July 28, 2023

Chair Katie Johnson (VA)
Vice Chair Cynthia Amann (MO)
2023 NAIC Privacy Protections (H) Working Group
NAIC Central Office
1100 Walnut Street
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Kansas City, Missouri  64106

Sent via email to: lalexander@naic.org

RE: Insurance Consumer Privacy Protection Draft Model Law #674 (Model #674)

Dear Chair Johnson and Vice Chair Amann:

The Committee of Annuity Insurers (CAI or Committee)\(^1\) appreciates the opportunity to submit the following comments to the 2023 NAIC Privacy Protections (H) Working Group (Working Group) on the exposure draft of Model #674 version 1.2 (published July 11, 2023) (the Revised Draft). We applaud the Working Group’s continuing efforts on this complex and important issue and its commitment to continuing to work collaboratively over the coming months with consumer and industry stakeholders in order to craft effective and pragmatic enhancements to consumer privacy protections that are tailored to the insurance sector.

OVERVIEW

The CAI recognizes and appreciates the Working Group’s efforts to respond to and reflect previous comments made by the CAI and others. The Revised Draft certainly represents a step in the right direction toward providing enhanced privacy protections to consumers in a way that is pragmatic and workable for licensees. That said, the CAI continues to have significant concerns regarding the Revised Draft, including issues we previously commented on as well as new issues arising from new language contained in the Revised Draft.

As revised, Model #674 would dramatically change the equilibrium that has been struck among insurance, banking and securities regulators regarding consumer privacy rights by placing much stricter limitations on insurance licensees’ ability to process their consumers’ data relative to the banking and securities sectors. This would put CAI members and all insurers at a competitive disadvantage in the broader marketplace for financial products, including by prohibiting their use of certain personal information even with the consumer’s consent and reducing the ability of insurers to market products to consumers who may benefit from those products.

As you continue to work on the draft Model #674, we again urge you to be mindful of the balance between protecting consumers and enabling the smooth and efficient operation of insurance businesses that provide necessary and important financial protection and tools to those consumers. We also urge you to be mindful of the interplay between the various provisions of the Revised Draft and how they

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\(^1\) The Committee of Annuity Insurers is a coalition of life insurance companies that issue annuities. It was formed in 1981 to address legislative and regulatory issues relevant to the annuity industry and to participate in the development of public policy with respect to securities, state regulatory and tax issues affecting annuities. The CAI's current 31 member companies represent approximately 80% of the annuity business in the United States. More information is available at [https://www.annuity-insurers.org/](https://www.annuity-insurers.org/).
may result in conflicting approaches to the same issue and unintended outcomes. To assist stakeholders, including the CAI, in responding to the Working Group's ongoing efforts, we also request that the Working Group provide additional commentary on the Working Group’s thinking and intended approach to issues under consideration in the Revised Draft.

Our comments below focus on several significant aspects of the Revised Draft that CAI members believe warrant particular attention in this regard.

COMMMENTS

1. The data minimization limitations, including consent requirements for marketing, would limit the ability of licensees to compete in the marketplace and innovate in the future.

   a. Limiting licensees to processing personal information for only statutorily permitted purposes is the wrong approach.

   The Committee recognizes and appreciates the changes made to Section 4 on data minimization and Section 5 on sharing limitations to expressly allow certain marketing activities, including the ability to market non-insurance financial products and services without obtaining consumer consent. That said, the problematic overall approach taken by Model 674 does not appear to have changed.

   Sections 4 (Data Minimization) and 5 (Sharing Limitations) would still limit the ability of insurance licensees to collect, process, retain, or share personal information collected in connection with providing an insurance product or service to a narrow list of statutorily defined circumstances. Collecting, using, or sharing any personal information that cannot be tied back to an "Insurance Transaction" would be an "additional activity" and would require consumer consent. Additionally, Section 5(A) appears to further limit the purposes for which personal information may be collected in connection with an "Insurance Transaction" to only when "necessary" to carry out certain defined purposes related to an "Insurance Transaction".

