The Consumer Finance Podcast – Cruising Through Change: The Auto-Finance Industry's New Era Under Trump Unveiled (Crossover Episode With _Moving the Metal: The Auto Finance Podcast_)
Hosts: Brooke Conkle, Chris Capurso, and Chris Willis
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Chris Willis:

Welcome to *The Consumer Finance Podcast*. This is Chris Willis, the co-leader of Troutman Pepper Locke's Consumer Financial Services Regulatory Practice. And this week we're airing a special crossover episode with our sister podcast, *Moving the Metal*, hosted by my colleagues, Brooke Conkle and Chris Capurso.

You're going to hear Chris and Brooke and myself talking about the first hundred days of the Trump administration, and the impacts that it has had and that we expect it to have on the auto finance industry. So stay tuned, and I hope you enjoy the episode.

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 joined by the esteemed Chris Willis, with a crossover episode with the granddaddy of them all, *The Consumer Finance Podcast*. Welcome, Chris.

Chris Willis:

Thanks a lot, Brooke and Chris. It's great to be here again.

Brooke Conkle:

Today, we'll be discussing the first 100 days of the second Trump administration, what we expected, what surprised us, and what to look for in the coming months. 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 and ConsumerFinancialServicesLawMonitor.com.

Also, we have a bevy of other podcasts that you might find interesting. We have, of course, *The Consumer Finance Podcast*, which as you might guess, is all-things consumer finance related. *The Crypto Exchange*, devoted to trends, challenges, and legal issues in Bitcoin, Blockchain, FinTech, and RegTech. *FCRA Focus*, a podcast dedicated to all-things credit reporting. *Unauthorized Access*, a deep dive into the personalities and issues in the privacy, data, and cybersecurity industry. And finally, *Payments Pros*, a great podcast focused exclusively on the payments industry. All of these insightful shows are available on your favorite podcast platform, so check them out.

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For today, as I mentioned, we're joined by Chris Willis, and we'll be discussing the first 100 days of Trump 2.0. Chris?

Chris Willis:

Thanks a lot, Brooke. And looking back on what we experienced during the first Trump administration, we had anticipated that when new leadership took over the CFPB, that is acting leadership, that there would be an immediate slowdown in enforcement, because we experienced that the last time around. Here, though, we saw that happening in that no further action is being taken right now on pending enforcement investigations. They've all just been on hold since the early part of February.

But one thing that's different about this administration versus the last is that this CFPB's leadership inherited a very large number of matters in litigation between the CFPB and various industry participants. So, in order to deal with that, the CFPB's new leadership has been reviewing those cases and deciding whether to continue litigating those cases or to abandon them. There was one in particular that was abandoned in the auto-finance world, a lawsuit in the Southern District of New York jointly with the New York Attorney General, alleging some very, very creative theories, I have to say, and ones which we were very critical of, both in our writing and in the amicus brief that we filed on behalf of the industry in that case.

The CFPB reached the decision to withdraw from that case and no longer pursue it, which of course we thought was the right decision because we didn't think very much of the merits of that case in the first place. We've also seen pending enforcement investigations in the auto-finance world come to a halt with nothing really happening in them, and that's really been expected. The other thing that's happened though that wasn't the same as last time was the halt and supervisory activity.

So, the last time we had a Trump administration, supervision just sort of kept on trucking along without a lot of interference from the new political leadership of the Bureau. This time though, the supervisory efforts were also brought to a halt and numerous supervisory exams that were in various states of completion have all been stopped. A handful of them have been closed, but most of them that are just sitting there in limbo while we wait for the CFPB to decide what to do with them. But that slowdown has definitely been expected.

The other thing that I think we expected, and that I think is playing out was for the new administration's leadership of the agency to be less creative in terms of using UDAP and other theories to impose new obligations on the auto-finance industry. In the last administration, there was a lot of that going on, and primarily, it was happening through supervision. We would see it in our clients' supervisory exams, and then, we'd see it reflected later publicly in supervisory highlights. That also happened during the last Trump administration. There were some brand-new things that were created by the CFPB during that period of time, but I think the leadership of the Bureau has been very clear in the public statements that they've made or that have been released, that they're not going to be creative like that in the future.

