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March 29, 2004

Communications Division
Public Information Room, Mailstop
Office of the Comptroller of the Currency
250 E Street, S.W.
Washington, D.C. 20219
Attention: Docket No. 03-27
regs.comments@occ.treas.gov

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552
Attention No. 2003-62
regs.comments@ots.treas.gov

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Ave., N.W.
Washington, D.C. 20551
Docket No. R-1173
regs.comments@federalreserve.gov

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429
Attn: Comments/Executive Secretary Section
comments@fdic.gov

Jonathan G. Katz
Securities and Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549
File No. S7-30-03
rule-comments@sec.gov

Office of the Secretary
Federal Trade Commission
Room 159-H
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
Attn: "Alt. Forms of Privacy Notices,
Project No. P034815
GLBnotices@ftc.gov

Jean A. Webb
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
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Becky Baker
Secretary of the Board
National Credit Union Admin.
1775 Duke Street
Alexandria, VA 22314-3428
regcomments@ncua.gov

**Re: Advance Notice of Proposed Rulemaking (68 Fed. Reg. 75164, Dec. 30, 2003) – Interagency Proposal to Consider Alternative Forms of Privacy Notices Under the Gramm-Leach-Bliley Act**

Dear Sir or Madam:

The American Insurance Association ("AIA") appreciates the opportunity to provide comments in response to the advance notice of proposed rulemaking ("ANPR") in the December 30, 2003 Federal

Register. The ANPR sets forth a joint proposal by the Office of the Comptroller of the Currency, Treasury ("OCC"), the Office of Thrift Supervision, Treasury ("OTS"), the Board of Governors of the Federal Reserve System Board ("Board"), the Federal Deposit Insurance Corporation ("FDIC"), the National Credit Union Administration ("NCUA"), the Federal Trade Commission ("FTC"), the Commodity Futures Trading Commission ("CFTC"), and the Securities and Exchange Commission ("SEC") (collectively, "Joint Agencies"), to amend existing regulations for sections 502 and 503 of the Gramm-Leach-Bliley Act of 1999 ("GLBA") to allow financial institutions to provide "consumer-friendly" alternatives to the privacy notices sent to consumers currently under GLBA. AIA is a national trade association of major property and casualty insurance companies, representing over 400 insurers that provide all lines of property and casualty insurance throughout the United States and that wrote more than $109 billion in annual premiums in 2002. As discussed in more detail below, AIA supports the ANPR proposal to provide simpler alternatives to GLBA notices, as long as the proposal (a) is permissive, not mandatory, (b) where utilized, provides insurers with "safe harbor" protection, (c) incorporates flexibility to allow individual insurers to properly explain their individual information sharing practices, (d) leads to regulatory revisions that align with GLBA standards, and (e) can be implemented uniformly and consistently across insurance regulatory jurisdictions.

**A. Federal Preemption Keyed To GLBA Privacy Standards Is Critical**

This last point – uniformity and consistency of privacy regulation – turns on federal preemption of state privacy laws and regulations that differ from those in GLBA. As an association whose members are regulated by the 50 states and the District of Columbia, AIA has a significant interest in ensuring that privacy regulation is uniform and consistent. For AIA member companies, many of which operate regionally and nationally, uniformity and consistency are necessary for three overriding reasons: (1) compliance implementation; (2) reduction in cost burden; and (3) leveling the competitive playing field. The costs of ensuring compliance increase with differing regulation. Those costs will inevitably increase where a company implements an enterprise-wide privacy compliance program based on federal standards, only to be forced to re-tool that program because of deviations at the state level. In addition, an uneven insurance regulatory playing field in the area of privacy may tip the competitive balance in favor of federally regulated financial institutions (which are regulated by one standard instead of by 51 standards).

Our experience with GLBA implementation (and that of our member companies) at the state level is that failure to provide strong federal preemption of state insurance privacy regulation has perpetuated a patchwork of differing privacy laws and regulations. Prior to GLBA's enactment, more than a dozen states had state insurance privacy laws patterned after the National Association of Insurance Commissioners ("NAIC") Model Insurance Information and Privacy Protection Act adopted in 1982 ("1982 NAIC Model"). The 1982 NAIC Model required insurers to provide insurance applicants and customers with privacy notices that differ from the GLBA privacy notices. None of the 1982 NAIC Model states repealed their existing insurance privacy laws. Instead, some states integrated GLBA standards into their existing insurance privacy frameworks. Other states adopted GLBA privacy regulations in addition to their existing insurance privacy laws. Still other states did nothing.

