



May 20, 2009

The Honorable Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: File Number S7-09-07, Model Privacy Form

Dear Secretary Murphy:

The National Association of Mutual Insurance Companies ("NAMIC") is pleased to offer comments on proposed amendments to Regulation S-P, which implements the privacy provisions of Title V, Subtitle A of the Gramm-Leach-Bliley Act ("GLBA").

NAMIC is the largest full-service national trade association serving the property/casualty insurance industry with more than 1,400 member companies that underwrite more than 40 percent of the property/casualty insurance premium in the United States. NAMIC members are small farm mutual companies, state and regional insurance companies, risk retention groups, national writers, reinsurance companies, and international insurance giants.

The Financial Services Regulatory Relief Act of 2006 ("Regulatory Relief Act") directed federal regulators to develop jointly a model form that may be used at the option of financial institutions to provide initial and annual privacy notices under section 503 of the GLBA.¹ The Agencies on March 29, 2007 published a Notice of Proposed Rulemaking ("NPR") and solicited public comment on a prototype privacy notice to describe an institution's information sharing practices and, for certain types

¹ Section 728 of the Financial Services Regulatory Relief Act of 2006, Pub. L. 109-351, 120 Stat. 1966.

of sharing, a consumer's right to opt out.² NAMIC submitted comments in response to the 2007 request.

NAMIC supports the goal of simplification and applauds the effort to develop a simpler, more meaningful privacy notice form. While we support the goal of simplification, NAMIC raised several significant concerns with the proposal. Those concerns are reiterated in these comments.

Background

Subtitle A of Title V of GLBA requires each financial institution to provide a notice of its privacy policies and practices to customers that obtain financial products or services used primarily for personal, family or household purposes ("consumers"). The Fair Credit Reporting Act ("FCRA") also gave consumers the right to limit the sharing of information which would be characterized as non-transactional or non-experience information.³ Section 624 of FCRA as amended by the Fair and Accurate Credit Transactions Act of 2003 ("FACTA") also permits consumers to opt out of sharing of information, including transaction and experience information, among affiliates for marketing purposes.

The GLBA privacy rule does not prescribe any specific format or standardized wording; however, the Agencies have developed model language ("sample clauses") that institutions may use to satisfy the privacy rule. Institutions using the sample clauses are provided the benefit of a safe harbor for compliance with the privacy rules.

GLBA provides that enforcement and regulatory authority is based on functional regulation and authority over insurers is vested in state insurance regulators.⁴ As such, insurers are not directly subject to the Agencies' regulations implementing the privacy requirements; however, individual insurers, their holding companies, affiliates and consumers have a stake in changes to the federal standards and safe harbors. Insurers have taken great care and expended significant time and financial resources to ensure that their privacy notices meet current GLBA requirements in all the states in which they conduct business and many utilize the sample clauses and rely on the safe harbor protections afforded by their use.

² 72 *Fed. Reg.* 14940 (March 29, 2007).

³ Section 603(d)(2)(A) Fair Credit Reporting Act; 15 U.S.C 1681

⁴ 15 U.S.C. § 6805(a).

Model Notice

The NPR goes far in its goal of achieving a simplified notice, but it fails to recognize in content and form the subtle and actual differences between banking, securities and insurance. NAMIC believes changes in the model form and flexibility in language is necessary to reflect the true purpose of financial modernization and to make the notice factually accurate for our member companies.

The NPR proposed that use of the model form be optional for financial institutions. NAMIC is pleased that regulators recognize the importance of not mandating the use of a particular form. However, since the use of the model form under the proposed rule would be the only path to safe harbor protection from private and regulatory enforcement actions, NAMIC believes that the model form must be improved and that it should supplement, but not replace, the sample clauses. Like other financial institutions insurers should be able to utilize a notice that accurately reflects their business practices in terms of what information is gathered from consumers and customers, how that information is shared and what “opt outs” consumers or customers have with respect to the insurance “side” of financial services, while providing them safe harbor legal protection.

In previous comments, NAMIC raised a number of specific issues and concerns with the model form. NAMIC reiterates those concerns and urges regulators to seriously consider these issues in development of model notice regulations.

Content Flexibility

NAMIC believes that the model form does not provide sufficient flexibility to meet the needs of insurers and their consumers. The proposed model form permits very few deviations or modifications. Since insurers are subject to varied state requirements, NAMIC is concerned that the lack of flexibility to modify the form may inhibit the ability of insurers to reflect their actual policies and practices and to meet specific state requirements.

NAMIC is concerned that the model form does not provide the requisite flexibility needed to meet varying state requirements. In addition, it is important to note that there is no guarantee that states will amend their notice requirements. As a result insurance consumers could receive two or more privacy notices. Such an outcome would prove confusing for consumers and contrary to the goal of simplification as outlined in the Regulatory Relief Act.

