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Biden to Pick Rohit Chopra to Lead Consumer-Finance Agency

"Rohit Chopra is the former student-loan ombudsman at the Consumer Financial Protection Bureau."

Why this is important: As an assistant director of the CFPB, Chopra led the agency's student loan oversight where he demonstrated an aggressive style toward lenders and consistently criticized private student loan businesses. In his role as FTC commissioner since 2018, he has supported "vigorous agency enforcement." It appears clear that Chopra's nomination will result in the CFPB taking a more aggressive stance in its rulemaking and enforcement functions. --- Bryce J. Hunter

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Technology and Regulation: The Mortgage Industry's Balancing Act

"A recent Fannie Mae Mortgage Lender Sentiment Survey found that lenders ranked 'consumer demand' and 'operational efficiency (technology)' as two of the top three factors that will drive the largest increase in profit margins over the next three months."

Why this is important: One of the few positive outcomes of the pandemic is that it fueled innovation and utilization of new technologies that allow business to be conducted remotely. Such technologies can play a significant role in regulated industries, such as the mortgage industry, by automating processes to remove both human error and human bias from the lending process. For example, employing AI such as self-inspection valuation products allows for defensible lending determinations on the front-end of a loan transaction, and using Remote Online Notarization or eClosings ensures no signatures are missed at closing. New "Regtech" technologies simplify regulatory compliance through automated monitoring and reporting. The result of embracing these technologies is that mortgage lenders can dedicate more of their human capital to the customer service experience without sacrificing attention to the regulatory details. In that way, lenders who embrace and invest in technology can enhance their bottom line by growing their customer base, improving operational efficiencies, and reducing potential regulatory headaches. --- Lori D. Thompson

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7 Things That have Changed Forever in the Mortgage Industry

"COVID-19 conditions fueled acceptance and recognition of a global, distributed working model."

Why this is important: The article provides a quick list of the ways the mortgage industry has changed in response to the pandemic, changes that the authors argue are permanent. Some may be anticipated by the reader, like paper being "a dirty word" and the switch to "E-Everything." But, others might not be so readily apparent. Consumers have adapted quickly to the need to be "self-directed digital learners" capable of using newsfeeds, push notifications, and chatbots to navigate the mortgage process without the hand-holding the mortgage industry assumed they needed." --- Nicholas P. Mooney II

President Biden Extends Student Loan Payment Freeze Through Sept. 30

"Almost 6 in 10 borrowers with paused payments reported to Pew that it would be difficult to begin making their payments if they had to do so in the next month."

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 more than 40 million federal student loans. The pause in payments and collections has been extended several times and now extends through September 30, 2021. For servicers and individuals still struggling financially from the pandemic, the extension allows more time for all parties to continue to prepare for repayments to begin. Borrowers concerned about payments or collections should contact their student loan servicer to discuss available options. --- Angela L. Beblo

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Regulatory Shift Favoring Payday Lenders Challenged by 8 Attorneys General

"The attorneys general of California, Colorado, Massachusetts, Minnesota, New Jersey, North Carolina and the District of Columbia all joined the case."

Why this is important: Under the National Bank Act, a Civil War-era statute, national banks were given the privilege of exporting their interest rates. Broadly speaking, that means the limit on the interest rate a national bank can charge a customer in any state is the limit imposed by law in the bank's home state. Some states have no interest rate limit. Thus, national banks located in those states are permitted to charge any interest rate to customers in other states, even when those states limit the interest rate other lenders can charge. Critics claim that lenders other than national banks, like payday lenders, can skirt interest rate limitations in those states by partnering with a national bank to be the lender in a payday loan. Called "rent-a-charter" lending schemes (referring to the bank's charter as a national bank), states have cracked down on this practice. Recently, the OCC issued a "true lender" rule that would help those lenders. The rule provides that a national bank is deemed to be the true lender in a loan whenever it is named as the lender in the loan documents or it provides the funds for the loan. A lawsuit has been brought in New York federal court challenging that rule. --- Nicholas P. Mooney II

$1 Fines from Consumer Agency Were Common Under Trump. That’s About to Change

"Another key metric of the bureau’s effectiveness is how much money it pries out of companies that cross the line in their dealings with consumers."

Why this is important: In the 2020 fiscal year, the CFPB collected $34 million in fines, the largest of which -- $25 million -- hit a New Jersey-based bank for "deceptive and abusive acts" involving overdraft fees. Many of the remaining fines were dwarfed by that figure. As reported by the *Los Angeles Times*, 13 fines were for $10 or less, and 10 fines were for just $1, even though they were also for deceptive acts. It should be no surprise that this has raised eyebrows with consumer advocates, who have criticized the CFPB for being too "chummy" with the companies it oversees. Things are expected to change under new leadership. Consumer advocates expect the new director to step up enforcement actions (and fines) for financial institutions engaged in deceptive acts. --- Tai Shadrick Kluemper

2021 Predictions for the Payments Industry

"Predictions for 2021 must consider the general trends from previous years, but with COVID-19 playing a major role in customer behaviour as well as restrictive measures for purchasing, the predictions for the payments industries and online merchant accounts must be viewed and studied with a more focused degree of scrutiny."

