

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

ARKANSAS FEDERAL CREDIT UNION
and THE SUMMIT FEDERAL CREDIT
UNION, on Behalf of Themselves and All
Others Similarly Situated,

Plaintiffs,

v.

HUDSON'S BAY COMPANY, SAKS
FIFTH AVENUE LLC, SAKS &
COMPANY LLC, SAKS
INCORPORATED, and LORD &
TAYLOR, LLC,

Defendants.

Case No. 19-cv-4492 (PKC)

**DECLARATION OF KARI L. SCHMIDT IN SUPPORT OF PLAINTIFFS'
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

I, Kari L. Schmidt, declare as follows:

1. I am a Project Manager at Analytics Consulting LLC ("Analytics"), a firm with offices in Chanhassen, Minnesota that provides consulting services relating to the design and implementation of class action and mass tort litigation settlements and notice programs. I am responsible for Analytics' consulting services, including the implementation of the Notice Program in this matter. The

following statements are based on my personal knowledge and information provided to me in the regular course of business by other Analytics employees working under my supervision. If called as a witness, I would testify as follows:

2. Pursuant to the Preliminary Approval Order dated July 22, 2021 (ECF No. 91), Analytics was appointed to serve as the Settlement Administrator with responsibility for Claims Administration, the Notice Program, and all other obligations of the Settlement Administrator as set forth in the Settlement.¹ I submit this Declaration in order to provide the Court and the parties to the Settlement with information regarding the execution of the Court-approved Notice Program and Claims Administration in accordance with the Settlement Agreement.

3. Analytics was responsible for providing notice to Settlement Class Members. Specifically, pursuant to the Preliminary Approval Order, the Notice was to be mailed by first class mail, postage prepaid, to the last known address of each Settlement Class Member identified through records obtained by Class Counsel through discovery conducted of third parties. Because of the nature of the Settlement Class and the third-party discovery obtained by Class Counsel, the identity of and last known address for each Settlement Class Member was available to Analytics.

¹ All terms with initial capitalization not otherwise defined in this declaration shall have the meanings ascribed to them in the Settlement Agreement and Release dated May 27, 2021 (ECF No. 86-1) (the “Settlement”).

4. Analytics received from Class Counsel files containing names and addresses of Financial Institutions determined to be members of the Settlement Class through third-party discovery that was conducted during the course of the litigation. The data was consolidated and de-duplicated and ingested into a single database, and was updated using the National Change of Address (“NCOA”) database maintained by the United States Postal Service (“USPS”);² certified via the Coding Accuracy Support System (“CASS”);³ and verified through Delivery Point Validation (“DPV”).⁴ This resulted in mailable address records for 4,736 Settlement Class Members.

5. Analytics formatted the Notice and Claim Form and caused them to be printed, personalized with the name and address of each Settlement Class Member, posted for first-class mail, postage pre-paid, and delivered on August 23, 2021 to the United States Postal Service (“USPS”) for mailing. Copies of the Notice and Claim Form are attached here as **Exhibit A** and **Exhibit B**, respectively.

² The NCOA database contains records of all permanent change of address submissions received by the USPS for the last four years. The USPS makes this data available to mailing firms, and lists submitted to it are automatically updated with any reported move based on a comparison with the person’s name and last known address.

³ Coding Accuracy Support System is a certification system used by the USPS to ensure the quality of ZIP + 4 coding systems.

⁴ Records that are ZIP + 4 coded are then sent through Delivery Point Validation to verify the address and identify Commercial Mail Receiving Agencies. DPV verifies the accuracy of addresses, and reports exactly what is wrong with incorrect addresses.

6. As of the date of this Declaration, the USPS has returned nine (9) Notices with an updated address for the Settlement Class Member (the period in which the USPS automatically forwards the notice had expired). Analytics re-mailed the Notices to these Settlement Class Members at their updated addresses. Eighteen additional Notices were returned by the USPS as undeliverable. Of these undeliverable Notices, Analytics located new addresses for 11 Settlement Class Members through a third-party commercial data source, Experian. Analytics re-mailed the Notices to those 11 Settlement Class Members at these updated addresses. Analytics was not able to locate new addresses for seven (7) Settlement Class Members; these seven (7) Notices remain undeliverable. Analytics estimates that Notice was successfully delivered to over 99% of the Class.

7. In addition to the mailed notice, published notice in the form of 10 banner advertisements appeared in the ABA Banking Journal Digital Edition beginning between August 23, 2021, and September 1, 2021. Each banner advertisement ran for a period of 30 consecutive days, ending on October 1, 2021. Copies of the published banner advertisements are attached here as **Exhibit C**.

8. Analytics established and is maintaining a toll-free phone number (1-866-989-2895) for the Settlement to provide Settlement Class Members with additional information regarding the Settlement. Automated messages were and

continue to be available to Settlement Class Members 24-hours a day, 7-days a week, with live call center representatives (agents) available during standard business hours. The toll-free number became operational on August 23, 2021. As of the date of this Declaration, Analytics has received a total of nine (9) telephone calls and five (5) Settlement Class Members requested to speak with a customer service representative for assistance, all of whom have been responded to in a timely manner.

9. Prior to mailing the Notice of Class Action Settlement, Analytics consulted with counsel for the parties to develop a format for the settlement website. The website address was cited in all published notice materials as www.HBCFinancialInstitutionSettlement.com. The website became live on August 23, 2021. By visiting the settlement website, Class Members are able to read and download key information about the settlement and submit Claim Forms electronically. As of the date of this Declaration, the website has received 336 page views from 139 unique users.

10. As an additional avenue for the Settlement Class Members to receive support, an e-mail address was designated and listed on the website as info@HBCFinancialInstitutionSettlement.com. As of the date of this Declaration,

Settlement Class Members submitted three (3) questions via email, all of which were promptly responded to and resolved.

11. The Settlement Agreement provides that Settlement Class Members may submit via the website or by mail a completed Claim Form in order to seek a monetary settlement payment by February 17, 2022. As of the date of this Declaration, Analytics has received 205 completed Claim Forms.

12. The Settlement Agreement provides Settlement Class Members the option to request exclusion from the Settlement by November 15, 2021. As of the date of this Declaration, Analytics has received no Requests for Exclusion.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 27th day of October 2021 in Chanhassen, Minnesota.



Kari L. Schmidt

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

If your financial institution issued one or more payment cards identified as having been at risk as a result of the data security incident that Hudson’s Bay Company announced in 2018, it could get a payment from a class action settlement.

A federal court authorized this notice. This is not a solicitation from a lawyer.

Your financial institution’s legal rights are affected whether you act or don’t act. Read this notice carefully.

- A Settlement has been proposed to resolve a lawsuit against Defendants Hudson’s Bay Company ULC (formerly known as Hudson’s Bay Company), Saks Fifth Avenue LLC, Saks & Company LLC, Saks Incorporated, and Lord & Taylor, LLC (collectively, “Hudson’s Bay” or “Defendants”) brought by a putative class of financial institutions as a result of a third-party criminal cyberattack on Defendants’ stores, which was announced in 2018 and affected millions of payment cards (the “Data Security Incident”).
- The lawsuit, *Arkansas Federal Credit Union and Summit Federal Credit Union v. Hudson’s Bay Company, et al.*, No. 19-cv-4492 (PKC) (S.D.N.Y.), asserts claims on behalf of a class of financial institutions related to the Data Security Incident and Hudson’s Bay’s data security practices. These claims include alleged negligence, negligence per se, violations of California and New York unfair and deceptive trade practices statutes, unjust enrichment and seek injunctive and declaratory relief. Hudson’s Bay denies these allegations, any wrongdoing, and that it is liable in any amount to the financial institutions.
- Under the Settlement, two types of claims may be made: “Fixed Payment Claims” and “Documented Out-of-Pocket Claims.” A Settlement Class Member may make one or both types of claims. The different types of claims are explained later in this notice. Hudson’s Bay will pay, on a claims-made basis, up to a maximum aggregate amount of \$3 million to the Settlement Class Members who submit approved Fixed Payment Claims and \$1 million to the Settlement Class Members who submit approved Documented Out-of-Pocket Claims (subject to a *pro rata* reduction, if necessary).
- In addition, Hudson’s Bay has agreed to adopt and/or maintain certain practices related to its data security. If approved by the Court, Hudson’s Bay also will pay Class Counsel’s reasonable attorneys’ fees and expenses, service awards up to \$3,000 to each Settlement Class Representative, and notice and settlement administration costs in an amount not to exceed \$1.1 million.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM	If eligible, your financial institution will receive a cash payment. This is the only way to get compensation from the Settlement.
EXCLUDE YOUR FINANCIAL INSTITUTION	If you ask to be excluded, you will not receive a cash payment, but you may be able to file your own lawsuit against Hudson’s Bay for the same claims. This is the only option that leaves your financial institution the right to file its own lawsuit against Hudson’s Bay and/or Defendants’ Released Persons (defined in the Settlement Agreement) for the claims that are being resolved by the Settlement. In order to be effective, a request to be excluded from the Settlement must include all information required by the Settlement.
OBJECT	Your financial institution can remain in the Settlement Class and file an objection telling the Court why you do not like the Settlement. If your objections are overruled, your financial institution will be bound by the Settlement.
DO NOTHING	If you do nothing, you will not receive any cash payment. If you do nothing, you will also forfeit your right to sue or bring any claim against Hudson’s Bay and/or Defendants’ Released Persons related to the Data Security Incident.

