



National Association of Insurance Commissioners

June 19, 2008

Hon. William E. Kovacic  
Federal Trade Commission  
Office of the Secretary  
Room 135 (Annex C)  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Re: Model Privacy Form

Dear Chairman Kovacic:

On behalf of its 56 members, the National Association of Insurance Commissioners (“NAIC”) appreciates the opportunity to provide comments on the Interagency Proposal for Model Privacy Form under the Gramm-Leach Bliley Act issued by the Federal Trade Commission in conjunction with seven other federal regulators (“Interagency Group”). Founded in 1871, the NAIC is a voluntary association of the principal insurance regulatory officials of the fifty states, the District of Columbia, the territories and insular possessions of the United States. Pursuant to Section 504 of the Gramm-Leach-Bliley Act, the Interagency Group is to work in “consultation as appropriate with representatives of State insurance authorities designated by the National Association of Insurance Commissioners.”

Representing the functional regulators for financial institutions and licensees engaged in the business of insurance, the NAIC applauds the Interagency Group’s efforts to develop a model privacy form with the objective of enhancing consumers’ abilities to make informed decisions when shopping for insurance coverage and exercising their legal and contractual rights to protect personal information. In order to better address the specific needs of the insurance market and make the Model Privacy Form more adaptable across the broad spectrum of the financial services market, the NAIC would appreciate your consideration of possible revisions as shown in the attached marked-up copy of the form.

We appreciate the Interagency Group’s interest in considering optional terminology specific to particular sectors of the financial services industry, rather than prescribing a one-size-fits-all form relying on generic language based on statutory terms of art. It has been widely recognized that the one-size-fits-all approach can be a major factor in making existing notices hard to read. In order to provide insurance-related terminology that could be used, where appropriate, in place of terms geared toward the banking sector such as “accounts,” “deposits,” and “loans,” the attached revisions substitute references to “policies,” “claims,” “premiums,” and “insurance scores.”

We also propose allowing insurers to refer to “creditworthiness or insurability,” instead of simply “creditworthiness,” when describing the information for which a statutory opt-out right is provided under the Fair Credit Reporting Act (FCRA). The reason is that insurers make extensive use of information regulated by FCRA for reasons that are different from assessing a prospective customer’s credit risk. Some important consumer reporting agencies are set up for precisely this purpose, to collect and disseminate various kinds of information that is intended to relate strictly to insurance claim risk, not to credit risk.

|                                    |                                      |                            |                  |                  |
|------------------------------------|--------------------------------------|----------------------------|------------------|------------------|
| <b>EXECUTIVE HEADQUARTERS</b>      | 2301 McGee Street, Suite 800         | Kansas City, MO 64108-2662 | p   816 842 3600 | f   816 783 8175 |
| <b>GOVERNMENT RELATIONS</b>        | 444 N. Capitol Street, NW, Suite 701 | Washington, DC 20001-1509  | p   202 471 3990 | f   202 471 3972 |
| <b>SECURITIES VALUATION OFFICE</b> | 48 Wall Street, 6th Floor            | New York, NY 10005-2906    | p   212 398 9000 | f   212 382 4207 |

We recognize that a great deal of work, including extensive consumer testing, went into developing the creditworthiness clauses in the Interagency Proposal, so we do not make this proposal lightly. However, FCRA expressly recognizes that consumer reporting is used to track and evaluate both creditworthiness and insurability, referring throughout the Act to “eligibility for credit or insurance.” It was acknowledged that when the term “creditworthiness” was tested, there was no inquiry into whether consumers understood this category of information to include such factors as insurance claims history. It is unlikely that they would, and it is reasonable to expect policyholders to understand “insurability” just as well as borrowers understand “creditworthiness.” Perhaps some of the consumer advocates and academics who participated in the process could be consulted on whether this change could be made without major disruption to the form and without losing the information gleaned from the consumer testing.

In addition, we have identified a few places to consider changes to the basic language of the form:

- *“affiliates’ everyday business purposes”* – The fourth and fifth boxes in “Reasons we can share” on Page 1 compares “information about your transactions and experiences” with “information about your creditworthiness [or insurability].” These categories overlap significantly, and the right to share experience information takes precedence over the right to opt out of FCRA information. Therefore, we would suggest changing the fifth box from “information ...” to “other information ...,” to clarify that transaction and experience information is not included and not subject to the opt-out right.
- *“Unless we hear from you, we can begin sharing ...”* – This warning at the top of the last page is not necessarily accurate, because it implies that the company is prepared to treat existing opt-out notices as lapsing and preparing to share information again unless the opt-out instruction is renewed. Therefore, we would suggest changing this sentence to read: “Unless we hear from you or you have already instructed us to limit information sharing, we can begin sharing ...”
- *“information collection services”* – Your research has shown that the statutory term “consumer reporting agencies” is easily misunderstood by consumers, who are more likely to understand “credit bureaus.” However, as discussed earlier, many insurers rely extensively on certain consumer reporting agencies that are unique to the insurance industry and do not function as “credit bureaus,” so it would be desirable to have some more generic term, broader in scope without confusing or misleading the consumer, that could be used on an optional basis by insurers. Perhaps the term could be “information collection services such as credit bureaus.”

The NAIC looks forward to discussing these suggested revisions with the Interagency Group, and in furtherance of our consultative role under the Gramm-Leach-Bliley Act, we would appreciate any opportunity you could provide to review further revisions to the Model Privacy Form. If you have any immediate questions, please contact Bob Wake, staff attorney with the Maine Bureau of Insurance, at 207-624-8430 or Tim Mullen, NAIC Director of Market Regulation, at 816-783-8260.

