

Legislative Update 158

May 1, 2017

Highlights this issue:

- On April 14 the CFPB's Office of Fair Lending and Equal Opportunity issued its annual report on fair lending. The report provides an overview of the work that the Bureau has done over the past year to provide oversight and enforcement of the fair lending laws under its jurisdiction.
- In March, US Senate Banking Committee Chairman Mike Crapo (R-Idaho) and Ranking Member Sherrod Brown (D-Ohio) announced that they were seeking legislative proposals to promote economic growth. Proposals were due to the Committee on Friday, April 14. Experian worked closely with the CDIA and Chamber of Commerce to ensure that our policy priorities were included in their letters. CDIA's comment letter recommended that the Committee take up and pass CROA reform, credit score competition and legislation to cap class action damages under the FCRA.
- On April 19, GAO released a report on fintech and marketplace lending. The report was intended to provide an overview of fintech, as well as the potential benefits and challenges for consumers and small businesses.
- Texas, H.B. 2333 would require a business that accepts a credit card or debit card for payment and retains any data related to the card, other than a confirmation number, for the transaction, to secure the retained information against a breach of system security. If a breach of system security occurs in which credit card or debit card information is compromised, the business shall notify the attorney general within 24 hours.

FEDERAL UPDATE

CFPB Watch: Fair Lending Report; Small Business Lending; Prepaid Rule

On April 14 the CFPB's Office of Fair Lending and Equal Opportunity issued its annual report on fair lending. The report provides an overview of the work that the Bureau has done over the past year to provide oversight and enforcement of the fair lending laws under its jurisdiction. While it focused broadly on auto, student and mortgage loans, this year's report also included an update on the process CFPB is taking to develop a rule that would require small business lenders to provide the CFPB with new data on women- and minority-owned business loan applicants. CFPB's authority to issue a rule on this topic comes from Section 1071 of the Dodd Frank Act. CFPB reports that it is currently in the pre-rule stage, which will likely continue through mid-2017. The CFPB said it expects to expand its supervisory activity into the small business lending marketplace, and this activity will provide key information to supplement its research, especially with respect to the credit application process and any associated fair lending risk. Further, the CFPB announced on April 25 that it would be holding a field hearing in Los Angeles on May 10 focusing on small business lending. While the CFPB did not provide further details about the hearing, the Bureau typically has used a field hearing to unveil a new report, guidance or rulemaking. Experian will plan to monitor the field hearing and report back

on any relevant details. Meanwhile, on April 24 the CFPB announced that it would finalize the six-month delay for the new rules for prepaid cards, with the effective date now scheduled for April 1, 2018. The prepaid rule requires issuers to provide additional disclosures, as well as a 21-day grace period before being hit with any late fees. Experian will continue to monitor any rules, reports or guidance issued by the CFPB.

CDIA, US Chamber and Coalition Respond to Senate Banking RFP

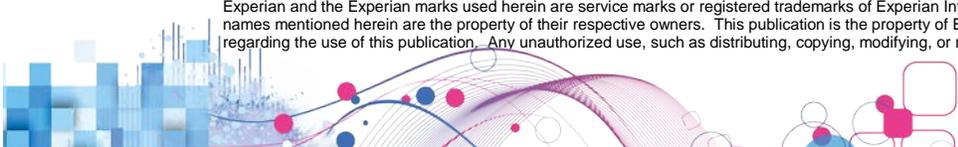
In March, US Senate Banking Committee Chairman Mike Crapo (R-Idaho) and Ranking Member Sherrod Brown (D-Ohio) announced that they were seeking legislative proposals to promote economic growth. Proposals were due to the Committee on Friday, April 14. Experian worked closely with the CDIA and Chamber of Commerce to ensure that our policy priorities were included in their letters. CDIA's comment letter recommended that the Committee take up and pass CROA reform, credit score competition and legislation to cap class action damages under the FCRA. The US Chamber of Commerce included a section of their comments arguing for the Committee to pass CROA reform legislation as well. The Coalition to Improve Credit Education also submitted a proposal outlining the need for CROA reform, as well as how it could benefit consumers and the overall economy. Experian will continue to work directly with the Senate Banking Committee, as well as through our trade associations to educate lawmakers on the need for CROA reform.