- These rights and options — **and the deadlines to exercise them** — are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.

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BASIC INFORMATION

1. Why did my financial institution get this notice package?

Your financial institution may have issued payment cards identified in one of the alerts (or a similar document) sent out by Visa, MasterCard, or Discover related to the Data Security Incident.

The Court authorized this notice because you have a right to know about your financial institution's rights under a proposed class action settlement before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and after objections and appeals are resolved, a settlement administrator appointed by the Court will make the cash payments that the Settlement allows.

This package explains the lawsuits, the Settlement, your financial institution's rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the United States District Court for the Southern District of New York, and the case is known as *Arkansas Federal Credit Union and Summit Federal Credit Union v. Hudson's Bay Company, et al.*, No. 19-cv-4492 (PKC) (S.D.N.Y.). The financial institutions who sued are called "Plaintiffs," and the companies they sued, Hudson's Bay Company ULC (formerly known as Hudson's Bay Company), Saks Fifth Avenue LLC, Saks & Company LLC, Saks Incorporated, and Lord & Taylor, LLC, are the "Defendants."

2. What is this lawsuit about?

The lawsuit, referred to as *Arkansas Federal Credit Union and Summit Federal Credit Union v. Hudson's Bay Company, et al.*, No. 19-cv-4492 (PKC) (S.D.N.Y.), is related to the Data Security Incident and asserts claims against Hudson's Bay for alleged negligence, negligence per se, violations of California and New York unfair and deceptive trade practices statutes, unjust enrichment, and injunctive and declaratory relief. The financial institutions seek to recover damages for the expense of payment card reissuance and amounts paid to cover fraudulent payment card charges incurred as a result of the Data Security Incident. Hudson's Bay denies the allegations and any wrongdoing, and that it is liable in any amount to the financial institutions. The Court has not decided whether Hudson's Bay has any legal liability.

3. Why is this a class action?

In a class action, one or more entities called "class representatives" sue on behalf of themselves and other entities with similar claims. All of these entities together are the "class" or "class members." One court resolves the issues for all class members, except for those who exclude themselves from the settlement class.

4. Why is there a settlement?

The Court has not decided in favor of Plaintiffs or Hudson's Bay. Instead, both sides agreed to the Settlement. The Settlement is not an admission that Hudson's Bay did something wrong, but rather a compromise to end the lawsuit. By agreeing to settle, both sides avoid the costs, risks, and uncertainties of a trial and related appeals, while providing benefits to members of the Settlement Class. The Settlement Class Representatives and the attorneys for the Settlement Class think the Settlement is best for all class members.

WHO IS PART OF THE SETTLEMENT

5. How does a financial institution know if it is part of the settlement?

Your financial institution is a member of the Settlement Class and affected by the Settlement if:

- It is a financial institution in the United States (including its Territories and the District of Columbia); and
- It issued one or more "Alerted-On Payment Card," which includes any payment card (including debit and credit cards) that was identified as having been at risk as a result of the Data Security Incident in the following alerts or similar documents issued by Visa, MasterCard, or Discover: (i) in an alert in the MasterCard series ADC004939-US-18 (e.g., ADC004939-US-18-1, ADC004939-US-18-2, ADC004939-US-18-3, ADC004939-US-18-4, and ADC004939-US-18-5); (ii) in an alert in the Visa series US-2018-0169 (e.g., US-2018-0169a-PA, US-2018-0169b-PA, US-2018-0169c-PA, US-2018-0169d-PA, US-2018-0169e-PA, US-2018-0169f-PA, US-2018-0169g-PA,

US-2018-0169h-PA, US-2018-0169i-PA, US-2018-0169j-PA, US-2018-0169k-IC, US-2018-0169l-IC, US-2018-0169m-IC, and US-2018-0169n-IC); or (iii) in a similar notice issued by Discover, the recipients of which were identified by Discover in discovery in the Action.

Specifically *excluded* from the Settlement Class are the Court and any immediate family members of the Court; directors and officers Defendants; parents and subsidiaries of Defendants; and financial institutions who timely and validly request exclusion from the Settlement Class.

6. Are there exceptions to being included?

If your financial institution excludes itself from the Settlement, it is no longer part of the Settlement Class and will no longer be eligible to receive any of the Settlement benefits. This process of excluding your financial institution is also referred to as “opting out” of the Settlement.

7. I am still not sure if my financial institution is included.

If you are still not sure whether your financial institution is included, you can ask for free help. You can call 1-866-989-2895 or visit www.HBCFinancialInstitutionSettlement.com for more information. Or you can fill out and return the Claim Form described in Question 10 to see if you qualify.

THE SETTLEMENT BENEFITS

8. What does the settlement provide?

Under the Settlement, two types of claims may be made: “Fixed Payment Claims” and “Documented Out-of-Pocket Claims.” A Settlement Class Member may make one or both types of claims. Hudson’s Bay will pay, on a claims-made basis, up to a maximum aggregate amount of \$3 million to the Settlement Class Members who submit approved Fixed Payment Claims and \$1 million to the Settlement Class Members who submit approved Documented Out-of-Pocket Claims (subject to a *pro rata* reduction, if necessary). The two types of claims are further explained in the next section.

In addition, Hudson’s Bay has agreed to adopt and/or maintain certain practices related to its data security. If approved by the Court, Hudson’s Bay also will pay Class Counsel’s reasonable attorneys’ fees and expenses, service awards up to \$3,000 to each Settlement Class Representative, and notice and settlement administration costs in an amount not to exceed \$1.1 million.

9. How much will my financial institution’s payment be?

If your financial institution issued an Alerted-On Payment Card and does not “opt out” of the Settlement, it may be eligible for a payment under the Settlement. If your financial institution files a timely and valid claim, the amount your financial institution receives will depend on the type of claim(s) filed and other variables. The two types of claims are described below:

- **Fixed Payment Claims:** All Settlement Class Members who submit a valid Claim are eligible to receive a cash payment of \$1.85 for each Alerted-On Payment Card they issued (subject to *pro rata* reduction as discussed below). Settlement Class Members making these claims must identify the total number of their Alerted-On Payment Cards on their Claim Form, but are not required to provide any other documentation of their losses.
- **Documented Out-of-Pocket Claims:** Settlement Class Members who submit a valid Claim for reimbursement of documented, unreimbursed, out-of-pocket expenses consisting of fraud reimbursement amounts paid to customers for fraudulent activity on Alerted-On Payment Cards incurred directly as a result of, and specifically associated with, the Data Security Incident may receive up to \$3,000 per Settlement Class Member. The amount received may be subject to *pro rata* reduction as discussed below. This type of Claim must be supported with documentation. Claims are subject to review and approval by the court-appointed Settlement Administrator and there is no guarantee that a Documented Out-of-Pocket Claim will be approved.
 - A Documented Out-of-Pocket Claim shall be supported by documentation that demonstrates that: (1) the fraudulent activity occurred on an Alerted-On Payment Card; and (2) the Settlement Class Member reimbursed its customer/member as a result of the fraudulent activity. Satisfactory documentation may include, but is not limited to, correspondence with customers/members, correspondence with card brands regarding fraudulent activity on

payment cards (e.g., CAMS or ADC alerts), payment card and/or bank statements, and police reports. No specific documentation shall be required, but the Settlement Administrator may reject any claims that, in the Settlement Administrator's discretion, are not substantiated with sufficient documentary evidence or are related to transactions that would require information not compromised in the Data Security Incident to complete.

Fixed Payment Claims are subject to a *pro rata* reduction if the total of all valid Fixed Payment Claims exceeds \$3,000,000. Documented Out-of-Pocket Claims are subject to a *pro rata* reduction if the total of all valid Documented Out-of-Pocket Claims exceeds \$1 million. Settlement Class Members may submit one or both types of Claims, if applicable, and may submit multiple types of Documented Out-of-Pocket Claims, if applicable, but no Settlement Class Member will receive more than \$3,000 total for Documented Out-of-Pocket Claims. Expenses typically associated with cancellation and reissuance of Alerted-On Cards, such as the costs of printing and mailing new cards, do not qualify as Documented Out-of-Pocket Claims. The Fixed Payment Claims provide compensation for any expenses associated with the cancellation and reissuance of payment cards.

