



CFSI Member Exclusive

September 2016



Welcome to the September Issue of the Dispatch from D.C.!

At our Network Summit session with Gary Stein from the CFPB, we're going to be covering overdrafts, consumer data access, working across units at the Bureau, faster payments and business lending data, so look for a summary of those topics after the Network Summit, or [join us](#) in Chicago today at 3:45pm.

Also, we are working on our comment letter to the CFPB on their proposed payday lending rules – we will be sharing that letter with our network members once we have submitted it in early October.

This issue is packed with information and insights on why this matters to you.

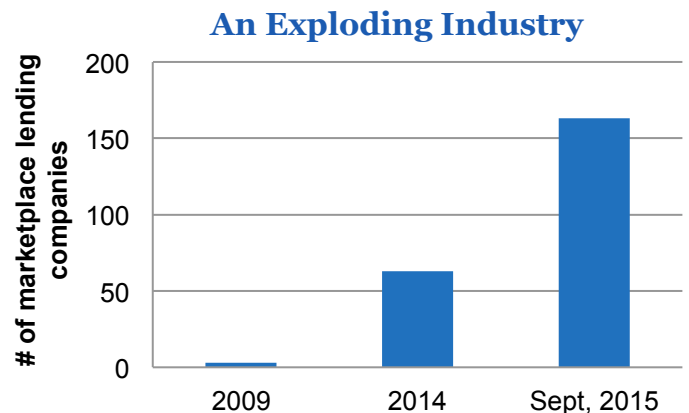
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Special thanks to Kaitlin Asrow, Nick Canfield, and Sohrab Kohli for their help with the edition. As always, we welcome your feedback and suggestions to help make the Dispatch most useful to you – remember, we're all in this together!

*Jeanne*

## Lending and 3<sup>rd</sup> Party Arrangements

The FDIC is taking a closer look at arrangements with third parties to provide consumers access to loans beyond those the financial institution can offer. They've issued [Proposed Guidance for Third-Party Lending](#) along with proposed exam procedures, which include a 12-month examination cycle. You may also want to look at the Winter 2015 issue of their [Supervisory Insights](#) (starting on page 12) to learn more about their thinking on third party and marketplace lending. The FDIC comment period closes October 27.



Identified by industry analysts with IBISWorld. [Source](#)

Additionally the U.S. District Court for the Central District of California recently ruled that a third party (in this case, Cash Call) was the “true lender,” not the firm dealing directly with the consumer (in this case, Western Sky Financial, a tribal lender). The case turned a violation of state usury laws into a federal violation of unfair, deceptive and abusive acts and practices, UDAAP.

**Why This Matters:** Both of these may have a dampening effect on new third party lending arrangements, and may cause some banks to re-think existing arrangements. If you are a third party lender or if you’re working with one, whether a marketplace lender or a balance-sheet lender, you may want to take a look at both the FDIC proposal and the Cash Call case.

## National Charters

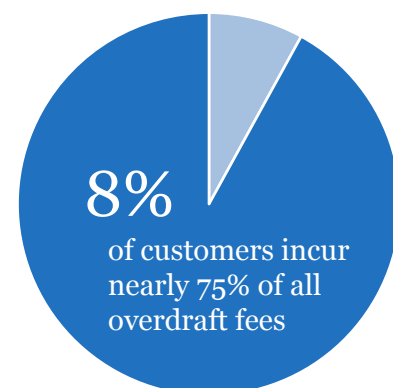
The OCC has hinted that they may be willing to consider national charters for some fintech firms. A national charter would reduce – or eliminate – the need to deal with the patchwork of state registrations and regulations. But the devil is always in the details, which will emerge as the OCC and the industry continue to chew on this issue. On September 13, Treasury announced a proposed [framework](#) for receivership for uninsured, federally-chartered national banks. This is viewed as a first step toward a national chartering discussion.

**Why This Matters:** National charters could enable fintech firms to operate more easily at a national level, and will come with a foundational set of prudential and consumer protection requirements. The OCC receivership proposal addresses the important issue of how to unwind a failed company (that doesn’t have FDIC insurance). But state regulators don’t want to lose control over businesses operating in their states. And while consumer advocates embrace a national consumer protection framework, they want states to be able to continue to build additional protections on to a federal foundation – so there will still be state-level provisions that companies need to deal with. There will be a lot of constituencies and stakeholders in this discussion -- any national charter will take a while.

