

Legislative Update 159

June 1, 2017

Highlights this issue:

- On May 19 Experian submitted comments in response to the CFPB's Request for Information (RFI) on the use of alternative credit data and alternative credit scoring models. The CFPB sought comments on the types of information that should be considered alternative data and how it could be used to improve financial inclusion.
- On May 18, Representative Marsha Blackburn (R-TN) introduced the Balancing the Rights of Web Surfers Equally and Responsibly (BROWSER) Act of 2017 (H.R. 2520). Blackburn is joined by Representatives Brian Fitzpatrick (R-PA) and Bill Flores (R-TX) as original co-sponsors of the bill. The legislation seeks to bring internet service providers and edge service providers under the same privacy regime, by designating the FTC as the nation's sole online privacy enforcement agency.
- On May 8, Representative Barry Loudermilk (R-GA) introduced H.R. 2359, the FCRA Liability Harmonization Act. The bill seeks to bring consistency to national consumer financial protection laws by capping class action damages and eliminating punitive damages to align the Fair Credit Reporting Act with other consumer financial protection laws.
- In New York, S.B. 5601 amends the state's breach law by adding biometric data to the definition of personal information and permitting email notification unless the breach includes access credentials for an email account. Notification would instead be provided in real time by providing clear and conspicuous notice when the consumer is accessing the account from their usual location.

FEDERAL UPDATE

CFPB Watch: Alternative Data RFI; Small Business Lending RFI

On May 19 Experian submitted comments in response to the CFPB's Request for Information (RFI) on the use of alternative credit data and alternative credit scoring models. The CFPB sought comments on the types of information that should be considered alternative data and how it could be used to improve financial inclusion. Experian's comments highlighted our work to date to incorporate utility, telecom and rental data, as well as our new products that use consumer permissioned data to help speed up credit decisions. Our response also highlighted the substantial research that demonstrates the positive impact that the inclusion of this data could have on underserved consumers. In addition, Experian asked CFPB and other policymakers to differentiate between the different types of alternative data, such as the data that can meet the legal guardrails of the FCRA and the ECOA, as opposed to data from sources (social media, online behavioral data, etc.) that cannot meet those legal standards. Experian also called on CFPB to encourage Congress to pass legislation that would remove barriers to the inclusion of alternative data. A summary of comments from other industry stakeholders can be found here. On another issue, the CFPB announced at a

field hearing in Los Angeles on May 10 that it was launching a RFI into the ways to gather and use new and existing information to identify the financing needs of small businesses. The CFPB indicated that its focus is on small businesses owned by women and minorities. In addition to the RFI, the CFPB released a White Paper reviewing the existing information and data on the small business lending landscape. Of importance to Experian, the RFI specifically seeks input on certain data that small business lenders collect on applicants, as well as any standards that the lenders use in formulating and reporting data, including to credit bureaus. Experian is currently reviewing the CFPB's RFI and will determine whether a direct response from Experian is appropriate.

Rep. Blackburn to introduce ISP and Edge Service Provider Privacy Bill

On May 18, Representative Marsha Blackburn (R-TN) introduced the Balancing the Rights of Web Surfers Equally and Responsibly (BROWSER) Act of 2017 (H.R. 2520). Blackburn is joined by Representatives Brian Fitzpatrick (R-PA) and Bill Flores (R-TX) as original co-sponsors of the bill. The legislation seeks to bring internet service providers and edge service providers under the same privacy regime, by designating the FTC as the nation's sole online privacy enforcement agency. The bill would require entities provide a "clear and conspicuous" notice of its privacy policies. Covered entities would be required to obtain a consumer's opt-in consent to use, disclose or permit access to the sensitive user information, while an opt-out would apply for all non-sensitive data. The bill notes that sensitive data includes financial and health data, but it does not define these terms. Finally, the legislation provides for pre-emption of state laws. It is expected that the proposed legislation will move through the House Energy and Commerce Committee, but is unlikely to be passed in its current form. Experian will work with our trade groups, including the DMA, US Chamber of Commerce and National Business Coalition on E-Commerce and Privacy, to educate lawmakers on the need for specific amendments. We'll also use this opportunity to inform lawmakers of the important role that industry self-regulation plays in balancing consumer protection with innovation.

