



April 29, 2020

Cynthia Amann, Chair
Privacy Protections (D) Working Group
Missouri Department of Insurance

c/o National Association of Insurance Commissioners
Attn: Lois Alexander, Market Regulation Manager
Via email: LAlexander@NAIC.org

Re: Privacy Protections (D) Working Group Exposure Draft Topics Document (April 15, 2020)

Dear Ms. Amann:

Although the cover memo of the Working Group release of April 15 requests that comments be submitted in outline format, we, the undersigned, ask your indulgence in our variance from that due to the nature of our comments. Regardless, we will be brief as possible in deference to your wishes, the abbreviated comment period, and the extraordinary time demands posed by the COVID-19 pandemic crisis. At this early phase, we offer the following foundational suggestions.

Gap Analysis Framework

Any subject as complex as Privacy requires a deliberative and considered approach based on facts and policy. We submit regulators and Industry together can move forward only if we first understand the landscape of existing federal law in the privacy arena. Therefore, we strongly urge the Working Group, before taking further steps, to conduct an analysis of the specific privacy requirements with which licensees must comply, including at least FCRA, GLBA, and for health insurers, HIPAA (including HITECH and the new Interoperability Rule). This could be done in a two-phase process, proceeding first with a public comprehensive review of these laws' *specific* privacy requirements, and then second, assembling of a list of areas in which the existing laws fail to protect consumers. This "gap analysis" would not only enable the Working Group and Interested Parties to avoid creating a model containing redundant reworded provisions of federal

law, but also focus attention on meaningful policy-based discussions ensuring that any new requirements are workable and solve real problems, not imagined ones.

Exclusive Regulatory System

Another foundational consideration for regulators, industry, and consumers alike is the landscape of existing *state* privacy laws. However, in this case, a solution is much more easily attained. As other Interested Parties have noted in previous letters, any Model developed in this effort must be the exclusive state privacy law applicable to insurance department licensees. Just as the above-mentioned Gap Analysis will avoid creating a model which duplicates, overlaps, and may even conflict with federal law provisions, a state exclusivity provision will avoid the same problems with other state privacy laws. Avoidance of redundant or conflicting requirements saves administrative costs and helps hold down increasing premium costs to consumers.

Regulatory Expertise

As insurance regulators, the Working Group has an opportunity – when and as there is time to address the issue – to bring your practical industry-specific knowledge into a deliberate, workable, clear, and reasoned approach, which contemplates the kinds of transactions, relationships, and business functions that are part of the sector and legal/regulatory environment for which you have a specialized understanding.

Conclusion

As Industry continues to take unprecedented steps during the crisis, we appreciate regulators’ and the NAIC’s corresponding efforts to ease the challenges posed by this pandemic. Sufficient time is important to analyzing these important privacy issues and to drafting provisions carefully. We are committed to the privacy of our consumers, and we look forward to working closely with you to continue discussion of drafting privacy model wording carefully to avoid inconsistencies and needless unintended challenges.

The Interested Parties listed below support the comments made in this letter.

| <u>Organization</u> | <u>Name</u> | <u>Phone Number</u> | <u>E-mail Address</u> |
|--|--------------------|----------------------------|--|
| American Council of Life Insurers | Kate Kiernan | (202) 624-2463 | katekiernan@ACLI.com |
| American Property Casualty Insurers Association | Angela Gleason | (202) 828-7181 | angela.gleason@apci.org |
| America's Health Insurance Plans | Bob Ridgeway | (501) 333-2621 | bridgeway@ahip.org |
| Blue Cross Blue Shield Association | Clay McClure | (202) 626-8649 | Clay.McClure@bcbsa.com |
| Independent Insurance Agents & Brokers of America | Wes Bissett | (202) 302-1607 | Wes.Bissett@iiaba.net |
| National Association of Mutual Insurance Companies | Cate Paolino | (508) 431-0484 | cpaolino@namic.org |