

SHARE:

[Join Our Email List](#)

[View as Webpage](#)



## Volume 3, Issue 8

### Welcome!

Welcome to the eighth issue of *All Consuming* for 2022.

We are pleased to sponsor the West Virginia Economic Development Council's Annual Conference, September 6-8 at Oglebay in Wheeling, West Virginia. This is an important gathering of economic development professionals, and conference topics include knowing your partners, workforce, and site readiness. In addition to our sponsorship, [Jason Pizatella](#) will be presenting a Legislative Update on September 7. [Josh Jarrell](#) will be presenting Tools for Funding Infrastructure on September 8. Click [here](#) to learn more.

Thanks for reading.

[Nicholas P. Mooney II](#), Editor of *All Consuming*

[Bruce M. Jacobs](#), Chair, Spilman [Consumer Finance Litigation Practice Group](#)

### ***Legislative Actions***

#### **Financial Services Committee Passes Bills to Protect Consumers**

*"The House Financial Services Committee, led by Chairwoman Maxine Waters (D-CA), passed eight bills to strengthen oversight of our nation's affordable housing and address the housing and homeless crises, put consumers in the driver's seat to shape their financial futures and simplify bureaucratic processes to improve communities, here and around the world."*

**Why this is important:** The legislation passed the Committee either by voice vote or a majority of its members voting to approve. The legislation includes: (1) The "Credit Union Board Modernization Act" that would reduce the required number of meetings for the board of directors of highly rated federal credit unions; (2) The "Naomi Schwartz Safe Parking Act of 2022" would allow communities to use HUD

Emergency Solution Grant funding for safe parking facilities where individuals experiencing homelessness can legally and safely park their cars overnight and be connected to supportive services and permanent housing; (3) The "Studying Barriers to Housing Act" would require the U.S. Government Accountability Office to conduct a study on barriers that make it difficult for public housing authorities to serve people experiencing homelessness through public housing and the Housing Choice Voucher program; (4) The "Housing Inspections Accountability Act of 2022" would require HUD and USDA to submit annual reports to Congress regarding failed property inspections of federally assisted housing projects, and to make such reports publicly available through a searchable online database; (5) The "Overdraft Protection Act of 2022" would strengthen protections and disclosures under the Truth In Lending Act for consumers with respect to overdraft fees; (6) The "Expanding Access to Credit through Consumer-Permissioned Data Act" would codify a provision in CFPB's regulations implementing the Equal Credit Opportunity Act to require lenders to consider additional credit information not typically included on a consumer's credit report in the evaluation of a borrower for a mortgage, upon the request of the consumer. It would also require lenders to provide each mortgage applicant a disclosure that explains the applicant's right to provide additional credit information to the lender for consideration and provides examples of additional information that may be considered; (7) The "Credit Reporting Accuracy After a Legal Name Change Act" would require the display only of a consumer's current legal name on consumer reports after the consumer requests the consumer reporting agency to do so, which would respect transgender and non-binary consumers' decisions to change their names and protect them from facing potential discriminatory effects from having their former name reflected on their credit report; and (8) The "Registration for Index-Linked Annuities Act" would require the Securities and Exchange Commission to create a new registration form for index-linked annuities to ensure that a retiree or other purchaser can make an informed decision. **To date, these legislative proposals need to survive a full House and Senate vote.** --- [Bryce J. Hunter](#)

## ***Fair Lending Compliance***

### **Fair Lending Compliance isn't Just a Bank Problem**

*"The 5 most common fair lending mistakes by credit unions & how to prevent them."*

**Why this is important:** Regulators are taking a closer look at fair lending issues in all types of financial institutions. Credit unions aren't immune from that scrutiny. Last year, the National Credit Union Administration ("NCUA") found that almost 15 percent of federal credit unions it examined had violated some consumer compliance rules. Fair lending examinations yielded violations that involved 64,000 credit union members. Those violations included things like discrimination based on marital status or age, violations of Reg E, Truth in Lending Act violations, Fair Credit Reporting Act violations, and violations related to small-dollar and Payday Alternative Loans. **At bottom, credit unions should not think they are immune from potential fair lending mistakes or scrutiny by regulators. Credit unions who want to avoid potential problems on this front can use the common violations discussed in this article to audit their own procedures and guard against potential future fair lending issues.** --- [Nicholas P. Mooney II](#)

## ***CBDC***

### **Ex-CFTC Chairman Discusses Celsius' Bankruptcy and CBDC Adoption**

*"The former Commodity Futures Trading Commission chief joined CoinDesk TV's 'First Mover' to discuss why the bankruptcy of lender Celsius Network could set legal precedent in future crypto hearings, and why the likelihood of CBDC adoption worldwide could be based on Chinese technology."*

