

SHARE:



[Join Our Email List](#)

[View as Webpage](#)



## Volume 2, Issue 7

### **Consumer Complaints to the CFPB for 2020 Up 54 Percent Over Previous Year**

*"The CFPB handled about 542,300 complaints last year – a nearly 54 percent increase over the 352,400 complaints handled in 2019."*

**Why this is important:** Clearly, the COVID-19 pandemic influenced the increase in complaints according to the CFPB's recently issued report, "Consumer Response Annual Report January 1 – December 31, 2020." The report describes issues consumers reported to the CFPB in 2020. As in the past, consumer complaints provide the CFPB with an important real-time window into where consumers encounter problems in the marketplace.

The report includes analyses of complaints across multiple consumer financial products and services. According to the report, credit and consumer reporting complaints accounted for more than 58 percent of complaints received, followed by debt collection (15 percent); credit card (7 percent); checking or savings (6 percent); and mortgage complaints (5 percent). Interestingly, most complaints dealt with the three largest Nationwide Credit Reporting Agencies or NCRAs: Equifax, Experian, and TransUnion.

The CFPB will issue a separate report later this year on complaints submitted about the NCRAs that are related to incomplete or inaccurate information on the consumers' credit reports as required under the Fair Credit Reporting Act. **In the meantime, the CFPB expects companies to respond to all concerns and that consumers receive responses from companies that address the issues consumers raise in their complaints.** --- [Bryce J. Hunter](#)

---

### **Share of Mortgages in Forbearance Hits New Low During Pandemic**

*"The share of mortgages in forbearance dropped below 5 percent in March for the first time since the beginning of the pandemic, as homeowners resuming their payments continued to outnumber new requests for relief for the fourth week in a row."*

**Why this is important:** For the fourth week in a row, homeowners resuming payments outnumbered requests for COVID-19 forbearance relief. Additionally, in March, the share of mortgages in forbearance dropped below 5 percent for the first time since the pandemic started. These figures are positive, and suggest that the economy may slowly be getting back to normal; however, we are not out of the storm yet. Indeed, one in five borrowers in extended forbearance have surpassed the one-year mark, according to Mike Fratantoni of the Mortgage Bankers Association. **Time will tell whether the positive trends from March will endure, as the COVID-19 vaccine rollout continues throughout the country.** --- [Wesley A. Shumway](#)

---

## **FTC Permanently Bans Collection Agencies from Debt Collection**

*"Wasting no time in showing they mean business, the FTC announced that, through a settlement, both National and Absolute have been permanently banned from the debt collection industry."*

**Why this is important:** This article reports on a lawsuit brought by the FTC against two collection agencies and the settlement reached in that lawsuit. In addition to the agencies agreeing to a judgment of more than \$25 million, they also agreed that they and several of their affiliated companies will be permanently banned from the debt collection industry. The article discusses some of the conduct these agencies were alleged to have engaged in, including failing to identify themselves as collectors during calls and instead identifying themselves as mediators and attorneys. They also were alleged to have threatened lawsuits and arrests if the person called failed to pay the debt, which according to the FTC in most cases never was owed or had already been paid. This article and the FTC's lawsuit show that bad actors do exist, and conduct like what was alleged hurts the debt collection industry as a whole. The article makes the point well when it says "[c]ollection agencies spend enormous amounts of time, energy, and financial resources to comply with applicable laws and regulations." **Companies that intentionally disregard those laws and regulations hurt the entire industry.** --- [Nicholas P. Mooney II](#)

---

## **Visa Moves to Allow Payment Settlements Using Cryptocurrency**

*"Visa's move comes as finance firms including BNY Mellon, BlackRock Inc and Mastercard Inc take steps to make more use of cryptocurrencies for investment and payment purposes."*

**Why this is important:** Visa Inc. announced that it would be accepting cryptocurrency to settle transactions on its network, making it increasingly more likely that consumers will use cryptocurrency for day-to-day transactions. Visa initially collaborated with crypto.com to provide a card that cryptocurrency holders could use to make purchases from their digital wallets. For those purchases, the digital currency would need to be converted into fiat currency in order to be settled. Visa, using the ethereum blockchain, has cut out this step and made the transaction settling process much less complex for businesses. **This move by Visa illustrates a growing acceptance of digital currencies, but it also highlights a need for law in this area.** In order for people to truly accept digital currency, there needs to be some recourse in the event that something goes wrong. --- [Kellen M. Shearin](#)

