

State of Delaware



INSURANCE COMMISSIONER

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Department of Insurance

QUESTIONS & ANSWERS FOR AGENTS ON PRIVACY ISSUE

1. Q. Does Regulation 904 apply to agents?
 - A. Yes, Regulation 904 does apply to agents. However, an agent does not have to comply with the notice and opt out requirements if:
 - The agent is an employee, agent or other representative of another licensee (a “principal”) that complies with, and provides the notices required by, the regulation; and
 - The agent does not disclose protected information to any person other than the principal or its affiliates.
 - So, if an agent wishes to disclose a consumer’s protected information to an entity other than the insurance company that the agent is representing, the agent must give the consumer a copy of the agent’s privacy notice and an opportunity to prohibit the disclosure of that information to non-affiliated third parties (“opt out”).

2. Q. I’m a paid representative of one insurance company and I only represent that company and its line of insurance and financial services products. What are my responsibilities under this new privacy rule?
 - A. You are subject to the regulation, but you are not required to comply with the notice and opt out requirements of the regulation if:
 - The company for which you act as an agent complies with the regulation; and
 - You do not disclose protected information to any person other than that company or its affiliates.

3. Q. I’m an independent agent and therefore represent a variety of insurance companies. What are my responsibilities under the privacy rule?
 - A. Just like other agents, you are subject to the regulation, but you are not required to comply with the notice and opt out requirements of the regulation if:

- The company (or companies) for which you are acting as an agent with respect to a particular consumer complies with the regulation; and
- You do not disclose protected information to any person other than that company (or companies) or the affiliates of that company (or companies).

4. Q. I am a licensed insurance agent and I sell variable annuities. Am I required to comply with the privacy rule?

- A. Yes, you are subject to the regulation, but you are not required to comply with the notice and opt out requirements of the regulation if:
- The company (or companies) for which you are acting as an agent with respect to a particular consumer complies with the regulation; and
 - You do not disclose protected information to any person other than that company (or companies) or the affiliates of that company (or companies).

5. Q. I'm an independent agent and need to share consumer information with many insurers in order to get the best prices for my clients. Is this permissible under the privacy regulation?

- A. Yes, an agent may share protected information with multiple companies in an effort to compare prices. In such situations, the individual will be a consumer of each of the companies and will be entitled to privacy and opt out notices from any of the companies that wishes to share the individual's protected financial information with non-affiliated third parties.

6. Q. Do I have to go back to every one of my existing clients and tell them about this new rule?

- A. Not necessarily. You are required to provide privacy and opt out opportunities to a client if the client is your "customer." A client is considered your customer if he or she obtains financial, investment or economic advisory services relating to an insurance product or service from you for a fee, or if the individual obtains insurance through you.

If you are acting as agent for another licensee, however, you are not required to provide privacy notices to your customer if:

- The principal complies with the regulation with respect to that customer; and
- You do not disclose protected information about that customer to any person other than the principal or its affiliates.

7. Q. Every company is different. Of the companies I represent, how am I supposed to know which ones sent out notices?

A. Like all aspects of the agent-principal relationship, effective compliance with privacy regulations will require on-going communication and coordination between all the parties.

8. Q. What if one of my clients didn't receive a notice from a company? Who is responsible?

A. Specific compliance issues will be decided on a case-by-case basis, of course. However, if an agent is acting in good faith and legitimately relies on a company to comply with the regulation, the agent would have a good argument that he or she should not be held responsible.

If you have not already done so, find out exactly what your company(s) privacy policy says and exactly what the company intends to do with the personal information being collected.

9. Q. Our agency receives phone-in requests for information on the insurance products offered by the companies we represent. Do we have to tell these callers the privacy policy of each of the companies when they call in?

A. Not necessarily. If these individuals are simply requesting information and not purchasing a product, they are likely to be considered consumers – either your consumers or consumers of the companies for which you are acting as agent. If you collect protected personal information about these individuals and you are going to share that information with non-affiliated third parties, however, you will be required to provide them with privacy and opt out notices prior to disclosure of any protected personal information. On the other hand, if you are not going to disclose any non-public personal information to non-affiliated third parties, you have no obligations to provide privacy and opt out notices to the individual. Finally, if you are going to disclose information only pursuant to a joint marketing or servicing agreement, a privacy notice is all that is required; the consumer is not entitled to opt out.

10. Q. What if an individual actually purchases a product from you over the telephone? Is that individual considered a customer?

A. Normally, customers are entitled to privacy and opt out notices at the time the customer relationship is established. With a telephone transaction, however, delivery of notices can be delayed with the customer's consent.

The same obligations would apply to the companies for which you are acting as agent.

11. Q. I'm an independent agent and I perform servicing and processing functions for several insurers. Does Regulation 904 permit the exchange of information necessary for me to continue to perform these functions?

A. Yes. An insurer can share nonpublic personal information with agents acting as service providers for a variety of purposes regardless of whether a consumer permits disclosure of his or her information.

Regulation 904 specifically permits companies to share nonpublic personal financial information with third parties to enable them to perform services for the company or functions on the company's behalf. The only requirements are (i) the company must provide an initial notice to the individual, and (ii) the company must enter into a written agreement with the third party prohibiting the third party from using the information other than to carry out the purposes for which the information was disclosed and pursuant to the exceptions in the rule.

Regulation 904 also permits companies to share nonpublic personal financial information with third parties, including agents, for numerous servicing purposes including: servicing or processing an insurance product that a consumer requests or authorizes; carrying out the service business of which the consumer's transaction is a part; and administering or servicing benefits or claims. Such disclosures are subject to the regulation's reuse and redisclosure provisions, which generally prohibit third parties that receive information under an exception from using such information other than to carry out the purposes for which the information was disclosed and pursuant to the exceptions in the rule.

A copy of Regulation 904 can be downloaded by going to:
www.state.de.us/incom

DEFINITION OF KEY TERMS FROM REGULATION 904

Affiliate – means any company that controls, is controlled by, or is under common control with another company. (Under the GLBA, insurers and banks can become affiliates.)

Consumer – means an individual who seeks to obtain, obtains, or has obtained an insurance product or service from an insurer that is to be used primarily for personal, family, or household purposes. (For example, an individual who has submitted an application for insurance is a consumer of the company to which he/she has applied, as is an individual whose policy with the company has expired.)

Customer – means consumers with whom insurers have on-going relationships. (For example, policyholders are considered to be customers.)

Insurers – means insurance companies, insurance agents, or other entities that are required to comply with the privacy regulation.

Non-Affiliated Third Party – means any company that is not affiliated with an insurer.

Opt In – means granting affirmative consent to the disclosure of protected information by an insurer.

Opt Out – means prohibiting the disclosure of protected information by an insurer.

Nonpublic Personal Financial Information – means information provided to an insurance company to obtain an insurance product or service (like income, credit history, assets). It includes information received as a result of a transaction involving an insurance product or service (like premium payment history, how much a life insurance policy is worth, and the value of personal property insured). It also includes any list that is derived using such information. For example, a list that includes the names and income of an insurer's customers would be considered protected information. Please note, however, that publicly available information is not considered to be non-public personal information (i.e., information obtained from a phone book, government records (including mortgage records), or the Internet).