

Moving the Metal: The Auto Finance Podcast — Through the Crystal Ball: What's Next for Auto Finance?

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Brooke Conkle:

Welcome to *Moving the Metal*, the premier legally focused podcast for the auto finance industry. I'm Brooke Conkle, a partner in Troutman Pepper Locke's Consumer Financial Services Practice Group.

Chris Capurso:

And I'm Chris Capurso, an associate in Troutman Pepper Locke's Consumer Financial Services Practice Group.

Brooke Conkle:

Today, we're taking a look into our crystal ball about what to expect from federal and state regulators in 2025. But before we jump in, let me remind you to please visit and subscribe to our blogs. We have two great ones that may be of interest to you, [TroutmanFinancialServices.com](https://www.troutmanfinancialservices.com) and [ConsumerFinancialServicesLawMonitor.com](https://www.ConsumerFinancialServicesLawMonitor.com), and also a bevy of other podcasts that you might find interesting.

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For today, as I mentioned, we'll be taking a look about what to expect from federal and state regulators in 2025. Chris, we've had a lot of changes. What do you think will be on the agenda for federal regulators in 2025?

Chris Capurso:

Yes. When you said crystal ball, it's more like a magic eight ball at this point. I'll be honest. Shake it up. I mean, depending on the day, who knows what's going to happen? Very realistically, by the time this podcast comes out, I mean, this has been happening to us constantly over the last two months where we record a podcast. Then within five days, it's not timely anymore, and we have to release a disclaimer that's like, "We swear, we know about these developments. It's just they keep happening so unbelievably fast that we can't keep up in podcast form." We, obviously, keep up in our blogs and all the other things I'm going to tell you to read at the end of this podcast.

But I think for the regulators, obviously, the big one on everybody's mind is the CFPB and what's going on there and, obviously, a lot of politics going on right now with the CFPB. You've got Russell Vought going in and shutting it down. You've got Elon Musk tweeting out RIP CFPB. You've got Elizabeth Warren picketing out in front of the CFPB. I mean, you've got everything you could possibly imagine going on. In the background, between the side saying the CFPB is going, they're shuttering the cop on the beat, and the other side going into saying this is about efficiency, there was a new director proposed, and he's had a confirmation hearing at this point. Maybe by the time this is released, he's been confirmed. But there is a director, and it was interesting.

I was listening to the confirmation hearing, and a lot of the Democratic senators, their big point was, "Are you going to follow the law? Essentially, are you going to fulfill the CFPB's mandate?" Then the Republican senators are, "Are you going to limit yourself to that statutory mandate and not overreach?" But they were all questions about an actual CFPB doing actual things. Again, I'm probably going to be made to look foolish in a day or two, but it seems like the CFPB will be a going concern, and it may look something more like the Kathy Kraninger CFPB, which was not vacant, which was not this agency that did nothing. They did quite a bit, just maybe not to the extent of the Cordray or Chopra years where you're getting blog posts that you better be on top of because that could set your compliance policy for years to come. I think with the CFPB, that's obviously top of mind.

Brooke, what are your thoughts?

Brooke Conkle:

For the bureau, I think kind of the big broad-scale agenda items are going to be different. Almost immediately when Director Chopra ascended in the bureau, it was very clear that junk fees was going to be a massive pedestal that he was going to attack consistently. That was going to be a theme. Junk fees writ large was something that was a target not just from the bureau but from the FTC. You saw that really distinct coordination between the bureau and the FTC in targeting these initiatives.

For Trump-era regulators, depending on who they are, and they're probably going to have an agenda, but they're very unlikely to broadcast it. The benefit of the Chopra years was that you knew what he was going to be going after. You knew where to predict it. With the regulators we're seeing come on, we're not quite sure what their specific agenda is going to be, what are

the areas that are most important to them, and what are the areas that companies need to focus on to make sure that they don't wind up on regulators' radar.

With those changes at the CFPB, we're also seeing changes at the FTC. Just as Rohit Chopra had a very distinct profile at the bureau, Lina Khan had a very distinct profile at the FTC. Her successor, Andrew Ferguson, is a little bit of an unknown, frankly. But, Chris, I think we've seen signs of what may be of interest to him in specific dissents that he has had during the Lina Khan years. Chris, what have you picked up on?

Chris Capurso:

Yes. I mean, as far as the junk Rule, he is not a fan of administrations releasing rules late into their tenure. But seriously, even though he's only been at the FTC for, I think, a year now, which in regulatory terms is I don't even know. Is it short? Is it long? It really depends on what's going on. But he has had a couple of opinions based on auto actions because, I mean, anybody who's listening to the podcast knows that we've covered several FTC actions in the last year. They've actually been quite active in the auto space, and he's released some dissenting and concurring opinions.

