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May 20, 2009

Via Electronic Submission

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

Ms. Jennifer Johnson  
Secretary of the Board  
Federal Reserve System  
20<sup>th</sup> Street and C Streets, N.W.  
Washington, DC 20551  
Docket No. R-1280

Federal Trade Commission  
Office of the Secretary  
Room H-135 (Annex C)  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20585  
FTC File No. P034815

Office of the Comptroller of the Currency  
250 E Street, S.W.  
Mail Stop 1-5  
Washington, D.C. 20219  
Docket Number OCC -2007-0003

Regulation Comments  
Chief Counsel's Office  
Office of Thrift Supervision  
1700 G Street, N.W.  
Washington, D.C. 20552  
Attention: OTS-2007-0005

Mary Rupp  
Secretary of the Board  
National Credit Union  
1775 Duke Street  
Alexandria, Virginia 22314  
Proposed Rule Part 716

Eileen Donovan  
Secretary of the Commission  
Commodity Futures Trading Commission  
Administration  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581

Re: File Number S7-09-07

Ladies and Gentlemen:

The American Council of Life Insurers ("ACLI") is pleased to provide you with its comments it has filed with the Securities and Exchange Commission (the "Commission") in response to the Commission's reopening of the period for public comment on proposed amendments to

Regulation S-P,<sup>1</sup> which implements the privacy provision of the Gramm-Leach-Bliley Act, originally published in the *Federal Register* on March 29, 2007.<sup>2</sup>

ACLI requests that its comments be included in your record concerning your request for comments on the Gramm-Leach-Bliley Proposed Model Privacy Form.

Sincerely,



Roberta Meyer

Attachments

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<sup>1</sup> 74 *Fed. Reg.* 17925 (April 20, 2009).

<sup>2</sup> 72 *Fed. Reg.* 14940 (March 29, 2007).



**Roberta Meyer**  
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May 20, 2009

Elizabeth M. Murphy  
Secretary  
Security and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: File Number S7-09-07

Ladies and Gentlemen:

The American Council of Life Insurers (“ACLI”) is pleased to provide comments to the Securities and Exchange Commission (the “Commission”) in response to the Commission’s reopening of the period for public comment on proposed amendments to Regulation S-P, which implements the privacy provisions of the Gramm-Leach-Bliley Act (“GLB Act”),<sup>3</sup> originally published in the Federal Register on March 29, 2007.<sup>4</sup> ACLI is the principal trade association of life insurance companies, whose 340 life insurance companies account for 93 percent of the industry’s total assets, 94 percent of life insurance premiums and 94 percent of annuity considerations. ACLI member companies are also major participants in the pension, long term care insurance, disability income insurance, and reinsurance markets.

In addition, many of ACLI member companies manufacture variable annuities and variable life insurance products that are registered under the federal securities laws and distributed through broker-dealers. Over 50% of FINRA’s 653,000 registered representatives work for broker-dealers affiliated with life insurance companies. Some life insurance agents also operate as registered investment advisers. Licensed insurance agents that sell variable insurance products are subject to the requirements of both the federal securities laws and state insurance laws. The proposed amendments to Regulation S-P, therefore, will have a significant and distinct impact on life insurers, their distributors, and their agents.

#### LIFE INSURANCE INDUSTRY’S INTEREST

The Financial Services Regulatory Relief Act of 2006 (the “Regulatory Relief Act”) amended section 503 of the GLB Act to direct the Federal agencies, specified in GLB Act Section

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<sup>3</sup> 74 Fed.Reg. 17925 (April 20, 2009)

<sup>4</sup> 72 Fed.Reg. 14940 (March 29, 2007)

504(a)(1)<sup>5</sup> (“Agencies”), to jointly develop a model form (“Model Form”) that may be used at the option of financial institutions to provide initial and annual privacy notices under section 503 of the GLB Act.<sup>6,7</sup> The Regulatory Relief Act further amends section 503 of the GLB Act to provide that any financial institution that elects to use the Model Form developed by the Agencies shall be deemed to be in compliance with the disclosures required under that section.<sup>8</sup>

