

represents a positive step toward achieving the goals Congress established in the Regulatory Relief Act. A model form should facilitate the ability of consumers to better comprehend and compare financial institutions' privacy policies and practices.

To enable life insurers to use the Model Form proposed by the Agencies, ACLI believes that the Agencies need to take into account unique aspects of life insurers' information collection and sharing practices as well as the fact that life insurers must accommodate various state privacy and disclosure requirements that differ from the GLB Act requirements. The Model Form and proposal currently do not provide flexibility to permit life insurers to address their unique practices or varying state requirements.

In addition, the GLB Act eliminated the walls between banking, securities, and insurance by allowing the merger of these types of businesses under a single holding company. The privacy notices required under Section 503(a) of the GLB Act should not create barriers to these entities working together, since the GLB Act was clearly intended to permit and foster such activity. Therefore, privacy notices that accommodate this type of holding company should be permitted, and given safe harbor under the Agencies' rules, so that life insurers that are part of diversified financial institution holding companies are permitted to use a single uniform privacy notice that reflects the privacy policies of the affiliated group of companies.

Accordingly, ACLI urges the Agencies to permit life insurers that use the Model Form with the prescribed format: (i) to make limited modifications to the language, by omitting inapplicable provisions, or adding additional bullets, boxes, or footnotes; or (ii) to include supplemental materials with the Model Form to make their notices accurately reflect life insurance industry practices and comply with state insurance privacy laws, without losing the safe harbor. In addition, ACLI urges the regulators to modify certain parts of the Model Form to make specific generic changes, generally applicable to financial institutions, to also make the form more reflective of life insurance industry practices and state insurance privacy laws. ACLI's views regarding parts of the Model Form in connection with which life insurers should be permitted to make modifications and our specific recommended language changes are explained below. The recommended language changes are also reflected in the attached mark-up of the Model Form. By permitting limited modifications and making certain language changes to the Model Form, the Agencies will enable life insurers to make use of the Model Form and facilitate the ability of life insurers that are part of diversified holding companies to use a single notice, in line with the clear intent of the GLB Act.

In addition, ACLI believes that in certain instances, the proposal imposes operational burdens that appear to be unnecessary to achieving the goals Congress established in the Regulatory Relief Act. Providing life insurers and other financial institutions with additional operational flexibility, as discussed below, will enhance the usefulness of the Model Form without diminishing its importance and value to consumers.

Under the Agencies' current GLB Act privacy regulations, financial institutions obtain a safe harbor by using the sample clauses set forth in the regulations. The Agencies propose to eliminate this safe harbor after a one-year transition date. ACLI strongly objects to the elimination of the safe harbor for institutions that use the sample clauses.

As the Agencies are aware, the GLB Act assigns jurisdiction over insurers to the state insurance authorities. A majority of states have adopted laws and regulations that are substantially similar to the language adopted by the Agencies in their GLB Act regulations. Generally, state regulations provide a safe harbor similar to that provided by the Agencies in their current regulations.

For example, the disclosure table does not take permit life insurers to inform consumers of special disclosure practices they may have in connection with medical information or to take into account unique state opt-in or opt-out requirements with respect to certain sharing of personal information. Also, the column entitled “Does [name] share?” permits only a “yes” or “no” answer. However, a life insurer may wish to inform consumers that it shares nonpublic personal information with certain affiliates or types of institutions rather than with all affiliates or all types of institutions.

Accordingly, ACLI urges that life insurers be permitted to modify the disclosure table so that it accurately reflects life insurers’ practices and unique state privacy laws without losing the safe harbor. Providing added flexibility will result in additional clarity for consumers and will not weaken the goal of making privacy disclosures clear and understandable.

In addition, ACLI believes that certain specific minor changes to the language of the disclosure table will enhance consumer understanding of the information presented and more accurately reflect the information sharing practices of the life insurance industry. Accordingly, we suggest that the first block be adjusted read as follows:

For our everyday business purposes – such as to process your transactions, maintain your account, and report to consumer reporting agencies.

Again, use of the phrase “such as” is suggested to clarify that not all companies use personal information for all the purposes presented.

In addition, for the reasons discussed above, ACLI believes that the term “consumer reporting agencies” should be substituted for the term “credit bureaus” in the first block.

