



THE NEXT LEVEL

The issues that will be changing the credit and collection industry, and what you need to know in the coming year.

By Anne Rosso May and ACA Staff

Now that 2017 is behind us, it's time to look ahead into a new year. We talked to a number of collection industry professionals about what we can expect to see in the months ahead, and these are the need-to-know trends and issues on their radar.

THE CFPB ROLLERCOASTER

Expect to hear a lot from the Consumer Financial Protection Bureau in the coming months, but first here's some good news to start your year off.

In late October 2017, the credit and collection industry enjoyed an exciting victory when U.S. Senate Republicans overturned the CFPB's rule to ban class-action waivers in arbitration agreements in contracts for consumer financial products. President Donald Trump signed the legislation Nov. 1.

This important win for the industry came in part thanks to ACA's vocal opposition to the rule. ACA submitted a comment letter last year explaining the important role class-action waivers played in offering legitimate debt collectors a way to more easily defeat inappropriate class-action lawsuits. ACA also joined 28 other industry associations and organizations in a letter to the CFPB requesting that it withdraw the rule.

A lot has changed since Richard Cordray's Nov. 24 departure from the CFPB. Days after Cordray cleared out his office, his former Chief of Staff Leandra English and President Donald Trump's interim pick for the job, Mick Mulvaney, showed up to lead the agency. This prompted a lawsuit and quick decision favoring Trump's man. , though English filed an amended complaint and a motion for a preliminary injunction in the U.S. District Court for the District of Columbia to reverse the district court's ruling.

With Mulvaney at the helm on an interim basis, the next question is: Who will be the permanent CFPB director? At press time we were still waiting for an answer.

"ACA International looks forward to working with a new director of the CFPB and demonstrating the important role that debt collectors play in the financial services market," said ACA International President Rick Perr. "We are committed to collaborating with the CFPB's future leadership to ensure any new policies and regulations impacting the credit and collection industry are evidence-based, well-reasoned and fair."

The ACA-supported case *PHH Corp. v. CFPB*, which questions the constitutionality of the CFPB, is still being considered by the U.S. Court of Appeals for the District of Columbia Circuit, but ACA is hopeful a decision will come in the first part of 2018.

EXPERT INSIGHT

LOOKING AHEAD:

DATA SECURITY



Giles
Witherspoon-
Boyd, president
& CEO, Protocol
Enterprises, LLC

"In 2018 you'll see a lot of people dialing in how they provide authentication when communicating with consumers. I think you'll see a big rise in tech companies coming up with new ways of knowing your customer.

I also expect to see a lot of people coming out with different ways to segment the public web from their private environments so they can communicate in a more direct way with their customers and other businesses. These types of network tunneling and infrastructure products will make a huge jump forward. You'll see a lot of technologies that say they offer a complete communication channel for either business-to-business or customer-to-business."

CONSUMER-INITIATED ROBOCALL BLOCKING AND LABELING ISSUES

You can expect the Federal Communications Commission to continue its fight against unlawful robocalls through increased enforcement and further regulatory proceedings. This year the FCC will likely move forward with its pursuit of robocall mitigation regulations, continue its look into a potential reassigned number database and explore additional technological solutions to thwart unlawful robocalls.

Because legitimate calls are increasingly being mislabeled as "suspected scam" or even blocked completely by robocall processing providers, ACA is actively seeking a solution to combat this serious issue for our members. The association is participating in the newly formed Communication Protection Coalition, a diverse group of stakeholders seeking to develop Best Practices for robocall blocking and other solutions. Look for positive changes to come from these efforts.

WORKING FOR TCPA CLARITY

At press time, ACA and the credit and collection industry continued to await a decision from the D.C. Circuit Court of Appeals in the *ACA Int'l, et al. v. Federal Communications Commission* case, which could have a significant impact on the rules governing calls and texts to consumers.

Once this ruling is released, depending on the outcome, there may be efforts at the FCC to address the definition of an ATDS, the reassigned number problem and the revocation of consent under the Telephone Consumer Protection Act—all huge issues for the collection industry right now.

MIDTERM ELECTION OUTLOOK

The 2018 midterm elections are on the horizon, and members of Congress are scurrying back to their states to shore-up their support. Could this be the election that helps the Democrats take back the U.S. House of Representatives? In the 2018 House races, we are already

seeing Democrats trying to gain control of the chamber by targeting 24 seats currently held by Republicans. Most of the focus is on the seats currently held by Republicans that were won by Democratic presidential candidate Hillary Clinton in the 2016 election.

If the Democrats retake control of the House in 2018, Minority Leader Nancy Pelosi (D-Calif.) would most likely become the speaker of the House. A Democratic majority would mean major changes as there would be a swap in who controls the House committees.