   This approach continues to be overly restrictive, and would inhibit innovation and flexibility in the insurance marketplace. Sitting here today, neither regulators nor licensees can hope to accurately identify and quantify the full scope and variety of activities that licensees conduct as part of their businesses today, nor how their offerings will evolve in the future. Accordingly, any list of permissible "Insurance Transactions" and related purposes for processing personal information defined in Model 674 will inevitably be overly narrow as the market continues to develop. Additionally, fixing or updating the list would require legislative action on a state-by-state basis, an exceptionally difficult and slow process. Accordingly, this approach will inevitable hamstring the insurance industry, suppressing innovation and harming its ability to compete in the broader financial service marketplace.

   **CAI Recommendations.** We request that licensees be permitted to collect, use and share personal information consistent with their privacy disclosures, without making artificial distinctions between an insurance transaction and "additional activities", subject to certain opt-out rights. Consent to collect, use and share personal information should not be required. Collection of personal information should still be minimized to that data that is reasonably necessary for the disclosed purposes for which the personal information is collected. This approach would be consistent with the approaches taken under the California Consumer Privacy Act and other existing and emerging US and international privacy laws.

   b. Licensees must be able to share privileged information with certain non-affiliated third parties.

   As drafted, Section 5(B) of the Revised Draft would require licensees to obtain consumer consent to share "privileged information" with any non-affiliated third party. "Privileged Information" is defined to include any personal information that relates to a claim for insurance benefit or any civil or criminal proceedings involving a consumer. There is no exception provided for sharing information with outside counsel, independent claims adjusters, or similar third parties. Licensees clearly need to be able to share information with such third parties in order to engage in normal day-to-day operations, including as necessary to pursue or protect their legal interests.
**CAI Recommendations.** Section 5(A) should be amended to provide that consent is not required where privileged information is shared with a third-party service provider. We suggest doing so through the addition of a new section that specifically permits licensees to share personal information with third-party service providers to the extent reasonably appropriate in connection with the services being provided.

**CAI Recommendations.** Section 5(C)(2)(a) appears intended to limit third parties who receive personal information in connection with providing additional activities from further sharing the information. However, as currently drafted this section would prohibit any “person” conducting additional activities from further sharing personal information, which would include licensees directly providing such additional activities. This would effectively prohibit licensees from using third-party service providers in connection with additional activities, even with consumer consent.

**CAI Recommendations.** This section should be clarified to refer to a “third party” instead of a “person”.

**d. Consumers should be empowered to decide how their personal information can be used and shared.**

Section 5(C)(2)(b) of the Revised Draft would prohibit any sharing of “Sensitive Personal Information” in connection with additional activities involving marketing a non-insurance or non-financial product or service. This appears to be a flat prohibition, regardless of consumer intent. Additionally, while this provision appears to only prohibit sharing the data, Section 6(C)(4) suggests it is meant to operate as a broader prohibition on even internal uses of Sensitive Personal Information for marketing of additional activities. Instead of empowering consumers to choose how their personal information is used and shared, this provision would make the decision for them. It would also prevent licensees from engaging in normal marketing practices that help them to effectively market beneficial products in a crowded and competitive market.

Similarly, Section 5(E) appears to be a broad prohibition on selling consumers’ Personal Information, regardless of consumer intent or consent.

**CAI Recommendations.** Processing or sharing personal information should never be flatly prohibited. Rather, consumers should be empowered to opt-out of the sharing of sensitive personal information or selling of personal information, subject to certain exceptions.

**2. Revise sections where consumer consent appears to be required for opt-out rights.**

The CAI appreciates that the Working Group has responded to previous comments made by the CAI and others by incorporating language in the Revised Draft that seems to move from a consent based approach to an opt-out approach for marketing and joint marketing activities. However, there are several sections of the Revised Draft that seem to cut against this approach and make it unclear as to whether some form of consent or authorization remains required.

