***Moving the Metal: The Auto Finance Podcast* — Shifting Gears: Adapting to Regulatory Changes in Auto Finance**
Hosts: Brooke Conkle and Chris Capurso
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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 going to answer the question, "What now?" With federal regulations suddenly at a crossroad, what should your dealership or auto finance company be focusing on?

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Today, as I mentioned, we'll be discussing those areas that dealers and auto finance companies should focus their interests on while DC politicians duke it out. Chris, level set with us. Where are we and what's going on in DC?

Chris Capurso:

Oh, Brooke, a lot has happened. Much has happened. I guess we can start with the CFPB. As I've said, the last couple of podcasts, it may very well be, by the time you listen to this, something just totally different has changed. It makes me think of when I would listen to like a sports podcast, and it's like previewing a big game, and I don't get to it until after my team has probably been decimated, and then I have to listen to like all the optimism about them doing well, and it's like, “Boy, I wish I had listened to that beforehand.” This could be like that.

But I guess I'll start with the CFPB. Obviously, this has been in not just our news, the type of news the financial service is nerds listen to, but I mean national, international news. I mean, I saw the tweet from Elon Musk first on the BBC, not in a trade magazine, and that tweet, the RIP CFPB tweet kind of sets the stage for everything that's gone on. But after several weeks of confusion, I mean, I think there's still confusion, but several weeks of confusion where people were being let go, Russell Vought was just kind of in there taking things away. We do have a nominated director, Jonathan McKernan, and he has gone through his hearings and he has made it out of committee. As of the time of this podcast, he's still awaiting a final vote, but we do have a real director. As of the time of this recording, which I'm going to say probably 17 times, the litigation over the fired employees is still ongoing, but the court has ordered them to rehire many if not all. I haven't been paying as close attention to that. But let's scratch that entirely.

The court is requiring the CFPB to require many if not all of those employees. So, I mean, it looks like it's going to be back in business. Now, what that business is, is up for debate. I don't think it's going to be, and I'm sure Brooke agrees, it's not going to be the Chopra-era CFPB, certainly not the end of the Chopra-era CFPB, where every single day there were at least three major pronouncements. In his confirmation hearing, Jonathan McKernan noted several times that he was going to uphold the statutory mission of the CFPB and do the things it is tasked to do by statute.

So, you may not see as much overreach or “overreach” where you've got industries being brought within the CFPB's gamut that normally wouldn't be thought of as being within it, but you could still see a lot of actions. I mean, obviously for finance companies, the CFPB could still be looking at repossessions. I'm almost positive they're still going to be looking at service member issues. The things that transverse the political wins, they're always going to be there. So, if the CFPB comes back, and a lot of this depends on how big the staff is, because they can only do so much, you're probably going to see a lot of that. But you may not see as much of, you’re probably going to see a lot of that, but you may not see as much of out of, out of the all the thing that comes immediately in my mind is the auto data pilot that Brooke and I discussed very early on. That was kind of an information-gathering that seemed like a roundabout way to find out about dealer practices.

The CFPB doesn't have authority over dealers. So, maybe that type of thing goes away, but they're still going to be active in some way, I would guess, especially on service member issues, especially on repossessions, things like that, things that regardless a political party. Folks want to make sure if it's a repossession that's done right, if it's a service member that they're treated right. The FTC, it's funny. The CFPB seemed like what's going on there, at least the FTC is somewhat stable, false. The FTC currently, as of the time of this recording, only has two commissioners. I just imagine them at a table of five with three empty chairs, just sad. But

currently it's just the chair, Andrew Ferguson, and Commissioner Holyoak, and that is it. The two other Democratic commissioners, obviously, Chair Lina Khan resigned right around the time of the administration change, but the other two Democratic commissioners were fired by President Trump, and they are currently suing as of the time of this recording. I told you I'm going to get to 17, so there's a lot of uncertainty with the FTC as far as who the commissioners are going to be, but also, not a ton has happened so far.

So, we're still trying to get a feeling for what the Ferguson FTC is going to look at. We've talked about this previously that he's commented on prior auto actions by the FTC and he has not gone out of his way to criticize unauthorized add-ons, potential deceptive practices, things like that, he really went out of his way to go after disparate impact. But the FTC, it's in administrative flux, and it's also just in flux because we don't know exactly what's going to happen. But as I think we've mentioned several times, there were some big auto actions in the first Trump administration. So, it's not like they're not going to look at it. But the FTC, like the CFPB, the overarching thing is you need to have staff to be able to carry these things out, and they were already light because the FTC has such a broad mandate. So, that's a question.

Then, on top of all this, the FCC also has a new head. We'll see, a lot of the actions, it seems are more in the kind of broadcasting trying to determine those types of things, but obviously, new head there. You could see changes in the rules that are coming out, maybe there's differences in enforcement of how the rules are enforced, including the two new rules that we discussed last time. And again, hopefully that's in some kind of solid state so that I'm not talking about something that's been completely revoked and you're like, “Wow, this guy didn't listen to the news.”

