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The House and Senate remain in session.

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Federal Affairs

DMA's Woolley Testifies on Privacy Self-Regulation: "We are Nimble And Can Move Quickly"

On Thursday, Linda Woolley, DMA's executive vice president of Washington operations, testified before the House Energy and Commerce Subcommittee on Commerce, Manufacturing, and Trade (CMT) at a hearing entitled, "[Understanding Consumer Attitudes About Privacy.](#)" Woolley testified on behalf of the [Digital Advertising Alliance](#) (DAA), home of the AboutAds Self-Regulatory Program for Online Behavioral Advertising (OBA), which DMA formed along with several other advertising trade associations in 2010.

This hearing was the fourth in a series of hearings on privacy held by the CMT Subcommittee. The Subcommittee has previously considered regulation of Internet privacy, the impact EU regulation has on U.S. businesses, and children's online privacy. Representative Mary Bono Mack (R-CA), CMT Subcommittee Chairman, said the purpose of these hearings is to identify how to balance the need to

remain innovative with the need to protect privacy. Yesterday's session focused on industry efforts to provide transparency and control to consumers. The discussion focused mainly on the achievements of the DAA, with Representative Cliff Stearns (R-FL) at one point commenting that the DAA program and its Advertising Option Icon are "terrific."

In addition to Linda Woolley, the CMT Subcommittee heard from witnesses including Barbara Lawler, Chief Privacy Officer of Intuit; Scott Meyer, Chief Executive Officer of Evidon; Michael Hintze, Associate General Counsel of Microsoft; Alessandro Acquisti, Associate Professor of Information Systems and Public Policy at Carnegie Mellon University; and Pam Dixon, Executive Director of the World Privacy Forum.

In her opening statement, Chairman Bono Mack said the purpose of the hearing is to explore what consumers expect and want from their online experience. She said she remains skeptical about whether industry is doing enough to protect consumers, but that she has concerns with the government regulating because it tends to overreach when it comes to new regulations. She noted that the use of consumer data can be beneficial and targeted marketing may not be "necessarily bad," and said that the "root of the privacy issue" is whether there is enough transparency around advertising practices and choice with respect to the delivery of behavioral ads.

Representative G.K. Butterfield (D-NC), Ranking Member of the CMT Subcommittee, used his opening statement to call for a national, baseline privacy statute and said companies should provide transparency and choice to consumers. He cited several studies that he said show consumers are uncomfortable with interest-based advertising. He also questioned the size of the interest-based advertising market, saying that while online advertising is a "big business" generating more than \$26 billion in ad revenue in 2010, online behavioral advertising remains a small portion of that overall revenue. During the question and answer portion of the hearing, he supported his statement by referencing a blog post that stated the online behavioral advertising as accounting for only \$928 million in ad revenue annually. Woolley responded that based on the Federal Trade Commission's (FTC) definition of behavioral advertising, the Interactive Advertising Bureau has been able to calculate that around 80 percent of annual ad revenue could be attributed to behavioral advertising.

Representative Marsha Blackburn (R-TN), Vice Chair of the CMT Subcommittee, began her opening statement with an assertion that data should be treated as a natural resource. She commented that data is the lifeblood of a thriving market and companies should be permitted to explore uses of this data. She expressed opposition to a one-size-fits-all approach to consumer privacy and said that government regulation could hurt innovation. Instead, she recommended a flexible approach to consumer privacy that protects against real harms while ensuring industry can use data to deliver products and services to consumers.

In her testimony, Lawler expressed support for baseline "principles-based" privacy legislation, saying that legislation should be technology neutral. She also said recent research by Intuit shows that consumers want transparency and choice, and that consumer confidence in data usage increases when companies explain their data practices.

Hintze's testimony focused on four elements of Microsoft's approach to privacy: (1) best practices that give consumers transparency and choice; (2) technology tools that allow consumers to make informed privacy choices; (3) industry self-regulation such as the DAA's Self-Regulatory Principles for Online Behavioral Advertising, which provides consumers with transparency and choice; and (4) consumer education. He said Microsoft supports technology neutral, baseline privacy legislation.

Meyer described Evidon's role in the broader self-regulatory program administered by the DAA. He said that his company has researched consumer expectations concerning the DAA's Advertising Option Icon and its effect on consumers' perception of advertising, saying their research shows that 67% of consumers felt more positive towards brands that gave them control over of how data is collected and used.