Why this is important: With the onset of the pandemic in 2020, consumers embraced the digital marketplace to address product shortages and reduce personal contact. The prediction is that 2021 will bring more of the same, resulting in a 61 percent rise in global e-commerce between 2020 and 2022. The continuing surge in online financial activity means a surge in cybercriminal activity -- and regulations to reduce such activity -- are sure to follow. Merchants who want to capture the economic opportunity that 2021 presents need to partner with a payment solutions company that embraces new technologies that will prevent fraud, provide a range of online payment options to consumers, and ensure compliance with an ever-changing regulatory landscape. --- Lori D. Thompson

Stolen Credit Card Site Closes After Making $1 Billion in Bitcoin

"However, researchers say the shutdown is unlikely to curb the massive stolen card market."

Why this is important: Joker's Stash, one of the darknet's largest operators of stolen credit cards, announced that it will be closing and that they definitely will not be opening again. Joker's Stash "connected sellers with vendors of illicitly obtained credit card information, codes, and payment addresses." The stolen credit card business is quite lucrative; Joker's Stash earned over $1 billion in Bitcoin during its tenure, which is why some are questioning their motives for shutting down. What is apparent is that the removal of one site will not end, nor put a dent in, the stolen credit card business. --- Kellen M. Shearin

Stopping Predatory Fintech Lending

"Odinet argues that financial regulators must update the banking regulatory landscape to protect consumers, especially as fintech lending to economically vulnerable households skyrockets during the coronavirus pandemic."

Why this is important: Financial technology, or fintech, companies have been playing an increasing role in consumer finance in recent years. Predictions are that this trend will continue. A law professor argues that fintech companies are engaging in predatory lending practices by, among other ways, partnering with banks who are able to export their interest rates. (For a discussion of exporting interest under the National Bank Act, see the article above titled "Regulatory Shift Favoring Payday Lenders Challenged by 8 Attorneys General"). The professor argues that a number of measures must be taken to address these abuses, including his call for the FDIC to essentially hold the banks responsible when their fintech partners engage in what he sees as predatory lending practices. --- Nicholas P. Mooney II

Federal Student Loan Forgiveness Programs Already Exist. Why aren't More Borrowers Taking Advantage?

"This is all through the government's income-driven repayment plans, which allow you to tie monthly payments to how much you earn and forgive any remaining balance after 20 or 25 years of payments."

Why this is important: The federal government has several loan forgiveness programs for student loan cancellation. For instance, income-driven repayment plans and the Public Service Loan Forgiveness ("PSLF") provide for student loan cancellation after 10 years for public service workers or 20-25 years for others on an income-driven repayment plan. Yet few individuals take advantage of such plans. The plans are open to any borrower with a federal student loan. While paperwork and other items are required, only about 30 percent of borrowers apply. A series of research and studies have determined that the lack of participation is multifaceted as the system for income-driven payments is cumbersome and involves on-going paperwork for several years, there is unclear servicer guidance, and there is resulting tax liability for forgiveness. “If your loans are wiped out, but you have to pay a five-figure tax bill because of it, then the government isn’t exactly cancelling 100% of your outstanding debt so much as 75% of it," says John R. Brooks, a law professor at Georgetown University who has studied the issue. Even so, borrowers should explore all options available to them to determine if an income-drive repayment plan can, or would, be beneficial for their particular situation. (NOTE: Recently, the American Federation of Teachers and the Student Borrower Protection Center issued a scathing report about the servicing errors committed by a former servicer for the U.S. Department of Education, claiming that the servicer's failures are directly responsible for causing harm to borrowers due to the servicer's failure to enroll, qualify and manage the accounts of students that may have been eligible for the PSLF program.) --- Angela L. Beblo

Featured Attorney Spilman Profile

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Eric Gadd advises and represents nonprofit and tax-exempt organizations on a wide variety of matters. He also works in the areas of creditors' rights and foreclosures, trusts and estates, taxation, and general corporate law. Within the area of creditors' rights and foreclosures, he coordinates, supervises, and conducts foreclosure sales of commercial, industrial and residential properties throughout West Virginia on behalf of local, regional, and national financial institutions and government agencies. Eric participates in the prosecution of judicial foreclosures in non-power-of-sale jurisdictions. He also represents secured and unsecured creditors in chapter 7, chapter 11 and chapter 13 bankruptcy cases.

He is admitted to the West Virginia State Bar, United States District Courts for the Northern and Southern Districts of West Virginia, and United States Tax Court. He received his B.S. in Accounting from West Virginia Wesleyan College and his J.D. from West Virginia University College of Law.

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