HOW TO GET A PAYMENT – SUBMITTING A CLAIM FORM

10. How can my financial institution get payment?

To qualify for a payment, you must complete and submit a valid Claim Form, which is included with this Notice. You may also get this Claim Form on the internet at www.HBCFinancialInstitutionSettlement.com. All Settlement Class Members that wish to receive compensation must complete and submit a Claim Form and follow its instructions, including submitting supporting documentation as needed.

To properly complete and timely submit a Claim Form, you should read the instructions carefully, include all information required by the Claim Form, sign it, and either submit the signed Claim Form electronically through www.HBCFinancialInstitutionSettlement.com by **February 17, 2022** or mail it to the Settlement Administrator postmarked no later than **February 17, 2022** at the following address:

Hudson's Bay Company Financial Institution Data Breach Settlement
c/o Analytics Consulting LLC, Settlement Administrator
P.O. Box 2005
Chanhassen, MN 55317-2005

The Settlement Administrator will review your claim to determine its validity and the amount of your financial institution's payment.

11. When would my financial institution get its payment?

The Court will hold a hearing on December 7, 2021 to decide whether to approve the Settlement. If the Court approves the Settlement, there may be appeals. It is always uncertain whether these appeals can be resolved and resolving them takes time, perhaps years. Payments to Settlement Class Members will be made after the Settlement is finally approved and any appeals or other related proceedings have been completed as set forth in the Settlement Agreement. You may visit www.HBCFinancialInstitutionSettlement.com for updates on the progress of the Settlement. Please be patient.

12. What is my financial institution giving up to get a payment or remain in the Settlement Class?

Unless you exclude your financial institution from the Settlement, your financial institution cannot sue, or be part of any other lawsuit against, Hudson's Bay or Defendants' Released Persons (as defined in the Settlement) relating to the Data Security Incident. The specific claims your financial institution is giving up against Hudson's Bay and Defendants' Released Persons are described in the Settlement Agreement. The terms of the release are described in Section 9 of the Settlement Agreement. Read it carefully. The Settlement Agreement is available at www.HBCFinancialInstitutionSettlement.com.

If you have any questions, you can talk to the law firms listed in Question 16 for free, or you can, of course, talk to your own lawyer if you have questions about what this means.

If your financial institution wants to keep its rights to sue or continue to sue Hudson's Bay based on claims this Settlement resolves, your financial institution must take steps to exclude itself from the Settlement Class (*see* Questions 13-15).

EXCLUDING YOUR FINANCIAL INSTITUTION FROM THE SETTLEMENT**13. How can my financial institution opt out of the settlement?**

To exclude your financial institution from the Settlement, or “opt out,” you must send a letter by U.S. Mail that includes the information in the bullet points below. If you fail to include this information, the notice of exclusion will be ineffective and the Settlement Class Member will be bound by the Settlement, including all releases.

- The name of this Litigation, *Arkansas Federal Credit Union and Summit Federal Credit Union v. Hudson’s Bay Company, et al.*, No. 19-cv-4492 (PKC) (S.D.N.Y.);
- Your financial institution’s full name, address, and phone number;
- The words “Request for Exclusion” at the top of the document or a statement in the body of the document requesting exclusion from the Settlement;
- The name, address, email address, telephone number, position, and signature of the individual who is acting on behalf of the Settlement Class Member; and
- The total number of Alerted-On Payment Cards issued by your financial institution.

You must mail via first class postage prepaid United States mail the completed above-described letter, postmarked no later than **November 15, 2021**, to each of the following addresses:

Settlement Administrator

Hudson’s Bay Financial Institution
Data Breach Settlement
c/o Analytics Consulting, LLC
P.O. Box 2005
Chanhassen, MN 55317-2005
Info@HBCFinancialInstitution
Settlement.com

Settlement Class Counsel

Joseph P. Guglielmo
SCOTT+SCOTT ATTORNEYS
AT LAW LLP
230 Park Avenue, 17th Floor
New York, NY 10169
JGuglielmo@scott-scott.com

Defense Counsel

Gregory T. Parks
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103
Gregory.Parks@morganlewis.com

If you ask to be excluded, your financial institution will not get any payment as part of this Settlement, and you cannot object to this Settlement. Your financial institution will not be legally bound by anything that happens in the Settlement and related proceedings. Your financial institution may be able to sue (or continue to sue) Hudson’s Bay in the future. If you object to the Settlement and seek to exclude your financial institution, you will be deemed to have excluded your financial institution.

14. If my financial institution doesn’t opt out, can it sue Hudson’s Bay for the same thing later?

No. Unless you exclude your financial institution from the Settlement, your financial institution gives up any right to sue Hudson’s Bay and Defendants’ Released Persons (as defined in the Settlement Agreement) for the claims that this Settlement resolves. If you have a pending lawsuit, speak to your lawyer in that case immediately. Your financial institution must exclude itself from this Settlement to continue its own lawsuit. Remember, the exclusion deadline is **November 15, 2021**.

15. If my financial institution excludes itself, can it get money from this Settlement?

No. If you exclude your financial institution, do not send in a Claim Form asking for a payment.

THE LAWYERS AND FINANCIAL INSTITUTIONS REPRESENTING YOU**16. Does my financial institution have a lawyer in the case?**

Yes. The Court appointed to represent your financial institution and other members of the Settlement Class the following law firm: Scott+Scott Attorneys at Law, LLP, in New York, New York (“Class Counsel.”). You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

17. How will the lawyers and financial institutions representing the Settlement Class be paid?

Class Counsel joined with other two other law firms to initiate the lawsuit and prosecute the case on behalf of the Plaintiffs and Settlement Class Members. Class Counsel worked on a contingent basis, which means that they would receive a

fee only if the lawsuits were successful. None of the lawyers has yet received any payment for their time or expenses. If approved by the Court, Hudson’s Bay will pay Class Counsel’s reasonable attorneys’ fees and expenses, service awards to each Settlement Class Representative (discussed next), and notice and settlement administration costs in an amount not to exceed \$1.1 million, in addition to the amount made available to the Settlement Class. Class Counsel intend to ask the Court to approve an award of \$1.1 million, to be paid separately by Hudson’s Bay, and Hudson’s Bay has agreed not to object to these requests.

The Settlement Class is represented by two named financial institutions (the “Settlement Class Representatives”). In addition to the benefits that the Settlement Class Representatives will receive as members of the Settlement Class—and subject to the approval of the Court—Hudson’s Bay has agreed to pay service awards of up to a maximum of \$3,000 to each of the Settlement Class Representatives for the efforts that they have expended on behalf of the Settlement Class. The amount of the service awards approved by the Court will be paid out of the \$1.1 million Hudson’s Bay has separately agreed to pay.

The Court will determine whether to approve the amount of fees and costs and expenses requested by Class Counsel and the proposed service awards to the Settlement Class Representatives at the Final Approval Hearing scheduled for December 7, 2021. Class Counsel will file an application for fees, expenses, and service awards no later than November 1, 2021. The application will be available on the Settlement Website www.HBCFinancialInstitutionSettlement.com or you can request a copy by contacting the Settlement Administrator (*see* Question 23).

OBJECTING TO THE SETTLEMENT

18. How does my financial institution tell the Court that it does not like the Settlement?

If your financial institution is a Settlement Class Member, you can object to the Settlement if you do not think it is fair, reasonable, or adequate. You can give reasons why you think the Court should not approve it. The Court will consider your views. If you both object to the Settlement and seek to exclude your financial institution, your financial institution will be deemed to have excluded itself and your objection will be deemed null and void.

Your objection must be in writing, and must include:

- The name of this Litigation: *Arkansas Federal Credit Union and Summit Federal Credit Union v. Hudson’s Bay Company, et al.*, No. 19-cv-4492 (PKC) (S.D.N.Y.);
- Your financial institution’s full name, and the full name, address, email address, and telephone number of the person acting on its behalf; and
- All grounds for the objection stated with specificity.

Any objection must be either filed electronically with the Court or mailed to the Clerk of the Court, Class Counsel, and Hudson’s Bay counsel at the addresses set forth below. The objection must be electronically filed, or if mailed postmarked, no later than **November 15, 2021**.

