



Call Recording and Regulatory Compliance

A Mitel White Paper

Overview

As companies face the challenges presented by the current global economic crisis, it is expected, if not demanded, that governments will respond to the collapse of the financial credit market that fueled the meltdown with increased regulations. These new regulations will almost certainly impact a wide range of business operations with even tighter scrutiny than before.

Even today, virtually every industry in the United States is subject to some type of state or federal regulation. Some regulations oversee practices, such as telemarketing, that are used by businesses in multiple industries, and some are industry-specific, such as the Health Insurance Portability and Accountability Act (HIPAA).

This document will examine several existing regulations and highlight how call recording and voice documentation can help businesses affected by these regulatory issues achieve compliance. We will also explore general benefits of the technology that will prove valuable in ensuring compliance with new regulatory requirements businesses may face.

The Sarbanes-Oxley Act

Ostensibly passed as an accounting reform bill to prevent a recurrence of the type of fraud that led to the collapse of several major businesses, the Sarbanes-Oxley Act created extensive guidelines for the documentation of business processes and transactions, mandating that businesses create and maintain electronic records as part of their regular business processes.

With written documents, such as email, this process was relatively straightforward and easy to audit. Verbal communications, however, have proven much more challenging. In many cases, the best that could be hoped for is that each party took written notes about their telephone conversations, converted them to an electric format and that those notes supported what actually transpired during the call.

With Mitel call recording solutions important calls are captured in their entirety and stored in an easily organized and searchable hierarchical folder structure, similar to email organization in Microsoft Outlook. Maintaining an electronic record of telephone calls in the same manner as emails helps to ensure compliance with Sarbanes-Oxley and simplifies the discovery and auditing processes, reducing the potential for abuse or mistakes.

The Payment Card Industry Data Security Standard

The Payment Card Industry (PCI) Data Security Standard (DSS) is a self-imposed set of regulations created by the PCI Security Standards Council to reduce the possibility of fraud and identity theft. Among its mandates are retaining consumer identification data for a defined useful life, ensuring only authorized access to payer information and putting in place a data encryption system to prevent unauthorized disclosure or theft of confidential information.

Since account, password, and other identity sensitive information is often contained in telephone calls to banks and other financial institutions, facilities should ensure their telephone conversations comply with the PCI DSS.

Mitel solutions can easily be configured to purge recording data after a defined time period. Access to call recordings is based on a hierarchical permissions system, and calls that need to be shared with others in an organization are done so via a secure encrypted data stream to ensure the actual file never leaves the server.

The Fair Debt Collection Practices Act

The Fair Debt Collection Practices Act (FDCPA) places strict guidelines under which debt collections agencies can conduct business, specifically what methods and behaviors they can employ in attempting to collect a debt. While the penalties and awarded damages are generally small, defending against lawsuits brought forth by consumers under the FDCPA can prove time consuming and costly.

The Act prohibits conduct by debt collectors that could be considered abusive or deceptive. This includes restrictions on when consumers can be contacted by telephone, misrepresentation of the debt or the debt collector's legal authority, abusive or threatening language and other conditions.

Maintaining a record of every call, which can be easily searched for and located when needed, serves as powerful protection against FDCPA claims. Without a valid recording of the call, such allegations may immediately devolve into, "he said/she said" disputes, placing a tremendous burden on debt collectors to clear themselves of wrongdoing and impeding their ability to collect valid debts.

Mitel's Call Recording and Quality Management solutions also offer another layer of credibility and verification for debt collectors. Call recordings are embedded with a distinct digital watermark that indicates whether they have been tampered with or altered. Demonstrating that a recording exists, and also that it is an authentic and verifiable account of the actual conversation exactly as it occurred, can serve as compelling and inarguable evidence that a debt collection agency is in compliance with the law.

The Gramm-Leach-Bliley Financial Services Modernization Act

The Gramm-Leach-Bliley Act (GLBA), also known as the Financial Modernization Act of 1999, is a federal law enacted in the United States to control the ways that financial institutions deal with the private information of individuals.

The Act consists of three sections:

1. *The Financial Privacy Rule*
 - » *This regulates the collection and disclosure of private financial information*
2. *The Safeguards Rule*
 - » *This stipulates that financial institutions must implement security programs to protect such information*
3. *The Pretexting Provisions*
 - » *This prohibits the practice of pretexting (accessing private information using false pretenses)*

The Act also requires financial institutions to give customers written privacy notices that explain their information-sharing practices.

Under the Safeguards Rule, financial institutions must create and follow a written information security plan that details how they will protect the non-public information, such as account and identification numbers of their current and former customers.

The plan must include the following:

- *Identifying one or more employees to manage the program*
- *Developing processes for how each department handles non-public information*
- *Developing and testing a program to ensure information security*
- *Making ongoing changes and updates as needed regarding how information is obtained and stored*

Mitel call recording and voice documentation solutions make it easy to incorporate voice-based communications as part of an organization's GLBA compliance plan.

In addition, companies that factor call recording into their electronic records plan have an added layer of security, knowing that every aspect of their business is compliant, rather than just their written documents and transactions.

The Do-Not-Call Implementation Act and the Telemarketing Sales Rule

In an effort to reduce the volume of telemarketing calls consumers receive, Congress passed the Do-Not-Call Implementation Act. Under the Act and the changes made by the Federal Trade Commission to the Telemarketing Sales Rule (TSR) to enable its implementation, US consumers were permitted to place their telephone numbers on the National Do-Not-Call Registry.

Companies that engage in marketing by telephone, with certain exceptions, are required to verify their call lists against this database of callers who do not wish to be contacted. They are also required to initiate conversation within two seconds after the person being called answers the phone.

Additionally, telemarketers who make sales or take orders are required to obtain a customer's direct and verifiable authorization in which they agree to be billed and must also identify the method of payment, including a statement that the customer understands he or she will be billed, and the specific amount and date on which the charge will be submitted.

Fines for failing to comply with the TSR can be as high as \$11,000 for each violation committed.

The benefits of call recording as a defense against alleged violations are tremendous. If a company is contacted by the FTC about an alleged violation, they would simply conduct a search on a wide variety of specific recording file attributes to locate the call in question. Search criteria may include attributes such as the phone number, date, time, etc. Once located, the company can provide the investigator with a secure link to the call, accessible by email. Upon review, the investigator can determine whether the company was in compliance, saving the costs of a lengthy investigation, eliminating "he said/she said" disputes and protecting the organization from false allegations.

About Mitel

Mitel is a leading developer of call recording and contact center management solutions for a wide range of organizations, from small-to-medium sized businesses to multi-site large enterprises. The Mitel voice documentation and interaction management solutions help companies within a variety of industries attract and retain customers by digitally capturing phone-based interactions for simple retrieval, playback and management. Compatible with leading business communications systems, Mitel Call Recording and quality Management applications help companies improve risk management, quality assurance, customer retention, dispute resolution, regulatory compliance and other critical business concerns.