

Special Swiss Re Corporate Solutions Policy Alert

Important Information Affecting the E&O Policy



This year Swiss Re Corporate Solutions has launched a new, state-of-the-art Insurance Agents E&O policy form developed with IIABA to meet the changing E&O needs of member agents. One very timely and important coverage afforded by the new policy form is coverage for 1st and 3rd party breach of personal dataⁱ. The 1st party coverage is automatically afforded. Eligibility for 3rd party coverage, however, hinges upon your agency meeting specific underwriting and policy requirements. These requirements focus on your agency's security procedures in protecting the privacy of your clients' personal information.

The application contains the following question, to evaluate your agency's eligibility for the 3rd party breach of personal data coverage:

- 18. L. Do you encrypt or use other measures to protect personal data when transmitted? Yes or No

If you respond "NO" to this question, 3rd party breach of personal data coverage WILL NOT be afforded by the policy. If, however, you answered "YES", coverage can be afforded subject to provisions within the policyⁱⁱ. To be afforded this coverage the agency must have implemented current and commonly accepted technologies and methodologies to secure personal data and must also comply with any privacy regulations found in HIPAA or any other federal or state law. It is extremely important that you understand the data privacy and security requirements of the states in which you do business. Some examples of commonly accepted technologies and methodologies may include, but not be limited to:

- Password protecting or encrypting agency systems,
- Locking paper files when not in use,
- Encrypting personal data of customer stored on portable devices
- Using secure email when emailing personal data,
- Using a secure fax service when faxing personal data,
- Using a secure tunnel or password protection on the website before allowing consumers to enter personal data.

IIABA's Agency Council of Technology has written an article highlighting the importance of agencies' implementing a written security plan and has provided a free prototype. [Click here](#) to review the article, which includes a direct link to the prototype. When properly implemented, an information security plan can assist your agency in implementing the procedures to manage the risk of data breaches and to qualify for third party breach of privacy data under the new E&O policy form.

Listed on the following pages are additional resources and tools on agency security and breach of personal data. These materials and more can be found on ACT's website at www.iiaba.net/act under the Agency Security/Customer Privacy section, or visit the Big "I" Risk Management Website – E&O Happens at www.iiaba.net/EOhappens and click on the "Resources" tab, then "ACT." This website is available exclusively to Swiss Re Corporate Solutions policyholders.

In addition, we encourage you to speak with your IT provider, your Agency Management software provider, and an attorney to fully evaluate your systems operations and legal obligations. Here are a few questions to consider:

1. What types of private customer information does your agency retain that needs to be protected?
2. What are the state and federal privacy laws affecting your agency?
3. Is personal data encrypted when transmitted electronically through email, fax, or carrier systems?
4. Is personal data collected through your website done through a secure interface?
5. Do your agency procedures addressing collection, storage, transmittal, and disposal of private customer information comply with all applicable regulations?

NEED LOG IN HELP?

If you don't know your User ID or Password, you can get them from IIABA. Just send us an email with your name and your agency name and address to logon@iiaba.net. We will be happy to provide you with the necessary login information.

Resources and Tools Available – Security and Privacy

Federal Trade Commission – “Protecting Information: A Guide for Business” (Web site)

This website offers some good resources to help you educate yourself on the reason for protecting personal data. [Click here](#) to visit.



Implementing an Effective Information Security Program in Your Agency (Webinar)

Highlights the major security risks independent agencies face and the practical steps they should take to protect the privacy of their private client & employee personal information whether in paper or electronic form. The session outlines how federal and state law, as well as good risk management practices, have made it mandatory for agencies to implement an information security program that is anchored by a written security plan. The program also covered the numerous free tools and articles that ACT has produced to assist agencies with their security program-- including a prototype agency information security plan. **To view the recorded webinar, [click here](#).**



Prototype Agency Information Security Plan and Companion Article (Articles)

This is a prototype security plan for agencies to use in developing their own written security plans customized to their own operations. This prototype plan also serves as a great checklist in formulating a security program. In addition to the plan itself, you will find an article discussing the importance of agencies' having a written security plan and how to use ACT's prototype security plan most effectively. The article also provides agencies with a series of steps to take to put a strong security program in place. [Click here](#) for the ACT article, "ACT Releases Prototype Agency Information Security Plan" and [Click here](#) for the ACT Prototype Agency Information Security Plan (Best to "save" this Word document to your desktop to avoid prompt for a password. If you "open" the document, click "cancel" when you get the password prompt to open it.)

Data Privacy Federal Law Summary (ARRA, HIPAA, and GLBA) and State Specific Laws (Web sites)

To learn more about the applicability of federal laws requiring insurance agencies to protect personally identifiable information visit IIABA's Office of General Counsel – “Legal Advocacy” webpage on the IIABA website [clicking here](#). There you will find information on legislation effecting data security including: ARRA, HIPAA, and GLBA. Member login is required.



