

SHARE:



[Join Our Email List](#)



[View as Webpage](#)



December 9, 2020

Welcome to the Last *All Consuming* Issue of 2020

Welcome to our last issue of *All Consuming* for 2020, a year of unprecedented obstacles. We all watched as the financial industry responded to those obstacles, with foreclosure moratoria, forbearances, remote notary loan closings, the continued rise of fintechs, and the call for debt forgiveness, among other things. Next year promises to bring even more responses to those challenges, especially with a new Presidential administration. We'll continue to bring analysis of the hottest topics in financial services law.

Thank you for reading. We will see you next year. In the meantime, we wish you and yours a great, healthy, and safe holiday season and new year.

Nicholas P. Mooney II, Co-Editor

Angela L. Beblo, Co-Editor

Spilman's Consumer Finance Practice Group

Senate GOP Open to Confirming Yellen to be Biden's Treasury Secretary

"Though GOP senators stopped short of predicting she would be confirmed, they are praising Yellen's qualifications — a stark contrast to other members of Biden's economics team."

Why this is important: Fulfilling promises to many of his supporters, President-elect Joe Biden has chosen a diverse group of individuals for his economic policy team, the most high profile of which is Janet Yellen for treasury secretary. Ms. Yellen boasts several notable achievements, including serving as the chair of the Federal Reserve and as the chair of the Council for Economic Advisers under prior administrations. If confirmed, she would not only be the first woman to hold the position of treasury secretary, but also would face the daunting task of repairing the United States' economy after it has suffered (and continues to suffer) the devastating and potentially long-term effects of COVID-19. Fortunately for Ms. Yellen, she appears to be a less controversial pick than others whom Biden has

chosen, with at least seven Republican senators (Grassley, Cornyn, McConnell, Thune, Toomey, Rounds, and Romney) agreeing that she is highly qualified and experienced for the role. --- [James E. Simon](#)

Survey Reveals How Borrowers are Choosing Their Lenders in the COVID-19 Era

"While rates remain the main reason why consumers select a particular mortgage lender, pandemic-induced trends have put increased importance on digital experience and time-to-close."

Why this is important: The COVID-19 pandemic has led to historically low interest rates for borrowers and has attracted home buyers or other loan applicants into the market. Many of these borrowers would not have otherwise begun exploring borrowing options if rates were not at their current low levels. In fact, the majority of borrowers stated that the interest rate is the main factor in their decision to borrow now, followed by familiarity with a specific institution or specific loan officer. However, several of these borrowers with accelerated timelines are willing to disregard familiarity if another institution has an easier online borrowing process. Social distancing coupled with an accelerated shift to a digitized economy has increased the demand for quality online borrowing services. As with other hyper-efficient technology tools, borrowers are now expecting closings to occur within a much shorter window. Lending institutions are doing their best to keep up with the demand for shortened closings, but proper procedures must be followed and many of those procedures can take several days or weeks. The effects of the COVID-19 pandemic are slowly receding, but some changes are likely to outlast the end of the pandemic as society realizes a "new normal." --- [P. Corey Bonasso](#)

Consumer Financial Protection Bureau to Decide Who Owns Your Financial Data

"The Consumer Financial Protection Bureau is looking to implement the area of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act pertaining to a consumer's rights to his or her own financial data."

Why this is important: Many issues are converging that may make the question of who owns consumers' data one of the most important issues to watch in the coming months. More and more consumers are relying on financial technology, or fintech, companies in their daily lives. In fact, "[n]early 100 million American consumers use at least one finance app that takes data from their bank accounts." The reliance on these companies and their ability to access and use consumers' data has reached an all-time high. At the same time, the CFPB has been preparing to make a move on the issue of consumers' data for years, starting with gathering information from financial institutions and hosting conferences on data privacy. Another issue not to be forgotten is the incoming Biden administration. Critics of the Trump administration charged that it sidelined the CFPB and reduced its role in protecting consumers. Expect the change in administration to lead to a more active CFPB, and it appears that the issue of consumers' data will be one of the early issues it addresses. --- [Nicholas P. Mooney II](#)

Student Loan Borrowers Worried about Repayments, but the Payment Pause has Been Extended Until January 31, 2021

"Administration extends student loan payment moratorium until after the inauguration."

