

# INDEPENDENT INSURANCE AGENTS & BROKERS OF LOUISIANA

## Technical Advisory

TA 325

June 6, 2016

**Subject:** Annual Privacy Notices and Recent Changes to Federal Privacy Law

**Background:** Financial institutions, including insurance agencies, have been required to send privacy notices annually to personal lines insureds since July 1, 2001, as provided by the Financial Services Modernization Act (better known as the Gramm-Leach-Bliley Act, or GLBA). In December 2015, a key provision of GLBA was amended which will significantly reduce the time, effort, and expense in sending annual privacy notices for most agencies.

**Main Points:** Below is the new language added to GLBA, regarding privacy notices:

**§6803 (or GLBA §503). Disclosure of institution privacy policy**

**(f) Exception to Annual Notice Requirement.** *A financial institution that-*

*(1) provides nonpublic personal information only in accordance with the provisions of subsection (b)(2) or (e) of section 502 or regulations prescribed under section 504(b), and*

*(2) has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with this section,*

*shall not be required to provide an annual disclosure under this section until such time as the financial institution fails to comply with any criteria described in paragraph (1) or (2).*

On the following pages is a Memorandum from the Independent Insurance Agents & Brokers of America (IIABA), which explains this important change in detail.

Also included for reference is the section of GLBA which deals with the overall subject of disclosure of nonpublic personal information (§6801 - §6809). It is recommended that agencies review this information to be sure they are in compliance with all of the provisions of GLBA.

For additional information on GLBA, see these two articles posted on the website of the Independent Insurance Agents & Brokers of Louisiana (IIABL):

[“Gramm-Leach-Bliley”](#)

[“Privacy Notices and Gramm-Leach-Bliley – One Year Later”](#)

Louisiana Department of Insurance Regulation 76.

Louisiana was one of the first states to develop state-specific requirements for annual privacy notices that are mandated in the GLBA. The Louisiana Department of Insurance issued LDI Regulation 76, effective November 13, 2000, which incorporates these requirements.

As noted in the Memorandum from IIABA (see below), while the GLBA has been revised regarding the annual notices, each state that passed statutes or issued regulations implementing the original GLBA provisions will need to revisit and amend those statutes or regulations. IIABL will notify members as soon as such information is released by the Louisiana Department of Insurance.

For reference, LDI Regulation 76 was later incorporated into the [Louisiana Administrative Code](#) (Title 37, Part XIII, Chapter 99). The annual notice requirements are found in §9913.

**Necessary Action:** Circulate this Technical Advisory to all appropriate agency staff.

**Please note that this Technical Advisory is intended to be educational and is not legal advice upon which you should rely. Please seek any legal opinion you may need from a qualified attorney.**



# Independent Insurance Agents & Brokers of America, Inc.

## Memorandum

**To:** IIABA State Association Executives and Lobbyists

**From:** Wes Bissett

**Subject:** Annual Privacy Notices and Recent Changes to Federal Privacy Law

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Since the adoption of the Gramm-Leach-Bliley Act (GLBA) in 1999 and its subsequent implementation in the early 2000s, insurance agencies have been forced to comply with the various privacy requirements established by that law. Many agencies, for example, are required to send privacy notices to their clients every year, despite the fact that many customers disregard these disclosures and even though the privacy practices of agencies often remain unchanged over time. However, as a result of recent changes to GLBA, there is an opportunity to alleviate some of the privacy-related regulatory burden currently imposed on insurance agents and brokers.

### Background

Title V of the Gramm-Leach-Bliley Act established a series of privacy requirements for all financial institutions, including banks, securities firms, insurers, and insurance agencies.<sup>1</sup> GLBA directed state officials to implement and enforce these privacy mandates with respect to the insurance industry. The states quickly enacted statutes or promulgated regulations that conformed to the parameters of the federal law, and many jurisdictions closely adhered to and relied on the model recommendations developed by the National Association of Insurance Commissioners (NAIC). Since the early 2000s,

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<sup>1</sup> The privacy obligations imposed on the financial world by the Gramm-Leach-Bliley Act are described and discussed in detail in a memorandum prepared by IIABA's Office of General Counsel. The memo can be found at the Legal Advocacy section of IIABA's website.

insurers and insurance agencies have complied with the state-level privacy requirements implemented in the wake of the Gramm-Leach-Bliley Act.

