

INDEPENDENT INSURANCE AGENTS OF LOUISIANA  
9818 BLUEBONNET BOULEVARD  
BATON ROUGE, LA 70810  
TEL: 225/819-8007  
FAX: 225/819-8027  
www.iiial.com

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**SUBJECT:           Gramm-Leach-Bliley Act / Amendments to Agency Agreements and  
Sample Authorization Letter**

**BACKGROUND:**    In recent weeks, IIAL and IIAA have received numerous questions regarding various amendments to agency agreements that insurance companies developed in response to the requirements of the Gramm-Leach-Bliley Act ("GLBA"). A review of some of those amendments has identified common issues of importance to our members. These issues consist primarily of concerns that:

- Some insurance companies are asking or requiring agencies to distribute and/or adhere to the companies' privacy policies;
- Insurance companies' privacy policies are imposing greater restrictions on the use and disclosure of customer information than those mandated by GLBA or the states' privacy statutes or regulations;
- Insurance companies are limiting agency access to loss run reports.

In reviewing this information, please keep in mind that Louisiana did not adopt the 1982 NAIC Privacy Model Act, but did pass the NAIC Model State Privacy Regulation ("NAIC Model") with some minor changes.

**MAIN POINTS:**

1.    **Distribution of and Adherence to Company Privacy Policies.** GLBA imposes an obligation on each financial institution to respect the privacy of its customers and to protect the security and confidentiality of its customers' non-public personal information ("NPI"). Since insurance companies and independent insurance agencies are financial institutions that have separate and distinct relationships with customers, each insurance company and independent agency must independently satisfy this GLBA obligation. There is nothing in GLBA or the NAIC Model State Privacy Regulation ("NAIC Model") to indicate that an independent agency must assist an insurance company in satisfying the insurance company's GLBA obligations. Similarly, there is nothing in GLBA or the NAIC Model to require an independent agency to adhere to an insurance company's privacy policy. Therefore, an insurance company has no statutory or regulatory authority to compel independent agencies to distribute or adhere to the insurance company's privacy policy.

Nonetheless, some insurance companies are requesting and/or requiring independent agencies to sign amendments to agency agreements that compel the agencies to distribute and/or adhere to the insurance company's privacy policy. While the distribution request may be administratively cumbersome, it is the adherence to an insurance company's privacy policy that is far more troublesome. This is because each insurance company may have different technical, administrative and physical safeguards to protect customer data, some or all of which may be inconsistent with the independent agency's own privacy policy or with privacy policies of other insurance companies represented by the agency with which the agency also is being asked to comply. Thus, it will be impossible for the agency to adhere to the insurance company privacy policies of all companies with which the agency is appointed unless those policies are consistent with each other and with the agency's privacy policy, which is fairly unlikely.

2. **Restrictions on Use and Disclosure of Customer Information.** Numerous agency agreement amendments we reviewed contained clauses imposing limits on the use and disclosure of customer information that are more restrictive than limits that request or require such compliance imposed by GLBA and the NAIC Model. An example of this is a restriction against the agency's use of NPI for any purpose other than the purpose for which it was provided, even though GLBA and the NAIC Model permit an agency to use customer NPI if the agency obtains the customer's consent or if the agency has a joint marketing agreement with another insurance company.

If an independent agency agrees to an agency agreement amendment with a more restrictive information sharing policy than that required by GLBA or the NAIC Model, the agency must comply with the stricter policy. Therefore, it is critical that an agency carefully examine the proposed amendments to ensure that they do not restrict the agency from using and/or disclosing customer NPI for the purposes for which it has been supplied and as otherwise permitted by law or regulation to the extent required by the agency's business practices.

3. **Limitations on Agency Access to Loss Run Reports.** Some insurance companies are refusing to provide agencies with copies of loss run reports unless the agencies sign contracts agreeing to use the information only for the purposes for which it has been provided, or for other purposes as agreed to in writing by the company and agency. Noticeably absent from these contracts is language permitting the agency to use the information either as permitted by law or pursuant to customer consent. As a practical matter, this contractual limitation prevents an agency from: (a) using loss run reports with NPI to quote coverage with other insurance companies with which the agency has joint marketing agreements, unless the insurance companies providing the loss run reports agree to allow the agency to do so; and (b) obtaining consumer consent prior to any

disclosure of the NPI provided to the agency by the insurance company.

It is clear that GLBA authorizes disclosure of a customer's NPI by an agency when the agency obtains the customer's consent, or when there is an applicable exception to GLBA's restrictions. To the extent that loss run reports contain NPI that is protected under GLBA, agencies are subject to GLBA's restrictions on reuse and redisclosure of that information and must obtain customer consent prior to using the information as a marketing tool to solicit competitive quotes.

There are three circumstances in which agencies may reuse or redisclose NPI contained in loss run reports. First, an agency can reuse or redisclose NPI contained in loss run reports as long as: (a) the reuse or redisclosure is consistent with the reasons for the agency's receipt of the information in the first place, or pursuant to an exception to GLBA (such as with the customer's consent, or pursuant to a joint marketing agreement with another insurance company); (b) the reuse or redisclosure of NPI is consistent with the insurance company's privacy policy; or (c) the reuse and redisclosure is subject to the applicable consumer opt out directive. Second, an agency can reuse or redisclose NPI contained in loss run reports when the agency has a joint marketing agreement in place with the entity to which it is disclosing the information in the loss run reports, and such reuse or redisclosure is consistent with the agency's privacy policy. Third, the agency can reuse or redisclose NPI contained in loss run reports when the agency obtains the consent of the customer who is the subject of the NPI.

However, if an agency signs agreements with insurance companies that impose greater restrictions on the agency's ability to use loss run reports than those required by GLBA or applicable state law (such as amendments to agency agreements), the agency becomes contractually obligated to those restrictions. If an agency is not prepared to comply with those restrictions, the agency should either strike the restrictive language from the agreement prior to signing, or not sign the agreement at all.

**NECESSARY  
ACTION:**

In response to requests for a form to use when obtaining MVRs and consumer reports in the 16 states that have adopted the 1982 NAIC Privacy Model Act, attached is a sample authorization letter for that purpose. Agencies also may use this form letter as a customer authorization/consent form in all other states and the District of Columbia when obtaining this type of information.

**SAMPLE AUTHORIZATION FORM FOR MVRs AND CONSUMER REPORTS  
(MUST BE GIVEN SEPARATELY FROM THE PRIVACY NOTICE)**

**[NAME OF CUSTOMER]**  
**[ADDRESS OF CUSTOMER]**

**Dear [Name of Agency]:**

**I understand that [Name of Agency], as part of the insurance underwriting process, will obtain consumer reports containing certain information about me. These reports may include my driving record, financial responsibility information and prior claims information. By signing this letter, I authorize [Name of Agency] and its designated representatives to obtain such information about me from: [Name of entity supplying consumer information such as ChoicePoint, Equifax, TransUnion, etc.]**

**I also understand that I have a right to request a copy of this authorization form and that such authorization remains valid for a period of [12 months for property casualty insurance, or 30 months for life, health or disability insurance].**

**A photocopy of this form will be valid as the original.**

**Sincerely,**

\_\_\_\_\_  
**Print Name: [Name of Customer]**

**Date:** \_\_\_\_\_