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Volume 2, Issue 10

### **4 Ways to Boost Blockchain in Consumer Finance**

*"Plenty of executives and industry leaders in the blockchain space are looking for clarity on financial regulation."*

**Why this is important:** The recent MIT FinTech Conference discussed the barriers impeding the adoption of blockchain technology in the consumer finance space. The conference identified four reasons for the barriers. First, the lack of regulatory clarity worldwide, including the lack of consistency within the different regulatory regimes within the U.S. Second, the reluctance by retail banks to adopt this technology, due in part to "outdated infrastructure" and lack of regulatory clarity. Third, the need for increased merchants' ease with using blockchain. Fourth, a "seamless, easy-to-use experience" that makes it easier for consumers. At bottom, the conference appeared to identify major hurdles to adoption. **It's hard to imagine barriers larger than "it isn't easy for the merchants or consumers to use, and it's uncertain what law governs it." It goes without saying that before widespread adoption ever can be achieved, these issues must be resolved.** --- [Nicholas P. Mooney II](#)

### **The Mortgage Boom is Fading**

*"Yet lenders are preparing for mortgage demand to cool in the coming months, the result of rising interest rates that make refinancing less attractive for a huge chunk of borrowers."*

**Why this is important:** While houses are being sold at incredibly high rates, lenders are bracing themselves for demand to decrease in the months ahead, which likely is caused by increased interest rates. The predicted drop in mortgage volume "is setting off price wars across the industry. That is driving down profit margins and spooking the shareholders of mortgage firms that went public closer to the height of the lending boom." This trend may be good for borrowers, as lenders likely will lower rates, but the trend could create challenges for lenders. **This trend is predicted to impact wholesale mortgage lenders more than lenders who extend mortgages directly to borrowers (without needing to share profits with brokers). Lenders should conduct careful planning, and pay close attention to short-term and long-term trends in this unprecedented era.** --- [Wesley A. Shumway](#)

## **Covid Forced More Borrowers to be Late on Their Mortgages than at Any Time Since the Great Recession**

*"Black and Hispanic mortgage borrowers are twice as likely to be delinquent or in a forbearance program as White borrowers."*

**Why this is important:** During the pandemic, the CARES Act provided for forbearances for federally owned or backed mortgages. These forbearances initially allowed borrowers to receive up to two six-month extensions for their mortgage. Extensions were provided and, if borrowers qualify, some loans may obtain up to 18 months of total forbearance. The burden to request a forbearance rests with the homeowner. Many private lenders also offered pandemic-related forbearances similar to the federal government's program. As the economic recovery continues, the number of accounts in forbearance has decreased. "Home loans in forbearance peaked in early June at 8.55 percent, according to the Mortgage Bankers Association. Almost 4.3 million homeowners were then in forbearance plans. As of April 25, the number dropped to 4.47 percent of loans in forbearance, representing 2.23 million homeowners." Unfortunately, there is stark disparity in the forbearances. According to the CFPB, "Black and Hispanic homeowners were more than twice as likely as White homeowners to be behind on mortgage payments as of March" and "Black and Hispanic borrowers accounted for 33 percent of loans in forbearance and 27 percent that were delinquent." The CFPB finds these numbers highly concerning because Black and Hispanic borrowers are only collectively 18 percent of mortgage borrowers. The CFPB is concerned about the impact of these accounts when the moratorium on foreclosures end. **Servicers should pay close attention to any particular groups or areas of high delinquency for two reasons. First, the CFPB has informed borrowers to contact lenders about relief before the forbearance program ends. Second, the CFPB has issued a warning to servicers urging them to "work with borrowers and communicate the options available to avoid a wave of foreclosures."** --- [Angela L. Beblo](#)

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## **Student Loan Servicing Companies Shouldn't Exist**

*"And Rich Cordray, now running the office of Federal Student Aid, could help make that a reality."*

**Why this is important:** Former Consumer Financial Protection Bureau director Rich Cordray has been appointed chief operating officer of the office of Federal Student Aid ("FSA"), which manages the government's \$1.56 trillion student loan portfolio. Cordray led the CFPB's crackdown on consumer abuses in debt collection, student loan servicing and for-profit colleges, garnering the respect of advocates and drawing the ire of those industries. His selection signals tougher oversight of the loan servicers and enforcement of the rules governing federal student aid. Very simply, the servicers, outside for-profit companies contracted to manage federally issued loans, collect monthly payments on loans and assist borrowers with payment options, but have been criticized for abuses. **Keying off a 2014 pilot program, Cordray may look at eliminating the private middleman (the servicers) and bring student loan collections in-house. Congress would have to provide funding to fully insource direct collection, but it may be cheaper than outsourcing to private companies that take a profit, and it could pave the way for canceling student debt, another Biden administration option.** --- [Bryce J. Hunter](#)

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## **Banding Together to File an Amicus Brief in the Wake of The 11th Circuit Court of Appeals Decision**

*"This is the first time that these individual firms have joined together, acting not as individual firms or competitors, but as a powerful, collective force to promote a positive result for the overall ARM industry."*

**Why this is important:** It's common in the accounts receivable management industry for collectors to retain the services of a letter vendor to prepare and send collection letters to debtors. These vendors specialize in accurately and efficiently sending collection letters to large numbers of debtors, thereby keeping down the cost to the collector and creditor, and in turn keeping down the cost of credit to consumers. Recently, a panel of the Eleventh Circuit disrupted the entire ARM industry by ruling it is a violation of federal debt collection law to provide information about consumers to a letter vendor. The defendant in that case is seeking a rehearing before the entire Eleventh Circuit. The article reports on the efforts by a group of vendors to organize and collaborate in response to the decision, including filing an amicus curiae brief for the rehearing. **The need to collaborate could not be greater. The Eleventh**