Among the GLBA privacy mandates is a requirement that financial entities (including insurance agencies) disclose their privacy policies and practices at the time a customer relationship is established and at least annually during the continuation of the relationship. Many financial entities have complained over the years that this annual privacy notice requirement is a burdensome mandate that provides little value, and many observers have noted that these ubiquitous disclosures are often discarded by consumers before they are ever reviewed.

In a somewhat surprising development, Congress recently passed and President Obama signed into law an amendment to the privacy provisions of GLBA that is intended to alleviate some of the burden imposed by the annual notice requirement. The provision was included in the federal highway bill (the Fixing America's Surface Transportation Act, or FAST Act) that was enacted in December 2015, and it modifies existing law by creating an exemption from the GLBA notice mandate.<sup>2</sup> A copy of the modified GLBA privacy provisions is included as an attachment to this memorandum, and the recent changes to the statute have been highlighted. The new provision establishes an exemption from the annual privacy notice requirement for any financial institution that satisfies two conditions:

- First, the entity does not share nonpublic personal information (NPI) with nonaffiliated third parties *or* only shares NPI with nonaffiliated third parties pursuant to one of the existing GLBA exemptions from which consumers cannot opt out; and
- Second, the entity has not changed its privacy policies and practices since providing its most recent privacy notice.

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<sup>2</sup> Specifically, Title LXXV of the FAST Act (entitled "Eliminate Privacy Notice Confusion") adds the following new subsection to GLBA Section 503:

*"(f) EXCEPTION TO ANNUAL NOTICE REQUIREMENT. A financial institution that-*

*(1) provides nonpublic personal information only in accordance with the provisions of subsection (b)(2) or (e) of section 502 or regulations prescribed under section 504(b), and*

*(2) has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with this section,*

*shall not be required to provide an annual disclosure under this section until such time as the financial institution fails to comply with any criteria described in paragraph (1) or (2)."*

Many and perhaps most insurance agencies would satisfy the two criteria outlined above, and the enactment of this GLBA privacy notice exemption could significantly reduce the number of disclosures that agents and brokers must provide to customers. There are, however, at least two limitations. First, the new exemption does not eliminate initial privacy notice requirements, and it is only applicable when an institution's current privacy policies and practices have previously been disclosed. Second, the provision does not eliminate or preempt state-level privacy measures that are currently in place (including those implemented in response to GLBA). The second consideration is discussed in more detail below.

### **Considerations and Next Steps for State Associations**

Although other financial institutions are able to utilize this new exemption immediately, additional action by state officials will likely be necessary in most jurisdictions before insurance agencies are able to take advantage of it. The privacy requirements that states implemented in the early 2000s to achieve compliance with the Gramm-Leach-Bliley Act remain in place, and those state-level statutes or regulations are not (in most cases) automatically modified by the recent change in federal law. The states achieved consistency with the stricter privacy notice standards that were in place at the time, and those state laws and rules exist independently and remain on the books. Although the federal standard has now been relaxed and the bar lowered, most states will need to take corresponding action in order for insurance agents and brokers to benefit from the change.

In short, the recently enacted exemption to the GLBA privacy notice requirement creates an opportunity for state associations to reduce the regulatory burden currently imposed on members. Federal law has been amended, and state requirements can be similarly modified. The manner in which individual state associations respond will depend on a number of factors, including whether a state's privacy notice requirement is rooted in statute or regulation, the appetite of state officials to act, etc.

A large number of states address the annual privacy notice requirement via regulation, and state associations in this situation may wish to seek revisions to those regulatory requirements and even urge their insurance departments to promulgate emergency rules. Many jurisdictions closely follow the NAIC Privacy Consumer Financial and Health Information Regulation, and Section 6 of that model regulation addresses annual privacy notices. States that have promulgated the model rule could address the issue by simply adding an exemption that is consistent with the GLBA provision, and one possible option is outlined below:

## Section 6. Annual Privacy Notice to Customers Required

D. Exception. A licensee is not required to provide an annual notice under subsection (A) of this section if the licensee:

- (1) Provides nonpublic personal information only in accordance with the provisions of Sections 15, 16, and 17; and
- (2) Has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure provided in accordance with Section 5(A) or subsection (A) of this section.