**Why this is important:** Celsius Network is a New Jersey-based cryptocurrency lending platform that has recently filed for Chapter 11 bankruptcy protection in the Southern District of New York. Seeking to restructure and hopefully emerge from bankruptcy, the company's bankruptcy case represents a significant development as crypto gains a foothold in United States markets. The bankruptcy proceedings will be important to monitor as they may set a course for future bankruptcy cases where crypto-based assets are a large factor. This could become even more significant as support grows for the development of a central bank digital currency ("CBDC") in the United States. China has already instituted a digital yuan that is available to early adopters. There are currently about 250 million digital wallets holding digital yuan. Implementing a CBDC in the United States would certainly raise privacy concerns. The

technology underlying the digital yuan is powerful in that it can be adapted to a wide variety of devices and digital assets, but it also lends itself to increased surveillance and censorship issues. While there is no current decision of the Federal Reserve to create a CBDC in the United States, the idea is being explored and discussed. **In a recent paper titled *Money and Payments: the U.S. Dollar in the Age of Digital Transformation*, the Federal Reserve addresses the need for an open dialogue and comment among consumers, lawmakers, and regulators on the potential benefits and risks of implementing a CBDC in the United States. The initial 120-day comment period on the paper has closed, but questions are still able to be submitted by interested parties.** --- [Brian H. Richardson](#)

## ***Auto Financing & SCRA***

### **Justice Department & CFPB Repeat SCRA Stipulations for Auto Finance**

*"While servicemembers have the same rights as non-military borrowers, officials reiterated the SCRA provides additional rights to protect servicemembers and their families against unique financial challenges."*

**Why this is important:** On July 29, the Department of Justice ("DOJ") and the Consumer Financial Protection Bureau ("CFPB") issued a joint letter, reminding auto finance companies of their responsibilities to recognize important legal protections for military families under the Servicemembers Civil Relief Act ("SCRA"). While servicemembers have the same rights as nonmilitary borrowers, the SCRA provides additional rights to protect servicemembers and their families against unique financial challenges.

Recent CFPB research has shown that servicemembers carry more auto loan debt at younger ages and are more common targets of unfair and predatory practices than their civilian counterparts, largely due to the need for transportation while living on a military base. The letter is designed to ensure that auto finance companies are aware of key provisions within the SCRA, including: (1) wrongful vehicle repossessions; (2) failure to terminate vehicle leases without penalty; and (3) violations of auto loan interest rate benefits. **If you have clients that provide services or banking products to individuals who are actively serving in the military, they should be made aware of this joint letter from the DOJ and CFPB.** --- [Bryce J. Hunter](#)

## ***Reg F***

### **CFPB Releases Reg F Guidance**

*"These FAQs serve as a good checkpoint for ARM entities to take stock of their risk tolerance thresholds and audit their Reg F policies and procedures."*

**Why this is important:** Last month, the CFPB issued additional guidance on Reg F, the recent debt collection regulation, by issuing a set of Frequently Asked Questions. They address topics like Limited-Content Messages, call frequency, third-party communications, electronic communications, opt-out notices, and calling at unusual or inconvenient times or places. Most, if not all, of the information in the FAQs also can be found in Reg F; so, collectors already may have compared it to their existing policies and procedures. **However, the FAQs present an organized and streamlined resource for auditing those policies and procedures to ensure compliance with Reg F.** --- [Nicholas P. Mooney](#)  
[II](#)

## ***Critical Infrastructure Act and Breach Rule***

### **Breach Rule Would Give Credit Unions Longer Reporting Window than Banks**

*"The 72-hour time frame falls in line with the Critical Infrastructure Act that President Joe Biden signed in March, but is twice as long as the reporting window banks have had to comply with since May."*

**Why this is important:** The National Credit Union Administration ("NCUA") recently issued a proposed rule regarding a change to the reporting period for credit unions to report cybersecurity incidents. The proposed rule would require credit unions to report cybersecurity incidents to the NCUA within three days of reasonably believing a reportable cyber incident has occurred. This proposed rule change is in conformance with the Critical Infrastructure Act that was signed into law in March 2022, which requires companies to notify the Cybersecurity and Infrastructure Security Agency within 72 hours of learning of a cyberattack. **This proposed rule change is less strict than the rule instituted by the Federal Deposit Insurance Corp. ("FDIC") for covered banks. Banks regulated by the FDIC are required to report cybersecurity incidents within 36 hours of discovery. The proposed NCUA rule is likely more lenient because smaller institutions, which most credit unions are, may have difficulty complying with a 36-hour reporting period.** --- [Alexander L. Turner](#)

