



National Association of Insurance Commissioners

June 19, 2008

Hon. William E. Kovacic
Federal Trade Commission
Office of the Secretary
Room 135 (Annex C)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Model Privacy Form

Dear Chairman Kovacic:

On behalf of its 56 members, the National Association of Insurance Commissioners (“NAIC”) appreciates the opportunity to provide comments on the Interagency Proposal for Model Privacy Form under the Gramm-Leach Bliley Act issued by the Federal Trade Commission in conjunction with seven other federal regulators (“Interagency Group”). Founded in 1871, the NAIC is a voluntary association of the principal insurance regulatory officials of the fifty states, the District of Columbia, the territories and insular possessions of the United States. Pursuant to Section 504 of the Gramm-Leach-Bliley Act, the Interagency Group is to work in “consultation as appropriate with representatives of State insurance authorities designated by the National Association of Insurance Commissioners.”

Representing the functional regulators for financial institutions and licensees engaged in the business of insurance, the NAIC applauds the Interagency Group’s efforts to develop a model privacy form with the objective of enhancing consumers’ abilities to make informed decisions when shopping for insurance coverage and exercising their legal and contractual rights to protect personal information. In order to better address the specific needs of the insurance market and make the Model Privacy Form more adaptable across the broad spectrum of the financial services market, the NAIC would appreciate your consideration of possible revisions as shown in the attached marked-up copy of the form.

We appreciate the Interagency Group’s interest in considering optional terminology specific to particular sectors of the financial services industry, rather than prescribing a one-size-fits-all form relying on generic language based on statutory terms of art. It has been widely recognized that the one-size-fits-all approach can be a major factor in making existing notices hard to read. In order to provide insurance-related terminology that could be used, where appropriate, in place of terms geared toward the banking sector such as “accounts,” “deposits,” and “loans,” the attached revisions substitute references to “policies,” “claims,” “premiums,” and “insurance scores.”

We also propose allowing insurers to refer to “creditworthiness or insurability,” instead of simply “creditworthiness,” when describing the information for which a statutory opt-out right is provided under the Fair Credit Reporting Act (FCRA). The reason is that insurers make extensive use of information regulated by FCRA for reasons that are different from assessing a prospective customer’s credit risk. Some important consumer reporting agencies are set up for precisely this purpose, to collect and disseminate various kinds of information that is intended to relate strictly to insurance claim risk, not to credit risk.

EXECUTIVE HEADQUARTERS	2301 McGee Street, Suite 800	Kansas City, MO 64108-2662	p 816 842 3600	f 816 783 8175
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SECURITIES VALUATION OFFICE	48 Wall Street, 6th Floor	New York, NY 10005-2906	p 212 398 9000	f 212 382 4207

We recognize that a great deal of work, including extensive consumer testing, went into developing the creditworthiness clauses in the Interagency Proposal, so we do not make this proposal lightly. However, FCRA expressly recognizes that consumer reporting is used to track and evaluate both creditworthiness and insurability, referring throughout the Act to “eligibility for credit or insurance.” It was acknowledged that when the term “creditworthiness” was tested, there was no inquiry into whether consumers understood this category of information to include such factors as insurance claims history. It is unlikely that they would, and it is reasonable to expect policyholders to understand “insurability” just as well as borrowers understand “creditworthiness.” Perhaps some of the consumer advocates and academics who participated in the process could be consulted on whether this change could be made without major disruption to the form and without losing the information gleaned from the consumer testing.

In addition, we have identified a few places to consider changes to the basic language of the form:

- *“affiliates’ everyday business purposes”* – The fourth and fifth boxes in “Reasons we can share” on Page 1 compares “information about your transactions and experiences” with “information about your creditworthiness [or insurability].” These categories overlap significantly, and the right to share experience information takes precedence over the right to opt out of FCRA information. Therefore, we would suggest changing the fifth box from “information ...” to “other information ...,” to clarify that transaction and experience information is not included and not subject to the opt-out right.
- *“Unless we hear from you, we can begin sharing ...”* – This warning at the top of the last page is not necessarily accurate, because it implies that the company is prepared to treat existing opt-out notices as lapsing and preparing to share information again unless the opt-out instruction is renewed. Therefore, we would suggest changing this sentence to read: “Unless we hear from you or you have already instructed us to limit information sharing, we can begin sharing ...”
- *“information collection services”* – Your research has shown that the statutory term “consumer reporting agencies” is easily misunderstood by consumers, who are more likely to understand “credit bureaus.” However, as discussed earlier, many insurers rely extensively on certain consumer reporting agencies that are unique to the insurance industry and do not function as “credit bureaus,” so it would be desirable to have some more generic term, broader in scope without confusing or misleading the consumer, that could be used on an optional basis by insurers. Perhaps the term could be “information collection services such as credit bureaus.”

The NAIC looks forward to discussing these suggested revisions with the Interagency Group, and in furtherance of our consultative role under the Gramm-Leach-Bliley Act, we would appreciate any opportunity you could provide to review further revisions to the Model Privacy Form. If you have any immediate questions, please contact Bob Wake, staff attorney with the Maine Bureau of Insurance, at 207-624-8430 or Tim Mullen, NAIC Director of Market Regulation, at 816-783-8260.

Sincerely,



Mila Kofman
Chair, NAIC Consumer Protections & Innovations (D) Working Group
Maine Superintendent of Insurance

Cc: Loretta Garrison