

COLLECTION

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TECHNOLOGY NEWS

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# Rules & Regs

## DATA FURNISHERS TO GET SAFE HARBOR, IF CONGRESS ACTS FAST

Collectors breathed sighs of relief Nov. 5, as a limited liability amendment to the Fair Credit Reporting Act moved a step closer to becoming law. But there was still concern that what appears to be the light at the end of the tunnel could be an oncoming train, in the form of a Congressional recess.

Following the House's lead, the Senate overwhelmingly passed a bill amending the FCRA, including one amendment that establishes a safe harbor for collectors that act as third-party data furnishers for creditors.

Under the current FCRA, data furnishers are exclusively liable for the accuracy of dates of consumer delinquency included in a credit report. The problem is that credit issuers, which are often the first to key that data before passing it on to contracted firms, bear no such liability. The Senate amendment limits the liability for collectors that report inaccurate dates of consumer delinquency based on information provided by a credit issuer.

"We're very pleased about that," said Jenifer Loon, director of government relations for ACA International, The Association of Credit and Collections Professionals, "That's one of the biggest wins for our industry."

ACA International lobbied the Senate banking committee to include the amendment, which ACA helped draft. The House had already passed its bill before the industry group took up the cause.

Now, however, the big concern for collectors and creditors alike, is whether Congress can conference the House and Senate versions of the bill in time to renew current FCRA rules that provide federal preemption of state laws that govern credit reporting. Those rules are set to expire Jan. 1, meaning that Congress must have a final version for President Bush to sign before the legislative session ends, which is expected to be by Nov. 21. Both the House and Senate bills extend the preemption rules, but contain other minor differences that must be hashed out.

If the Federal preemption provisions are permitted to sunset, any or all 50 states could institute their own regulations, sending credit markets into disarray. Collectors would face a plethora of new compliance standards for disclosing notices of denial of credit, credit prescreening, the length of time delinquencies must stay on a consumer credit report, and other issues.

"Without preemption, credit rules will be a proverbial free-for-all," said attorney Michael A. Klutho, of the Minneapolis law firm Bassford Remele. "This is a big-picture issue, because we're a consumer-driven economy."

The expense of complying with so many new regulations could undermine the entire national credit reporting industry, said Klutho.

Lenders now voluntarily submit consumer information and payment history to national credit bureaus that maintain centralized databases. The increased regulatory risk state laws would create could be prohibitive for both parties. If the national reporting system disintegrates, it will make access to credit more difficult for consumers, especially when they move across state lines.

"Right now you can just go and buy a car by giving information like your Social Security number," said Klutho. "You won't be able to do that. We'll go back to the old form where the dealer would have to check your employment status and credit background. That will take weeks."

The extension of federal preemption rules passed by huge majorities, (392-30 in the House, 95-2 in the Senate), suggesting that most members of Congress understand the bill's importance. Still, debate over other amendments, could cause a delay on the Hill.

"There aren't huge differences, so I would not expect a protracted conference," said Loon. "But I've learned never to say never with legislation."

## CALENDAR

Dec. 3-5  
CBA 2003 Student Lending Conference, Crystal Gateway Marriott, Arlington, Va. [www.cbanel.org](http://www.cbanel.org)

2004

Jan. 21-23  
Thomson Financial's Mortgage Technology Conference, Hotel Intercontinental, Miami. [www.tmconferences.com/conferences/MT04/](http://www.tmconferences.com/conferences/MT04/) Call 800-803-3424

Feb. 4-6  
Debt Buyers' Association 7<sup>th</sup> Annual Conference, Caesars Palace, Las Vegas. Call 562-903-7222

Feb. 22-24  
Royal Media Group's Subprime Summit, Hilton Torrey Pines, La Jolla, Calif. [www.royalmedia.com](http://www.royalmedia.com) Call 800-320-4418

March 17-19  
Thomson Financial's 8<sup>th</sup> Annual National Collections & Credit Risk, New Orleans. Call 800-803-3424

March 21-24  
NACHA Payments 2004, Washington State Convention Center, Seattle. Call 703-561-3960

April 21-23  
ACA International's Internet & Check Services Expo, Wyndham Resort, Miami Beach, Fla. Call 952-926-6547