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ACLI
Financial Security. For Life.

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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
20th 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
Alexandrian, Virginia 22314
Proposed Rule Part 716

Eileen Donovan
Secretary of the Commission
Commodity Futures Trading Commission
Administration
Three Lafayette Centre
1155 21st 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,[1] which implements the privacy provision of the Gramm-Leach-Bliley Act, originally published in the *Federal Register* on March 29, 2007.[2]

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

[1] 74 *Fed. Reg.* 17925 (April 20, 2009).
[2] 72 *Fed. Reg.* 14940 (March 29, 2007).

ACLI
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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), [3] originally published in the Federal Register on March 29, 2007.[4] 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

[3] 74 *Fed.Reg.* 17925 (April 20, 2009)
[4] 72 *Fed.Reg.* 14940 (March 29, 2007)

504(a)(1)[5] ("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. [6] [7] 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. [8]

Section 503(a) of the GLB Act requires financial institutions to provide initial and annual privacy notices to customers.[9] 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.[10] 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.[11] 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;[12]

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[5] 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)

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

[7] 15 U.S.C. Section 6803(e)(1).

[8] 15 U.S.C. Section 6803(e)(4)

[9] 15 U.S.C. Section 6803(a)

[10] 12 U.S.C. Section 1843(k)(4)(B)

[11] 74 *Fed.Reg.* 17925 (April 29, 2009)

[12] 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.[13] 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"[14] 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.[15] Also, while the KCG Table Notice generally scored somewhat higher than the Sample Clause Notice, as reflected in Table 1,[16] 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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[13] Mall Intercept Study of Consumer Understanding of Financial Privacy Notices: Methodological Report, Appendix A: Final Interview Protocol

[14] Consumer Comprehension of Financial Privacy Notices - A Report on the Results of the Quantitative Testing, p. 17

[15] Consumer Comprehension of Financial Privacy Notices, p. 12 and p. 17

[16] 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. [17] 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

[17] 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
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Washington, D.C. 20249
Attention: Comments

Federal Trade Commission
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Room H-135 (Annex C)
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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
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Commodity Futures Trading Commission
Administration
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Jennifer Johnson
Secretary of the Board
Federal Reserve Board
20th 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.
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Washington, D.C. 20219
Docket Number OCC-2007-0003

Mary Rupp
Secretary of the Board
National Credit Union
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Proposed Rule Part 716

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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.[1] 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

[1] 73 *Fed.Reg.* 13692 (March 13, 2008)

efforts to review and revise Regulation S-P standards for safeguarding customer records and responding to data security breaches.

ACLI strongly agrees with the Commission's view that an information security program should be appropriate to the firm's size and complexity, nature and scope of activities and sensitivity of personal information at issue. ACLI believes it is important that a diversified financial organization that includes life insurers be permitted to adopt an information security program that applies to all companies within the organization. This will ensure that the security of the nonpublic personal information of all of the organization's customers is subject to the same level of security protection; and it will appropriately enable the organization to take advantage of economies of scale by adopting information security programs across the entire consolidated organization.

For the reasons just described, ACLI also believes that the proposed requirements for an information security program and response program in the event of security breaches should not conflict with or extend beyond the requirements of Section 501 of the GLBA, the federal interagency guidance, and applicable state laws and regulations. Accordingly, ACLI urges the Commission to modify the proposed rule as discussed below and as otherwise necessary to achieve this goal. ACLI also requests that the proposed rule be modified to make it clear it is only applicable to information of customers with securities products and does not apply to insurance files maintained separately.

Proposed GLBA Exception for Disclosures to Departing Brokers, Dealers or Investment Advisers

The Commission proposes to establish an exception to the GLBA 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. This exception would permit the former representative to solicit customers to whom the representative personally provided a financial product or service on behalf of the company. The information that may be disclosed is limited to the customer's name, contact information (address, telephone number and e-mail address) and a general description of the type of account and products held by the customer. The information may not include the customer's account number, Social Security number or securities positions.

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 strongly urge that the rule 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 insurers, that also govern permitted

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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.

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Proposed Requirements for Information Security Programs

Extension of Scope

ACLI objects to the proposed extension of the requirements with respect to information security programs to employees' information. Section 501 of the GLBA provides that financial institutions have an affirmative and continuing obligation to protect the security and confidentiality of their *customers'* nonpublic personal information.[2] Section 501(b) authorizes the Commission, certain other Federal agencies, and State insurance authorities to establish appropriate standards for financial institutions to insure the security of *customer* information. State laws and regulations that provide guidance for insurers' implementation of the security requirements of GLBA § 501 are based on the Standards for Safeguarding Customer Information Model Regulation, adopted by the National Association of Insurance Commissioners ("NAIC"). Neither the NAIC Model Regulation nor the state laws that track the NAIC Model Regulation apply to employee information. Similarly, there is nothing in § 501 of the GLBA that applies to employee information. Moreover, the guidance of the Federal banking agencies and the Federal Trade Commission does not extend to employee information.[3]

In view of the express language of GLBA § 501, and in order to be consistent with the requirements of the other Federal agencies and the state insurance authorities, ACLI believes the Commission should not extend the scope of the proposed rule to employee information. Accordingly, the ACLI requests the Commission to adjust the proposed amendment to the definition of "personally identifiable financial information" in § 248.3(u)(1)(iv) and the proposed language of § 248.30(a)(2)(iii), relating to the objectives of an information security program, and to make any other necessary corresponding adjustments to the proposed rule to eliminate any extension of the rule to employee information.

