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## **Biden Makes It Easier for Student Loan Borrowers to Get a Mortgage**

*"The new rule supported by the Biden administration proposed that FHA lenders drop the requirement to calculate student loan payments at 1%."*

**Why this is important:** As part of the application and approval process for mortgages, lenders review the overall debt burden of an applicant (or applicants). Lending rules for the Federal Housing Authority required that the debt load – referred to as the debt-to-income ratio – total 43 percent or less of monthly income. The former rules also required specific calculations for student loans as part of the debt-to-income ratio, regardless of the actual monthly payment the borrower was making on their student loans. This calculation hurt applicants with high student loan balances. The Biden administration has proposed that the calculation use the actual student loan payment to determine mortgage loan eligibility, and experts believe this will make it possible for more individuals to qualify for FHA loans. **Companies offering FHA-backed loans should pay attention to any guidance issued by the FHA with respect to rule changes to DTI calculations and particularly as they relate to the impact of student loans on those calculations.** --- [Angela L. Beblo](#)

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## **Credit Scores are Increasingly Including Things Like Rent and Utilities—Here's What That Means for You**

*"Including alternative data in lending decisions could potentially open up credit opportunities to the tens of millions of Americans with thin to nonexistent credit histories."*

**Why this is important:** Although credit scores are used by a variety of financial institutions to determine whether (and at what cost) to loan an individual money, they rarely consider an individual's timely rent and utility payments in assessing financial stability. The absence of consideration for payments made for these basic necessities often times means lower income individuals lack the fundamentals needed to establish any credit, let alone good credit. Using a wider variety of data sources to consider an individual's credit worthiness may assist lower income individuals in establishing credit history at an earlier age. **While we are unlikely to see a complete elimination of traditional credit scoring any time soon, financial institutions should be mindful of alternative ways to**

evaluate an individual's credit worthiness and consider adopting alternative credit scoring where appropriate. --- [Tai Shadrick Kluemper](#)

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## **Your Car Will Pay for Gas and Parking So You Don't Have To**

*"Once everything is configured, the system would use payment information to automatically connect to the bank's payment network and take care of charges for your most common activities while driving, such as refueling, parking, and even insurance and maintenance."*

**Why this is important:** Blackberry, the one-time leader in smart phones, is betting on the connected car payment market and partnering with Car IQ to build the technology. Their plan provides for each vehicle to have its own digital fingerprint and digital wallet that would be in charge of payments for the vehicle. The wallet would pay for the most common charges associated with operating the vehicle, like parking, refueling, tolls, maintenance, and insurance without the driver having to initiate those transactions. The article discusses how fleet owners stand to benefit from the system, as it could eliminate the need for reimbursement to drivers for out-of-pocket costs. In addition, the convenience of this system would be a benefit to all drivers. **If Blackberry's estimate is correct that the connected car payment market will exceed \$623 billion by 2030, it stands to benefit, too.** --- [Nicholas P. Mooney II](#)

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## **Biden Wants 'Targeted' Student Loan Cancellation — But What Does That Mean?**

*"Student loan legal scholars and advocacy groups have argued that the President does have the authority under federal law to unilaterally cancel student loan debt on a mass scale, but others have disagreed, and the theory has never been tested."*

**Why this is important:** Several student loan legal experts have argued that Biden has broad authority under the Higher Education Act ("HEA") to cancel student debt using executive action. They also point to the HEROES Act as a potential authority during times of emergencies, such as a pandemic, that both former President Trump and Biden relied on for authority to use executive action to suspend billions of dollars in student loan interest after the original CARES Act payment pause expired. The administration has been reviewing the legality of broad student loan cancellation using executive, regulatory, and legislative action. Biden has expressed concern about whether he would have sufficient legal authority to act and seems to be considering a more "targeted" approach to student loan forgiveness — a word that has not been clearly defined. **Based on the administration's actions on student loan debt to date, even a so-called "targeted" approach to student debt cancellation could result in widespread relief for millions of borrowers. However, it could also fall well short of what advocates hope the administration might do and could result in years of litigation.** --- [Bryce J. Hunter](#)

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## **Federal Court Holds Pre-Recorded Recruitment Calls a Violation of TCPA**

*"The rules for these two types of phones are different, and the TCPA further distinguishes calls made with an informational intent from those made to advertise or for telemarketing."*