Woolley testified on the substantial progress the DAA has made since its launch. She discussed company participation in the Self-Regulatory Program and how the Principles represent industry consensus on providing transparency and consumer control with respect to online behavioral advertising. She also testified on the impact online advertising has on the U.S. economy and job growth, explaining that regulation of online advertising could have a negative impact on industry.

Acquisti discussed his research on consumer privacy and expressed support for privacy legislation. He commented that consumers are concerned with how data may be used, but said consumer actions show they are willing to accept collection and use of data in return for free content and services.

Dixon said she supports privacy legislation, but said she does not believe it is likely that a law will be enacted. She said that if self-regulation is going to be the approach to addressing privacy concerns, then the process by which such programs are developed must be reformed, calling for the self-regulatory process to be more transparent and include consumer involvement.

Other Members of the Subcommittee expressed their views through their opening statements and questions to the witnesses. Representative Joe Barton (R-TX) called for privacy legislation, while Representative Charlie Gonzalez (D-TX) focused his time on available technological solutions for addressing consumer privacy. Representative Brett Guthrie recognized the benefits of behavioral advertising and acknowledged that he along with other elected officials use behavioral data for politics, at one point saying “we are all behavioral advertisers.” Guthrie also inquired as to what would drive innovation and growth in the marketplace without advertising, and questioned whether consumers would be willing to pay for content in the absence of ad-supported business models.

Representative Adam Kinzinger (R-IL) said government regulation is not the appropriate approach, but expressed concern that privacy issues could undermine consumer confidence. He asked whether website operators should be required to secure opt-in consent to transfer data to third parties. Dixon responded that first parties should be permitted to collect and use data, but that restrictions should be imposed on third parties. Representative Bill Cassidy (R-LA) expressed interest in efforts by industry to self-regulate mobile practices, and Woolley informed him of the DAA’s efforts to provide guidelines for behavioral advertising in mobile environments.

Representative Pete Olson asked a series of questions related to the DAA’s effort to self-regulate behavioral advertising. He asked how the DAA is helping small businesses participate in the program, to which Woolley replied that small business can acquire the Advertising Option Icon for free and that the DAA provides a free tool for small businesses to implement the icon. She further explained that by helping small businesses participate in the Program these companies can benefit from the online advertising, noting that online advertising lowers the barriers to entry for new entrants and supports the growth of small businesses. Representative Olson asked if self-regulation is preferred to government-imposed regulation; Woolley responded that self-regulation is the preferred approach and explained how the DAA has quickly responded to evolving privacy concerns.

Following the hearing, Chairman Bono Mack told reporters that she plans to hold additional privacy hearings in the coming weeks. With regard to the possibility of introducing privacy legislation, she said that her decision on that front will come, “As soon as there are real definitive answers on a pathway forward.” She added that her top priority is safe data, referring to her data security bill, the SAFE Data Act ([H.R. 2577](#)).

To read opening statements or witness testimony, please visit the E&C Committee [website](#). For more information, please contact [Rachel Thomas](#), DMA’s vice president of government affairs. Related press coverage is available here:

- AdWeek: [Privacy Legislation Stalled in House](#)
- PC World: [Lawmakers Disagree on Need for Online Privacy Legislation](#)
- POLITICO Pro: [Republicans clash over privacy protection](#)
- B&C News: [Bono Mack: Industry Not Doing Enough to Protect Consumers Online](#)
- National Journal: [Despite Much Talk, Panel No Closer to Action on Privacy](#)

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Joint House E&C Subcommittee Hearing Examines Effects of Food Marketing Restrictions

On Wednesday, the House Energy and Commerce (E&C) Subcommittee on Health and Subcommittee on Commerce, Manufacturing, and Trade (CMT) held a joint hearing to examine the Interagency Working Group's (IWG) proposed food marketing principles.

In 2009, Congress formed the IWG, comprised of the U.S. Department of Agriculture (USDA), Federal Trade Commission (FTC), Food and Drug Administration (FDA), and Centers for Disease Control and Prevention (CDC), to complete a study on food marketing to children and report back to Congress. Instead of providing the study, the IWG proposed an overreaching set of "voluntary" principles.

Subcommittee Members heard testimony from several agencies involved in the IWG, including the CDC, USDA and FTC, as well the Association of National Advertisers (ANA), the Children's Food and Beverage Advertising Initiative, Food Directions LLC, the Center for Science in the Public Interest, University of Arizona and the Economic Policy Institute.