Definition of Sensitive Information

The proposed definition of "sensitive personal information" is overly broad and is inconsistent with the definition adopted by the Federal banking agencies. In the proposed rule "sensitive personal information" is defined to mean "personal information." "Personal information" is defined as "any record containing consumer report information, or "nonpublic personal information" as defined in § 248.3(t). As a result, virtually all information a company maintains will be "sensitive personal information." Since the triggers for notice to consumers and regulators are tied to breaches in the security of sensitive personal information, companies will be required to notify customers when misuse of essentially *any* information is reasonably possible and to notify examining authorities when there is a significant risk of substantial harm or inconvenience or an authorized person has intentionally obtained access to or use of essentially *any* information. This is a significant departure from the standards for notice under state security breach laws and used by the other Federal banking agencies, which

[2] 15 U.S.C. § 6801(a).
[3] 70 *Fed. Reg.* 15736 (March 29, 2005).

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define "sensitive personal information" in a manner that is far more meaningful to customers.

In addition, ACLI is concerned that the Commission's proposed definition of "sensitive personal information" also includes a person's Social Security Number ("SSN") and the maiden name of the person's mother. The Federal banking agencies regard an SSN as sensitive customer information only if it is used in combination with the individual's name, address or telephone number. ACLI believes that a SSN should be regarded as "sensitive personal information" only if it is obtained in combination with other information that would permit access to a customer's account. Moreover, a mother's maiden name should not be regarded as sensitive personal information unless the name is used as a password for access to a person's account.

In view of the above, ACLI requests the Commission to modify the definition of sensitive personal information in the proposed rule to reflect the definition adopted by the Federal banking agencies.[4]
Further, because the risk of misuse of information that is encrypted or otherwise rendered unreadable through other methods is nonexistent, ACLI believes that information that is rendered unusable through encryption, redaction, or other methods should not be regarded as sensitive personal information unless the confidentiality of the encryption key or other technology has been compromised. Accordingly, ACLI requests that the definition of sensitive personal information also be modified to make it consistent with numerous state security breach laws, that do not treat information as sensitive personal information if the information is encrypted or rendered unusable through redaction or other methods and neither the encryption key nor other technology has been compromised.[5]

Substantial Harm or Inconvenience

The Commission proposes that a firm's information security program be reasonably designed to protect against unauthorized access to or use of personal information that could result in substantial harm or inconvenience. The proposed rule states that the term "substantial harm or inconvenience" is defined as "personal injury, or more than trivial financial loss, expenditure of effort or loss of time." ACLI believes that the proposed definition of the term "substantial harm or inconvenience" is appropriate. ACLI agrees with the statement in the proposal that a firm's decision to change to an account number or password is not "substantial harm." ACLI also supports the Commission's statement that unintentional delivery of an account statement to an incorrect address is not substantial harm if the information was unlikely to be misused. ACLI agrees that accidental access by an employee to a customer's records would not constitute substantial harm or inconvenience if there is no significant risk of misuse. ACLI recommends that these examples be modified so that they also apply to employees of affiliates and service providers.

Designation of Responsible Employee

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[4] 70 Fed.Reg. 15736 (March 29, 2005

[5] *E.g.*, *see* ORS §646A.602(11)(a) (Oregon).

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The proposal requests comment on whether companies should be required to designate an employee or employees by name to coordinate the information security program or whether companies should be required to designate a coordinator by position or office. ACLI believes that companies should have the flexibility to decide which option to choose and should be able to have consolidated information security programs. Accordingly, ACLI requests that the Commission permit companies to determine the procedure for designating the appropriate person, position, or area within or across the organization that will have responsibility for coordinating the company's information security program.

Service Providers

Proposed Regulation S-P provides that a company's information security program must require service providers by contract to implement and maintain appropriate safeguards. The definition of service provider includes any entity that is permitted access to personal information through its provision of services to the firm. As a result, the proposed rule appears to require firms that have services provided by affiliates to enter into contracts with their affiliates to implement and maintain safeguards.

ACLI believes that the Commission should not require formal contracts between companies and affiliates that are providing services to them. Requiring formal contractual agreements between affiliates ignores the reality that affiliates generally are subject to company-wide policies and standards relating to safeguarding personal information. Moreover, affiliates typically provide services on an informal basis without a formal contract. In view of the nature of these arrangements, contracts requiring affiliates to implement and maintain appropriate safeguards would appear unlikely to provide additional security protection and unnecessarily burdensome. According, ACLI recommends that the Commission clarify the proposed rule so that contracts are not required under these circumstances.

ACLI agrees that firms should be permitted to use third-party reports, such as a review of a service provider's SAS-70 or SysTrust reports, in order to assess the adequacy of service provider information safeguards. ACLI suggests that the Commission also indicate that: (i) other methods for evaluating service provider information safeguards are acceptable as long as they are reasonable, and (ii) formal audits of service providers are not necessary.

Procedures for Responding to Unauthorized Access or Use - Notice and Form SP-30

The proposed rule requires companies to provide written notice to their designated examining authority on Form SP-30 as soon as possible after becoming aware of an incident of unauthorized access to, or use of, personal information in which: (i) there is a significant risk of substantial harm or inconvenience to the individual, or (ii) an unauthorized person has intentionally obtained access to or used sensitive personal information.