With Chairman Jeb Hensarling's term ending, the position of chair of the powerful House Financial Services Committee will be up for grabs in January 2019 for the first time in six years. House Republicans have begun to jockey for a shot at the gavel. Congressman Patrick McHenry (R-N.C.) is the frontrunner given his GOP leadership position. Several other likely candidates have voiced their interest in running for the highly coveted position: Frank Lucas (R-Okla.), Ed Royce (R-Calif.), Peter King (R-N.Y.) and Blaine Luetkemeyer (R-Mo.). Bill Huizenga (R-Mich.) and Sean Duffy (R-Wis.) are also possible contenders. The list will likely change and grow in the next year.

Of course, their struggle would be fruitless if the Democrats wrestle away control of the House in November, a greater possibility after their victories in Virginia and New Jersey last year. Republicans have held the majority in the House for almost eight years, but as Election Day approaches, Democrats are gaining confidence that they can recapture the people's chamber.

U.S. Rep. Dave Trott (R-Mich.), a member of the House Financial Institutions and Consumer Credit subcommittee who is a former owner of a debt collection law firm, announced he will not seek re-election, putting his seat in play and open to a potential Democratic takeover in the midterm election.

In the upper chamber, the current U.S. Senate line-up is 52 Republicans, 46 Democrats and two Independents who caucus with the Democrats, giving the Republicans a four-seat majority. Of the 34 Senate races on the ballot, Republicans are defending nine seats and Democrats are defending 25. The Democrats' path to 51 seats to recapture the U.S. Senate is extremely difficult.

QUESTIONS IN THE STUDENT LOAN MARKET

This year, look for more news on the CFPB's lawsuit against Navient Corp., which was put back in motion in August 2017 when the U.S. District Court for the Middle District of Pennsylvania denied Navient's motion to dismiss the case. Navient has also been sued by the Pennsylvania attorney general, for alleged violations of consumer protection laws when originating and servicing student loans, as well as shareholders, for allegedly withholding information about its subprime loans.

Last year, the CFPB announced new initiatives to enforce compliance by student loan servicers working with borrowers enrolled in the Public Student Loan Forgiveness Program. However, the program is under fire from President Donald Trump, who in his 2018 budget request proposed eliminating Public Service Loan Forgiveness for loans taken out after July 1, 2018.

In December 2017, House Republicans introduced their first stab at higher education reauthorization: the Promoting Real Opportunity, Success, and Prosperity through Education Reform (PROSPER) Act, which—among other things—would eliminate the student loan forgiveness program. The bill also proposed replacing the Federal Direct Loan program with a new Federal ONE loan program and winding down the Federal Perkins Loan Program.

At press time, the bill had just completed the markup process. *The Hill* reported that the Senate planned to take action on higher education reauthorization in early 2018.

The Department of Education's approach to loan servicing contract procurement is still in flux, but David Glezerman, assistant vice president/bursar at Temple University, said he could see some movement taking place on this soon. "This will not have as much impact on third-party collectors initially, but it could give some indication of what the department is going to do with all of its contracts and procurements," he said.

Speaking of: the debacle surrounding the DOE's RFP for private collection agency services continues. It will be interesting to see if the new chief operating officer of the Office of Federal Student Aid, Wayne A. Johnson, intervenes at some point. "There's seemingly a cone of silence that has come down over the Department of Education when it comes to dealing with their contractors," Glezerman said.

As a result of the RFP delay, several small third-party collection agencies are sitting out there with contracts but no business. "If the log jam breaks, I think the high volume of accounts may overwhelm some companies," Glezerman said. "I think there could be openings for additional subcontracting opportunities."

INCREASED FOCUS ON DATA SECURITY

The Equifax breach grabbed headlines last year, but the company wasn't the only victim of a hacker attack. Verizon, Deloitte and Instagram were just a few of the companies involved in the more than 1,100 reported data breaches in 2017 that compromised consumers' personally identifying information.

The result? Consumers are on high alert for fraud and several states are considering legislation that addresses credit reporting, data security, data breaches and consumer security freezes. By the end of 2017, New York had already introduced five bills in this area, and two Oregon committees called a special interim hearing specifically on the Equifax data breach.

It's definitely time for companies to shore up their data security practices—you don't

EXPERT INSIGHT

LOOKING AHEAD:

PAYMENT PROCESSING



*Dave Yohe,
vice president
of marketing,
BillingTree*

"We're seeing a demand for technology systems to help drive PCI compliance—things like web portals and IVR systems and even to a degree some core software solutions. Also, our annual industry survey has shown that for five years now there has been a continued direction toward omnichannel and self-service payment solutions. Agents will not go away, but more and more consumers expect agencies to offer them a way to set up a payment arrangement or settle a balance without having to speak to a live agent. Also, agencies are starting to accept more types of payments, like healthcare savings accounts and Paypal."



State attorneys general are ramping up efforts with the Federal Trade Commission to address debt relief scams.

want to be in the spotlight for a breach that could have been prevented.

Meanwhile, over in Europe, the new General Data Protection Regulation legislation, which goes into effect in May, is changing how businesses process and protect consumer information. Under GDPR, companies that handle the personal data of European Union customers must prove they have appropriate security measures in place to protect it—if not, they can incur big fines.

