

# 2021 NCHER Fall Legal Meeting



**October 21, 2021**

*Bradley Arant Boult Cummings  
Nashville Office  
1600 Division Street, Suite 700  
Nashville, TN 37203*

# For Your Health and Safety

Even though the incidence of COVID-19 is declining, if you are not completely vaccinated, we urge you to take a COVID test 1-3 days prior to the meeting. If you test positive, are not feeling well, have any COVID-related symptoms, or have recently traveled outside of the United States, stay home and join the meeting remotely. Attendees are encouraged to wear face masks in the building and when social distancing is not possible. The meeting room should be large enough to allow adequate social distancing based on the current number of attendees. Face masks and hand sanitizer will be provided at the registration desk and in the meeting room. Proper sanitation of the meeting space will be performed prior to the start of the meeting. We encourage all in-person attendees to return to the same seat after breaks and throughout the duration of the meeting. For presenters, the computer equipment including the microphones will be wiped down after each use.

We ask that all NCHER attendees follow any additional safety protocols established by the Bradley Arant Boult Cummings law firm for guests.





# 2021 Fall Legal Meeting

October 21, 2021

Nashville Offices of Bradley Arant Boult Cummings

## Agenda

*Central Daylight Time*

8:30 am – 9:00 am	Registration & Continental Breakfast	
9:00 am – 9:05 am	Welcoming Remarks	Keith Anderson Host, Bradley Arant Boult Cummings  Jessica Guise Chair, NCHER Legal Committee
9:05 am – 9:50 am	Fair Debt Collection Practices Act Developments	Aaron Chastain, Partner Grant Premo, Senior Attorney Bradley Arant Boult Cummings
9:50 – 10:35 am	CFPB Update	David Esquivel Bass, Berry & Sims
10:35 am – 10:45 am	Break	
10:45 am – 12:30 pm	State Servicing and Lending Laws Federal Preemption True Lender Considerations	John Culhane & Thomas Burke Partners, Ballard Spahr  Vaishali Rao, Partner Hinshaw & Culbertson
12:30 pm – 1:15 pm	Lunch	
1:15 pm – 2:00 pm	Privacy and Cybersecurity	Luke Sosnicki Partner, Thompson Coburn
2:00 pm – 2:45 pm	Department of Education Regulation of Guaranty Agencies	Dan Fisher President, ECMC  Rebecca Rapp General Counsel, Ascendium
2:45 pm – 3:30 pm	Washington Update	James Bergeron President, NCHER
3:30 pm – 4:15 pm	Financing FFELP and Private Loans	Ron Gambill Executive Vice president, ELF1  John Arnold President and CEO, SouthEast Bank  Barbara Thomas COO, SouthEast Bank



## SPEAKER BIOGRAPHIES

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**Keith Anderson, Partner**  
**Bradley Arant Boult Cummings**

Keith Anderson is a Partner in Bradley Arant Boult Cummings Birmingham, AL office. He has wide-ranging experience across multiple jurisdictions and concentrates his practice on representing financial institutions in the financial services industry, as well as representing employers in employment matters. Keith's financial services practice includes representing financial institutions, mortgage lenders and servicers, student loan lenders and servicers, auto-finance lenders in defensive litigation throughout the country. He has extensive experience related to the SCRA, FCRA, and bankruptcy in both providing regulatory guidance to clients for compliance and in defending litigated cases. He is a graduate of The Ohio State University Moritz College of Law and the United States Air Force Academy.

**John E. Arnold, Jr. Executive Chairman**  
**SouthEast Bank**

John Arnold is the Executive Chairman of SouthEast Bank and Chairman of its Board of Directors. Mr. Arnold also serves as the Chief Executive Officer of Education Loan Finance, Inc. and the Chairman of its Board of Directors. Prior to joining Education Loan Finance, Inc. and SouthEast Bank, Mr. Arnold was a partner at Robertson, Ingram & Overbey in Knoxville, Tennessee, and his practice was concentrated primarily in the areas of municipal and structured finance, financial and regulatory matters for commercial banks, bankruptcy, factoring, loan workouts, and tax issues related to municipal and structured finance. He has served as bond counsel, issuer's counsel and underwriter's counsel on approximately \$20 billion of structured finance transactions. He structured the first allocation and issuance of tax-exempt debt by an out-of-state issuer in the United States. He also designed and achieved bank holding company status for the first non-profit corporation applicant in the United States. He obtained his undergraduate degree in finance from the University of Tennessee and his law degree from the University of Memphis. Mr. Arnold is also a graduate of the Graduate School of Banking held at the University of Colorado.