In his opening statement, E&C Chairman Fred Upton (R-MI) said, "While this initiative was portrayed as a helping hand to parents – to reduce children's exposure to advertising for foods with limited nutritional value – to many of us and our constituents, this appears to be a first step toward Uncle Sam planning our family meals." CMT Subcommittee Chairman Mary Bono Mack (R-CA) seconded those concerns in her opening statement. "As a former small business owner, I am troubled by the impact that the IWG's Nutrition Principles could have on smaller U.S. companies, which often struggle to comply with these types of standards," she said.

Health Subcommittee Chairman Joe Pitts (R-PA) noted that the IWG's proposed standards exceed and conflict with the nutritional standards of other government programs such as the WIC program, school lunch program, and SNAP program. "These guidelines are so restrictive that many healthy foods, like low-fat yogurt, whole wheat bread, and 2 percent milk could not be marketed to those 17 and under." In response to Pitts' questions regarding how the marketing principles would impact jobs and the economy, the CDC's William Dietz admitted the IWG did not study the proposal's impact on charitable organizations, the price of food, and jobs.

Jim Baughman of Campbell's Soup Company urged the IWG to withdraw its proposal, saying that the nutritional criteria proposed are unrealistic, counterproductive and contrary to established nutrition policy. Baughman said, "dictating 'voluntary' standards to industry will be less effective than genuine self-regulation, which is the only practical way to achieve meaningful changes in foods marketed to children."

Elaine D. Kolish of the Children's Food and Beverage Advertising Initiative at the Council of Better Business Bureaus testified to the merits and successes of self-regulation as more effective means to fight childhood obesity. "Self-regulation has accomplished a significant amount in just a few short years—it's changed not only the way products are advertised to kids, but the expectations about what should and should not be advertised to kids," said Kolish.

For more information, please visit the E&C Committee [website](#), or contact [Rachel Thomas](#), DMA's vice president of government affairs.

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P2P File-Sharing Software Developer Frostwire Settles FTC Charges

On Tuesday, peer-to-peer file-sharing application developer Frostwire LLC agreed to settle Federal Trade Commission (FTC) charges that its software likely would cause consumers to unwittingly expose sensitive

personal files stored on their mobile devices, and that it misled consumers about which downloaded files from their desktop and laptop computers would be shared with a file-sharing network.

The FTC complaint alleged that FrostWire's two free P2P file-sharing applications were likely to cause consumers to unwittingly disclose personal files, like pictures and videos, stored on their smartphones and tablet computers.

The proposed settlement order bars Frostwire from using default settings likely to cause inadvertent public sharing of files by consumers and requires clear and prominent disclosures about file sharing and how to disable it. It also bars them from making material misrepresentations about the file-sharing behavior of their applications and prohibits them from distributing copies of the unlawful versions of the applications, and requires them to provide free upgrades that stop sharing files that the legacy applications had shared by default.

For more information, please visit the [FTC website](#), or contact [Rachel Thomas](#), DMA's vice president of government affairs.

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Second Remote Sales Tax Collection Bill Introduced in Congress

Representatives Steve Womack (R-AR) and Jackie Speier (D-CA) have introduced the Marketplace Equity Act ([H.R. 3179](#)), which would provide states with the ability to require remote sellers to collect sales tax on any sale into the state.

Unlike the Main Street Fairness Act, which implements the Streamlined Sales Tax Agreement on a federal level, this bill sets out just a few simplification requirements and conditions before a state would be allowed to require collection by remote sellers. The text of the bill has not been released yet, but based on a review of an earlier, unofficial version, key provisions of the bill are:

- a small seller exemption of \$1 million in national sales or \$100,000 in in-state sales annually;
- a single revenue authority for remote sellers to file with and a single sales and use tax return to be filed, along with a prohibition on any local jurisdictions requiring submission of a tax return;
- products and services subject to tax must be consistent throughout the state;
- remote sellers must choose to collect sales tax under one of the following three tax rate structures;
 - a state-wide blended rate that includes both the state rate and applicable rates of local jurisdictions;
 - the maximum state rate, exclusive of any local jurisdiction rates; or
 - the applicable destination rate, meaning the sum of the state rate and any local jurisdiction rate where the sale was made.
- the state must provide the software for remote sellers to utilize in determining taxing rates and it must relieve any liability a company would have for reliance on the software.

The provisions in the bill would go into effect at the beginning of the first quarter at least six months after passage. The bill has been referred to the Judiciary Committee. The bill has garnered eight other co-sponsors thus far.

