

Legislative Update 162

September 1, 2017

Highlights this issue:

- On September 7, the House Subcommittee on Financial Institutions and Consumer Credit has scheduled a hearing to review “Legislative Proposals for a More Efficient Federal Financial Regulatory Regime.” The Subcommittee has not released the full agenda, but it is expected that the hearing will focus on several bills affecting consumer credit.
- Congress continues to consider legislation that would repeal the CFPB’s Arbitration Rule using an expedited legislative process under the Congressional Review Act (CRA). The House of Representatives passed a resolution of disapproval on July 25. The Senate is expected to take up the measure upon their return from the August recess, although there is uncertainty when a vote will take place given other priorities that Congress must pass by September 30, which is the end of the US Fiscal Year.
- On August 30, three Democrats on the House Energy and Commerce Committee sent a letter to the Government Accountability Office (GAO) requesting that GAO further evaluate post-breach identity protection products used by government agencies.
- Legislators in California continue to debate legislation that would enact a broadband privacy law in the state, similar to the one first issued by the FCC and then overturned by Congress. A.B. 375 would prohibit an internet service provider from using, disclosing, selling or permitting access to customer personal information.

FEDERAL UPDATE

House Financial Services Subcommittee hearing on CROA and FCRA liability

On September 7, the House Subcommittee on Financial Institutions and Consumer Credit has scheduled a hearing to review “Legislative Proposals for a More Efficient Federal Financial Regulatory Regime.” The Subcommittee has not released the full agenda, but it is expected that the hearing will focus on several bills affecting consumer credit. One of the bills expected to be discussed is CROA reform legislation that Rep. Ed Royce (R-CA) has developed. In addition, the Subcommittee is expected to review H.R. 2359, the FCRA Liability Harmonization Act, which would cap class action damages and eliminate punitive damages to align the Fair Credit Reporting Act with other consumer financial protection laws. Experian plans to attend the hearing and will report back on any updates related to CROA reform and H.R. 2359.

CFPB Watch: Arbitration CRA; Payday Lending Rule Update

Congress continues to consider legislation that would repeal the CFPB’s Arbitration Rule using an expedited legislative process under the Congressional Review Act (CRA). The House of Representatives passed a resolution of disapproval on July 25. The Senate is



expected to take up the measure upon their return from the August recess, although there is uncertainty when a vote will take place given other priorities that Congress must pass by September 30, which is the end of the US Fiscal Year. A broad coalition of trade groups is supporting the repeal legislation, including the US Chamber, CDIA, ABA, AFSA and NAFCU. Experian has sent letters to key Senators asking them to support the resolution of disapproval and continues to meet directly with Congressional offices in advance of the vote. Meanwhile, recent news reports indicate the CFPB may soon release a Final Rule governing payday loans. The CFPB issued a proposed rule for the payday loan market in June 2016 and has since been reviewing public comments it received. The Wall Street Journal reports that CFPB's rule is now expected to focus on short-term payday loans of two weeks or less and may exclude installment loans. The CFPB could issue the final rule as early as September. Experian will continue to monitor developments from the CFPB in this space.

Lawmakers ask GAO for additional information on post-breach credit monitoring

On August 30, three Democrats on the House Energy and Commerce Committee sent a letter to the Government Accountability Office (GAO) requesting that GAO further evaluate post-breach identity protection products used by government agencies. The letter was sent by Ranking Member Frank Pallone, Jr. (D-NJ), Rep. Jan Schakowsky (D-IL), and Rep. Diana DeGette (D-CO). This letter follows a report that GAO released in March 2017, which found that identity theft services offer benefits to consumers, but have certain limitations. In the new letter, the three lawmakers ask that GAO provide information about whether existing solutions provide reasonable protection for breach victims and whether any solution is more effective at preventing fraud or is more cost-effective. The lawmakers also ask that GAO consider whether there are additional options not currently utilized for post-breach protections. Finally, the lawmakers ask GAO to consider whether there are any obstacles that impede the use of effective post-breach services and what, if any, steps the federal government and the private sector do to make these solutions easier to leverage.