---

## **FDCPA's Bona Fide Error Defense Applies to a Mistake of Law in Determining the Appropriate Statute of Limitations**

*"The FDCPA, as well as state laws, can present a complex path when it comes to statutes of limitation."*

**Why this is important:** This decision confirms what many practitioners already believe: the calculation of the applicable statute of limitations can sometimes be complex and uncertain. Generally speaking, a statute of limitations is the time period in which a plaintiff must file a lawsuit or the right to do so is lost. For example, if you were in an automobile collision today, you can't wait a decade to file a lawsuit about that collision. You have to file that lawsuit within a specified period of time. The law generally tells a plaintiff what that period of time is. However, creditors and/or collectors looking to file a lawsuit to collect a debt sometimes face uncertainty as to what the period of time is. In some states, it's governed by specific statutes. Some states have different time periods depending on the type of debt. Some states have statutes that actually provide that other states' statutes of limitations may apply. If the conflicting statutes aren't confusing enough, sometimes the documents underlying the debt determine what statute of limitations apply. Sometimes, they don't. What happens if a creditor or collector gets the analysis wrong and files suit after the statute of limitations has expired? Unlike our plaintiff in the automobile

collision example who loses her or his right to file the lawsuit, the creditor and collector lose their right to file the lawsuit, but also very likely will be charged by the debtor with violating federal and/or state debt collection laws by trying to commence a lawsuit when they weren't entitled to do so. When faced with a lawsuit like this, some creditors and collectors attempt to rely on the provision in the FDCPA or similar state statutes that provide a defense from liability for bona fide errors. Unfortunately, courts have held that a bona fide error must be a mistake of fact and miscalculating the correct statute of limitations is a mistake of law. This new decision may aid creditors and collectors facing this problem. That decision attempts to limit a prior court decision that mistakes of law can't be bona fide errors. Instead, it holds that mistakes of law can't be bona fide errors when the mistakes relate to interpreting the requirements of the FDCPA. That's a different issue than calculating what the applicable statute of limitations is. At bottom, this article highlights the point that calculating the applicable statute of limitations sometimes can be a complex and uncertain issue. **Creditors and collectors would be wise not to assume it's a one-size-fits-all analysis across all 50 states and instead conduct a state-by-state analysis (or better yet consult an attorney in a state where the statute of limitations may be uncertain).** --- [Nicholas P. Mooney II](#)

---

## **U.S. Consumer Confidence Hits One-Year High; House Prices Soar**

*"U.S. consumer confidence raced in March to its highest level since the start of the COVID-19 pandemic, supporting views that economic growth will accelerate in the coming months, driven by more fiscal stimulus and an improving public health situation."*

**Why this is important:** For several months, the real estate market has seen strong sales of homes, with some reports of homes receiving multiple cash offers over asking price. Consumer confidence remains high. In a March 2021 survey, consumers surveyed intend to make major purchases (homes, vehicles, and major household appliances). The same survey found a higher number of individuals anticipate that their income will increase in the next six months. This interest could indicate that the demand for homes will remain high and prices will continue to increase. **Lenders and servicers should remain vigilant and expect that this strong interest will continue to mean a high level of applications for home loans and the attendant services needed such as underwriting, closing, servicing, and compliance.** --- [Angela L. Beblo](#)

---

## **Featured Spilman Attorney Profile**



**[James E. Simon](#)**  
Senior Attorney  
Charleston, WV  
office 304.340.3832  
[jsimon@spilmanlaw.com](mailto:jsimon@spilmanlaw.com)

James Simon is a Senior Attorney in our Charleston, West Virginia office. He has developed considerable experience litigating motions to compel arbitration in West Virginia's courts, an issue that often arises in consumer finance disputes. In addition to this work, James assists in all phases of state and federal litigation, including drafting pleadings, drafting dispositive and evidentiary motions, conducting written discovery, taking and defending depositions, successfully arguing pre-trial and dispositive motions, participating in trial preparation, voir dire, and jury selection, and drafting multiple appellate briefs to the West Virginia Supreme Court and the Fourth Circuit Court of Appeals.

James is a member of the American Bar Association and Kanawha County Bar Association. He is a graduate of Pensacola Christian College, *magna cum laude*, and received his J.D. from Washington and Lee University School of Law, *magna cum laude*. He is admitted to the West Virginia State Bar, the United States Court of Appeals for the Fourth Circuit, and the United States District Courts for the Northern and Southern Districts of West Virginia.

---



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