So, those are just like three of the agencies, but much like the rest of the federal government, these three regulators have seen some change, some of them more drastic than others, and we're still kind of waiting to see what exactly is going to be the end game with all that.

Brooke Conkle:

That's right, Chris. And I think as our buddy Chris Carlson would advise all of us, silence at the federal level does not mean that regulation is dead. We still have regulators at the state level who are ready and willing to enter into that vacuum and put forth their own agendas, and really kind of make a name for certain states on particular issues that they believe are of import to consumers. So, we have all of this kind of both action and inaction at the federal level, but that doesn't mean that sort of the compliance mantle should be dropped because we do have state regulators who are there and frankly have the playbook, as we have discussed, the playbook that the CFPB wrote up before Chopra left office.

Then the other kind of consideration is that, frankly, there's going to be another election in four years. If there is another changeover, then conduct that's currently ongoing could be the focus of regulatory efforts from a new administration. So, we're kind of trapped in this sort of pendulum between one party to another and conduct that is not on the radar for these regulators could be problematic for folks three and a half years down the line.

So, Chris, for dealers and for auto finance companies, where should everybody focus their energies in this sort of wait-and-see period? What should we be doing with all of the free time that everyone has?

Chris Capurso:

Yes. Actually, just going off that prior one, speaking a free time, as I mentioned, a lot of enforcement attorney's compliance professionals are out of jobs at these federal regulators. States are on the record as going after some of these folks and hiring them and kind of bolstering their own ranks. So, just to echo Brooke's point, it happened in New York hiring ex-CFPB folks. You could have the states bolstering, getting ready for the next four years by hiring these folks who have been let go from federal regulators, so just another thing to consider.

As far as our energies right now, I mean, you could devote literally all your attention to trying to keep track of everything that's happening at the federal level. I think one big area, and it's always going to be a big area regardless of what's going on is consumer complaints. We always discuss, as much as you don't want to look at it this way, a complaint should be looked at as a learning experience. You're finding out from a consumer something about your business that you may not have known. So, you've got that portion of it. You can also see if a consumer has complained or several consumers have complained about the same type of thing, you find out that there may be some kind of systemic issue. These complaints are always going to be vital.

Obviously, at the state level, an AG complaint could breed a state AG action. But also, at the federal level. I mean, even if the CFPB dials back a little bit, they still have the complaint portal for the time being. If that complaint portal is showing a ton of complaints for a company or a ton of complaints about a specific issue with a company or something like that, it's probably going to catch somebody's eye. The other issue is there's the negative publicity aspect of it too. I mean, you could have Better Business Bureau complaints or bad CFPB complaints. You have to make sure those are resolved and you have to make sure that you've responded to them in a timely manner as well, just from the reputational standpoint.

Complaints are always going to be important. It's something that maybe in this time period you can brush up on, maybe make sure the complaint management process is up to snuff. Make sure that the process feeds into any kind of monitoring or revisions of policies or anything like that. It can't be done in a vacuum. It should feed into other aspects of the business so that you can use that complaint data to better bolster your compliance efforts.

Brooke, is there anything else coming to mind immediately on where we should focus our energies?

Brooke Conkle:

Yes, and Chris, you mentioned customer complaints and you're exactly right. They are the canary in the coal mine that's going to tell you what's going on. And as our mentor, Alan Wingfield used to say, if your customers can get in touch with a regulator more easily than they can get in touch with you, you got a problem. So, I wholeheartedly sign on for customer complaints.

Then kind of taking a step back to kind of what's been going on in the past five years, kind of maintaining the workforce has been a distinct challenge, both for dealers and for auto finance companies. There has been so much turnover since COVID. Kind of brush up on who are the folks who are making up your sales associates, your consumer, your customer service reps, all of these consumer-facing folks. Do they have the training that they need? Now that we're kind of able to take a step back and the need for employees is always going to be there, but it's not quite what it was in those post-COVID days.

So, make sure that your folks have the training that they need, that they know how to interact with customers, that they know how to deal with customer complaints, that they know kind of where to go for certain policies and procedures that are important for your business. Brush up on that training in this time period. Then, kind of, once we take a look at sort of what's on the horizon for 2025, the winds of change are blowing and everything indicates that we are likely on the road to a consumer recession.

Chris, kind of, what should we be looking for to get ready for that, frankly?

Chris Capurso:

Yes. I mean, if I'm thinking back to the last recession right around COVID, however brief that was, not COVID, the recession, COVID lasted forever. The thing that always comes to mind is modifications of credit contracts. I mean, that was a big thing with people potentially being out of work, companies trying to do right by their customers, giving them some extended time to be able to things off or moving things down the road. I mean, the student loan repayment was basically one big modification. The interesting thing now is, going into that recession, rates were in a decent spot, costs of vehicles were in a decent spot. Where we are now is entirely different from that. I mean, the cost of vehicles, who knows what's going to happen with the tariff battle currently being waged. Again, maybe that's changed by the time this podcast comes out, but certainly seems like it won't be. And financing costs are very high because the rates have not changed and that is definitely not going to happen by the next

podcast. So, I feel pretty confident saying that one.