**James P. Bergeron, President**  
**National Council of Higher Education Resources**

James Bergeron currently serves as President of the National Council of Higher Education Resources.

Prior to joining NCHER, James worked as the Director of Education and Human Services Policy for the House Committee on Education and the Workforce. In this capacity, he advised Chairman John Kline, members, and staff, and oversaw policy development on all areas of education and human services programs, including the reauthorization of the Higher Education Act (HEA), the Elementary and Secondary Education Act (ESEA)/No Child Left Behind (NCLB), the Individuals with Disabilities Education Act (IDEA), the Workforce Investment Act (WIA), the Head Start Act, and other federal laws governing elementary, secondary, and postsecondary education.

Before joining the Committee in 2006, Bergeron served as Legislative Director in California Rep. Buck McKeon's personal office where he was responsible for developing and implementing the legislative agenda within the House Education and the Workforce Subcommittee on 21st Century Competitiveness. He authored important legislative initiatives on college affordability and financial aid simplification. Bergeron began his Capitol Hill service almost 20 years ago as a Legislative Assistant to former Louisiana Rep. Bob Livingston, who chaired the House Appropriations Committee.

Bergeron also served as Vice President of MARC Associates (now part of Holland & Knight), a government relations firm where he consulted for a number of elementary and secondary education and higher education organizations.

He received a Bachelor of Arts in Political Science from the University of Louisiana at Lafayette.

**Thomas Burke, Partner**  
**Ballard Spahr**

Thomas F. Burke focuses his practice on internal investigations, regulatory compliance, and government enforcement defense. Tom joined the firm in 2015 after federal district and appellate clerkships and a four-year term at the New York County District Attorney's Office. As an assistant district attorney, Tom tried fourteen felony cases to verdict and supervised long-term investigations into narcotics trafficking, identity theft, and embezzlement. Tom also works on matters that involve complex federal constitutional law and statutory construction.

**Aaron Chastain, Partner**  
**Bradley Arant Boult Cummings**

Aaron Chastain is Partner in Bradley Arant Boult Cummings Birmingham, AL office.

Aaron represents financial services institutions, healthcare companies, and other businesses in a broad range of litigation and compliance-related matters. Aaron has advised student loan and mortgage loan originators and servicers in complying with the complex universe of regulation and state lien laws, as well as in handling finance-related litigation, such as claims for violations of the Fair Debt Collection Practices Act (FDCPA), wrongful foreclosure, violations of the Truth in Lending Act (TILA), and violations of the Real Estate Settlement Procedures Act (RESPA). He has specific experience advising clients in the realms of student and mortgage lending, servicing, and operations.

Aaron has litigated cases in both federal and state courts in a wide range of venues, including courts in Alabama, Florida, Georgia, Minnesota, Mississippi, Missouri, Nevada, New Jersey, Oklahoma, Utah, Virginia and Wisconsin, and the United States Courts of Appeals for the Fifth, Sixth, Seventh, Ninth, Tenth and Eleventh Circuits. He has tried multiple cases to a verdict as lead counsel managed discovery in complex multi-party litigation, led settlement discussions for matters involving tens of millions of dollars, and has had primary responsibility for drafting his clients' appellate briefs in hundreds of cases. He has presented oral arguments in multiple appellate courts, including the U.S. Courts of Appeal for the Seventh and Ninth Circuits.

In working with his clients, Aaron strives to provide sensible and practical advice from a business standpoint. He understands that both compliance and litigation require perspective: Some cases are worth fighting for every square inch of ground, while others are not. Aaron always tries to work with his

clients to understand the broader context for each issue and come to an understanding about the best approach to resolving it. He finds that helping his clients solve problems – which may be winning a big case or may just be implementing a new internal process designed to avoid significant problems down the road – is the most rewarding part of his practice.

