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DMA 
Direct Marketing Association

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Direct Marketing Association
Councils

DMA Councils'
Regulatory and
Legislative
Update
on Consumer
Financial
Protection



Agenda

- Stay Connected with DMA
- Wall Street Reform and Consumer Protection Act of 2009
 - (H.R. 4173)
 - Consumer Financial Protection Agency
 - Expansion of FTC Authority
- Senate Action on Financial Regulatory Reform
 - Banking Committee
 - Commerce Committee
- Other Regulatory/Legislative Issues
- Q&A

Today's Speakers

DMA Councils'
Regulatory and
Legislative
Update
on Consumer
Financial
Protection



Jerry Cerasale
Senior VP, Government Affairs



Rachel Thomas
VP, Government Affairs



Neil O'Keefe
VP, Multichannel Segments





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Connected**

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Search

DMA 2009 Response Rate Report

NEW METRICS ON:

- Text Messaging/SMS
- Mobile
- Email
- Web 2.0
- Paid Search

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MARKETING NEWS

02/08/2010
Mintel Comperemedia Predicts Banking Industry Changes for 2010

02/08/2010
Philadelphia Direct Marketing Association (PDMA)Presents Marketing Consultant and Author Chris Brown at February Networking Meeting

02/08/2010
Boost Mobile, Home Away, E*Trade & Google Scored Integrated Marketing Standouts at Superbowl, According to Reprise Media

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DMA Direct Marketing Association

Legislative Action Center

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Welcome to your Legislative Action Center [Click Here to Read More About the New Legislative Action Center](#)

In The Spotlight

Click on the above image to learn more about the proposed expansion of FTC authority.

Latest News

- Push for consumer protection agency faces obstacles in new bipartisan talks (The Hill) Feb 12, 2010
- Even in snowstorms, mail carriers manage to deliver (Washington Post) Feb 9, 2010
- FTC probing CVS Caremark (Washington Post) Feb 9, 2010

[View More News](#)

Weekly "Direct from Washington" Newsletter

Politically Direct Winter 2010 Edition

Quick Poll

Which channel is more important to your marketing strategy?

Mobile Postal
 Online Telephone
 Email Other

results

Key Issues

- Proposed Expansion of FTC Authority
- Online Behavioral Advertising

Voter Resources

- Early / Absentee Voting Information
- My Candidates

Federal & State Legislation

- H.R. 4173: Wall Street Reform and Consumer Protection Act of 2009
- S. 1490: Personal Data Privacy and

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Insurance & Financial Services Segment

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Join our Linked In group: www.linkedin.com/groups: DMA Insurance and Financial Services Council

Mark your calendars for the **2010 DMA Insurance and Financial Services Conference** to be held in May at the DMA Seminar Center. Look forward to a training track and a multichannel case studies track. Sponsors and tabletops will be available.

Congratulations to Marsh U.S. Consumer for sweeping the DMA Insurance and Financial Services Council Awards!

**Marsh U.S. Consumer is Company of the Year
and
Tonv A. Baldus, Senior Vice President, is Direct Marketer of the Year for 2009!**

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DMA Councils' Regulatory and Legislative Update on Consumer Financial Protection



Resources	Links & Tools	Advocacy	White Papers
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Banking	Insurance	Research	Industry Links
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[XEROX helps PNC Advanced Output Solutions Achieve Dramatic Growth With Strategy For Winning External Customers](#)

[AT&T, Firethorn Launch Mobile Banking Ap for iPhone](#)
By Dan Butcher, Mobile Marketer, November 4, 2008

[There's No Credit Crunch in Second Life](#)
From Silicon.com, October 23, 2008

[Mobile payments to hit \\$300bn by 2013](#)

