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Welcome!

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

The Pennsylvania Bar Association is hosting their Civil Litigation Section Annual Retreat on April 29-May 1 in Gettysburg, PA. We are a sponsor and will be in attendance. We would love to see you there. Click [here](#) to learn more.

Please feel free to contact us about our opinions and thoughts. We welcome your insight.

Thanks for reading.

[Angela L. Beblo](#), Co-editor of *All Consuming*

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Biden Administration Extends Pause on Federal Student Loan Repayments Through August

"The repayment freeze, which has been in place since the beginning of the pandemic, had been scheduled to expire on May 1."

Why this is important: At the beginning of the pandemic in March 2020, the CARES Act included a pause for all federal student loans. That pause has been extended several times by former President Trump during his remaining term and by President Biden since he assumed the presidency. "Borrower balances have effectively been frozen for more than two years, with no payments required on most federal student loans since March 2020. During this time, interest has stopped adding up and collections on defaulted debt have been on hold." The pause on repayment has saved some borrowers more than \$5,000 in interest payments and cost the government nearly \$4 billion a month according to some

estimates. The most recent pause extension was set to expire May 1. However, the administration has extended the payment pause for federal student loan repayment once again. Now, repayment will be delayed until August 31. In a recent statement, "the Department of Education said that it will allow all borrowers with paused loans to receive a 'fresh start' on repayment by eliminating the impact of delinquency and default and allowing them to reenter repayment in good standing." **The delay allows servicers, some of whom have had numerous student loans transferred for servicing due to changing government contracts, more time to prepare for the restarting of payments and to process any borrower requests relating to alternative payment arrangements.** --- [Angela L. Beblo](#)

Yellen Sets Stage for Biden's Executive Order Implementation on Digital Currency Issues

"Regulatory frameworks should be designed to support responsible innovation while managing risks."

Why this is important: On April 7 in a speech delivered at American University in Washington, D.C., Secretary of the Treasury Janet Yellen addressed the Biden administration's forthcoming legislative approach to digital assets (starting with the Executive Order issued on March 9) as well as the digitization of the American economy, which Yellen evaluated through the lens of five lessons she suggests are often implicated by emerging technologies generally: (1) responsible innovation; (2) appropriate guardrails; (3) monetary sovereignty; (4) technological neutrality; and (5) interagency and international collaboration. While some lawmakers want regulators to crack down on the industry due to volatility in crypto asset valuations, causing some market worries about onerous new rules, the Biden administration's message on supporting responsible innovation has assuaged some of those fears. Yellen also said that wherever possible crypto regulations should be "tech neutral" and guided by risks associated with services provided to households and businesses, not the underlying technology.

Biden's Executive Order requires the Treasury and the Commerce Departments and other agencies to prepare reports on "the future of money" and the role cryptocurrencies will play. **The Executive Order is a significant step in acknowledging that cryptocurrencies are not merely a topic of the future and are instead here to stay.** --- [Bryce J. Hunter](#)

FCC Chairwoman Suggests More Authority from Congress is Needed to Fight Robocalls

"She specifically notes the Supreme Court's ruling in Facebook narrowing the TCPA's ATDS provisions as part of her concern."

Why this is important: As one of its top priorities, the Federal Communications Commission ("FCC") has taken aggressive action to combat illegal robocalls over the past year. However, FCC Chairwoman Jessica Rosenworcel believes additional authority may be required from Congress to address this issue. In her March 21, 2022 letter to Congress, Rosenworcel warns Congress that the Supreme Court's decision in *Facebook v. Duguid*, 592 U.S. _ (2021) could have harmful consequences for consumers. In *Duguid*, the Supreme Court rejected Duguid's argument that the definition of an "automatic telephone dialing system" in the Telephone and Consumer Protection Act of 1991 ("TCPA") encompasses any device that can "store" and "automatically dial" telephone numbers, even if the device does not "use a random or sequential number generator." Analyzing which verbs are modified by the clause "using a random number generator" in the definition, the Supreme Court unanimously held that the TCPA requires a device to have the capacity either to store or to produce a telephone number using a random or sequential number generator in order to qualify as an "automatic telephone dialing system." **Rosenworcel states this narrowed definition could lead to less consumer protection from robocalls, but it remains to be seen whether Congress will take action.** --- [Victoria L. Creta](#)

What Metaverse Real Estate Means for Mortgage Professionals

"Is there demand for 'mortgages' to buy virtual real estate in the Metaverse?"

Why this is important: Before diving into metaverse mortgages, it's important to understand some of the underlying concepts. The metaverse is a digital world that mimics our real world through virtual reality and augmented reality. Virtual real estate is being bought and sold in the metaverse. Just like a buyer is able to purchase an actual parcel of real property in our real world, a buyer can purchase a parcel of virtual property in the metaverse. Decentraland and Sandbox are examples of virtual worlds where property is on the market. As in the real world, there is a limit in the virtual world to the number of available parcels. Decentraland has 90,601 individual parcels measuring 50' x 50'. Is there demand for purchasing virtual real property? Yes. In 2021, \$500 million was spent purchasing virtual property. In January 2022, more than \$85 million was spent. It's estimated that as much as \$1 billion could be spent purchasing virtual property in 2022. With prices in the tens and hundreds of thousands of dollars, purchasers may need financing. Enter the metaverse mortgage. This article is a great resource for the nuts and bolts of underwriting a metaverse mortgage, although as it notes calling this financing a mortgage is probably incorrect in the traditional sense. The metaverse "mortgage" is in its infancy and many things are uncertain. For example, what disclosures must be given in the loan documents? Can a security interest be granted and, if so, how? Is an appraisal needed? What comparables should be used? Is title insurance needed (the article argues probably not as virtual property ownership is recorded on a blockchain)? Is hazard insurance needed? We often say that something "remains to be seen" when we're unsure how all of its particulars will play out. **However, in the case of metaverse mortgages, so many things are uncertain that it really does remain to be seen how all of these issues will come together into a coherent framework for the financing of virtual property purchases.** --- [Nicholas P. Mooney II](#)

BNPL Loans Will Soon be on Your Credit Report: Here's What You Need to Know

"The popularity of BNPL loans skyrocketed over the past year as people spent more time shopping online due to the pandemic."