So, you're looking at higher costs, higher borrowing costs. If we hit a recession and folks are out of work, then the modifications or deferrals or things like that, consumers may be seeking those more than ever. So, you want to make sure that if you offer modifications that those processes are dusted off and compliant with all applicable law and that your customer service processes are in shape so that say a consumer emails about a modification, it doesn't take three weeks to respond, and by that time they've defaulted or something like that. You want to make sure all of that is in place.

That's the big thing that came immediately to my mind. Brooke, do you have another one?

Brooke Conkle:

Yes. Chris, just as you mentioned, should we head towards a recession? Then consumers are going to be distressed. They're going to have trouble making their payments. And specifically,

during COVID, we saw retail installment contracts that the average term was between five and six years. So, those are folks who entered into a retail installment sales contract in 2020, 2021, those contracts are still going, those accounts are still active, and those are customers who your relationship is still there even though that sales transaction took place in a very different time.

If we do have a recession, auto finance companies and dealers need to be able to communicate with distressed customers and figuring out what is the best way to communicate with your customers, whether it's by calls, emails, text messages, how do they want to communicate with you, what is going to be your best return on investment on that attempted communication. Then frankly, as we talked about in the prior episode, we have new regulations, we think, new regulations on how to respond to certain terms that indicate revocation.

According to the FCC, stop, opt out, unsubscribe, all of these terms that are going to indicate an automatic revocation of consent to be contacted. So, really kind of where is that line, figuring out how do we get information to our customers? They don't necessarily want to talk to us if they're distressed. How do we still kind of create those lines of communications to make sure that folks have the information that they need? Anything else, Chris?

Chris Capurso:

Yes. That just immediately brought to mind with FCRA litigation, we're seeing even now quite a few of cases related to COVID and how companies handled modifications and how they handled just that general reporting, and how documented modifications and all those things. So, branching off of the idea of modifications is making sure that your policies for credit reporting are really up to snuff, because you got to make sure your investigation policy is together, what kind of information you're furnishing, all these types of things need to be together, because even now we're seeing, this is right around the five-year anniversary of COVID, we're still seeing cases because these could live on for several years, right? It's kind of like an aftermath effect.

But cases were, “Oh, I agreed in May 2020 to a modification of this agreement, and I have it, but the company doesn't have it.” But they were furnishing information that I was behind, even though we had agreed that that wasn't going to happen. All these agreements that happened that may not have been documented properly, and that lack of documentation led to inaccurate credit reporting, and furnishers now such as finance companies getting sued over it. So, there could be long ranging effects of these types of contracts and this is an odd situation because if we do hit a recession and we just had one in the last five years, you can see how those effects reverberated through time, and try to learn from that and try to fix it this time around if that's what should happen.

So, I think having your credit reporting policies up to snuff is vitally important, especially as litigation over the FCRA is continuing to rise. It's a popular statute, much like the TCPA for plaintiff's attorneys. Brooke and I were discussing this earlier, the regulators may be in flux. There may be a move from federal to state or state to – all those types of things. But the plaintiff's attorneys will always be there. They're always waiting to find the next novel issue or the next big thing that a company may have made a mistake on or may not have had proper policies for. The FCRA, like the TCPA, is just waiting for plaintiffs' attorneys to pounce. So, you got to make sure that those policies are together.

Are there any other kind of litigation-focused things that you're thinking about, Brooke?

Brooke Conkle:

Yes. One last issue, really, is monitoring for bankruptcies. As unfortunate as it is with the rise of a recession, there always is a rise in bankruptcy filings by customers. And having those policies and procedures, as Chris mentioned, to make sure that your consumer-facing employees know when and how to deal with customers who are represented, how to communicate with them, when to communicate with their lawyers instead, when to check those dockets to see if an auto account is being paid in a bankruptcy plan, if it's being paid out of a bankruptcy plan, and how does that change the credit reporting of an account? Those are very, very technical questions that really could come to the forefront, should we move into a recession.

Chris Capurso:

That was a very gloomy end to the podcast.

Brooke Conkle:

It's not always gloom and doom, guys.

Chris Capurso:

That's right, but it's good to be prepared, and hopefully this doesn't happen. But if it does, you got to be ready, and we're going to say it with the utmost caveat. Fortunately, what has happened recently, and we can learn from those processes that were in place just five years ago.

With that, we'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. And 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*, which we will be releasing every two weeks in 2025. That will be generally, on the second and fourth Tuesdays of each month. As always, if you have any questions or if we can help out in any way, please reach out to us. Until next time.

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