

By David D. Cherner

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State Shift

The nationwide political change presents new opportunities for the credit and collection industry

By now, nearly everyone has seen the results of the 2010 elections. The U.S. House of Representatives changed hands from the Democratic Party to the GOP. Although the U.S. Senate did not flip, the Republicans picked up several seats. These political changes will bring new challenges and opportunities as President Obama continues to retain executive control over federal agencies that govern financial products and services, including the Bureau of Consumer Financial Protection that is currently being created.

In many ways, however, the more amazing and widespread political shift may have occurred at the state level. Taking a big-picture look at all 50 states, the nation witnessed an incredibly reactionary electorate that wanted change and a reassessment of

government priorities. What happened at the state level and, more importantly, what effect does the election have on your industry and your business?

Governors

In November, gubernatorial elections were held in 37 states and two territories. Republicans picked up 11 governorships: Iowa, Kansas, Ohio, Oklahoma, Maine, Michigan, New Mexico, Pennsylvania, Tennessee, Wisconsin and Wyoming. The Ohio and Iowa wins ousted incumbent governors.

Democrats picked up the governorships of California, Connecticut, Hawaii, Minnesota and Vermont. The split in 2011 will be 20 Democratic governors, 29 Republican governors and one Independent.

Governors are required to execute

the laws of their respective states, meaning they have significant control over regulatory agencies operating under the executive branch—this includes those agencies that regulate, license and have enforcement authority over debt collectors and asset buyers.

Attorneys General

A total of 15 new state attorneys general have been elected. Republicans picked up the attorney general offices in Arizona, Georgia, Kansas, Ohio and Oklahoma on Election Day. The California race was finally decided on Nov. 24, when Republican Los Angeles County District Attorney Steve Cooley conceded to San Francisco District Attorney Kamala Harris.

Of the 30 attorneys general up for election, there were 19 Democratic attorneys general and 11 Republican attorneys general. In 2011, Republicans will have 24 attorney general offices, and Democrats will have 25. New Jersey's attorney general is an Independent.

Attorneys general are appointed by the governor in Alaska, Hawaii, New Hampshire and Wyoming. They are elected by the legislature in Maine and by the state Supreme Court in Tennessee. The Maine legislature switched from Democratic to Republican control, making it all but certain that the new attorney general will be a Republican.

State Legislatures

Midterm elections are historically a challenging election cycle for the party in power. With the Democratic Party taking control of Congress, the presidency, and the majority of state legislatures and elected official offices in

COMMITTEE

What is the Interstate Committee?

The Interstate Committee assists ACA units to improve the legal and regulatory climate in which members do business at the state level and administers the State Action Fund, which offers financial assistance to ACA units.

While the primary role of the committee is to act as a financial resource for state units in promoting or defeating state legislation and regulations by administering the State Action Fund, it also monitors and discusses issues that could have a negative impact on ACA's members from an interstate perspective.

Consisting of 10 volunteer members from various divisions of ACA's membership, the committee focuses specifically on helping units communicate and share strategy. Recently, the committee hosted two unit leader and lobbyist conference calls with unit leaders and lobbyists to discuss pressing issues and effective tools for garnering membership involvement.

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2008, there was certainly an uphill battle for incumbents. It is not the Democratic loss of seats during this election that was surprising, but the magnitude.

According to the National Conference of State Legislatures, Republicans added more than 675 seats in the November midterm election, surpassing gains from 1994 and giving them their highest level of control at the state level since 1928.

The GOP picked up at least 19 legislative chambers. After the election, Republicans control 55 chambers, Democrats have 38, and two are tied (with Nebraska having a unicameral legislature). The Republicans have taken control of the following state legislative chambers:

- Alabama—House and Senate.
- Colorado—House.

- Indiana—House.
- Iowa—House.
- Maine—House and Senate.
- Michigan—House.
- Minnesota—House and Senate.
- Montana—House.
- New Hampshire—House and Senate.
- North Carolina—House and Senate.
- Ohio—House.
- Pennsylvania—House.
- Wisconsin—Assembly and Senate.

To put the election into further perspective, consider that in 1990, there was no single Republican legislative chamber in the South. After the midterm election, 18 of 20 chambers in the South are controlled by the GOP, and a majority of all legislative seats for the first time since Reconstruction.

The significant political shift in state

legislatures will have a tremendous impact on redistricting, the process by which state legislatures review and change electoral district boundaries that will be operational for the next 10 years. As you can imagine, the redistricting process may also shape the makeup of Congress over the next decade—one in which health care, financial product and budget reform are all supposed to take place.

So Now What?

There has often been a public perception that Republicans tend to be more “business friendly.” And many business owners may take this perception to mean there are brighter days ahead, that legislators and policymakers will be sympathetic to business concerns.

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Perhaps this is true, but let's consider the type of political pressure these newly elected officials are under. First, there is a huge budget crisis nationwide. This is a high priority that may result in both positive and adverse consequences. Regulators, for example, may be seeking higher licensing fees.

Second, consumer protection is always a popular topic. Legislators will likely be making challenging decisions over budget issues. Cutting off money to constituents and businesses is never easy, but passing consumer protection policy can be incredibly rewarding for a legislator, particularly when seeking reelection. Attorneys general, for example, are charged with protecting consumers.

Third, many of the new legislators are also new to the political process, which creates significant pressure to hear from the variety of constituencies

and learn about the intricacies of the political process.

What does this all mean? Because of the current political climate, some people may believe the credit and collection industry will enjoy some quiet time—conservative legislators will focus exclusively on budget issues, reduce regulatory red tape and avoid addressing business practices. This could not be further from the truth.

It is possible the industry may enjoy a more pro-business climate, but the debt collection and asset buying industries continue to come under significant public scrutiny. This trickles up to attorneys general, who must protect consumers, and legislators, who may be seeking opportunities to help their voters. For example, this fall a conservative legislator introduced legislation that would have imposed

extremely onerous requirements on a debt collector's use of an autodialer.

The ACA International Interstate Committee implores you to get involved now, at a time when state legislators are new and where newly elected attorneys general and governors are learning about their responsibilities. Set up a coffee appointment with your state legislators. Educate them about the credit and collection industry, be honest and tell your unit or national association about your meeting so we can leverage these connections.

With the midterm election over, this industry has many new opportunities. But if we do not take advantage of them, we will squander the potential to harness significant political capital. **cm**

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