Court	Settlement Class Counsel	Defense Counsel
Clerk of the Court USDC, South District of New York Daniel Patrick Moynihan United States Courthouse 500 Pearl St. New York, NY 10007-1312	Joseph P. Guglielmo SCOTT+SCOTT ATTORNEYS AT LAW LLP 230 Park Avenue, 17th Floor New York, NY 10169 JGuglielmo@scott-scott.com	Gregory T. Parks Morgan, Lewis & Bockius LLP 1701 Market Street Philadelphia, PA 19103 Gregory.Parks@morganlewis.com

19. What is the difference between objecting and excluding/opting out?

Objecting is simply telling the Court that you don’t like something about the Settlement. You can object to the benefits provided by the Settlement or other terms of the Settlement only if your financial institution stays in the Settlement Class. Excluding your financial institution or “opting out” is telling the Court that you don’t want to be included in the Settlement Class. If your financial institution excludes itself, you have no basis to object to the Settlement and related releases because the Settlement no longer affects you.

THE COURT'S FINAL APPROVAL HEARING

20. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Approval Hearing on December 7, 2021, in Courtroom 11D before Senior United States District Judge P. Kevin Castel of the United States District Court for the Southern District of New York, at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl St., New York, NY 10007-1312, or at such other time, location, and venue as the Court may Order. This hearing date and time may be moved. Please refer to the settlement website (www.HBCFinancialInstitutionSettlement.com) for notice of any changes.

By no later than November 1, 2021, Class Counsel shall file a motion for final approval of the Settlement and a motion for attorneys' fees, costs, and expenses and for Service Awards. Objectors, if any, shall file any response to Class Counsel's motions no later than November 15, 2021. By no later than November 29, 2021, responses shall be filed, if any, to any filings by objectors, and any replies in support of final approval of the Settlement and/or Class Counsel's application for attorneys' fees, costs, and expenses and for Service Awards shall be filed.

At the Final Approval Hearing, the Court will consider, among other things, whether the Settlement is fair, reasonable, and adequate; how much Plaintiffs' lawyers will receive as attorneys' fees and costs and expenses; and whether to approve service awards to the Settlement Class Representatives. If there are objections, the Court will consider them. The Court will listen to people at the hearing who file in advance a timely notice of their intention to appear (*see* Question 18). At or after the Final Approval Hearing, the Court will decide whether to approve the Settlement. There is no deadline by which the Court must make its decision.

21. Does my financial institution have to attend the hearing?

No. Class Counsel will answer questions the Court may have. You are welcome, however, to come at your own expense. If you submit an objection, you do not have to come to the Court to talk about it. As long as you submitted your objection timely and in accordance with the requirements for objecting set out of the Settlement (*see* Question 18), the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

IF YOU DO NOTHING

22. What happens if my financial institution does nothing at all?

If your financial institution is a Settlement Class Member and does nothing, it will remain a part of the Settlement Class but will not get any payments from the Settlement. And, unless your financial institution excludes itself, it will not be able to sue Hudson's Bay about the claims being resolved through this Settlement ever again. See the Settlement Agreement for more details about the releases.

GETTING MORE INFORMATION

23. How do I get more information?

This notice summarizes the Settlement. More details are in the Settlement Agreement itself. You can get a copy of the Settlement Agreement at (www.HBCFinancialInstitutionSettlement.com) or from the Settlement Administrator by calling toll-free at 1-866-989-2895.

Please do not contact the Court or Defendants with questions about the Settlement.

EXHIBIT B

Hudson's Bay Company Financial Institution Data Breach Settlement
c/o Analytics Consulting LLC, Settlement Administrator

P.O. Box 2005
Chanhassen, MN 55317-2005

CLAIM FORM

COMPLETE AND SIGN THIS FORM AND SUBMIT ONLINE NO LATER THAN **FEBRUARY 17, 2022** at:

www.HBCFinancialInstitutionSettlement.com

OR

SUBMIT BY MAIL POSTMARKED BY FEBRUARY 17, 2022 at:

Hudson's Bay Financial Institution Data Breach Settlement
c/o Analytics Consulting LLC, Settlement Administrator
P.O. Box 2005
Chanhassen, MN 55317-2005

- Use this form if your financial institution is a Settlement Class Member that is entitled to make a claim under the Settlement. For more information about who is a Settlement Class Member and details about the Settlement, see www.HBCFinancialInstitutionSettlement.com.
- To make a claim, fill out the "Settlement Class Member Information" on the next page, regardless of the type of Claim you are making.
- After this Instructions section, this form has two parts. You should fill out Part I if your financial institution wants to make a "Fixed Payment Claim" and be eligible to receive a fixed payment of \$1.85 per Alerted-On Card (subject to potential pro rata reduction depending on the amount of valid Claims). No documentation is needed for claims submitted under Part I, but you must provide the total number of Alerted-On Payment Cards issued by your financial institution.
- You should fill out Part II if your financial institution wants to make a "Documented Out-of-Pocket Claim" and be eligible to receive up to \$3,000.00 for reimbursement of unreimbursed out-of-pocket expenses consisting of fraud reimbursement amounts paid to customers for fraudulent activity on Alerted-On Payment Cards incurred directly as a result of, and specifically associated with, the Hudson's Bay Data Security Incident (subject to potential pro rata reduction depending on the amount of valid Claims). To submit a valid Documented Out-of-Pocket Claim, you need to provide documentation to support your Claim, as further explained below. Documented Out-of-Pocket Claims are subject to review and validation by the Settlement Administrator and there is no guarantee that your Documented Out-of-Pocket Claim will be approved.
- Your financial institution may file just one or both types of Claims, but if you intend to file a Documented Out-of-Pocket Claim in Part II, you must still complete Part I to verify that you are a Settlement Class Member.
- Please note that Settlement benefits will be distributed only after the Settlement is effective.

Materials to Gather to Complete a Fixed Payment Claim (Part I): The number of payment card accounts your financial institution issued that were identified as having been at risk as a result of the Data Security Incident in an alert: (i) in the MasterCard series ADC004939-US-18 (e.g., ADC004939-US-18-1, ADC004939-US-18-2, ADC004939-US-18-3, ADC004939-US-18-4, and ADC004939-US-18-5); (ii) in the Visa series US-2018-0169 (e.g., US-2018-0169a-PA, US-2018-0169b-PA, US-2018-0169c-PA, US-2018-0169d-PA, US-2018-0169e-PA, US-2018-0169f-PA, US-2018-0169g-PA, US-2018-0169h-PA, US-2018-0169i-PA, US-2018-0169j-PA, US-2018-0169k-IC, US-2018-0169l-IC, US-2018-0169m-IC, and US-2018-0169n-IC); or (iii) in a similar notice issued by Discover, the recipients of which were identified by Discover in discovery in the Action.

Materials to Gather to Complete a Documented Out-of-Pocket Claim (Part II): First, gather the same information identified immediately above and complete Part I to verify that you are a Settlement Class Member. Then, you will need to provide documentation to support the out-of-pocket expenses for which you seek reimbursement. Please read the following carefully:

PART I – FIXED PAYMENT CLAIM, CONTINUED

If you are unable to answer YES to any part of Question 1 then your financial institution is not a Settlement Class Member and is not eligible to participate in any part of this Settlement. Please do not submit a Claim Form.

SIGN THE CLAIM FORM BELOW

PART II – DOCUMENTED OUT-OF-POCKET CLAIM

COMPLETE THIS SECTION IF YOU WANT TO MAKE A DOCUMENTED OUT-OF-POCKET CLAIM. IF YOU ONLY WANT TO MAKE A FIXED PAYMENT CLAIM, YOU CAN SKIP THIS SECTION, BUT YOU STILL NEED TO SIGN YOUR CLAIM FORM BELOW.

For purposes of completing this section, please note that the maximum amount that a Settlement Class Member can receive for these claims is \$3,000. Depending on the amount of claims received, your claim may be reduced on a prorated basis.

<p>1. Were you able to state in Part I that your financial institution issued at least one Alerted-On Card? If the answer is no, your financial institution is not a Settlement Class Member. Please do not submit a Claim Form.</p>	<p><input type="checkbox"/> YES <input type="checkbox"/> NO</p>
<p>2. Did your financial institution reimburse any of its customers/members for fraudulent activity on Alerted-On Payment Cards that was directly as a result of, and specifically associated with, the Hudson’s Bay Data Security Incident and which has not previously been reimbursed to your financial institution? If so, state the total amount you reimbursed to customers/members in the box: You will need to provide documentation. Please refer to the Instructions regarding acceptable documentation for a “Documented Out-of-Pocket Claim.” Attach the supporting documentation for your claim, including a document describing what you have attached for this claim. Clearly label the documentation (e.g., with a cover sheet).</p>	<p><input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>\$ <input style="width: 100px; height: 20px;" type="text"/></p>

SIGN THE CLAIM FORM BELOW

SIGN CLAIM FORM

By submitting this Claim Form, the above-named Settlement Class Member certifies that it is eligible to make a claim in this Settlement and that the information provided in this Claim Form is true and correct. The Duly Authorized Representative of the Settlement Class Member declares under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. The above-named Settlement Class Member understands that this claim may be subject to audit, verification, and Court review and that the Settlement Administrator may require supplementation of this claim or additional information from Settlement Class Member. The representative signing this form certifies that it has authority to submit the form on behalf of the above-named Settlement Class Member.

