

# FINANCIAL SERVICES REPORT



Quarterly News, Winter 2021

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## MOFO METRICS

129	Number of books in existence as of 2010, in millions
38	Number of books in the Library of Congress, the largest library in the world, in millions
23	Percentage of all books sold worldwide that were e-books as of 2016
30.8	Cost of most expensive book ever purchased, in millions of dollars
823	Number of words in longest sentence ever printed
50	Number of books that can be made from one tree
90	Average number of words in a novel, in thousands
998	Record of number of people balancing books on their heads at the same time



## EDITOR'S NOTE

Welcome to the Financial Services Report, holiday style! Banks and non-banks alike started early this year with additions and changes to their regulator stockings. The Senate confirmed Rohit Chopra as the new CFPB Director. Director Chopra in turn appointed Lorelei Salas to oversee supervision policy and examinations. Perhaps Director Chopra sent Ms. Salas an exam manual as a stocking stuffer. Director Chopra also appointed Eric Halperin to head the Office of Enforcement. Mr. Halperin oversaw the DOJ Civil Rights Division's fair lending programs, yet another indication of the expected focus on fair lending in the New Year.

Like our holiday decorations, Richard Cordray has reappeared just in time for the holidays with news that President Biden is considering him to replace Randal Quarles as the Fed's vice chairman of banking supervision. Cordray would serve under Fed Chair Jerome Powell, whom President Biden nominated to continue to serve in that role. Expect Senator Warren to bring out the holiday tinsel for Cordray and a lump of coal for Powell.

And while visions of sugarplums or latkes may dance in your head, we can watch to see President Biden's pick to head the OCC now that Saule Omarova has withdrawn from consideration. And get ready for emotional debate at your holiday table over whether CFPB Director Chopra and FDIC Director Gruenberg are staging a coup or taking necessary steps in announcing a review of bank merger policy without approval of FDIC Chair Jelena McWilliams.

As we wait and watch, *on Privacy, on Bureau, on Beltway and BSA/AML, on Operations, on Preemption, on TCPA and Emerging Payments!*

Until next time, have a wonderful holiday and a happy and heathy New Year, from all of us to all of you.

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# BELTWAY

## Mind Your Information Security

The OCC announced a [consent order](#) against a bank based on alleged failure to comply with the Interagency Guidelines Establishing Information Security Standards and unsafe and unsound banking practices in connection with the bank's technology and operational risk management. The consent order sets forth a number of directives, including, among other things, requirements to develop (i) a comprehensive remedial action plan, (ii) a Technology Risk Assessment Plan, (iii) an Internal Controls Plan, (iv) a plan to hire and retain sufficient staff to support the bank's remediation of IT and operational risk issues and business-as-usual activities, and (v) a Data Management and Reporting Plan. The OCC did not assess any civil money penalties, noting that the bank has begun corrective action and has committed resources to remediate the deficiencies.

*For more information, contact Nathan Taylor at [ndtaylor@mofo.com](mailto:ndtaylor@mofo.com).*

## Got Crypto (and Sanctions) on My Mind

Following [actions](#) to “disrupt[] criminal networks and virtual currency exchanges responsible for laundering ransoms” and “increas[e] incident and ransomware payment reporting to U.S. government agencies,” OFAC published a [sanctions compliance guide](#) as a resource for the virtual currency industry to promote sanctions compliance. OFAC stated that the “virtual currency industry play[s] a critical role in . . . prevent[ing] sanctioned persons . . . from exploiting virtual currencies” and made clear that sanctions compliance obligations apply equally regardless of the type of currency at issue. The guidance was issued alongside a FinCEN [report](#) tracking ransomware trends in the first half of 2021, discussed in the BSA/AML section below.

*For more information, contact Marc-Alain Galeazzi at [mgaleazzi@mofo.com](mailto:mgaleazzi@mofo.com).*

## Back to Enforcement as Usual

Federal and state financial regulators issued a [joint statement](#) on supervisory and enforcement practices regarding the Regulation X mortgage servicing rules in response to the continuing COVID-19 pandemic and the CARES Act. The joint statement lifts the temporary supervisory and enforcement flexibility mandates authorized by the [previous joint statement](#) issued in April 2020. The agencies reasoned that while consumers and mortgage servicers continue to be affected by the COVID-19 pandemic, servicers have had “sufficient time to adjust their operations,” including by “developing more robust business continuity and remote work capabilities.”