The effects of this legislation are being felt stateside too. “The new law will usher in cascading privacy demands that will require a renewed focus on data privacy for U.S. companies that offer goods and services to EU citizens,” said Jay Cline, PwC’s U.S. Privacy Leader.

STATE ISSUES: DEBT RELIEF SCAMS, GARNISHMENT AND MORE

State legislatures will be very busy from mid-January through early May. This heightened level of legislative activity

is expected to wane in early summer as political and campaign pressures increase with the looming November election. More than 80 percent of all state legislative seats (6,000+) across the country are up for election.

The misleading tactics deployed by many credit repair organizations continue to be a top issue for ACA state and regional units. Efforts to reform consumer and creditor confusion caused by generic credit repair dispute notices seem to be gaining momentum with state lawmakers. Several states are expected to consider legislation in 2018 to address this issue.

Additionally, state attorneys general are ramping up efforts with the Federal Trade Commission to address debt relief scams.

Every year a handful of states consider significantly shortening their state’s statute of limitations for bringing a debt collection action, and 2018 is not expected to be any different. ACA’s units have a good message to relay to lawmakers



IT NEVER HURTS TO GET A SECOND OPINION ON YOUR INSURANCE POLICIES

We have E & O policies no other agent can offer. Guaranteed.

CORNERSTONESUPPORT.COM | 770-691-1168



Cornerstone Support, Inc.

LET US COMPARE TO MAKE SURE YOU'RE GETTING THE BEST FOR YOUR BUSINESS.



on this issue regarding the unintended consequences of these proposals and the real negative impact the legislation would have on consumers.

Garnishment will also continue to be a hot topic. Last year Colorado, California, Louisiana, Nebraska and Tennessee considered legislation to significantly limit garnishment procedures. Similar efforts are expected to come back in these and other states during the 2018 legislative sessions.

As of June 30, 2017, eight states managed debt collection licenses in the Nationwide Multistate Licensing System and Registry. There are 1,189 companies in NMLS that hold more than 3,600 approved debt collection licenses. In 2018, several additional states are expected to move toward using the NMLS to manage their debt collection licenses.

The NMLS is also expected to launch a new modern platform next fall. Information on the new NMLS platform as well as ways to provide input on what's being developed can be found here: <https://new.nmls.org>.

M&A TRENDS

Overall, 2018 is looking to be a strong year for mergers and acquisitions in the accounts receivables management industry given the changing regulatory environment and more interest from buyers.

"In our engagements, we've seen that owners that are considering a sale have many more high-quality potential buyers to speak with than in recent years," said Brian Greenberg, CEO of Greenberg Advisors LLC. For example, in 2017 one of his firm's clients received more than 10 offers from interested buyers.

"We think that's indicative of the market ... and we think it will continue in 2018," he said.

Deregulation, or even a softer regulatory environment, can lower the amount of perceived risk in the collection industry, enticing buyers to make investments in debt collection firms.

With the increased interest comes more competition, and sellers need to make sure they have a "differentiated service or technology offering that will drive buyer

interest and therefore result in a completed transaction," Greenberg said.

Potential sellers with a high "client concentration," when a significant portion of their revenue is derived from one client or a handful of clients, may face challenges in the marketplace.

CONSUMER FINANCES & COMMUNICATION CHANGES

Economist Bill Conerly predicted in *Forbes* that consumer spending would remain weak through early 2018, but after that "wages will rise, improving incomes and enabling faster growth of consumer spending."

Meanwhile, the lending world continues to swell with credit cards—outstanding revolving debt levels reached a record high in 2017. Student and auto loans are also on the rise, and all of this will affect the volume of accounts that go out into the agency world this year.

Social Security will see some changes in the coming year. The good news: recipients will see a 2 percent cost of living benefit increase starting in January. The less-good news: as a result of this cost of living adjustment, some people will see their Medicare premiums go up a bit in 2018.

Slowly but surely, collection agencies are engaging consumers through websites, emails and even text messaging, though use is still fairly conservative due to regulatory uncertainty.

In one recent case, *Lavallee v. Med-1 Solutions, LLC*, the court ruled that a validation letter attached to an email did not comply with the Fair Debt Collection Practices Act. While Med-1 Solutions attempted to be as compliant and secure as possible, the Indiana court decided the process surrounding its email communication was flawed. Decisions like this only add to agencies' hesitation to communicate with consumers in the manner they prefer. Industry experts are hoping the CFPB provides some clarity on this issue in its proposed rules for the debt collection industry. ▀

Anne Rosso May is editor of Collector magazine.

KEYNOTES

1 State legislatures will be very busy from mid-January through early May, but this activity will wane in early summer as campaign pressures increase with the looming November election.

2 2018 is looking to be a strong year for mergers and acquisitions in the accounts receivables management industry given the changing regulatory environment and increased buyer interest.

3 Expect to see action surrounding the Department of Education's approach to loan servicing contract procurement as well movement on reauthorization of the Higher Education Act.