

Consumer privacy

Leahy's Privacy Announcement sent 9.19.98

Senator Leach's bill not moving

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/adminsimp index.htm

# FINANCIAL INSTITUTIONS AND PRIVACY Talking Points: August 17, 1998 - DRAFT

**CLOSE HOLD - NOT FOR DISTRIBUTION - FOR DISCUSSION ONLY**

Steps on PIRI show Consumer ways to Gov & PIRI

Make good House bill privacy bill of right terminate

The Administration strongly opposes H.R. 10. The Chief of Staff has indicated that the President will veto the bill if presented to the President with its current significant deficiencies.

As a result, the Administration opposes a strategy to offer desirable amendments to address concerns about consumer privacy, which may only serve to make it more attractive for wavering members -- especially Democrats -- to support H.R. 10.

w. that add our other

If such amendments were offered, while we might (or might not) support their substance, they would not change our position on the underlying measure.

However, in response to your request, we will detail for you the Administration's current position on privacy of consumer financial and other information. We would welcome an opportunity to work with you to advance appropriate legislation in another context.

**Voluntary and Self-Regulatory Privacy Guidelines.** As a general matter, the Administration supports and encourages the efforts of industry and self-regulatory bodies to develop privacy standards appropriate to their specific industry, based on certain principles. These principles include \_\_\_\_\_. However, in certain cases, where adequate voluntary steps are not taken or where the privacy interests at stake are too important to await appropriate voluntary response, the Administration supports legislation.

**Vice President Gore's Privacy Announcement.** The Vice President recently announced a number of proposals to protect consumer privacy, including:

support for 4 bills

(3.512)

• **Identify Theft:** The Administration supports Senators Kyl and Leahy's bill to crack down on the fraudulent use of another person's identity to facilitate the commission of a crime, such as credit card fraud. (This bill has passed the Senate and awaits House action.) Better idea

• **Theft of Personal Financial Information:** The Administration supports legislation sponsored by Representatives Leach and LaFalco that will make it a federal crime to obtain confidential customer information from a bank by fraudulent means. (In some cases, people are obtaining information illegally and then using the information for a legal purpose -- e.g., pretending to be a customer in order to trick confidential information out of a bank, and then selling that information to a private investigator or other third party.)

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HR 4321  
out's flow  
action

D. Amato  
included

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**FCRA Information Sharing Disclosures and Opt-Outs.** The Fair Credit Reporting Act (FCRA) permits sharing of personal information with affiliates; however, the consumer must be provided with notice that their information may be shared and given an opportunity to opt-out of the affiliate sharing. (Note that this notice and opt-out right does not apply to "transactional" and "experience" information which may be shared with affiliates or sold to third parties without notice or right to opt-out.) The Administration has directed the Treasury and the bank regulators to work together to strengthen enforcement to ensure compliance with these requirements. *[BAER TO CHECK ON FED INTENTIONS.]* Steps may include development of "best practices" for financial institutions and enforcement actions against these and other types of firms.

**FCRA Examination Authority:** The FCRA permits sharing of personal information with affiliates; however, the consumer must be provided with notice that their information may be shared and given an opportunity to opt-out of the affiliate sharing. (Note that this notice and opt-out right does not apply to "transactional" and "experience" information which may be shared with affiliates or sold to third parties without notice or right to opt-out.) The bank regulators, however, are prohibited from examining financial institutions for compliance with these notice and opt-out requirements. The Administration supports legislation to allow regulators to monitor financial institutions for compliance with the law.

**Medical Record Privacy.** On September 11, 1997, HHS Secretary Shalala recommend Federal legislation to protect the confidentiality of health information by imposing duties on those holding such information and providing rights to the subjects of the information. She proposed that Federal law provide a floor of protection and that the States be permitted to provide stronger protections, in addition.

