

CFPB Bites of the Month - 2022 Annual Review - Auto Finance

January 10, 2023 | [Thomas J. Buiteweg](#), [Patricia E.M. Covington](#), [Eric L. Johnson](#) and [Justin B. Hosie](#)

In this article, we share a timeline of our monthly "bites" for 2022 applicable to the auto finance industry.

So, what happened in 2022?

1. The CFPB moved to thwart "illegal" auto repossessions

On February 28, 2022, the CFPB issued a compliance bulletin addressing alleged conduct, including the illegal seizure of cars, sloppy record keeping, unreliable balance statements, and ransom for personal property. To head off the risk of wrongful repossessions, the CFPB indicated that it is taking action against illegal repossessions and sloppy servicing of auto loans. The bulletin describes instances, in examinations and enforcement actions, where servicers violated the Dodd-Frank Wall Street Reform and Consumer Protection Act's prohibition against unfair, abusive, or deceptive acts and practices such as illegally seizing cars, sloppy record keeping, unreliable balance inquiries; and ransom for personal property.

Eleven Republican members of the House Financial Services Committee sent Director Chopra a letter regarding the Director's recent blog posts on vehicle finance. The letter specifically noted that the CFPB's equating of repossessing a vehicle with theft is a "gross mischaracterization." The letter also noted that the CFPB's examples of evidence or unlawful repossessions occurred well before the pandemic and the increase in automobile prices.

2. The CFPB is pursuing discrimination in consumer finance, beyond credit transactions, using its unfairness authority

On March 16, 2022, the CFPB announced changes to its supervisory operations to address discrimination, including in situations where fair lending laws do not apply. The CFPB indicated that in examinations, it plans to scrutinize discriminatory conduct related to advertising, pricing, and other areas to ensure that companies are testing for and eliminating discrimination.

Government regulators and private plaintiffs have commonly relied on the Equal Credit Opportunity Act (ECOA), a fair lending law which covers extensions of credit. However, under this new approach, certain discriminatory practices may also trigger liability under the Consumer Financial Protection Act (CFPA), which prohibits unfair, deceptive and abusive acts and practices (UDAAPs). The CFPB published an updated exam manual for evaluating UDAAPs, which notes that discrimination may meet the criteria for "unfairness."

The CFPB said it will examine for discrimination in all consumer finance markets, including credit,

servicing, collections, consumer reporting, payments, remittances, and deposits. CFPB examiners will require supervised companies to show their processes for assessing risks and discriminatory outcomes, including documentation of customer demographics and the impact of products and fees on different demographic groups.

On September 29, 2022, the U.S. Chamber of Commerce, American Bankers Association, Consumer Bankers Association, and other organizations filed a complaint in the Eastern District of Texas against the CFPB. The plaintiffs claimed the CFPB exceeded its statutory authority when it revised its UDAAP exam manual in March. They also claimed that changes were arbitrary and capricious, and violated the Administrative Procedure Act's notice and comment requirements.

3. The CFPB issued its Spring Supervisory Highlights

On May 2, 2022, the CFPB issued its Spring Supervisory Highlights. The CFPB's Spring Supervisory Highlights reported findings from examinations in auto servicing, consumer reporting, credit cards, debt collection, deposits, mortgage origination, prepaid accounts, and remittances. With respect to auto finance, according to the CFPB some servicers unfairly repossessed vehicles even after consumers took actions to prevent repossession. Examiners also found that auto servicers unfairly failed to obtain refunds for borrowers for add-on products that no longer provided a benefit. In other instances, they found that auto servicers misled consumers about the amount of their final loan payments after their normal payments were deferred due to financial difficulties - largely as a result of the COVID-19 pandemic.

4. Mid-Year "Extra Bite": The FTC proposed a car buying rule

On June 23, 2022, the FTC announced that it was seeking comment on proposed measures that would prohibit dealers from making deceptive advertising claims, charging consumers for add-ons the FTC claims provide no benefit to consumers, charging consumers for add-ons without clear written consent. The Rule would also require dealers to provide pricing information including an "offering price," a price without optional add-ons, and other information about financing terms. The proposed rule would allow the FTC to recover money when consumers are misled or charged without their consent. The proposal was published on July 13, 2022, and the comment deadline was set for September 12, 2022.