These issues could also be addressed by legislation, and state associations may especially wish to explore legislative options if their regulators are reluctant, unwilling, or slow to act. Those that wish to enact legislation to achieve consistency with the federal exemption could pass a provision that simply states that licensees that satisfy the requirements of 15 U.S.C. 6803(f) shall not be required to provide annual privacy notices to customers. State associations could also or alternatively pursue legislation that requires their commissioner to promulgate regulations that ensure that no licensee is required to provide annual privacy notices to customers when the conditions of 15 U.S.C. 6803(f) are satisfied.

In jurisdictions where regulators may be willing to provide some form of immediate relief consistent with the change in federal law, state associations might consider asking their insurance departments to issue a bulletin or other document indicating that privacy notices are not required if the two conditions are satisfied. Federal financial regulators are beginning to provide such guidance to their institutions, and, for example, the notice recently issued by the National Credit Union Administration can be found online at <https://1.usa.gov/1X4utZX>.

IIABA recognizes these issues may be confusing, and we are prepared to assist any state association as it assesses its current privacy requirements and considers how to take advantage of the new federal exemption. Please contact me at [wes.bissett@iiaba.net](mailto:wes.bissett@iiaba.net) or at 202-302-1607 if you have any questions or if you wish to discuss these issues in greater detail.

## 15 USC CHAPTER 94

### Subchapter I: Disclosure of Nonpublic Personal Information

#### §6801 (or GLBA §501). Protection of nonpublic personal information

**(a) Privacy obligation policy.** It is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information.

**(b) Financial institutions safeguards.** In furtherance of the policy in subsection (a), each agency or authority described in section 6805(a) of this title, other than the Bureau of Consumer Financial Protection, shall establish appropriate standards for the financial institutions subject to their jurisdiction relating to administrative, technical, and physical safeguards-

- (1) to insure the security and confidentiality of customer records and information;
- (2) to protect against any anticipated threats or hazards to the security or integrity of such records; and
- (3) to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.

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#### §6802 (or GLBA §502). Obligations with respect to disclosures of personal information

**(a) Notice requirements.** Except as otherwise provided in this subchapter, a financial institution may not, directly or through any affiliate, disclose to a nonaffiliated third party any nonpublic personal information, unless such financial institution provides or has provided to the consumer a notice that complies with section 6803 of this title.

#### **(b) Opt out**

- (1) In general. A financial institution may not disclose nonpublic personal information to a nonaffiliated third party unless-
  - (A) such financial institution clearly and conspicuously discloses to the consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 6804 of this title, that such information may be disclosed to such third party;
  - (B) the consumer is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such third party; and
  - (C) the consumer is given an explanation of how the consumer can exercise that nondisclosure option.

(2) Exception. This subsection shall not prevent a financial institution from providing nonpublic personal information to a nonaffiliated third party to perform services for or functions on behalf of the financial institution, including marketing of the financial institution's own products or services, or financial products or services offered pursuant to joint agreements between two or more financial institutions that comply with the requirements imposed by the regulations prescribed under section 6804 of this title, if the financial institution fully discloses the providing of such information and enters into a contractual agreement with the third party that requires the third party to maintain the confidentiality of such information.

**(c) Limits on reuse of information.** Except as otherwise provided in this subchapter, a nonaffiliated third party that receives from a financial institution nonpublic personal information under this section shall not, directly or through an affiliate of such receiving third party, disclose such information to any other person that is a nonaffiliated third party of both the financial institution and such receiving third party, unless such disclosure would be lawful if made directly to such other person by the financial institution.

