



FEDERAL ISSUE BRIEF

Data Breach Liability

BACKGROUND

Over the past few years, several national retailers reported massive data breaches. In 2013, Target was compromised during the peak of the holiday shopping season, exposing the card or personal identifying information of nearly 70 million consumers and costing credit unions over \$30 million. In 2016, Wendy's had a massive data breach impacting hundreds of thousands of Michigan credit union members. Additional breaches have also occurred at national retailers including Home Depot, Neiman Marcus and Michaels.

The retail industry's self-policing is clearly inadequate. Financial institutions are required to assume the costs related to card replacement, fraud control and member communication.

While credit unions have been subject to strict federal privacy requirements since 1999, retailers have no similar obligation to invest in systems designed to protect their customer transaction data.

COST OF DATA BREACHES

When a data breach occurs Michigan credit unions are confronted with numerous costs. On average, credit unions pay \$6.38 to replace each credit or debit card. This amount includes member service costs, increased call center volume, and actual card replacement; however it does not include the cost of actual fraud.

WENDY'S DATA BREACH HITS MICHIGAN HARD

The Wendy's breach impacted more than 100 of their locations across Michigan. The breach affected customers who dined at Wendy's between December 2, 2015 and June of 2016, and included locations outside of Michigan as well. Hundreds of thousands of Michigan credit union members have been impacted and Michigan credit unions continue to bear the costs of this breach.

Until retailers are required to invest in robust data security measures, credit unions will continue to pay the price for retailer data breaches.



EMV CARD (PIN AND CHIP) TECHNOLOGY

Retailers have hailed Europay MasterCard Visa (EMV or chip and pin) cards as a fix to make the system safer, but it is not a panacea. EMV technology represents an improvement in payment technology but it only covers one aspect of the payment process. Congress should not prescribe a static technology standard that will become easily outdated. Instead Congress must ensure all of those who participate in the payments system are held to the same standards to protect consumer data.

MCUL POSITION

The MCUL supports Data Security legislation (H.R. 2205 and S. 961) as well as legislation to repeal the Durbin Amendment. The MCUL urges Congress to pass data security legislation that includes the following principles:

- **Strong national data protection and consumer notification standards and effective enforcement provisions** must be part of any comprehensive data security regime. The standards should apply to any party with access to important consumer information.
- **Recognition of the robust data protection and notification standards which credit unions are already subject** to under section V of the Gramm-Leach-Bliley Act.
- **Preemption of inconsistent state laws and regulations** in favor of strong federal data protection and notification standards.
- **The ability for credit unions to inform members about information regarding a breach**, including where the breach occurred.
- **Shared responsibility** for all those involved in the payments system for protecting consumer data. The costs of a data breach should ultimately be borne by the entity that incurs the breach.

STATUS OF LEGISLATION

- **H.R. 2205** (*House Data Security bill*) was reported out of committee during a markup session of the House Financial Services Committee in December of 2015. Michigan Co-Sponsors: Representatives Mike Bishop, Candice Miller and John Moolenaar
- **S. 961** (*Senate Data Security bill*) has not yet received a hearing in the Senate Committee on Commerce, Science, and Transportation since its introduction in April of 2015. Neither of Michigan's Senators are currently co-sponsors of the legislation.
- **H.R. 5465** (*Durbin Amendment Repeal bill*) was introduced and referred to the House Financial Services Committee in June. There are currently no Michigan co-sponsors.