NAMIC urges regulators to permit institutions to make appropriate modifications to the language of the model form, particularly modifications necessary to satisfy state law requirements. In addition, additions or modifications to permit disclosure of privacy rights other than those established by GLBA or the FCRA or describe non-standard privacy practices should be allowed.

Consolidated Notices/Insurance Notices

To facilitate the use of a single consolidated form, particularly where the covered institutions provide insurance, and banking or securities products or services, NAMIC proposed the following amendments to the proposed model form. The changes are necessary to ensure that the form is capable of being factual and accurate for insurance companies—rather than a form of notice that is bank or securities centric in scope and focus and is not reflective of the needs of insurance companies.

NAMIC urges that the proposed model form be comprehensive enough to describe insurance-type transactions. Our suggested amendments to the three- page standard notice follow:

The three bullets on Page 1 of the form under the heading of “*What?*” should be modified to reflect insurance practices permitted under the FCRA as well as relate to the sample clauses proposed by the NAIC in its model rule:

- Information (from application or other sources) to establish your eligibility for our products or services
- Account balances or payments; transaction or loss history
- Consumer report or credit score

Under the heading “*How?*” we would recommend use of the term “consumer report” rather than “credit history.” The term consumer report reflects the reports accessed by both banking and insurance institutions and results in a notice form that is factual and accurate as to insurance underwriting practices.

In that portion of the notice listing “*Reasons we can share your personal information*” we recommend inclusion under the heading “*For our affiliates every day business purposes*” the following language: “information other than information about your transactions with us.” This qualification will help make clear the FCRA opt out on

Page 3 as it relates to insurers and their underwriting practices and sharing practices as financial institutions.

In addition we recommend adding a bullet on Page 2 of the model form describing “*Sharing practices*” under the heading “*We collect your personal information, for example, when you*” as follows to better describe insurance practices.

- Pay for bills or apply for insurance.

Using loan, account or depository information as the only examples does not give insurance consumers a perspective to understand how the information sharing practices apply to them. A few additional product or transaction references in this area would provide better clarity to such consumers.

As to the “*Why can't I limit all sharing*” it is important to again qualify how the transactions or experience rules relate to underwriting or loss history. We recommend amending the first bullet under the heading “*Federal law gives you the right to limit sharing only for*” as follows:

- Affiliate’s everyday business purposes—information other than information about your transactions or experience with us

This clarification is important to give the consumer an opportunity to make an informed choice on the decision made on Page 3 of the notice.

With respect to Page 3 of the notice we believe the FCRA opt out needs to be modified slightly to reflect insurance practices as follows:

- Do not share with your affiliates for their everyday business purposes information other than information about my transactions or experience with you.

As to the choice offered regarding the use of personal information for marketing between affiliates, Section 624(a)(4)(a) of the FCRA provides that the notice and opt out requirements will not apply if the receiving affiliate has a pre-existing customer relationship with the consumer to whom the marketing solicitation has been sent or shared. Accordingly we believe the following modification is required:

- Do not allow your affiliates with whom I do not do business to use my personal information to market to me. (I may receive a renewal notice for this use for marketing in 5 years.)

We believe these changes are necessary to make the model form accurate and meaningful for insurance consumers and to afford insurance financial institutions the option to use the model form.

Format Standardization

The NPR proposes a number of detailed formatting specifications for model forms. As outlined, NAMIC is concerned that several of these requirements will impose operational difficulties.

Our member companies do not believe it is necessary, or appropriate, to specify either the size of the paper or the number of pages. Requirements for full size paper and multiple pages would significantly increase printing and mailing costs. Requirements for separate mailings would needlessly reduce delivery options. It is unclear that such formatting and delivery changes would increase consumer understanding. Ironically such requirements could hamper efforts of insurers to provide comprehensive policy and account information to consumers in a consolidated format. Logos and colors help consumers to identify entities and should be permitted in model notices.

Sample Clauses

The NPR provides that the model form will replace the sample clauses for purposes of safe harbor protections. Under the proposed rule, the sample clauses contained in current privacy rules would be eliminated.⁵ Financial institutions would be permitted a one-year transition period, after which they would receive no safe harbor protection for use of the sample clauses. Privacy notices delivered or posted electronically to meet the annual notice requirement would have a safe harbor for one year. Annual notices delivered or posted during the one-year transition period would continue to have safe harbor protection until the next annual privacy notice is due.

⁵ The Securities and Exchange Commission's privacy rule does not provide safe harbor protection for financial institutions using the sample clauses. The sample clauses; however, provide guidance on the application of the rule in ordinary circumstances. During the one-year transition period the sample clauses would continue to provide guidance.

NAMIC strongly objects to the elimination of the safe harbor for institutions that use the sample clauses. The Regulatory Relief Act requires that the model form to be an “option” for financial services firms, but does not specifically require the form to be the sole source of safe harbor protection, nor does the Act require the elimination of the sample clauses.

