



Legislative Update

February 2007

Federal

Security breach notice legislation is identified as one of the top legislative priorities on the Financial Services Committee's Web page, which lists these elements to be included:

- **Regulation of Data Brokers:** Expands the Fair Credit Reporting Act (FCRA) to cover unregulated data brokers, such as ChoicePoint and LexisNexis, requiring them to operate by the same information sharing standards and consumer protections as consumer reporting agencies.
- **New Data Security Standards:** Imposes similar data security obligations and standards on data brokers and consumer reporting agencies as the Gramm-Leach-Bliley Act requires of regulated financial institutions.
- **Uniform Data Breach Notification:** Establishes uniform requirements for data brokers, consumer reporting agencies and financial institutions to notify consumers following a breach in any data system in which sensitive consumer information has been obtained by an unauthorized party and is likely to be misused.
- **Notification by Merchants:** Imposes greater responsibility on retail merchants to protect their customers' payment account information by requiring that any business that routinely collects and maintains customer credit card, checking or other payment information must notify customers or their financial institutions when financial account information has been obtained and is likely to be misused by unauthorized parties.

It appears that disagreements between the Financial Services (FS) and the Energy & Commerce (E&C) Committees on the elements of this legislation have not ceased as control has shifted from the Republicans to the Democrats. As it now stands, all three committees may develop their own legislation.

In the Senate, Christopher Dodd, Chairman of the Committee on Banking, Housing, and Urban Affairs, conducted a hearing on one of his often-declared priorities -- bank card marketing and billing practices -- on Jan. 25th and a second hearing on another

priority – predatory lending – on Feb. 7th. Among the practices scrutinized in the first hearing was “universal default” (increasing the interest charged on an account on the basis of a delinquency on another account, with a different lender). The predatory lending hearing focused on abuses in the subprime market and highlighted potential abusive practices among mortgage brokers, e.g. loans based on misrepresented “stated income.”

Senator Hillary Clinton has weighed in on privacy and security breach issues with her introduction, in the last Congress, of the “Privacy Rights and Oversight for Electronic and Commercial Transactions Act of 2006” (The PROTECT Act). This bill includes provisions for security breach notice, civil liability in the event of a breach, credit file freezing, information security requirements, changing GLBA from opt-out to opt-in, and expansion of the HIPAA privacy rule. In January, her staff began meetings with industry representatives to discuss this bill and the Senator’s intent to include these issues among her legislative priorities. It appears likely that she will reintroduce The PROTECT Act in some form in this Congress.

In the States

Despite the recently released Javelin Strategy & Research Identity Fraud Report showing the number of Americans who are victims of identity fraud has declined steadily since 2003, the early stages of this year’s legislative session continue to focus on providing identity theft protections for consumers. With no movement in Congress on this issue, state legislatures have pursued their own course. These protections include the freezing of credit reports, notification of instances of breaches of data security, information safeguarding standards, and reduction in the use of Social Security numbers.

Security Freezing

Twenty-six states and Washington D.C., currently have laws giving consumers the right to freeze access to their credit files. Many of those states that currently do not have security freeze laws on the books are expected to enact such laws in 2007. Some states that have existing laws are attempting to reduce or eliminate fees, reduce timeframes consumer reporting agencies are allowed to lift the freeze, and also give consumers notice each time their file is temporarily lifted.

As of Feb. 2, we have seen 61 security freeze bills introduced in 24 states. There is bipartisan support for freeze legislation: 54 percent of these are from Democrat authors while 44 percent are from Republicans and 2 percent are from Independents/Others.

Utilities Use of Credit Information

Of continued interest to some legislators this winter is regulating how utilities report payment information to consumer reporting agencies and how utilities use credit

information for assessing deposits. Ironically, when so much attention lately is being paid to broadening the information reported to the bureaus to help credit reach underserved markets, this legislation would have the effect of limiting the ability of many consumers to establish a positive payment history and gain a foothold in the credit markets. Both Texas HB 211 and Illinois HB 318 would hinder utilities reporting credit information to consumer reporting agencies.

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Bob Ryan

Vice President of Government Relations
(312) 466-7799
rryan@transunion.com

Eric Rosenberg

Director of State Government Relations
(312) 466-6323
erosenb@transunion.com

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