Sincerely,

Mila Kofman  
Chair, NAIC Consumer Protections & Innovations (D) Working Group  
Maine Superintendent of Insurance

Cc: Loretta Garrison

# FACTS

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

|              |  |
|--------------|--|
| <b>Why?</b>  | 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.   |
| <b>What?</b> | <p>The types of personal information we collect and share depend on the product or service you have with us. This information can include:</p> <ul style="list-style-type: none"> <li>• Social Security Number and income</li> <li>• Account balances and payment history</li> <li>• Credit history and credit scores</li> <li>• <a href="#">Credit-based insurance scores</a></li> <li>• <a href="#">Insurance claim history</a></li> </ul> <p>When you <a href="#">are no longer a policyholder</a>, we continue to share information about you according to our policies.</p> |
| <b>How?</b>  | All financial companies need to share customers' personal information to run their everyday business—to process transactions, maintain customer accounts, and report to credit bureaus. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [ <b>name of financial institution</b> ] chooses to share; and whether you can limit this sharing.  |

Deleted: close your account

| Reasons we can share your personal information  | Does [name of financial institution] share?       | Can you limit this sharing? |
|---|---|-----------------------------|
| <b>For our everyday business purposes—</b><br>to process your transactions, maintain your account, and report to credit bureaus   |   |                             |
| <b>For our marketing purposes –</b><br>to offer our products and services to you  |   |                             |
| <b>For joint marketing with other financial companies</b>   |   |                             |
| <b>For our affiliates' everyday business purposes—</b><br>information about your transactions and experiences   |   |                             |
| <b>For our affiliates' everyday business purposes—</b><br><a href="#">other</a> information about your creditworthiness <a href="#">or</a> <a href="#">insurability</a> |   |                             |
| <b>For our affiliates to market to you</b>  |   |                             |
| <b>For our nonaffiliates to market to you</b>   |   |                             |
| <b>Contact Us</b>   | Call [toll-free telephone] or go to [web address] |                             |

# FACTS

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

How often does [name of financial institution] notify me about their practices?

We must notify you about our sharing practices when you [purchase a policy](#) and each year while you are a customer.

Deleted: open an account

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 safeguards and secured files and buildings.

How does [name of financial institution] collect my personal information?

We collect your personal information, for example, when you

- [apply for insurance coverage](#),
- [pay insurance premiums](#)
- [file an insurance claim](#),
- use your credit or debit card

Deleted: open an account or deposit money

Deleted: pay your bills or apply for a loan

We also collect your personal information from others, such as [affiliates, other companies, or information collection services such as credit bureaus](#).

Deleted: credit bureaus,

Deleted: or

Deleted:

Why can't I limit all sharing?

Federal law gives you the right to limit sharing only for

- affiliates' everyday business purposes—information about your creditworthiness
- affiliates to market to you
- nonaffiliates to market to you

State laws and individual companies may give you additional rights to limit sharing.

| Definitions                       |   |
|-----------------------------------|---|
| <b>Everyday business purposes</b> | The actions necessary by financial companies to run their business and manage customer accounts, such as <ul style="list-style-type: none"> <li>• Processing transactions, mailing and auditing services</li> <li>• Providing information to credit bureaus</li> <li>• Responding to court orders and legal investigations</li> </ul> |
| <b>Affiliates</b>                 | Companies related by common ownership or control. They can be financial and nonfinancial companies. <ul style="list-style-type: none"> <li>• [affiliate information]</li> </ul>   |
| <b>Nonaffiliates</b>              | Companies not related by common ownership or control. They can be financial and nonfinancial companies. <ul style="list-style-type: none"> <li>• [nonaffiliated information]</li> </ul>   |
| <b>Joint marketing</b>            | A formal agreement between nonaffiliated financial companies that together market financial products or services to you. <ul style="list-style-type: none"> <li>• [joint marketing]</li> </ul>  |

# FACTS

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

**If you want to limit our sharing**

|                   |  |
|-------------------|--|
| <b>Contact us</b> | <p><b>By telephone:</b> [toll-free telephone] — our menu will prompt you through your choices</p> <p><b>On the web:</b> [web address]</p> <p><b>By mail:</b> mark your choices below, fill in and send form to:<br/>[mailing address]</p> <p>Unless we hear from you <a href="#">or you have already instructed us to limit information sharing</a>, we can begin sharing your information 30 days from the date of this letter. However, you can contact us at any time to limit our sharing.</p> |
|-------------------|--|

|   |  |                   |
|---|--|-------------------|
| <i>Your choices will apply to everyone on your account.</i> | <b>Check any/all you want to limit:</b> <i>(see page 1)</i>  |                   |
|   | <input type="checkbox"/> Do not share information about my creditworthiness <a href="#">or insurability</a> with your affiliates for their everyday business purposes.         |                   |
|   | <input type="checkbox"/> Do not allow your affiliates to use my personal information to market to me. (I will receive a renewal notice for this use for marketing in 5 years). |                   |
|   | <input type="checkbox"/> Do not share my personal information with nonaffiliates to market their products and services to me.  |                   |
|   | <b>Your name</b>   |                   |
| <b>Your address</b>   |  |                   |
|   |  |                   |
|   |  |                   |
|   |  |                   |
| <b>Account/<a href="#">Policy</a> number</b>                |  | [mailing address] |