

NAIC

NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

March 31, 2000



EXECUTIVE HEADQUARTERS

2301 MCGEE STREET
SUITE 800
KANSAS CITY MO
64108-2604
VOICE 816-842-3600
FAX 816-783-8175

Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, NW
Washington, DC 20580

COMMENTS OF STATE INSURANCE AUTHORITIES REGARDING FEDERAL CONSUMER PRIVACY REGULATIONS UNDER THE G-L-B ACT

FEDERAL AND INTERNATIONAL RELATIONS

HALL OF THE STATES
444 NORTH CAPITOL ST NW
SUITE 701
WASHINGTON DC
20001-1512
VOICE 202-624-7790
FAX 202-624-8579

Section 504(a)(1) of the Gramm-Leach-Bliley Act (G-L-B Act) requires that the Federal Trade Commission prescribe consumer privacy regulations mandated by the Act "after consultation as appropriate with representatives of State insurance authorities designated by the National Association of Insurance Commissioners" (NAIC). The comments in this letter represent the views of State insurance authorities designated by the NAIC in order to comply with the G-L-B Act.

1. **Except as noted below, State insurance authorities support issuing final FTC privacy regulations using the same language and provisions contained in the proposed rules released for public comment on March 1, 2000.**

SECURITIES VALUATION OFFICE

7 WORLD TRADE CENTER
19TH FLOOR
NEW YORK NY
10048-1102
VOICE 212-285-0010
FAX 212-285-0073

We agree with the bulk of the FTC rule proposal. The absence of specific comments on any provision means we believe the proposed language should be adopted as the final rule language.

2. **State insurance authorities recommend adding a new section to the proposed Federal rules that will clarify Federal and State jurisdiction over financial privacy requirements.**

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The G-L-B Act is very complex and confusing regarding consumer privacy protections required or permitted under the Act. We have already encountered mistaken views about who will prescribe and enforce privacy standards for insurance providers. Some people mistakenly think the Federal Trade Commission will establish privacy standards for insurance, while others believe Federal banking regulators will establish privacy standards that apply to the insurance activities of insured depository institutions.

Such regulatory confusion is unnecessary and counterproductive to effective functional supervision of financial services firms. Because Federal regulatory authority is widely perceived as always superseding State regulatory authority, it would be useful for Federal agencies to expressly say their privacy rules do not apply to insurance providers.

State insurance authorities recommend that each Federal functional regulator include a separate section in its privacy regulations addressing the limits of its authority over privacy protections regulated by the States. This section should clearly say that none of the agency's privacy regulations apply to any insurance provider which is functionally regulated by State insurance authorities under Titles III and V of the G-L-B Act.

3. State insurance authorities support using practical examples to illustrate and clarify general privacy rules.

Section 313.2 of the proposed Federal rules asks whether the use of typical examples in the marketplace is a good way to explain how a generally-stated privacy rule may work in practice. We agree that this method is very helpful, and that using hypothetical examples to communicate regulatory requirements is a good way to achieve "plain English" rules.

4. State insurance authorities believe "nonpublic personal information" should be defined according to the source of the information, not its content.

Section 313.3(a) asks whether certain nonpublic personal consumer information should be allowed to be disclosed without a consumer's consent if it could be obtained from publicly available sources. Alternative A gives consumers greater protection by requiring that publicly available information actually be obtained from widely available public sources, such as telephone listings and government data, before it can be used without giving the consumer a chance to opt-out. Alternative B would permit financial firms to use personal data without the opportunity for a consumer to opt-out if the data could possibly be obtained from a public source, even though the information has not actually been obtained from that source.

We support giving consumers the greater protection they would normally expect as set forth in Alternative A. Everyone agrees that cross-marketing permitted under the G-L-B Act will not succeed unless consumers trust that their personal information will be kept confidential by financial institutions. People generally expect that disclosures of names, addresses, and telephone numbers will be available to the public if given to most government agencies or telephone companies. For that reason, some people are willing to pay extra fees to have the telephone company not list their personal information.

By contrast, people normally expect that all personal information given to a financial firm will only be used for conducting transactions with that firm. Considering the G-L-B Act permits financial firms to freely exchange nonpublic personal information among affiliates without consumer consent, it does not seem a significant burden to require that normal consumer expectations be followed by requiring an opportunity for people to opt-out of having their names, addresses, and other information shared if they are the source of that information.

