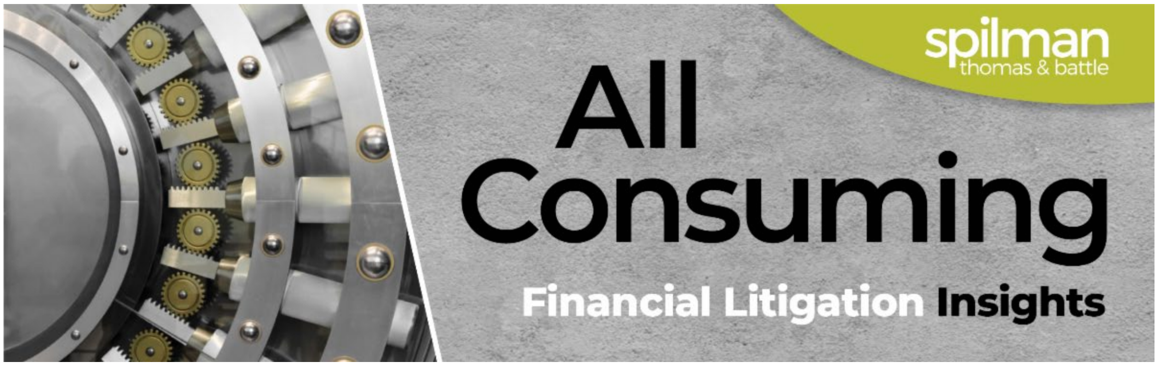
View as Webpage



September 9, 2020

Three Important Ways the COVID-19 Pandemic is Changing the Delivery of Consumer Financial Services

By Nicholas P. Mooney II

The world continues to come to grips with the daily changes brought by the COVID-19 pandemic. Schools contemplate opening. Some do, while others do not. Some professional and college sports teams play games to empty stadiums. Some businesses are open, with restrictions, while others are not. Lawsuits are being filed by businesses that think they should be permitted to reopen like their neighbors who already have. It comes as no surprise that the pandemic also is changing the way consumer financial services are offered. This article looks at three ways those services and the businesses offering them are navigating the "new normal."

Click **here** to read the entire article.

Court Allows Bankruptcy Discharge Of $200,000 In Student Loans

"In McDaniel v. Navient, the U.S. Court of Appeals for the 10th Circuit affirmed a lower bankruptcy court's determination that a borrower's private student loan debt could be discharged in bankruptcy."

Why this is important: After the 2005 amendments to the Bankruptcy Code, many bankruptcy courts held that all student loans – both government and private – could not be discharged. The only exception was if the debtor could show "undue hardship," which is a fairly high standard to meet under the case law. The relevant section of the Code, as amended, excepted from discharge (a) an education loan that was made, insured, or guaranteed by the government or a nonprofit institution; (b) a "qualified education loan" as defined by the Internal Revenue Code; and (c) "an obligation to repay funds received as an educational benefit, scholarship, or stipend." The issue is whether student loans that do not meet the definition in (a) or (b) are still excepted from discharge as an "educational benefit" under (c). In 2019, the U.S. Court of Appeals for the Fifth Circuit affirmed, as a matter of first impression, that the private student loans at issue in that proceeding were not an "educational benefit" subject to the discharge exception. See *Crocker v. Navient Sols., L.L.C.* (In re Crocker), 941 F.3d 206 (5th Cir. 2019). The U.S. Court of Appeals for the Tenth Circuit followed suit last month, holding that a private student loan is not an "educational benefit, scholarship, or stipend" that is excepted from discharge. The Court's analysis focused on certain canons of statutory construction to interpret the relevant Code section and conclude that Congress did not intend to include student loans in the words "educational benefit." *McDaniel v. Navient Solutions, LLC,* No. 18-1445 (10th Cir. Aug. 31, 2020). Lenders must be mindful of the type of student loan they are holding, and more importantly, they will want to check a Chapter 13 plan to determine whether the debtor indicates a student loan is or is not going to be discharged. --- Angela L. Beblo and Debra Lee Allen

---

Lenders Ask Homebuyers to Certify They Won't Seek Forbearance

"The notifications inform borrowers that they won't be able to skip a payment until the government backs their loan, and some of them warn of penalties if the contract is breached in this way."

Why this is important: While lenders are determining which borrowers are affected, credit bureaus, like TransUnion, reported over 100 million accounts on deferred debt payment programs from March to May 2020, and financial analysts predict more to come. As a result, the Federal Reserve Board said the nation's biggest banks could see more than $700 billion in loan losses. More homebuyers can expect to sign, and closers will need to prepare at least one more document for closings. --- Bryce J. Hunter

---

Reverse Mortgage Complaints to CFPB Slow During Pandemic

"When averaged out to the amount of complaints received per month, the figure is lower than the typical monthly average seen over the past three years."

