

September 20, 2021

Cynthia Amann, Chair  
Ron Kreiter, Chair  
Privacy Protections (D) Working Group  
NAIC Central Office  
1100 Walnut, Suite 1500  
Kansas City, MO 64106-2197

Attn: Lois Alexander, Market Regulation Manager

VIA Electronic Mail: lalexander@naic.org

RE: Privacy Protections (D) Working Group Discussion – Opt-in and Opt-Out

Dear Ms. Amann and Mr. Kreiter:

The American Property Casualty Insurance Association (APCIA)<sup>1</sup> offers the following comments on Segment 1 (Right to Opt-Out of Data Sharing) and Segment 2 (Right to Opt-In of Data Sharing) of the Draft Privacy Policy Statement (Statement) collectively.

Consumer privacy is a priority issue for the insurance industry. Ideally, insurers want to create a partnership with their customers based on trust and collaboration. This partnership allows the insurer to get information to perform legitimate and necessary business functions and customers benefit from better products and services. This balanced approach has served the insurance industry well for decades and is reflected in the current risk-focused legal framework for privacy issues.

Anchored by the Gramm-Leach-Bliley Act (GLBA) and state insurance privacy laws, this workable framework has made the financial services industry, including insurers, a leader in data privacy for decades. GLBA hinges on the use of opt-out sharing which consumers have grown accustomed to, understand, and expect as the framework across financial services. Accordingly, privacy laws should continue to reinforce these balanced, tested consumer expectations by maintaining an opt-out framework rooted in GLBA going forward.

### **Risk-Based Framework**

Managing privacy risks requires a risk-based approach that balances operational challenges with consumer protection. No one specific mechanism for consumer control is suitable in all instances, and organizations should be permitted flexibility in how these controls may reasonably be exercised in light of the sensitivity of the personal information, as well as the risk and context of the specific data processing and sharing with non-affiliated third parties.

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<sup>1</sup> Representing nearly 60 percent of the U.S. property casualty insurance market, the American Property Casualty Insurance Association (APCIA) promotes and protects the viability of private competition for the benefit of consumers and insurers. APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association. APCIA members represent all sizes, structures, and regions, protecting families, communities, and businesses in the U.S. and across the globe.

## **Definition**

APCIA offers that the definition section needs additional context. For instance, the description of Section 13 would benefit from a more thorough description of the exemptions contained in Model 670 as well as a summary of the Model 670 Section 6 opt-out procedure.

To help educate our feedback on the examples provided in subsection b, APCIA is curious as to how these examples were identified and their purpose. The scenarios presented are not ones that we have come across in the insurance context and as such we are not certain as to how widespread they are in an insurance context. Further, if we better understood the purpose of the examples, we could offer alternative or modifications for your consideration.

## **Discrimination**

On page 8 of the Statement there are two paragraphs directed at the right to opt-out “ensur(ing) that insurers cannot discriminate or retaliate against insureds who exercise their right.” The paragraph continues to state that “a consumer’s decision to opt-out of personal information sharing bears no relationship to the risk underwritten by the insurers, consumers should not pay higher premiums, incur additional charges, face denial of coverage, or otherwise be subject to favorable treatment than consumers who allow sharing of personal information.” These statements fail to recognize that the business of insurance relies on information to effectively underwrite and manage risk. If a consumer were to deny an insurer access to information, this could lead to incomplete information significantly limiting the ability to accurately price and underwrite the risk. Such statements also ignore the risk of fraud and misrepresentation such permissive grants can perpetuate.

The business of insurance presents a very different scenario and need for information, than, for example, access to information for enrollment in a frequent shopper program. It is important that the privacy conversation recognize the unique business needs of the insurance industry.

## **Consent**

The first full paragraph on page 8 suggests that opt-out should require notice to consumers of that right, upon initial collection and at intervals thereafter. Use of “should” is troubling because existing law requires notice of the right to opt out and the election to opt-out is valid until revoked.

Also, consent requirements should be contextual, taking into account the nature of both the personal information and its proposed uses. GLBA accomplishes this balance Framework.

## **Terminology**

Respectfully, in addition to considering a different term than “right,” APCIA urges the Working Group to avoid using presumptive terms such as “problem” and to consider an alternative to “gap.” We fully recognize that APCIA encouraged the working group to do a “gap analysis” and the NAIC staff has done a commendable job comparing and contrasting a number of relevant privacy laws. This work is very helpful and greatly appreciated by APCIA and its members. APCIA politely observes that this work identifies the differences in the laws, but not necessarily “gaps.” Using “gaps” implies that there are deficiencies, but what has really been identified are differences. While the laws differ, they do so in a thoughtful way recognizing the different needs of the various industries and in fact the emerging state comprehensive laws recognize this through exemptions. Respectfully, this current discussion of the Statement is a type of “gap analysis” to identify if the differences require additional consideration and if technology really has left open “gaps” or if current law is flexible enough to address new terminology.

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The current Federal/State system of regulation has appropriately balanced the treatment of sensitive information in a risk-focused manner. APCIA welcomes the opportunity to provide specific red-line recommendations to the revised exposure consistent with the feedback above.

Respectfully submitted,

Angela Gleason