

## Legislative Update 161

August 1, 2017

### Highlights this issue:

- On July 10, the CFPB published a final rule prohibiting the use of mandatory pre-dispute arbitration clauses that prevent class action lawsuits in consumer contracts for a wide array of financial products. The final rule was published in the *Federal Register* on July 19, and will become effective 60 days after that date, or September 18. All consumer contracts with arbitration clauses will need to comply with the rule within 180 days of the effective date, which will be March 19, 2018.
- The House of Representatives is working to pass 12 appropriations bills by September 30 to fund federal agencies for the Fiscal Year 2018. The House Appropriations Committee passed the spending bill for financial regulatory agencies on July 13. The measure included several provisions important to Experian and our clients.
- On July 19, Representatives Patrick McHenry (R-N.C.) and Gregory Meeks (D-NY) introduced the Protecting Consumers Access to Credit Act. The bill would codify the legal precedent under federal banking laws that preempts a loan's interest as valid when made.
- Legislators in California continue to debate legislation that would enact a broadband privacy law in the state, similar to the rule 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

### **CFPB Watch: Arbitration Rule Released; Congress seeks Repeal**

On July 10, the CFPB published a final rule prohibiting the use of mandatory pre-dispute arbitration clauses that prevent class action lawsuits in consumer contracts for a wide array of financial products. The final rule was published in the *Federal Register* on July 19, and will become effective 60 days after that date, or September 18. All consumer contracts with arbitration clauses will need to comply with the rule within 180 days of the effective date, which will be March 19, 2018. The final rule covers products offered by Experian, such as credit reports, credit scores, credit monitoring, identity protection and credit education. Congress is currently considering legislation that would repeal the 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. In the Senate, there is a narrower margin for error, as Republicans only a 52-48 majority. Under the CRA, Republicans only need 51 votes. Given that all 48 Democrats are expected to vote no, Republicans can only lose two votes and still pass the bill (with Vice President Pence breaking the tie). At this point, Senators Susan Collins (R-ME), Lindsey Graham (R-SC), Lisa Murkowski (R-AK) and John Kennedy (R-LA) have yet to

announce how they will vote. The Trump Administration has issued a Statement of Administrative Policy, stating that the Administration strongly supports the legislation and encourages Congress to pass it. Experian is working with a coalition of trade groups to support the legislation, including the US Chamber, CDIA, ABA, AFSA and NAFCU. Experian has sent letters to key Senators asking them to support the resolution.

### **House Appropriations Bill addresses IRS IVES Data; and CFPB Reform**

The House of Representatives is working to pass 12 appropriations bills by September 30 to fund federal agencies for the Fiscal Year 2018. The House Appropriations Committee passed the spending bill for financial regulatory agencies on July 13. The measure included several provisions important to Experian and our clients. The bill directs the Internal Revenue Service to develop a report to Congress on automating the IRS' Income Verification Express Services (IVES) using a data sharing API. The bill also incorporate a number of CFPB reform provisions, including: bringing the CFPB under the Appropriations process; eliminating the CFPB's supervisory authority; and removing CFPB's ability to write rules on arbitration and payday lending. The bill is now awaiting consideration by the full House. The Senate Appropriations Committee has yet release its draft of the related spending bill for this year. Experian will continue to monitor the Appropriations process for any developments impacting our business.

### **FinTech Update – McHenry Legislation; Cleaver Inquiry**

On July 19, Representatives Patrick McHenry (R-N.C.) and Gregory Meeks (D-NY) introduced the Protecting Consumers Access to Credit Act. The bill would codify the legal precedent under federal banking laws that preempts a loan's interest as valid when made. This is in response to the Supreme Court's decision to decline to hear the case *Madden v. Midland Funding, LLC*. The bill has been referred to the House Financial Services Committee. Meanwhile, on June 26, Rep. Emmanuel Cleaver (D-MO) announced an inquiry into small business FinTech lending, including online companies that offer payday loan-like products for small businesses and individual consumers. Cleaver sent letters to five fintech lenders, seeking information about their products, fees, and methods for addressing any potentially discriminatory practices. Experian will continue to monitor legislative and regulatory developments impacting fintech and marketplace lenders.

### **Democrats introduce Online Privacy Legislation**

On July 12, a group of 7 House Democrats, led by Representatives Keith Ellison (D-MN), Carol Shea-Porter (D-NH), Maxine Waters (D-CA) and Jan Schakowsky (D-IL), introduced H.R. 3175, the Online Privacy Act of 2017. The bill would re-instate the Federal Communication Commission's online privacy rule, which would prohibit Internet Service Providers from selling user browsing data without affirmative consent of the consumer. The bill has been referred to the House Energy and Commerce Committee for further consideration. Given that Republicans control the House, it is unlikely that the bill will move forward this session. However, it does provide an opportunity for Experian and the DMA to educate lawmakers on the important role that responsible information sharing plays in our economy, as well as the fact that industry self-regulation is the best way to protect consumer privacy while still allowing for innovation.

### **Patient matching study included in House Appropriations Legislation**

On July 19, the House Appropriations Committee approved the fiscal year 2018 Labor, Health and Human Services, and Education funding bill on a vote of 28-22. The bill now



awaits consideration by the full House. The legislation includes funding for programs within the Department of Labor, the Department of Health and Human Services, the Department of Education, and other related agencies. Of importance to Experian Health, the legislation includes a provision requiring HHS to conduct a study on the potential impact that patient matching technology could have on health outcomes. The legislation asks HHS to determine “the impact on care improvement, reduction in costs, estimated saved lives or reduction in errors, and improvements in patient safety if hospitals were required to use a patient matching system as a requirement for participation in the Medicare program.” This provision follows a language in the FY17 funding bill that allowed the HHS Office of the National Coordinator for Health Information Technology (ONC) to provide technical assistance to private sector companies engaged in patient matching technology. Experian will continue to monitor developments legislative and regulatory developments impacting our health business.

## STATE UPDATES

### **ISP Privacy Legislation debated in California; Vermont Data Broker Study**

Legislators in California continue to debate legislation that would enact a broadband privacy law in the state, similar to the rule 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 passed by the Senate Judiciary Committee on July 19. The ISP privacy language was amended into a bill previously approved by the Assembly and, is now awaiting consideration before the Senate Rules Committee. Experian is working directly with a broad coalition led by the DMA and California Chamber of Commerce to defeat this legislation. Meanwhile, the Vermont AG’s staff and Department of Financial Regulation kicked off the Data Broker Regulation Summit on July 26-27. The first day of the summit featured roundtable discussions between regulators and industry representatives. The debate centered on existing state and federal regulations on data collection; our data sources; data collection processes; data security breach notification; downstream uses; vendor credentialing; non-FCRA regulated data; and opt-in vs. opt-out. Day 2 of the event featured presentations by privacy advocates including the World Privacy Forum, PIRG, the Electronic Frontier Foundation, the ACLU and others. The AG’s staff will use the roundtable to develop a final report to the legislature, which is due on December 15, 2017.

### **Auto-Renewal Bill debated 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. The measure now moves to the Assembly floor for consideration.





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 also considering criminal history legislation. 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. Further, the bill would prohibit a consumer reporting agency from furnishing a consumer report with records of any arrest that did not result in an indictment, information or misdemeanor complaint. The bill was amended by the Assembly Appropriations Committee on July 17 and now awaits further consideration by the Committee. Experian is working directly and with CDIA and the Coalition for Responsible Public Records Access to favorably amend the legislation.