Section 503(a) of the GLB Act requires financial institutions to provide initial and annual privacy notices to customers.<sup>9</sup> Life insurers are financial institutions under the GLB Act because they are engaged in financial activities as defined in § 4(k) of the Bank Holding Company Act.<sup>10</sup> Accordingly, if a life insurer uses the Model Form developed by the Agencies, as provided for in the amendments to the GLB Act, made by the Regulatory Relief Act, the insurer will be deemed to be in compliance with the initial and annual disclosure requirements of the GLB Act. Moreover, many life insurers are affiliated with other financial institutions, such as broker-dealers regulated by the SEC and depository institutions regulated by the Federal bank supervisory agencies. The Agencies’ proposed Model Form, therefore will directly affect ACLI member companies. Also, many of these affiliated companies find it efficient to send customers one uniform privacy notice that reflects the privacy policies of the affiliated group of companies. For these reasons, ACLI believed it was appropriate to comment on the proposed Model Form, originally published in the Federal Register on March 29, 2007. These comments were set forth in an ACLI letter to the Agencies, dated May 29, 2007, a copy of which is attached. For the same reasons and for the additional reasons explained below, ACLI believes it appropriate to respond to the Commission in connection with its reopening of the public comment period relating to the Model Form.

#### CONCERNS WITH THE QUALITATIVE TESTING

The Commission indicates that it is reopening the comment period before final action is taken on the Model Form to provide all interested parties an opportunity to comment on the additional quantitative testing documents placed in the comment file for the proposed rule.<sup>11</sup> Of critical importance to ACLI member life insurance companies, our review of the “Consumer Comprehension of Financial Privacy Notices -- A Report on the Results of the Quantitative Testing” (the “Report on the Results of the Quantitative Testing”) and the “Mall Intercept Study of Consumer Understanding of Financial Privacy Notices: Methodological Report” (the “Mall Study Report”) revealed that the documents tested and the analysis performed focused almost exclusively on banks and their customers. The sample notices were bank notices;<sup>12</sup>

<sup>5</sup> 15 U.S.C. Section 6804(a)(1) (Securities and Exchange Commission, Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Trade Commission, Office of Thrift Supervision, Federal Deposit Insurance Corporation, National Credit Union Administration, and the Commodity Futures Trading Commission)

<sup>6</sup> Section 728 of the Financial Services Regulatory Relief Act of 2006, Pub.L. 109-351, 120 Stat. 1966

<sup>7</sup> 15 U.S.C. Section 6803(e)(1).

<sup>8</sup> 15 U.S.C. Section 6803(e)(4)

<sup>9</sup> 15 U.S.C. Section 6803(a)

<sup>10</sup> 12 U.S.C. Section 1843(k)(4)(B)

<sup>11</sup> 74 *Fed.Reg.* 17925 (April 29, 2009)

<sup>12</sup> Mall Intercept Study of Consumer Understanding of Financial Privacy Notices: Methodological Report, Appendix C: Model Privacy Notices Used in Testing

and most of the survey questions related to those sample notices and banks.<sup>13</sup> The sole references to insurance companies appear to have been in the sample bank notice forms that included an insurance company as an affiliate. There appears to be no evidence of any testing to determine how customers of insurance companies would have viewed these sample notices.

ACLI submits that the failure to include insurance company notices and insurance customers reflects a significant weakness in the study and its findings, and gives rise to significant question as to whether the conclusion, that “the KCG Table rates the highest on a diverse set of communication effectiveness measures”<sup>14</sup> would have been true if insurance customers had been surveyed. It also gives rise to significant concern as to whether any of the sample bank notices tested would be understandable and meaningful to insurance customers, or enable them to identify and compare different insurers’ and other financial institutions’ sharing practices, as required under the Regulatory Relief Act.