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ACLI believes that notice to the designated examining authority should be required *only* if there is a significant risk that the individual will experience substantial harm or inconvenience; and recommends that the proposed rule be modified accordingly. If an unauthorized person has obtained access to or used sensitive personal information, but there is no significant risk of substantial harm or inconvenience to the individual, no enhanced consumer protection will result from requiring the provision of notice to examining authorities and undue burden will be unnecessarily imposed on companies. Alternatively, the Commission should clarify that "intentionally obtained access to or used sensitive personal information" means to have obtained access to or used the information with intent to commit identity theft or for other unlawful purpose.

ACLI also believes that the proposed Form SP-30 is excessively complex and that its use should not be required The proposed rule requires companies to submit Form SP-30 as soon as possible after becoming aware of an incident of unauthorized access to or use of personal information. Because the form is required to be submitted shortly after the incident has occurred, it is unlikely a company will have all of the information requested in the form.

At a minimum, ACLI urges the Commission to adjust the proposed rule to reflect the approach taken by the Federal banking agencies -- which do not require financial institutions to use a specific form and do not specify the details of the filing. ACLI believes that the only information companies should be required to submit to examining authorities is: the name of the company, the date of the incident, a brief description of the incident, the number of persons affected and whom to contact for more information.

ACLI requests that the Commission clarify that: (i) the owner of the information subject to a breach of security is responsible for providing the requisite notices; (ii) only one entity is required to provide the notices; and (iii) a service provider shall provide notice of a breach to the owner of the data. Clarification to this effect is important because in an insurance company offering variable products, there may be one or more investment companies, one or more broker dealers, a transfer agent, and possibly other regulated entities. There is concern that the proposed rule could be construed to require *all* these entities to provide notice.

ACLI also recommends that the proposed rule be modified to require examining authorities to keep confidential and to protect from public disclosure any information they receive in connection with notice of a security breach. ACLI believes that companies should not be required to request confidential treatment with each notice, and that the proposed rule should adjusted to indicate that information provided in filings made with an examining authority, including the Commission, in accordance with Regulation S-P, shall be accorded confidential treatment under relevant laws and rules regarding public availability of information.

Disposal of Personal Information

The proposed rule expands the scope and substance of the current provision in Regulation S-P regarding disposal of personal information. ACLI is concerned by the proposed expansion of the Commission's disposal rule well beyond the scope of the Fair and Accurate Credit

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Transactions Act of 2003 ("FACT Act") and the rules of the other Federal financial institution regulatory agencies. Section 216 of the FACT Act amended the Fair Credit Reporting Act ("FCRA") to require the Federal financial institution agencies to adopt regulations requiring any person that possesses consumer information derived from consumer reports to properly dispose of such information.[6] A consumer report, of course, is a defined term under the FCRA.[7]

When the Commission adopted its disposal rule implementing § 216 if the FACT Act, it applied the rule only to "consumer report information," defined as any record about an individual that is or is derived from a consumer report.[8] The same approach was taken by the other Federal agencies when they adopted rules implementing FACT Act § 216.[9] However, the Commission's proposed rule would extend coverage of its current disposal rule to personal information, which, under the proposed rule, includes not only consumer report information, but also any nonpublic personal information about a consumer.[10] Extension of the coverage of the Commission's disposal provisions beyond the scope of the FCRA and the other agencies' requirements will cause the Commission's requirements to be inconsistent with those of the other agencies and will likely impose significant additional burdens on financial institutions without commensurate enhanced consumer protection.

The proposed rule also requires companies to document in writing the proper disposal of personal information. ACLI is concerned that the current language of the proposed rule may be construed to require written documentation of every disposal of documents containing personal information. Again, such a requirement would impose a significant burden and provide questionable additional consumer protection.

In view of the above, ACLI requests that the proposed rule's disposal requirements be modified to be consistent with the federal banking regulators' rules that extend only to "consumer report information." ACLI also requests that the proposed rule be adjusted to reflect a more reasonable approach that would: (i) require companies to: (a) have appropriate disposal policies and procedures; and (b) periodically review their disposal practices to ascertain whether there is compliance with their policies and required procedures; and (ii) permit companies to rely on certification from their agents or other third parties to the effect that the company is in compliance with its disposal policies and procedures.

Use of Examples

ACLI believes that the examples of acceptable practices contained in the *Federal Register* preamble to the proposed rule can be of considerable value to companies because they present real practical situations that firms may encounter. Accordingly, rather than leaving them in a *Federal Register* preamble, ACLI requests that the examples of acceptable

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[6] 15 U.S.C. § 1681w.
[7] 15 U.S.C. § 1681a(d).
[8] 17 C.F.R. § 248.30(b)(ii).
[9] 69 *Fed. Reg.* 77610, 77612 (December 28, 2004).
[10] Proposed Rule § 248.30(d)(8)

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practices be incorporated into the final rule as nonexclusive, illustrative examples, that are not prescriptive.

Internet Authentication and Red Flag Requirements

The Commission also asks whether the rule's requirements should specify factors such as those identified in the Federal banking agencies' guidance regarding authentication in an Internet environment, or include policies and procedures such as those in the banking agencies' final "red flags" requirements. ACLI does not believe it is necessary for the Commission to adopt these additional requirements and requests that the Commission take no action in this area

Effective Date

ACLI believes that member companies may not have sufficient time to implement the rule in an orderly fashion within 60 days after it is adopted. Member companies are likely to need at least eighteen months after the rule is adopted to implement all of the necessary systems changes. Accordingly, we request that the final rule provide that companies will have at least eighteen

months after the effective date to implement and comply with the requirements of the rule.