5. State insurance authorities support the current proposed definition of “personally identifiable financial information” that protects consumer health information.

Section 313.3(o) asks whether its definition of “personally identifiable financial information” is correct since it protects consumer health information provided during a transaction with a financial firm. We believe this definition is correct as it stands. Personal health information provided when seeking insurance and other financial services must always be protected.

In addition, State insurance authorities believe the Federal privacy regulations issued under the G-L-B Act must be compatible with privacy protection regulations being issued by the Department of Health and Human Services regarding personal medical information. We recommend a coordinated approach among Federal agencies to ensure that medical information is fully protected.

6. State insurance authorities believe “publicly available information” should be defined to mean information that is actually obtained from public sources.

Section 313.3(p) presents the question raised in item 4 above. It also offers the same alternatives. We believe the same interpretation of consumer fairness should apply, and that Alternative A is the right choice for Federal regulators to adopt.

Quite simply, publicly available information should be gathered from public sources, not taken from consumers who do not intend to make their personal information public when seeking financial services. Nobody benefits if consumers are faced with guessing whether some of their personal information is publicly available elsewhere, and thus is subject to being used by financial firms with no opportunity for a consumer to opt-out.

7. State insurance authorities believe 60 days is a more reasonable period of time to permit consumers to exercise their opt-out right.

Section 313.7 asks if 30 days is a reasonable amount of time to permit consumers to exercise their statutory right to opt-out of information sharing in the case of notices sent by mail. Considering mail delays and daily personal activities that demand a person’s attention, we do not believe 30 days provides an adequate

opportunity to receive an opt-out notice and respond to it. Since this only applies to personal information given to nonaffiliated third parties, we do not believe consumers should be forced to reach a hasty judgment or stop their daily activities to respond in a two or three week period.

Sixty days is a more reasonable period of time to allow the sending of opt-out notices and the receipt of responses from consumers who choose to do so.

8. State insurance authorities recommend the Federal rules clearly require that opt-out notices sent to consumers should be easy and cost-free for those who wish to exercise their opt-out right.

Section 313.8 sets forth the acceptable methods by which financial firms can satisfy their responsibility to notify consumers that nonpublic personal information will be disclosed to nonaffiliated third parties. We believe the present proposed rules and examples are fine as far as they go. However, we recommend clearly requiring that:

- Acceptable opt-out decisions should not be given orally by consumers.
- Opt-out notices with convenient consumer check-off boxes should be pre-addressed with return postage paid.
- Opt-out notices and returns given in electronic form by consumers who choose this option should comply with the Uniform Electronic Transactions Act (UETA) in States which have adopted that law.

To avoid unnecessary trouble, consumer opt-out consent should be given in a written or acceptable electronic form that matches the way personal privacy notices are provided to consumers by financial firms. Consumers should not need to hunt for stamps or envelopes to exercise their opt-out right. Preaddressed and postage-paid return forms are common in the business world. We see no significant commercial burden in requiring that they be used to implement basic consumer rights under the G-L-B Act.

States are presently modernizing the legal requirements for conducting electronic business transactions through adoption of UETA. This model law provides necessary regulatory flexibility to deal efficiently with special situations relating to the importance of financial transactions to consumers. Recognizing that trend will help keep Federal privacy regulations current and compatible with electronic commerce initiatives in the States.

The NAIC and State insurance regulators are pleased to offer our comments and recommendations to support and improve Federal privacy regulations under the G-L-B Act. Any questions regarding this comment letter should be directed to Jack Chesson in the NAIC Washington office at 202-624-7790.

State insurance authorities have an important stake in consumer privacy regulations established by Federal agencies because they will set the standard by which State privacy standards will be compared. We look forward to working closely with Federal functional regulators as we strive to implement the G-L-B Act promptly and efficiently.

Sincerely,

A handwritten signature in black ink that reads "George Nichols III" followed by a stylized flourish.

George Nichols III
Commissioner of Insurance, Kentucky
President, NAIC

A handwritten signature in black ink that reads "Kathleen Sebelius" in a cursive style.

Kathleen Sebelius
Commissioner of Insurance, Kansas
Chair, NAIC Privacy Working Group