**(d) Limitations on the sharing of account number information for marketing purposes.** A financial institution shall not disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a credit card account, deposit account, or transaction account of a consumer to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

**(e) General exceptions.** Subsections (a) and (b) shall not prohibit the disclosure of nonpublic personal information-

(1) as necessary to effect, administer, or enforce a transaction requested or authorized by the consumer, or in connection with-

(A) servicing or processing a financial product or service requested or authorized by the consumer;

(B) maintaining or servicing the consumer's account with the financial institution, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or

(C) a proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer;

(2) with the consent or at the direction of the consumer;

(3)(A) to protect the confidentiality or security of the financial institution's records pertaining to the consumer, the service or product, or the transaction therein; (B) to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability; (C) for required institutional risk control, or for resolving customer disputes or inquiries; (D) to persons holding a legal or beneficial interest relating to the consumer; or (E) to persons acting in a fiduciary or representative capacity on behalf of the consumer;

(4) to provide information to insurance rate advisory organizations, guaranty funds or agencies, applicable rating agencies of the financial institution, persons assessing the institution's compliance with industry standards, and the institution's attorneys, accountants, and auditors;



(5) to the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.], to law enforcement agencies (including the Bureau of Consumer Financial Protection, a Federal functional regulator, the Secretary of the Treasury with respect to subchapter II of chapter 53 of title 31, and chapter 2 of title I of Public Law 91–508 (12 U.S.C. 1951–1959), a State insurance authority, or the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety;

(6)(A) to a consumer reporting agency in accordance with the Fair Credit Reporting Act [15 U.S.C. 1681 et seq.], or (B) from a consumer report reported by a consumer reporting agency;

(7) in connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or

(8) to comply with Federal, State, or local laws, rules, and other applicable legal requirements; to comply with a properly authorized civil, criminal, or regulatory investigation or subpoena or summons by Federal, State, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law.

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### **§6803 (or GLBA §503). Disclosure of institution privacy policy**

**(a) Disclosure required.** At the time of establishing a customer relationship with a consumer and not less than annually during the continuation of such relationship, a financial institution shall provide a clear and conspicuous disclosure to such consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 6804 of this title, of such financial institution's policies and practices with respect to-

(1) disclosing nonpublic personal information to affiliates and nonaffiliated third parties, consistent with section 6802 of this title, including the categories of information that may be disclosed;

(2) disclosing nonpublic personal information of persons who have ceased to be customers of the financial institution; and

(3) protecting the nonpublic personal information of consumers.

**(b) Regulations.** Disclosures required by subsection (a) shall be made in accordance with the regulations prescribed under section 6804 of this title.

**(c) Information to be included.** The disclosure required by subsection (a) shall include-

(1) the policies and practices of the institution with respect to disclosing nonpublic personal information to nonaffiliated third parties, other than agents of the institution, consistent with section 6802 of this title, and including-

(A) the categories of persons to whom the information is or may be disclosed, other than the persons to whom the information may be provided pursuant to section 6802(e) of this title; and

(B) the policies and practices of the institution with respect to disclosing of nonpublic personal information of persons who have ceased to be customers of the financial institution;

(2) the categories of nonpublic personal information that are collected by the financial institution;

(3) the policies that the institution maintains to protect the confidentiality and security of nonpublic personal information in accordance with section 6801 of this title; and

(4) the disclosures required, if any, under section 1681a(d)(2)(A)(iii) of this title.

**(d) Exemption for certified public accountants**

(1) In general. The disclosure requirements of subsection (a) do not apply to any person, to the extent that the person is-

(A) a certified public accountant;

(B) certified or licensed for such purpose by a State; and

(C) subject to any provision of law, rule, or regulation issued by a legislative or regulatory body of the State, including rules of professional conduct or ethics, that prohibits disclosure of nonpublic personal information without the knowing and expressed consent of the consumer.

(2) Limitation. Nothing in this subsection shall be construed to exempt or otherwise exclude any financial institution that is affiliated or becomes affiliated with a certified public accountant described in paragraph (1) from any provision of this section.

(3) Definitions. For purposes of this subsection, the term "State" means any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the Northern Mariana Islands.

**(e) Model forms**

(1) In general. The agencies referred to in section 6804(a)(1) of this title shall jointly develop a model form which may be used, at the option of the financial institution, for the provision of disclosures under this section.

(2) Format. A model form developed under paragraph (1) shall-

(A) be comprehensible to consumers, with a clear format and design;

(B) provide for clear and conspicuous disclosures;

(C) enable consumers easily to identify the sharing practices of a financial institution and to compare privacy practices among financial institutions; and

(D) be succinct, and use an easily readable type font.