Hopefully, we're going to have a hiatus from those sorts of new, what I consider to be, rulemaking through supervision or rulemaking through enforcement. When people say that, or at least when I say it, what I mean is, creating new obligations and new theories of liability that didn't exist before. That, I think is likely to come to a halt, and the agency's new leadership really has said as much publicly.

Brooke Conkle:

Chris, you mentioned leadership. One of the unexpected transitions was the leadership of the FTC, and specifically, Commissioner Andrew Ferguson being promoted to chair of the FTC. We knew a little bit about Chair Ferguson because he was a commissioner in 2024. He was seen as a pretty clear, yet respectful opponent of Lina Khan's initiatives. He was a commissioner who very much wanted to rule by what the law said, rather than the spaces between the laws.

I think one of the indications of where Chair Ferguson currently stands, really, we can look back to the dissent that he submitted in December 2024 when the junk fee rule was enacted. As you recall, the junk fee rule that eventually wound up becoming law was an extremely stripped-down version of what the FTC originally proposed. Then, Commissioner Ferguson's dissent really didn't have any kind of merits problems with the rule whatsoever. He, at the very first sentence of his dissent, essentially says, "I have no problems with the merits of this rule."

His problem was with essentially what he believed or what he saw as Chair Lina Khan's attempt to take a lame duck session of the FTC and use it to sort of push through a final initiative of the Biden administration. So, we have those markers where we can plot what we think is coming from Chair Ferguson, but he was someone who was, frankly, on all of our bingo cards. We thought he probably was going to be the man to lead the FTC, and here we are.

Chris Willis:

Yes, the real surprise, Brooke, with the FTC was not really Ferguson being made chair, which as you said, you know, seemed like a pretty obvious choice, but the administration's decision to terminate the democratic commissioners that were remaining on the Federal Trade Commission.

Brooke Conkle:

That's right.

Chris Capurso:

So, yes. We've discussed the FTC being a short-handed party. I say every time, I just imagine there's a table of five chairs and there's just a couple people there looking sad, waiting for the rest to come. But I think what might be the most obvious to me, thing that was expected was that service members and veterans are still a high priority of the CFPB and of federal agencies in general before the election even. Everyone asks us to guess, you know, what's going to change? What's going to stay the same?

Always. The obvious one was, well, service members and veterans are bipartisan issue, regardless of who's in there, they're going to look to take care of veterans and service members. Sure enough, in the first paragraph of that enforcement and supervision priorities memo that the CFPB released that we discussed on one of our prior podcasts, they specifically mentioned that they're going to be looking and protecting specifically veterans and service members. So, you know, it's one of the obvious ones to call out, but it's still there and it's one of those things that everybody needs to be careful of because obviously, there are a lot of veterans and service members and they do tend to buy a lot of things, especially cars.

When you're in auto-finance, you got to be careful about that, about especially compliance with federal and state laws related to service member and veteran consumers.

Chris Willis:

Although, Chris, I have to say, I wonder how big of a push we will see on veterans and service members, because it's not like the previous administration was ignoring that issue. They were very happy to go after service member and veteran-related cases themselves, seemingly at every opportunity from my perspective. So, is there another gear that that can be pushed up into by the new administration's leadership of the regulatory agencies? I kind of question whether that is the case.

The other thing is, there are some lingering service member issues that there might be disagreement between the old administration and the new about. One prime example that's very prominent for auto-finance is the status of optional products under the Military Lending Act. There had been regulations in and out and in and out over the last administration about whether or not the inclusion of an optional product in the amount financed of an auto-finance retail installment contract, took it out of the scope of the Military Lending Act or not, and it wouldn't surprise me if there were an effort to revisit that issue to make it possible for service members to buy those optional products when they purchase cars without bringing the retail installment contract within the restrictions of the Military Lending Act. That's one service member-related issue on which we might actually see a change.