* * *

ACLI appreciates the opportunity to provide its comments on the Commission's proposed amendments to Regulation S-P and appreciates your consideration of its views. If you have any questions, please do not hesitate to contact me

Sincerely,

Roberta Meyer

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May 29, 2007

Via Electronic Submission

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

Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549
File No. S7-09-07

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex C)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
FTC File No. P034815

Jennifer Johnson
Secretary of the Board
Federal Reserve Board
20th and C Streets, N.W.
Washington, D.C. 20551
Docket No. R-1280

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

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

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

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

Re: Proposed Model Privacy Form

Ladies and Gentlemen:

The American Council of Life Insurers ("ACLI") is pleased to provide these comments in connection with the Interagency Proposal for Model Privacy Form (the "Model Form") under the Gramm-Leach-Bliley Act ("GLB Act") jointly issued by the Federal agencies[1] (the "Agencies").[2] ACLI is the principal trade association of life insurance companies, whose 373 life insurance companies account for 93 percent of the industry's total assets, 91 percent of life insurance premiums and 95 percent of annuity considerations. ACLI members are also major participants in the pension, long term care insurance, disability income insurance and reinsurance markets.

The Financial Services Regulatory Relief Act of 2006 (the "Regulatory Relief Act") directs the Agencies to jointly develop 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 GLB Act.[3] The Regulatory Relief Act amends section 503 of the GLB Act to require that the model form must be comprehensible, with a clear format and design, provide for clear and conspicuous disclosures, and enable consumers to easily identify the sharing practices of financial institutions and compare privacy practices among financial institutions.[4] 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.[5]

LIFE INSURANCE INDUSTRY'S INTEREST

Section 503(a) of the GLB Act requires financial institutions to provide initial and annual privacy notices to customers.[6] 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.[7] 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. 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. Accordingly, we believe that it is appropriate for us to comment on the Model Form because of the possible effect it will have on life insurers.

INTRODUCTION

ACLI believes that the goal of providing financial institutions the opportunity to simplify privacy notices is a worthy objective. Consumers should find simplified notices more understandable and more useful by enabling them to make more informed choices. We appreciate the Agencies efforts to develop a more meaningful model privacy form. ACLI believes that the development of a model form

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[1] 72 *Fed. Reg.* 14940 (March 29, 2007).
[2] Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Trade Commission, Office of Thrift Supervision, Federal Deposit Insurance Corporation, Securities and Exchange Commission, National Credit Union Administration and the Commodity Futures Trading Commission.
[3] Section 728 of the Financial Services Regulatory Relief Act of 2006, Pub. L. 109-351, 120 Stat. 1966.
[4] 15 U.S.C. § 6803(e)(2).
[5] 15 U.S.C. § 6803(e)(4).
[6] 15 U.S.C. § 6803(a).
[7] 12 U.S.C. § 1843(k)(4(B).

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represents a positive step toward achieving the goals Congress established in the Regulatory Relief Act. A model form should facilitate the ability of consumers to better comprehend and compare financial institutions' privacy policies and practices.

To enable life insurers to use the Model Form proposed by the Agencies, ACLI believes that the Agencies need to take into account 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 differ from the GLB Act requirements. The Model Form and proposal currently do not provide flexibility to permit life insurers to address their unique practices or varying state requirements.

In addition, the GLB Act eliminated the walls between banking, securities, and insurance by allowing the merger of these types of businesses under a single holding company. The privacy notices required under Section 503(a) of the GLB Act should not create barriers to these entities working together, since the GLB Act was clearly intended to permit and foster such activity. Therefore, privacy notices that accommodate this type of holding company should be permitted, and given safe harbor under the 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.

Accordingly, ACLI urges the 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 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. 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 below. The recommended language changes are also reflected in the attached mark-up of the Model Form. 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.

In addition, ACLI believes that in certain instances, the proposal imposes operational burdens that appear to be unnecessary to achieving the goals Congress established in the Regulatory Relief Act. Providing life insurers and other financial institutions with additional operational flexibility, as discussed below, will enhance the usefulness of the Model Form without diminishing its importance and value to consumers.

Under the 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. ACLI strongly objects to the elimination of the safe harbor for institutions that use the sample clauses.

As the 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.

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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 Agencies have deemed notices to be in compliance with the GLB Act because they used 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. Because use of the Model Form is voluntary, there is no reason why the Agencies should punish a financial institution that chooses not to use the Model Form. Nor should companies be forced to choose between a safe harbor under federal regulations and compliance with state privacy laws. Accordingly, ACLI urges that the Agencies maintain the existing safe harbor for institutions that use the sample clauses.

MODEL FORM

"WHAT DOES [ ] DO WITH YOUR PERSONAL INFORMATION?"

Page one of the Model Form permits a financial institution to include the name of the financial institution or the group of affiliated institutions providing the notice. ACLI strongly agrees that affiliated institutions should be permitted to adopt a single privacy notice. However, in view of the limited space provided and the fact that in many instances the names of affiliates are not similar, ACLI believes that consumers may not understand which institutions are sending the Model Form. To reduce the likelihood of this occurring, ACLI believes that financial institutions should be permitted to indicate on the Model Form the names of the affiliated institutions covered by the policy without losing the safe harbor. This could be accomplished through the use of a footnote or a listing on the reverse side of the Model Form.