For example, Section 5(A)(14) defines what licensees must do to engage in joint marketing, which states that consumers must be provided the right to “opt-out”. However, Section 5(A)(14)(c) appears to also require an “authorization” that complies with Section 6 (Consumer’s Consent). Requiring consent or authorization of any kind to engage in marketing is diametrically opposed to an “opt-out” approach. It is therefore unclear as currently drafted what is required for licensees to use personal information for marketing, and whether the law takes an opt-in or opt-out approach. The same issue exists in Section 5(A)(15) regarding what is required to engage in marketing.

Similarly, Section 6(A) seems to indicate that consumer consent could be required in connection with both opt-in and opt-out rights, stating “Where the consumer’s consent . . . is required by this Act, whether opt-in or opt-out, . . .” This language is self-contradictory. Any approach that requires consumer
consent or authorization is not an opt-out requirement, but rather an opt-in requirement. A similar issue exists in Section 6(B).

**CAI Recommendations.** The Revised Draft should be further revised to clarify that consent is not required in connection with marketing or joint marketing activities, and rather that an opt-out approach is being taken. At a minimum, subsections (c) should be deleted from both Sections 5(A)(14) and (15). Additionally, the reference to “whether opt-in or opt-out” should be deleted from Sections 6(A) and (B).

3. **Clarify that de-identified information is not personal information and is excluded from the restrictions and requirement of Model 674.**

The Revised Draft includes conflicting language regarding how de-identified information is treated under Model 674 and causes confusion over the extent to which de-identified information is subject to regulation under Model 674. The Definition of “Personal Information” in Section 2(DD) clearly states that de-identified information is not personal information. We believe this reflects the Working Group’s intent, and is appropriate since the use of de-identified information does not pose privacy risks to consumers.

However, Section 5(D) appears to limit the ability of licensees to collect, process, retain, or share de-identified personal information to only “as necessary in connection with insurance transactions and additional activities”. This is incongruous and inconsistent with the definition of personal information, and would regulate de-identified data as a subset of personal information.

Similarly, several provisions in the Revised Draft would require that personal information be entirely deleted in various circumstances, without allowing for de-identification in lieu of deletion. For example, Section 7(C)(1) would mandate that personal information be “deleted” within 90 days of a determination that the personal information is no longer needed for certain specified purposes. The definition of “delete” in Section 2(M) states this means such data must be “permanently and completely erased.” It does not allow for de-identification. Indeed, Section 7(C)(2) suggests that de-identification is only permissible where deletion is not feasible. This approach would lead to the incongruous result that the same de-identified information would be permissible for licensees to maintain if it was collected in a de-identified manner, but would be impermissible to keep if it was collected in an identifiable form and later de-identified. It is unclear what regulatory purposes this approach would serve.

**CAI Recommendations.** We request clarification that a licensee could de-identify personal information in lieu of deleting it, as such data would no longer be personal information. This could be accomplished by amending the definition of “delete” to allow for de-identification and by deleting Sections 5(D) and 7(C)(2).

4. **The requirements for enhanced third party oversight and contracting requirements would still adversely limit the ability of licensees to hire top service providers.**

The Revised Draft contains largely the same third party oversight provisions as previously proposed and continues to raise issues of significant concern. Section 3(B) would continue to require third-party service providers to agree to “abide by the provisions of this Act” and to require them to implement appropriate measures to “comply with the provisions of this Act”. As drafted, this appears to be an attempt to exercise long-arm jurisdiction over third-party service providers through contractual requirements that the licensee must impose. As we previously commented, many service providers will not be willing to agree to comply with a law that would not otherwise apply to them. In practice, these requirements would serve only to alienate quality service providers from serving the insurance sector, and limit the ability of licensees to assess and manage the privacy risks posed by third-party service providers. We reiterate our comments made on this issue in our previous comment letter dated April 3, 2023 and maintain that licensees should be empowered to pick the best vendor overall, not just the vendors willing to agree to certain contractual language.

Section 3(G) also carries over an additional issue from the previous draft of Model #674 by requiring that contracts with third-party services providers require that both the licensee and service provider must comply with consumer “directives”. As drafted, both parties would be prohibited from “collecting,
processing, retaining, or sharing the consumer's personal information in a manner inconsistent with the directive of the consumer", regardless of whether that directive goes beyond the consumer rights otherwise provided in Model # 674. This would be virtually impossible for licensees and service providers to comply with in practice, and would be extremely burdensome.

