COMMENT

07-02
(11)

NAMIC®

NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

May 29, 2007

Received CFTC
Records Section
05/30/07

Office of the Comptroller of the Currency
250 E Street, S.W.
Mail Stop 1-5
Washington, DC 20219

Re: Docket ID OCC-2007-0003

Ms. Jennifer Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Re: Docket No. R-1280

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429

Re: RIN 3064-AD16

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, DC 20552
Attention: OTS-2007-005

Re: Docket ID OTS-2007-0005

Ms. Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428

Re: RIN 3133-AC84

Federal Trade Commission
Office of the Secretary
Room 135 (Annex C)
600 Pennsylvania Avenue, N.W.
Washington, DC 20585

Re: Model Privacy Form, FTC File No. P034815

Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

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

Ms. Eileen Donovan
Acting Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: RIN 3038-AC04

RECEIVED
C.F.T.C.
2007 MAY 29 PM 4:15
OFC. OF THE SECRETARIAT

RE: Interagency Proposal for Model Privacy Form

Ladies and Gentlemen:

The National Association of Mutual Insurance Companies ("NAMIC") is pleased to offer comments on the Interagency Proposal for Model Privacy Form ("Model Form") under the Gramm-Leach-Bliley Act ("GLBA"), Title V, Subtitle A, issued jointly by the Federal agencies. [1]

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 the Agencies 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.[2] The Agencies on March 29 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 of sharing, a consumer's right to opt out.

The NPR proposes that use of the model form be optional, but that financial institutions that choose to use the model form would satisfy the disclosure requirements for the notices and could take advantage of a legal safe harbor. Under the NPR, after a transition period, institutions using notices based on sample clauses currently contained in most of the Agencies' privacy rules would lose their safe harbor protection.

NAMIC supports the goal of simplification and we applaud the Agencies for their efforts in developing a simpler, more meaningful privacy notice form. While we support the goal of simplification, we have several significant concerns with the proposal as currently outlined. We urge the Agencies to work with NAMIC and

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[1] 72 *Fed. Reg.* 14940 (March 29, 2007).
[2] Section 728 of the Financial Services Regulatory Relief Act of 2006, Pub. L. 109-351, 120 Stat. 1966.

the insurance industry to improve the model form to meet the needs of insurers and consumers.

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"). Financial institutions were first required to distribute privacy notices by July 1, 2001. Thereafter, notices required under GLBA must be delivered to consumers no later than when a customer relationship is formed and annually thereafter throughout the life of the relationship. The privacy notices must describe the institution's policies and practices with respect to disclosing nonpublic personal information about a consumer to both affiliated and nonaffiliated third parties. The notices must accord consumers with a reasonable opportunity to opt out of sharing of nonpublic personal information with nonaffiliated third parties, other than as permitted by statute.

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

[3] Section 603(d)(2)(A) Fair Credit Reporting Act; 15 U.S.C 1681
[4] 15 U.S.C. § 6805(a).

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.

The intent of Congress in adopting the GLBA was to provide a new framework for financial modernization to facilitate the provision of products and services to consumers on an integrated basis by affiliated financial institutions, including banking, insurance and securities firms. Title V, the "privacy article" of GLBA, address non-public personal information and requires financial institutions to give consumers notice of how such information may be used. Consumers are also given a new choice as to sharing their personal information with non-affiliated companies for marketing purposes. Financial institutions under Title V in Section 506 were directed in that same notice to offer consumers choices in how to limit sharing information which would be characterized as non-transactional or non-experience information under the Fair Credit Reporting Act ("FCRA"). The opt out notice respecting the sharing of such information within affiliate groups was addressed.

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 proposes that use of the model form be optional for financial institutions. NAMIC is pleased that the agencies 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 to 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. .

Content Flexibility

The Agencies requested comment on whether institutions can accurately disclose their information sharing practices using the standardized provisions in the model form. 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.