**Why this is important:** Employers have been complaining about workforce shortages for months, and some of them have been trying creative ways to lure potential employees, like offering sign-on bonuses. One employer's creativity recently landed it in federal court. The employer made calls and left pre-recorded messages on people's voicemails to discuss potential job opportunities. At least one of the people receiving these voicemails saw the opportunity, but it didn't result in a new job. The individual sued the employer in federal court under the Telephone Consumer Protection Act that, broadly speaking, limits the instances in which pre-recorded messages can be left when calling residential and cell phones. The employer moved to dismiss the lawsuit, and the court agreed. However, the plaintiff appealed, and the appeals court reinstated the lawsuit. It ruled that the TCPA is broad enough to apply to the employer's calls to the individual's cell phone. **The lesson here is that a seemingly innocuous act of leaving a message for someone to see if he or she is interested in a job could lead to**

**potential liability in a federal court lawsuit that (although not discussed in the article) may be asserted as a class action.** --- [Nicholas P. Mooney II](#)

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## **PPP Loan Investigations: What's on the Horizon for Banks?**

*"This will take the form of government and whistleblower investigations, including False Claims Act claims related to loans that went to companies (and fraudsters) that should not have received these loans."*

**Why this is important:** The banking industry has been expecting the second shoe to fall since 2020. Banks were heavily encouraged by the federal government to be active and even proactive in making PPP loans during the pandemic. Now, the regulatory focus seems to be turning to finding and prosecuting fraudulent and improper PPP loans. Allegations may arise through government and whistleblower investigations generated in response to False Claims Act claims and through class actions from companies denied such loans. Creative plaintiffs' attorneys will develop new theories for litigation. Financial institutions already are receiving subpoenas for this information. The fear is that financial institutions, who responded to government and local need, now find themselves in a tactical box. Either: (i) They expanded their borrower base without usual confirmation/investigation, in response to the "need for speed." And, that now leaves them open to regulatory reprimand. OR (ii) They limited their borrowers to current customers, trying to continue to "know the customer," as regulations generally require. In hindsight, that now may appear discriminatory. **This article proposes actions that financial institutions can take now, in anticipation of this regulatory push.** --- [Hugh B. Wellons](#)

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## **Virginia Foreclosures of Owner Occupied Real Estate Get More Complicated**

*"The Virginia General Assembly in 2021 passed (and the Governor signed) a new law affecting foreclosures of real property and manufactured homes that are owner-occupied."*

**Why this is important:** The new Act provides for various protections for homeowners and tenants of manufactured home parks (i.e., owner-occupied residential real estate) by increasing the notice period for a foreclosure sale from 14 days to 60 days, requiring an affidavit from the party sending the notice and including in such notice information regarding housing counseling. The 60-day notice requirement, the disclosure of payment status (in more detail below), and affidavit requirement took effect July 1, 2021. The provisions related to the specifics of the notice that is required before a trustee can sell a property in a foreclosure sale have a delayed effective date of October 1, 2021. The notice period of at least 14 days remains in effect for real property that is not owner-occupied residential real property.

In addition to the change from 14-days notice to 60-days notice related to owner-occupied residential real estate, also effective July 1, 2021, the notice to the owner/borrower will need to include:

1. The date of the last payment received and the amount received;
2. The total amount of principal, interest, costs, and fees due in arrears; and
3. The remaining total principal balance due on the instrument (i.e., note).

**Lenders, trustees, and other firms foreclosing on owner-occupied residential real property must be aware of and comply with these changes. Failure to do so will result in the foreclosure sale being set aside and increase potential liability for wrongful foreclosure.** --- [Bryce J. Hunter](#)

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## **Featured Spilman Attorney Profile**



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Mark Clark is a Counsel attorney in our Charleston office. Mark's primary areas of legal experience during his 40 years of practice include oil and gas law and regulation, government

relations, eminent domain, environmental law, banking and finance, bankruptcy, consumer protection, and real estate.

He has broad experience representing lenders in commercial financing transactions for projects in West Virginia, including preparation of loan documents; representing financial institutions in connection with interpretation and application of Federal Reserve Regulations E and CC, and NACHA Rules and Guidelines; representing financial institutions in connection with consumer credit protection law litigation; and assisting clients with matters relating to appeals to the Supreme Court of Appeals of West Virginia, bankruptcy, litigation, consumer protection, and UCC issues, collection and replevin, energy and real estate.

Mark has been selected by his peers for inclusion in The Best Lawyers in America.

He is admitted to the West Virginia State Bar, the U.S. 5th and D.C. Circuit Courts of Appeal, and the U.S. District Court for the Southern District of West Virginia.

He is a graduate of West Liberty State College and earned his J.D. from West Virginia University College of Law.

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Thank you for reading this issue of *All Consuming!* We hope you found the information timely and useful. If you have topics you would like us to cover or would like to add someone to our distribution list, please [email us](#).

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