As a result, the agencies will resume their respective supervisory and enforcement authorities to address noncompliance or violations of the mortgage servicing rules under Regulation X.

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# BUREAU

## CFPB Says It's a Loan

In a recent [consent order](#) with an education finance company, the CFPB concluded that the income-share agreements (ISAs) offered by the company were loans, subject to TILA. The ISAs allow students to receive funds for tuition in exchange for a promise to make payments based on a percentage of the students' income for a fixed period of time following graduation or until a total fixed amount has been repaid, whichever occurs first. The CFPB concluded that because the ISA products allowed consumers to incur and defer payment of debt, they are credit products that must be offered in compliance with TILA, including the disclosure requirements and prohibition on prepayment penalties, as well as other federal consumer financial laws, including the prohibition on UDAAP.

*For more information, contact Maria Earley at [mearley@mofo.com](mailto:mearley@mofo.com).*

## After 10 Years of Waiting...

The CFPB has issued its long-awaited small business lending data collection [proposed rule](#). The proposed rule would implement Section 1071 of the Dodd-Frank Act, which amended the Equal Credit Opportunity Act to direct the CFPB to require financial institutions to collect and report loan data on women-owned businesses, minority-owned businesses, and small businesses in connection with applications for credit. Under the expansive proposed rule, the data collected and reported would include transaction data, such as the type of credit product, guarantees obtained, loan amount, and pricing information, as well as applicant information, such as the applicant's gross annual revenue, number of workers, length of time in business, minority-owned business status, and women-owned business status. Comments on the proposed rule are due by January 6, 2022.

*For more information, contact Jeremy Mandell at [jmandell@mofo.com](mailto:jmandell@mofo.com) or read our [Client Alert](#).*

## Report: CARD

The CFPB released its biennial [report](#) summarizing the impact of the CARD Act on the consumer credit card market. The report highlights several indicators related to consumer credit card activity during the pandemic, acknowledging that issuers responded quickly to the economic conditions caused by the pandemic, and that issuers' relief efforts "likely resulted in consumers preserving billions of dollars in liquidity following, and especially immediately following, the onset of the pandemic." According to the report, fewer consumers applied for new credit cards in 2020, and existing cardholders paid off the highest share of their credit card debt in recent years. The Bureau also found that most basic account servicing functions are now in almost all card issuers' mobile and online platforms and that consumers are increasingly engaged through those channels. Per the report, the cost of credit on revolving accounts increased in 2019, but fell to 2018 levels in 2020.

*For more information, contact Jeremy Mandell at [jmandell@mofo.com](mailto:jmandell@mofo.com) or read our [Client Alert](#).*

## The DOJ Takes Initiative on Redlining

The Department of Justice (DOJ) [announced](#) a partnership with the CFPB and the OCC regarding a new initiative to crack down on "modern-day" redlining. Through the Combatting Redlining Initiative, the agencies aim to extend the DOJ's analyses of potential redlining to include non-depository institutions that the DOJ indicated are originating the majority of mortgage loans. The initiative also will involve increased coordination among the three agencies, federal prosecutors, and state attorneys general. To kick off the new initiative, the DOJ, CFPB, OCC, and U.S. Attorney's Office for the Western District of Tennessee announced a consent order against a national bank for alleged illegal redlining.

*For more information, contact Nancy Thomas at [nthomas@mofo.com](mailto:nthomas@mofo.com) or read our [Client Alert](#).*

## Credit Report Disputes

The CFPB published a [report](#) that found that consumers living in majority Black and Hispanic neighborhoods are significantly more likely to have disputes appear on their credit reports. The CFPB recognizes in the report, though, that census tract race and ethnicity are strongly correlated with other characteristics such as credit scores that may affect the likelihood of disputes appearing on credit reports. The credit reporting analyzed for the report includes auto loan, student loan, and credit card accounts opened between 2012 and 2019. Since the start of the COVID-19 pandemic, complaints to the CFPB about credit reporting issues have spiked, with credit reporting complaints becoming the most common complaint topic.

