SHARE:

Join Our Email List

View as Webpage

Volume 3, Issue 1

Welcome!

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

In this first issue of our third year of publishing, we look at student loan forgiveness, landlords and mortgage services and the SCRA, an update on federal student loans, issues with BNPL, and the trend (or not) toward digital closings.

As always, we hope you enjoy reading. Please take a few moments to fill out our survey at the bottom of this newsletter. Is this information valuable? Do you like a monthly publishing schedule? Are there any topics you would like discussed or changes you would like to see? Your input is important and we value your opinion tremendously.

Thanks for reading.

Angela L. Beblo, Co-editor of *All Consuming*

Nicholas P. Mooney II, Co-editor of *All Consuming*

Bruce M. Jacobs, Chair, Spilman Consumer Finance Litigation Practice Group

---

Student Loan Forgiveness Updates: New Changes Coming in 2022 for Public Service Borrowers

"Borrowers on track for Public Service Loan Forgiveness, a federal student loan forgiveness program for people devoted to careers in nonprofit and public organizations, will continue to see significant changes this year."

Why this is important: Federal student loan repayments for all borrowers -- regardless of whether they experienced a loss of employment -- were paused during the pandemic, and the Biden administration recently extended the pause in payments until May 1, 2022. However, as this article spotlights, many feel that what the program needs are more fundamental reforms. The loan program has proven to be complicated for borrowers to navigate, and several large student loan servicers have left the program, evidencing that lenders are not happy either. Many are concerned that even borrowers who historically made their timely monthly student loan payments may have difficultly transitioning back into that practice following the pause in payments, and a borrower's default on his or her federal student loan payment may quickly result in garnishment of wages, loss of tax refunds and higher fees. **Accordingly, this article suggests that perhaps this additional 90-day "pause" is best spent by the Biden administration taking a serious look at how the program itself can be restructured to make improvements to benefit both borrowers and lenders.** --- Lori D. Thompson

---

Justice Department and CFPB Put Landlords and Mortgage Servicers on Notice About Servicemembers' and Veterans' Rights

"'The illegal foreclosures of military families in the last crisis was one of the financial industry's worst failures,' said Director Rohit Chopra of CFPB."

Why this is important: The Servicemembers Civil Relief Act ("SCRA"), originally enacted in 1940 and amended over 19 times, is enforced by the Civil Rights Division of the Department of Justice ("DOJ"). The DOJ has a rich history of very active enforcement of SCRA rights, filing enforcement actions or consent decrees in matters involving only a single covered military member. In late December 2021, the DOJ and Consumer Financial Protection Bureau ("CFPB"), the agency tasked with oversight of enforcement of consumer financial protection laws, issued statements "regarding important legal housing protections for military families." These statements were addressed to landlords and mortgage servicers reminding them of the special, additional protections afforded to active military personnel under the SCRA that apply in addition to standard consumer protection laws. "During the COVID-19 pandemic, roughly 7.6 million homeowners entered forbearance. While the majority have resumed their regular mortgage payments, approximately 1.25 million borrowers – many of whom are military borrowers – remain in forbearance programs that will expire at the end of the year." The DOJ and the CFPB placed landlords, servicers, and those receiving the letters on notice that the agencies intend to carefully scrutinize their actions for individuals covered by the SCRA as the agencies are actively reviewing housing and mortgage servicing complaints made by military members. **Landlords and servicers should review the requirements of the SCRA and seek advice to ensure that any actions comply with the SCRA's additional protections for active service personnel.** --- Angela L. Beblo

---

Federal Student Loan Repayments Stay Paused. What's Next?

"Last month, the Biden administration announced a 90-day extension on a roughly two-year, pandemic-long pause on borrowers repaying their federal student loans."