Why this is important: "Buy now, pay later" ("BNPL") payment app options have dramatically increased over the past few years, particularly as more people have engaged in online shopping due to the pandemic. These options allow shoppers to split purchases into smaller, equal installments (typically 3-4 payments) instead of making a payment in a single lump sum. Most major retailers and online shopping sites now have some form of BNPL option. With the popularity of these apps becoming more prevalent, credit reporting agencies have taken notice. TransUnion, Experian, and Equifax are all in the process of including these types of accounts on consumers' credit reports. "While it may seem like a welcome change for credit bureaus to use BNPL loans in the calculation of an individual's FICO or VantageScore, these loans have the potential to reduce consumers' FICO credit scores even if they are paying them off on time. The reason: BNPL loans are typically short-term installment loans." Paying off a BNPL is closing a line of credit. TransUnion, Experian, and Equifax are all exploring how to permit the reporting of these accounts without negatively impacting consumers' credit scores. "TransUnion is attempting to address this issue by not counting all BNPL loans in the calculation of an individual's core credit score." Experian is separating BNPL information from its traditional reporting methods. Equifax is allowing BNPL providers different options for how to report the accounts – either as revolving or installment accounts. **Consumers should be cautious and make an informed decision about use of BNPL options, particularly given the impact such accounts could have on their credit score.** --- [Angela L. Beblo](#)

Borrowers Want to Reach Servicers Digitally When Help is Necessary

"Many people still believe, and very much want, a human element when it comes to servicing their mortgage, but the pandemic, acting as an unlikely ally to digitization, proved that the human element could not always be honored."

Why this is important: If you've read prior issues of *Decoded* or attended our presentations on digital payments, you know that consumers were starting to favor digital payments prior to 2019, partly led by millennials' preference to living in a digital-first world. The COVID-19 pandemic quickened the speed at which consumers wanted to digitally transact all interactions (work Zoom meetings, shopping, paying bills) and forced merchants to offer digital solutions or face being left behind. If you haven't read VISA's Back-to-Business Surveys for the past couple years, read them. They expand on the ways in which COVID-19 changed consumers' purchasing habits, including how many consumers say they will switch to shopping at another business if their preferred merchant doesn't offer digital payment solutions. This

article gives another example of consumers preferring digital solutions. Although the preference is borne out of ease as much as a fear of the pandemic, it can't be ignored. While there are people who prefer having an in-person face-to-face interaction with their mortgage servicer, a recent survey showed that more than half of homeowners reported they want an alternative to speaking directly to someone for help or questions about their mortgage. Most homeowners interact with their mortgage servicer to either obtain a pay-off statement for their loan or when they are having trouble paying. The homeowners reported in the survey that more than half of them want a digital way to address these issues without having to go through the process of speaking directly with someone. **At bottom, the article gives another example of consumers telling us how they want to conduct business in 2022. We expect mortgage servicers to continue to add this option for borrowers.** --- [Nicholas P. Mooney II](#)

Courts are Increasingly Pushing Back on Threadbare Prerecorded Call Allegations

"For many years the courts allowed any old allegation of a prerecorded voice call slip through past the pleadings stage."

Why this is important: In federal court, complaints must contain sufficient factual allegations that present plausible claims in order to survive motions to dismiss for failure to meet the pleading standards set forth in the *Iqbal/Twombly* decisions. In some instances relating to the Telephone Consumer Protection Act and other debt collection cases, courts have permitted plaintiffs to simply copy and paste statutory language into a complaint and held that such parroting was sufficient to state a claim. Indeed, as one author stated: "the Courts have been depressingly lenient on plaintiffs filing [automatic telephone dialer system ('ADTS')] cases post-Facebook. Some even suggest that threadbare ATDS allegations are sufficient." However, some federal courts have recently begun analyzing TCPA cases with a more analytical view. In a recent case in the Eastern District of Pennsylvania, "the court found that allegations of prerecorded calls and 'spoofing' were just parroting the law" without any actual facts to support the claims. **As courts turn a more critical eye towards these types of complaints, companies using prerecorded calls may have stronger grounds to challenge a complaint that simply recites the TCPA's statutory language.** --- [Angela L. Beblo](#)

28% of Patients Would Like to Use Digital or Mobile Wallets to Pay for Healthcare

"The top three payment methods consumers used to pay for their most recent healthcare are cards and checks."

Why this is important: This article goes hand-in-hand with the above article in which a recent survey showed that mortgage borrowers want a digital way to interact with their mortgage servicer. This article shows that patients want the same option when paying for healthcare. A survey of more than 2,000 patients showed that their second most common complaint about healthcare is viewing invoices, setting up payment plans, and making payments. The survey showed that patients want options in payment methods. Most patients want to use credit cards. However, many said they want the option to use a digital or mobile wallet to pay for healthcare services, although only 8 percent reported that they already have used those wallets to pay providers. It's interesting that the article doesn't report if the survey measured whether patients would consider switching healthcare providers if their current provider doesn't offer digital payment options. We're interested to see that data. In sum, we view this issue as similar to the above. Patients want options in paying for healthcare services, and some patients want digital or mobile payment options. **We expect this desire to continue, and we expect healthcare providers to offer those options to meet patient demand.** --- [Nicholas P. Mooney II](#)



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