**CAI Recommendation.** Instead of applying a one-size-fits-all approach that will limit the ability of licensees to engage the best service providers in the market, Model #674 should be revised to take a risk-based approach. The CAI recommends that the Model require licensees to conduct appropriate due diligence and oversight of all third party service providers that process personal information, and require licensees to negotiate appropriate contractual protections based on the assessed risk of the service provider. The Model should not specify what those contractual protections would include beyond limiting the service providers’ ability to use, share or disclose personal information for purposes other than providing the services and requiring the third party’s cooperation when consumers exercise their rights to data correction and deletion.

Section 3(G) should be deleted. Alternatively, at minimum, Section 3(G) should be revised to clarify that parties must honor a consumer’s decision to exercise rights provided under Model # 674, not comply broadly with any directive submitted by a consumer.

5. **Key definitions need clarification and refinement.**

   a. **The definition of “consumer” should be clearly focused on personal information collected in connection with an insurance transaction.**

      As currently drafted, the definition of a “consumer” in the Revised Draft is extremely broad, and would appear to include virtually any individual whose personal information a licensee collects. Section 2(I) currently defines “consumer” to include information on any individual “whose personal information is used, may be used, or has been used in connection with an insurance transaction. Including any individuals whose information could possibly be used ("may be used") in connection with an insurance transaction expands the definition significantly with no clear boundary. For example, this definition could be interpreted to apply to employee information, business partner information, and other information that is not actively collected in connection with an insurance transaction, since any such information could potentially be used in connection with an insurance transaction in the future. This drafting of the definition would seem to be at odds with other provisions of Model # 674, which are appropriately focused on protecting actual insurance customers rather than any personal information that happens to be collected by a licensee.

      **CAI Recommendations.** The definition of “Consumer” should be aligned with the existing definition in Model # 672.

   b. **The definition of “personal information” should be clarified.**

      As currently drafted, the definition of “personal information” under Section 2(DD) would be limited only to the specific types of personal information listed under Section 2(DD)(1). This drafting would appear to contrast to the apparent intent of the language otherwise included in Section 2(DD) defining personal information as "any individually identifiable information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked to a consumer . . . .”

      Additionally, there appears to be a typo in the definition, as it states that the definition applies to consumer information “that is by or on behalf of a licensee . . . .” A word appears to be missing from this phrase, and it is unclear what it is meant to convey.

      **CAI Recommendations.** The definition of personal information should be revised and clarified, including to clearly indicate whether the list of items in Section 2(DD)(1) are meant to be an exclusive or illustrative list of what constitutes “personal information”.

   c. **Define “additional activities”.**
The concept of “additional activities” is central to the current Revised Draft of Model 674. However, this key term is not defined. Based on how it is used within the Revised Draft, it appears intended to include any activity that is not defined as an “Insurance Transaction”. To the extent the concept of “additional activities” is retained in future drafts, the term should be clearly defined. However, we reiterate that consent should not be required to collect or use information consistent with privacy disclosures made to consumers.

**d. Amend the definition of “personal information” to exclude “publicly available information”**.

Unlike NAIC Model #672 Section 4(T)(2)(b), which excludes publicly available information from the definition of “personal information” in a manner similar to other state privacy laws, the Revised Draft does not explicitly exclude “publicly available information” from its scope. Rather, it restricts or adds requirements to the use of “publicly available information” throughout the draft, such as in Section 3(C), which permits a licensee to share “publicly available information” with a third party service provider only to the extent necessary to provide the service requested by the consumer. Similarly, new language in Sections 12 and 13 would require consumers to submit verifiable requests to access the consumer’s personal and publicly available information in the possession of a licensee or its third-party service providers. Including “publicly available information” in this privacy law would be unprecedented, overly burdensome and detract from the purpose of privacy laws, which is to protect the privacy of private personal information.