In the fourth block of the disclosure table, relating to disclosures to affiliates for everyday business purposes, ACLI believes that the use of the term “creditworthiness” may not accurately reflect the type of information that may be shared by life insurers with affiliates. ACLI recognizes the term “creditworthiness” is a short-hand way of describing information other than information relating to the customer’s transactions and experiences with the institution. However, ACLI suggests that the term “creditworthiness” may be too expansive and may prove confusing to consumers, because it may connote information relating to the customer’s transactions, such as payment history. Accordingly, we recommend that the language be changed to the following:

For our affiliates’ everyday business purposes – information other than information about your transactions and experiences with us ~~creditworthiness~~

In the fifth and sixth blocks of the disclosure table, relating to sharing of personal information with affiliates and nonaffiliates for marketing purposes, it is not clear that the blocks are intended to be applicable to sharing for purposes of marketing the affiliates’ and nonaffiliates’ products only. Accordingly, we suggest that the language of the fifth and sixth block be adjusted respectively to read as follows:

For our affiliates to market their products to you

For our nonaffiliates to market their products to you

“CHECK YOUR CHOICES”

ACLI again is concerned that the inflexible structure of the opt-out choices will not provide life insurers the ability to provide opt-out choices that reflect their particular sharing policies and unique state laws. For example, a life insurer may wish to provide a partial opt-out, as explained below. Accordingly, ACLI urges that life insurers and other financial institutions be permitted, without losing the safe harbor, to adjust the opt out choices as necessary to accurately reflect an institution’s particular practices. This will enhance, not weaken, the goal of making the opt out choices more clear and accurate.

Sharing with affiliates for everyday purposes

Further, ACLI is concerned that the opt out choices presented on page 3 of the Model Form may not accurately reflect the opt out opportunities provided by the FCRA. ACLI believes that the use of the term “creditworthiness” in the first choice is potentially confusing because customers may believe that the opt out choice also applies to information relating to their transactions with the company. ACLI suggests that the first opt out choice be changed to read as follows:

Do not share with your affiliates for their everyday business purposes information other than information about my transactions and experiences with you. ~~with your affiliates for their everyday business purposes~~

Sharing with affiliates for marketing

ACLI is concerned that the second opt out choice is not accurate because it does not indicate that a company may use information obtained from an affiliate for marketing purposes if the consumer is a customer of both companies and for other reasons specified in the Fair Credit Reporting Act. As proposed, consumers may believe that the opt out permits them to prevent all affiliates from using information for marketing purposes. Accordingly, ACLI believes that the option should be modified to read as follows:

Do not allow your affiliates with whom I do not do business to use my personal information to market to me.

Many financial institutions maintain the policy that if a customer chooses not to permit an affiliate to use personal information for marketing purposes, the opt out will continue until rescinded by the customer and need not be renewed. Accordingly, ACLI requests that the Agencies clarify that the sentence on page 3 of the Model Form regarding the need to renew this opt out after five years need not be provided if the institution’s policy is to continue the opt out until the customer chooses to withdraw it.

Partial Opt-out

The Agencies’ GLB Act regulations provide that financial institutions may permit a consumer to select certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt-out. The Model Form does not appear to permit institutions to offer partial opt-outs to consumers. In view of the fact that the Agencies’ existing regulations permit such an option, ACLI requests that the Model Form permit life insurers and other financial institutions to provide consumers with the opportunity to select certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt-out.

Account Number

ACLI suggests that the reference to “Account Number” at the bottom of the opt out form be adjusted to reference an identifying number, that would include either an account or a policy number, since life insurers’ customers are issued policies rather than accounts.

OPERATIONAL CONSIDERATIONS

FLESH SCORE/FONT SIZE

ACLI is concerned that the Model Form does not meet the Flesch Score of 50 required in the state of California with respect to insurers’ privacy notices. There also is concern that the Model Form may not meet certain state requirements relating to font size. Accordingly, ACLI urges that the Agencies adjust the Model Form so that it meets the California Flesch Score requirement or that insurers be granted the flexibility to adjust the form as necessary to meet the requirement. ACLI also urges that insurers be permitted to adjust the font size to meet any applicable state requirements.