Small Business Roundtable; Treasury report seeks repeal of data collection

On August 4, the Small Business Administration hosted a roundtable discussion on Small Business lending. The roundtable brought together industry representatives and consumer advocates to discuss the CFPB's RFI regarding small business lending. At the roundtable, participants discussed challenges and opportunities presented by the CFPB's small business lending rulemaking. Topics included the definition of "small business," what data may be collected, possible exceptions to the collection requirements, the burden the data collection process could have on the industry, the need for additional data on small business lending, and how collecting additional data may impact women- and minority-owned small businesses. Experian is currently developing a response to CFPB's RFI on small business lending. Meanwhile, the Treasury Department's June 2017 report on reforming the financial regulatory system recommended repealing Section 1071 of the Dodd-Frank Act, which requires the CFPB to establish regulations and issue guidance for small business loan data collection. The report notes that while "financial institutions are not currently required to gather such information, many lenders have expressed concern that this requirement will be costly to implement, will directly contribute to higher small business borrowing costs, and reduce access to small business loans." Treasury states that the provisions in this section of





Dodd-Frank pertaining to small businesses should be repealed to ensure that the intended benefits do not inadvertently reduce the ability of small businesses to access credit at a reasonable cost. Experian will continue to monitor legislative and regulatory developments impacting the commercial credit ecosystem.

TCPA Update – Spoofing Prevention Act

On August 3, the U.S. Senate passed the Spoofing Prevention Act of 2017 (S. 134) by unanimous consent. The bill, which was sponsored by Sen. Bill Nelson (D-FL), proposes modifications to numerous provisions of the TCPA. First, it would expand the scope of the anti-spoofing section to include calls originated by a person outside the U.S. if the recipient of the call is within the U.S. It would also amend the TCPA to include a definition for “text message.” The bill would also require the FCC, in coordination with the Federal Trade Commission, to develop consumer education materials to help consumers identify scams and other fraudulent activity typically associated with spoofing. A companion bill in the House of Representatives was passed in January (H.R. 423), but there are some differences between the House and Senate bills that must be reconciled before being sent to the President for his signature. Experian continues to monitor legislative and regulatory developments related to TCPA and any potential impacts on our business and that of our clients.

STATE UPDATES

ISP Privacy Legislation debated in California

Legislators in California continue to debate legislation that would enact a broadband privacy law in the state, similar to the one first issued by the FCC and then overturned by Congress. A.B. 375 would prohibit an internet service provider from using, disclosing, selling or permitting access to customer personal information. The measure would require a customer to give opt-in consent to an internet service provider to use, disclose, sell or permit access to the customer’s personal information. The bill passed the Assembly in May and was amended by the Senate Rules Committee on August 21. Experian is working directly with a broad coalition led by the DMA and California Chamber of Commerce to defeat this legislation.

Auto-Renewal Bill Narrowed in California

In California, S.B. 313 continues to move through the legislature. The bill was recently narrowed to require a business that makes an automatic renewal offer online to provide an online option for cancellation and a clear and conspicuous explanation of price after a trial ends. The bill was passed by the Assembly Privacy & Consumer Protection Committee on July 18 and is now being considered on the floor. During debate on the floor, it was amended on August 21 to revise the provision related to automatic renewal termination by removing the requirement to provide a 3 to 7 days’ notice before the first charge to the consumers’ credit or debit card. Experian continues to work directly with lawmakers, as well as with the California Chamber of Commerce, DMA and Internet Coalition to favorably amend this bill.





California Criminal History Bill Moves Forward

California is considering legislation governing public criminal history records. S.B. 393 requires consumer reporting agencies to inquire with either trial courts or the Department of Justice on a weekly basis to determine which arrests have been sealed. If a record was sealed, the consumer reporting agency must delete all records in its possession relating to the arrest. A hearing before the Assembly Appropriations Committee has been scheduled for September 1, where the bill is expected to be narrowed to prohibit the sharing of a sealed record to any person that is not a criminal history provider defined under the bill. Experian is working directly and with CDIA and the Coalition for Responsible Public Records Access to favorably amend the legislation.

Delaware Enacts New Data Breach Bill

On August 17, Delaware Governor Jay Carney signed H.B. 180 into law. The new statute makes several changes to the state's data breach notification law. First, it would expand the definition of personal information that if breached would trigger notice to the consumer. The law also requires notice to the consumer no later than 60 days after discovery and notice to the Attorney General if the breach impacts more than 500 residents. Finally, if a breach involves Social Security numbers, affected individuals must be provided with credit monitoring at no cost for one year. The new law becomes effective on April 17, 2018. Experian worked closely with the Internet Coalition and CDIA to ensure that it was in line with data breach notice standards in other states.