- Under the legislation, health care providers, those who pay for health care, and those who get information from those entities would have to:
  - permit patients to see their own records
  - keep records of disclosures and let patients know who has seen their records,
  - permit patients to file proposals for correction of erroneous records
  - advise patients of their confidentiality practices and the patient's rights.
- Under the legislation, disclosure would only be permitted if authorized by the patient or for specifically authorized purposes including:
  - treatment and payment
  - research
  - public health

*e.g. - self-insurer  
provides drug  
but can't see  
patient's  
records*

- oversight of the health care system
- use in law enforcement or other legal proceedings permitted by law.
- Within an organization, information could be used only for the purposes reasonably related to the purposes for which it was gathered and disclosures would have to be limited to the minimum necessary to accomplish the purpose of the disclosure.
- Entities receiving information pursuant to patient authorization would have to give patients a statement of their intended use of the information, and would be civilly liable for uses in violation of that statement.
- In addition, there would be civil and criminal sanctions for violations, such as improper disclosure and obtaining information under false pretenses.
- *State (leg)*  
*Spell out in detail how the provisions we support would apply in context of insurance firm merger with financial company.*

*Administrative*

- **Other Proposals.** In addition to these steps, already announced, further steps along these same lines could be taken to enhance consumer privacy.

*Possible regulation*

- **Legislative Specification of Notice and Opt-Out Requirements for Affiliate Sharing.** No agency has rulemaking authority under the affiliate sharing provisions of the FCRA (which allow sharing of personal information with affiliates), although the Federal Reserve has the ability to issue interpretations and the bank regulators and the Federal Trade Commission (FTC) can enforce its provisions. However, the requirements in statute are sketchy -- there is no commonly understood: (1) definition of what information is personal and is subject to these requirements; (2) what information can be shared and with whom; (3) what constitutes "clear and conspicuous" notice; and (4) what constitutes providing the consumer with a reasonable opportunity to opt-out. While the bank regulators have some ability to strengthen enforcement, *it would be easier to enforce if the statute more specifically prescribed the standards for consumer notice of their rights and mechanisms for exercising those rights.*

- **Limiting the Undisclosed Sharing and Selling of Consumer Transactional Information.**

- The Fair Credit Reporting Act (FCRA) as enacted in 1970 exempted from the definition of "consumer report" the communication of "transaction or experience" information.

- The purpose of the exemption was to facilitate communication of information by credit grantors and others to credit bureaus, by not making the furnishers of that information subject to the restrictions of the FCRA.
- This system has resulted in huge benefits to the economy by allowing firms to quickly and efficiently assess the risk posed by consumer applicants for credit, insurance, or employment, for example. Consumers have benefited too, for example, by being able to buy a car in an hour's time or obtain credit as they enter a department store for the first time.
- However, the exemption for reporting of experience or transaction information also allows credit card issuers, banks, and insurance companies, for example, to sell detailed transaction information about their customers without disclosure, opt-out rights, or other restriction.
  - Some consumers may view it as a benefit that firms can target catalog mailings, for example, to their interests (e.g., biking, travel, gardening, pets).
  - However, others may view the sale of their transaction information as an invasion of privacy, especially when it results in third parties learning about their medical or financial condition.
  - The rapidly expanding use of computers to cull through and compile information means that this type of information sharing occurs much more frequently than in 1970 when the FCRA enacted.
- In 1996, Congress amended the FCRA to allow affiliated companies to pool certain personal information without being treated like a credit bureau, as they would have been prior to the amendments.
  - However, before information can be shared with an affiliate, consumers must be: (1) told that their information may be shared with affiliates; and (2) given an opportunity to opt-out -- to insist that their information not be shared.
  - These procedures do not apply to transaction or experience information when shared with an affiliate. That information

benefits from the broader exemption in the FCRA regardless of whether the information is shared with an affiliate or other third party.

- The FTC is planning a one-year study of what protections should be afforded exchange of transaction and experience information, including an assessment of the costs and benefits of additional protections.
  - The study is motivated, in part, by concern that, in a computer networked world, the credit bureau as we know it will become obsolete. Instead, it will become far more efficient to poll one or more firms directly over a network about a specific consumer applicant. Under the experience or transaction exemption, the resulting exchange of information would fall outside of the FCRA's protections.
  - Similarly, as firms increasingly merge with targets to gain access to information about the target's customer base, new questions are raised about the affiliate sharing exemption.
- The FTC will consult with the banking agencies in designing and implementing its study, as well as in developing recommendations.
- *A Congressional mandate for such a study might prompt greater voluntary steps in the interim and ensure that its recommendations receive prompt attention by the Congress.*