on this chapter's effective date if, by that date, the licensee has established a system for providing an initial notice to all new customers and has mailed the initial notice to all the licensee's existing customers.~~
- ~~3. — Grandfathering of service agreements. Until March 1, 2003, a contract that a licensee has entered into with a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf satisfies the provisions of paragraph 2 of subdivision a of subsection 1 of section 45-14-01-14, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as the licensee entered into the agreement on or before March 1, 2001.~~

This chapter shall become effective October 1, 2004, and shall apply to all nonpublic personal information regardless as to when the information was collected by a licensee. A licensee is not

required to provide a privacy notice solely because of amendments to this chapter, as long as nonpublic personal information is not disclosed to a non-affiliated third party not authorized by this chapter.

History: Effective December 1, 2001; amended effective _____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-02-27

Appendix A - Sample Clauses - A-6 is amended as follows:

A-6-Explanation of ~~opt-out~~ authorization right ~~in~~ (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 ~~opt-out~~ of 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:

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

Chapter 45-14-02, relating to Information Security Program, is created as follows:

CHAPTER 45-14-02
INFORMATION SECURITY PROGRAM

Section

45-14-02-01 Definitions

45-14-02-02 Information Security Program

45-14-02-03 Developing and Implementing an Information Security Program

45-14-02-01. Definitions. As used in this chapter:

1. “Customer” means “customer” as defined in section 45-14-01-04.
2. “Customer information” means “nonpublic personal financial information” as defined in section 45-14-01-04 about a customer, whether in paper, electronic, or other form that is maintained by or on behalf of the licensee.
3. “Customer information system” means the methods used to access, collect, store, use, transmit, protect, or dispose of customer information.
4. “Licensee” means “licensee” as defined in section 45-14-01-04.
5. “Service provider” means a person that provides services to the licensee and maintains, possesses, or otherwise is permitted access to customer information.

History: Effective _____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-02-27

45-14-02-02. Information security program. Each licensee shall implement a comprehensive written information security program that includes administrative, technical, and physical safeguards for the protection of customer information that are appropriate to the size and complexity of the licensee and the nature and scope of its activities. Each information security program shall be designed to ensure the security and confidentiality of customer information; protect against any anticipated threats or hazards to the security or integrity of customer information; and protect against unauthorized access to, or use of, customer information that could result in substantial harm or inconvenience to any customer.

History: Effective _____.

General Authority: NDCC 28-32-02

Law Implemented: 26.1-02-27

45-14-02-03. Examples of areas to be considered when developing and implementing an information security program. The actions and procedures described below are examples of methods of implementation of this chapter. These examples are nonexclusive illustrations of practices and procedures that a licensee may follow to implement this chapter.

1. Each licensee identifies reasonably foreseeable internal or external threats that could result in unauthorized disclosure, misuse, alteration, or destruction of customer information or customer information systems. Each licensee shall assess the likelihood and potential damage of the risks presented by the threats it has identified, taking into consideration the sensitivity of customer information. Each licensee assesses the sufficiency of the policies and procedures it has in place to control the risks it has identified.
2. Each information security program is designed to control the identified risks, commensurate with the sensitivity of the information and the complexity and scope of the licensee's activities. Each licensee trains staff, as appropriate, to implement the licensee's information security program and regularly tests or otherwise monitors the key controls, systems, and procedures of its information security program.
3. Each licensee exercises due diligence in selecting service providers, and obtains satisfactory assurances from the service provider that it will appropriately safeguard the information to meet the objectives of section 45-14-02-02.
4. Each licensee monitors, evaluates, and adjusts, as appropriate, its information security program to reflect any relevant changes in technology, the sensitivity of its customer information, internal or external threats to information, and the licensee's own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements, and changes to its customer information systems.

History: Effective _____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-02-27