**CAI Recommendations.** The scope of the requirements of the Revised Draft should be restricted to “personal information,” and “publicly available information” should be explicitly excluded from the definition of “personal information.” All references to “publicly available information” that impose additional restrictions or burdens on licensees should be deleted.

**e. Clarify the definition of an “insurance transaction”**.

As currently drafted, the definition of “insurance transaction” under Section 2(V) appears to contain language that would result in unintended consequences. The first sentence of the definition provides that an insurance transaction is any transaction “by or on behalf of a licensee and its affiliates” (emphasis added). As drafted, this would mean that any of the specific transactions listed in the definition that follow this phrase would only qualify as insurance transactions if they are provided by both the licensee and its affiliates; the same transaction provided just by the licensee would not qualify. We do not believe this is the intended meaning.

Additionally, Subsection 2(V)(7) appears intended to provide flexibility for licensees to process personal information for short-term transient uses. However, as drafted the provision appears to enact additional limitations on the ability of licensees to engage in common marketing practices that would otherwise be permissible under the Revised Draft. Additionally, it does not expressly state that it is referring to the short-term, transient use of personal information; it simply refers to “short-term, transient use.”

**CAI Recommendations.** The definition of “insurance transaction” should be reviewed and revised to clarify that an “insurance transaction” includes transactions or services provided by licensees or their affiliates, and to broadly permit short-term, transient uses of personal information.

6. **The limits on data retention in Section 7 should be revised to allow more flexibility.**

   **a. Permitting retention of personal information only for the duration of an insurance transaction with the consumer should be modified to permit retention for any reasonable business purpose, as disclosed in the privacy notice.**

   Revised Section 7(A)(1) would permit retention of personal information “as necessary” for “the performance of any insurance transaction with the consumer”, after which the data must be deleted.
However, a retention scheme that relies on transactions with consumers fails to allow licensees to retain personal information received from affiliates and other financial institutions for legitimate business purposes, such as joint marketing. For example, once a single joint marketing campaign has been completed and the personal information used in connection with that campaign is no longer strictly “necessary” for purposes of that campaign (an insurance transaction), a licensee would be required to delete that personal information even if it will just need to gather the information again in the future for additional or limited campaigns.

**CAI Recommendations.** This provision should be modified to allow licensees to retain personal information for any reasonable business purpose, and as disclosed in their privacy notice.

b. **An annual review of “all consumers’ personal information in its possession” is highly burdensome and should be changed to a review by category or type of personal information**

Revised Section 7(B) would require a licensee to annually review its data retention and “review all consumers’ personal information in its possession” to determine whether the purposes for which the personal information was retained still remain. As drafted, licensees would be required to review all of the actual consumer personal information in its possession, as opposed to conducting a broader assessment of the types and amounts of personal information it retains. The annual review of all consumers’ personal information in its possession is highly burdensome and unwarranted.

**CAI Recommendations.** Section 7(B) should be revised to clarify that the requirement is to annually review the type and amount of personal information in the licensee’s possession, not specific personal information.

c. **The 90-day period to completely delete a consumer’s personal information should be extended.**

Revised Section 7(C)(1) provides that once a licensee has determined that the consumers’ personal information is no longer needed, then the licensee shall completely delete all the consumers’ personal information within 90 days. We had previously commented that the 90-day time period to completely delete all personal information is too short and impractical, given the number of systems on which the personal information can be retained, including systems such as application, underwriting, operational, claims, distribution and other systems. Personal information will also be retained on backup systems, which present special issues and may be accessible only on a quarterly basis. Moreover, given the length of time that personal data must be retained, some consumer data may be in paper files that are archived and difficult to access.

The current version of the Model Law does not add flexibility on this point, other than to add new language that gives the commissioner the discretion to grant exceptions for good cause shown. Practical questions remain, however, regarding the severity of this 90-day requirement and regarding which commissioner would grant the exception, especially if one or more commissioners other than the commissioner in the insurer’s state of domicile can weigh in on this issue.

