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Time to Pull Out the Trusty Old Crystal Ball

February 15, 2022 | Shelley B. Fowler, Eric Johnson, Nikki Munro and Patty Covington

Eric Johnson, Patty Covington, and Nikki Munro located the old crystal ball, dusted it off, and looked intently at it to come up with auto sales, finance, and lease predictions for this year. Here's what they saw.

Eric, from Hudson Cook's Oklahoma office, gazed at the crystal ball and saw signs of these events taking place in 2022:

- The Consumer Financial Protection Bureau will continue to team up with certain states, particularly in politically "blue" states, in its investigations and enforcement actions. There will be a lot more enforcement activity from the CFPB and the states in 2022, particularly in areas like fair lending, fair servicing, and UDAP.
- Rulemaking by enforcement will rear its ugly head once again, which will create a chilling effect for the auto finance industry because the industry will not know what may be considered legal or illegal.
- The CFPB will notch a win against (or a settlement with) the software company and owner/CEO it recently sued for providing "substantial assistance" to credit repair businesses. This success will embolden the CFPB to go after others that provide advice, model templates, and trainings to alleged "bad actors" or to businesses the CFPB doesn't like.
- The Federal Trade Commission will take action against a franchise motor vehicle dealer, or two, or three, claiming that the dealer(s) discriminated against consumers on fair lending grounds, possibly under a disparate impact theory. The FTC may also wrap the fair lending claims in UDAP or easy-to-prove Truth in Lending or Consumer Leasing Act advertising claims, thereby making a giant (and tasty to the FTC) fair lending, advertising, and UDAP sandwich.
- The FTC will seek to hold an auto dealer and/or finance company accountable, and make an example of them, for not following its new Safeguards Rule requirements. Dealers and finance companies have almost a year to implement changes necessitated by the updated rule, but that time will pass by quickly.

Patty, from Hudson Cook's Virginia office, stared at the crystal ball long and hard and saw these happenings:

- The CFPB and the FTC will seek to hold individuals accountable in enforcement actions. During their investigations, they'll inquire about who made what decisions and how those decisions may have resulted in the alleged violations. So, don't be surprised when the regulators include individuals' names in enforcement actions.

- Online targeted marketing will become a "hot" issue as state comprehensive privacy bills continue to be proposed and enacted in 2022. This legislation will affect the use of cookies on websites as well as data sharing for cross-marketing.

- How artificial intelligence, credit scoring, and credit reports affect the underserved consumer and/or protected classes will continue to be an area of focus for all segments of the ecosystem, including federal regulators, *possibly* state regulators, consumer advocates, and industry. Regulators and consumer advocates will probe to uncover unfair and/or discriminatory use or effect. Industry will focus its efforts on inclusion and reaching the underserved.

- The FTC will try to continue to spread its enforcement "wings"—a/k/a power and authority—by putting companies on notice regarding what activities it considers unfair and/or deceptive in violation of the FTC Act. It may also delve into rulemaking again, either under the Administrative Procedure Act or the Magnuson-Moss Warranty Act. APA rulemaking would likely focus on dealers, while MMWA would apply more generally to all industries. Both activities would expand the FTC's right to impose civil money penalties.

- MORE and MORE enforcement by the CFPB and the FTC, including them joining forces on some actions.

Nikki, from Hudson Cook's Maryland office, also took a quick peek and saw these visions:

- We'll see more consumer privacy legislation, like the California, Virginia, and Colorado models, giving consumers more control over their information and complicating national privacy compliance.

- On the collections front, California will lead the way with broad changes to consumer contact regulation. Specifically, California has already proposed legislation that would limit collection calls to a consumer to one call or three attempts in a seven-day period.

- We'll see more funding for electronic vehicle infrastructure. Electronic vehicles may also change the voluntary protection products market, as EVs typically need fewer replacement parts but have a higher cost when replacements are required.

- There may be an increasing trend towards fleet purchasing of vehicles for rideshare programs or community auto pooling.

- Continued vehicle production shortages will keep the cost of cars high, and more consumers will be pushed into the used car market. Additionally, more leased vehicles will be purchased at the end of the lease term, reducing the used vehicle pool.

- We'll see the Fed raise interest rates, potentially limiting access to credit or cutting into dealer profit as more buyers will be priced out of the new car market.
- Finally, many do not want to leave their computer screens to go buy a car, so dealers will have to get tech and E-SIGN savvy to engage in online sales, and state laws that prohibit off-site sales or vehicle deliveries are going to need to play catch-up to a market interest that has been dictated by the pandemic, Instacart, and Amazon.

Feel free to share any of your predictions for this year. We'd love to hear from you.

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