**John Culhane, Partner**  
**Ballard Spahr LLP**

John L. Culhane, Jr. is a Partner at Ballard Spahr LLP where he is known for his work advising on interstate direct and indirect consumer and residential mortgage loan and leasing programs, through both traditional brick-and-mortar facilities and e-commerce. Before joining Ballard Spahr, John was Associate Counsel with Mellon Bank, N.A.; Associate Counsel with Bank of America NT&SA; and Senior Attorney (section chief) with the National Credit Union Administration, the federal agency regulating federal credit unions. John addresses issues involving licensing, advertising and marketing, application processing, privacy, disclosure, pricing, substantive terms, servicing, collection, portfolio sales, and securitization. His regulatory practice includes preparing clients for banking agency and Consumer Financial Protection Bureau (CFPB) compliance examinations and assisting in the defense of attorney general investigations and banking agency and CFPB enforcement actions. His clients have ranged from a multibillion-dollar bank holding company, to one of the nation's largest residential mortgage lenders, to a leading provider of financial institution forms and documentation. John is a member of the firm's Fair Lending Task Force.

**David Esquivel, Pro Bono Member**  
**Bass, Berry & Sims**

David Esquivel serves as the firm's Pro Bono Member. In that capacity, he devotes half his practice to leading teams in significant pro bono litigation and managing the firm's overall pro bono efforts.

David has long been active in pro bono and access-to-justice initiatives. He is a founding member of the firm's Pro Bono Committee and has served as chair since 2013. David previously served as chair of the Tennessee Bar Association's Access to Justice Committee and a member of the Tennessee Supreme Court's Access to Justice Commission. David has served as chair of the board of directors of the Tennessee Justice Center, Conexión Américas, and the Maddox Charitable Fund. He currently serves as chair of the board of directors of the Nashville Public Library Foundation.

In addition to his robust pro bono practice, David advises clients on investigations and litigation matters mainly in the financial services sector, with a particular emphasis on matters relating to the Fair Credit Reporting Act (FCRA), Fair Debt Collection Practices Act (FDCPA) and Telephone Consumer Protection Act (TCPA).

**Dan Fisher, President**  
**Educational Credit Management Corporation**

Dan Fisher currently serves as the President of Educational Credit Management Corporation (ECMC), which is one of the largest guaranty agencies in the Federal Family Education Loan Program and the designated guarantor for eight states. He oversees all of ECMC's operational activities as well as student success initiatives, including financial literacy, college access, and national training efforts.

In addition to his current role as President, Mr. Fisher serves as General Counsel and Corporate Secretary of ECMC Group where he serves as the primary legal advisor to ECMC Group and its affiliates, including its executive management team and Board of Directors. In addition to ensuring compliance with all laws and regulations, he has been critical in forming ECMC's national bankruptcy litigation strategy. He has argued appeals involving student loan discharge ability standards, due process matters, and collection cost issues. Prior to joining ECMC Group, Mr. Fisher served on active duty in the U.S. Army as a judge advocate in Georgia and the Washington, DC area, where his primary focus was court-martial litigation. He currently serves on the Board of Directors for the nonprofit Credit Abuse Resistance Education (CARE), which has 60 state and local chapters focusing on teaching young people the skills to improve their financial literacy.

**Ron Gambill, Executive Vice President  
Education Loan Finance Inc. (ELFI)**

Ron Gambill is Executive Vice President for Student Lending and Legislative Affairs of Education Loan Finance. Formerly, Mr. Gambill was the Chairman and Chief Executive Officer of Educational Funding of the South, Inc. (Edsouth), serving as a Director on the Edsouth Board since 1988. Prior to joining Edsouth, he was Executive Director of the Tennessee Student Assistance Corporation (TSAC) for over 17 years and served as a financial aid director for Nashville State Technical Institute for over 11 years before his appointment to TSAC. Mr. Gambill is a member of the Board of Directors of the National Council of Higher Education Resources where he has served for several terms including Chairman of the Board. He has served on the Executive Board of the Southern Association of Student Financial Aid Administrators in various positions and is currently a member of the Legislative Relations Committee. He is a member of the Executive Board of the Tennessee Association of Student Financial Aid Administrators and is a member and Past President of the National Association of State Student Grant and Aid Programs. He holds a Bachelor's degree from Lipscomb University, where he serves on the Board of Visitors for the Education Department. He holds a Master's degree from Middle Tennessee State University. Mr. Gambill serves as a Trustee on the Board of Williamson College and has worked in state and federal legislative relations for over 30 years.