Signature of Duly Authorized Representative of Settlement Class Member

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Date Signed

Print Name

Title

CLAIM SUBMISSION REMINDERS

- You may submit your claim by mail or through the website at www.HBCFinancialInstitutionSettlement.com.
- Please keep a copy of this claim form if submitting by mail.
- If you are making a claim in Part II, please be sure to follow the Instructions and include the required types of documentation. Clearly label and describe the documentation (e.g., with a cover sheet).
- Claims must be submitted through the website by **FEBRUARY 17, 2022** or mailed so they are postmarked by **FEBRUARY 17, 2022**.

EXHIBIT C

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Learning Pods: Not Just for Kids

ON AUGUST 23, 2021

COMMUNITY BANKING, HUMAN RESOURCES

By Julie Knudson

Virtual learning took center stage in 2020, but for one group of ABA Stonier Graduate School of Banking attendees, a virtual-only option just wasn't going to cut it. Instead, the six bankers met at a hotel in Portland, Maine, and created a homebrewed hybrid education experience. The result was a summer session that blended meaningful online education and powerful in-person collaboration—offering some insights into why it's important to make every professional development event your own.

Innovation in action

If your financial institution issued one or more payment cards identified as having been at risk as a result of the data security incident that Hudson's Bay Company announced in 2018, it could get a payment from a class action settlement. [Learn More](#)

What happens when you present a bunch of bankers with a problem? They work it out. "As a group, we figured out a solution to solve for the thing we needed," says Raymond McLanahan, chief credit officer at Landmark National Bank in Manhattan, Kansas. The group had grown close through their time in the Stonier program and maintaining their strong collaboration was vitally important amid a disrupted and disjointed year. "When Stonier decided to go virtual in the second year, everyone in this group wanted to move forward and finish, but we didn't want to finish [our third years] in a virtual environment because we recognize the value of those ongoing discussions that happened outside of the classroom," McLanahan says.

Portland offered maximum flexibility for the group's members, and the location also addressed challenges posed by a mishmash of vaccination rollout protocols. Individuals who couldn't travel far due to vaccine eligibility rules were able to stay close to home, while others who had already been vaccinated were free to make the trek. Everyone was grateful to be together and they were eager to get into the Stonier groove in their rented hotel conference room.

Just as the group surmised would happen, they quickly found that the exchange of information didn't stop when the class ended each day. Meals enjoyed together offered an opportunity to continue discussing the course material and bouncing ideas off each other, and the classroom portions of the session were amplified by the face-to-face interactions. As the group's members left their individual breakout sessions, everyone was able to build their

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knowledge by talking about and cross-referencing insight from others' breakouts. "They were unique and different for each of us," says Billi Griffeth, regional VP for retail banking at Katahdin Trust Company in Houlton, Maine. The various breakout sessions were unpacked and analyzed, with everyone learning new things from others' experiences.

Each of the group's members emphatically agrees the Stonier content was phenomenal, despite the switch to a virtual format. "They did the best they could to create breakout rooms and replicate the experience of sharing information across smaller groups," says Timothy F. Tunney, VP for commercial banking services at Farmington, Maine-based Franklin Savings Bank. However, the group quickly learned their decision to come together in person added significantly to the educational content. "There was never-ending cross talk and discussion in person," Tunney says. "It was like putting Stonier on steroids relative to the virtual experience."

Benefits for the long term

While the quality and benefits of the Stonier content remain of primary importance, the group agrees there's value in personal interactions that are difficult to sustain in a virtual-only environment. "What I'll take away most from the program are the connections and knowing that, 20 years from now if I have a question, I can call Ray and ask for his perspective," says Sarah Day, SVP and commercial loan officer at St. Mary's Credit Union in Marlborough, Massachusetts. "I have connections now with people that are more valuable to me than anything that's lectured in the class."

Janet Rosenkranz, SVP and credit officer at Greenfield Cooperative Bank in Greenfield, Mass., couldn't attend the summer session due to an unexpected, last-minute, Stonier-stopping health issue. However, she joined in on the experience through online discussions, photos shared from the Portland gathering spot and a steady flow of texts and emails. "The relationships you build in person have carried us through the last several years since the first day we met," Rosenkranz says. "They gave us some peace of mind when things like PPP happened. Being able to throw ideas at each other was invaluable." She intends to complete the Stonier program next year and the entire group agrees it will be a perfect excuse to bond again.

Learning beyond the class material

The group's hybrid Stonier experience uncovered some other lessons that may help make future virtual sessions even better. A few participants encountered technical issues early on. "If we'd been remote, they might not have been able to access the first couple days of classes," says Javier Montero, CTO at Miami-based Global Outsource Services/Datapro Organization. "Together we took care of it and got them going."

The Stonier capstone presentation, a major component of the third-year experience, was made more meaningful through in-person interactions than it may have been in an entirely remote environment. "Doing it in person, where you have an audience to give you nonverbal cues about whether you're communicating effectively, was powerful," Tunney says. "It also raised the stakes in terms of the seriousness with which I took that exercise." For some, it would be difficult to maintain that level of engagement doing the presentation at home, with a pile of unfolded laundry visible on the couch nearby or a barking dog in the background.

Stonier students are driven to fully engage with the material, but that can create a somewhat solitary experience even when sessions are face to face. "There are people who attend who don't make a lot of connections the first year for whatever reason," Griffeth says. Virtual learning environments can exacerbate this issue, but just as the group took the initiative to ensure they had an interactive summer session, Griffeth says onsite participants should also strive to overcome whatever stands in their way of getting the most out of Stonier. "If you feel isolated going through the in-person experience, Stonier has so much to offer that you need to take the initiative to branch out."

Photo above: From left, Timothy Tunney, Javier Montero, Raymond McLanahan, Billi Griffeth and Sarah Day during their self-designed in-person Stonier experience in Maine.

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JULIE KNUDSON



A freelance writer in the Pacific Northwest, Julie Knudson is a frequent contributor to the ABA Banking Journal.

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The Ghost of Thomas Jefferson

ON AUGUST 27, 2021

ABA BANKING JOURNAL, ECONOMY

By John Steele Gordon

Thomas Jefferson was born one of the richest men in the American colonies. At the age of 14, he inherited 5,000 acres and 52 slaves from his father. Later, he and his wife, Martha, inherited 11,000 acres and 135 slaves from his father-in-law, John Wayles. But as one of the largest planters in the country, he had an aristocratic disdain for those who engaged in commerce—especially banking—a business that makes money from money, rather than from what Jefferson rather ironically regarded as “honest toil.”

American banking began only in 1784, as before independence Great Britain had forbidden banks in the colonies. Alexander Hamilton, the first secretary of the treasury, established the Bank of the United States, modeled on the Bank of England, to act as the central bank and provide discipline to the emerging American banking system.

If your financial institution issued one or more payment cards identified as having been at risk as a result of the data security incident that Hudson’s Bay Company announced in 2018, it could get a payment from a class action settlement. [Learn More>](#)

With the founding of the BUS, which had been chartered over Jefferson’s furious opposition, a bull market in bank stocks developed on Wall Street. When the bubble collapsed, a delighted Jefferson calculated that it had caused losses of \$5 million—about what he thought all the real estate in Manhattan was worth.

The American banking system flourished under the BUS, but Jeffersonians in Congress managed to deny it a new charter in 1811. Without a central bank, it proved very difficult for the federal government to borrow when war with Britain broke out the next year.

In 1816 President James Madison, who had opposed the first Bank of the United States, supported a second bank, now recognizing how important a central bank was to a healthy banking system and to facilitate federal borrowing. But the Second Bank of the United States never had the power to discipline commercial banks that the first one had had. Andrew Jackson, a thoroughgoing Jeffersonian when it came to money and banking, vetoed the renewal of its charter. For the next 77 years, the United States would be the only major country without a central bank. The price was numerous bank failures and a boom-and-bust economy.

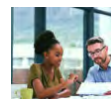
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In the panic of 1907, the federal government had to turn to J. P. Morgan to prevent a wave of bank failures and it was realized that a central bank was a necessity in a modern economy.

SEP 29

Podcast: Inside a Community Bank's ESG Strategy

In 1913 the Federal Reserve came into existence. But the ghost of Thomas Jefferson and his hatred of large, powerful banks still lived. Instead of one central bank, there were 12, spread across the country. The governors of these banks at the time tended to be political appointees with little or no banking experience.