## Agenda for CFPB Regulations

In addition to finalizing the prepaid rules and dealing with comments on payday loans and arbitration, the CFPB has a number of items on their pre-rule agenda including overdraft, debt collection, business lending data, and supervision of larger participants in installment loan and vehicle title loan markets. In July, the Bureau released a [report](#) on third-party debt collection operations along with their Small Business [Review Panel](#) for Debt Collector and Debt Buyer Rulemaking at a California [hearing](#). While the Bureau’s agenda will keep them busy for quite a while, it’s worth noting that other items, such as credit reporting and student loan servicing, are also on their longer-term agenda.

**Most overdraft fees are paid by a small fraction of bank customers**



Source: [CFPB Data Point](#)

Overdraft continues to be on the agenda – the Bureau has updated their 2014 Overdraft [Data Point](#) with a [look](#) at call report data. But don't look for a proposal any time soon—late 2017 might even be optimistic.

**Why This Matters:** Overdraft is fraught with details – consumers love it or hate it; it's generally not considered a loan, although it looks a lot like one; and it appears across a variety of products and services. Suffice it to say it's complicated. And then there's the whole revenue model issue for smaller institutions. Arbitration and debt collection are both big issues with lots of nuance. The CFPB's bandwidth is stretched already, so there may not be many new proposals coming out between now and the end of the year, but they are coming. You can be proactive by following the issues and reviewing your product lines and compliance protocols.

## FinTech Regulation

Outside of the OCC work on national charters, there is little substantive happening here in DC. The FinTech area is getting a lot of visibility in Washington through events from the [Electronic Transactions Association](#), work by the [Milken Institute](#), and interest from The Clearing House. In addition, some Congressional offices (e.g. McHenry from NC, Brown from OH, and Merkley from OR) are doing deeper dives into fintech. It's clear that fintech means different things to different people, from replacing legacy systems to early-stage startups. Sometimes fintech is conflated with cyber security and consumer data access. The agencies are not yet very active with respect to consumer data access issues, but they are paying close attention to cyber security issues. In December 2015, Obama signed the somewhat controversial [Cybersecurity Information Sharing Act](#). In June 2016, the FFEIC issued a [guidance statement](#) encouraging banks to review the risks associated with messaging and payment systems.

**Why This Matters:** Agencies are responding quickly to cyber security issues as prudential regulators, so staying on top of your data security systems is critical. But the agencies are still trying to figure out the rest of the fintech space and its associated issues (e.g. consumer data access). They are still in a listening and learning mode, for the most part. There can be benefits if you are the one they are listening to and learning from.

## Credit Unions

The financial services industry as a whole is paying close attention to credit unions moving into business lending – and in case you missed it, the Independent Community Bankers of America has [sued](#) the National Credit Union Administration over their February [amendments](#) to business lending rules. The NCUA is also considering a [proposal](#) to expand field-of-membership regulations. In turn, credit unions are [frustrated](#) that the CFPB did not provide a carve-out for credit unions in the Bureau's proposed payday loan rules.

**Why This Matters:** More and more, lines between non-profit financial services – credit unions and CDFIs – and for-profit services are becoming blurred, both for regulators and for consumers. There are opportunities to build financially healthy products and services, but there are also challenges to stand out in an increasingly competitive market.

## Enforcement

We would be remiss if we didn't confront this head on. The CFPB uses enforcement – of fair credit, UDAP, and all the other rules and regulations – as an important, if not primary, tool for consumer protection. In their 5<sup>th</sup> anniversary [news release](#) in July, they cited “\$11.7 billion in relief for more than 27 million harmed consumers.” There were additional enforcement actions in August and September, resulting in at least \$54 million in restitution and \$116 million in penalties, plus another \$85 million in penalties assessed by the OCC and DOJ. This may be just the tip of the iceberg, however, as consumers go to court on their own behalf. That said, a recent Supreme Court [decision](#) (Spokeo Inc. v. Robins) ruled that any would-be class action case must show “injury in fact,” not just potential injury (note the impact this may have on the Telephone Consumer Protection Act [TCPA] in terms of showing real injury). Despite the fact that the House Financial Services Committee passed the [Financial CHOICE Act](#), Congress is unlikely to reform Dodd-Frank this year; and depending on the election results, they may not tackle any CHOICE Act-type reforms in the next Congressional session.