In none of them did he really go after the tenants of the CARS Rule, the shades of the CARS Rule, which we sang a requiem to last podcast, but he did rail against a very specific thing which was disparate impact and not necessarily – I mean, he makes pretty clear that he's not sure if it's a cognizable theory under the Equal Credit Opportunity Act, but that he's willing to defer to the courts who have said it is, which is kind of a very legalistic, nuanced way to be like, "Well, the courts have said it's okay, so I'm going to go with it, but I don't think it's okay."

He's kind of going that path. He has been very clear that he doesn't believe in discrimination as a UDAAP, which is the same arguments that were made back in – I believe it was 2022 when the CFPB updated the exam manual to include discrimination as a UDAAP, which was like we've had these discrimination laws for a long time. We've had the FTC Act for even longer, and yet this is a novel interpretation over 100 years later that discrimination is included as a UDAAP. If it was, why do we need these extra laws? Just kind of that thought process. That's something he's been focused on.

In these auto actions, this comes up a lot. We talk about the dealer markup being higher for certain minority communities than for majority white communities, things like that. Those seem to appear in every single one of these actions. But also, in all of these actions is add-ons and junk fees and things like that. I think there are some things that the FTC may move away from. I wouldn't call it a focus, but they're still going to be looking at auto. What do you think, Brooke?

Brooke Conkle:

I agree. When I look at sort of the dissents from Ferguson and the issues that he has been most vocal about, I think what he does not seem to like from the Lina Khan era FTC is exploiting the ambiguities that are in the law. He really seems to be like a guy who says, "The text of the law is the law. We're reading the letters in the law and not the spaces that are in between." He seems like someone who is very much sort of that textualist, "Let's go back to the statute. Let's see what the statute actually says, and we're only going to enforce our authority based on the

authority that's given to us." He seems like kind of a bright line sort of guy, and it'll be interesting to see whether that comes out in the FTC's enforcement actions, whether they occur at all, what his agenda is for the new FTC.

As we see the CFPB and the FTC, their shapes are changing. That, of course, means that the state AGs are going to increase. As Taylor, a partner in our RISE Group tells me, every time he says, "Politics, like nature, abhors a vacuum." As the FTC and the CFPB recedes, we're going to see state AGs moving in to fill that vacuum. What was interesting is that with the administration change at the federal level, a lot of those folks who were working for the CFPB or the FTC, working at the federal level, probably are moving to the state level, whether that's to Massachusetts, New York, Connecticut, California. A lot of those initiatives that were most important to federal regulators we're going to see being pursued at the state level.

Chris, where do you think that shift is going to happen with the states, and what do you think will continue to be the big issues?

Chris Capurso:

Well, I think first, I think this all means that Chris Carlson is going to be making several more appearances on our podcast. For everybody who is a long-time listener, you'll know that Chris is now the – I think he's the only two-time guest.

Brooke Conkle:

That's right. That's right.

Chris Capurso:

He's going for the trilogy, and I'm sure it's going to happen soon. Obviously, there's the whole blue state, red state dichotomy. You think all of the blue state AGs are going to be really strict in enforcement, and the red state AGs will be a little bit more accommodating to innovation and things like that. But I mean, in auto finance and auto dealer practices generally, complaints are complaints. If somebody complains to an AG and there are enough of them, I don't think you can hope that, "Oh, I'm in a red state, so the AG may react this way or live in fear in the blue state."

I mean, the nice thing about auto finance is it is an established market. We're not talking about enforcing crypto, or we're not enforcing things that are brand new that are like how do people feel about it, areas that have maybe been politicized a little bit. How do people approach them? If a dealer is accused of being openly discriminatory, which is, I mean, some of the FTC allegations have said that even beyond the disparate impacts of, I mean, some of them been like the sales manager was openly discriminatory. If that complaint comes in, I don't think it matters if it's a red state or a blue state AG. I think they're going to act on it.

Same thing with somebody feels that they're being overcharged for something excessively. That complaint is going to come in. There could be multiple of them because it's happened to multiple people. I think the AG is going to look into it because at the end of the day, a lot of the

times, people refer to the AG as kind of their political animals. I mean, that's what Tom Kline said on our podcast. But I mean, they are concerned about those types of things. Wanting to pursue an action where their constituents are really upset about this particular practice, I don't think it matters what side of the aisle it is. I think state AG is going to enforce as a state AG does.

Brooke Conkle:

Yes, Chris. I can't agree with you more completely. I'll say in talking with Ashley and Chris, one of the things that they have consistently cautioned us about and our clients about is using that sort of red state, blue state dichotomy as a heat map for who is going to be active in the consumer protection space. It is, frankly, to your own peril that you draw a line between a red state and a blue state and say, "Red state, I'm good to go." Some of those states that we would typically think of as crimson as you could possibly get still are extremely active in the consumer protection space and, frankly, take pride in that sort of activism and their own enforcement powers at the state level. Absolutely, do not think of it as a sort of red state, blue state. That is the map. It is much more nuanced than that.