## **Digital Lending**

### **Is Digital Lending a Boon or Bane for Customers?**

*"Digital lending apps are known for providing easy and quick loans without much hassles, but are in news recently for all the wrong reasons like excessive service charges, high interests, defaming defaulters etc."*

**Why this is important:** This article discusses the rise of digital lenders and how the COVID-19 pandemic boosted their popularity. Those lenders offer benefits over traditional financing, like the ability to receiving funds more quickly and inclusion of those who might be excluded from traditional loans due to lack of collateral or low credit scores. However, the rise of digital lenders isn't without problems. The article discusses some of the problems borrowers encounter with those lenders, like higher than average interest rates, harassment over missed payments, and misuse of customer data. In the end, like with traditional lenders, customers' experiences with digital lenders have been both positive and negative. **Lenders who wish to offer a digital loan service should review this article and consider how they can include the positive aspects of digital lending while guarding against the negative aspects discussed.** --- [Nicholas P. Mooney II](#)

## **Overdraft Fees**

### **Delaware Court Decision Draws Attention on Overdraft Fees**

*"A recent decision in the Federal District Court in Delaware should draw the attention for banks that charge overdraft fees for overdraft protection."*

**Why this is important:** On July 19, the U.S. District Court for the District of Delaware issued a decision that should draw the attention for banks charging overdraft fees for overdraft protection. In *Miller v. Del-One Federal Credit Union*, the court's opinion: (1) validated a fraud claim based on allegedly inaccurate disclosure of overdraft policies (rather than a simple breach of contract); and (2) found that the official overdraft fee opt-in form included in Regulation E, promulgated under the Electronic Fund Transfers Act, and administered by the Consumer Financial Protection Bureau, must not only adapt to the institution's policies, but also state all associated overdraft procedures. The credit union had argued that its policy was accurately explained by the federally mandated overdraft opt-in form in combination with two other documents provided to customers.

**Financial institutions should be aware of the two major compliance concerns in the Court's opinion. As regulators continue to crack down on overdraft fees and compliance issues, financial institutions now face additional pressure from federal courts.** --- [Bryce J. Hunter](#)

## **FDCPA**

## **Hunstein Copycat Suit Fails Where Data Sent to Vendor is Secure**

*"Halsted filed a motion for summary judgment alleging that the consumer did not suffer an injury sufficient to allow him to maintain the action in federal court."*

**Why this is important:** Ever since the 11th Circuit issued its *Hunstein* decision that a collector violates debt collection laws when it sends debtors' information to a letter vendor in order to prepare and send letters to debtors, *Hunstein* copycat cases have been filed across the country. One court recently distinguished a case before it from the rationale of *Hunstein*. In *Tukin v. Halsted Financial Services*, an Illinois federal court found that a collector's evidence that (1) the letter vendor did not analyze the information the collector sent, (2) that information was secure and encrypted at all times, and (3) no individual had access to the unencrypted data was sufficient for the court to rule that there was no disclosure to the vendor of the plaintiff's information. Accordingly, the court ruled that the case was distinguishable from *Hunstein*, and it granted summary judgment in favor of the collector. **Collectors should review this article and the *Halsted* decision to ensure their policies and procedures are sufficient to distinguish them from *Hunstein* if they ever are the target of a similar lawsuit.** --- [Nicholas P. Mooney II](#)

## ***U.S. House of Representatives and U.S. Senate Committee Meetings***

We have included a listing of pertinent U.S. House and Senate Committee meetings for your reference.

These are events scheduled at press time for the months of August and September 2022.

### **U.S. House Committee on Financial Services**

- No August or September events scheduled at this time.

### **U.S. House Committee on Small Business**

- No August or September events scheduled at this time.

### **U.S. Senate Committee on Banking, Housing, and Urban Affairs**

- No August or September events scheduled at this time.

### **U.S. Senate Committee on Finance**

- September 7: Open Executive Session to Consider Favorably Reporting the Nomination of Douglas J. McKalip, of the District of Columbia, to be Chief Agricultural Negotiator, Office of the United States Trade Representative, with the Rank of Ambassador

### **U.S. Senate Committee on Small Business & Entrepreneurship**

- No August or September events are scheduled at this time.



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. The views and opinions expressed in this e-newsletter are those of the authors and do not necessarily reflect the views or positions of Spilman Thomas & Battle, PLLC.

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