Why this is important: Since the beginning of the pandemic, a total of 102 complaints about reverse mortgages have been submitted to the Consumer Financial Protection Bureau. That equates to roughly 18.2 complaints per month compared to 30 complaints per month in the 30 months prior to the federal government declaring a national emergency. The drop in CFPB complaints could be linked to the federal government's easing of regulatory requirements, including changes to the appraisal process and delaying due-and-payable requests, foreclosures, and evictions. --- Tai Shadrick Kluemper

---

Pandemic Onset Did Not Cause Delinquency Spike – CFPB

"The report examined the early effects of the pandemic on consumer credit, focusing on mortgages, student and auto loans, and credit card accounts from March to June."

Why this is important: The Consumer Financial Protection Bureau released a report analyzing the effects the COVID-19 pandemic has had on mortgages, credit card accounts, auto loans, and student loans from March to June of 2020. According to the report, the pandemic has significantly affected household income, with unemployment rates reaching 11.1 percent within three months, and household retail spending decreasing as well. However, according to the report, "[o]ver 33 million U.S. workers claimed [unemployment] benefits at the end of June 2020, many of whom received expanded benefits from an expansion of benefits under the CARES Act." Notably, the report explained that new delinquencies on student loans, auto loans, credit cards, and mortgages actually decreased between March 2020 and June 2020, after staying level or increasing over the prior year. However, the report noted increases in payment assistance programs, especially for student loans and first-lien mortgage accounts. It will be important for industry leaders and lawmakers to continue monitoring these numbers as the country grapples with the COVID-19 pandemic and its effects on consumer lending. --- Wesley A. Shumway

---

CFPB Continues Crackdown on VA Lenders

"The Consumer Financial Protection Bureau's ongoing sweep of VA lenders has netted another business that allegedly deceived veterans."

Why this is important: In four recent cases, the CFPB has resolved investigations into lenders that made VA loans to veterans. The CFPB focused its investigations on mailed advertisements that it claimed mislead and misrepresented credit and payment terms available for mortgages. Combined, the four consent orders imposed civil penalties in excess of $1,250,000 against the four companies and required significant compliance initiatives. With the recent surge in homebuyer and mortgage refinancing, the CFPB's recent consent orders are a timely reminder to originators of the necessity for clear, transparent advertisements of mortgage terms. --- Angela L. Beblo

---

Yes, Blockchain Mortgages are a Thing Now

"But according to a recent Moody's study, blockchain technology — the same encrypted record-keeping system behind Bitcoin — could save the mortgage industry $1 billion every year by cutting down on fees and redundant audits every time the application changes hands."

Why this is important: This article is important because it discusses one of the use applications for blockchain technology. This technology, and other distributed ledgers like it, have been implemented in various use scenarios for the past few years and are routinely talked about as a possible cure to current technology and operational woes in scores of other fields. One of those fields is mortgage loan origination. This article discusses how the use of blockchain technology could streamline the mortgage process to cut down on processing time and costs as well as to keep the records of the mortgage loans on a blockchain that could be accessed at any time. It also discusses the recent Moody's study that found that deploying blockchain technology into the mortgage loan origination process could save the industry approximately $1 billion every year. --- Nicholas P. Mooney II

The Federal Debt Collection Practices Act is Getting a Face Lift

"Pressure from consumers and debt collectors to update and clarify the rules led the Consumer Financial Protection Bureau to finally propose new rules that are likely to take effect in October 2020."

Why this is important: Although the FDCPA was first enacted more than 40 years ago, numerous provisions of the Act did not include bright-line guidance on communications with consumers, especially in light of new communication technologies that have emerged in recent years. The CFPB's proposed updates are intended to provide bright-line guidance on permitted communications to consumers (i.e., a maximum of seven calls per week), the use of texts and emails, and consumers' rights to restrict communications. The CFPB received significant feedback on the proposed revisions, and the new rules attempt to strike an appropriate balance between the interests of all parties. --- Angela L. Beblo

---

Featured Attorney Spilman Profile

Travis A. Knobbe
Member
412.325.3311
tknobbe@spilmanlaw.com

Travis Knobbe is a Member in Spilman Thomas & Battle's Pittsburgh office. His primary practice area is creditors' rights and bankruptcy litigation, where he has focused a majority of his time over the past decade. He also has experience in commercial litigation, having chaired several multi-day jury and bench trials. Mr. Knobbe has engaged with clients in a variety of industries, including traditional and non-traditional lenders, trade vendors, ad hoc committees, trustees, and others, representing their rights before, during, and after bankruptcy. Sometimes, that experience requires his litigation knowledge. Other times, that experience requires a workout focus informed by his experience trying to correct problems created by issues with loan documents, agreements, and the like.

Mr. Knobbe has been listed by Pennsylvania Super Lawyers and Virginia Super Lawyers as a Rising Star.

He earned his Bachelor's Degree from Bethany College and his J.D. from West Virginia University College of Law.