**CAI Recommendations.** Section 7(C)(1) should be revised to provide an annual deletion period, which would be more manageable and permit insurers to include deletion of personal information in their periodic cycles of system maintenance.

d. **The requirement to replace legacy systems within 10 years if they do not permit targeted disposal is highly prescriptive and costly without taking collateral consequences into account. Compensating controls should be permitted as an alternative to legacy system replacement.**

Section 7.C.(2) of the Revised Draft would require a licensee that cannot de-identify or delete consumers’ personal information from a system to replace the system within 10 years and to annually report to their domestic regulator on their progress in completing the project within those 10 years.
The commissioner has discretion to grant exceptions for good cause. Assuming the revised Model #674 is ultimately adopted broadly, as currently drafted a licensee would be required to obtain an exception from each state commissioner in order to avoid having to migrate away from an existing legacy system.

The reality of migrating off of a legacy system in practice is extraordinarily complex, time consuming, and astronomically expensive. The process would easily take more than a decade to complete for some systems, and result in large costs that would necessarily be passed on to consumers. Part of the reason for this complexity and difficulty is that legacy systems are not stand-alone systems, but rather are deeply entrenched and enmeshed in licensees’ information technology infrastructure. Migrating away from a legacy system would mean: (1) peeling back decades of custom and iterative software development and system design to disentangle the legacy system from the overall IT architecture; (2) migrating huge volumes of data to the new system in a way that transforms data from legacy formats to formats used by newer systems while ensuring consistency and fidelity in the data set; (3) integrating the new system with hundreds of other existing systems that interact with and depend on the existing legacy system to function; and (4) manage to complete all those tasks without disrupting ongoing business operations.

The task is enormous, comes with large amounts of operational and business interruption risk, and should not be taken lightly. We do not believe mandating such projects broadly across the insurance sector is an appropriate remedy to concerns about data minimization. Moreover, licensees are already subject to cybersecurity requirements, which require the adequate protection of personal information stored on legacy systems. Licensees have spent millions of dollars implementing compensating cybersecurity and privacy controls on their legacy systems, controls that are designed to appropriately protect consumer personal information held on such systems in satisfaction of existing NAIC and state standards. We do not believe mandating migration away from legacy systems is the appropriate remedy for addressing the cybersecurity risks of legacy systems.

**CAI Recommendations.** The proposed requirement to migrate away from legacy systems goes beyond the purview of privacy and what a privacy law is intended to accomplish. We respectfully submit that Model #674 is not the venue for addressing this issue. Instead, the CAI requests that this requirement be removed and that flexibility be provided to address legacy systems issues through the development and approval of appropriate compensating controls.

**7. The delivery of the notice of consumer privacy protection practices (“notice of privacy practices”) in Section 8 should be revised and made more flexible.**

a. The requirement to provide a notice of privacy practices when a licensee or third-party service provider first collects the personal information of a consumer is unworkable and should be revised.

As currently drafted, revised Section 8(B)(1) would require a licensee to provide an initial notice of privacy practices to the consumer at the time the licensee, directly or through a third-party service provider, first collects, processes or shares the consumer’s personal information in connection with an insurance transaction or additional activity. This provision is unworkable on several levels.

For example, assume the licensee is planning a digital marketing campaign and has obtained information about a consumer that does not include a street address. In such cases, how is the licensee going to send an initial notice of privacy practices to a consumer at the time the licensee first collects the consumer’s information if the licensee has not obtained a mailing address for the consumer from the marketing agency? Note that Section 11(B)(3) would require the notice of privacy practices to be mailed to the individual at the time of collection.

Additionally, under the current language, the trigger for sending the notice of privacy practices is when the insurer receives the marketing leads from a third-party marketer, not when the licensee or its agent contacts the consumer. However, the licensee would not know whose information it is collecting until it receives the personal information, and therefore it would be impossible to comply with the
requirement to provide notice at the time the data is collected. Additionally, requiring every licensee that would market to a consumer to deliver a privacy notice would create a deluge of privacy notices to consumers that would render the notices ineffective and annoying.

