

**MEMO# 13194**

February 23, 2001

## **REQUEST FOR COMMENT ON ESIGN CONSUMER CONSENT REQUIREMENT BY MARCH 16, 2001**

[13194] February 23, 2001 TO: TAX COMMITTEE No. 8-01 PENSION COMMITTEE No. 14-01 PENSION OPERATIONS ADVISORY COMMITTEE No. 19-01 RE: REQUEST FOR COMMENT ON ESIGN CONSUMER CONSENT REQUIREMENT BY MARCH 16, 2001 On June 30, 2000, Congress enacted the Electronic Signatures in Global and National Commerce Act ("ESIGN") to facilitate the use of electronic signatures and records in interstate or foreign commerce and remove uncertainty about the validity of contracts entered into electronically. Section 105(b) of ESIGN requires the Federal Trade Commission ("FTC") and the Secretary of Commerce to study and report to Congress, by June 30, 2002, on the benefits and burdens of the consumer consent requirement in Section 101(c)(1)(C)(ii) of ESIGN. That provision states that if information is required to be provided or made available to a consumer in writing, the information may be provided electronically only if the consumer "consents electronically, or confirms his or her consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent." The FTC and the Department of Commerce have issued a notice requesting public comment and academic papers, and announcing a public workshop, to inform their study. A copy of the notice is attached and it is summarized below. Comments and papers are requested on or before March 16, 2001. If there are comments you would like the Institute to consider submitting, please contact Deanna Flores at (202) 371-5436 or [dflores@ici.org](mailto:dflores@ici.org), or Russell Galer at (202) 326-5835 or [rgaler@ici.org](mailto:rgaler@ici.org), by March 2, 2001. As indicated in the attached notice, ESIGN requires that the FTC and the Secretary of Commerce address five aspects of Section 101(c)(1)(C)(ii) in their report to Congress. These are: (1) the benefits to consumers of the procedures required by the provision; (2) any burdens imposed by these procedures; (3) whether the benefits outweigh the burdens; (4) whether the absence of the consumer consent provision would increase consumer fraud; and (5) any improvements or changes to the statutory language that would be appropriate. The notice seeks comment on ESIGN generally to inform the examination of the narrower issues associated with the consumer consent requirement. It also sets forth a series of specific questions that are intended as examples of the relevant issues, while inviting comment on any relevant issue. 2The questions listed in the notice are divided into four categories: general issues; business issues; consumer issues; and technology issues. General issues include, among others, questions about how the consumer consent provision affects electronic commerce and what, if any, changes should be made to the statutory language. Business issues cover such topics as whether and how businesses obtain electronic consent from consumers to receive legally- required information electronically, what the associated costs and burdens

are, and whether there are any additional methods that could be employed to prevent consumer fraud. Questions categorized as consumer issues inquire about, for example, consumers' experience with providing consent in connection with receiving information electronically that is legally required to be provided in writing and the benefits of receiving electronic versions of information required by law to be provided in written form. Technology questions address, among other things, whether there are software programs readily available that enable consumers to provide electronic consent or consent confirmation and whether available technology enables companies to verify that an electronic consent or confirmation is transmitted by the specific person entitled to receive electronic information. According to the notice, staff of the FTC and the Department of Commerce's National Telecommunications and Information Administration will conduct a public workshop to discuss the issues raised by comments received in response to the notice on April 3, 2001 from 8:30 a.m. until 5:00 p.m. at the FTC, 600 Pennsylvania Avenue, N.W., Washington, D.C. Criteria for the selection of workshop participants are set forth in the notice. Deanna J. Flores Associate Counsel Attachment Attachment (in .pdf format)

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