Benjamin Strong, head of the paramount Federal Reserve Bank of New York, was an exception, having been president of Bankers Trust. He soon became the de facto head of the entire Fed system with the other Fed governors following his lead. Thus, when Strong died in 1928, the Fed became essentially leaderless and stood by after the stock market crash the following year. It kept interest rates high when they should have been slashed and the money supply shrank by one-third, greatly deepening the depression. Thousands of banks failed over the next three and a half years and the banking system nearly collapsed.

The Fed was reorganized in 1934, with power moving from the regional banks—now headed by presidents, not governors, which is the true title of power in central banking—to the Board of Governors in Washington.

After untold financial disasters, Thomas Jefferson's ghost was finally banished from American banking.

From the Vault

History

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ABOUT AUTHOR

JOHN STEELE GORDON



John Steele Gordon, the ABA Banking Journal's "From the Vault" columnist, is an acclaimed economic historian. His books include *An Empire of Wealth*, *Hamilton's Blessing* and *The Great Game*.

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Finding Compliant Ways to Use Consumer Data to Better Serve Consumers

ON AUGUST 31, 2021

COMPLIANCE AND RISK, RETAIL AND MARKETING

By Mark Cunningham

With consumer data privacy laws banging on pots and pans in the compliance kitchen, banks are being forced to re-evaluate their marketing practices to identify areas of potential risk. Direct-mail campaigns aimed at purchased lead lists have long been a mainstay of bank marketing. But as more states place restrictions on how consumer data is used and stored, some banks are concluding that they may be better served by prioritizing customer retention above new customer acquisition.

The U.S. compliance landscape has always been thorny, but it's become even more difficult to navigate following recent regulations that mark a paradigm shift in how consumer data is protected. On the regulatory front, California's Consumer Privacy Act is leading the way, followed closely by a wave of similar bills from other states. Meanwhile, companies like Apple and Google are leading the commercial data privacy charge.

If your financial institution issued one or more payment cards identified as having been at risk as a result of the data security incident that Hudson's Bay Company announced in 2018, it could get a payment from a class action settlement. [Learn More>](#)

Consumer data is becoming not merely a secured entity but an almost wholly protected one where companies may be required to limit the sharing of consumer data with third parties and delete consumer data after use. As much as banks want to do right by their customers, these limitations are a bitter pill to swallow considering the tremendous investment financial institutions make in customer acquisition and prospect marketing each year.

Fortunately, there are notable exceptions to consumer data privacy rules that suggest customer retention as a less fraught path to revenue growth than net new customer acquisition. (Note: This article mainly focuses on the CCPA, since this law is already in effect and is being used as the model for similar consumer privacy bills nationwide.)

Transactional exemption to retain consumer data

The CCPA establishes nine exemptions to a consumer's right to have his or her data erased. Perhaps the most useful for bank marketers is the "transactional" exemption, which allows businesses to retain a consumer's data to

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complete the transaction for which the personal information was collected; provide a good or service requested by the consumer (or reasonably anticipated within the context of the ongoing business relationship with the consumer); or otherwise perform a contract between the business and the consumer.

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While the transactional exemption does not give banks carte blanche to keep customers' information—determinations must be made on a case-by-case basis—justifying retention of a bank customer information is frequently straightforward. Financial institutions obviously have an ongoing need to retain account holder data, and a customer who takes out a 30-year mortgage can expect his or her information to be retained for the life of the loan. But it can also be appropriate to maintain data for a turndown. For example, say a customer applied for a first-lien home loan with a bank in 2018 and did not meet the required minimum credit score at that time. Banks that accompany each turndown letter with an offer of credit improvement solutions and a promise to check back in once the consumer's credit is repaired have effectively established an ongoing business relationship that could fall under the transactional exemption.

What these scenarios all have in common is that they relate to use of a bank's existing database of customers and prospects, not a purchased lead list for which it can be difficult, if not impossible, to prove the existence of a transactional business relationship.

Permissible use of personal information by service providers

A typical financial institution engages numerous service providers to process personal information on the bank's behalf. While the CCPA imposes limits on the sharing of consumer data with third parties, it also grants exceptions for "permissible use" of a bank's customer data by third-party vendors acting on behalf of the bank and in support of providing consumers a net tangible benefit.

Permissible use of a consumer's data includes sharing information with vendors to determine if and when the bank can best serve the consumer with the offer of a loan.

Provided they adhere to Fair Credit Reporting Act guidelines, third-party vendors can view the consumer's data, identify the relevant opportunity with a net tangible benefit and notify the consumer of a potential benefit on the bank's behalf by, for example, generating and delivering a firm offer of credit. (Note that firm offers of credit are not subject to the same disclosure requirements as loan applications and therefore do not trigger any compliance-related actions should the consumer decide not to obtain a loan.)

Ideally, third-party vendor software and processes should integrate with a bank's existing systems and compliance practices. Banks should ask third-party vendors how they are using data in accordance with CCPA, the European Union's General Data Protection Regulation and other regulations.

Regulators hold banks responsible for the actions of their third-party vendors, so banks should ensure their third-party vendors are meeting all guidelines and work with vendors to develop best practices that include the regular, voluntary compliance audits. Banks can require a third-party vendor that generates firm offers of credit to receive approval from the credit bureaus on the collateral firm offers of credit to be sent to consumers. Additionally, banks can add their own legal opinion or opt-out messages to meet general consumer marketing opt out disclosures.

Consumer data privacy is only likely to become more regulated in the future, but that doesn't mean that banks can't find compliant ways to use consumer data to gain competitive advantage and better serve consumers. A customer retention strategy focused on mining a bank's database for new opportunities of tangible value is an easy way to generate new business without running afoul of tricky data privacy issues associated with purchased lead lists. And banks can even continue to use third-party assistance in this endeavor without taking on undue compliance risk.

Mark Cunningham is an entrepreneur and business strategist who co-founded Sales Boomerang, where he now serves as president and COO.

California Consumer Privacy Act Data Data privacy

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Treasury Announces New Markets Tax Credit Recipients

ON SEPTEMBER 1, 2021

COMMUNITY BANKING, NEWSBYTES

The Treasury Department's Community Development Financial Institutions Fund **today announced** the recipients of \$5 billion in new markets tax credits to spur investment in low-income urban and rural communities. The tax credit allocations were awarded to 100 community development entities.

The new markets tax credit program has generated \$8 of private investment for every dollar invested by the government, the CDFI fund said.

"Many of the communities that will receive these funds have confronted economic challenges over many decades. Challenges which have been made more difficult by a lack of investment. It's critical that Congress sustain these investments over time by making the New Markets Tax Credit Program permanent," said Treasury Secretary Janet Yellen.

If your financial institution issued one or more payment cards identified as having been at risk as a result of the data security incident that Hudson's Bay Company announced in 2018, it could get a payment from a class action settlement. [Learn More>](#)

Today's recipients are expected to make more than \$1 billion in new markets tax credit investments in non-metropolitan counties, and about 20% of the total investments will be made in rural areas. Through the program, recipients have deployed \$56 billion in investments in low-income communities and businesses, including the creation of almost 871,000 jobs through the end of fiscal year 2020.

Community development

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Fed's Bowman and OCC's Hsu to Address Virtual ABA GRC Fall Meeting

ON AUGUST 23, 2021

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Federal Reserve Board Governor Michelle Bowman and Acting Comptroller of the Currency Michael Hsu will address ABA's virtual Government Relations Council fall meeting on Sept. 9. Bowman, who holds the community bank seat on the Federal Reserve Board, will deliver remarks on innovation and community banking and then participate in a question and answer session with ABA President and CEO Rob Nichols.

If your financial institution issued one or more payment cards identified as having been at risk as a result of the data security incident that Hudson's Bay Company announced in 2018, it could get a payment from a class action settlement. [Learn More>](#)

Hsu, who was named acting comptroller in May by Treasury Secretary Janet Yellen, will join Nichols for a conversation on banking regulation. The GRC meeting will mark Hsu's first appearance at an ABA event. Bowman has previously addressed ABA's annual Conference for Community Bankers.

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With Section 1071 Proposal, CFPB Outlines Plan for Collecting Small Biz Loan Data

ON SEPTEMBER 1, 2021

UNCATEGORIZED

The CFPB today issued its long-awaited [proposal for implementing Section 1071](#) of the Dodd-Frank Act, which concerns the collection of credit application data for small businesses, including women-owned and minority-owned small businesses. The [extensive 913-page proposal](#) would require lenders to report: the amount and type of small business credit applied for and extended; the race, ethnicity and sex of the small business owners; and several key elements of the price of the credit offered. A lender's employees or officers who are involved in considering a small business application would be prohibited from accessing the business's demographic information, unless the lender determines that such a "firewall" is infeasible.

