

**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
PROPOSED
SECOND AMENDMENT TO
11 NYCRR 420
(INSURANCE REGULATION 169)**

**PRIVACY OF CONSUMER FINANCIAL AND HEALTH INFORMATION
GENERAL PROVISIONS**

I, Maria T. Vullo, Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 301, 1505, 1608, 1712, and 3217, and Article 24, of the Insurance Law, and in accordance with the provisions of 12 U.S.C. Section 1831x, 15 U.S.C. Sections 6801(b), 6802, 6803, 6805(b), 6805(c) and 6807, and 15 U.S.C. Chapter 94, do hereby promulgate the Second Amendment to Part 420 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 169), to take effect upon publication in the State Register, to read as follows:

(DELETED MATTER IN BRACKETS; NEW MATTER UNDERSCORED)

Section 420.5 is amended as follows:

420.5 Annual privacy notice to customers required.

(a)(1) General rule. [A] Except as provided in subdivision (b) of this section, 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 12 consecutive months during which that relationship exists. A licensee may define the 12-consecutive-month period, but the licensee [must] shall apply it to the customer on a consistent basis.

(2) Example. A licensee provides a notice annually if it defines the 12-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 buys an insurance policy on any day of year one, then the licensee shall provide an annual notice to that customer by December [31st] 31 of year two, but thereafter, shall provide each subsequent annual notice within 12 calendar months of the prior annual notice.

(b) Exception to general rule. A licensee shall not be required to provide an annual disclosure under subdivision (a) of this section if the licensee:

(1) provides nonpublic personal information to nonaffiliated third parties only, in accordance with sections 420.13, 420.14 or 420.15; and

(2) has not changed its policies and practices, with regard to disclosing nonpublic personal information, from the policies and practices that the licensee disclosed in the most recent disclosure sent to consumers in accordance with section 420.4 of this Part or this section.

(c)(1) Termination of customer relationship. A licensee [is] shall not be 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.

(2) Examples.

(i) 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.

(ii) 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 12 consecutive months, other than to provide annual privacy notices, material required by law or regulation, or promotional materials.

(iii) For the purposes of this Part, 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.

(iv) 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.

[(c)] (d) *Delivery*. When the licensee is required by this section to deliver an annual privacy notice, the licensee shall deliver it according to section 420.9 of this Part.

(e) Example of revocation of consent. A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal financial information as permitted under section 420.7(f) of this Part.