(3) Timing. A model form required to be developed by this subsection shall be issued in proposed form for public comment not later than 180 days after October 13, 2006.

(4) Safe harbor. Any financial institution that elects to provide the model form developed by the agencies under this subsection shall be deemed to be in compliance with the disclosures required under this section.

**(f) Exception to Annual Notice Requirement.** A financial institution that-

(1) provides nonpublic personal information only in accordance with the provisions of subsection (b)(2) or (e) of section 502 or regulations prescribed under section 504(b), and

(2) has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with this section,

shall not be required to provide an annual disclosure under this section until such time as the financial institution fails to comply with any criteria described in paragraph (1) or (2).

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**§6804 (or GLBA §504). Rulemaking**

**(a) Regulatory authority**

(1) Rulemaking

(A) In general. Except as provided in subparagraph (C), the Bureau of Consumer Financial Protection and the Securities and Exchange Commission shall have authority to prescribe such regulations as may be necessary to carry out the purposes of this subchapter with respect to financial institutions and other persons subject to their respective jurisdiction under section 6805 of this title (and notwithstanding subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.]), except that the Bureau of Consumer Financial Protection shall not have authority to prescribe regulations with respect to the standards under section 6801 of this title.

(B) CFTC. The Commodity Futures Trading Commission shall have authority to prescribe such regulations as may be necessary to carry out the purposes of this subchapter with respect to financial institutions and other persons subject to the jurisdiction of the Commodity Futures Trading Commission under section 7b-2 of title 7.

(C) Federal Trade Commission authority. Notwithstanding the authority of the Bureau of Consumer Financial Protection under subparagraph (A), the Federal Trade Commission shall have authority to prescribe such regulations as may be necessary to carry out the purposes of this subchapter with respect to any financial institution that is a person described in section 1029(a) of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5519(a)].

(D) Rule of construction. Nothing in this paragraph shall be construed to alter, affect, or otherwise limit the authority of a State insurance authority to adopt regulations to carry out this subchapter.

(2) Coordination, consistency, and comparability. Each of the agencies authorized under paragraph (1) to prescribe regulations shall consult and coordinate with the other such agencies and, as appropriate, and with <sup>1</sup> representatives of State insurance authorities designated by the National Association of Insurance Commissioners, for the purpose of assuring, to the extent possible, that the regulations prescribed by each such agency are consistent and comparable with the regulations prescribed by the other such agencies.

(3) Procedures and deadline. Such regulations shall be prescribed in accordance with applicable requirements of title 5.

**(b) Authority to grant exceptions.** The regulations prescribed under subsection (a) may include such additional exceptions to subsections (a) through (d) of section 6802 of this title as are deemed consistent with the purposes of this subchapter.

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### **§6805 (or GLBA §505). Enforcement**

**(a) In general.** Subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.], this subchapter and the regulations prescribed thereunder shall be enforced by the Bureau of Consumer Financial Protection, the Federal functional regulators, the State insurance authorities, and the Federal Trade Commission with respect to financial institutions and other persons subject to their jurisdiction under applicable law, as follows:

(1) Under section 1818 of title 12, by the appropriate Federal banking agency, as defined in section 1813(q) of title 12, in the case of-

(A) national banks, Federal branches and Federal agencies of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers);

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.], and bank holding companies and their nonbank subsidiaries or affiliates (except brokers, dealers, persons providing insurance, investment companies, and investment advisers);

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), insured State branches of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers); and

(D) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, and any subsidiaries of such savings associations (except brokers, dealers, persons providing insurance, investment companies, and investment advisers).

(2) Under the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the Board of the National Credit Union Administration with respect to any federally insured credit union, and any subsidiaries of such an entity.

(3) Under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], by the Securities and Exchange Commission with respect to any broker or dealer.

(4) Under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], by the Securities and Exchange Commission with respect to investment companies.

(5) Under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.], by the Securities and Exchange Commission with respect to investment advisers registered with the Commission under such Act.

(6) Under State insurance law, in the case of any person engaged in providing insurance, by the applicable State insurance authority of the State in which the person is domiciled, subject to section 6701 of this title.

(7) Under the Federal Trade Commission Act [15 U.S.C. 41 et seq.], by the Federal Trade Commission for any other financial institution or other person that is not subject to the jurisdiction of any agency or authority under paragraphs (1) through (6) of this subsection.