Brooke Conkle:

We've talked about what we expected, but let's talk a little bit about what has been a surprise so far. Chris Willis, you mentioned the enforcement slowdown and the retreat from litigation from the Bureau's perspective. But also, we've seen consent orders from prior enforcement actions that have been terminated early. Essentially, the Bureau is withdrawing from those as well.

Chris Willis:

Yes, that's a really interesting phenomenon, and we haven't seen that in the past, Brooke, in connection with other administration changes. Where the new administration says, "Oh, I want to undo or terminate early a settlement, essentially, that the agency had entered into under the old administration." But you've seen an effort to vacate one entirely, a mortgage redlining matter that was litigated all the way to the Seventh Circuit. You've seen an auto-finance one where it was terminated early, not vacated altogether, but it was terminated early. There's been other indications that the CFPB may be interested in revisiting some of those existing settlements, because there was another one that was entered not in the auto-finance industry, but another one that was entered into right on the eve of the administration change, where the CFPB went back and amended it to reduce the amount of the civil monetary penalty that the target was required to pay.

So, that was expected from my standpoint. We haven't seen that from prior administration changes, and it really raises the question for everybody who's entered into a CFPB consent order, "Hey, can I get out of it now? Can I get out of it early? Can I have some other change made to it?" There's quite a few parties, I think, that are thinking about what approach can I make to the CFPB, because I want that too, essentially.

Brooke Conkle:

That's right, Chris. One of the questions will be, who will be leading the Bureau? I think we all knew it wasn't going to be Rohit Chopra anymore, but I don't know that any of us expected that six months in, we would still be waiting on an answer.

Chris Willis:

The thing is, that would be consistent with what we had during the last Trump administration because there was an acting director of the CFPB for around 10 months, actually, under the last Trump administration, after Rich Cordray resigned, which was in November of 2017. So, the fact that you have a while with an acting director isn't that big of a surprise. But what was a surprise is that the administration announced a nominee. That nominee, Jonathan McKernan, had his hearing in the Senate Committee, was voted successfully out of committee and was just awaiting his Senate floor vote. Then, it was announced, well, he's taking a position at the Treasury instead. So, we're not going to have him be the leader of the CFPB.

So, this sort of, okay, we have a nominee and now we don't have a nominee was really the surprising part. Now, everybody is left to speculate who will be the administration's next nominee. There's speculation going on about that, but no name has been announced publicly by the administration in that regard. So, that does leave the agency and everybody who deals with the agency in some degree of limbo, not knowing kind of what things will look like in the long term.

The other thing, Brooke, that unfolded in a way that was, I think, a little more than we expected was the agency's efforts to repudiate or withdraw various pieces of guidance that had been introduced over the course, not just in the last four years, but since the agency's inception. In mid-May, the agency published a federal register notice saying, "Hey, we're withdrawing these almost 70 pieces of informal guidance, interpretive rules, advisory opinions, bulletins," that sort of thing. With the statement there that this is just the first batch and there's more to come.

That's not totally unprecedented, because the acting director of the CFPB under President Biden, Dave Uejio did something like that, not to that scale, but nevertheless did something like that shortly after assuming that office. So, we figured that would happen, but it happened on a scale that was larger than we had experienced in the past. That again, the CFPB of the Biden administration put out a whole lot of that informal guidance. So, there was a greater volume of that for the new leadership to deal with.

The interesting thing that I think remains is, what will the Bureau do with supervisory highlights? Because, as I said, that's particularly impactful for the auto-finance industry, because so much of the pressure that the CFPB put on the industry to change business practices when there was no clear law involved was through supervision, and then, the publication of those supervisory actions in supervisory highlights. There were numerous auto-finance related issues that were featured in supervisory highlights over the past four years on things like power booking or the refunds on optional products that were canceled, things like that. So, auto-finance was a regular subject of those supervisory highlights. None of them has been withdrawn yet, but you would think they would be on the list for consideration for withdrawal. So, it'll be interesting to see what happens with those.

Brooke Conkle:

Yes. Chris, one of the topics that we thought would be on the Bureau's list hasn't been and that's discrimination, right, Chris?