**Jessica E. Guise, Assistant Chief Counsel, Legal Services Division  
Pennsylvania Higher Education Assistance Agency**

Jessica Guise joined the Pennsylvania Higher Education Assistance Agency or PHEAA in 2015 as a compliance attorney where she advises the Agency on consumer protection, risk, and data privacy and security. Prior to joining the Agency, Jessica served on active duty in the U.S. Army Judge Advocate General's Corps. She is currently a Major in the U.S. Army Reserve. Jessica received a B.A. from Saint Bonaventure University and a J.D. from the Pennsylvania State University Dickinson School of Law.

**Grant Premo, Senior Attorney  
Bradley Arant Boult Cummings**

Grant Premo represents financial services institutions and other businesses across the country in a variety of commercial litigation and compliance matters. He has experience advising clients on lending, servicing and operations in the areas of student lending and residential and commercial mortgage lending, including helping develop best practices for telephone and text-message communications with consumers to comply with the Telephone Collection Practices Act (TCPA). Grant litigates matters involving state law tort and contract claims and claims of violations of federal and state laws, including the TCPA, Truth in Lending

Act (TILA), Fair Debt Collection Practices Act (FDCPA), Fair Credit Reporting Act (FCRA), Real Estate Settlement Procedures Act (RESPA), Home Ownership and Equity Protection Act (HOEPA), the Servicemembers Civil Relief Act (SCRA), state unfair and deceptive trade practice statutes, government loan programs, and mortgage lending, servicing and securitization practices. Grant also assists financial services clients facing investigations and enforcement actions by an attorney general, the CFPB and other regulators.

In addition to his financial services clients, Grant defends corporations in complex litigation matters. He has litigated cases across the country, including in state and federal courts in Alabama, Texas, Georgia, Mississippi, Florida, Oklahoma, Wisconsin, Nevada, Massachusetts, New York, New Hampshire and Tennessee. He has led expansive e-discovery efforts, managing complex electronic reviews and productions utilizing the latest technology. Grant also advises on non-profit board governance and operations.

Grant takes a holistic approach to his matters, seeking to understand his clients' goals and objectives. He appreciates that every matter is different and requires an individualized approach that accounts for the client's overall goals. Ultimately, Grant finds that the most rewarding part of practicing law is helping his clients find creative solutions for their problems.

**Vaishali Rao, Partner**  
**Hinshaw & Culbertson LLP**

Vaishali S. Rao is a Partner in Hinshaw & Culbertson LLP's Consumer Financial Services group where she leads the group's Regulatory & Compliance practice. Vaishali focuses her practice in two primary areas: first, defending companies in regulatory investigations and litigation brought by governmental bodies; second, compliance counseling related to statutes intended to protect consumers, including data privacy. She advises a range of financial institutions, including student loan lenders, servicers, banks, non-banks, and fintech. Prior to joining Hinshaw, Vaishali was previously a supervising attorney in the Office of the Illinois Attorney General where she led a variety of consumer protection efforts across the country, especially in financial services. Vaishali also served as Assistant Counsel to the Speaker of the Illinois House of Representatives. During her tenure there, she assisted in the impeachment trial of former Illinois governor, Rod R. Blagojevich. Vaishali maintains strong relationships with consumer regulators, federal and state, across the country.