Each of the 50 states and the District of Columbia has adopted guidance for insurers to implement the GLBA privacy requirements. Most of the state requirements are based on the Model Privacy of Consumer Financial and Health Information Regulation adopted by the National Association of Insurance Regulators; however, significant variations exist between jurisdictions. For example, the California legislature in 2003 enacted legislation which changes the GLBA third-party marketing disclosure standard from "opt-out" to "opt-in." The legislation also imposed new and different notice requirements. Insurers have developed and implemented privacy policies and notices to accommodate these different and/or additional state requirements, often using the sample clauses.

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 the Agencies to permit institutions to make appropriate modifications to the language of the model form. Specifically, we urge the Agencies to permit institutions to modify the model form to satisfy state law requirements. In addition, we urge the Agencies to permit additions or modifications to permit disclosure of privacy rights other than those established by GLBA or the FCRA or describe non-standard privacy practices.

Consolidated Notices/Insurance Notices

Financial institutions affiliated with other financial institutions may desire to utilize a single notice form to cover the practices and policies of all covered entities. To facilitate the use of a single consolidated form, particularly where the covered institutions provide insurance, and banking or securities products or services, NAMIC proposes 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. We believe these changes can lead to a single form suitable for all financial services companies coming under the umbrella of the GLBA and its goal of communication of information sharing practices in a consistent manner under Title V.

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 to option to use the model form.

Format Standardization

The Agencies requested comment on whether each page of the proposed model form should be required to be on a separate piece of paper and what paper size would be appropriate for the model form. They also requested comment on whether financial institutions should be permitted to use color and/or logos on their privacy notices.

The Agencies propose a number of requirements designed to standardize privacy notices. As outlined, NAMIC is concerned that several of these requirements will impose operational difficulties. Specifically, we are concerned over requirements that the notices be presented on two (three, if an opt-out is provided) 8.5" x 11" single-sided sheets of white or light colored paper with black or suitable contrasting color ink, and that the notice not be incorporated into any other document.

Our member companies do not believe it is necessary, or appropriate, for the Agencies 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. In addition, many institutions include privacy notices in billings or other communications and the proposed requirements could require institutions to send privacy notices in separate mailings. While consumers may have expressed a preference for the format it is not clear that the full size and single side requirements increase understanding and the preference should not be used as a justification for the significant cost increase that would result. Similarly, not permitting the privacy notice to be included in other consumer communications needlessly reduces delivery options and may ironically hamper efforts of insurers to provide comprehensive policy and account information to consumers in a consolidated format.

Many companies use logos or colors to identify their products to consumers. The use of these highly recognizable symbols helps consumers to identify the

institution to which the notice is applicable. NAMIC believes that incorporation of corporate logos and colors will not interfere with the purpose and goals of the privacy notices and should be permitted.

NAMIC urges the Agencies to remove requirements for specific paper sizes and document length and the requirement that the privacy notice be separated from other documents.

Sample Clauses

The Agencies requested comments on the proposal to replace the sample clauses with the proposed model form. Specifically, the Agencies seek comment on whether sample clauses should be retained and whether the transition period is appropriate.

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 noticed 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.

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 that it 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.

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[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.

These protections are particularly important for insurers. It is highly unlikely that states will conform their requirements to be consistent with 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 the Agencies to permit the continued use of sample clauses and the corresponding safe harbor protection for insurers.

Form Content

In addition to the areas on which the Agencies sought comment, NAMIC would like to raise two issues of particular concern to our members. The first issue concerns 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 three 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.

Conclusion

NAMIC fully supports the Agencies' efforts to simplify and streamline the privacy notice process and to increase consumer understanding. We appreciate that use of the model form would be voluntary, but are concerned about the proposal to remove the sample clauses. Likewise, we are concerned that the format of the form is not 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. NAMIC also opposes proposals to stipulate paper size, the use of single-sided paper and separation from other policy and account documents.

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,

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