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***The Consumer Finance Podcast: Navigating the CFPB's Auto Finance Data Collection Initiative***

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**Guests: Brooke Conkle and Chris Capurso**

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**Chris Willis:**

Welcome to *The Consumer Finance Podcast*. I'm Chris Willis, the Co-Leader of Troutman Pepper's Consumer Financial Services Regulatory Practice. Today, we're going to be talking about the CFPB's proposal to engage in regular data collection for the auto-finance industry. Before we jump into that topic, let me remind you to visit and subscribe to our blogs, [TroutmanPepperFinancialServices.com](https://TroutmanPepperFinancialServices.com) and [ConsumerFinancialServicesLawMonitor.com](https://ConsumerFinancialServicesLawMonitor.com). Don't forget about our other podcasts. We have lots of great ones. We have the [FCRA Focus](#), all about credit reporting, [The Crypto Exchange](#), about everything crypto, we have [Unauthorized Access](#), which is our privacy and data security podcast, and finally, [Payments Pros](#), which is all about the payments industry. All of those are available on all popular podcast platforms.

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Now, as I said, today, we're going to be talking about the CFPB's proposal to engage in regular and, shall I say, very extensive data collection for the auto finance industry using its authority for market monitoring under Section 1022 of Dodd-Frank. Joining me to talk about that are my colleagues, Brooke Conkle and Chris Capurso. Brooke, Chris, welcome to the podcast.

**Brooke Conkle:**

Hi, Chris. Great to be here.

**Chris Capurso:**

Hey, Chris. Thanks for having us.

**Chris Willis:**

I'm really glad the two of you are on. Of course, Brooke and Chris do work for auto finance companies all the time and have been doing it for a great deal of time. This is a potentially very

significant development by the CFPB, because it really bespeaks a degree of monitoring of the market that is extremely extensive and goes well beyond anything we've seen under Section 1022 before. I guess, to level set us, Chris, let me go to you first. The CFPB is proposing to do this data collection under Section 1022 of Dodd-Frank. Tell the audience about what Section 1022 says and what it allows the Bureau to do.

**Chris Capurso:**

Thanks, Chris. Yeah. I guess, the story goes back to November of 2022 when the Bureau first proposed developing this new data set idea under its authority to monitor consumer financial services markets. The reasoning they gave was auto is an enormous part of the consumer financial services market, and it's growing because prices are up, rates are up, and that was all a baseline that they wanted to collect more info on how the market is operating. They proposed, or announced that they were seeking public comment on this proposal. Then just three short months later, nine of the biggest auto finance companies received, essentially, data requests from the CFPB implementing this notion.

Chris, I wanted to ask you, this data request, it's pretty long. It's several pages and an outrageous amount of info. I'm curious, you represent these clients. What was their first reaction to getting this enormous list of data subjects?

**Chris Willis:**

Well, I think their initial reaction was similar to yours, that this is an incredibly large and burdensome request that requires an immense amount of detail over a very long period of time. Much longer than your typical supervisory exam. It was enough to get them questioning what is the Bureau's authority under Section 1022 really all about. It's supposed to be market monitoring, but it seemed because of the breadth and length of time of the request that the Bureau may have been exceeding that authority. The problem, of course, is that Section 1022 isn't very specific in terms of the limits on the Bureau's authority to collect this information. Chris, let me come back to you. Tell the audience a little bit about what you saw as the focus areas for the CFPB and the pilot that was directed to the nine larger auto finance entities.

**Chris Capurso:**

Sure. I have this list in front of me, because anybody who's memorized this, one spent a lot of time and two, hasn't a lot of time for anything else, because it's enormous. I have the list in front of me of this immense amount of data subjects, and they're split into origination and servicing. The biggest area from what I gather from it is repossession. There's really an eye on repossession. This makes sense, because this is something that the Bureau has keyed in on. It's something that shows up in supervisory highlights, something that they're really focused on, and pretty much anything that you could imagine about repossessions is requested in this, the types of situations that led to them, what resulted from the disposal of the collateral, if that's what happened, what refunding happened, whether GPS and starter interrupt were used.

