

Legislative Update 160

July 1, 2017

Highlights this issue:

- On June 7, the CFPB released a new study that found that the ways “credit invisible” consumers establish credit history can differ greatly based on their economic background. The CFPB estimated in its May 2015 study “Data Point: Credit Invisibles” that more than 45 million American consumers are credit invisible, meaning they either have a thin credit file that cannot be scored or no credit history at all.
- On June 8, the US House of Representatives passed the Financial CHOICE Act on a strictly partisan vote with Republicans supporting the bill and Democrats opposing it. 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.
- On June 12, the US Treasury Department released a report on the Administration’s priorities for financial regulatory reform. The report was requested as part of the President’s February Executive Order on Dodd-Frank Reform.
- Massachusetts H.B. 157 stipulates that no person or company engaged in trade or commerce shall have a right to obtain, possess, sell, lend, distribute, disseminate or use any person’s account number without his/her prior written permission. Account number is defined to include each person’s social security number, driver’s license number, license plate number, bank account number, credit card number, account number at a retail store which sells goods or services, account number at a business which sells goods or services on-line, telephone number and all other account numbers of all kinds and varieties.

FEDERAL UPDATE

CFPB Watch: Credit Invisible Report; Debt Collection and Small Business Rules

On June 7, the CFPB released a new study that found that the ways “credit invisible” consumers establish credit history can differ greatly based on their economic background. The CFPB estimated in its May 2015 study “Data Point: Credit Invisibles” that more than 45 million American consumers are credit invisible, meaning they either have a thin credit file that cannot be scored or no credit history at all. The new study reviewed de-identified credit records on more than one million consumers who became credit visible. It found that consumers in lower-income areas are 240 percent more likely to become credit visible due to negative information, such as a debt in collection. The CFPB noted consumers in higher-income areas become credit visible in a more positive way, with 30 percent more likely to become credit visible by using a credit card and 100 percent more likely to become credit visible by being added as a co-



borrower or authorized user on someone else's account. The study also found that the percentage of consumers transitioning to credit visibility due to student loans more than doubled in the last 10 years. Meanwhile, during the CFPB's Consumer Advisory Board meeting on June 8, Director Cordray made comments related to the Bureau's debt collection rulemaking and RFI on small business lending. Cordray said that the CFPB planned to continue to move forward with most of the initial proposal for third-party collectors, but would be consolidating the provisions related to "right consumer, right amount" verification into a subsequent rule that they plan to develop for first-party collectors. He said it was too difficult to separate the verification provisions into first-party and third-party buckets and instead planned to address the issues marketwide. With respect to the RFI on small business lending, Cordray said that CFPB would be extending the original deadline of July 14 by an additional 60 days. Experian is currently reviewing the Small Business Lending RFI and considering comments on our role in facilitate affordable access to credit for small businesses.

US House Passes Dodd-Frank Reform Bill; Smucker Amendment

On June 8, the US House of Representatives passed the Financial CHOICE Act on a strictly partisan vote with Republicans supporting the bill and Democrats opposing it. 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 CHOICE Act will now serve as a House Republican marker on Dodd-Frank Reform. The Senate is unlikely to pass similar legislation, given that Democrats oppose the bill and their support is necessary in the Senate, where 60 votes is needed to break a filibuster. However, there are provisions and concepts in the CHOICE Act that have bipartisan support and could pass in a separate legislative vehicle. Experian will continue to monitor the legislation and work with lawmakers and our trade groups to shape provisions directly impacting our business. During debate on the House floor, freshman Representative Lloyd Smucker (R-PA) introduced an amendment to the bill stating that it was the sense of the Congress that credit bureaus and their subsidiaries should use strong multi-factor authentication procedures to verify the identity of consumers when providing access to information contained in the consumer's credit file. Experian opposed the amendment and worked directly with lawmakers as well as with the CDIA and our other trade groups to oppose the amendment. Rep. Luetkemeyer (R-MO), who chairs the Financial Services Subcommittee on Consumer Credit, voiced opposition to the amendment during debate on the House floor. The resolution has no force of law and is not binding. However, Experian will use this as an opportunity to educate lawmakers on our data security obligations under existing law and our company's own data security best practices.