(8) Under subtitle E of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5561 et seq.], by the Bureau of Consumer Financial Protection, in the case of any financial institution and other covered person or service provider that is subject to the jurisdiction of the Bureau and any person subject to this subchapter, but not with respect to the standards under section 6801 of this title.

**(b) Enforcement of section 6801**

(1) In general. Except as provided in paragraph (2), the agencies and authorities described in subsection (a), other than the Bureau of Consumer Financial Protection, shall implement the standards prescribed under section 6801(b) of this title in the same manner, to the extent practicable, as standards prescribed pursuant to section 1831p–1(a) of title 12 are implemented pursuant to such section.

(2) Exception. The agencies and authorities described in paragraphs (3), (4), (5), (6), and (7) of subsection (a) shall implement the standards prescribed under section 6801(b) of this title by rule

with respect to the financial institutions and other persons subject to their respective jurisdictions under subsection (a).

**(c) Absence of State action.** If a State insurance authority fails to adopt regulations to carry out this subchapter, such State shall not be eligible to override, pursuant to section 1831x(g)(2)(B)(iii) of title 12, the insurance customer protection regulations prescribed by a Federal banking agency under section 1831x(a) of title 12.

**(d) Definitions.** The terms used in subsection (a)(1) that are not defined in this subchapter or otherwise defined in section 1813(s) of title 12 shall have the same meaning as given in section 3101 of title 12.

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#### **§6806 (or GLBA §506). Relation to other provisions**

Except for the amendments made by subsections (a) and (b), nothing in this chapter shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act [15 U.S.C. 1681 et seq.], and no inference shall be drawn on the basis of the provisions of this chapter regarding whether information is transaction or experience information under section 603 of such Act [15 U.S.C. 1681a].

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#### **§6807 (or GLBA §507). Relation to State laws**

**(a) In general.** This subchapter and the amendments made by this subchapter shall not be construed as superseding, altering, or affecting any statute, regulation, order, or interpretation in effect in any State, except to the extent that such statute, regulation, order, or interpretation is inconsistent with the provisions of this subchapter, and then only to the extent of the inconsistency.

**(b) Greater protection under State law.** For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this subchapter if the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided under this subchapter and the amendments made by this subchapter, as determined by the Bureau of Consumer Financial Protection, after consultation with the agency or authority with jurisdiction under **section 6805(a)** of this title of either the person that initiated the complaint or that is the subject of the complaint, on its own motion or upon the petition of any interested party.

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#### **§6808 (or GLBA §508). Study of information sharing among financial affiliates**

**(a) In general.** The Secretary of the Treasury, in conjunction with the Federal functional regulators and the Federal Trade Commission, shall conduct a study of information sharing practices among financial institutions and their affiliates. Such study shall include-

- (1) the purposes for the sharing of confidential customer information with affiliates or with nonaffiliated third parties;
- (2) the extent and adequacy of security protections for such information;

- (3) the potential risks for customer privacy of such sharing of information;
- (4) the potential benefits for financial institutions and affiliates of such sharing of information;
- (5) the potential benefits for customers of such sharing of information;
- (6) the adequacy of existing laws to protect customer privacy;
- (7) the adequacy of financial institution privacy policy and privacy rights disclosure under existing law;
- (8) the feasibility of different approaches, including opt-out and opt-in, to permit customers to direct that confidential information not be shared with affiliates and nonaffiliated third parties; and
- (9) the feasibility of restricting sharing of information for specific uses or of permitting customers to direct the uses for which information may be shared.

(b) Consultation. The Secretary shall consult with representatives of State insurance authorities designated by the National Association of Insurance Commissioners, and also with financial services industry, consumer organizations and privacy groups, and other representatives of the general public, in formulating and conducting the study required by subsection (a).

(c) Report. On or before January 1, 2002, the Secretary shall submit a report to the Congress containing the findings and conclusions of the study required under subsection (a), together with such recommendations for legislative or administrative action as may be appropriate.

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**§6809 (or GLBA §509). Definitions.** As used in this subchapter:

**(1) Federal banking agency.** The term "Federal banking agency" has the same meaning as given in section 1813 of title 12.