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Direct from Washington



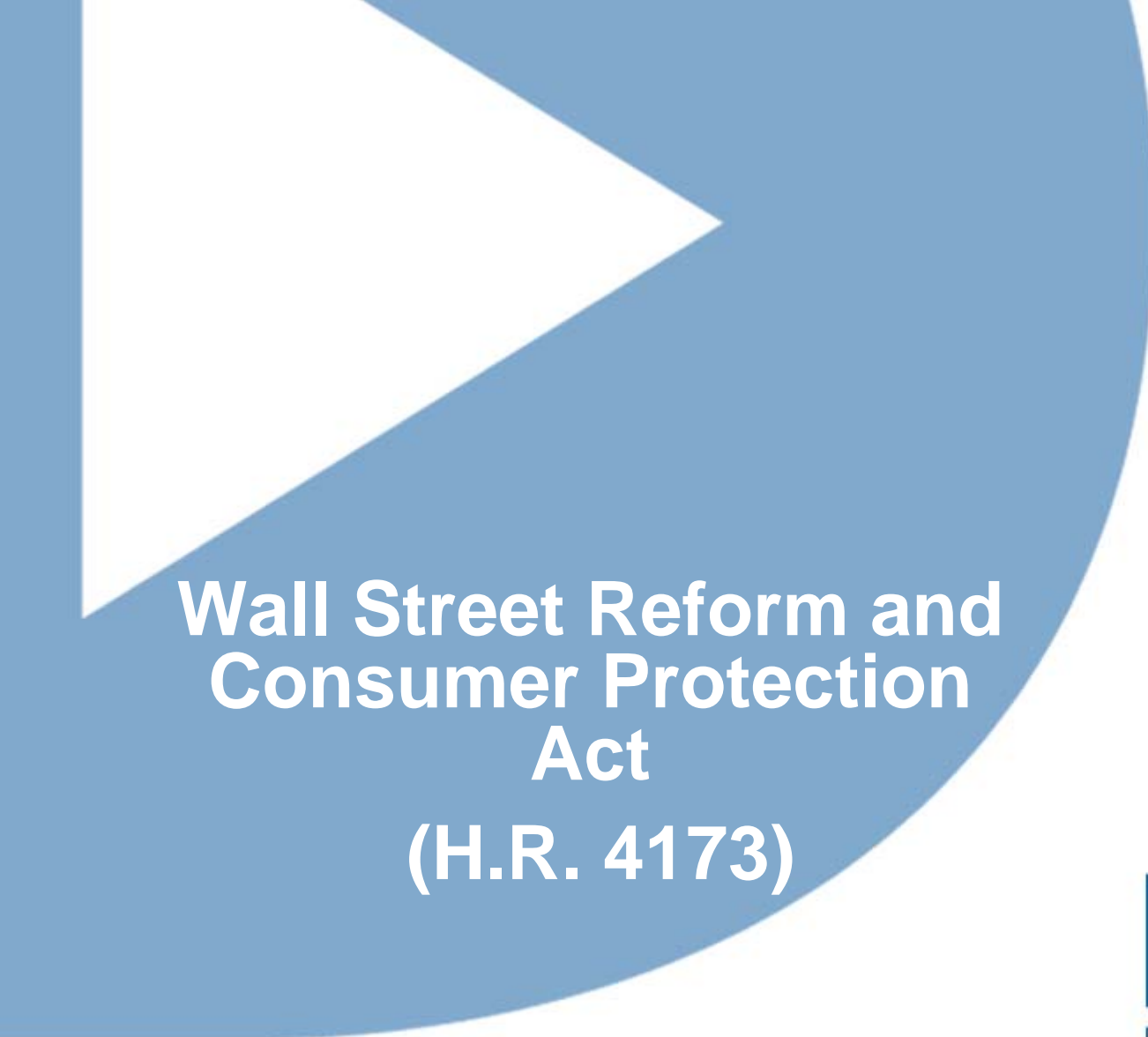
Regulatory Cooperation



DMA works closely with other associations, regulatory commissions and government committees to ensure that self regulation minimizes the need for government intervention.

Upcoming Regulatory Update Schedule

- Mobile Marketing Guidelines - May 11, 2010
- Environmental Responsibility - August 12, 2010
- Social Media Guidelines and Best Practices - November 9, 2010



Wall Street Reform and Consumer Protection Act (H.R. 4173)

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Wall Street Reform and Consumer Protection Act



- Creates a Financial Stability Council of regulators to coordinate on issues of systemic risk.
- Establishes a process for shutting down large, failing financial institutions.
- Gives shareholder “say on pay” with executive compensation, requiring financial firms to disclose incentive-based compensation structures.
- Strengthen the SEC’s powers to regulate the securities markets.
- Regulates over-the-counter derivatives.
- Outlaws certain mortgage lending practices (incorporating earlier legislation).
- Requires registration of hedge funds.
- **Creates a Consumer Financial Protection Agency (CFPA).**



Issues with H.R. 4173

- Creation of independent, watchdog Consumer Financial Protection Agency (CFPA)
- Expansion of FTC Rulemaking and Enforcement Authority

- An Obama Administration proposal incorporated into House legislation as the CFPA Act.
- Broad language in the original CFPA Act would have regulated companies that have nothing to do with financial services:
 - Companies processing credit card transactions or gift cards.
 - Marketers and advertisers could be liable if a company they worked for made false claims about its financial products.
 - Ad agencies, list brokers or even publishers printing an advertisement could be held liable if the product in that ad was found to be inaccurate.
 - A nonprofit organization that explains to a donor how to make a bequest would be subject to regulation.
- **Many companies and organizations would have faced the significant financial and administrative burdens of CFPA regulation at a time when they are already struggling in a tight economy.**

DMA Action

- DMA worked with members on both sides of the aisle to ensure that an explicit exemption of marketing activities from CFPA regulation was included in the bill before it was passed out of the House Financial Services Committee.