*For more information, contact Evan Minsberg at [eminsberg@mofo.com](mailto:eminsberg@mofo.com).*

# MOBILE & EMERGING PAYMENTS

## Order Up for Payment Platforms

The CFPB [ordered](#) six large technology platforms to provide information on their payments systems concerning a wide range of topics, including how the companies use personal financial information. Specifically, [the orders](#) request information on data harvesting and monetization, access restrictions and user choice, and the prioritization of other consumer protections throughout the payments system. In [comments](#), CFPB Director Rohit Chopra said the companies' responses will help to better inform policymakers and regulators when drafting future rulemaking to promote competition and fairness. Responses to the orders are due on December 15, 2021. In addition, on November 5, 2021, the CFPB published a [request](#) for public comment regarding the inquiry into Big Tech payment platforms; the comment period subsequently was extended to December 21, 2021.

*For more information, contact Jeremy Mandell at [jmandell@mofo.com](mailto:jmandell@mofo.com).*

## Community Relations: Guidance for Fintech Relationships

The federal banking agencies released [guidance](#) for community banks considering relationships with fintech companies. The guidance covers six areas of due diligence that community banks can consider when exploring relationships with fintech companies, including the business experience and qualifications, financial condition, legal and regulatory compliance, risk management and controls, information security, and operational resilience of the fintech company. This agency guidance comes in parallel with state [attorneys general](#) and [consumer advocate](#) comment letters in response to [guidance issued](#) by the banking regulators on banks' third-party relationships. The letters urged federal banking regulators to tighten regulations surrounding financial institution partnerships with fintech firms and other third parties to limit "rent-a-bank" schemes.

*For more information, contact Trevor Salter at [tsalter@mofo.com](mailto:tsalter@mofo.com) or read our [Client Alert](#).*

## Open Banking Is in the House... Financial Services Committee

The House Financial Services Committee Task Force on Financial Technology, which was [created in 2019 to help Congress keep pace with financial innovation](#), held a hearing related to consumer ownership of financial data. During the hearing, Task Force members highlighted the authority of the CFPB to regulate consumer control of personal financial information under the Dodd-Frank Act, while recognizing that financial innovation has outpaced

current applicable laws. In light of this, the Task Force members discussed policy issues and objectives for forthcoming legislation to regulate use of financial data and provide explicit rights for consumers.

For more information, contact Trevor Salter at [tsalter@mofo.com](mailto:tsalter@mofo.com).

## New Strides in Crypto-Asset Regulation

The government effort to develop a comprehensive crypto-asset regulatory regime continues, with the release of the OCC's [Interpretive Letter 1179](#) and a [Joint Statement on Crypto-Asset Policy Sprint Initiative and Next Steps](#) from the OCC, FRB, and FDIC. The letter clarifies that before a national bank or federal savings association engages in certain crypto-asset activities, formal notice to and non-objection from the institution's supervisory office is required. This appears to be an entirely new requirement. The statement details the agencies' policy sprint on crypto-assets and the work undertaken by the agencies in conducting an analysis of crypto-asset issues. The agencies also released a roadmap of areas where the agencies intend to provide greater clarification.

For more information, contact Marc-Alain Galeazzi at [mgaleazzi@mofo.com](mailto:mgaleazzi@mofo.com) or read our [Client Alert](#).

## OPERATIONS

### So Long, LIBOR

Five federal agencies issued a [joint statement](#) to emphasize the expectation that supervised institutions will transition away from LIBOR as a reference rate and to provide guidance to institutions in managing the LIBOR transition. For example, the joint statement indicates that entering into "new contracts" that use LIBOR as a reference rate after December 31, 2021, would create safety and soundness risks. The statement encourages institutions entering into contracts on or before December 31, 2021, to use a reference rate other than LIBOR or to include fallback language that provides for use of an alternative reference rate in the contract. The joint statement also provides guidance to supervised institutions in their selection of fallback reference rates, setting expectations about what this language will include, and encouraging supervised institutions to take a comprehensive and proactive approach to the transition.

