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TECHNICAL ADVISORY

TA 155 **April 3, 2000**

SUBJECT: **FEDERAL INSURANCE LAW SEMINAR**

BACKGROUND: IIAL is currently presenting a seminar on Federal Insurance Laws and Regulations, in nine locations around Louisiana. We encourage members to attend, as Federal laws such as the Fair Credit Reporting Act (FCRA) significantly impact the daily operations of virtually every insurance agency.

MAIN POINTS: The FCRA gives consumers significant rights to the *privacy* of their credit information, and provides certain safeguards to ensure the *accuracy* of the information. To that end, the FCRA restricts access to a consumer's credit information to only a limited number of situations, two of which are insurance underwriting and employment. In addition, various disclosures must be made under certain circumstances. IIAL believes that in some instances, the *agency* would be required to provide the consumer with such disclosure forms. At other times, the disclosure would come from the insurer, or the consumer reporting agency.

Agencies which have insurers that use **credit scoring** for personal lines business must be well-versed in the provisions of the FCRA.

Another area of concern is the situation in which an agency is asked by one of its commercial lines clients to provide an MVR or other credit information on one of the client's employees, or prospective employees. There can significant legal dangers for the agency, unless proper safeguards are used. For example, the FCRA clearly states that credit information used for employment (hire, promote, terminate) can only be used upon the written authorization of the consumer.

Agencies should also be aware of the potential risk from an employee who might obtain a credit report, credit score, or MVR, on an ex-spouse, friend, neighbor, etc., which is done outside the scope of underwriting insurance. Both the agency and the employee could face significant legal problems in this situation.

One last area of concern is hold harmless provision of the agency/company agreement. Some insurers have a good hold harmless agreement on behalf of the agency, for the agency's handling credit information, credit scores, MVR, etc. Other insurers do not.

Another area in which an agency should have a hold harmless agreement for their protection is when the agency signs a contract with a consumer reporting agency, or a third party provider of credit information (at the request of one of the agency's insurers). Unfortunately, the contracts between agencies and third party providers which IIAL has reviewed, actually require the *agency* to hold the *third party* harmless!

As to E&O coverage, IIAL believes that most of the agency's exposure in the handling of credit information, credit scores, MVRs, etc., would be covered by a standard E&O policy. However, there are some instances, such as intentionally obtaining credit information without a permissible purpose, in which the E&O policy might not respond. Under the FCRA, this would be classified as "willful noncompliance," which an E&O carrier might interpret as an "intentional act." In addition, some E&O policies contain a contractual exclusion, which would leave the agency extremely vulnerable, if it has signed a hold harmless agreement with a credit reporting agency or a third party provider.

NECESSARY ACTION: We urge members to attend this seminar. Please see the enclosed seminar registration form.