"WHAT?"

Information Collected

On page one of the Model Form, the section entitled "What?" sets out the types of information financial institutions collect and share. Financial institutions are not permitted to change the language appearing in this section. In order for this section to accurately reflect the types of information life insurers collect, ACLI urges that they be permitted to include additional bullets that reflect types of information they collect and to delete inapplicable bullets without losing the safe harbor. For example, life insurers should be permitted to add a bullet relating to medical information since life insurers collect medical information to perform fundamental life insurance business functions, such as underwriting and claims evaluations.

In order to reflect the practices of the insurance industry, ACLI also recommends the following specific adjustments to this section:

A new bullet should be added to read as follows:

- <u>information to establish your eligibility for our products and services</u>

The current second bulleted phrase should be changed to read as follows:

- account balances or payment <u>or transaction</u> history

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In addition, ACLI suggests that the term "credit history," used in this section, be replaced by the term "consumer report." Credit history is a narrow term and does not convey the range of personal information that institutions may collect and share. ACLI believes that use of the term consumer report will better reflect the practices of the life insurance industry than credit history.

Closed Accounts

On page one of the Model Form, the section entitled "What?" also contains a statement to the effect that the institution continues to share information about a customer after the customer closes the account. Because customers generally do not have "accounts" with life insurers, ACLI recommends that the phrase be changed to read as follows:

> When you are no longer a customer ~~close your account~~, we continue to share . . .

Additionally, ACLI believes that the statement relating to former customers is in the incorrect place on the Model Form. We suggest that it is more appropriate that the statement be included in the section entitled "How?" That section relates to information-sharing practices rather than the type of information collected and shared. Finally, ACLI urges that life insurers and other financial institutions not be required to provide the statement regarding sharing of information relating to former customers if the company does not share information after a customer relationship is terminated.

"HOW"

ACLI suggests that "such as" be used in the section entitled "How?" as follows:

> All financial companies need to share customers' personal information to run their everyday business – such as to process transactions . . .

Use of the phrase "such as" will indicate to consumers that not all companies use personal information for all the purposes presented.

In addition, in the section entitled "How" and throughout the balance of the Model Form, ACLI believes that the term "credit bureaus" may be too limiting. Instead, we suggest use of the term "consumer reporting agencies" which would include entities that maintain personal information that is not related to credit, such as medical information that life insurers share with the Medical Information Bureau.

"REASONS WE CAN SHARE YOUR PERSONAL INFORMATION"

ACLI believes it is very important to ensure that the information contained in the disclosure table, on page one of the Model Form, accurately reflects a life insurer's sharing practices. However, life insurers and other financial institutions are not permitted to change the language appearing in this disclosure table. ACLI is concerned that the current list of reasons for sharing personal information and the permitted "yes" or "no" responses, in the columns relating to whether the company shares and whether the consumer can limit the sharing, will not permit life insurers to inform consumers about important aspects of their particular privacy policies or to reflect unique state requirements with respect to the disclosure of consumer information.

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For example, the disclosure table does not take permit life insurers to inform consumers of special disclosure practices they may have in connection with medical information or to take into account unique state opt-in or opt-out requirements with respect to certain sharing of personal information. Also, the column entitled "Does [name] share?" permits only a "yes" or "no" answer. However, a life insurer may wish to inform consumers that it shares nonpublic personal information with certain affiliates or types of institutions rather than with all affiliates or all types of institutions.

Accordingly, ACLI urges that life insurers be permitted to modify the disclosure table so that it accurately reflects life insurers' practices and unique state privacy laws without losing the safe harbor. Providing added flexibility will result in additional clarity for consumers and will not weaken the goal of making privacy disclosures clear and understandable.

In addition, ACLI believes that certain specific minor changes to the language of the disclosure table will enhance consumer understanding of the information presented and more accurately reflect the information sharing practices of the life insurance industry. Accordingly, we suggest that the first block be adjusted read as follows:

> For our everyday business purposes – such as to process your transactions, maintain your account, and report to consumer reporting agencies.

Again, use of the phrase "such as" is suggested to clarify that not all companies use personal information for all the purposes presented.

In addition, for the reasons discussed above, ACLI believes that the term "consumer reporting agencies" should be substituted for the term "credit bureaus" in the first block.

In the fourth block of the disclosure table, relating to disclosures to affiliates for everyday business purposes, ACLI believes that the use of the term "creditworthiness" may not accurately reflect the type of information that may be shared by life insurers with affiliates. ACLI recognizes the term "creditworthiness" is a short-hand way of describing information other than information relating to the customer's transactions and experiences with the institution. However, ACLI suggests that the term "creditworthiness" may be too expansive and may prove confusing to consumers, because it may connote information relating to the customer's transactions, such as payment history. Accordingly, we recommend that the language be changed to the following:

> For our affiliates' everyday business purposes – information other than information about your transactions and experiences with us ~~creditworthiness~~

In the fifth and sixth blocks of the disclosure table, relating to sharing of personal information with affiliates and nonaffiliates for marketing purposes, it is not clear that the blocks are intended to be applicable to sharing for purposes of marketing the affiliates' and nonaffiliates' products only. Accordingly, we suggest that the language of the fifth and sixth block be adjusted respectively to read as follows:

> For our affiliates to market their products to you
>
> For our nonaffiliates to market their products to you

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"CONTACT US"

The section on the bottom of page one of the Model Form entitled "Contact Us" provides for financial institutions to enter a telephone number or an Internet web address. In some instances, institutions wish consumers to contact them only by mail or by electronic means. In addition, many institutions wish also to provide a physical or electronic mailing address for consumers. Accordingly, ACLI urges that the Agencies not require life insurers or other financial institutions to provide a telephone number or Internet web address if these options are not offered and that institutions also be permitted to provide a physical or electronic mailing address as a point of contact.