The situation in the remaining states is not much better. Despite the NAIC's unanimous adoption of a model insurance privacy regulation following enactment of GLBA, many states chose not to adopt the model exactly, but instead adopted portions of the model or modified certain provisions of the model. The result is an uneven patchwork of insurance privacy laws and regulations that defies attempts at uniformity and consistency.

Equally important, the state privacy patchwork keeps shifting. In 2003, the California legislature enacted Senate Bill 1, which changes the GLBA third-party marketing disclosure standard from "opt-out" to "opt-in," and imposes new and different notice requirements. For insurance consumers, the potential result in

California – a 1982 NAIC Model state – may be the receipt of 3 separate, different privacy notices (one under California's existing insurance privacy law, a second under GLBA, and a third under Senate Bill 1) from their insurers. This is the antithesis of the process that the ANPR attempts to promote, and the result is consumer confusion and frustration directed at the insurers that must comply with this complex maze of privacy standards. As a result, AIA strongly favors federal preemption based on existing GLBA standards. For our industry, preemption will lead to greater consumer understanding and more streamlined notices of insurer privacy practices.

**B. Regulatory Revisions Will Simplify Privacy Notices**

There are several areas where the GLBA regulations (those adopted by the federal agencies, as well as the NAIC model privacy regulation) could be revised to align more closely with GLBA itself. This, in turn, would simplify privacy notices. First, the regulations require GLBA privacy notices to describe categories of affiliates and the information that is shared with them. See, e.g., NAIC Privacy of Consumer Financial and Health Information Model Regulation, Model #672-1, §§ 7A(3), (4) (Sept. 2000) ("NAIC Privacy Model Regulation"). Neither GLBA nor the Fair Credit Reporting Act ("FCRA") requires such a description. Deletion of this requirement would make the regulations consistent with the underlying statute and would shorten the content of privacy notices. Second, the regulations require financial institutions to describe categories of third party service providers and the categories of information that are disclosed to them. See, e.g., NAIC Privacy Model Regulation at § 7A(5). Again, this requirement does not appear in GLBA, and consumers have no ability to opt-out of these disclosures. Inclusion of this information in the content of GLBA privacy notices makes the notices unnecessarily complex. This regulatory requirement should be removed.

Finally, and perhaps most importantly, the notice contents provisions of the regulations (see NAIC Privacy Model Regulation at § 7A(6) contain an "explanation of the consumer's right ... to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties." While it may appear self-evident that insurers that do not share nonpublic personal financial information in this context should not include an "opt-out" explanation in order to avoid confusion, the regulations should be revised to make this clear. Indeed, the sample notices in Appendices A, B, and D to the ANPR do not allow flexibility to delete the "opt-out" language where that language is not needed.

These regulatory revisions would eliminate unnecessary content and make GLBA privacy notices more understandable to consumers. Consumers are not well-served by privacy notices that include language that is not in the underlying statute.

**C. The Regulations Should Provide Flexibility**

Many of the questions for comment contained in the ANPR ask the fundamental question whether simplified privacy notices should be mandatory or permissive. AIA urges the Joint Agencies to provide flexibility for companies by creating a short-notice "safe harbor." As we have noted, insurers spent significant resources developing and implementing privacy compliance programs based on the GLBA privacy standards. If simplified notices were mandatory, those companies would have to spend additional resources to conform their current notices to the short-form standards. Alternatively, if simplified notices were optional, but use of those notices provided insurers with a regulatory "safe harbor" against private or regulatory enforcement actions, the Joint Agencies' objective of developing simplified privacy notices would be achieved without penalizing insurers that complied with GLBA and the current privacy regulations.

**D. The Joint Agencies Should Urge State Insurance Regulators To Adopt Federal Regulatory Revisions Without Amendment**

Assuming arguendo that federal preemption cannot be achieved, AIA strongly recommends that the Joint Agencies work with the NAIC and individual state insurance regulators to promote uniformity and consistency by adopting any federal regulatory revisions verbatim at the state level. As previously mentioned, the NAIC has been able to develop model laws and regulations that are adopted unanimously by its membership. However, difficulties arise when those models are introduced in the various insurance regulatory jurisdictions. We have documented some of those difficulties with respect to the NAIC's GLBA model privacy regulation.