As Chris said, this is a request that goes pretty far back. This goes back to January 1, 2018. I mean, that's now not only several years ago, but with a pandemic in between, it feels like an eon ago. These auto finance companies are having to dig back into their annals to try to figure

out, basically, every data point that could be associated with, basically, any account they've serviced. As Chris said, it doesn't surprise me that the reaction was, "My gosh. This is a lot."

Again, this was targeted at nine of the largest auto finance companies, and this was last year. The more recent CFPB action was broader, maybe less specific, but it was a request for comment, and we're going to hear a little bit about that.

**Chris Willis:**

That's right. We're going to go into that in just a second. But one other focus area that I perceived from the pilot data collection process was not just repossessions, which was definitely very much in evidence, but also ancillary products and ancillary product refund issues, which is another area of perennial CFPB interest, both publicly expressed and as a matter of high emphasis in the supervisory exams that we assist clients with. Brooke, Chris alluded to the proposal that's now out by the CFPB. Do you mind telling the audience what it is the CFPB has proposed to do on an ongoing basis in the future with respect to auto finance market monitoring?

**Brooke Conkle:**

Absolutely, Chris. What's interesting is that the CFPB is proposing to take this massive data collection that it imposed upon the nine biggest auto finance companies and taking that and putting it down to a smaller scale. For those companies that originate between 500 and 20,000 loans in a calendar year would now be subject to many of the same data requests that the CFPB imposed on the nine biggest companies. You see the Bureau really taking its document requests and voicing them upon lenders who aren't as big as the big guys are.

You have companies that are originating a much narrower band of auto finance loans, between 500 and 20,000. They're going to also be providing this data to the CFPB on how their loans are originated and also, how loans are repossessed, how vehicles are repossessed, not only repossessions, but also voluntary surrenders. We have end of account life issues that the Bureau is really focusing on here in this. I should reiterate, it is a proposal. It is not set in stone yet, but the Bureau is seeking authority to go ahead and target these companies that are originating a substantially fewer number of loans than the big nine.

**Chris Willis:**

That raises an interesting question, Brooke. When the Bureau sent the 1022 orders to the nine large market participants, it didn't have to get any approval from anybody and just went ahead and did it. What is the approval that they need to do this on the broader basis that you just described?

**Chris Capurso:**

Yeah, that's exactly right. The Bureau published in the Federal Register, it's January 23<sup>rd</sup> of this year, they published the Request for Notice and Comment, and specifically the Bureau is

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requesting approval for the Office of Management and Budget for this new auto finance data project. The Bureau needs the OMB's approval to be able to implement this project.

**Chris Willis:**

Got it. It'll be interesting to see what interaction may occur between the CFPB and the Office of Management and Budget with regard to that, but we're waiting to hear in terms of that now. I think now, what I'd really like to do is get the two of you to discuss what would be the practical impacts for the auto finance industry if the Bureau is permitted to go forward as it has proposed that is doing these extensive annual data requests to a very large segment to the auto finance market? Brooke, let me direct it to you first. What do you think some of the practical impacts may be?

**Brooke Conkle:**

Absolutely, Chris. Really, this is a significant swath of data. This is information that goes back over years. Suddenly, you have the CFPB really able to not just track market variants, or market variables, but also use that information for enforcement actions. As the Bureau has stated, they're going to use the information for all legally permissible activities, and that includes enforcement. On the one hand, you have all of this data. On the other hand, you have the Bureau seeking this information from companies that aren't necessarily designed to collect and provide this volume of information to the Bureau.

With the efforts now to seek this information from auto finance companies that are originating considerably fewer loans a year, even just 500, suddenly, they're having to provide all of this data to the CFPB as well. That can be a manpower problem, where you have to devote significant resources to just being able to respond to these requests for data.

**Chris Willis:**

Chris, what's your take on the potential practical impacts on the industry from this if it goes forward?

