

**MEMO# 16812**

November 26, 2003

## **CONGRESS APPROVES LEGISLATION TO MAKE NATIONAL STANDARD FOR INFORMATION SHARING AMONG AFFILIATES PERMANENT**

[16812] November 26, 2003 TO: BOARD OF GOVERNORS No. 67-03 FEDERAL LEGISLATION MEMBERS No. 26-03 PRIMARY CONTACTS - MEMBER COMPLEX No. 105-03 PRIVACY ISSUES WORKING GROUP No. 9-03 PUBLIC INFORMATION COMMITTEE No. 42-03 RE: CONGRESS APPROVES LEGISLATION TO MAKE NATIONAL STANDARD FOR INFORMATION SHARING AMONG AFFILIATES PERMANENT On November 22, the Senate approved the conference report on H.R. 2622, the Fair and Accurate Credit Transactions Act of 2003, by unanimous consent.<sup>1</sup> The legislation will renew and make permanent the uniform national standards for credit reporting set forth in the Fair Credit Reporting Act (FCRA). The legislation also enhances consumer protections in areas such as identity theft and credit report accuracy. The House of Representatives approved the conference report by a 379-49 vote on November 21. The key component of the legislation is the reauthorization of a provision in FCRA that preempts state laws regulating the sharing of information among affiliates. Absent the legislation's permanent extension of this provision, a uniform national standard for financial privacy would be jeopardized. The Institute supports a single, nationwide standard for the sharing of customer information. The legislation will, however, add to federal law a new provision governing the sharing of consumer information among affiliated companies for purposes of making a solicitation for marketing purposes. (See Section 214 of the Act.) This new provision will prohibit the sharing of information unless the consumer is provided notice of such sharing and allowed to opt out of receiving such solicitations. Exempted from the opt-out requirement are entities with preexisting customer relationships, affiliates that provide certain servicing functions, and contacts that are initiated by the consumer or otherwise authorized. The bill also addresses industry concerns related to the ability of employers to hire third parties to investigate employee misconduct without triggering the notification, consent, and other requirements of FCRA. H.R. 2622 permits such investigations to be conducted without employee notice or consent. However, if the investigation results in adverse action being taken <sup>1</sup> A copy of the legislation is available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108\\_cong\\_reports&docid=f:hr396.108.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_reports&docid=f:hr396.108.pdf). <sup>2</sup> against the employee, the employee must be provided a summary containing the nature and substance of communications (but not their sources) upon which the adverse action is based. (See Section 611 of the Act.) The President is expected to sign the legislation into law shortly.

Matthew P. Fink President

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