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NAIC Privacy Protections (D) Working Group
NAIC Central Office
1100 Walnut Street
Suite 1500
Kansas City, MO 64106

Attn: Lois Alexander, NAIC Market Regulation Manager
Via email: lalexander@naic.org

Dear Chair Amann, Vice Chair Kreiter and Members of the Privacy Protections Working Group:

Thank you for soliciting stakeholder comments on the work you are undertaking to review the current NAIC privacy related models. The American Council of Life Insurers respectfully submits the following thoughts to the Working Group as you embark on this endeavor.

We would like to state at the outset that we are proud of the fact that the financial services industry has traditionally been a conscientious and responsible guardian of customers’ highly vulnerable personal information. Our industry has appropriately managed consumers’ confidential medical and financial information for decades.

Background

Insurers have long been subject to comprehensive federal and state privacy laws and regulations. These requirements provide a complex, broad and rigorous regulatory framework that requires our industry to protect the privacy, use and security of customers’ personal information. These laws have reflected a critically important balance between consumers’ legitimate privacy concerns and the proper use of personal information to serve existing and prospective customers.

Privacy laws impacting the financial services sector have been on the books for decades. In 1999 Congress passed Gramm-Leach-Bliley (GLBA), arguably one of the most comprehensive information privacy laws to date. The law governs the use and collection of non-public personal information by financial institutions. As a result of the passage of GLBA, the NAIC developed the Privacy of Consumer Financial & Health Information Regulation.

Both GLBA and the resulting NAIC model were developed in an era when personal information was primarily collected directly from the customer, with knowledge and consent, on a paper application. Those days are long gone, and the technology revolution has led to dynamic new inroads into the collection and use of personal information which has vastly transformed our world. The constancy of our industry specific privacy laws reflects well on the stability of the insurance regulatory structure. However, advances in technology have led to continued evolution in the way we collect and use personal information. These reasons, and many others, are an impetus for policymakers and stakeholders to take a fresh look, with a new and open perspective, at the current privacy regime.
The insurance industry is a consumer privacy leader in support of clear obligations in the appropriate collection, use and sharing of sensitive personal information. As we have touched upon above, insurers are subject to a prolific number of comprehensive federal and state privacy laws and regulations. For this reason, the financial services industry is uniquely and detrimentally affected by general privacy laws aimed at other industries as well as current privacy requirements.

**The Regulatory Environment is Evolving**

Existing privacy laws have been on the books in some instances since the mid-80s and late 90s with little change which reflects well on the stability of the insurance regulatory structure. However, advances in technology and changes in the insurance industry have resulted in rendering some of the concepts in existing financial services privacy laws are somewhat outdated. State lawmakers have responded to the privacy debate with varying proposals to provide consumers with greater transparency and control over the use of personal data which affects all businesses, with California being the leading example. However, while they passed comprehensive new requirements on the entire business community, they did not harmonize existing privacy requirements on financial institutions, which in California includes both the NAIC Insurance Information and Privacy Protection Model Act and the Privacy of Consumer Financial and Health Information Regulation. As a result, the financial services industry is now burdened by existing requirements as well as sweeping new comprehensive consumer privacy laws.

**Consistency Across States and Business Types is Necessary**

The changing regulatory environment and privacy expectations of consumers are some of the reasons why a comprehensive review of our statutory privacy regime is necessary. These forces will only intensify with the increasing pace of technological innovation.

Insurers are uniquely affected by the confluence of general consumer privacy laws and our existing regulatory scheme. The consequences of conflicting requirements – as we are seeing play out in California with conflicting scopes, definitions, notice requirements and consumer rights – may ultimately detrimentally impact our business models, particularly considering the types of data we collect, our legacy systems, and long history of data collection.

In light of all these factors, the complexities and expenses of implementing 50 differing state approaches to consumer privacy regulation is certainly daunting.

Setting aside the difficulties we face as an industry, differing 50 state privacy approach would be confusing and frustrating to consumers, who could be subject to divergent rights to control over their personal information based upon where they live or do business.

Bottomline, insurers should not be stuck with bespoke, industry specific privacy rules while the Amazons, Googles and Insuretechs have separate rules.

**Questions for Regulators to Consider**

How do you envision the current financial services privacy regulatory system meshing with new comprehensive laws such as the California Consumer Privacy Act?

How will financial services companies be able to compete with technology companies with differing rules on the use of personal information?
How can we provide control and equal protections to all consumers with regard to their personal information no matter where they live or with whom they are doing business? In other words, provide consumers with legal transparency and the same level enforceable rights.

How can we develop a regime that is robust and supports growth and innovation?

To put these questions another way:

How do we avoid consumer confusion over this already complex issue?

How do we avoid the obstruction of the flow of data and impediments to interstate commerce?

How do we prevent the distortion of competition (tech v. retail v. financial services)?

**Conclusion**

Technology is transforming both social norms and business capabilities. The internet is universal, and information is global. Consumers and businesses need standards that are coherent, and which provide a common understanding of privacy protections. We believe policymakers should avoid creation of a system which would provide differing consumer rights; differing levels of protections; fragmented implementation of consumer protections; and legal uncertainty. We believe that this complex issue warrants a comprehensive review and we look forward to working with the Working Group as you move forward.

Lastly, we would like to align our comments with the recently submitted observations of the National Association of Mutual Insurance Companies (NAMIC) and the American Property and Casualty Insurance Association (APCIA). We agree with the thoughtful and specific issues and challenges that our sister national trade associations raise in their remarks.

Sincerely,

Kate Kiernan

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