**Why This Matters:** Management guru Tom Peters talks about “doing the right thing” and “doing things right” – and that is probably good advice for anyone in the financial services industry right now. Take some time to review your products and services as well as your processes – for regulators these days, how you do what you do is as important as what you do.

## Quick Federal Agency Scan

### CFPB

The Bureau has [expanded foreclosure protections](#) and updated their “know before you owe” rule to inform and better protect consumers. They released new proposed [regulations](#) that would require better information before debt collection, limited communications to borrowers, and easier debt disputing processes. The Bureau is also interested in [combating exploitation of elder consumers](#) through community-based efforts that have shown promise.

### Defense

The Military Lending Act (MLA) will go into effect on October 3rd this year by capping interest rates at 36% for all military personnel and their families for most credit products. However, many financial institutions are becoming increasingly [concerned](#) about verifying information via unreliable databases and the specific restrictions of the new rules. Look for more guidance this year from the DOD in addition to their recently released [clarifications](#) to the MLA.

### Education

The DOE is continuing its work on income-based repayment plans and with Treasury on its Fiscal-Federal Student aid defaulted [student loans pilot program](#). Last fall the department finalized rules on [disbursing student loan funds](#) on prepaid cards; there continue to be reports of some problems with implementing this rule.

### FCC

A continued [battle cry against robocalls](#) is heard as Chairman Wheeler looks to increase the efforts of the Robocall Strike Force. The [Telephone Consumer Protection Act](#) continues to receive attention from industry and the agency. Interesting new research is being shared on how [health problems](#) can be addressed via increased access to broadband internet.

## FDIC

The FDIC continues [encouraging](#) more “de novo” banks to apply for deposit insurance to increase access to banking and market competition in underserved communities. On top of these efforts, the agency is responding to global cyberattacks on interbank messaging and wholesale payments with [steps](#) to strengthen its own cybersecurity protocols and infrastructure. They will host their Committee on Economic Inclusion on Oct. 20, when there will be a more detailed release of their latest Un- and Underbanked [Survey](#); their 6<sup>th</sup> Annual Consumer Research [Symposium](#) is on October 28.

## Federal Financial Institutions Examination Council (FFIEC)

The FFIEC [released data](#) on small business and community development lending from 2015. The agencies have also proposed [reforms](#) to Call Report data for small financial institutions (comments due by October 14).

## Federal Reserve System

After observing some [improvements](#) in the global economy, even amid shocks such as Brexit, many are expecting an increase in interest rates sometime later this year. Yellen’s comments at the [Jackson Hole meeting](#) this August combined with Brainard’s [speech](#) on the “new normal” at the Chicago Council on Global Affairs have increased the chances of a rate hike by year end to 40%. On the research side, The Board has published an interesting study on the positive impacts of [family leave legislation](#) on wages and employment for women, and the NY Fed has released their [Quarterly Report on Household Debt & Credit](#). The St. Louis Fed’s [Center for Household Financial Stability](#) continues to produce interest work on household balance sheets and income and wealth inequality.

## Federal Trade Commission

Starting in summer 2016, the FTC began a [forum](#) series exploring emerging financial technology and its implications for consumers. The first Forum, held June 9, addressed marketplace lending. They’ve also just published a summary of work on [lead generation](#). Responding to regional issues, the FTC will be running a campaign to decrease fraudulent practices and scams in the aftermath of the [Louisiana flooding](#).

## HUD

Along with the VA, HUD continues work toward solving the [homeless veterans problem](#). HUD will also be focusing on [disaster assistance](#) for victims of the Louisiana flood crisis as the state continues to recover from its devastating flood.

## Justice

DOJ continues to keep an eye on money-service related businesses, recently turning their [attention](#) to those servicing casinos. In addition, industry will be watching how the DOJ applies the “[Yates Memo](#)” (which holds that an effective way to combat corporate misconduct is to hold individuals accountable) to the Wells Fargo situation.

## Labor

Look for efforts to increase public awareness of the [new overtime rules for salaried workers](#), which go into effect this December. Efforts to [raise the minimum wage](#) may benefit from election year campaigns.

## Office of the Comptroller of the Currency (OCC)

The OCC’s September issue of Community Development Investments focuses on [Housing Financing in Indian Country](#), including a [Native American Banking Resource Directory](#).

## Treasury Department

The Treasury is looking to [close loopholes](#) in estate and gift taxes, along with international attention on corporate [inversion](#). They will be hosting a second forum on financial inclusion in December.