FinTech Update: GAO Report; McHenry to Introduce Bipartisan Legislation

On April 19, GAO released a report on fintech and marketplace lending. The report was intended to provide an overview of fintech, as well as the potential benefits and challenges for consumers and small businesses. GAO identified four buckets of fintech companies: marketplace lenders; mobile payment systems; digital wealth management platforms; and distributed ledger technology (blockchain). With respect to marketplace lending, GAO noted that it provided an opportunity to expand credit access. However, GAO also identified several potential risks, including few protections for small business borrowers and a lack of transparency in payment terms. The GAO also noted that the use of less traditional data in credit decisions and new data-driven algorithms carry risk for fair lending violations. Meanwhile, in a speech before the American Action Forum, Rep. Patrick McHenry said that he is working with a Democrat in the Senate to reintroduce his Financial Innovation Act. As previously introduced this bill would have established "regulatory sandboxes" for financial innovation. McHenry said he expects to reintroduce the bill in the next two months. Experian will continue to monitor legislative and regulatory developments impacting fintech and marketplace lenders.

House Financial Services Committee Reviews Dodd-Frank Reform Bill

On April 19, House Financial Services Committee Chairman Jeb Hensarling (R-TX) released a "discussion draft" of the Financial CHOICE The draft (CHOICE 2.0) reflects several months of public and industry outreach. In addition to making broad changes to the Dodd-Frank Act, the draft bill would substantially transform the CFPB into an enforcement agency. It would repeal the Bureau's supervision authority, abolish the UDAAP provision and prohibit the public disclosure of complaint data. The draft bill would also allow the President to remove the Director of the CFPB at will. On April 26, the House Financial Services Committee held a hearing the new draft discussion draft. Most of the hearing focused on issues related to how the draft bill would impact capital and liquidity requirements and on the impact that the draft legislation would have on the CFPB's authority. Republicans focused their discussion on how the bill would increase





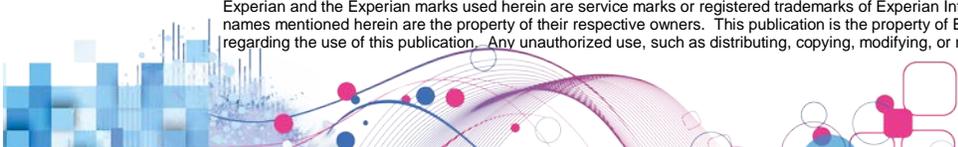
accountability of the CFPB, while still allowing for the Bureau to engage in law enforcement activity. Republicans also asked about how the bill would impact the complaint portal, with witnesses stating that it would still allow for complaints to be lodged with CFPB, but that the complaints would no longer be made public. Democrats suggested that the draft bill would limit the ability of CFPB to fully protect consumers and that supervisory authority is necessary. The Committee has scheduled a mark-up of the bill on May 2, where it is likely to pass on a party-line vote. If CHOICE 2.0 does pass the House, it is unlikely to be considered by the Senate in its current form due to lack of support by Democrats. Nevertheless, CHOICE 2.0 serves as a marker for House Republicans on Dodd-Frank reform. Experian will continue to monitor the legislation and work with lawmakers & our trade groups to shape provisions directly impacting our business.

Toomey Asks if CRA Can Be Applied to Guidance Issued by a Federal Agency

On March 31, Senator Pat Toomey (R-Pa.) sent a letter to the GAO, asking it to determine whether 2013 regulatory guidance on lending can be considered a rule for Congressional Review Act (CRA) purposes. Under the authority of the CRA, Congress can roll back certain regulations under an expedited process. While Republicans in Congress have already used the CRA to repeal several rules enacted during the Obama administration, Toomey is seeking clarification about whether the CRA applies to agency actions, such as guidance, which is outside of the formal rules that have traditionally been repealed using CRA. Toomey specifically cited lending guidance issued by the Federal Reserve, FDIC, and the OCC and indirect auto lending guidance by the CFPB. Experian will continue to monitor developments related to this matter.

President Trump Issues Financial Services Memoranda

On April 21, President Trump signed two presidential memoranda regarding financial regulation. While news reports referenced the new actions as Dodd-Frank reform, they are in fact more narrowly focused on certain provisions of the law. The first memoranda signed by President Trump instructs Secretary Mnuchin to assess the FSOC's process of designating financial firms as "systemically important financial institutions (SIFIs)." A second memoranda instructs Secretary Mnuchin to review and report back on whether the federal government's orderly liquidation authority is useful or hurtful to the U.S. economy, and in line with the administration's financial regulatory policy.