FTC Expansion

- The last four pages of the CFPA Act would significantly expand the rulemaking and enforcement powers of the Federal Trade Commission (FTC):
 - APA Rulemaking Authority
 - Enforcement Authority for “Substantial Assistance” Violations
 - Civil Penalty Authority
 - Independent Litigating Authority
- **These provisions would grant the FTC - a generalist agency regulating broad segments the U.S. economy - the equivalent of extraordinary legislative powers.**

APA Rulemaking Authority

- H.R. 4173 would allow the FTC to promulgate rules about “unfair or deceptive acts or practices” using the simplified Administrative Procedure Act (APA) procedure instead of the enhanced Magnuson-Moss rulemaking.
 - Congress first required use of the Magnuson-Moss procedure in response to overzealous regulation by the FTC in the 1970s, including an attempt to ban all children’s advertising.
- **With such broad jurisdiction, it is appropriate to require robust industry and consumer participation when the FTC seeks to issue a rule that would affect an entire trade or sector.**

“Substantial Assistance” Violation

- H.R. 4173 would provide that any person that “knowingly or recklessly” provides “substantial assistance” to another in committing an unfair or deceptive act or practice can be punished as a primary perpetrator, even without actual knowledge of the violation.
 - This would subject the entire advertising and marketing chain to liability based on the veracity of a single company’s product claims.
 - For example, a publisher could be held liable for claims made in an advertisement printed in its newspaper or magazine.
- **Such an expansion of FTC authority is neither reasonable nor necessary.**

Civil Penalty Authority

- The FTC would receive authority to seek penalties not only for *actual* violations of the FTC Act, but also to *deter* potential violations.
 - Currently, the FTC delivers an administrative order for a company to change a certain practice or behavior, seeking civil penalties only if that order is violated.
 - This gives companies an incentive to reach an agreement with the FTC and improve their business practices instead of litigating against the Commission.
- **With ample enforcement tools already at its disposal, giving the FTC civil penalty authority would have negative unintended consequences.**

Independent Litigating Authority

- The FTC would no longer need to notify the Department of Justice (DOJ) of any proposed action.
 - Currently, the DOJ can decide to act on the FTC's behalf rather than the Commission taking action on its own.
- **DOJ consultation is necessary to coordinate law enforcement activities across agencies and to provide a critical check on the FTC's discretion when a company is exposed to damaging penalties.**

FTC Expansion

“The administration’s proposal would do more than just change the procedures used in rulemaking.

It also would eliminate the requirement that unfair or deceptive practices must be prevalent, and eliminate the requirement for the Commission’s Statement of Basis and Purpose to address the economic effect of the rule.

It also changes the standard for judicial review, eliminating the court’s ability to strike down rules that are not supported by substantial evidence in the rulemaking record taken as a whole”.

- Timothy Muris, Former FTC Chairman (2001- 2004)

“Passage of the legislation as currently drafted would be “like putting the FTC on steroids.”

Jim Miller, Former FTC Chairman (1981-1985)

- DMA organized a coalition of member companies and other associations to bring attention to the “hidden” issue of FTC expansion, lobbying across the House Financial Services and Energy & Commerce Committees.
- In early December, DMA organized a letter - signed by 21 other associations – sent to every member of the House opposing the FTC-related provisions in H.R. 4173 and asking that they be removed before the bill was passed.

Senate Action on Financial Regulatory Reform

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Senate Banking Committee

- Chairman Dodd introduced the “Restoring American Financial Stability Act” in October 2009:
 - Establish an Agency for Financial Stability
 - Create process for orderly resolution of failing complex financial institutions
 - Establish a Financial Institutions Regulatory Administration
 - **Establish a Consumer Financial Protection Agency (CFPA)**
 - Establish an office of National Insurance in the Department of Treasury
 - Strengthen regulation of derivatives, securities, securities products, credit rating agencies, and hedge funds.
- Committee members went back to the drawing board after markup in mid-November, working on small groups ever since.



- While the Banking Committee's draft bill did not include them, the Commerce Committee will take up FTC-related provisions from H.R. 4173 as part of its work on FTC Reauthorization.
- It is expected that the Commerce bill will be "married" with Chairman Dodd's financial reform legislation before it moves to the Senate floor.
- February 4: Hearing on the "Role of the FTC in Consumer Financial Protection"...with FTC Chairman Leibowitz as the sole witness.

DMA Action

- Senate Banking Committee's CFPB proposal includes the same explicit exemption of marketing activities that DMA successfully lobbied for in the House.
- In January, DMA organized 28 other trade associations in sending the attached letter to members of the Senate Commerce Committee expressing concerns about the expansion of FTC authority.
- DMA's coalition has grown to include many member companies and more than 40 associations now lobbying in the Senate Banking and Commerce Committees.



In Summary: DMA Positions

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- DMA supports Congress' commitment to passing comprehensive financial regulatory reform.
- However, the original CFPA proposal would have had sweeping implications for a wide range of businesses and nonprofit organizations that have nothing to do with the financial sector.

FTC Expansion

- DMA supports the FTC's mission to prevent and punish unfair and deceptive acts or practices.
- However, DMA believes that the current limits on the FTC's discretion are appropriate given the significant consequences of any enforcement action for a targeted company and its shareholders and employees.

Other Issues

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Other Issues

- USPS
 - Summer Sale
 - Five-Day Delivery
- Telemarketing
 - Stronger Rules for Robocalls Proposed by FCC
 - Matching FTC's Telemarketing Sales Rule
- Privacy
 - S. 1490: Personal Data Privacy and Security Act
- Nexus
 - Colorado H.B. 1193

Thank You!

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