Moreover, as indicated above, the overall conclusion that the KCG Table Notice significantly outperformed all the other notices, is undermined by the fact that it is not entirely clear that the KCG Table Notice significantly outperformed the Sample Clause Notice. This is particularly true as a result of the ambiguity as to the outcome in connection with the opt-out question, characterized as an “anomaly” on page 12 and discussed again in the “Conclusion” on page 17 of the Report on the Results of the Quantitative Testing.<sup>15</sup> Also, while the KCG Table Notice generally scored somewhat higher than the Sample Clause Notice, as reflected in Table 1,<sup>16</sup> where the KCG Table Notice has a “True low sharing score” of 40.6% and the Sample Clause Notice has a score of 25.9%, the KCG Table Notice’s score of 40.6% still is relatively low, indicating that most of the respondents, who saw the KCG Table Notice, did not provide correct fact-based reasons for choosing the lower sharing bank.

#### LIFE INSURERS’ UNIQUE INFORMATION PRACTICES

ACLI continues to believe that the goal of providing financial institutions the opportunity to simplify privacy notices is a worthy objective; and we continue to appreciate the Commission’s and other Agencies’ efforts to develop a more meaningful model privacy form, as required under the Regulatory Relief Act. A Model Form should facilitate the ability of consumers to better comprehend and compare financial institutions’ privacy policies and practices.

However, in view of the weaknesses in the findings of the study described above, most significantly, the lack of evidence that any of the tested bank forms would be understandable and meaningful to the customers of life insurance companies, ACLI strongly urges that, in finalizing the Model Form, the Commission and the other Agencies take into account the suggestions made in ACLI’s May 29, 2007 letter, regarding the proposed Model Form,

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<sup>13</sup> Mall Intercept Study of Consumer Understanding of Financial Privacy Notices: Methodological Report, Appendix A: Final Interview Protocol

<sup>14</sup> Consumer Comprehension of Financial Privacy Notices - A Report on the Results of the Quantitative Testing, p. 17

<sup>15</sup> Consumer Comprehension of Financial Privacy Notices, p. 12 and p. 17

<sup>16</sup> Consumer Comprehension of Financial Privacy Notices, p. 9

published by the Commission and the other Agencies in the Federal Register on March 29, 2007.

To enable life insurers to use the proposed Model Form, ACLI believes that the Agencies need to take into account the unique aspects of life insurers' information collection and sharing practices as well as the fact that life insurers must accommodate various state privacy and disclosure requirements, that may differ from the GLB Act requirements. ACLI also submits that the privacy notices required under Section 503(a) of the GLB Act should not create barriers to affiliated financial institutions working together, in an efficient manner, to provide a single uniform notice to customers of all the affiliates. Therefore, ACLI urges that privacy notices that accommodate financial institution holding companies, permitted under the GLB Act, should be given safe harbor under the Commission's and other Agencies' rules, so that life insurers, that are part of diversified financial institution holding companies, are permitted to use a single uniform privacy notice, that reflects the privacy policies of the affiliated group of companies.

In view of the above, ACLI again urges the Commission and the other Agencies to permit life insurers that use the Model Form with the prescribed format: (i) to make limited modifications to the language, by omitting inapplicable provisions, or adding additional bullets, boxes, or footnotes; or (ii) to include supplemental materials with the Model Form to make their notices accurately reflect life insurance industry's practices and comply with state insurance privacy laws, without losing the safe harbor.

In addition, ACLI urges the regulators to modify certain parts of the Model Form to make specific generic changes, generally applicable to financial institutions, to also make the form more reflective of life insurance industry practices and state insurance privacy laws. By permitting limited modifications and making certain language changes to the Model Form, the Agencies will enable life insurers to make use of the Model Form and facilitate the ability of life insurers that are part of diversified holding companies to use a single notice, in line with the clear intent of the GLB Act.