**Circuit's decision effectively puts an end to the letter vendors being able to work in Alabama, Florida, and Georgia.** --- [Nicholas P. Mooney II](#)

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## **Cryptocurrency is Now Worth More Than All US Currency in Circulation**

*"Experts warn it could be signs of a bubble."*

**Why this is important:** The recent popularity of cryptocurrency has pushed its value to \$2.25 trillion as of May 9, 2021, which exceeds all U.S. dollars in circulation. However, in a recent financial stability report, the Federal Reserve stated that cryptocurrencies are "vulnerable to significant declines should investor risk appetite fall, progress on containing the COVID-19 virus disappoint, or the recovery stall," signaling that investors should be wary of a crypto bubble. Many others recently have issued similar warnings. The Bank of England and Elon Musk, a well-known crypto advocate, recently urged caution when investing in crypto. Perhaps coincidentally, the crypto market dropped considerably over the past week. While many factors could be contributing to the decline, investors likely also are concerned about a bubble. **Many investors seem willing to sell at the first hint of unfavorable news about crypto, as they did when the Treasury was rumored to be pursuing money launderers using crypto. Time will tell if crypto continues to rise or whether it comes crashing back down as it did in 2018.** --- [Kellen M. Shearin](#)

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## **Over a Third of US Adults Don't Use Mobile Payment Systems**

*"In the US, 37% of adults don't use mobile payment systems, but among those who do, one has a commanding lead: 39% of US adults use PayPal, while only 15% use rival Venmo and even fewer (12%) use Zelle."*

**Why this is important:** This short article touches on a topic *All Consuming* has addressed before and our group members have discussed on webinars -- the rise of digital or contactless payments as a result of the COVID-19 pandemic. The pandemic increased the speed at which people worldwide incorporated digital payments into their lives. A 2020 survey by VISA revealed that a significant number of consumers were unwilling to shop at a particular merchant unless that merchant provided an option for the consumer to pay by digital or contactless methods. **This article reports that, despite the increase in adoption of digital payments, 37 percent of U.S. adults still don't use mobile payments. We expect that number to decrease not because of the pandemic, but as people become more accustomed generally to digital commerce.** --- [Nicholas P. Mooney II](#)

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## **Cash Advance Firm to Pay \$9.8M to Settle FTC Complaint It Overcharged Small Businesses**

*"Yellowstone Capital made unauthorized bank withdrawals and misled business owners, FTC alleged."*

**Why this is important:** The Federal Trade Commission ("FTC") recently announced a \$9.8 million settlement agreement between it and Yellowstone Capital, a merchant cash advance firm. In theory, merchant cash advances are another form of financing through which a struggling small business can obtain an immediate influx of cash that it will then have to repay with significant interest. A key aspect of the merchant cash advance system is that these repayments usually are deducted automatically through ACH transfers from the small businesses' bank accounts, often on a daily or weekly basis. While this may seem straightforward, regulators like the FTC allege that in practice merchant lenders have incorporated numerous procedures of dubious or outright illegality into these merchant cash advance agreements. Common arrangements include: (1) requiring personal guarantees and signed confessions of judgment that incorporate hundreds of thousands of dollars of "attorneys' fees and costs" that were never actually incurred; (2) directly misleading small businesses about the amount of funds they will receive; (3) purportedly "purchasing" nonexistent accounts-receivable in an effort to disguise the transaction as a purchase, not a loan; and (4) conducting unauthorized withdrawals and/or continuing to withdraw funds from accounts after the merchant cash advance had been repaid in full. **After the FTC filed charges against Yellowstone and several related individuals, the FTC case was resolved for nearly \$10 million -- likely a drop in the bucket of gains that the FTC believes Yellowstone and its ilk have obtained over the years.** --- [James E. Simon](#)

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## **End of Mortgage Payment Relief Looms for 2.2M Homeowners**

*"The share of homes in forbearance continues to dwindle, but many owners haven't made a payment in 12 months or more."*

**Why this is important:** The U.S. government and many states enacted a variety of measures over more than a year to delay foreclosures as a result of the COVID-19 pandemic. More than 2 million homeowners took advantage of those measures by obtaining forbearances on their mortgages. **Those forbearances are set to end in the coming months, and close to half of those homeowners haven't made a mortgage payment in a year or more. Many of them may be subject to foreclosure if they can't resume their payments.** --- [Nicholas P. Mooney II](#)

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## **Featured Spilman Attorney Profile**



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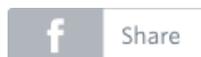
Nick Preservati is a Member in our Charleston, West Virginia office, and his practice centers around complex litigation. Nick represents corporate plaintiffs in multi-million dollar disputes.

He is AV® Distinguished™ Peer-Review Rated by Martindale-Hubbell and was nominated by his peers for inclusion in *The Best Lawyers in America*. He is a member of the Energy & Mineral Law Foundation and West Virginia Coal Association. He serves in a variety of roles for the American Bar Association including Chair of the Public Utilities, Transportation & Telecommunications Committee; Chair of the Environment, Energy & Resources Law Committee; Special Committee on the Practice of Law; Individual Rights Executive Subcommittee; and Litigation Committee Executive Subcommittee. Most recently, Nick served as Vice Chairman of the Energy and Resources Industry Group for Lex Mundi.

He is admitted to the West Virginia State Bar, Illinois State Bar, United States Court of Appeals for the Fourth Circuit, United States Court of Appeals for the Seventh Circuit, United States District Court for the Northern and Southern Districts of West Virginia, United States District Court for the Northern District of Illinois, Supreme Court of Appeals of West Virginia, and the Illinois Supreme Court.

He is a graduate of the University of Notre Dame and earned his J.D. from Loyola University Chicago School of Law.

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