Chris Capurso:

Yes, I think, to Chris number one's point, there are certain actions that we're not necessarily surprised that they're eyeballing it or focusing on it. It's just the scope of it, and how deep it's going. So, discrimination like not terribly surprised that there's a dialing back of some of these theories, but the length to which they are dialing them back, even to remove them has been somewhat surprising. I mean, the two right offhand, obviously, disparate impact is definitely being frowned upon in this administration. The agenda that the CFPB released absolutely went after that. And then, this recent executive order from President Trump specifically targeting it. Then, also, the whole thought of discrimination as a UDAP.

Recently, the Fifth Circuit officially dismissed the CFPB's challenge of the vacation of those amendments to the UDAP exam manual back several years ago. But it kind of goes along with what we were talking about earlier, this idea of novel theories, and this administration will not pursue novel theories.

In the FTC too, Chairperson Ferguson, before he was just the chairperson, when he was a commissioner, he had some concurring and dissenting opinions in auto-finance actions that we've discussed briefly, previously. But in both of those, he discusses one that he doesn't know if disparate impact is a cognizable theory under ECOA. One of the actions, he says, he's going to go with the courts, but he specifically puts in a line that he doesn't know if he personally agrees with it, but the court said it. So, he will defer in this instance. And that, in the other opinion, he mentions, "Hey, this idea of a novel theory of discrimination isn't what we should be doing. There is a law about this, called ECOA. We should be looking at the letter of the law and not trying to explore these either statistical analyses or trying to find it under a UDAP theory."

I think, repeating the broken record is not necessarily that they're looking at dialing back discrimination. It's how far it's gone.

Brooke Conkle:

That's right. You mentioned the list of supervisory priorities that was released earlier this month. What, frankly, was sort of glaring to me when I look at that list is one word in particular, and that's fees. When you think about the Chopra-led CFPB, one of his main, main priorities was junk fees. Sort of the proliferation of junk fees, how to attack junk fees, how to essentially create frankly new causes of action to specifically target junk fees. What is a junk fee? We're still trying to figure that out. But it was interesting to see on the Bureau's list of priorities that fraudulent overcharges and fees, et cetera, is one of their priorities. So, it still signifies a keen interest in consumer fees. Junk fees are still pervasive.

For dealers, that means, price disclosures are still super important. Dock fees, other types of paperwork fees are still going to be closely scrutinized. And then, for auto-finance companies on the servicing end, it's the convenience fees or the pay-to-pay fees. Those are still going to have a high interest from regulators according to the supervisory bulletin. So, how does this impact auto-finance companies moving forward? Chris Willis, what's going on at the federal level?

Chris Willis:

Well, I think for banks who have auto-finance operations, presumably, they will still be subject to examination by the CFPB, but it seems likely that the number and depth of those examinations may decrease. Because right now, there's no supervision going on that I'm aware of. All those exams that were happening have stopped, and I haven't heard of any new ones being noticed. The CFPB has said in its priority memos, it's going to focus on large banks, and there are certainly large banks who have auto-finance operations.

But likewise, the reduction in force plan that the acting leadership of the Bureau was attempting to carry out before it was halted by court action at the hands of the litigation brought by the CFPB employees union, was going to have a reduction in force in supervision that would be the majority of the supervision staff. So, if they do anything like that, there will be many fewer supervisory exams. So, one would think that A, there just won't be as many supervisory exams. And B, the same memo said, we're not going to make up new duties and new theories of law in supervision or enforcement. I think the bank auto-finance players are likely looking forward to less supervision and less demands being made on them to implement new things that the Bureau was just making up as it was going along.

Then, for the non-bank auto-finance companies, of which there are many, they probably will experience even less supervision. Again, most of this pressure was happening in supervision, not in enforcement. There were a few enforcement cases, but many more were dealt with in supervision. The priorities memo that the Bureau's acting leadership release said, essentially, we're not going to prioritize doing exams of non-banks. We're going to let the state licensing authorities do that. That means that the non-bank auto finance companies, I think, are going to experience an even greater relaxation of scrutiny at the federal level, and they'll be left to their state licensing regulators, the state financial services regulators, essentially, who license and regulate them under motor vehicle sales finance acts or retail installment sales acts.