The proclivity of some state insurance regulators to go in a different direction should not preclude the Joint Agencies from laying the foundation for uniform adoption of regulatory revisions. If successful, the Joint Agencies will have addressed one of AIA's primary concerns – that federal standards will become "lost in translation" at the state level, resulting in higher costs of doing business in those jurisdictions and increased consumer confusion.

**E. The Joint Agencies Should Consider Another Alternative to Simplified Notices**

AIA has reviewed the short notices contained in the appendices and cannot endorse Appendix A, B, or D as currently worded. Because the notice in Appendix C provides the most flexibility for individual insurers to properly convey their information sharing practices, it has the most potential for success as a "safe harbor."

But, AIA urges the Joint Agencies to consider another alternative. A couple of years ago, the NAIC formed a Privacy Notice Content Subgroup to examine growing confusion with the understandability and readability of GLBA privacy notices. AIA was a key contributor to that Subgroup. When the Subgroup issued its final report in March 2003, it highlighted a number of areas where GLBA privacy notices might be shortened or simplified to the benefit of consumers, including (a) the placement and ordering of items in notices, (b) the use of "terms of art" that might not be commonly understood, (c) the extent to which different items in notices could be combined, (d) explaining information sharing "permitted by law", and (e) notice format. We have attached the final report for your consideration. We believe that it might prove helpful should this notice proposal go forward.

The report also discussed the possible inclusion of a preamble or introductory statement that would accompany the GLBA notice designed to educate insurance consumers about the privacy protections available under GLBA. The preamble could be used for electronic and written versions of GLBA notices. The preamble discussion used the following example of an introductory statement:

- *Privacy policy.* Licensees must have privacy policies describing their personal information collection practices, and the extent to which they share that information with third parties for purposes other than normal business operations.

- *Privacy notice*. Licensees must provide privacy notices to customers, reflecting their privacy policies, when the relationship is established and annually thereafter. A privacy notice must also be provided to applicants and certain other non-customers when their personal information is shared with a third party for marketing purposes, or other purposes for which disclosure without consent is not expressly permitted or required by law.

- *Marketing "opt-out."* Licensees must provide their customers, applicants, and other consumers with the opportunity to "opt-out" from having their personal financial information shared with third parties for marketing purposes. The only exceptions are for financial information shared with a corporate affiliate, with the licensee's own service providers or under a joint marketing agreement with another financial institution.

- *Medical information authorization.* Licensees may not share personal health information for marketing purposes with anyone, including affiliates, unless the licensee has received affirmative authorization to do so.

- *Business operations and legal disclosures.* Licensees may share personal information for non-marketing business operations and for legal purposes without consent.

- *Affiliates*. Except for health information, the restrictions on sharing personal information with third parties do not apply if the third party is under common ownership with the licensee.

NAIC Privacy Notice Subgroup Report on Improving Privacy Notices at 9-10 (Mar. 10, 2003). If the proposal moves forward, AIA would recommend inclusion of a preamble or introductory statement as another alternative. We believe that much of the confusion arises because consumers are unaware of GLBA's privacy standards. A simple one-page introductory statement, like the one set forth above, would better inform consumers about privacy protections afforded under GLBA.

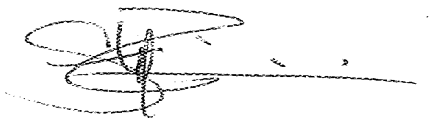
**F. The Recent Enactment of FACTA Must Be Taken Into Account**

Any proposal to simplify GLBA privacy notices must also account for the Fair and Accurate Credit Transactions Act of 2003 ("FACTA"), which established new standards for information sharing among affiliated companies and amended certain provisions of the Fair Credit Reporting Act ("FCRA"). For insurers, those amendments should not appreciably alter privacy notices, but new and continued preemption provisions will probably pave the way for more uniform and consistent notices when used in the states. While consideration of FACTA and FCRA may delay the proposal, that consideration is necessary to ensuring that financial institution privacy notices clearly and accurately convey information sharing and privacy choices available to consumers.

* * *

AIA welcomes the opportunity to help shape the process for generating privacy notices that are easier for consumers to understand. We hope that the proposal will allow that to occur, while producing uniformity and consistency of privacy notice regulation in a flexible format.

Respectfully submitted,



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