



DANIEL P. AMOS  
PRESIDENT  
CHIEF EXECUTIVE OFFICER

March 30, 2000

Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Re: Federal Trade Commission, Gramm-Leach-Bliley Act Privacy Rule,  
16 CFR Part 313-Comment  
Office of the Comptroller of the Currency, Docket No. 00-05  
Board of Governors of the Federal Reserve System, Docket No. R-1058  
Federal Reserve Insurance Corporation, Attention: Comments/OES  
Office of the Thrift Supervision, Docket No. 2000-13  
Securities and Exchange Commission, File No. S7-6-00  
National Credit Union Administration, No. 7535-01-4

Dear Mr. or Ms. Secretary:

AFLAC Incorporated hereby submits comments on the proposed rules to implement Title V of the Gramm-Leach-Bliley Act (“G-L-B”) that were published on February 22, March 1, and March 8, 2000.<sup>1</sup> We understand that the proposed rules are not identical, but for ease of reference we are submitting a single set of comments to all of the federal agencies with proposals outstanding. For convenience we will refer to the proposals collectively as the “Proposed Privacy Rule.”

AFLAC Incorporated, a Fortune 500 company, operates primarily through its wholly-owned subsidiary, American Family Life Assurance Company of Columbus (“AFLAC”). AFLAC is the largest provider of supplemental insurance coverage in the United States and insures over 13½ million individuals in the United States. AFLAC also provides supplemental insurance abroad and has close to 40 million insureds worldwide. Thus, we have a strong interest in uniform rules on privacy and applaud the effort of the federal regulators to achieve this result, an effort that has been largely successful.

AFLAC’s business centers on the workplace. AFLAC distributes its insurance products by providing a set of insurance options that form a part of the overall compensation and benefits package that an employer makes available and from which an

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<sup>1</sup> See 65 Fed. Reg. 8770 (Feb. 22, 2000)(banking agencies); 65 Fed. Reg. 10988 (Mar. 1, 2000) (NCUA); 65 Fed. Reg. 11174 (Mar. 1, 2000)(FTC); 65 Fed. Reg. 12354 (Mar. 8, 2000)(SEC).

employee may choose. AFLAC policies are issued on an individual basis, frequently through employer-sponsored cafeteria plans. Our primary interface with customers in the United States is through a network of independent third party agents. Accordingly, our comments focus somewhat on the employer and agent aspects of the privacy issue.

AFLAC strongly supports the principles of customer privacy embodied in Title V and the Proposed Privacy Rule. As a worldwide provider of insurance, we are principally concerned that privacy rules be consistent and that they be structured in a way that protects customers without imposing undue burdens on employers in connection with their benefit plan administration and on insurers providing critical coverage to employees. The Proposed Privacy Rule goes a long way towards these ends, and AFLAC appreciates the hard work of the regulators in developing consistent and reasonable rules.

Although the Proposed Privacy Rule will apply directly to AFLAC only to the extent that AFLAC may be subject to the requirements of the Federal Trade Commission privacy rule, AFLAC nevertheless has a real interest at stake in the Proposed Privacy Rule. Title V clearly contemplates that the states will issue rules to implement the G-L-B Act's privacy provisions, and further that these rules will be similar to the federal ones. Similarity between the federal and state rules will further the important objective of consistency, but if the Proposed Privacy Rule is to be the model, certain clarifications would be helpful. Accordingly, AFLAC is providing these comments.

As a member of the National Business Coalition on E-Commerce and Privacy (the "Coalition"), AFLAC agrees with the general comments that the Coalition is filing. AFLAC has three additional specific comments that relate to the regulatory treatment of employers and independent agents and the timing of the initial privacy policy disclosure.

1. Employers and the definition of "financial institution." Section 509(3) of the G-L-B Act defines a financial institution as "any institution the business of which is engaging in [certain] financial activities." These financial activities include "[i]nsuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death ... and acting as principal, agent, or broker for purposes of the foregoing, in any State."<sup>2</sup> AFLAC is concerned that this definition could be misconstrued to include an employer solely by virtue of the fact that the employer arranges for its employees the opportunity to obtain insurance coverage from third party insurers.

When employers facilitate the provision of insurance to their employees, they are not themselves "insuring, guaranteeing, or indemnifying," in the sense of taking on any risk those employees may seek to insure against, nor are they "acting as principal, agent, or broker." The employer's role is limited to facilitating efforts by employees and insurers to obtain or to provide insurance coverage. This is part of the employer's broader function to provide compensation and various benefits for its employees.

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<sup>2</sup> G-L-B Act. § 103(a) (to be codified in 12 U.S.C. § 1843(k)(4)(B)).

AFLAC asks that the Proposed Privacy Rule be clarified on this point. The final regulation should include an example or statement to the effect that an employer that allows an unrelated third party to offer insurance (or other financial products or services) to its employees does not, by virtue of that action, become a financial institution itself.