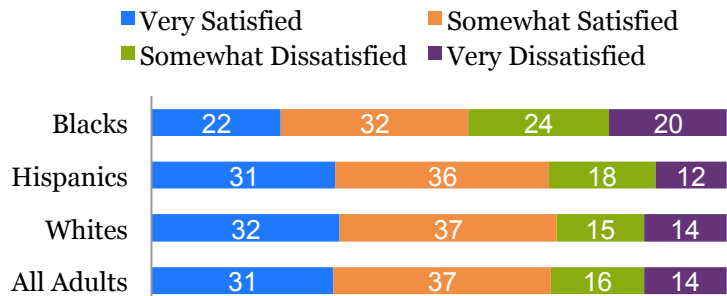


## Quick Non-profit and NGO Scan

### Racial Wealth Gap (CFED, PEW)

Recent events across the U.S. have shed light on the enormous racial disparities that exist in our country, and research by a number of entities demonstrates that this gap is starkly present in personal finance and wealth. The Corporation for Enterprise Development (CFED) has [found](#) that during the past 30 years wealth has grown among the white population at three times the rate of the black population. If this trend of growth continued, it would take the black population 228 additional years to reach the same level of prosperity that the white population experiences today. The Pew Research Center released [research](#) that further highlights this issue, and demonstrates that the financial outlooks, experiences and satisfaction levels of black communities are acutely impacted by this wealth divide. Blacks are more likely to have experienced a financial hardship, struggled to pay bills, and express significantly less satisfaction with their financial situation. Community is cited as potentially playing a role in this, as the research found that even among groups with similar income levels, blacks tended to live in overall poorer communities with less available resources. And as John Hope Bryant has said, communities with 700 FICO scores don't tend to riot.

### Blacks are less satisfied with finances



[PEW RESEARCH CENTER](#)

### Migration Patterns (Brookings)

A long-standing trend in U.S. history has been the slow convergence of income levels between poorer states and wealthier states. In recent years this convergence has dramatically slowed, which may be one influencing factor in community differences and the growing wealth gap, cited above. The Brookings Institute [argues](#) that the original convergence was driven by low-wage migration to wealthier regions, which drove down the cost of labor and incomes, allowing poorer regions to catch up. This trend has been stymied though by the growing cost of land in wealthy regions, which has decreased the incentive to migrate.

### Student Loan Gap (Urban Institute)

Student loans are an investment in the future, but they can also cause ongoing struggles with debt. The long-term impact of student loans on individuals and families also has stark racial differences. The Urban Institute recently [explored](#) the racial differences between both individual student loan debt, and debt taken on by families to finance a child or grandchild's education. They found that black individuals were more likely to have education debt, and in larger amounts, than other groups, but that black families were less likely to borrow for a family member's education. The Urban Institute highlights some possible explanations for this difference, including income levels and collateral ownership among black families, which are common requirements for parental loans.

### [Child Tax Credit \(Center for American Progress\)](#)

The United States middle class is facing challenging economic times stemming from flat incomes and rising everyday costs. The costs associated with having children are a key factor in this struggle, and the Center for American Progress [estimates](#) that approximately 70 percent of rising living costs are tied to having kids. To help combat this issue the Center has [called](#) for key enhancements to the Child Tax Credit, including eliminating a minimum earnings requirement, and tying the value of the credit to inflation.

### [The Challenges and Opportunities of Financial Education \(CFED, CFSI, Filene\)](#)

Improving financial literacy has been a long-standing tactic to improve financial outcomes for consumers, but it is only one piece of a much larger system, and many entities, including [CFSI](#), are wrestling with how to incorporate financial education into the broader lens of financial health. The Corporation for Enterprise Development (CFED) has developed a [model](#) of financial capability that combines knowledge, skills and access to resources, integrated into existing social services programs. They recently released [results](#) from this initiative that reinforce the understanding that a consumer's financial capability is complex, unique and cannot be disentangled from other life circumstances.

A concept that may be central to the growing notion of holistic financial capability is hands-on learning. CFED has also published [research](#) that highlights the promise of this approach, and as banks move away from brick and mortar locations it is essential to think about new avenues to teach financial concepts while experiencing and performing transactions. A Chicago based non-profit, [Money Locker](#) is working to address this issue by embedding a credit union in low-income schools, and after-school programs, and has partnered with the Filene Research Institute to further [explore](#) the benefits of this model.