December 5, 2019

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 Workplan

Dear Ms. Amann and Mr. Kreiter:

The American Property Casualty Insurance Association (APCIA)\(^1\) welcomes the opportunity to provide feedback on the National Association of Insurance Commissioners’ (NAIC) Privacy Protections (D) Working Group’s (Working Group) draft workplan (workplan). APCIA appreciates the comprehensive and flexible methodology identified in the workplan, but we respectfully recommend that an important addition to the workplan is assessing and identifying a response to the increasing state legislative activity for comprehensive all-industry privacy frameworks. This legislative activity, if successful, could result in establishing a complex, duplicative and contradictory patchwork of privacy requirements for insurance licensees, which could reduce rather than enhance existing consumer protections and generates significant operational challenges. The insurance department’s can play an important role in these legislative conversations based on their experience with insurance-specific privacy laws and consistent with the regulator’s objective to protect consumers and insurer solvency. It is APCIA’s recommendation that consideration of this legislative activity by the Working Group should occur during the December to January timeframe.

Additionally, APCIA suggests adding “implementation timeframes” as an issue for review. The European Union engaged in an approximately four-year process to adopt the General Data Protection Regulation (GDPR). Following adoption by Parliament in 2016, the GDPR was not effective until May 25, 2018. The GDPR continues to raise questions and present uncertainties, but the 2-year delayed effective date was an important procedural element for the business community. Conversely, The California Consumer Privacy Act (CCPA) was rushed through the California legislature at the end of 2018 and passed with a 1-year effective date of January 1, 2020. Importantly, the implementing regulations that are meant to provide guidance on the CCPA requirements are not yet finalized. This tight timeframe for compliance is causing significant concern for the business community at-large. As such, if at the end of the Working Group’s review process, it is determined that amendments to the NAIC’s privacy models are necessary, the implementation window will be critical.

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\(^1\) 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.
The Working Group also requested feedback on a survey to assess whether the NAIC model laws and regulations need to be revised or rewritten and whether or not a new model is necessary. Respectfully, we believe that this survey is premature. The objective of the work plan is to engage in a thoughtful process to identify what, if any, modifications to the current insurance-specific privacy landscape are necessary. The current framework is functioning well and serves as a solid foundation for this Working Group’s activity. As such, any decisions about the final direction of the Working Group should be deferred.

Thank you for the opportunity to comment. APCIA looks forward to constructively collaborating with the Working Group on this important topic.

Respectfully submitted,

Angela Gleason