**CAI Recommendations.** A more effective and relevant approach would be to revise Section 8(B)(1) so the sending of the notice of privacy practices was triggered when the licensee is first in direct contact with a consumer and can obtain the information necessary to send the privacy practices notice.

**b. The requirement on when to send a notice of privacy practices to a beneficiary should be clarified.**

New language in revised Section 8(B)(1) states that the term “consumer” includes a third-party claimant or beneficiary in connection with a claim under an insurance policy. However, there is ambiguity regarding when the initial notice of privacy practices must be sent to third-party claimants and beneficiaries. Often, an insurer licensee first collects a beneficiary’s name and possibly contact information at the time the insured applies for an insurance policy or contract. But the actual processing of a claim likely will occur much later.

**CAI Recommendations.** The Committee requests that Section 8(B)(1) be revised to clarify that a notice of privacy practices must only be delivered to beneficiaries at the time a claim is filed with the licensee.

8. **The requirement that the notice of privacy practices list the persons who received the consumer’s personal information should be deleted. In the same vein, consumers should not be given the right, in the notice of privacy rights, to obtain the identification of all persons who have received the consumer’s personal information.**

Revised Section 9(A)(5) continues to require that the notice of privacy practices state that a consumer may obtain a list of persons with whom the licensee or its third-party service provider has shared the consumer’s personal information in the three previous calendar years. Because the term “person” is defined to include individuals, this would require licensees to track and maintain a list of every individual, internal or external, that processes a particular individual’s personal information. We commented in our previous letter that this provision would be extremely costly, onerous and difficult to manage, while providing the consumer with little, if any, benefit.

Similarly, new Section 10(B)(e) would require a licensee to send a privacy rights notice to each consumer with whom the licensee has an ongoing relationship, giving the consumer the right to obtain “the identification” of all persons who have received the consumer’s personal information in the past three years. As drafted, this requirement would be extremely burdensome, as noted above, and serve no clear purpose.

**CAI Recommendations.** The Committee reiterates its previous request that Section 9(A)(5) be generalized so that the licensee would be required to give an indication of the categories of third parties with whom the consumer’s personal information was shared, not the names of individuals.

The Committee also requests that Section 10(B)(e) be generalized to provide notice of the types or categories of third parties with whom a consumer’s personal information has been shared.

9. **The delivery requirements for the notice of privacy practices and the notice of privacy rights should be symmetrical.**

Revised Section 8(C) requires that the notice of privacy practices be delivered only when the privacy protection practices of the licensee change. But new Section 10(C) requires that the notice of privacy rights be provided to the consumer at least once every year, which in many cases would require the notice to be physically mailed. This new requirement would be costly, would be inconsistent with the revised approach that Congress has taken to delivery of privacy notices, and would be of limited utility.
to the consumer, especially since the notice of privacy rights would be posted on the licensee’s website and always available.

**CAI Recommendations.** The Committee requests that the annual delivery requirement for the notice of privacy rights and the requirement for delivery of updated notice of privacy practices be revised to allow that website posting of the notices satisfies the requirements for delivery of both the notice of privacy practices and the notice of privacy rights.

**10. Delivery of initial notices required by the Act should be more flexible.**

While the Revised Draft has added some flexibility for delivering notices required by the Act, it would still generally require notices to be mailed in hardcopy as the default approach. This is out of step with a modern approach to delivering notices. We reiterate our previous comments on this issue.

**CAI Recommendations.** The Committee requests that further flexibility be provided to allow licensees to send initial notices by default in the way that the licensee generally engages with that consumer. This approach, consistent with the approach taken in the CCPA, would allow a consumer who frequently uses the licensee’s website to receive the initial privacy notices electronically, unless the consumer requests delivery in another way.

We want to express our deep appreciation for the opportunity to comment on draft Model #674, and we hope that you find these comments helpful at this stage. Please do not hesitate to contact us if you have any questions.

Sincerely,

**For The Committee of Annuity Insurers**

Eversheds Sutherland (US) LLP

By:

[Signature]

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