Relatedly, the House of Representatives passed the [Adjustable Interest Rate Act of 2021](#), which facilitates the transition away from LIBOR. The bill now moves to the Senate.

For more information, contact Barbara Mendelson at [bmendelson@mofo.com](mailto:bmendelson@mofo.com) or read our [Client Alert](#).

### Bucket List

In its most recent [list](#) of global systemically important banks (G-SIBs), the Financial Stability Board (FSB) moved three banks into a higher capital buffer bucket, raising the capital buffer each institution is required to hold against the assets on its balance sheet by 0.5% over last year's levels. The list does not specify the basis for the change. Two of the banks already meet the capital buffer requirements imposed by the FSB, whereas the third bank, a foreign bank not subject to the Federal Reserve's G-SIB surcharge, does not. The FSB's list of G-SIBs was otherwise consistent with last year's version, which contained a total of 30 institutions. The additional capital buffer requirements associated with this list will go into effect in 2023.

For more information, contact Henry Fields at [hfields@mofo.com](mailto:hfields@mofo.com).

## PREEMPTION

### A Usury Unicorn

We lead the Preemption Report with what, admittedly, is not a preemption case. Instead, it is a truly rare case alleging federal usury. The Fifth Circuit affirmed the district court's dismissal of a claim alleging that the defendant national bank's overdraft charges on checking accounts constituted usury under the NBA because the charges exceeded the rate allowed by the law of the national bank's home state. *Johnson v. BOKF Nat'l Assn*, 15 F.4th 356 (5th Cir. 2021). The Fifth Circuit agreed with the district court that overdraft charges are not "interest" subject to the NBA usury provision. The court followed the OCC's Interpretive Letter concluding overdraft fees are charges for non-interest deposit account services, finding the OCC's interpretation of its own regulation was entitled to *Auer* deference.

For more information, contact Nancy Thomas at [nthomas@mofo.com](mailto:nthomas@mofo.com).

### UDAP Beats FCRA Preemption

A federal court in Illinois held that a claim for violation of the Illinois UDAP statute based on an alleged misrepresentation that obtaining a COVID-19 forbearance would not affect plaintiff borrower's credit is not preempted by FCRA. *Lewis v. LoanDepot.com, LLC*, No. 20 C 7820, 2021 U.S. Dist. LEXIS 209300 (N.D. Ill. Oct. 29, 2021). The court reasoned that FCRA preempts claims regarding the "subject matter regulated" by section 1681s-2, which concerns the obligation to accurately report and correct information on a consumer's credit report. Plaintiff's claim rested on a communication with the borrower, not furnishing of information to the credit reporting agency. The court therefore found that the UDAP claim was not preempted.

For more information, contact Nancy Thomas at [nthomas@mofo.com](mailto:nthomas@mofo.com).

## Federal FCRA Beats State FCRA

Texas became the latest state to pass legislation attempting to limit reporting of certain types of medical account information to credit reporting agencies. And a federal court in Texas became the latest court to declare the state law preempted by FCRA. *CDIA v. Texas*, No. 1:19-CV-876-RP, 2021 U.S. Dist. LEXIS 212009 (W.D. Tex. Sept. 28, 2021). The court agreed with federal courts in Maine and Colorado in finding FCRA expressly preempts any state law that attempts to limit or bar reporting of types of information contained in consumer reports. Because FCRA specifies the medical debt information that can be included in consumer reports, a state law conflicting with those provisions is expressly preempted.

For more information, contact Nancy Thomas at [nthomas@mofo.com](mailto:nthomas@mofo.com).