Any differences between the introduced version and the draft DMA had access to will be noted in next week's *Direct from Washington*. For more information, please contact [Jerry Cerasale](#), DMA's senior vice president of government affairs, or [Ron Barnes](#), DMA's vice president of state affairs.

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OGR Committee Votes to Send Postal Reform Act (H.R. 2309) to House Floor

Yesterday, the House Committee on Oversight and Government Reform (OGR) held a markup of the Postal Reform Act ([H.R. 2309](#)). While the bill was ultimately passed 22 to 18 on a party-line vote, several significant amendments to the bill were discussed and accepted in the course of the markup. Among other things, these amendments addressed issues including underwater classes of mail, whether to move from six to five-day delivery; closing of post offices; retiree health benefits, nonprofit postage rates, postal employee provisions and door delivery.

Underwater Classes of Mail

- Representative Dennis Ross (R-FL) offered an amendment to postpone the requirement in H.R. 2309 that postage for classes of mail not covering their costs be increased to cover costs without regard to the CPI cap. The amendment would postpone that requirement for 2 years during which time the U.S. Postal Service (USPS) would eliminate excess plants and employee complement. At the end of the 2-year period, if the class still does not cover its costs, postage for the class would be increased to cover costs. In effect, this amendment is targeted for periodical publications. The amendment did not change the provisions for classes of mail that do cover their costs. Postage for all products in those classes must cover their costs. If not, postage for the underwater product must be raised to cover costs, but postage for the class of mail as a whole remains subject to the CPI cap. Thus, for Standard Mail parcels and regular flats, their postage rate must be increased to cover costs. The amendment was passed.

Six or Five-Day Delivery

- Representative Jason Chaffetz (R-UT) offered an amendment to strike the authority for USPS to reduce a delivery day and substituted authority for USPS to choose 12 non-delivery days (excluding Sundays) each year. The amendment passed. Thus, the requirement for USPS to deliver the mail 6-days per week remains in effect and USPS can pick up to 12 days per year to not deliver the mail.

Closing Post Offices

- Representative Ann Marie Buerkle (R-NY) offered an amendment to limit the closing of rural Post Offices such that no more than 10% of all Post Office closings may come from rural areas. Representative Gerry Connolly (D-VA) opposed the amendment on grounds that it penalizes suburban and urban areas. The amendment passed.
- Delegate Eleanor Holmes Norton (D-DC) offered an amendment to require USPS to ensure that there remains a retail USPS presence in communities where a Post Office is closed. The amendment failed.
- Representative James Lankford (R-OK) offered an amendment to give appeal rights to citizens for USPS decisions to close a station or branch. Under this amendment, citizens would be able to appeal to the Postal Regulatory Commission (PRC) any USPS decision to close a Post Office, a station or a branch. The PRC, with whom USPS disagrees, believes current law already allows appeals for stations and branches. The amendment passed.

Retiree Health Benefits

- Representative Gerry Connolly (D-VA) offered an amendment requiring the PRC to recalculate USPS retiree health payments based on industry best practices since private industry funds retiree health benefits at the 80% not 100% level. The amendment failed.
- Representative James Lankford (R-OK) offered an amendment to reduce the FY2011 USPS retiree health benefit payment to \$1 billion in order to allow USPS time to improve its financial status. The remaining \$4.5 billion payment will be included in adjustments made in 2017. The amendment passed.

Nonprofit Postage Rates

- Representative Danny Davis (D-IL) offered an amendment to strike Section 403 of the bill, which would reduce the postage preference for nonprofit mail. Chairman Darrel Issa (R-CA) offered a secondary amendment that would maintain the current postage preference for nonprofit mail for 3 years after which the preference would be reduced by 2 percentage points per year for 10 years. Thus, after 13 years the nonprofits postage for Standard Mail would be 80% of the commercial rate rather than the current 60% preference. Representative Davis accepted the secondary amendment as a substitute for his amendment. The secondary amendment then passed.

Postal Employee Provisions

- Representative Michael Turner (R-OH) offered an amendment to give preference for any postal contracts to postal employees who have lost jobs. The amendment passed.
- Representative Danny Davis (D-IL) introduced and later withdrew an amendment to strike the provision in H.R. 2309 to create a separate workers' compensation schedule for postal employees. Representative Davis withdrew the amendment on the promise from Chairman Issa to work with him and the Senate to find a practical solution to USPS' workers' compensation costs.
- Representative Chris Murphy (D-CT) offered an amendment to strike the provision in H.R. 2309 granting the Control Board authority to rewrite collective bargaining labor agreements. The amendment failed.