Brooke Conkle:

That's right. Then, at the state level, as we discussed, as the federal regulators sort of recede, we see the state regulators moving in en masse, with sort of the usual suspects coming to the forefront. In particular, we've seen in the past few months essentially the disintegration of what was left of the CARS Rule. The Fifth Circuit invalidated it, sent it back. The FTC did not pick up that mantle, but we're seeing that the states potentially are.

There's the California legislation that essentially echoes all of the key hallmarks of the CARS Rule. But also, let's not forget, as Director Chopra left office, he left essentially a playbook for state regulators and said, here, here are the ways to target UDAP violations in particular. On the other side for the FTC, the FTC's position was, the CARS Rule is already the law. So, this is just codifying what already currently exists.

So, state regulators can easily take that and say, "Okay, the initiatives, and the prohibitions, and requirements of the CARS Rule, we can enforce that under state UDAP law." We've seen recent enforcement actions in New York and Illinois that really target those price disclosures and add-ons, that were kind of the two hallmarks of the CARS Rule. So, we're seeing that sort of filtered down to the state level. Chris Capurso, what do you see coming down the pike for auto-finance companies and dealers?

Chris Capurso:

So much has happened in the time since President Trump was inaugurated and we began this version 2.0 of the Trump administration. It is very hard to predict the future. I mean, people will always ask, "What does the crystal ball say?" And it's as foggy as it could possibly be. I think the most important thing, though, for everybody, dealers, auto-finance companies, everybody, is to really keep up with your consumer complaints. Because, well, for so many reasons. First off, I mean, just reputationally, you want to be a business that responds to your consumers if they're having issues or having any problems whatsoever. That's just good business practice.

Second, even if certain agencies are taking a step back, as Brooke has noted, state agencies are potentially taking a step up. AGs are always going to be looking for an action and what better way than with a consumer complaint that seems to be mirrored however many times.

That also goes for private litigation risk if there's some complaint about particular practice that may be subject to a private right of action. You don't want that to be permeating throughout your business practices, just because, during Trump's first 100 days, one agency dialed back. You want to keep this constant compliance initiative going, regardless of what's going on there as far as consumer complaints.

I think that's something that everybody needs to keep an eye on is consumer complaints. Regardless of what's happening at the federal level, regardless of what's happening at the state level, it's good business practice, it can protect you or at least mitigate the risks going forward that you're going to have some issue permeate for months and years. Again, the administration could change again in 2028, and then, if you haven't been responding to your complaints for a couple of years, and there's some kind of look back that hits on that, then, you'll wish you had looked at them.

Chris Willis:

The other thing, Brooke I'd love to add is, for the non-bank auto-finance companies that are subject to jurisdiction of the state financial service regulators, I think it's likely that New York is going to be the regulator among those that will act the most like the Chopra era of CFPB in terms of the scope of supervisory examinations and the types of issues that are pursued there. We had actually already seen a lot of that during the last administration and very active cooperation between CFPB supervision and New York DFS supervision. I think that has primed New York to continue in that role now that the CFPB may not be cooperating anymore, but New York, I think is going to continue carrying that torch forward for the next four years.

So, for non-banks who do business in New York, I think the message for me is, be sure you take New York compliance and New York exam prep very seriously and pay close attention to the positions that are taken and that are likely to be taken by that regulator, because they can be just as vigorous and forceful as the CFPB was over the last four years.

Chris Capurso:

With that, that'll wrap it up for today's podcast. Thank you to our audience 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 and the TroutmanFinancialServices.com blogs. While you're at it, why don't you head on over to troutman.com and sign up for our consumer financial services mailing list so that you can stay abreast of current issues with our insightful alerts and advisories, and receive invitations to our industry insider webinars.

Of course, please mark your calendars for this podcast, *Moving the Metal*, and as Brooke put it, the granddaddy of them of all, *The Consumer Finance Podcast*. *Moving the Metal* will be releasing every two weeks in 2025, generally on the second and fourth Tuesdays of each month. And *The Consumer Finance Podcast* releases every week. As always, if you have any questions or if we can help in any way, please reach out to us. Until next time.