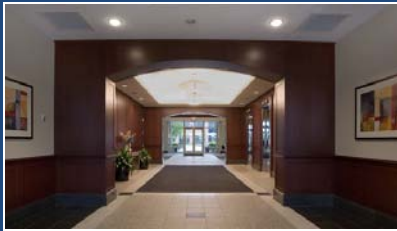


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Practice Areas:

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Privacy

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Assisting clients in matters
before state Attorneys
General, FTC & FCC

In This Issue:

New Federal Laws on Gift Cards

New Federal Laws on Gift Cards



Michele Shuster

President Obama passed the Credit Card Act of 2009. It places limitations on pre-paid credit or gift cards. It will allow an inactivity charge to be deducted if the card has not been used for 12 months. Only one charge is allowed per month.

An expiration date of less than five years is prohibited. An expiration after five years must be clearly disclosed on the card.

The Act does not apply to pre-paid telephone cards; re-loadable, non-transferable cards; promotional cards; private offer cards; and gift certificates only issued in the paper form. The Act will not preempt any state laws which are more stringent. The Act takes effect August 21, 2010.

Obama's Memorandum on Preemption



Shaun Petersen

On May 20th President Obama released a memorandum to all federal agencies regarding federal preemption of state law. The memo requires all new federal departmental or agency regulations to explicitly state the provisions that will preempt state law or codified regulation.

The memo also requires federal departments and agencies to review all regulations passed over the last ten years; if regulations do not preempt state laws, then it is to be amended as necessary.

Effectively, the memo is reining in on the federal regulatory power, restricting it only to areas which it has preemption power. All other regulatory power will reside in the individual states.

The federal limitations will allow each state to impose its own, different, stronger laws in an array of areas, including consumer

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protection. This will reverse the trend of the Bush administration, which aspired to have one unified federal regulation, and instead allow 50, very different, state regulations.

FCC Fines Company \$4500 *per Prerecorded Message*



Helen Mac Murray

The FCC recently issued a monetary forfeiture order against a broker for sending unsolicited prerecorded messages. The FCC rejected the broker's claim that it had an established relationship with the call recipients and assessed a forfeiture of \$4500 per call.

In the matter of 1 Home Lending Corp. File No. EB-03-TC-0

FTC Seeks Public Comments on its Pre-notification Negative Option Rule

The Federal Trade Commission ("FTC") has issued an Advance Notice of Proposed Rulemaking ("Notice"), whereby it is soliciting public comments on its Pre-notification Negative Option Plans Rule (16 C.F.R. Part 425; hereinafter "Rule"). Pre-notification option plans are agreements under which consumers receive periodic announcements of upcoming merchandise and have a set period of time to decline the merchandise; otherwise it is automatically sent to them. The Rule currently requires sellers of these plans to clearly and conspicuously disclose the material terms of the plan to consumers before they subscribe and to follow certain procedures in operating the plan.

Through its Notice, the FTC is soliciting public comments regarding the economic impact and continuing need for the Rule, the benefits of the Rule to consumers and the burdens the Rule places on businesses subject to its requirements. Additionally, the FTC seeks comments regarding whether the rule should be

expanded to include other types of negative option offers, including continuity plans (i.e. where consumers receive regular shipments of merchandise until they cancel the agreement), trial conversion offers (i.e. where a seller provides consumers with goods or services at an introductory rate and then charges them full price for the continued provision of the goods or services after the trial period expires, unless the consumers have cancelled their agreements) and/or automatic renewal plans (i.e. where sellers automatically renew consumers' subscriptions when they expire unless the consumers expressly cancel them).

The text of the Notice, which includes instructions on how to submit public comments and the specific questions asked by the FTC, can be found at the following web address: <http://www.ftc.gov/os/2009/05/P064202negativeoptionrule.pdf>. All written comments must be received by the FTC (via regular U.S. mail or electronic mail) by July 27, 2009.

ATA Lobbying Day in Columbus a Success

On June 9th, the Ohio Valley Chapter of the American Teleservices Association held a lobbying day in Columbus. Steve Brubaker, ATA Ohio Valley President, and John Stanovack of World Sharing LLC, provided their members a quick overview of the benefits of ATA membership and future ATA events.

The attendees spent the morning focused on how to connect with their local government officials and representatives in the Ohio legislature. Members also received input from some experts; including former Attorney General Betty Montgomery and Senator John Goodman. The rest of the member's day was spent on federal and state compliance.

MPS laid the foundation with a brief overview of telemarketing compliance law.

Then, John Mendanhall, the director of the East Central Region for the Federal Trade Commission, spoke about federal laws and regulations effecting teleservices.



Mr. Mendanhall was followed by Susan Choe, Chief of the Consumer

Protection Section, and Erin Leahy, assistant Attorney General, of the Ohio Attorney General's Office who spoke about Ohio specific laws and regulations as well as the general function of the Consumer Protection Section. The day wrapped up with a tour of the Capitol and a meet-and-greet reception with Ohio Congressional members.

State Compliance Updates

- Alaska: The Alaska House unanimously passed HB 93 which adds calls to wireless numbers to those calls regulated by the state's telemarketing law.
- Minnesota: The Minnesota Legislature recently passed H.B. 1853. This bill, signed into law May 22, 2009, provides that the state's Do-Not-Call laws (Minn. Stat. §§ 325E.311 through 325E.316) will expire December 31, 2012. The bill also creates an additional exemption from the state's prohibition against automatic dialing-announcing devices ("ADADs").

Specifically, the existing ADAD prohibition will not apply to "messages from a nonprofit tax-exempt charitable organization sent solely for the purpose of soliciting voluntary donations of clothing to benefit disabled United States military veterans and containing no request for monetary donations or other solicitations of any kind." More information about H.B. 1853, including the text of the bill, can be found here:

http://www.house.leg.state.mn.us/bills/billnum.asp?Billnumber=1853&ls_year=86&session_year=2009&session_number=0&Go.x=23&Go.y=4

- Virginia: Effective July 1, 2009, Virginia prohibits callers from using an automatic dialing-announcing device to make a commercial telephone solicitation unless the called party has requested, consented to, permitted, or authorized receipt of the message or unless the message is preceded by a live operator who obtains the subscriber's consent before the message is delivered.

The law also requires automatic dialing-announcing devices or other devices that disseminate a prerecorded or synthesized voice message to the number called to disconnect within five seconds after termination of the telephone call.

- Washington: The state of Washington will have amended consumer protection laws take effect July 26. Any consumer

rebates, which require the consumer to request the redemption, will now require a minimum of fourteen days for the consumer to request the rebate.

The rebate must be issued to the consumer within ninety days of the request and if issued by check in the mail, the envelope must be identified as such. Any violations of these provisions will be considered a violation of the state's consumer protection act and subject to its enforcement powers.

- Outbound calling will be prohibited in the following states on the following days:
 - July 24, 2009 - Utah (Pioneer Day).

MPS Updates

- Check out our new [Charitable Fundraising Regulatory Guide](#) as well as the [ATA regulatory guide](#).
- While the Red Flags Rules have been in effect since 2008, the Federal Trade Commission has delayed enforcement until August 1, 2009. The rules require financial institutions and creditors to develop and implement written Identity Theft Prevention Programs and require issuers of credit cards and debit cards to assess the validity of notifications of changes of address.

The FTC also has developed a [Web site](#) with additional resources and guidance for creditors and financial institutions that are within its jurisdiction.

- The Ohio House is currently considering a bill which is sparking considerable interest; the bill would regulate and reduce the amount of unwanted advertisements sent through faxes to business within the state.

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