Why this is important: As part of the CARES Act in March 2020, certain federal student loans had monthly payments and collection efforts paused (i.e., borrowers were not required to make their monthly payments and collection efforts on delinquent accounts ceased). This impacted nearly 24 million student loans. The pause in payments and collections, initially set to expire in September 2020, was originally extended to December 31, 2020. Last Friday, December 4, 2020, the U.S. Department of Education took executive action to extend the moratorium by one month, to January 31, 2021. Thus, the burden now shifts to Congress and the incoming administration for how to handle and proceed, if at all, with student loan relief. If nothing is done, payments and collections will re-start on February 1, 2021. Regardless of when the moratorium ends, for those still struggling financially from the pandemic, particularly the unemployed or the underemployed, the impending resumption of student loan payments and collections has been described as stressful and overwhelming. However, borrowers are not without options. Federal student loan repayment options include a variety of income-driven and income-sensitive repayment

plans, graduated repayment plans, and extended repayment options as well as other temporary relief options. Borrowers concerned about payments or collections should contact their student loan servicer to discuss available options. --- [Angela L. Beblo](#)

Under Biden, CFPB Will Play a Role in Any Student-Debt Cancellation — and Help Tackle Student-Loan Servicers

"Experts expect more aggressive oversight of the student-loan industry come January."

Why this is important: Student loan servicers and lenders likely can expect increased oversight from the Consumer Financial Protection Bureau under the Biden administration. Under the Obama administration, the CFPB maintained an active oversight role, suing major companies, and returning over \$750 million to student loan borrowers. Additionally, under the Obama administration, the CFPB and Department of Education worked closely in the student loan area. Meanwhile, under the Trump administration, enforcement shifted from major companies to scam operators, and the DOE terminated a memorandum of understanding wherein the CFPB and DOE agreed to share student loan borrower complaint information. Many expect that the CFPB's oversight over the next four years will look similar to the Obama administration, and expect increased cooperation between the CFPB and state regulators. Servicers and lenders, thus, can expect increased CFPB oversight, and should ensure they are adopting best practices. --- [Wesley A. Shumway](#)

Dealership-Based Auto Finance Faces Permanent Challenge as Digital and Direct Financing Options Increase During Pandemic

"While some of this behavior has been driven by the COVID-19 pandemic, an increasing number of buyers say they prefer a digital loan origination process for their next vehicle purchase."

Why this is important: The traditional car buying experience in the U.S. has greatly changed during the COVID-19 pandemic. Several of those changes are likely to stay in place even after COVID-19 has run its course. In numerous economic sectors, COVID-19 has accelerated the existing trend toward increasing digitization. Car buyers are no longer going to a dealership, finding the right car, and finally sitting down with a sales rep to discuss financing options. Instead, most car buyers walk into a dealership with financing already in place or their research already finished. Digitization of car loan applications for direct financing and online loan management are two major factors that consumers enjoy most. Many of the new protocols and procedures that COVID-19 forced on society will fade away as immunity and vaccinations increase, but this is one sector that is not likely to look the same ever again. --- [P. Corey Bonasso](#)

2021 Predictions for Mortgage Lending

"As lenders look ahead to a new year and a new administration, they offer insights into what lies ahead for nonbank lenders and servicers."

Why this is important: After a year of the pandemic, foreclosure moratoria, forbearances, and the incoming new administration, the issue of what the future holds for mortgage lending (indeed, for every sector of the economy) is a significant one. This article has a quick and easy-to-digest summary format giving many predictions for mortgage lending for 2021. Interest rates may rise, but only slightly. Staffing issues will continue. Investors who fled the secondary market at the onset of the pandemic appear ready to return. The percentage of loan closings performed remotely will increase. These are just a few of the predictions. Anyone interested in this sector should give this article a quick read. --- [Nicholas P. Mooney II](#)

CFPB Enters Complicated Consent Order with Auto-Finance Payment Firm

"And in a twist, the penalties levied by the CFPB against the company might not be completely delivered."