For the big issues, we still think even at the federal level, repossession is still going to be something that federal regulators are interested in. Nobody likes a complaint that says, "I got back to current on my payments, and my car was still repossessed." Whether it's wrongful repossessions or misrepossessions or inadvertent repossessions, all of those are going to be hot topics for federal regulators, regardless of who is in office. Then service members. Our country has never been more divided. But politically speaking, service member protection is evergreen content for regulators at the state level and at the federal level. That is always going to be something that is on their agenda, specifically through the SCRA.

Projected hot topics for litigation, we've beaten the drum ever since the Pulliam decision from the California Supreme Court that attorneys' fees and the Holder Rule, how those two ideas interplay is always going to be an issue. Plaintiffs' lawyers are going to want to push it as far as they possibly can. Defense lawyers are going to try to cabin it as much as they can, really to hew to the specific language of the Holder Rule itself.

Also, let's not forget the elements of the CARS Rule. The FTC's position was that, essentially, the elements of the CARS Rule were already bedrock UDAP principles. When we looked at the CARS Rule, we said that probably makes this regulatory initiative redundant and still provides a window for plaintiffs' lawyers to argue that the prohibitions from the rule are already the law. Things like the offering price requirement, the prohibitions on add-ons, those are already the law. That's what we see for litigation. But Chris, tell us a little bit about compliance. What do you think is on the radar?

Chris Capurso:

Yes. I think it kind of meshes up with a lot of that where talk about the CARS Rule, and yes, maybe the specific requirements. Well, unless the California CARS Rule comes into effect. But those specific types of requirements, avoiding deception in fees or just making sure the consumer is aware of what they are getting and have actually consented in some way to getting

it, maybe not an individual checkbox, but that they know it's in the contract or it's on the vehicle or anything like that.

From the compliance perspective, at origination, making sure that your documents are aligned with the actual practices, which is huge. A lot of people rely on document providers, and that's industry standard. But how old is the version? You got to be careful and make sure that everything is up to date, that you're using proper documents, and that your procedures internally actually match up to those. Obviously, servicing and collections will continue to be a big thing. As Brooke mentioned, repossession is one of those things we don't think is going to change. That also goes for servicing.

One area that Brooke and I both deal with quite a bit that we have really mentioned on this podcast is TCPA, like communications of any kind with a consumer. There are some new rules coming in as of this date that are still there. Those are the types of things that people are going to have to be aware of. Obviously, that feeds into litigation risk because as Brooke will tell you, the TCPA is a big one, but being aware of those types of things.

Then, obviously, as Brooke mentioned, the service members, in the hearing with, he may be director now, McKernan, Military Lending Act was specifically brought up. A lot of the people listening, Military Lending Act with the purchase of a car, they just still need to treat service members a certain way. The SCRA still applies, and then there is, obviously, the refinance situations which bring in their own complexity. Obviously, need to be cognizant of that because a service member complaint will go through every channel, regardless of what state you're in, what the political climate is. The service member complaint will always go to the top, so you got to be careful about those things.

I'm a compliance person, Brooke, so litigator most likely. The compliance needs to be there. Otherwise, you're going to be venturing into Brooke's litigation hot topics. You got to make sure everything is buttoned up. You got to make sure you have oversight of how things are actually operationalized. You don't want to just have a policy procedure on the shelf because that's a one-way ticket to some kind of enforcement action. If you have a policy procedure that says you're going to do something and you don't do it and to the consumer's detriment, the consumer complains, I mean, that's just low-hanging fruit. You just want to make sure that everything is in place and that you're actually complying with the things that you say you're complying with.

Brooke Conkle:

Chris, again, reminded of our buddy, Tom Kline. Problems come on two legs in the auto industry. We've seen a lot of changes in the job market. Frankly, employment and being able to staff things appropriately is still a problem in a lot of areas. Managing your team, managing your employees, that's probably going to continue to be a compliance challenge.

Chris Capurso:

Absolutely. With that, that'll wrap it up for today's podcast. You'll have to let us know in any LinkedIn comments or emails how wrong we are in two weeks' time. But we want to thank everybody for tuning in. Don't forget to check out our blogs where you can subscribe to the

entire blog or just the specific content you find most helpful. That's the [ConsumerFinancialServicesLawMonitor.com](https://www.consumerfinancialserviceslawmonitor.com) and the [TroutmanFinancialServices.com](https://www.troutmanfinancialservices.com) blogs.

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