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54

From: Susan.Hart@do.treas.gov
Sent: Wednesday, May 08, 2002 5:45 PM
To: Paul.Robin@ots.treas.gov
Cc: sandra.evans@ots.treas.gov
Subject: This is a comment from Maine Insurance Department, which came via the NAIC. I suggest adding it. What do you think?

From: Wake, Robert A [mailto:Robert.A.Wake@state.me.us]
Sent: Wednesday, May 08, 2002 12:25 PM
To: 'Fielding, John P. MS-JPF'
Subject: RE: Treasury Department Privacy Study

Sorry I didn't get to this by Mayday; if it's too late for these comments to be of any use to anyone, probably no great loss.

The basic elements of the outline are mandated by the statute, with the nine subject areas [(2) through (10)] of the substantive body of the outline corresponding directly to GLBA §§ 508(a)(1) through (9) - but not in that order: the statute lists "extent and adequacy of security protections" and "potential risks for customer privacy" second and third respectively, while the study outline moves them down below "Benefits to Institutions" and "Benefits to Customers." (The statute also speaks of "potential" benefits to institutions and to customers.)

The biggest change I would recommend in the outline is to replace the word "customer" with "consumer" wherever it occurs - since the core statutory mandate is to conduct "a study of information sharing practices" and the nine enumerated points are merely the statutory floor for the study, not the ceiling. It is my opinion that the use of "customer" in GLBA § 508 was a drafting accident and was not intended as a statement that Congress did not care what companies did with sensitive personal information furnished by applicants or other consumers who never consummated a customer relationship. The concept that you don't buy any privacy rights unless you buy the product would conflict with consumer protection provisions elsewhere in GLBA. (If the study reveals that noncustomer information isn't being shared, so much the better, but that shouldn't be taken for granted - that might be a question to address in the sections on adequacy of existing laws, privacy policies, and disclosures.)

On a related note, if it doesn't expand the scope of the inquiry too broadly, an additional topic to that might be productive to explore would be a comparison between the privacy situation of individuals in their role as GLBA consumers and everyone else (non-financial consumers, individuals who have furnished personal information to financial institutions in

connection
with commercial activities, and perhaps even business entities).

Some specific subtopics worth exploring:

In the area of adequacy of policies and disclosures - What proportion of consumers care? Of those who don't, is it because they don't think they have meaningful choices? Of those who do (or might) care, do they understand the privacy policies they get? If they have concerns, do they tell the company? Do they use it as a factor when they shop? Is there any market sector in which companies have made any attempt to compete on privacy policies?

In the area of benefit to consumers - how would the potential benefits of unrestricted disclosure between affiliates and between joint marketing partners be impacted by giving consumers a choice?