**Rebecca Rapp, General Counsel and Chief Privacy Officer**  
**Ascendium Education Group**

Rebecca Rapp is General Counsel and Chief Privacy Officer of Ascendium Education Group, Inc., in Madison, Wisconsin. Before Ascendium, Rebecca served as a Dane County Circuit Court Judge and as an Assistant Attorney General at the Wisconsin Department of Justice. She worked in Washington, D.C., at a law firm and then at a nonprofit, The Children's Law Center, before moving to Wisconsin. Rebecca received her bachelor's degree and law degree from The University of Chicago and a master's degree from The University of Oxford. Rebecca is active in access to justice initiatives—including Lawyers for Learners ([lawyersforlearners.org](http://lawyersforlearners.org)), a project focused on connecting students with attorneys to address legal barriers to education and employment. Rebecca received both the American Bar Association's Pro Bono Publico Award and the Wisconsin Law Foundation's Gordon Sinykin Award of Excellence earlier this year related to the access to justice work she is doing at Ascendium.



**Luke Sosnicki, Partner**  
**Thompson Coburn**

Luke is an experienced commercial litigator who has successfully litigated commercial disputes of all types. He is also an experienced financial services litigator, having spent most of his career defending banks, mortgage servicers and other financial institutions in individual and class action cases across the country. Luke also holds a CIPP/US certification from the International Association of Privacy Professionals, and provides comprehensive advice on litigation risks related to federal and state data privacy laws, including the California Consumer Privacy Act (CCPA).

Luke has successfully defended clients in lawsuits brought under various state and federal consumer protection statutes related to loan origination, servicing, debt collection, foreclosure and unfair or deceptive practices. Luke is also an experienced appellate lawyer who has represented numerous bank and servicer clients on appeal.

Luke has been at the forefront of data and cybersecurity issues, with a particular focus on the financial services industry. He is certified by the International Association of Privacy Professionals as a U.S. Private Sector privacy professional (CIPP/US), and advises financial services companies on federal and state laws governing data management, privacy and eMortgage/digital mortgage processes, as well as best practices for handling private consumer information. Luke has also written and spoken extensively about California's new privacy law, the CCPA, including its impact on financial institutions.

As former in-house counsel for Nationstar, one of the country's largest mortgage servicers, Luke managed a large portfolio of lawsuits alleging various lending violations, origination fraud and loan-servicing errors. He also served as assistant general counsel to Aurora Bank FSB (formerly Lehman Brothers Bank FSB) during a critical transition period following the 2008 financial crisis, where he managed litigation and advised various business units on litigation risk, foreclosure practices and state and federal laws governing default management.

**Barbara Thomas, Chief Operations Officer**  
**SouthEast Bank**

Ms. Thomas, Chief Operations Officer of SouthEast Bank and ELFI, Inc., currently serves as Head of the Student Lending Division, Education Loan Finance (ELFI), a national online consumer lending business, the Mortgage Lending Division as well as other key functional areas of the Bank. Ms. Thomas is responsible for all facets of ELFI, a student loan financial technology based enterprise, including ELFI's technology platform build, operations, business strategy, and finance. Ms. Thomas has successfully developed ELFI into an industry leading private student loan franchise with over \$1.9Bn of loan volume.

Ms. Thomas has extensive financial services experience as a senior investment banker and commercial banking executive covering multiple industries including Consumer and Student Lending, TM T, and Energy. Prior to joining SouthEast Bank in July 2016, Ms. Thomas served as Managing Director and Head of Morgan Stanley's Student Loan Banking Group from 2004 to 2015. While at Morgan Stanley, Ms. Thomas developed the firm's student loan business into a market leader and in 2013, she created the financial framework for the national online student loan refinancing market. She served as lead banker on \$75Bn of student loan securitization financings and \$25Bn of M&A for student loan companies. Ms. Thomas was appointed lead advisor to US Treasury and the US Department of Education in 2008 and

developed and executed the \$40Bn Straight A Conduit Program to fund the student loan industry during the credit crisis. Ms. Thomas was previously a senior investment banker at Goldman Sachs and Deutsche Bank with client coverage in Energy and T M T industries. Ms. Thomas has a BS in Mathematics from the State University of New York at Albany and an MBA in Finance from New York University Stern School of Business. She currently serves as a National Board Member of Bottom Line, a nonprofit organization assisting disadvantaged youths with college access and success.



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