# PRIVACY AND DATA SECURITY

## Banking Agencies Issue Computer Security Incident Rules

The federal banking agencies issued their long-awaited computer security incident rules on November 18. The rules (with which covered entities must comply by May 1, 2022) will require a “banking organization” to notify its primary federal regulator (*i.e.*, the FDIC, FRB, or OCC) of a covered security incident **no later than 36 hours** after determining that the incident occurred. The rules also will directly apply to a “bank service provider” and will require such an entity to notify its affected bank customers as soon as possible after experiencing a security incident that causes four or more hours of material service disruption or degradation of the service it provides to the customer. In particular, the rules will require notice relating to severe computer security incidents that materially disrupt or degrade a bank’s (or bank service provider’s) operations.

For more information, contact Nathan Taylor at [ndtaylor@mofo.com](mailto:ndtaylor@mofo.com) or read our [Client Alert](#).

## FTC Updates Safeguards Rule

The FTC [finalized](#) significant revisions to its Gramm-Leach-Bliley Act information security rules. These amendments will require covered financial institutions to implement specific security practices to protect consumer financial information as part of their information security programs. The final rule as amended will take effect on January 10, 2022, with the effective date of many provisions delayed until December 9, 2022. The FTC Commissioners also voted unanimously to publish a Supplemental Notice of Proposed Rulemaking, which, *if adopted*, would require financial institutions to report to

the FTC within 30 days of the discovery of any security event that results in the misuse of customer information relating to at least 1,000 consumers.

For more information, contact Nathan Taylor at [ndtaylor@mofo.com](mailto:ndtaylor@mofo.com) or read our [Client Alert](#).

## Treasury Takes Actions to Counter Ransomware

Treasury announced new sanctions and ransomware [guidance](#) in an attempt to curb the disruptive increase in ransomware attacks. The actions are the latest signal from the Biden administration that the U.S. government views such attacks as a national security threat and that it will continue to undertake a “whole-of-government effort” against that threat. OFAC [released](#) an [Updated Advisory on Potential Sanctions Risks for Facilitating Ransomware Payments](#) that (1) emphasizes that the U.S. government strongly discourages the payment of cyber ransom or extortion demands; (2) reminds companies that numerous ransomware groups and other malicious cyber actors have been sanctioned and that facilitating or making payments with a U.S. nexus to such actors violates OFAC regulations and could result in civil penalties; and (3) identifies numerous mitigating actions that victims of ransomware attacks can take to reduce the risk of an enforcement action.

For more information, contact Alex Iftimie at [aiftimie@mofo.com](mailto:aiftimie@mofo.com) or read our [Client Alert](#).

## Cybersecurity and Financial System Resilience Report

The Federal Reserve Board submitted its [annual report](#) to Congress focusing on cybersecurity, pursuant to the Consolidated Appropriations Act (2021). The Board reported on policies and procedures related to cybersecurity risk management, as they relate to the Board’s supervision and regulation of financial institutions and administration of internal information security programs. The report also detailed the Board’s activities to address cybersecurity risks, including those carried out through the supervision of financial institutions, the Board’s own program initiatives, and the Federal Reserve Banks as providers of payment and settlement services. Additionally, the report discusses current and emerging cyber threats that may pose risks to the resiliency of the financial system.

For more information, contact Nathan Taylor at [ndtaylor@mofo.com](mailto:ndtaylor@mofo.com).

## California Privacy Agency Begins Rulemaking

The California Privacy Protection Agency, established pursuant to a 2020 ballot measure, [invited preliminary comments](#) to solicit feedback as the Agency begins to update state privacy regulations. The Agency requested comment on a variety of topics, including cybersecurity audit and risk assessment obligations, automated decision making, scope of CPPA authority for audits, the consumer right to manage personal information held by businesses,

and the consumer right to opt out of the selling or sharing of personal information and to limit use and disclosure of sensitive personal information.

For more information, contact Nathan Taylor at [ndtaylor@mofo.com](mailto:ndtaylor@mofo.com).

## Names Are Not Enough

In response to concerns about false identification by background screeners, the CFPB issued an [advisory opinion](#) indicating its view that consumer reporting agencies violate the FCRA if they match consumer records solely on the basis of names. The advisory opinion affirms the obligations and requirements of consumer reporting agencies to use reasonable procedures to assure maximum possible accuracy. The use of [name-only matching procedures](#)—when a consumer reporting agency uses only first and last name to determine whether a particular item of information relates to a particular consumer, without using other personally identifying information, such as address, date of birth, or Social Security number—does not assure maximum possible accuracy of consumer information.