Why this is important: Since its creation in 2007, the Public Service Loan Forgiveness ("PSLF") program has provided a path for those college graduates who work full-time in public service for a qualifying nonprofit or public employer and make 120 monthly payments pursuant to a qualifying repayment plan to receive student loan forgiveness. The complexities of the program make crossing the finish line on loan forgiveness a considerable accomplishment – one that only approximately 2,500 borrowers have achieved. This article notes the changes that are coming in 2022. For example, loan payments that were paused during the pandemic and set to restart at the end of January 2022, now will restart May 1, 2022. The loan servicer designated for individuals in the program is changing to Mohela. Perhaps most importantly, the Limited PSLF Waiver enacted by the Biden administration in October 2021 that markedly expanded the categories of loans included within the program resulting in over 40,000 borrowers receiving $2.4 billion in loan forgiveness will continue until October 31, 2022. **It is important to stay tuned as the Biden administration attempts to expand further the number of borrowers who are eligible for loan forgiveness.** --- Lori D. Thompson

---

BNPL: Entering Mainstream Lending with Credit Bureau Reporting

"BNPL may not be the best thing that happened to lending, but credit bureau reporting for BNPL consumer loans may be the best thing that happened to Buy Now, Pay Later lending."

Why this is important: "Buy Now Pay Later" plans are popping up as a checkout option for many online retailers. Most allow a consumer to split up a large payment into several smaller payments, while still receiving the merchandise after the first payment. While a BNPL plan is useful for those who do not have the cash to make a one-time large payment, or do not have (or do not want to use) traditional credit options, BNPL plans have faced scrutiny for not reporting to credit bureaus -- until now. The three major credit bureaus -- Experian, TransUnion, and Equifax -- are all working toward implementing credit reporting for BNPL loans. **Although consumers who make on-time payments using BNPL should benefit from this new credit reporting, as with any loan, opening multiple BNPL plans and missing payments on those open plans could negatively affect a consumer's credit report and give rise to a new wave of consumer litigation.** --- Tai Shadrick Kluemper

---

CFPB Opens Investigation into Buy Now, Pay Later Credit Programs

"Bureau seeks to ensure credit program not bringing harm to consumers."

Why this is important: On December 16, 2021, the Consumer Financial Protection Bureau ("CFPB") issued market monitoring orders to Affirm, Afterpay, Klarna, Pay Pal, and Zip, companies offering "buy now, pay later" ("BNPL") credit. Buy now, pay later credit is a type of deferred payment option that generally allows the consumer to split a purchase into smaller installments, and merchants are adopting BNPL programs under agreements to charge the BNPL companies typically 3-6 percent of the purchase price. BNPL use has spiked during the COVID-19 pandemic and the CFPB seeks to collect information necessary to evaluate to the risks and benefits of these loans. Notably, the CFPB is concerned about accumulating debt, regulatory arbitrage, and data harvesting. The BNPL companies are required to provide their responses to the orders, including information related to their BNPL products, their practices relating to servicing, credit reporting, and debt collection, user demographics, user disclosures, and purposes associated with data harvesting, by March 1, 2022. **The CFPB expects to publish the aggregated findings and insights about BNPL industry practices and risks.** --- Victoria L. Creta

---

What's Holding the Industry Back from Broad-Scale Digital Closing Adoption?

"One of the biggest challenges lenders face is that eNotes require a great deal of change management."

Why this is important: The mortgage industry has experienced steady progress in making digital closings a reality. To date, approximately 10 percent of loan closings are digitized, but that number has tripled in recent years. As a result, closings today fall on a spectrum of digitization, from traditional wet-ink closings to fully digital closings where all closing documents are electronically signed (eSigned) and electronically notarized (eNotarization). In the middle of this spectrum are hybrid digital closings, where some closing documents are eSigned and others are wet-ink signed. The term "eMortgage" refers to a hybrid or full digital closing where the promissory note is electronically signed (eNote).

Technology adoption and upgrades are adjustments lenders will need to make, but change management is the largest stumbling block. Digitized closings impact delivery and service processes. Traditional lenders will need to understand, incorporate, and coordinate execution of new forms, agreements, and testing required for approvals without compromising compliance.

It's inevitable that digital closings will one day become the norm, and most likely sooner rather than later. **Parties involved in the real estate transaction, including lenders and settlement agents, will experience significant benefits from digital closings, including reduced transaction costs, greater efficiencies, expedited turn times and improved consumer satisfaction.** --- Bryce J. Hunter

---

Please Fill Out Our Survey!

This survey will help us improve this publication to provide you timely and helpful information. If you have a moment, please let us know how we are doing.

Click **here** to take the survey.

Share Tweet Share