5. Consent order requires an auto company to pay \$192 Million

On July 26, 2022, the CFPB issued a consent order and fined an automotive company's financing arm \$19.2 million to resolve the CFPB's claims that the company submitted inaccurate credit information about consumers. The CFPB claims that the company provided credit bureaus with "inaccurate account information" about consumer payment history. The consent order requires the auto company to take steps to prevent future violations, pay \$13,200,000 in redress to consumers, and a \$6,000,000 civil money penalty. The auto company consented to the settlement without admitting to the substantive findings of fact or conclusions of law.

6. CFPB issued a circular about data security practices

On August 11, 2022, the CFPB issued a circular reminding regulators that financial companies violate federal law when they fail to safeguard consumer data. The circular provides guidance to other regulators, describing examples of circumstances in which organizations can be held liable for data security protocols. According to the circular, liability can arise for failing to implement multi-factor

authentication, inadequate password management, and failing to update software in a timely manner.

7. CFPB issues payments for alleged victims of an auto loan payment company

On September 2, 2022, the CFPB also announced details about payments coming to consumers previously involved in certain auto loan payment transactions. In August 2022, the CFPB began mailing checks to eligible consumers who had previously enrolled in a program to accelerate their loan payments. This distribution follows a November 2020 consent order against the payment company and its owner. The CFPB had alleged that the company misrepresented the amount consumers would save when using its payment platform, by not including the enrollment fee in the calculations presented to consumers.

According to the CFPB, because of the enrollment fee, the program's costs ordinarily exceeded any savings. The CFPB also found that the company's advertising stated that they have helped hundreds of thousands of customers save millions of dollars in interest by participating in the program when they had no basis for making this claim. The CFPB ordered the company and its owner to pay \$9,300,000 in redress to more than 100,000 consumers. Checks for these payments are also being sent from class action and case settlement administrator, Rust Consulting.

8. Federal Appeals Court Finds CFPB Funding Unconstitutional

On October 19th, a three judge panel of the U.S. Circuit Court of Appeals for the Fifth Circuit decided unanimously, that "Congress's decision to abdicate its appropriations power under the Constitution, *i.e.*, to cede its power of the purse to the Bureau, violates the Constitution's structural separation of powers." As a result, the court reversed the judgment of the district court, rendered judgment in favor of the trade associations suing the CFPB, and vacated a 2017 CFPB rule.

9. CFPB Kicks Off Personal Financial Data Rights Rulemaking

On October 27, 2022, the CFPB released an outline of options and proposals aimed to strengthen consumers' access to, and control over their financial data. The CFPB indicated that this is a first step before issuing a proposed rule on data rights that would implement section 1033 of the Dodd-Frank Act. Under the proposals, the CFPB would require firms to make a consumer's financial information available to them or to a third party at that consumer's direction.

10. CFPB Announces Efforts to Enhance Public Data on Auto Financing

On November 17, 2022, the CFPB announced that it wants to enhance public data on auto financing. The CFPB indicated that the auto financing market has grown to become the third largest consumer credit category after mortgages and student loans. But the CFPB indicated that it knows much less about this market than other markets. Compared to other sectors, the CFPB says that auto market data is sparse, making it difficult to identify emerging risks which could lead to negative consequences. As a result, the CFPB indicated that it is now collecting data from a sample of creditors that represent a cross-section of the market.

11. The CFPB's Fall 2022 Supervisory Highlights Find Credit Reporting Failures and UDAAP

On November 16, 2022, the CFPB announced that it had released its Fall 2022 Supervisory Highlights addressing examinations numerous industries. The CFPB highlighted inaccurate information in credit

reporting, allegedly illegal "pay-to-pay" fees in mortgage servicing, unfair and deceptive practices in auto financing, and mishandling of Covid relief. With respect to inaccurate information in credit reporting in auto finance, the CFPB claims that some auto finance furnishers were knowingly reporting inaccurate information about consumers. Also, with respect to auto finance, the CFPB identified violations related to alleged add-on product charges, loan modifications, double billing, electronic devices that interfere with driving, debt collection tactics, and junk fees. In some cases, the CFPB claims that servicers failed to provide refunds for unearned fees related to the add-on products that consumers paid-off early.

12. CFPB Proposes Registry to Detect So-Called "Repeat Offenders"

On December 12, 2022, the CFPB proposed to start a registry of organizations it calls "repeat offenders." The registry would include organizations involved in prior consent orders with government agencies. This proposal would require certain nonbank financial firms to register with the CFPB when they become subject to certain local, state, or federal consumer financial protection orders. The CFPB says that the registry will help unify the efforts of consumer financial protection enforcers, as well as provide the increased transparency and coordination. Comments will be due in February of 2023.

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