"SHARING PRACTICES"

Notification

The Agencies indicate that the language contained on page two of the Model Form under "Sharing practices" may not be changed. However, life insurance companies issue policies to customers. They do not typically open accounts. Modification of the language in the first section, entitled "How often does [ ] notify me about their practices?" to reflect insurance industry practices will not alter the meaning of the section and will take into account life insurers' practices. Accordingly, ACLI suggests that the language be modified to read as follows:

> We must notify you about our sharing practices when you become a customer ~~open an account~~ and each year while you are a customer

Protection

The response required for the question relating to how a financial institution protects personal information may not reflect actual practices of life insurers and other financial institutions. Accordingly, ACLI recommends that the provision be modified to read as follows:

> To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer and physical safeguards. ~~and secured files and buildings~~

Collection

ACLI is concerned that the responses to the question "How does [ ] collect my personal information?" do not reflect the reasons for which life insurers collect personal information. For example, one of the responses states that a company collects personal information when the customer opens an account or deposits money. It is likely that consumers will have little understanding of how that response applies to a customer's relationship with a life insurer because customers do not open accounts or deposit money with life insurers.

Accordingly, ACLI urges that, without losing the safe harbor, life insurers be permitted to delete bullets that do not describe reasons for which life insurers collect personal information and to add bullets that accurately reflect the reasons for which life insurers do collect personal information. The following are examples of bullets that life insurers should be permitted to use:

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- request or use a product, service, or account
- apply for insurance or benefits

Limitation of sharing

Use of the term "creditworthiness" in the first bullet in response to the question "Why can't I limit all sharing" is potentially confusing and may cause consumers to believe that federal law grants them the right to limit a life insurer's ability to share information relating to their transactions and experiences with an affiliate. Accordingly, in order to more accurately reflect the types of information that come within this category, we recommend modification of the bullet to read as follows:

- affiliates' everyday business purposes - information other than information about your transactions and experiences with us. ~~creditworthiness~~

Also, the next two bullets in response to the question "Why can't I limit all sharing?" are not entirely correct since federal law permits a life insurer or other financial institution to use an affiliate or a nonaffiliate to market its products and services. Accordingly, ACLI urges that these bullets be clarified to read as follows:

- affiliates to market their products to you
- nonaffiliates to market their products to you

ACLI also points out that it may be confusing to consumers to have a FAQ entitled "Sharing practices" that addresses a number of other issues. In particular, the collection of information would appear to be inappropriately placed in the "sharing practices" section. Accordingly, ACLI recommends that the section be given another name, or at a minimum, that the FAQ regarding information collection be moved to a more appropriate section.

"IF YOU WANT TO LIMIT OUR SHARING"

30-Day Delay

The sentence on page three of the Model Form, at the bottom of the box entitled "Contact Us," may be read to require institutions to delay sharing a consumer's personal information for 30 days from the date specified on the Model Form. Because the Model Form will be sent each year, this would require life insurers and other financial institutions to cease sharing nonpublic personal information for 30 days each year. ACLI believes that this is neither what the Agencies' regulations require, nor what the Agencies intended in the Model Form.

Accordingly, ACLI requests modification to indicate that the 30-day waiting period applies only to the initial GLB opt-out opportunity provided to consumers. ACLI suggests the following language:

> Unless we hear from you, we can begin sharing your information 30 days from the date of ~~this letter~~ our first notice providing you the opportunity to limit our sharing. However, you can contact us at any time to limit our sharing.

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"CHECK YOUR CHOICES"

ACLI again is concerned that the inflexible structure of the opt-out choices will not provide life insurers the ability to provide opt-out choices that reflect their particular sharing policies and unique state laws. For example, a life insurer may wish to provide a partial opt-out, as explained below. Accordingly, ACLI urges that life insurers and other financial institutions be permitted, without losing the safe harbor, to adjust the opt out choices as necessary to accurately reflect an institution's particular practices. This will enhance, not weaken, the goal of making the opt out choices more clear and accurate.

Sharing with affiliates for everyday purposes

Further, ACLI is concerned that the opt out choices presented on page 3 of the Model Form may not accurately reflect the opt out opportunities provided by the FCRA. ACLI believes that the use of the term "creditworthiness" in the first choice is potentially confusing because customers may believe that the opt out choice also applies to information relating to their transactions with the company. ACLI suggests that the first opt out choice be changed to read as follows:

> Do not share with your affiliates for their everyday business purposes information other than information about my transactions and experiences with you. ~~with your affiliates for their everyday business purposes~~

Sharing with affiliates for marketing

ACLI is concerned that the second opt out choice is not accurate because it does not indicate that a company may use information obtained from an affiliate for marketing purposes if the consumer is a customer of both companies and for other reasons specified in the Fair Credit Reporting Act. As proposed, consumers may believe that the opt out permits them to prevent all affiliates from using information for marketing purposes. Accordingly, ACLI believes that the option should be modified to read as follows:

> Do not allow your affiliates with whom I do not do business to use my personal information to market to me.