**Chris Capurso:**

Sure. I was withholding that. I don't know if anybody here plays the game where you have to – it's like a sports game where there are grids and you have to pick people who correspond with the teams on each side of the grid. All I could think was Mick Mulvaney hits the square for the CFPB and OMB and that's where my brain went. In reality, I think this order, there is so much data that they are requesting from at least the nine, that if that carries over practically to the rest of the industry, first off, they're going to have to think about data collection at every single point of their process, because there are data points related to origination, even though the CFPB doesn't have oversight over the auto dealers themselves who may be originating RICs if they don't, or if they assign them. There are still questions for the servicers of those retail installment contracts about what the total amount was, what the fees were, things like that. You got to think of it at the front end.

Then you have to think on the back end, the type of data that goes into a repossession that they may have to get from vendors who are undertaking that. It's just, they've got to be very careful to actually document all that stuff if this is going to be the way that the CFPB is going, as far as data collection. Also, it's an interesting question the Bureau brings up in this, this was most recent request for comment of ways to make it easier. Would it be easier if there was an automated system, as opposed to having to do it themselves? I'm sure people in the auto industry would just love an automated system created by the Consumer Financial Protection Bureau, but they can implement it into their own system. I'm sure that's just a winner in the industry. But just trying to figure out ways to make this easier.

It seems like the CFPB even recognizes, I'm sure they don't care, but I'm sure they recognize that this is a big undertaking. It's just the scope and this – the earlier order was to the nine biggest ones. What about the nine smallest ones who are going to be still be subject to this, because this order would cover 500 originations more and that's pretty small? What are those smaller entities going to do now that they may have to devote cost to data collection?

**Chris Willis:**

Well, I think you're both very right in terms of the potential burden on the industry, especially the smaller players. The other thing that I would point out with respect to this issue is something that Brooke alluded to. The Bureau said in the 1022 orders it issued to the nine large market participants, we can use this information for any purpose, including enforcement. It seems to me that this data collection exercise being directed to such a large portion of the industry is a way for the Bureau to sidestep the limits on its supervisory authority to larger participants, because it's not obviously limited to larger participants.

For larger participants, it might use the data to direct supervisory exams to inquire further into whatever it saw in the data. But for larger ones, it doesn't have supervisory jurisdiction. Enforcement is the only way that it can follow up with those companies and it would seem likely to me that if you present yourself as an outlier in your data about repossessions, or ancillary product refunds, or anything else, then you might get a civil investigative demand asking for more information. I view it as a form of shadow supervision by the Bureau over a very large swath of the industry. The purpose of which is to, for the majority of the industry probably, serve as the basis for enforcement proceedings.

**Brooke Conkle:**

Chris, I agree completely. I think one of the things that is most curious about the data collection is that historically, we have advised auto-finance companies to let consumer complaints be the driver of your remediation efforts. What are you seeing complaints about? Address those areas. Here, the CFPB is flipping that idea on its head, where it is potentially, potentially going to be using enforcement actions that are driven not by consumer complaints, but by this collection of data and the Bureau's own initiatives.

We can look at consumer complaints and use that as a general model for where we think the Bureau might be interested. With all of this data in hand, the Bureau is not going to necessarily be driven by consumer complaints when it comes to enforcement actions.

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**Chris Willis:**

Thanks a lot, Brooke. I think this has been a really interesting discussion. I think the audience will definitely come away from this understanding how serious the Bureau's data collection proposal really is, both in terms of the logistical issue of trying to collect and provide the data, but also from what may follow from an analysis of the data over at 1700 G Street.

I'd like to thank both you and Chris for being on the podcast today, and also to make a special announcement. As I noted before, Brooke and Chris are very experienced in the area of auto finance. I'm actually going to be turning over the reins of *The Consumer Finance Podcast* for a special series that the two of them are going to record on lots of issues dealing with auto finance. Watch your podcast feed for some special editions of this podcast hosted by Brooke and Chris, where they're going to be talking about a variety of interesting, both regulatory and litigation issues affecting the auto finance industry. Brooke and Chris, thanks a lot for today's episode and for the ones that you're going to be releasing. Thanks to our audience for listening today as well.

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