2. Agents. AFLAC and many other insurers conduct a large amount of their business through independent agents, who are individuals not employed by the insurer; a relatively small percentage may be incorporated. Title V does not deal specifically with the classification of these individuals. AFLAC would recommend that the definition of financial institution be clearly defined to exclude such individuals and that, in their capacity as agents for the insurer, insurance agents be classified as affiliates of the insurer and not as unaffiliated third parties for purposes of G-L-B. This position is supported by four clear circumstances: (i) the definition of financial institution excludes individuals, (ii) the insured does not have a customer relationship with the agent, nor is the insured a “consumer” of the agent, as those terms are defined in the Proposed Privacy Rule; (iii) the agents are properly classified as “affiliates” of the insurance company whose products they represent and thus are as a practical matter already covered by G-L-B’s privacy requirements, and (iv) agency principles under common law require consistency of action (in privacy matters and all others) between the agent and its principal.

G-L-B clearly states that a financial institution is an “*institution* the business of which is engaging in financial activities ...” Although acting as an agent for an insurer may constitute a financial activity under G-L-B,<sup>3</sup> the privacy provisions of G-L-B are clearly limited to *institutions* that engage in such activities. The term institution, as a threshold matter, excludes natural persons. Furthermore, Section 103(a) refers to a “company” that engages in financial activities. Given these clear definitional parameters, it does not follow that individuals serving as insurance agents should be regarded for purposes of the law or the regulations as financial institutions.

Further, in the circumstances here, an individual insured through the agent would not be a consumer, as defined under G-L-B, or the customer of that agent. Under Section 509(9) of G-L-B, a consumer is a person who obtains a financial product from a financial institution. Similarly, under the Proposed Privacy Rule, a customer relationship is created when an institution “provide[s]” a financial product, including an insurance product.<sup>4</sup> In the situation where the independent agent is the physical interface with the individual, the insurance provider, such as AFLAC, provides that product, rather than the agent. Thus, the agent should not be deemed to be a separate financial institution for purposes of G-L-B.

A thorough analysis also reveals that the privacy protections included in G-L-B are afforded to the public even if the insurance agents are treated as part of the insurance company financial institution or as an affiliate of the financial institution (and

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<sup>3</sup> G-L-B Act. § 103(a) (to be codified in 12 U.S.C. § 1843(k)(4)(B)).

<sup>4</sup> 65 Fed. Reg. 11174, 11189 (Proposed FTC Rule, § 313.3(i)(1)).

therefore not as a separate financial institution or a nonaffiliated third party). AFLAC's independent insurance agents perform sales and servicing functions on behalf of AFLAC. AFLAC has contractual relationships with these agents establishing the parameters of the AFLAC/agent relationship. As the SEC Proposed Rule clarifies, the control that a financial institution must maintain over an affiliate may be contractual.<sup>5</sup> To the extent that a financial institution's contracts with its independent agents establish such control, the agents are properly categorized as affiliates of the financial institution, rather than as nonaffiliated third parties. Title V of G-L-B already prevents a financial institution from using an affiliate to disclose nonpublic personal information contrary to G-L-B privacy provisions. Accordingly, clarifying that the independent sales agents with whom an insurance company financial institution contracts are affiliates of that financial institution, rather than nonaffiliated third parties or financial institutions themselves, will not limit G-L-B's privacy protections to the public. The clarification will, however, prevent undue burdens on both the agents and the insurance companies that employ them.

In addition to the statutory requirements applicable to independent agents under G-L-B, an agent performing duties for a principal must act consistently with the principal's legal obligations. In the circumstances presented by Title V, the agent would be required to make certain disclosures on behalf of the insurance company at the same time that disclosures would be required if the insurance company (or an employee) were dealing directly with the customer. Accordingly, the agent should not be required to develop his or her own privacy policies or opt-out mechanism because the very nature of their role in the process reconciles their duties with those of the principal who is clearly, in this case, already covered by Title V of G-L-B.

Moreover, if agents are considered as separate financial institutions, there is a substantial risk that they would develop privacy materials different from (and possibly in conflict with) those of the insurance provider. Customers would become confused and unable to make the kind of informed decisions that Title V contemplates because they would have different notices arising out of the same transaction. Further, of course, the agents' own privacy disclosures would likely differ among themselves, with the result that a policyholder's privacy protections could vary based on the agent involved.

Accordingly, AFLAC requests clarification that an agent acting within the scope of his or her responsibility on behalf of a financial institution be deemed an affiliate of or part of that institution for purposes of G-L-B, rather than a nonaffiliated third party or separate financial institution with independent obligations under G-L-B.

3. Timing of disclosures. AFLAC requests the agencies to revise the provision in the Proposed Privacy Rule that calls for the delivery of the initial privacy notification "prior to" the time that a consumer becomes a customer. Title V does not impose such a requirement, and it would be impractical for many insurance carriers and their agents, and ineffective for their customers. In AFLAC's case, the customer

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<sup>5</sup> 65 Fed. Reg. 12354, 12355 (Proposed SEC Rule, § 248.3(i)).

relationship typically is formed when an employee receiving AFLAC literature decides to purchase a policy, and contacts the AFLAC agent at the employer's place of business. In that single meeting with the agent, the employee signs up for coverage and receives certain other disclosures. This meeting would also be the appropriate time for the employee to receive any required privacy notifications. It is unclear under the "prior to" language in the Proposed Privacy Rule that this would constitute compliance. With other commenters, AFLAC requests that the "prior to" phrase be removed from the final regulation, so that an institution may offer the initial privacy notification at the time the individual becomes a customer.

We appreciate the opportunity to comment and, again, thank the agencies for their efforts to develop consistent and workable rules.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel P. Amos", written in a cursive style.

Daniel P. Amos  
Chief Executive Officer