Many financial institutions maintain the policy that if a customer chooses not to permit an affiliate to use personal information for marketing purposes, the opt out will continue until rescinded by the customer and need not be renewed. Accordingly, ACLI requests that the Agencies clarify that the sentence on page 3 of the Model Form regarding the need to renew this opt out after five years need not be provided if the institution's policy is to continue the opt out until the customer chooses to withdraw it.

Partial Opt-out

The Agencies' GLB Act regulations provide that financial institutions may permit a consumer to select certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt-out. The Model Form does not appear to permit institutions to offer partial opt-outs to consumers. In view of the fact that the Agencies' existing regulations permit such an option, ACLI requests that the Model Form permit life insurers and other financial institutions to provide consumers with the opportunity to select certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt-out.

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Account Number

ACLI suggests that the reference to "Account Number" at the bottom of the opt out form be adjusted to reference an identifying number, that would include either an account or a policy number, since life insurers' customers are issued policies rather than accounts.

OPERATIONAL CONSIDERATIONS

FLESCH SCORE/FONT SIZE

ACLI is concerned that the Model Form does not meet the Flesch Score of 50 required in the state of California with respect to insurers' privacy notices. There also is concern that the Model Form may not meet certain state requirements relating to font size. Accordingly, ACLI urges that the Agencies adjust the Model Form so that it meets the California Flesh Score requirement or that insurers be granted the flexibility to adjust the form as necessary to meet the requirement. ACLI also urges that insurers be permitted to adjust the font size to meet any applicable state requirements.

PAPER SIZE

The Agencies require financial institutions to print the Model Form on 8 ½" by 11" paper. ACLI believes that specification of the paper size is not necessary to accomplish Congress's objectives with respect to the Model Form as set forth in the Regulatory Relief Act. To date, ACLI member companies have not received complaints regarding the size of the paper on which their privacy policies are printed. Accordingly, ACLI recommends that the Agencies permit financial institutions to print the Model Form on whatever size paper they believe is appropriate given an institution's particular circumstances.

NUMBER OF PAGES

The Agencies require that the Model Form must appear on two separate pages. If an opt-out is provided, the opt-out form must be on a third page. The Agencies indicate that separate pages are required because testing has indicated that consumers have a preference for notices that enable them to view the information on pages one and two side-by-side. ACLI believes that the evidence regarding consumer preference does not outweigh the significant increase in expenses life insurers and other financial institutions will incur as a result of increased costs for paper, handling and processing. The Agencies' research did not indicate any significant increase in consumer comprehension and usability. Indeed, the Agencies' notice states that their research concluded that page one of the Model Form alone was adequate for consumer comprehension and usability.[8] Accordingly, ACLI requests that the Agencies not adopt the requirement that the Model Form be printed on separate pages.

DELIVERY

The Agencies indicate that institutions will not be permitted to incorporate the Model Form into any other document. It is unclear whether the Model Form may be sent to customers in a mailing that contains other material. Nonetheless, ACLI believes that such limitations are inappropriate and unnecessary. The Agencies cite no evidence to support the position that including the Model Form with other material in a mailing will dilute its effectiveness. Moreover, as indicated above, ACLI believes it is very important that life insurers to be permitted to include supplemental materials with the Model

[8] 72 *Fed. Reg.* at 14944.

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Form if necessary to make the notice accurately reflect life insurance industry practices and to comply with state privacy laws that differ from the GLB Act requirements. Also, including the Model Form with another important document, such as a periodic statement, will underscore the importance of the Model Form to consumers. Requiring that the privacy notice be sent in a separate mailing will add considerable expense with no demonstrable and possible diminution of its benefit to consumers. Accordingly, ACLI urges that the Agencies permit financial institutions to include other information in the mailing that contains the Model Form without losing the safe harbor.

Insurers often provide customers with privacy notices as part of a document or brochure that describes the terms and features relating to the customer's insurance policy or annuity. Customers review and retain these documents because they are important documents. For example, companies that are required to provide a prospectus to customers in connection with certain types of insurance products generally include the privacy notice in the prospectus. Because of their importance and comprehensiveness, consumers typically review and retain these booklets or documents. Permitting the Model Form to be part of a comprehensive relationship document will not adversely affect the goals set forth in the Regulatory Relief Act. Indeed, permitting the form to be part of an important relationship document will focus attention on the notice and help ensure that it will be read by customers. It also ensures that the Model Form will be delivered to customers and will not inadvertently be omitted from among other documents provided to consumers at the time they become customers. Accordingly, ACLI requests that the Agencies permit institutions to incorporate the Model Form into a document that includes other material relating to the customer's relationship with the institution.

NOTICE OF CHANGES

Life insurers and other financial institutions typically notify consumers of changes to their privacy policies in annual privacy notices. The Agencies have requested comment on whether they should require financial institutions to highlight changes in their policies as part of the Model Form. ACLI believes that such a requirement will result in consumer confusion and is unnecessary. Requiring institutions to highlight changes in their privacy policies would be meaningful only if consumers are informed as to what the previous policies were. Moreover, requiring that this additional information be provided is inconsistent with the objective of providing privacy policies in a clear, straightforward manner that consumers can easily understand. Highlighting changes will make the Model Form unnecessarily complex and confusing to customers.

