

Scrutiny on Payment Card Data Pass: Raising the Profile of Personal Information Sharing Among Marketers

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On April 27, 2010, Visa announced a new rule to expressly restrict online marketers from sharing cardholder information to other companies without the consumer's knowledge or active consent – a practice referred to as “data pass.” On May 19, 2010, Senate Commerce Committee Chairman, Jay Rockefeller (D-W.Va.), proposed legislation (S. 3386), entitled “The Restore Online Shoppers’ Confidence Act,” which would prohibit companies from enrolling consumers in paid-subscription programs unless the consumers separately provided full payment card numbers to each company presenting an offer and affirmatively agreed to each offer.

This article discusses the new restrictions on payment card data pass, and the areas of risk going forward for companies that continue to engage in the same or similar personal data sharing practices with third parties for marketing purposes when the practice is not clearly disclosed and agreed to by consumers.