ACLI's views regarding parts of the Model Form in connection with which life insurers should be permitted to make modifications and our specific recommended language changes are explained in detail on pages 4 -12 of the attached May 29, 2007 ACLI letter. ACLI's recommended language changes are also reflected in the mark-up of the Model Form, attached to the May 29, 2007 letter.

Under the Commission's and other Agencies' current GLB Act privacy regulations, financial institutions obtain a safe harbor by using the sample clauses set forth in the regulations. The Agencies propose to eliminate this safe harbor after a one-year transition date. As indicated previously, ACLI strongly objects to the elimination of the safe harbor for institutions that use the notices with the sample clauses -- particularly in view of the weaknesses in the conclusion of the study and lack of clarity as to whether the KCG Table Notice really did outperform the Sample Clause Notice, as discussed above.

As the Commission and other Agencies are aware, the GLB Act assigns jurisdiction over insurers to the state insurance authorities. A majority of states have adopted laws and regulations that are substantially similar to the language adopted by the Agencies in their GLB Act regulations. Generally, state regulations provide a safe harbor similar to that provided by the Agencies in their current regulations.

Life insurers and other financial institutions have invested significant resources in fine-tuning their privacy notices to comply with the GLB Act, the Agencies' rules, and related state laws, where applicable. If the Commission and other Agencies have deemed notices to be in compliance with the GLB Act, because they included the sample clauses the Agencies developed, it seems that the notices should continue to be deemed to be in compliance -- regardless of the fact that the Agencies have developed a Model Form.

Moreover, given the fact that use of the Model Form is voluntary, there is no reason why the Commission and other Agencies should punish an insurer, or other financial institution, that chooses not to use the Model Form. Nor should an insurer be forced to choose between a safe harbor under federal regulations and compliance with state privacy laws. In view of the above, including the lack of clarity as to whether the KCG Table really did outperform the Sample Clause Notice in the study, ACLI again strongly urges that the Commission and the other Agencies maintain the existing safe harbor for institutions, particularly life insurers, that use notices with the sample clauses.

#### PROPOSED CHANGES TO REGULATION S-P TO CREATE AN EXCEPTION TO THE GLB ACT NOTICE AND OPT-OUT REQUIREMENTS

In March, 2008, the Commission published proposed changes to Regulation S-P, to establish an exception to permit disclosure of certain limited customer information to a broker, dealer or investment adviser, when he or she leaves the company to join another organization, without the need to provide the customer with notice and an opportunity to opt-out from the disclosure.<sup>17</sup> This change will have a significant and distinct impact on life insurers, their distributors, and their agents, as explained in ACLI's May 12, 2008 comment letter to the Commission, a copy of which also is attached.

Given the importance and controversial nature of this proposed amendment to Regulation S-P, ACLI submits that the Model Form cannot be appropriately finalized until a decision has been made as to whether this exception should be adopted. If the exception is adopted, the language of the Model Form should be modified to reflect the exception. Some of the "boxes" in the proposed Model Form that may need to be modified include the following: (i) Reasons we can share your personal information -- For nonaffiliates to market; (ii) Sharing practices -- Why can't I limit all sharing; and (iii) Check your choices -- Do not share my personal information with nonaffiliates to market their products and services to me.

Also, if the Commission does decide to adopt the proposed exception, as indicated in our May 12, 2008 letter, the ACLI believes that as written, the exception could be misconstrued to *require* a company to disclose the information specified in the exception to departing representatives. Accordingly, we again strongly urge that Regulation S-P be clarified to indicate that the exception is not intended to impose *any* requirement that information be disclosed to departing brokers, dealers or investment advisers. In addition, we urge the Commission to underscore that: (i) in any event, the customer information a company's representative may take when departing is governed by the contract between the representative and the company; and (ii) a company's disclosure policies and practices may be subject to other laws or regulations, such as state GLBA privacy laws applicable to

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<sup>17</sup> 73 Fed. Reg. 13692 (March 13, 2008)

insurers, that also govern permitted disclosures by the company. These clarifications are particularly important to our member company life insurers that have registered representatives that are also licensed insurance agents, subject to the requirements of both the federal securities laws and state insurance laws, as well as to obligations and responsibilities under contracts between the parties.