Door Delivery

- Representative Michael Turner (R-OH) offered two amendments concerning door delivery of mail, which would be reduced under H.R. 2309. One amendment would require a review of the neighborhood and whether or not elimination of door delivery was warranted based upon the characteristics of the neighborhood, such as an historical district. The second amendment would require a study to determine whether or not limiting door delivery reduces costs to USPS. Both amendments passed.

DMA will continue to work to prevent any above-inflation postage increases for mailers and oppose any legislation that requires such action now or in the future.

For more information, please contact [Jerry Cerasale](#), DMA's senior vice president of government affairs.

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Take DMAAction: Tell Congress To Take the Shackles Off of USPS and Save Mailers' Jobs!

It's not news to anyone that the U.S. Postal Service (USPS) is in trouble. **But this dire situation has just gotten desperate.** USPS will soon default on a \$5.6 billion payment to the U.S. Government to cover its postal retiree health benefits. Even with that default, USPS will run out of money – and be unable to deliver the U.S. Mail – by August 2012....unless Congress steps in to help.

For the \$1.1 trillion postal industry and its 8.4 million employees, keeping the Mail moving is critical. Without it, many businesses may be in danger – faced with a struggle to survive at a time when our economy needs more jobs, not less. This is not the time to lose American jobs.

The only way to ensure that the Mail remains a viable marketing channel is for Congress to remove USPS' shackles and let it operate as a real business. The Postmaster General has lots of ideas about how to put USPS on the right track while keeping the Mail affordable for your business. All he needs is the authority to make those changes.

[Join DMA in asking Congress to grant that request!](#) Tell your Senators and Representatives to save USPS and the mailing industry that relies on it. Ask them to support legislation that gives the Postmaster General the specific authority he needs.

1.) **Write to your Members of Congress.** With our easy-to-use [DMAAction Grassroots Tool](#) you can send letters to your Representatives and Senators in just a few quick clicks!

2.) **Ask your employees, vendors and customers to do the same.** They can also use our easy [DMAAction Grassroots Tool](#) to contact their own Members of Congress.

For more information, please contact [Jerry Cerasale](#), DMA's senior vice president of government affairs.

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Take DMAAction: Put Your Stamp of Disapproval on Section 403 of the Postal Reform Act

Section 403 of the Postal Reform Act (H.R. 2309) would unfairly and unduly raise postage rates on charitable nonprofit organizations and will hinder their ability to provide services to the needy at a time when local, state and federal governments face challenges and cannot support the social needs which are increasing. The DMA Nonprofit Federation (DMANF), in conjunction with DMA's Government Affairs team, has been working hard to fight this threat to nonprofits nationwide.

This [heartbreaking video](#) from dual DMA & DMANF member Food For The Poor illustrates the **human cost of Section 403**. Most nonprofits still raise the majority of the funds required to support their missions via the postal channel, and the loss of the nonprofit postal rate would be catastrophic for charities and those they serve.

Don't let something as small as a stamp put an end to the life-changing work of non-profits. Take DMAAction and [put your stamp of disapproval on Section 403](#) of the Postal Reform Act today!

For more information, please contact [Jerry Cerasale](#), DMA's senior vice president of government affairs, or [Senny Boone](#), DMANF's senior vice president of corporate and social responsibility.

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Government Accountability Office Report Finds No CSRS Overpayment by USPS

As noted in last week's *Direct from Washington*, Congressional postal leadership asked the Government Accountability Office (GAO) to review the claim that the U.S. Postal Service (USPS) had overpaid its postal pension obligations. GAO issued its [report](#) yesterday.

In the report, GAO found that the pension formula used by the Office of Personnel Management (OPM) for USPS payments to the Civil Service Retirement System (CSRS) was consistent with law. GAO further stated that the Postal Regulatory Commission (PRC) and USPS Inspector General (IG) formulas were based upon a different policy foundation. In addition, GAO found that returning the \$55 billion to \$75 billion in question to USPS (i.e., the overpayment found by the PRC and IG) would substantially reduce the prefunding of government pensions and add a significant burden to U.S. taxpayers who would have to make up the difference. GAO did conclude that there is a \$6.9 billion overpayment in USPS pension obligations for the Federal Employee Retirement System (FERS) which should be returned to USPS.

At the House Oversight and Government Reform (OGR) Committee markup of the Postal Reform Act (H.R. 2309) this week, Chairman Darrell Issa (R-CA) stated that the issue of the CSRS overpayment is now concluded and that Congress should abide by the GAO report. Representative Stephen Lynch (D-MA), OGR Ranking Member, disagreed with Issa and cited problems with the GAO methodology.