For more information, contact Nathan Taylor at [ndtaylor@mofo.com](mailto:ndtaylor@mofo.com).

## ARBITRATION

### Back to Arbitration You Go

An Alabama judge rejected a creative attempt by a plaintiff to confirm her arbitration award and simultaneously file a complaint in federal court. In *Easley v. WLCC II*, No. 1:21-00049, 2021 WL 4228876 (S.D. Ala. Sept. 16, 2021), the court confirmed an arbitration award in plaintiff's favor, declaring a loan agreement illegal under state law and therefore void *ab initio*. The plaintiff sought to bring a purported class action challenging the loan practices in court rather than in arbitration, arguing that the arbitrator's decision declaring the payday loan contract void should therefore render the entire agreement void, including the arbitration clause. The court disagreed, noting that arbitration agreements are generally severable, and there was no indication that the arbitration provision itself was void or the result of fraud. The court, therefore, sent the case back to arbitration.

For more information, contact Natalie Fleming Nolen at [nflemingnolen@mofo.com](mailto:nflemingnolen@mofo.com).

### Mountain of Arbitration Filing Fees

Defendants continue to try to address mass arbitration demands. In a recent case, plaintiff's counsel filed over 31,000 individual arbitrations against the defendant based on the same claims. Defendant filed suit in New York state court against the American Arbitration Association (AAA) alleging the amount AAA demanded for case management

is unreasonable and not justified by AAA's costs. The trial court denied defendant's motion seeking a preliminary injunction to limit or restrain the effect of AAA's \$10 million invoice in light of the penalties imposed for nonpayment under California law. *Uber Techs., Inc. v. AAA*, No. 655549/2021, 2021 N.Y. Misc. LEXIS 5250 (N.Y. Sup. Ct. Oct. 14, 2021). The court found that the defendant had not established that it could not afford to pay the invoice, which the court described as a natural consequence of the defendant's decision to require arbitration. The court further found that the defendant had not shown likelihood of success on the merits.

The Appellate Division then entered an order staying payment of the invoice pending defendant's appeal conditioned on defendant's payment of \$700,000 to AAA. *Uber Techs, Inc. v. AAA*, No. 2021-03555, 2021 WL 5709932 (N.Y. App. Div. Dec. 2, 2021).

For more information, contact David Fioccola at [dfioccola@mofo.com](mailto:dfioccola@mofo.com).

## TCPA

### No Barr to Non-Debt Collection TCPA Suits

The Sixth Circuit held that the Supreme Court's landmark decision in *Barr v. American Association of Political Consultants, Inc. (AAPC)*, 140 S. Ct. 2335, 2344 (2020)—which struck down an unconstitutional debt collection exemption added to the TCPA in 2015—did not free defendants from liability for placing unwanted robocalls to cell phones for the five-year period when the now-severed exception was in place. *Lindenbaum v. Realgy, LLC*, 13 F.4th 524 (6th Cir. 2021). Although no other federal court of appeals has addressed this issue yet, the Northern District of Illinois reached the same conclusion in *Marshall v. Grubhub Inc.*, No. 19-cv-3718, 2021 WL 4401496 (N.D. Ill. Sept. 27, 2021), noting that although "AAPC's endorsement of retroactive severability to preserve the general cell phone robocall ban is persuasive dicta . . . almost all of the district courts to have considered the issue post-AAPC have also upheld the robocall restriction as constitutional during that window." *Id.* at \*3.

For more information, contact David Fioccola at [dfioccola@mofo.com](mailto:dfioccola@mofo.com).