Rep. Loudermilk introduces FCRA liability legislation

On May 8, Representative Barry Loudermilk (R-GA) introduced H.R. 2359, the FCRA Liability Harmonization Act. The bill seeks to bring consistency to national consumer financial protection laws by capping class action damages and eliminating punitive damages to align the Fair Credit Reporting Act with other consumer financial protection laws. The bill would not impact any actual damages or relief that may be obtained by consumers. The legislation is supported by the US Chamber of Commerce, American Bankers Association, Consumer Bankers Association, Financial Services Roundtable, Credit Union National Association, American Financial Services Association, the National Automobile Dealers Association, among several others.

FTC ID Theft Workshop Focuses on Emerging Trends

On May 24, the Federal Trade Commission (FTC) held a workshop entitled "Identity Theft: Planning for the Future." The workshop featured several panel discussions on a wide range of public policy and technology trends related to identity theft. Panelists included representatives from industry, academia, consumer advocacy groups and regulators. There were discussions on several topics important to Experian. Both Chairwoman Ohlhausen and FTC staff recognized Experian and the other nationwide credit bureaus for the work to integrate consumer choices on FTC's website, IdentityTheft.gov. There was a discussion on whether security freezes were the solution



to preventing ID theft, with the panelists agreeing that they could be helpful, but not a silver bullet. There was also a discussion about whether credit bureaus should be able to have the SSA verify SSNs to prevent identity theft. Synthetic identity theft was discussed throughout the day and seen as an emerging trend, with one panelist suggesting that it accounts for more than 80% of credit card fraud. Finally, there was a discussion on medical identity theft and the difficulty in helping consumers in that area because of the fragmentation of the medical record system. The FTC's workshop is likely to lead to a report by the Commission's staff on trends in identity theft and resources for consumers. Experian will continue to monitor developments from the FTC that intersect with our business.

House Financial Services Committee Passes Dodd-Frank Reform Bill

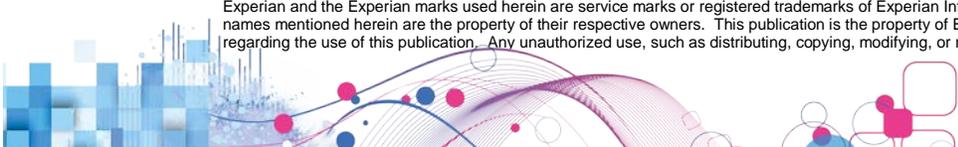
On May 4, the House Financial Services Committee approved Chairman Jeb Hensarling's (R-TX) Financial CHOICE Act on a party line vote. In addition to making broad changes to the Dodd-Frank Act, the bill would substantially transform the CFPB into an enforcement agency by repealing the Bureau's supervision authority, abolishing the UDAAP provision and prohibiting the public disclosure of complaint data. The bill would also put the CFPB under the appropriations process and allow the President to remove the Director of the CFPB at will. The bill now moves to the House floor, where it is expected that a vote will occur during the week of June 5. The bill legislation is likely to pass the House of Representatives and will then be considered by the Senate, where its fate is uncertain. Experian will continue to monitor the legislation and work with lawmakers & our trade groups to shape provisions directly impacting our business.

Appropriations bill for FY2017 includes language on national health identifier

President Trump signed the Appropriations bill for FY2017 into law in early May. The report language accompanying the bill encourages HHS to provide technical assistance to private-sector entities that aim to develop a unique patient identifier. Specifically, the report language states that one of the most significant barriers inhibiting electronic exchange of health information is the lack of a consistent patient data matching strategy. The report language notes that the HHS cannot adopt a final standard, but it can provide technical assistance to private-sector. Experian will use this language as an opportunity to continue educating lawmakers on the need for legislation that would remove barriers that prevent healthcare clearinghouses, like Experian Health, from being able to improve patient access to health records.

