



July 24, 2018

Cassandra Lentchner  
Director of Compliance  
New York State Department of Financial Services  
One State Street  
New York, NY 10004

Dear Ms. Lentchner:

An important deadline is approaching on March 1, 2019 with respect to compliance with the department's cybersecurity regulation, 23 NYCRR 500. On this date Covered Entities must begin compliance with Section 500.11 which sets forth requirements for Covered Entities that do business with Third Party Service Providers.

As trade associations for thousands of insurance producers in the state, we want to work in cooperation with the department to help producers to understand and comply with this regulation.

To do this we need to have consistent and clear direction from the department. There is an important question to which the department has yet to provide a clear answer.

The question is how the department views the relationship between insurance agents and the insurance companies with which they do business and share Nonpublic Information?

While both agents and insurers are clearly Covered Entities under the regulation, it is less clear how the department views each Covered Entity when they are sharing Nonpublic Customer Information with each other in the normal course of their business transactions? Are they considered by the department to be Authorized Users, or Third Party Service Providers, or neither?

Independent insurance agents often work with many different insurance companies. Insurance agents typically have written contracts with the insurance companies they represent that authorize them to act on behalf of the company.

In a typical insurance transaction, the consumer will deal directly with the insurance agent when applying for insurance. The insurance agent will obtain Nonpublic Information from the consumer that is necessary to apply for insurance. Sometimes the information is input into the producer's own

information system and then shared electronically with the insurance companies that the agents represents to obtain quotes. The consumer then selects the company with which it wishes to purchase insurance and the company issues the policy to the consumer.

Other times a producer may access the insurance company's information system to input the applicant's information for the purpose of obtaining a quote.

Once the policyholder relationship is established with the insurance company, the insurance company may gather more Nonpublic Information directly from the customer that it may then need to share with the agent. For example, if a policyholder has a claim, they may contact the insurance company directly. The insurance company would make information on the claim available to the insurance agent.

Throughout the course of the customer's policy term, agents and companies frequently share information back and forth for the purpose of servicing their mutual customer, the policyholder.

It is therefore a reasonable interpretation of the regulation that the relationship between insurance agents and the insurance companies they do business with would be that of "authorized users" as defined in Section 500.01(b).

An "authorized user" means an employee, **contractor, agent or other Person** that participates in the business operations of a Covered Entity and is authorized to access and use any Information Systems and data of the Covered Entity.

However, there is some confusion within the industry on how to characterize the agent-company relationship under Regulation 500. Some companies have assumed that insurance agents are Third Party Service providers. If this is the case, then the requirements of Section 500.11 would come into play.

The definition of "Third Party Service Provider" in Section 500.01(n) means a Person that: (i) is not an Affiliate of the Covered Entity (ii) provides services to the Covered Entity, and (iii) maintains, processes or otherwise is permitted access to Nonpublic Information through its provision of services to the Covered Entity.

We do not believe insurance agents fall within this definition because they not providing "services" to an insurer. Likewise, an insurance company doesn't seem to fit within that definition either.

Both insurance agents and insurance companies work together as one to provide service to their mutual customer, not services to each other.

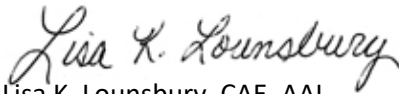
Furthermore, the requirements of Section 500.11 don't seem logical when applied to insurance agents and insurers. For instance, Section 500.11(a) requires that a Covered Entity establish minimum cybersecurity practices that must be met by Third Party Service Providers in order for them to do business with the Covered Entity.

If an insurance agent were viewed as a Third-Party Service Provider, an insurer would have to establish requirements for thousands of agents with whom they contract to provide insurance. If the insurance agents did not meet these practices, the insurer could not do business with them. But "the business" of the insurer is also the business of the agent. They are both serving the same customer. Insurance

companies could not simply stop providing information to an authorized insurance agent regarding their mutual customer. Likewise, if an insurance company were deemed to be a Third Party Service Provider, companies would have to comply with thousands of different requirements that would be imposed by their agents, who also would be unable to just stop providing information regarding their mutual customer if the company was not in compliance.

We hope the department will provide a clear answer to this important question that affects will impact thousands of licensees, both agents and insurers.

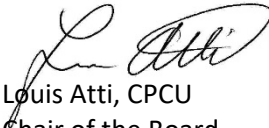
Sincerely,



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