Electronically Submitted to lalexander@naic.org

July 28, 2023

TO: The NAIC Privacy Protections (H) Working Group (the “Working Group”)

Re: Exposure Draft of New Insurance Consumer Privacy Protection Model Law #674 – Version 1.2

Dear Members of the Working Group:

On behalf of our members, the Insured Retirement Institute (IRI)\(^1\) writes to share comments on Version 1.2 of the Exposure Draft of the new Insurance Consumer Privacy Protection Model Law #674 (the “Exposure Draft”). We appreciate the Working Group’s continued efforts on this important issue and commend the Working Group for making important and necessary updates since the last version. For example, we support the updates to Section 26 (Individual Remedies) regarding the private cause of action and the removal of the prohibition on cross-border sharing of consumers’ personal information. We would like to take this opportunity, however, to highlight some remaining concerns for our members:

1) **Section 11. Delivery of Notices Required by This Act:** While we appreciate the Working Group’s amendments to this Section, we urge the Working Group to consider additional updates that better align with consumers’ expectations of being able to conduct business electronically. Specifically, in Section 11.B.(3), we recommend that this language be updated to remove the requirement for a delivery receipt for a licensee that chooses to email a notice to the consumer. If a licensee emails a notice to an email address that the consumer has provided (the email address of record), then this should be sufficient to provide actual notice. We see this as analogous to mailing a paper copy of notice to a physical address of record; no delivery receipt is required for a hard copy, and we believe the same should be the case for electronic delivery of a notice.

We’d also ask that the Working Group consider making electronic delivery the default option, with consumers “opting out” of electronic delivery if they wish to receive paper.

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\(^1\) The Insured Retirement Institute (IRI) is the leading association for the entire supply chain of insured retirement strategies, including life insurers, asset managers, and distributors such as broker-dealers, banks and marketing organizations. IRI members account for more than 95 percent of annuity assets in the U.S., include the top 10 distributors of annuities ranked by assets under management, and are represented by financial professionals serving millions of Americans. IRI champions retirement security for all through leadership in advocacy, awareness, research, and the advancement of digital solutions within a collaborative industry community.
We understand that there will always be some consumers that want paper, and this approach will not take that away from those consumers. An electronic default approach (1) is more aligned with increasing consumer expectations that more business (beyond just insurance) be conducted electronically, (2) gives regulators and companies tools, such as detailed audit trails (which paper currently lacks), to identify and deter fraud, and (3) is more environmentally conscious. Moreover, we note that this approach would align with the actions of federal regulators and federal programs that now facilitate greater use of electronic delivery, including, for example, when the Department of Labor used its exemption authority under the Electronic Signatures in Global and National Commerce Act (“E-SIGN”), to allow employers to post retirement plan disclosures online or deliver them to workers by email as a default. We urge the Working Group to consider adopting this approach in its next draft.

2) Within Article III. Notices and Delivery of Notices, we request that the Working Group add a section regarding Privacy Notices to Group Policyholders by including language from Section 10 of NAIC Model #672. Many carriers currently rely on this language to send notices to retirement plan sponsors who then send them to the plan participants. Taking away this language would impose an unwieldy burden on recordkeepers and may cause confusion for participants who are used to receiving communications directly from a plan sponsor.

We are still discussing the draft with our members, but we understand that the Working Group will be accepting comments until August 7th. If there are any additional comments, we will share them by that date. We appreciate the Working Group’s consideration of these comments, and please don’t hesitate to contact me with any questions or concerns.

Sincerely,

Sarah E. Wood

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