**(2) Federal functional regulator.** The term "Federal functional regulator" means-

- (A) the Board of Governors of the Federal Reserve System;
- (B) the Office of the Comptroller of the Currency;
- (C) the Board of Directors of the Federal Deposit Insurance Corporation;
- (D) the Director of the Office of Thrift Supervision;
- (E) the National Credit Union Administration Board; and
- (F) the Securities and Exchange Commission.

**(3) Financial institution**

**(A) In general.** The term "financial institution" means any institution the business of which is engaging in financial activities as described in section 1843(k) of title 12.

**(B) Persons subject to CFTC regulation.** Notwithstanding subparagraph (A), the term "financial institution" does not include any person or entity with respect to any financial activity

that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act [7 U.S.C. 1 et seq.].

**(C) Farm credit institutions.** Notwithstanding subparagraph (A), the term "financial institution" does not include the Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 [12 U.S.C. 2001 et seq.].

**(D) Other secondary market institutions.** Notwithstanding subparagraph (A), the term "financial institution" does not include institutions chartered by Congress specifically to engage in transactions described in section 6802(e)(1)(C) of this title, as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

#### **(4) Nonpublic personal information**

(A) The term "nonpublic personal information" means personally identifiable financial information-

- (i) provided by a consumer to a financial institution;
- (ii) resulting from any transaction with the consumer or any service performed for the consumer; or
- (iii) otherwise obtained by the financial institution.

(B) Such term does not include publicly available information, as such term is defined by the regulations prescribed under section 6804 of this title.

(C) Notwithstanding subparagraph (B), such term-

- (i) shall include any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any nonpublic personal information other than publicly available information; but
- (ii) shall not include any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any nonpublic personal information.

**(5) Nonaffiliated third party.** The term "nonaffiliated third party" means any entity that is not an affiliate of, or related by common ownership or affiliated by corporate control with, the financial institution, but does not include a joint employee of such institution.

**(6) Affiliate.** The term "affiliate" means any company that controls, is controlled by, or is under common control with another company.

**(7) Necessary to effect, administer, or enforce.** The term "as necessary to effect, administer, or enforce the transaction" means-

(A) the disclosure is required, or is a usual, appropriate, or acceptable method, to carry out the transaction or the product or service business of which the transaction is a part, and record or service or maintain the consumer's account in the ordinary course of providing the financial



service or financial product, or to administer or service benefits or claims relating to the transaction or the product or service business of which it is a part, and includes-

(i) providing the consumer or the consumer's agent or broker with a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product; and

(ii) the accrual or recognition of incentives or bonuses associated with the transaction that are provided by the financial institution or any other party;

(B) the disclosure is required, or is one of the lawful or appropriate methods, to enforce the rights of the financial institution or of other persons engaged in carrying out the financial transaction, or providing the product or service;

(C) the disclosure is required, or is a usual, appropriate, or acceptable method, for insurance underwriting at the consumer's request or for reinsurance purposes, or for any of the following purposes as they relate to a consumer's insurance: Account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects, or as otherwise required or specifically permitted by Federal or State law; or

(D) the disclosure is required, or is a usual, appropriate or acceptable method, in connection with-

(i) the authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid using a debit, credit or other payment card, check, or account number, or by other payment means;

(ii) the transfer of receivables, accounts or interests therein; or

(iii) the audit of debit, credit or other payment information.

**(8) State insurance authority.** The term "State insurance authority" means, in the case of any person engaged in providing insurance, the State insurance authority of the State in which the person is domiciled.

**(9) Consumer.** The term "consumer" means an individual who obtains, from a financial institution, financial products or services which are to be used primarily for personal, family, or household purposes, and also means the legal representative of such an individual.

**(10) Joint agreement.** The term "joint agreement" means a formal written contract pursuant to which two or more financial institutions jointly offer, endorse, or sponsor a financial product or service, and as may be further defined in the regulations prescribed under section 6804 of this title.

**(11) Customer relationship.** The term "time of establishing a customer relationship" shall be defined by the regulations prescribed under section 6804 of this title, and shall, in the case of a financial institution engaged in extending credit directly to consumers to finance purchases of goods or services, mean the time of establishing the credit relationship with the consumer.