PAPER SIZE

The Agencies require financial institutions to print the Model Form on 8 ½” by 11” paper. ACLI believes that specification of the paper size is not necessary to accomplish Congress’s objectives with respect to the Model Form as set forth in the Regulatory Relief Act. To date, ACLI member companies have not received complaints regarding the size of the paper on which their privacy policies are printed. Accordingly, ACLI recommends that the Agencies permit financial institutions to print the Model Form on whatever size paper they believe is appropriate given an institution’s particular circumstances.

NUMBER OF PAGES

The Agencies require that the Model Form must appear on two separate pages. If an opt-out is provided, the opt-out form must be on a third page. The Agencies indicate that separate pages are required because testing has indicated that consumers have a preference for notices that enable them to view the information on pages one and two side-by-side. ACLI believes that the evidence regarding consumer preference does not outweigh the significant increase in expenses life insurers and other financial institutions will incur as a result of increased costs for paper, handling and processing. The Agencies’ research did not indicate any significant increase in consumer comprehension and usability. Indeed, the Agencies’ notice states that their research concluded that page one of the Model Form alone was adequate for consumer comprehension and usability.⁸ Accordingly, ACLI requests that the Agencies not adopt the requirement that the Model Form be printed on separate pages.

DELIVERY

The Agencies indicate that institutions will not be permitted to incorporate the Model Form into any other document. It is unclear whether the Model Form may be sent to customers in a mailing that contains other material. Nonetheless, ACLI believes that such limitations are inappropriate and unnecessary. The Agencies cite no evidence to support the position that including the Model Form with other material in a mailing will dilute its effectiveness. Moreover, as indicated above, ACLI believes it is very important that life insurers to be permitted to include supplemental materials with the Model

⁸ 72 *Fed. Reg.* at 14944.

Form if necessary to make the notice accurately reflect life insurance industry practices and to comply with state privacy laws that differ from the GLB Act requirements. Also, including the Model Form with another important document, such as a periodic statement, will underscore the importance of the Model Form to consumers. Requiring that the privacy notice be sent in a separate mailing will add considerable expense with no demonstrable and possible diminution of its benefit to consumers. Accordingly, ACLI urges that the Agencies permit financial institutions to include other information in the mailing that contains the Model Form without losing the safe harbor.

Insurers often provide customers with privacy notices as part of a document or brochure that describes the terms and features relating to the customer's insurance policy or annuity. Customers review and retain these documents because they are important documents. For example, companies that are required to provide a prospectus to customers in connection with certain types of insurance products generally include the privacy notice in the prospectus. Because of their importance and comprehensiveness, consumers typically review and retain these booklets or documents. Permitting the Model Form to be part of a comprehensive relationship document will not adversely affect the goals set forth in the Regulatory Relief Act. Indeed, permitting the form to be part of an important relationship document will focus attention on the notice and help ensure that it will be read by customers. It also ensures that the Model Form will be delivered to customers and will not inadvertently be omitted from among other documents provided to consumers at the time they become customers. Accordingly, ACLI requests that the Agencies permit institutions to incorporate the Model Form into a document that includes other material relating to the customer's relationship with the institution.

NOTICE OF CHANGES

Life insurers and other financial institutions typically notify consumers of changes to their privacy policies in annual privacy notices. The Agencies have requested comment on whether they should require financial institutions to highlight changes in their policies as part of the Model Form. ACLI believes that such a requirement will result in consumer confusion and is unnecessary. Requiring institutions to highlight changes in their privacy policies would be meaningful only if consumers are informed as to what the previous policies were. Moreover, requiring that this additional information be provided is inconsistent with the objective of providing privacy policies in a clear, straightforward manner that consumers can easily understand. Highlighting changes will make the Model Form unnecessarily complex and confusing to customers.

LOGOS AND COLOR

The Agencies ask whether financial institutions will use corporate logos and color in connection with the Model Form. Financial institutions use corporate logos to provide a consistent corporate identity that customers easily recognize and identify with. The use of color and logos increases the likelihood that customers will read the information the institution provides. Accordingly, ACLI supports the ability of life insurers and other financial institutions to use logos and color on the Model Form.

TESTING

The Agencies indicate they plan to test the next version of the Model Form with consumers. ACLI recommends that the Agencies also convene an advisory group composed of representatives of life insurers and other financial institutions with expertise in privacy matters to review the Model Form and advise on whether the next version provides useful information to consumers, is understandable, and conveys meaningful information in a clear manner.