### Those Leads Are Going Nowhere

A federal court in Northern California held that a home loan refinancing business and the company it hired to generate leads were not vicariously liable for a subcontractor's supposed TCPA violations. *Schick v. Caliber Home Loans, Inc.*, Case No. 20-cv-00617-VC, 2021 WL 4166906 (N.D. Cal. Sept. 14, 2021). The court found that defendants had not given the subcontractor authority to violate the TCPA, or ratified the subcontractor's acts. The court further found that neither of the defendants

exercised sufficient control over the subcontractor to establish vicarious liability. This finding was bolstered by the defendants cutting off their relationship with the subcontractor when they became aware of customer complaints.

*For more information, contact Tiffany Cheung at [tcheung@mofo.com](mailto:tcheung@mofo.com).*

## Survey Says... No TCPA Violation

A federal court in Southern California found that a plaintiff failed to sufficiently allege that a text asking the plaintiff to provide feedback regarding his physician was sent with an auto-dialer. *Wilson v. rater8, LLC*, No. 20-cv-1515, 2021 WL 4865930 (S.D. Cal. Oct. 18, 2021). Applying the definition of an auto-dialer articulated in *Facebook, Inc. v. Duguid*, 141 S. Ct. 1163 (2021), the court determined that the fact that the claim was based only on one text message and the relationship between the parties indicated that the text message was targeted to a particular phone number rather than randomly selected by an auto-dialer. The court further determined that plaintiff had not sufficiently alleged a non-trivial economic injury under the UCL, or a breach of medical confidentiality under California law.

*For more information, contact Tiffany Cheung at [tcheung@mofo.com](mailto:tcheung@mofo.com).*

## BSA/AML

### Ransomware on the Rise

FinCEN issued a [report](#) on financial ransomware trends from BSA reports filed between January and June 2021. The report, issued pursuant to the Anti-Money Laundering Act of 2020 (AMLA), aligns with FinCEN's focus on cybercrime as one of its government-wide national security [priorities](#), as well as a larger Treasury effort to combat ransomware. In the report, FinCEN highlighted ransomware attacks as a particularly acute cybercrime concern that is rapidly increasing in number and severity. In addition, based on its analysis, open source reporting, and information from law enforcement partners, FinCEN [updated](#) its 2020 ransomware advisory. The amendments identify new trends and typologies of ransomware and associated payments, including the growing use of anonymity-enhanced cryptocurrencies and decentralized mixers.

*For more information, contact Marc-Alain Galeazzi at [mgaleazzi@mofo.com](mailto:mgaleazzi@mofo.com).*

### FinCEN Requests Input on Antiquities Trade Regulation

Under the AMLA, the BSA definition of a financial institution was amended to include a person engaged in the trade of antiquities, including an advisor, consultant, or any other person who engages as a business in the

solicitation or the sale of antiquities. The amendment responds to money launderers and terrorist financiers exploiting the antiquities trade to evade detection and launder funds through the U.S. financial system. FinCEN released an Advance Notice of Proposed Rulemaking ([ANPRM](#)), as a first step in implementing this amendment. The ANPRM follows a March 2021 FinCEN [notice](#) regarding ongoing efforts to implement antiquities trade requirements under the AMLA. The notice also provides instructions for filing related SARs.

*For more information, contact Marc-Alain Galeazzi at [mgaleazzi@mofo.com](mailto:mgaleazzi@mofo.com).*

### FinCEN Issues Notice on Online Child Sexual Exploitation Crimes

FinCEN issued a [notice](#) to raise awareness regarding an increase in online child sexual exploitation (OCSE). The notice provides financial institutions with specific SAR filing instructions and highlights OCSE-related trends. One such trend is the rising "sextortion" of minors, who are coerced or exploited into exchanging sexual images via the internet, often in exchange for money. OCSE-related crimes, such as the funding, production, or distribution of child sexual abuse materials, have also increased during the pandemic. SAR data revealed that OCSE offenders are increasingly using convertible virtual currency, peer-to-peer mobile apps, the darknet, third-party payment processors, and anonymization and encryption services to avoid detection.

*For more information, contact Marc-Alain Galeazzi at [mgaleazzi@mofo.com](mailto:mgaleazzi@mofo.com).*

This newsletter addresses recent financial services developments. Because of its generality, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.

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