Financial institutions, particularly insurers, have invested significant resources in the development of privacy notices that meet GLBA and state-specific privacy and disclosure requirements. Many of these institutions and insurers utilize sample clauses and the safe harbor protections provide important legal safeguards for these institutions.

These protections are particularly important for insurers. It is highly unlikely that states will conform requirements to the federal standard. Insurers will be faced with the prospect of not having safe harbor protections to rely upon at the federal level or having to issue separate notices to meet federal and state requirements. This issue is particularly important for smaller and mid-sized insurers who may not have resources in-house to revise privacy notices and ensure compliance in the absence of safe harbor provisions.

NAMIC urges regulators to permit the continued use of sample clauses and the corresponding safe harbor protection for insurers.

Form Content

The content of the form as proposed raises additional concerns. The first relates to the use of a single notice by affiliated institutions. The NRP notes that the model form may be used by individual companies or an affiliated group of companies; however, it is unclear how these companies would be identified on the model form. The limited amount of space on the form raises operational issues in listing all the affiliates of many large consolidated financial services groups. NAMIC believes that affiliated institutions should be permitted to utilize a single privacy notice and urges the Agencies to clarify how the notice can identify the covered institutions.

NAMIC also has a concern with the proposed language on Page 3 of the proposed form under “If you want to limit our sharing.” The language of the proposed form states that “unless we hear from you, we can begin sharing your information 30 days from the date of this letter.” Under GLBA financial institutions must give consumers 30 days from the initial notice to opt-out before they can share non-public personal

information and to effectuate the opt-out within 30 days anytime an opt-out election is received. The language of the proposed form is consistent with that requirement. However, in annual notices, GLBA does not require financial institutions to suspend disclosure of the information if the consumer has not previously opted out and wait for 30 days before resuming disclosures. NAMIC members are concerned that the inclusion of the statement as written could convey a misimpression to consumers of their opt-out rights and urges the Agencies to revise the language to reflect initial and annual notice requirements.

Quantitative Testing

In connection with development of the model form, federal regulators engaged Macro International (“Macro”) to evaluate the effectiveness of privacy notices. Macro developed and tested four models: a table notice, prose notice, current notice and a sample clause notice. The sample clause notice was comprised of the sample clauses that appear in regulations implementing the GLBA requirements and which have been used extensively by financial institutions in their notices

As we have noted, there are fundamental differences between insurance and other financial services. As such, NAMIC raises concerns with reliance on the results of the Macro evaluation of the effectiveness of different types of privacy notices. Drs. Alan Levy and Manoj Hastak acknowledge that the study specifically sought to assess and compare the notices in terms of their ability to help consumers compare **banks’** information collection and sharing practices, and make informed and reasoned choices between **banks**. Standard protocol would require the population involved in the test to reflect the group of people who actually will receive these privacy notices, including non-bank consumers. Nowhere in the study is there any evidence the sample group demographically reflects the set of customers who may receive a privacy notice and the authors specifically note that they did not test non-bank consumers.

The testing focused solely on banks and did not reflect other financial institutions, particularly insurers. The results should, therefore, not be used as justification for imposing model language on the broad spectrum of financial institutions. The authors of the study concluded that a table format sample notice significantly outperformed other notice styles. However, the results of the study demonstrated that sample clause notices performed as well as, and in some cases better than, other options.

NAMIC has noted the importance of retaining safe harbor protection for financial services entities that utilize the sample clauses. Given the significant differences among financial services and the time and money invested in developing legally accurate disclosures it is imperative that entities continue to be allowed to utilize, and receive safe harbor protection for, sample clause notices. Insurance is unique in the financial services industry. Model notices with proscribed language and format are unlikely to meet consumer needs and fulfill insurers' legal obligations for disclosure. NAMIC urges regulators to recognize these differences and continue to provide safe harbor protection to notices based on sample clauses.

Conclusion

NAMIC fully supports the Agencies' efforts to simplify and streamline the privacy notice process and to increase consumer understanding. NAMIC is concerned that a recent study could inappropriately be used to justify a requirement for a single model privacy form.

As regulators seeks to develop a simpler privacy notice, NAMIC reminds regulators that the content and form must be flexible enough to meet the different and additional state privacy law requirements applicable to insurers, and to permit insurers to appropriately disclose their privacy policies and practices. Requirements for presentation and delivery should be removed.

Most importantly, NAMIC urges regulators to make use of the model form voluntary and to retain safe harbor protection for notices based on sample clauses.

We look forward to working with the Agencies to improve the proposed model form and make it appropriate and effective for our nation's insurers and policyholders.

Sincerely,

National Association of Mutual Insurance Companies
122 C Street, N.W.
Suite 540
Washington, D.C. 20001
202-628-1558