ATTACHMENT

FACTS	WHAT DOES [name of financial institution] DO WITH YOUR PERSONAL INFORMATION?
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Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
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What?	<p>The types of personal information we collect and share depend on the product or service you have with us. This information can include:</p> <ul style="list-style-type: none"> • information to establish your eligibility for our products and services; • Social Security number and income • account balances or payment or transaction history • consumer report credit history or credit scores <p>When you are no longer a customer release your account we continue to share information about you according to our policies.</p>
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How?	All financial companies need to share customers' personal information to run their everyday business, such as to process transactions, maintain customer accounts, and report to consumer reporting agencies credit bureaus . In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.
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Reasons we can share your personal information	Does [name of financial institution] share?	Can you limit sharing?
For our every day business purposes - - such as to process your transactions, maintain your account, and report to credit bureaus consumer reporting agencies		
For our marketing purposes - - to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes - information about your transactions and experiences		
For our affiliates' everyday business purposes - Information other than information about your creditworthiness transactions and experiences with us		
For our affiliates to market their products to you		
For nonaffiliates to market their products to you		

Contact Us	[applicable means of contact] Call or go to [web address]
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Sharing practices	
How often does [name of financial institution] notify me about their practices	We must notify you about our sharing practices when you <u>become a customer</u> open an account and each year while you are a customer.
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer <u>and physical</u> safeguards and secured files and buildings .
How does [name of financial institution] collect my personal information	<p>[Option for life insurers] We collect your personal information, for example, when you</p> <ul style="list-style-type: none"> • <u>apply for insurance or benefits</u> • <u>request or use a product, service or open an account</u> or deposit money • buy or sell securities, pay your bills or apply for a loan • <u>use your credit or debit card</u> <p>We also collect your personal information from others such as <u>consumer reporting agencies</u>, credit bureaus, affiliates, or other companies.</p>
Why can't I limit all sharing?	<p>Federal law gives you the right to limit sharing only for</p> <ul style="list-style-type: none"> • affiliates' everyday business purposes – information <u>other than information</u> about your <u>transactions and experiences with us</u> creditworthiness • affiliates to market <u>their products</u> to you • nonaffiliates to market <u>their products</u> to you <p>State laws and individual companies may give you additional rights to limit sharing.</p>
Definitions	
Everyday business purposes	<p>The actions necessary by financial companies to run their business and manage customer accounts, such as:</p> <ul style="list-style-type: none"> • processing transactions, mailing, and auditing services • providing information to <u>consumer reporting agencies</u> credit bureaus • responding to court orders and legal investigations
Affiliates	<p>Companies related by common ownership or control. They can be financial and nonfinancial companies.</p> <ul style="list-style-type: none"> • [affiliate information]
Nonaffiliates	<p>Companies not related by common ownership or control. They can be financial or nonfinancial companies.</p> <ul style="list-style-type: none"> • [nonaffiliated information]
Joint marketing	<p>A formal agreement between nonaffiliated financial companies that together market financial products or services to you</p> <ul style="list-style-type: none"> • [joint marketing]

FACTS

WHAT DOES [name of financial institution] DO WITH YOUR PERSONAL INFORMATION?

If you want to limit our sharing

<p>Contact us</p>	<p>By telephone [toll-free telephone] – our menu will prompt you through your choices</p> <p>On the web: [web address]</p> <p>By mail: mark your choices below, fill in and send from to</p> <p>[mailing address]</p> <p>Unless we hear from you, we can begin sharing your information 30 days from the date of <u>our first notice providing you the opportunity to limit our sharing</u>this letter. However, you can contact us at any time to limit our sharing.</p>
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Check your choices

<p>Your choices will apply to everyone on your account</p>	<p>Check any/all you want to limit: (see page 1)</p> <ul style="list-style-type: none"> <input type="checkbox"/> Do not share <u>with your affiliates for their everyday business purposes</u> information, <u>other than information</u> about <u>my transactions and experiences with you</u>creditworthiness with your affiliates for their everyday business purpose. <input type="checkbox"/> Do not allow your affiliates <u>with whom I do not do business</u> to use my personal information to market to me. <i>(I will receive a renewal notice for this use for marketing in 5 years.)</i> <input type="checkbox"/> Do not share my personal information with nonaffiliates to market their products and services to me. 							
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