US Treasury Department Releases Report on Financial Reform Priorities

On June 12, the US Treasury Department released a report on the Administration's priorities for financial regulatory reform. The report was requested as part of the President's February Executive Order on Dodd-Frank Reform. In addition to several wide-ranging financial regulatory proposals, the report recommends: reforming the CFPB's structure and authority and repealing application of Section 1071 of Dodd-Frank to small business lending. While many of these recommendations would require legislation from Congress, the report notes that the Administration will seek to find ways





to decrease unnecessary regulation on its own. Experian will continue to monitor developments related to financial regulatory reform in the Administration and Congress.

FTC Announces Workshop on Service members Protections

The Federal Trade Commission announced the agenda and speakers for its upcoming workshop that will focus on financial issues on scams affecting military consumers. The July 19 workshop will include panelists from the FTC, military consumer advocates, government agencies and the financial industry. The groups will include panels on: auto purchase, financing, and leasing; student and installment loans; debt collection; legal rights and remedies; and financial literacy, including identity theft and financial resources. Experian will plan to monitor this workshop and report back on any developments impacting our business.

House Energy and Commerce Committee Hearing on Internet of Things

On June 13, the House Energy and Commerce Subcommittee on Digital Commerce and Consumer Protection held a hearing entitled “Disrupter Series: Update on IOT Opportunities and Challenges.” Members of the Subcommittee and witnesses discussed the Internet of Things (“IoT”) as it relates to government regulation, consumer privacy, and data use and security. With respect to consumer privacy, lawmakers asked whether privacy for IOT devices should be addressed by legislation. Both witnesses suggested that there is no single way to address privacy, and that it should be protected via industry self-regulatory standards around notice and choice, as well as better encryption technology. Experian will continue to monitor consumer privacy and data security policy debates related to the Internet of Things.

OCC Issues New Bulletin on Third Party Relationships for Fintech

On June 7, the Office of the Comptroller of the Currency (OCC) issued OCC Bulletin 2017-21. This is the OCC’s second bulletin focusing on third-party oversight released this year, which includes a specific focus on the relationship between banks and fintech companies. The latest bulletin is targeted at banks and clarifies the OCC’s supervisory expectations for safe and sound risk management with a focus on fintechs, including marketplace lenders and facilitators of mobile payments. Most importantly, the OCC’s bulletin stresses the need for compliance management systems and controls commensurate with the particular legal, compliance, information security and reputational risks posed by each such relationship. With respect to credit risk posed by relationships provided by third party service providers, the response provides that “banks should have adequate loan underwriting guidelines, and management should ensure that loans are underwritten to these guidelines.” Experian continues to monitor legislative and regulatory developments impacting lenders and fintech.



STATE UPDATES

Massachusetts bills Would Require Prior Written Consent Before Data Sharing

Massachusetts H.B. 157 stipulates that no person or company engaged in trade or commerce shall have a right to obtain, possess, sell, lend, distribute, disseminate or use any person's account number without his/her prior written permission. Account number is defined to include each person's social security number, driver's license number, license plate number, bank account number, credit card number, account number at a retail store which sells goods or services, account number at a business which sells goods or services on-line, telephone number and all other account numbers of all kinds and varieties. A hearing was held before the Joint Committee on Consumer Protection and Professional Licensure on June 20, but no votes were taken and the bill awaits further consideration before the Committee. Meanwhile, a similar bill was introduced in the Senate. S.B. 116 would prohibit a financial institution from selling, sharing, transferring or otherwise disclosing nonpublic personal information to nonaffiliated third parties without the explicit prior consent of the consumer, which must be obtained in a form, statement or in writing. The bill was referred to the Joint Financial Services Committee on June 15 and a hearing has been scheduled for September 26. Experian will work with CDIA, the Data and Marketing Association and directly with lawmakers in Massachusetts to defeat this legislation.

Privacy legislation passes New Jersey Assembly

New Jersey S.B. 1913 was passed by the full Assembly on June 11 and will now go back to the Senate for concurrence. 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. Experian is working with the Data and Marketing Association and other local retail trade groups to ensure this legislation was in line with laws in other states.

Work Continues On Auto-Renewal Bill in California

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 referred to the Assembly Privacy & Consumer Protection Committee on May 25 after being passed by the Senate on April 9. 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 considers requirements for maintaining criminal record information

Legislation to require consumer reporting agencies to verify arrest data on a weekly basis has passed by the California Senate and will now be considered by the Assembly. The bill, S.B. 393, would broadly define Consumer Reporting Agency to include any entity that collects and makes available to the public arrest information. The legislation would also require a weekly update of arrest data and prohibit an investigative consumer reporting agency from reporting arrest data that did not result in a conviction. Experian is working directly and with CDIA to amend the legislation.