

January 27, 2009

Federal Legislative and Regulatory Action

Data Security Legislation Introduced in 111th Congress

Social Security numbers are necessary tools used to establish contact with the proper consumer and to determine the accuracy of a debt. Thus, it is critical new laws do not limit industry use of consumer identifiers. It is likely that identity theft and data security will be priorities for the 111th Congress and ACA has already identified several that could have an impact on the industry.

According to National Journal's *Congress Daily* on January 7, Senate Bill 139, the Data Breach Notification Act, would "would require a federal agency or business entity to quickly notify an individual of a security breach involving personal data and would require notice to the Secret Service if records of more than 10,000 individuals are obtained or if the database breached contains more than a million entries, is owned by the federal government, or involves national security or law enforcement."

Senate Bill 141 and its companion H.R. 122 "would prohibit federal, state and local governments from displaying the numbers on records posted online or from printing them on government checks. It would also place limits on when businesses can ask customers for their Social Security numbers."

ACA is committed to ensuring the protection and security of personal consumer information while defending its members from unreasonable restraints on serving the economy. For this reason, ACA will advocate for positive legislation that contains industry-specific exemptions and oppose legislation that places undue burdens on association members.

Renewed Push for Adoption of Health Information Technology

Health information technology is anticipated to be a high priority on Capitol Hill in the 111th Congress, particularly given the Obama Administration's support for advancing such technology. Already the President has pledged to spend \$10 billion a year over the next five years to move the U.S. health care system to broad adoption of standards-based electronic health information systems, including electronic health records. House Democrats are supportive, including \$20 billion for doctors and hospitals to adopt electronic record systems in the economic stimulus plan (H.R. 598) proposed January 16, 2009.

Numerous bills to accomplish this transition were introduced in the last session of Congress but none made through their respective chambers. This is due, in part, to two of the biggest concerns surrounding health information technology systems: privacy and cost.

Privacy advocates want to ensure health information is adequately protected and want consumers to have control over their medical records. Industry groups like insurance companies and pharmacies, however, fear if privacy provisions become too stringent, they will not be able to properly communicate with other industry groups and patients.

In addition, healthcare providers are wary of any laws that would mandate electronic record keeping systems, because without financial assistance from the federal government, many smaller practices would be unable to cover any large set-up costs. The latest proposal seeks to alleviate this concern.

While ACA supports the advancement of health information technology, any security and privacy provisions must recognize existing protections under current law and not impose new security, privacy and notification requirements.

[NACHA Releases Notice Equals Authorization Survey](#)

On January 14, NACHA's Electronic Check Council invited ACH industry members to participate in a survey regarding a proposed amendment to their rules.

At present, NACHA Operating Rules currently require merchants to obtain a consumer's written authorization prior to electronically debiting the consumer's account for the amount of the service fee for a dishonored payment transaction.

However, under Regulation E, if notice is provided to the consumer prior to entering into the payment transaction that the consumer's account will be debited electronically if the payment transaction is dishonored, no written authorization is required from the consumer.

In order to develop a business case for amending its rules to allow for notice to equal authorization for the purposes of collecting services fees, NACHA has created a survey to obtain industry feedback.

ACA members who collect service fees for dishonored transactions are encouraged to complete this survey in order to help move this important initiative forward. The [NACHA survey is available online](#) and will be available until February 25, 2009.

[ACA Seeks Member Input on Debt Settlement Industry](#)

The Federal Trade Commission (FTC) hosted a workshop regarding the debt settlement industry in September 2008. The workshop brought together consumer advocates, industry representatives, state and federal regulators, and others with pertinent expertise to discuss a wide range of topics, including regulation and legal developments, advertising and marketing of debt relief services, the role of third party lead generators and other service providers, the history and development of the industry, and consumer education.

Following the workshop, ACA International submitted [comments on behalf of the credit and collection industry](#). In response to ACA's comments, the FTC asked if ACA could provide additional information regarding the contacts members have with debt settlement companies-those for-profit entities that advise consumers they can work with the consumer's creditors and collection agencies to reduce or eliminate the consumer's debt. In an effort to answer these questions, ACA is asking its members to participate in a brief online survey. The survey is intended to shed more light on the exchanges between ACA member agencies and debt settlement companies.

[Please take a few minutes to complete the online survey](#). We appreciate your time.

[FTC Co-Hosting Global Data Security Conference](#)

In March 2009, the Federal Trade Commission, the Asia-Pacific Economic Cooperation (APEC) forum and the Organization for Economic Co-operation and Development (OECD) will be co-hosting a two-day event devoted to international data security. The event, entitled Securing Personal Data in the Global Economy will "addresses how companies can manage personal data-security issues in a global information environment where data can be stored and accessed from multiple jurisdictions." It will include moderated panel discussions.

More information about the conference can be found in the [FTC's press release](#) and the FTC's [conference Web site](#). A full [agenda](#) is also available. People interested in participating in the conference as speakers may enquire by e-mail to securingpersonaldata@ftc.gov.

The conference will be held March 16 and 17, 2009 and will be webcast via the conference Web site.

State Action

[New Mexico Proposes Rule Concerning Collection of Time-Barred Debt](#)

The New Mexico Attorney General proposed rules making it an unfair or deceptive trade practice to collect or attempt to collect a debt the debt collector knows or has reason to know is time-barred in any demand for payment to the consumer unless the demand informs the reader that while the debt is valid , the applicable statute of limitations has run and the debt cannot be enforced in a court of law.

The disclosure also requires the debt collector state any acknowledgement by the consumer of the debt, either through oral or written confirmation or by making a partial payment, may result in the statute of limitations being revived.

Agencies attempting to collect time-barred debt from New Mexico residents should consult with qualified legal counsel to determine whether to provide disclosures to the consumer that such debt is time-barred and unenforceable through legal action.

Written comments may be submitted to the New Mexico Attorney General's Office by February 13, 2009. The proposed rules and regulations are available on the [New Mexico Attorney General's Office Web site](#).

[State Legislatures in Full Swing](#)

Almost all state legislatures have begun the 2009 session and there is a significant amount of legislation which may impact the credit and collection industry in a variety of ways, from new data security and security breach requirements to restrictions on post-judicial remedies and particular collection efforts.

It is critical for you, the membership, to be aware of proposed legislation so you can take action and network with your peers to develop and implement an effective grass roots advocacy strategy. In this regard, your unit leaders receive electronic legislative alerts from Stateside Associates, Inc. which administers the State Tracking Action Network (STAN) for ACA International. STAN serves as a resource for your unit leaders to stay abreast of new legislation.

In addition, members are encouraged to review ACA's monthly [State Legislative Alert](#), which is a list of selected legislative alerts that have particular significance to the industry. This alert notice is available to all members. Please review this alert and contact your unit leaders to discuss how you can assist in the advocacy process. This month's state legislative alert is available on ACA's Web site.

Now is the time, more than ever before, to work with your units and ACA International to advocate on behalf of the industry. Please contact David Cherner, legislative director of state government affairs, at +1(952) 928-8000, ext. 112 or cherner@acainternational.org to find out how you can get involved.