To learn more about state specific laws here are some websites that may be of use:

1. <http://www.ncsl.org/default.aspx?tabid=13489>
2. <http://privacylaw.proskauer.com/articles/security-breach-notification-/>
3. <http://www.aicpa.org/InterestAreas/InformationTechnology/Resources/Privacy/FederalStateandOtherProfessionalRegulations/StatePrivacyRegulations/Page/State%20Security%20Breach%20Laws.aspx>

Email Encryption -Protecting Data Over Email

To gain a better grasp of email encryption review these resources:

[Protect Your Clients with Secure Email Using TLS](#) - Agencies and carriers are encouraged to implement an efficient and cost effective approach to secure email by enabling their email servers for TLS (Transport Layer Security) email encryption. This article explains how TLS works. [Click here.](#)

[TLS Email Encryption-- Agents' Frequently Asked Questions](#) - This document builds upon ACT's article, "Protect Your Clients with Secure Email Using TLS," and provides answers to agents' most frequently asked questions, including giving examples of carriers that are enabled for TLS for their agents. [Click here.](#)

[ACT Recorded Webinar: Protecting Independent Agent Clients with Secure Email Using TLS](#) - Recorded May 13, 2010 (Demo in last 15 minutes puts more focus on implementation on Microsoft 2007 Exchange Server). Features Jim Rogers (The Hartford) & Tim Woodcock (Courtesy Computers) [Click here to watch.](#)

Combat Cybercrime and Protect Your Agency with Simple Security Steps (Article)

Protect your agency from cybercrime. The most potent tools to fight this threat are to keep a wary eye and practice proactive online security techniques and policies. Danielle Johnson, Vice President of InsurBanc, suggests several steps to protect personal privacy, banking information, and agency data, including adoption of recent advancements in banking security. [Click here](#) to read the article.

Encryption and Your Agency's Website (Webinar)

The Florida Association of Independent Agents recently had Sabrena Sally from Swiss Re on their Friday Morning Live webinar discussing cyber liability and the E&O issues surrounding websites. Here is a link to that and you'll see the topic is discussed about ten minutes in the webinar: [Friday Morning Live - February 25, 2011Encryption and your agency's website with Sabrena Sally, CPCU, Senior VP of Swiss Re.](#)

ⁱ Personal Data is defined in the new policy as follows:

PERSONAL DATA means all information, whether written, or electronic:

1. which can be used to distinguish or trace an individual's identity, including but not limited to, their name, social security number, biometric records, alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, or mother's maiden name;
2. concerning an individual that would be considered protected health information as defined within the Health Insurance Portability and Accountability Act of 1996; or
3. that would be considered nonpublic personal information within the meaning of the Gramm-Leach Bliley Act or similar state, federal and foreign identity theft and privacy protection legislation applicable to the breach.

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V. Exclusions

B. **BREACHES OF PERSONAL DATA.**

1. any BREACH of PERSONAL DATA resulting from any act committed by an individual or individuals acting in an effort to coerce the civilian populations of the United States or to influence the policy or affect the conduct of any federal, state, provincial, or local government;
2. any BREACH of PERSONAL DATA resulting from any failure of the INSURED to implement current and commonly accepted technologies and methodologies designed to secure PERSONAL DATA and appropriate to the size and complexity of the agency; or
3. any BREACH of PERSONAL DATA resulting from any failure of the INSURED to comply with any applicable privacy regulations found in the Health Insurance Portability and Accountability Act of 1996 or any other federal or state law or regulation, governing any industry in which the INSURED is rendering PROFESSIONAL SERVICES or OTHER RELATED SERVICES.

IV. Definitions and Explanations of Terms

V. **WRONGFUL ACT.** WRONGFUL ACT means:

3. any BREACH of PERSONAL DATA arising out of or in connection with the rendering of PROFESSIONAL SERVICES or OTHER RELATED SERVICES, but only if the INSURED has implemented current and commonly accepted technologies and methodologies designed to secure PERSONAL DATA and appropriate to the size and complexity of the agency and indecipherable to unauthorized individuals and which are in place at the time of the BREACH; provided, however, that any such technologies and methodologies must comply with privacy regulations found within the Health Insurance Portability and Accountability Act of 1996 or any other federal or state law or regulation, governing any industry in which the INSURED is rendering PROFESSIONAL SERVICES or OTHER RELATED SERVICES.

The information provided and statements made in this policyholder alert are for informational purposes and are not intended as legal or other professional advice. Please procure the appropriate legal or other professional advice and services to address your individual circumstances. There is no representation, guaranty or warranty made as to the sufficiency or accuracy of the information provided. This document is provided for informational purposes only and is intended as a general overview of the policy described and should not be considered a contract of insurance. In addition, all policies are individually underwritten and subject to the underwriting guidelines of Westport Insurance Corporation, a member of the Swiss Re Group. For complete policy language, refer to form SP 4 584 OB 0610, or the most current edition thereof. The opinions and views expressed by others contained in URL links do not necessarily reflect the opinions and views of Swiss Re or IIABA.