#### CONCLUSION

Finally, in view of the efficiencies and desirability of use of a single uniform privacy notice that reflects the privacy policies of an affiliated group of financial institutions, and to ensure that the Model Form takes into account the needs of all the different types of financial institutions, the ACLI urges the Commission to continue to coordinate with the other Agencies in the finalization of the Model Form, as required under Section 503 of the Gramm-Leach-Bliley Act, as amended by Section 728 of the Financial Services Regulatory Relief Act.

ACLI appreciates and thanks the Commission for the opportunity to comment and the consideration of its views regarding the quantitative testing documents and the proposed Model Form. If you have any questions, please do not hesitate to contact me.

Sincerely,



Roberta Meyer

#### Attachments

cc

Robert E. Feldman  
Executive Secretary  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, N.W.  
Washington, D.C. 20249  
Attention: Comments

Federal Trade Commission  
Office of the Secretary  
Room H-135 (Annex C)  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580  
FTC File No. PO34815

Regulation Comments  
Chief Counsel's Office  
Office of Thrift Supervision

1700 G. Street, N.W.  
Washington, D.C. 20552  
Attention: OTS-2007-005

Eileen Donovan  
Secretary of the Commission  
Commodity Futures Trading Commission  
Administration  
Three Lafayette Centre  
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Jennifer Johnson  
Secretary of the Board  
Federal Reserve Board  
20<sup>th</sup> and C Streets, N.W.  
Washington, D.C. 20219  
Docket No. R-1280

Office of the Comptroller of the Currency  
250 E Street, S.W.  
Mail Stop 1-5  
Washington, D.C. 20219  
Docket Number OCC-2007-0003

Mary Rupp  
Secretary of the Board  
National Credit Union  
1775 Duke Street  
Alexandria, Virginia 22314  
Proposed Rule Part 716



**Roberta Meyer**  
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May 12, 2008

Via Electronic Filing

Nancy M. Morris  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: File Number S7-06-08; Regulation S-P: Privacy of Consumer  
Financial Information and Safeguarding Personal Information

Ladies and Gentlemen:

The American Council of Life Insurers (“ACLI”) is pleased to provide comments to the Securities and Exchange Commission (the “Commission”) on its proposed amendments to Regulation S-P, Privacy of Consumer Financial Information and Safeguarding Personal Information.<sup>1</sup> ACLI is the principal trade association of life insurance companies, whose 353 life insurance companies account for 93 percent of the industry’s total assets, 93 percent of life insurance premiums and 94 percent of annuity considerations. Many of our member companies manufacture variable annuities and variable life insurance products that are registered under the federal securities laws and distributed through broker-dealers. Over 50% of FINRA’s 672,000 registered representatives work for broker-dealers affiliated with life insurance companies. Some life insurance agents also operate as registered investment advisers. Licensed insurance agents that sell variable insurance products are subject to the requirements of both the federal securities laws and state insurance laws. The proposed amendments to Regulation S-P, therefore, will have a significant and distinct impact on life insurers, their distributors, and their agents.

The life insurance industry has long recognized the importance of protecting its customers’ nonpublic personal information and strongly supports the confidentiality and safeguarding provisions of the Gramm-Leach-Bliley Act (“GLBA”) and implementing state laws and regulations. Our member companies work hard to ensure the confidentiality and security of customer information in accordance with these laws. ACLI appreciates the Commission’s

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<sup>1</sup> 73 Fed.Reg. 13692 (March 13, 2008)