House bill would delay the reporting of veteran's medical debt for one year

Congressman John Delaney (D-MD) reintroduced his legislation from last year, the Protecting Veterans Credit Act (H.R. 2683). The bill would delay the inclusion of medical debts in consumer credit reports for one year if those debts were incurred as part of the Veteran's Choice Program. Experian is working with CDIA to oppose or amend the legislation.



STATE UPDATES

New York debates expanded PII data breach legislation

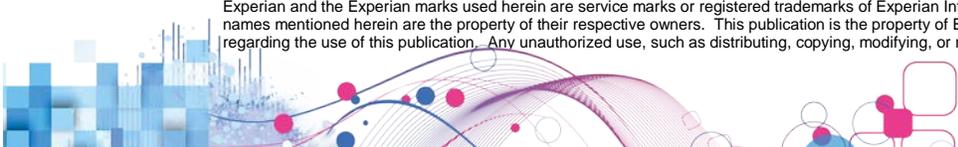
In New York, S.B. 5601 amends the state's breach law by adding biometric data to the definition of personal information and permitting email notification unless the breach includes access credentials for an email account. Notification would instead be provided in real time by providing clear and conspicuous notice when the consumer is accessing the account from their usual location. The bill was passed by the Senate Consumer Protection Committee on April 25. The legislature is also expected to consider legislation that would set the notification deadline to 45 days and require credit card issuers to provide a notice when new cards are issued after a breach. Experian continues to work directly with lawmakers, as well as through our trade associations to address data breach legislation in the states.

Privacy bills stall in Illinois, advance in Vermont, New Jersey

In Illinois, legislation to require new privacy disclosures failed procedural vote in late May. S.B. 1502 would create a "right to know" law in Illinois, by requiring operators of commercial websites or online services that collect personally identifying information to notify customers they are doing so. If the data is shared with a third party, the bill requires the operator provide the consumer with a notification and an email address or toll free number where the customer can access that information. Illinois also failed to advance H.B. 3449, which would prohibit companies from collecting, using, storing or disclosing geolocation information from a location-based app on a person's device unless the person gives consent. Experian worked 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, S.B. 72 was amended to require the Attorney General and Commission on Financial Regulation to develop study the issues around "data broker" regulations and 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. Finally, New Jersey S.B. 1913 was passed by the Assembly Consumer Affairs Committee on May 11. The bill places limitations on how companies can use driver's license information. The bill would prohibit the sale or dissemination to a third party of driver's license scans for any purpose, including marketing, advertising or promotional activities, except as allowed for compliance with state and federal law and for purposes of debt collection and credit reporting. The bill awaits further consideration in the Assembly.

California Senate considers regulation of connected devices

California S.B. 327 would require an internet connected device to provide a physical indicator when it is collecting information beyond what is considered a primary function of the device. Additionally, the bill would require disclosures at the point of sale about what types of personal information is collected and obtain consumer consent before the device collects or transmits information. The bill passed the Senate Judiciary Committee on May 9 and now awaits further consideration in the Senate. Experian is working directly and with the California Chamber of Commerce, DMA and the Internet Coalition to defeat this legislation.





Online cancellation bill in California and auto renewal bill in North Carolina

In California, S.B. 313 would require a business that makes an automatic renewal offer online, to provide an online option for cancellation. The bill was passed by the Senate on April 20 and has been referred to the Assembly Privacy and Consumer Protection Committee. Experian is working directly with lawmakers, as well as with the California Chamber of Commerce, DMA and Internet Coalition to favorably amend this bill. Meanwhile, North Carolina H.B. 502 clarifies the term consumer to mean any person who purchases or leases any products or services pursuant to a contract containing an automatic renewal clause for personal, family, household or agricultural purposes. Experian is working closely with CDIA, the DMA and the Internet Coalition to favorably amend this bill.

