Top 5 Federal Laws Credit Professionals Need to Know

A number of different bodies of law affect the day-to-day functioning of a company's credit department, and they're just as important now as they were when they were enacted. In fact, it's probably more important than ever to make sure your company is in compliance with all governing laws as regulators become increasingly vigilant in order to collect more in penalties to shore up recession-depleted budgets.

The body of laws and legislations is so diverse precisely because the credit function at many companies involves such a wide range of duties. Here, in no particular order, are the top five federal laws that credit professionals need to know:

1. **The Fair Debt Collection Practices Act (FDCPA):** Although this legislation technically only governs collection agencies seeking to collect consumer debts, it serves as a national framework for what's required, what's acceptable and what's illegal in the collection process. Many states even have their own statutes that extend the Act's rules to apply to commercial creditors and collectors working in-house at a creditor company. Actions on the collector's behalf—like calling in the middle of the night, using profanity, calling too often and deceiving the debtor—are not just practices that good collectors avoid, they're also illegal under the FDCPA.
2. **The Fair and Accurate Credit Transactions Act (FACTA):** This bill amended the Fair Credit Reporting Act (FCRA) (which would, in all likelihood be #6 on this list) to allow consumers to request credit reports every year. It also contains provisions geared toward reducing identity theft, most notably the "Red Flags" Rules provision that has continually beleaguered credit professionals because of its inherently vague definitions. The rules specifically require "creditors" to develop a plan to identify relevant red flags of identity theft, detect these red flags, prevent and mitigate identity theft and update the program. An amendment to the law limited the definition of a creditor to one that uses consumer reports in connection with a credit transaction, but, nonetheless, every creditor company must look at their business to determine whether or not they have a "reasonably foreseeable risk" of identity theft.
3. **The Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA):** Signed into law in 2005 and taking effect in 2006, the BAPCPA was the country's last major update to the Bankruptcy Code. It made several changes to the commercial section of the Code, the intent of which was to help protect creditors as they worked with distressed and insolvent debtors. Specifically, BAPCPA made it easier for creditors to prove the ordinary course of business defense in a preference claim and established a floor of $5,000 (since increased to $5,850) on preference claims, meaning that any demand for less than that amount is automatically illegitimate. It also requires that any preference challenge for payments of less than $10,000 (since increased to $11,725) must be brought in the district of the creditor.
4. **The Foreign Corrupt Practices Act (FCPA):** The FCPA passed in 1977 and has only grown in importance recently as companies have sought to use exports as a means to shore up lagging domestic sales. The Act consists of two primary provisions, one that addresses transparency requirements under the Securities Exchange Act of 1934 and another that addresses bribery of foreign officials, which is most important to credit professionals. In some countries, "grease payments"—payments designed to speed up a bureaucratic process—are typical and even necessary in some instances. Creditors need to be aware of FCPA provisions in order to know the line between a legitimate payment and an illegal bribe.
5. **All Four U.S. Antitrust Laws:** Okay, so this list should technically be the top eight laws that credit professionals need to know, but all of the U.S. antitrust laws blend together to prevent price fixing, collusion and other anti-competitive behavior. They are the Sherman Antitrust Act, the Clayton Act, the Federal Trade Commission Act and the Robinson-Patman Act. Together they regulate seller

behavior and ensure that companies don't work together to stifle competition or discriminate against equally-situated buyers. Most credit professionals unknowingly run afoul of these laws at credit group meetings, which is why participating in NACM Affiliate industry group meetings—run in full accordance with the law and regulated by a knowledgeable representative—are the best and easiest way to stay out of trouble.