STATE UPDATES

Texas breach legislation would require notice to Attorney General and FI

In Texas, H.B. 2333 would require a business that accepts a credit card or debit card for payment and retains any data related to the card, other than a confirmation number, for the transaction, to secure the retained information against a breach of system security. If a breach of system security occurs in which credit card or debit card information is compromised, the business shall notify the attorney general within 24 hours. The breached entity would also be required to send notice of the breach to each financial institution that issued a credit or debit card affected by the breach. A hearing on the bill was held before the House Business & Industry Committee on April 24 and a second hearing has been scheduled. Experian continues to work directly with lawmakers, as well as through our trade associations to address data breach legislation in the states.

Credit reporting bills considered in Connecticut and Texas

In Connecticut, H.B. 7030 awaits consideration on the House floor after being passed by the Joint Banking Committee on March 7. The bill would prohibit an electric distribution, gas, telephone or water company, certified telecommunications provider from furnishing a customer's nonpayment history to a credit reporting agency. Experian is working directly with lawmakers in CT, as well as through the CDIA and PERC to defeat this bill. Meanwhile, in Texas, S.B. 2127, prohibits a consumer reporting agency from furnishing a credit report with information related to a collection account relating to medical billing for an outstanding balance, after copayments, deductibles, and coinsurance, owed to an emergency care provider or a facility-based provider for an out-of-network benefit claim. The bill was passed by the Senate Business and Commerce Committee on April 24 and now awaits further consideration in the Senate. Experian is working directly with lawmakers and through CDIA to defeat this legislation.

Minor freeze bills in Alaska and Minnesota; Texas free freeze with breach notice

In Alaska, S.B. 93 passed the Senate on April 10 and referred to the House Labor and Commerce Committee. The bill would make several changes to the Alaskan minor freeze statute to bring it in line with other states. In Minnesota, H.F. 1243 continues to await consideration on the House floor after being passed by the Civil Law and Data Practices Policy Committee on March 7. Experian will continue to work with CDIA to ensure that minor file freeze bills are in line with existing statutes and do not create new compliance obligations. Meanwhile, in Texas H.B. 2001 would prohibit a consumer reporting agency from charging a fee for the placement of a security freeze at a consumer's request after the consumer has submitted a copy of a notice from a user of a consumer report, including a credit card issuer, that the consumer's sensitive personal information has been breached. Experian is working directly with lawmakers, as well as with CDIA to ensure this bill does not add any unnecessarily burdensome compliance obligations.

Privacy legislation debated in Illinois, Vermont and California

In Illinois, H.B. 2774 was amended and passed by the House Cybersecurity, Data Analytics and IT Committee on March 30. This bill would require an operator of a commercial website that collects personally identifiable information on consumers that visit its website to notify those customers of certain provisions in its information sharing policy. It would require an operator to notify consumers when their data is transferred to





a third party. The bill was amended on March 30 and awaits further consideration in the House. Experian is working directly with lawmakers in Illinois, as well as through the Internet Coalition, Direct Marketing Association and National Business Coalition on E-Commerce and Privacy to defeat this bill. In Vermont, H.B. 467 was amended by the House Commerce and Economic Development Committee to require the Attorney General and Commission on Financial Regulation to develop draft legislation to define “data broker” and additional consumer protections. As originally drafted the bill would have created a registration and reporting requirement for “data brokers.” Experian worked with the Internet Coalition and Direct Marketing Association to favorably amend this legislation. Meanwhile, in California S.B. 327 would require internet connected devices to indicate when it is collecting information and to obtain consumer consent before it collects or transmits information. The bill is currently pending in the Senate Judiciary Committee, where a hearing is scheduled for May 9. Experian is working with the Internet Coalition to defeat this legislation.

Online contract legislation debated in California

In California, S.B. 313 would require a business that makes an automatic renewal offer online to provide an online option for termination of service. The bill would also require an automatic renewal contract to obtain consumer consent in a standalone form. The legislation was passed by the Senate on April 20 and has been referred to the Assembly for consideration. Experian is working directly with lawmakers, as well as with the California Chamber of Commerce, CDIA and Internet Coalition to favorably amend this bill.