LOGOS AND COLOR

The Agencies ask whether financial institutions will use corporate logos and color in connection with the Model Form. Financial institutions use corporate logos to provide a consistent corporate identity that customers easily recognize and identify with. The use of color and logos increases the likelihood that customers will read the information the institution provides. Accordingly, ACLI supports the ability of life insurers and other financial institutions to use logos and color on the Model Form.

TESTING

The Agencies indicate they plan to test the next version of the Model Form with consumers. ACLI recommends that the Agencies also convene an advisory group composed of representatives of life insurers and other financial institutions with expertise in privacy matters to review the Model Form and advise on whether the next version provides useful information to consumers, is understandable, and conveys meaningful information in a clear manner.

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NOTICES ON WEBSITES

The Agencies indicate that if an institution posts a pdf version of the Model Form on its Internet websites it may come within the Agencies' safe harbor. The Agencies ask whether a web-based design should be developed. ACLI believes that a web-based Model Form would prove convenient to consumers because it would not require them to open a pdf document to view an institution's privacy policy. Consumers can review a web-based privacy policy by clicking on the appropriate web page. Accordingly, ACLI requests that life insurers and other financial institutions be permitted to develop and use a web-based design on their websites.

* * *

To enable life insurers to use the Model Form, the unique aspects of their information collection and sharing practices as well as various state privacy and disclosure requirements must be taken into account. This is particularly the case for life insurers that are part of diversified holding companies. Accordingly, ACLI urges: (i) the Agencies to permit life insurers to make limited modifications to the Model Form or to include supplemental materials with the Model Form, to reflect the unique aspects of the life insurance industry and state privacy laws, without losing the safe harbor, and (ii) that the Agencies make specific language changes to the Model Form, as discussed above, so that diversified holding companies that include life insurers may use a single notice, in line with the clear intent of the GLB Act.

ACLI appreciates the opportunity to provide its comments on the proposed Model Form and appreciates your consideration of its views. If you have any questions, please do not hesitate to contact me

Sincerely,

Roberta Meyer

Attachment

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ATTACHMENT

FACTS	WHAT DOES [name of financial institution] DO WITH YOUR PERSONAL INFORMATION?

Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: • information to establish your eligibility for our products and services; • Social Security number and income • account balances or payment or transaction history • consumer report ~~credit history~~or credit scores When you are no longer a customer~~close your account~~ we continue to share information about you according to our policies.
How?	All financial companies need to share customers' personal information to run their everyday business, such as to process transactions, maintain customer accounts, and report to consumer reporting agencies~~credit bureaus~~. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does [name of financial institution] share?	Can you limit sharing?
For our every day business purposes - - such as to process your transactions, maintain your account, and report to ~~credit bureaus~~ consumer reporting agencies		
For our marketing purposes - - to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes - information about your transactions and experiences		
For our affiliates' everyday business purposes - Information other than information about your ~~creditworthiness~~ transactions and experiences with us		
For our affiliates to market their products to you		
For nonaffiliates to market their products to you		

Contact Us	[applicable means of contact] ~~Call or go to [web address]~~

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FACTS	WHAT DOES [name of financial institution] DO WITH YOUR PERSONAL INFORMATION?

Sharing practices	
How often does [name of financial institution] notify me about their practices	We must notify you about our sharing practices when you become a customer ~~open an account~~ and each year while you are a customer.
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer and physical safeguards ~~and secured files and buildings~~.
How does [name of financial institution] collect my personal information	[Option for life insurers] We collect your personal information, for example, when you • apply for insurance or benefits • request or use a product, service or ~~open an~~ account ~~or deposit money~~ • buy or sell securities~~, pay your bills or apply for a loan~~ • ~~use your credit or debit card~~ We also collect your personal information from others such as consumer reporting agencies, ~~credit bureaus,~~ affiliates, or other companies.
Why can't I limit all sharing?	Federal law gives you the right to limit sharing only for • affiliates' everyday business purposes – information other than information about your transactions and experiences with us ~~creditworthiness~~ • affiliates to market their products to you • nonaffiliates to market their products to you State laws and individual companies may give you additional rights to limit sharing.
Definitions	
Everyday business purposes	The actions necessary by financial companies to run their business and manage customer accounts, such as: • processing transactions, mailing, and auditing services • providing information to consumer reporting agencies ~~credit bureaus~~ • responding to court orders and legal investigations
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. • [affiliate information]
Nonaffiliates	Companies not related by common ownership or control. They can be financial or nonfinancial companies. • [nonaffiliated information]
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you • [joint marketing]

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FACTS	WHAT DOES [name of financial institution] DO WITH YOUR PERSONAL INFORMATION?

If you want to limit our sharing	
Contact us	By telephone [toll-free telephone] – our menu will prompt you through your choices On the web: [web address] By mail: mark your choices below, fill in and send from to [mailing address] Unless we hear from you, we can begin sharing your information 30 days from the date of our first notice providing you the opportunity to limit our sharing~~this letter~~. However, you can contact us at any time to limit our sharing.

Check your choices		
Your choices will apply to everyone on your accou	**Check any/all you want to limit:** *(see page 1)* ☐ Do not share with your affiliates for their everyday business purposes information, other than information about my transactions and experiences with you~~creditworthiness with your affiliates for their everyday business purpose~~. ☐ Do not allow your affiliates with whom I do not do business to use my personal information to market to me. *(I will receive a renewal notice for this use for marketing in 5 years.)* ☐ Do not share my personal information with nonaffiliates to market their products and services to me.	
Your name Your address Your telephone number (optional)		Mail to: [mailing address]

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