The rule would apply to financial institutions, including banks, credit unions and nonbanks, that originate at least 25 credit transactions in each of the two preceding calendar years that meet the definition of "business credit" under Regulation B and that involve "small businesses"—which the bureau would define as businesses with \$5 million or less in gross annual revenue for the business' preceding fiscal year. Products subject to the 1071 rule would include business and agricultural-purpose loans, lines of credit, credit cards and merchant cash advances. The proposed rule does not provide an asset-based carve-out for banks or any other general exemptions for particular categories of financial institutions.

If your financial institution issued one or more payment cards identified as having been at risk as a result of the data security incident that Hudson's Bay Company announced in 2018, it could get a payment from a class action settlement. [Learn More>](#)

Lenders would be required to collect data on a calendar-year basis and report it to the CFPB by June 1 of the following year. They would also be required to retain evidence of compliance, including a copy of small business lending application registers, for at least three years. The bureau will make the data available annually to the public on its website, and is seeking comment on a balancing test it will apply to determine whether any information should be redacted from the public data set to protect privacy of small businesses.

When finalized, compliance would not be required for 18 months after publication in the Federal Register, and the bureau proposed allowing lenders to voluntarily collect the demographic data one year before the compliance deadline. The American Bankers Association is currently reviewing the proposed rule and will submit a comment letter to the bureau. Comments are due 90 days after the proposal is published in the Federal Register.

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The Regulated World of Healthcare Lending and Restructuring

ON AUGUST 26, 2021

COMMERCIAL LENDING, COMPLIANCE AND RISK

By Jim Lodoen, Donn Herring and Hillary Martel

Healthcare financing is different from traditional lending due to the unique regulatory environment in which it functions. Where else is a bank customer subject to:

- Revenue driven by procedures with prices regulated by state and federal agencies or governed by insurance provider agreements?
- Whether payment of such revenues actually occurs regulated by state and federal agencies?
- Whether facilities may be used for routine procedures (pandemic restrictions) regulated by state and federal agencies?
- Whether a facility opens or remains open being regulated by state licensing agencies?
- Limitations on securing accounts receivables from Medicare or Medicaid through a normal collateralization process thus requiring a "double lock-box" structure to effectively secure the collateral?

A thorough credit officer will want to understand how these regulatory functions may impact cash flow and risk associated with a healthcare credit. And a compliance officer will want to work closely with the credit officer to include covenants unique to a healthcare facility in the loan agreement.

A credit officer will also want to factor the risk associated with the unplanned possibility of rather draconian penalties under the Medicare anti-kickback statute and fines and damages under the Federal False Claims Act.

If your financial institution issued one or more payment cards identified as having been at risk as a result of the data security incident that Hudson's Bay Company announced in 2018, it could get a payment from a class action settlement. [Learn More](#)

Financial stress of the healthcare industry

The healthcare industry is estimated to have experienced approximately \$323.1 billion in financial losses in 2020, but for the \$178 billion of Provider Relief Funds distributed to the industry and \$68 billion of Paycheck Protection Program loans. Depending upon how the funds were used, both may be the subject of recoupment efforts in the future.

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While circumstances have improved for the industry since 2020, the outlook for 2021 is still dire. A recent study performed for the American Hospital Association by Kauffman, Hall and Associates predicts a loss of revenue in 2021 compared to pre-pandemic revenue of between \$53 billion and \$122 billion. And certain segments, such as rural providers, are in especially weak financial conditions.

Other trends impacting the industry include continuing decrease in reimbursement levels, new laws requiring transparency and increased demand for telehealth services by customers versus slower acceptance of such services by payers.

Recoupment of over-payments

Healthcare borrowers also present an additional challenge with respect to underwriting known as recoupment.

This concept allows the government to withhold payment of ongoing Medicare and Medicaid payments a lender is counting on as cash flow to service the debt. If the government discovers over-payments to the borrower, which may have occurred up to six years earlier, it will typically recoup this amount by withholding future payments. There is normally a lag of several months before payments made to a borrower are audited. Thus, there is always the looming risk that past events affect future receipts.

Events that can stop Medicare and Medicaid payments include failure to:

- Properly document provided care.
- Demonstrate the medical necessity of the care provided.
- Obtain prior authorization when needed.
- Comply with other conditions for participation or payment including substantive or processing requirements.

If the audit shows that errors in how services were provided or reimbursement was handled, the reviewing agency will typically continue to look back further to note additional overpayments. Meanwhile, future cash flow from Medicare or Medicaid provided services may completely stop until previous over-payments are recouped from payments otherwise made for current services.

The recoupment of such payments is often a triggering event to move an otherwise performing healthcare credit into a workout or restructuring credit, which provides its own unique set of considerations.

Default alternatives

Similar to other industries, there are several options for borrowers and lenders to consider once a healthcare credit is in or on the brink of a default status. They include:

- Out of court restructuring, including a forbearance agreement.
- Receivership where a third-party receiver steps in to assume control and determines whether to reorganize, sell the business or conduct an orderly wind-down and liquidate.
- Chapter 11 bankruptcy, controlled by existing management or a Chapter 11 trustee:
 - Reorganization.
 - Liquidation.
 - Sale as a going concern (Section 363 sale).
- Chapter 7 bankruptcy
 - Lights out.
 - Assets sold and/or recovered by secured lender.

Challenges to disposition of the collateral

The extensive regulatory nature of the healthcare industry generally persists throughout a restructuring or sale process.

Although not impossible, it is very difficult to sell a healthcare facility as a going concern through an asset sale process to a new buyer free and clear of known or unknown recoupment risk associated with misdeeds of the existing owner. As a result, a sale process may be delayed due to either extended due diligence by the buyer to obtain comfort assuming recoupment risk or a potential buyer may need several months to obtain approval to obtain a new provider number to qualify as a Medicaid or Medicare provider.

In addition, a buyer will also be required to obtain required state licenses. Of course a buyer could acquire the stock

or membership interest in the existing company but with it would come all the liabilities of the existing company, which is often not a desired option.

Finally, while a shutdown of a healthcare facility will ultimately result in the associated building and personal property being sold, the single-use nature of most healthcare facilities may make the property unattractive to many buyers.

Conclusion

As with most loans, a lender considering financing a healthcare facility should also consider what the exit strategy is in the event the loan does not perform. By considering the unique aspects of healthcare financing, the associated risks can be factored into the pricing and structure of the credit facility, and will result in fewer surprises if a default occurs in the underlying credit.

Jim Lodoen is a Minneapolis-based partner, Donn Herring is a St. Louis-based partner and Hillary Martel is an Overland Park, Kansas-based associate at the law firm Spencer Fane LLP.

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The Right Way for Banks to Use Texting

ON AUGUST 24, 2021

COMPLIANCE AND RISK, RETAIL AND MARKETING

By Tom Sheahan

Text messaging may seem like merely a way to communicate with friends and families, but since the beginning of short message service texting decades ago, its usage has evolved. Texting offers a fast, effective way for businesses to reach customers. And it's working. According to research from OpenMarket, 83 percent of millennials open SMS messages within 90 seconds of receiving them.

Research from Gartner indicates 90 percent of all people read texts within three minutes of receiving them, and that SMS boasts a 98 percent open rate, much higher than email.

If your financial institution issued one or more payment cards identified as having been at risk as a result of the data security incident that Hudson's Bay Company announced in 2018, it could get a payment from a class action settlement. [Learn More](#)

While not every industry has jumped on board, many banks are now wading into the texting pool. The private nature of SMS allows banks to send messages to customers that are both discrete and convenient. Calls from a bank during work hours can be uncomfortable; SMS allows customers to talk to their financial institution without saying a word.

Of course, there are regulations that must be followed when deploying an SMS campaign, and appropriate systems must be in place to keep all texting and other communication recorded. From marketing services and offers to account notifications and alerts, bank marketers should keep in mind the following tactics in order to offer convenience and information to customers with business SMS while also building affinity for the bank without becoming a nuisance.

Inform customers what you will and will not send via text. To avoid scammers and spammers, make sure to spell out what your communications will and will not include or request. Add this information to your opt-in process as well as posting it on your website. Security of your customers' information is top priority, so let them know you will not send out personal identification information or request social security numbers, account numbers, passwords, etc. via SMS. Remind customers that if they receive any texts of this nature to not respond and then report it to the bank.

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Send to expecting customers only. Texting is perceived as a more personal form of communication. For that reason, it can result in higher response rates, but only if those receiving the messages are expecting and interested in the message. That's why the recipient should be an existing customer who can benefit from the SMS, or someone who has opted in to receiving messages. Sending spam messages, perceived spam, or even just unwanted messages is the biggest texting mistake banks can make.