For more information, please contact [Jerry Cerasale](#), DMA's senior vice president of government affairs.

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USPS-PRC Study of Periodicals Data Quality and Pricing Incentives Finally Completed

The U.S. Postal Service (USPS) and the Postal Regulatory Commission (PRC) released a joint [study](#) of data quality, efficiencies and pricing incentives issues associated with periodicals mail this week. The study, which was required by the Postal Accountability and Enhancement Act of 2006 (PAEA) addresses concerns over the fact that costs appeared to be increasing for this type of predominately flat-shaped mail at a much faster clip than for other classes of mail. The magnitude of the increases resulted in periodicals mail, as a class, seemingly failing to cover costs and leading most recently to a purported shortfall of \$642 million in fiscal year 2010.

Among the principal findings of the study is an agreement between USPS and the PRC that the cost underlying data used in developing rates for periodicals mail is “reasonably accurate.” The parties also agreed that a decrease in the manual processing would reduce costs. Periodicals mailers and mailers of other flat-shaped mail have long argued that much of the manual processing of this type of mail was directly related to excess capacity in USPS workforce. The PRC and USPS differed on the savings that could result from increased automation of periodicals mail processing; the PRC savings figure was \$349 million while the USPS projected savings was only \$146 million. They also disagreed on the benefit from the collection more detailed data and whether cost data and processing efficiencies achieved with flat-shaped mail in other classes was simply instructive (PRC) or provided a proxy of sorts for possible cost avoidance (USPS).

As Congress continues to wrestle with how best to place USPS on a firm financial footing, there is one conclusion in the report that raises concerns. The report suggests that “[a] legislative change which relaxes strict inflation-based price caps by class and allows for flexible pricing reflecting market dynamics might enable the Postal Service to further remedy the Periodicals cost coverage issue.” Relaxing the price cap for Periodicals or any other class destroys the major compromise that led to PAEA.

For more information, please contact [Jerry Cerasale](#), DMA’s senior vice president of government affairs.

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CORRECTION: FTC Issues Proposed Changes to Mail and Telephone Order Rule, Not TSR

Last week, *Direct from Washington* mistakenly reported that the Federal Trade Commission (FTC) had issued a [Notice of Proposed Rulemaking](#) (NPRM) to amend the Telemarketing Sales Rule (TSR). That was in error. The NPRM would amend the Mail and Telephone Order Rule (MTOR).

The FTC announcement regarding the NPRM stated that, “based on a review of comments received, the FTC has concluded that the [MTOR] continues to benefit consumers and will be retained.” In addition, the Commission proposes the following amendments to the Rule:

- Clarify that the MTOR covers all orders placed over the Internet;
- Revise the MTOR to allow sellers to provide refunds and refund notices to buyers by any means at least as fast and reliable as first-class mail;
- Clarify sellers’ obligations when buyers use payment methods not spelled out in the MTOR, such as debit cards or prepaid gift cards;
- Require that refunds be made within seven working days for purchases that were made using third-party credit, such as Visa or MasterCard cards. For credit sales where the seller is the creditor (such as merchants using their own store charge cards) the refund deadline would remain one billing cycle. “

For more information, please contact [Jerry Cerasale](#), DMA’s senior vice president of government affairs.

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For more information, please contact [Rachel Thomas](#), DMA's vice president of government affairs.

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State Affairs

Michigan House Tax Policy Committee Holds Hearing on Affiliate Nexus/Controlled Group Bills

This week, the Michigan House Tax Policy Committee unexpectedly called a Wednesday hearing for [HB 5004](#) and [HB 5005](#), the two bills that redefine "engaged in business" in the state to include a corporate sibling company that works in concert with its remote seller sibling company to sell, deliver, promote, support or maintain the remote sellers' tangible personal property sold to customers in the state. The bills also include language that defines affiliate marketer programs to also be included under "engaged in business." The affiliate language is similar to that enacted in other states and includes a rebuttable presumption provision so that an affiliate can demonstrate that no solicitation occurred by the affiliate on behalf of the seller.

At the hearing, the bill sponsors and the Michigan Retailers Association testified that online sales were hurting local businesses and that the "loophole" that allowed remote sellers not to collect sales tax needed to be closed. No vote was taken at the hearing and another may be scheduled for next week.

For more information, please contact [Ron Barnes](#), DMA's vice president of state affairs.



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