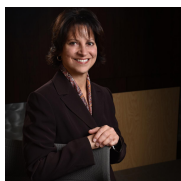
Why this is important: A company whose business model involved disguising the true costs of its services is now claiming that it is unable to pay the amount of the consent order it entered into with the Consumer Financial Protection Bureau. SMART Payment Plan ("SMART") marketed a plan wherein it would deduct payments from consumers' bank accounts and use that money to pay off the consumers' monthly auto loans -- representing that allowing SMART to play the middleman would create interest and money savings for the consumers. The average onlooker might question how the inclusion of a middleman would create savings instead of additional costs -- and the average onlooker would be correct. What SMART's marketing failed to disclose was that its own fees would exceed these alleged savings, thus causing the consumer to suffer a net loss. The CFPB conducted an investigation and issued a \$7.5 million consent order against SMART, finding that SMART had promulgated misleading statements that rose to the level of deceptive acts or practices. However, SMART, apparently as unprofitable as its products, filed sworn financial statements demonstrating its inability to pay for this judgment, and managed to convince the CFPB to agree to a suspension of the total judgment and payment of \$1.5 million and \$1 instead. While the ending of this saga may be unsatisfying, consumers should take the moral of this story to heart, and remember that if something sounds too good to be true, it probably is. --- [James E. Simon](#)

Debt Collectors Slammed for Parking Debt on Credit Reports

"The Federal Trade Commission has taken action against a debt collection company that allegedly placed bogus or highly questionable debts onto consumers' credit reports to coerce them to pay the debts."

Why this is important: Debt parking is the process where a collection company reports a debt on a consumer's credit report. The debt is "parked" there, and when the consumer sees the debt on his or her report, he or she typically will contact the collector or creditor to inquire about it. Critics charge that consumers will feel pressure to pay the debt, regardless of whether it's questionable or even valid, because the consumer only saw his or her credit report while in the process of making a large purchase, like a vehicle or home. The consumer may worry that the large purchase will fall through if the debt isn't paid. This article is important because it details an action taken by the Federal Trade Commission against one such collection company in which the FTC showed that a large percentage of the debts the company "parked" on consumers' credit reports were inaccurate or invalid. The FTC reached a settlement with the company that essentially ended the company's business. Pursuant to the settlement, the FTC was given a \$24.3 million monetary judgment, which was suspended because of the company's inability to pay. The company's assets will be surrendered, and one of its owners will sell the interest he has in another collection company. --- [Nicholas P. Mooney II](#)

Featured Attorney Spilman Profile



[Kelly J. Kimble](#)
Member
Morgantown, WV
304.291.7939
kkimble@spilmanlaw.com

Kelly Kimble is a member in our Morgantown, West Virginia office. She represents creditors throughout the collection process, including in pre-suit collections. As an accomplished trial lawyer, she also represents creditors and collectors when informal collection efforts are not successful and collection suits must be filed. Kelly also represents creditors and collectors in defense of lawsuits brought by debtors.

A graduate of West Virginia University and its College of Law, Kelly is admitted to the West Virginia State Bar, United States Supreme Court, United States District Courts for the Northern and Southern Districts of West Virginia, and United States Court of Appeals for the Fourth Circuit.



This is an attorney advertisement. Your receipt and/or use of this material does not constitute or create an attorney-client relationship between you and Spilman Thomas & Battle, PLLC or any attorney associated with the firm. This e-mail publication is distributed with the understanding that the author, publisher and distributor are not rendering legal or other professional advice on specific facts or matters and, accordingly, assume no liability whatsoever in connection with its use.

Responsible Attorney: Michael J. Basile, 800-967-8251