SEP 29

Podcast: Inside a Community Bank's ESG Strategy

Texting non-customers who have not opted in may violate the [Federal Communications Commission's rules](#) implementing the Telephone Consumer Protection Act. A Supreme Court ruling earlier this year narrowed the scope of devices that qualify as an autodialer, which opens the door to greater use of automated or interactive text messaging. But the opinion did not affect existing restrictions on artificial or prerecorded voice calls and "do not call" list requirements for telemarketing calls. Moreover, lower courts have only begun to implement the Supreme Court's ruling. An ABA members-only [staff analysis](#) advises that it "continues to be prudent for banks to obtain a customer's consent to be called [or texted] where possible, particularly as we wait to see how lower courts apply the opinion." And that banks should be aware of and follow both federal and state Telephone Consumer Protection Act laws.

Make opt-in and opt-out easy. Just like some people prefer calls over emails, some people prefer texts while others do not. Text opt-out is essential. Make texting opt out easy by including, "Text STOP to opt out" at the end of each text. Again, banks must receive consent first for all text messages sent by an organization using an autodialer.

Send texts purposefully: There is a delicate balance in finding the right number of texts for customers. Most people do not need to hear from their bank on a regular basis, so keep a close eye on which customers are getting sent what. When sending marketing messages, limit them to bimonthly or monthly. If messages are sent too often, your customers may start to ignore them or worse, opt out altogether.

SMS text messaging can offer an effective, quick way to strengthen a relationship with existing customers. When a texting campaign is deployed responsibly—respecting federal mandated rules—customers will feel well-informed and cared for, and perhaps less likely to look elsewhere for their banking needs.

Tom Sheahan is the CEO of Red Oxygen, a business SMS solutions provider.

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The Millennial Wealth Management Key: The Value of Relationships

ON AUGUST 25, 2021

RETAIL AND MARKETING, WEALTH MANAGEMENT

by Martha Bartlett Piland

Forbes predicts that by 2030, millennials will hold five times the wealth they have today and be the richest generation in history. Those are staggering statistics that represent a potentially huge and not-to-be-missed opportunity for banks with wealth management and trust departments.

Don't make the mistake of trying to shoehorn this audience into current product offerings, visuals and messaging. It won't appeal and it won't work. Millennials (born between 1980-1996) have very different attitudes about your bank's offerings—if they're even aware of them at all.

If your financial institution issued one or more payment cards identified as having been at risk as a result of the data security incident that Hudson's Bay Company announced in 2018, it could get a payment from a class action settlement. [Learn More](#)

Add that to the growth of online-only banks, DIY online tools and a post-COVID world, bankers must innovate to capture a share of this highly important audience and the newfound wealth they will need help managing.

This generation is hungry for education. Many think wealth management is out of reach. Their relationships and values matter. And they ask their parents for advice.

Let's look at what each of these means when it comes to wealth management:

They're hungry for education. Millennials want to be more prepared for their financial futures, but many are only partially managing their current financial conditions. They're looking for ways to save money, pay off debts and get ahead, but they're not well equipped for making decisions or being proactive about long term planning.

Many feel like they're going it alone. They're hungry for education around their current financial state—let alone the future. They scour social media for intel and look to strangers for information. They are also acutely aware that they need to know more. A recurring theme is that they don't want to be judged for not knowing things.

James Notzon, global wealth SVP and director of wealth management in the Texas border region for BBVA, says his

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bank is very aware that millennials will inherit a lot of wealth and they need to know much more about how to handle it. "Millennials have more access to information than I ever did at their age," he says "They're attuned to how much they're saving. They're informed on that."

While millennials know what they're saving, Notzon says most are not fully financially literate. He says they are constantly on social media looking for information and like to "DIY it, trying to make value judgments. The mix of options available to them is huge." More options take more time and experience to research and understand. It's overwhelming and can result in reckless gambles.

The takeaways: Providing valuable information and building trusted relationships means positioning the bank as a valued authority as customers' needs and assets grow. There is value in providing educational workshops and events, regular digital delivery of advice and frequent social media posts on these topics to position the bank as a welcoming, non-judgmental resource. Building a community of millennial investors who feel smart, included and valued is essential. Your bank will be stickier and grow as customers bring their friends.

Many millennials think professional wealth management help would be valuable, but think it's out of reach, or "for other people, not for me." They say they should get around to it and would like to have it, yet many think it's too expensive.

Notzon says many millennials are investing more than banker peers may realize because it's so easy to open a self-serve investment account online. Traditional banks are often not even on their radar as a place to go for advice and investing.

These perceptions should come as no surprise to marketers. Many bank websites and in-lobby communications perpetuate this mindset with language like "high-net-worth individuals" and showing gray-haired clients taking cruises and riding motorcycles across the country. That's not what they are. (Yet.)

High-net-worth clients have the assets that pay for the service your institution provides. Customers in a lower bracket can seem expensive to attract and serve. But there is value in the long view: The value of the client over time will far outweigh the initial acquisition and early-stage costs.

The takeaways: First, get on their radar. They need to be aware your bank offers wealth management for them. Next, develop marketing messages, graphics and digital communications channels that are relevant to the millennial audience.

Products, services—solutions, really—should also be suited to them. Technology makes it easy to showcase wealth management offerings designed for them. The offerings their parents and grandparents embrace probably don't resonate with millennials.

Many country clubs and philanthropic leadership circles offer a junior membership to people under 40 with special benefits. Innovate your offerings with inspiration from other sectors that are successful in captivating this audience.

Relationships and values matter. Online self-service investment products and apps can't compete with a personal relationship. Millennials want advisors who share their values or who understand their life goals and experiences. Doing business with bankers who "get them" will engender trust and solidify these budding relationships.

"I specifically signed up with my advisor because she was clear that she prioritized teaching financial wellness to single women," says a member of the Banktastic National Millennial Advisory Board in a recent study. Others mentioned experience with trusts for disabled dependents, understanding LGBTQ and environmental views as very important.

Another board member says: "I enjoy talking with my financial adviser, who has similar interests. They are helpful in bouncing ideas and strategies to get to me where I want to be."

What does the wealth management team look like in your bank? Diversity of age, gender and ethnicity makes a difference, too. Recruiting and retaining people relatable to the desired millennial audiences will also make your offerings more attractive.

The takeaways: Professional training and growth for your more seasoned wealth management and trust officers will be essential. They need to be ready to answer millennial customer concerns about matters very different than those of previous generations. Hiring and mentoring younger advisors who are relatable and proficient also sets you up for success.

Be ready to showcase your investment advisers and trust officers with these areas of interest and expertise in your bank's advertising, website and social media. Make sure these personnel are also networking—both in person and on social media—in the places where they can talk to people about this important work. Social word of mouth will be powerful marketing.

They ask their parents for advice. Parents and grandparents have enjoyed longtime trusted relationships with their banks' wealth management and trust departments. Those same parents probably have not yet shared much information with their children about these matters. From a marketing perspective, this should be viewed as a built-in referral source. Engaging their offspring sooner lessens the likelihood of losing the relationships when wealth transfers happen.

Notzon recommends getting families in the same room and discussing their wishes together. "In my space, it's not just the relationship with those who control the wealth," he says. "We like to have at least one family meeting per year with all the family together." Notzon says it's important to ensure parents' wishes and goals are met, while giving sound education and information—but only as much as the parents want to share.

He also cautions that family meetings will require diplomacy and care. There are many more blended families these days, so family meetings can be tricky to navigate. But with this added nuance, the meetings are even more important.

Key takeaways: Creating family-related referral outreach, seminars, marketing pieces and educational web and social media content gives your bank the opportunity to build awareness and interest from millennials. Generating family-centered conversations about wealth management and trust services could also spur additional needs from parents and grandparents. Crafted carefully, it's win-win-win.

The time is now. In less than 10 years, your most valuable audiences will look very different than they do today. To be well positioned for this seismic shift, it's essential to start evolving and marketing to this generation immediately.

*Martha Bartlett Piland is president and CEO of **Banktastic**, a branding firm that helps financial organizations build love and loyalty, and offers a special focus on millennial customers. Her second book, *Beyond Sticky*, is available at all major booksellers.*

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ON AUGUST 25, 2021

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The Federal Housing Finance Agency today [updated its guidelines](#) for adverse and non-adverse classification of assets at Fannie Mae, Freddie Mac and the Federal Home Loan Banks. The guidelines describe sound practices for managing credit risk at the regulated entities. FHFA also outlined procedures for listing assets for special mention. The advisory bulletin issued by FHFA rescinds and replaces several previously issued bulletins on asset classifications.

The bulletin outlines how to make adverse classifications for single-family residential mortgage loans, multifamily residential mortgage loans, other real estate owned, other assets including off-balance sheet credit exposures, and FHLB advances.

If your financial institution issued one or more payment cards identified as having been at risk as a result of the data security incident that Hudson's Bay Company announced in 2018, it could get a payment from a class action settlement. [Learn More>](#)

FHFA

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