

**2021 SURVEY OF ACTIVITIES IDENTIFIED AS UNFAIR, DECEPTIVE, OR  
ABUSIVE UNDER THE DODD-FRANK ACT,  
PART TWO**

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**I. INTRODUCTION**

This is our latest article in a series that surveys activities identified as unfair, deceptive, or abusive acts or practices (“UDAAPs”) by the Consumer Financial Protection Bureau (“CFPB”), state attorneys general, and consumer financial services regulators using federal UDAAP powers created by the Dodd-Frank Act.<sup>1</sup> This article covers relevant UDAAP activity that occurred between July 1, 2021, and December 31, 2021, and it surveys enforcement actions and other statements by the CFPB in reports that discuss UDAAP violations.<sup>2</sup> These activities provide insight into the specific types of practices that could be considered UDAAP violations in the future.<sup>3</sup>

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<sup>1</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5301, *et seq.* (the “Dodd-Frank Act”); *see, e.g.*, 12 U.S.C. § 5552 (2012).

<sup>2</sup> We have attempted to make this survey as comprehensive as possible; however, it is not exhaustive and other relevant actions may not be discussed in this survey.

<sup>3</sup> The term “unfair” is defined in the Dodd-Frank Act as an act or practice that “causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers [and the] injury is not outweighed by countervailing benefits to consumers or to competition.” 12 U.S.C. § 5531(c)(1) (2012). The term “deceptive” is not statutorily defined,

We intend to publish periodic updates to this article cataloging new UDAAP activity based upon the federal UDAAP powers contained in the Dodd-Frank Act as the use of this enforcement authority continues to evolve.

## **II. OVERVIEW: IDENTIFICATION OF UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR PRACTICES**

Between July 1, 2021, and December 31, 2021, the CFPB engaged in five public enforcement actions involving alleged UDAAP violations. Past UDAAP actions can provide a road map for industry participants to identify and better understand acts or practices considered problematic by law enforcement authorities. UDAAP enforcement actions during the period of this summary involved point-of-sale financing, student lending, small dollar lending, reverse mortgages, and prepaid debit cards.

Summaries of the UDAAP actions below appear in chronological order and are intended to provide a straightforward identification of the specific acts or practices that were alleged to be unfair, deceptive, or abusive under the Dodd-Frank Act.

## **III. CFPB ENFORCEMENT ACTIONS**

### **A. *GreenSky, LLC* — July 2021 (Point-of-Sale Financing).<sup>4</sup>**

*GreenSky, LLC* (the “company”) engages in loan origination and

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but it is defined in the CFPB’s examination manual as when the material “representation, omission, act, or practice misleads or is likely to mislead the consumer,” provided “the consumer’s interpretation is reasonable under the circumstances.” CONSUMER FIN. PROTECTION BUREAU, CFPB SUPERVISION AND EXAMINATION MANUAL V.2 9 (2012), [http://files.consumerfinance.gov/f/201210\\_cfpb\\_supervision-and-examination-manual-v2.pdf](http://files.consumerfinance.gov/f/201210_cfpb_supervision-and-examination-manual-v2.pdf). The Dodd-Frank Act introduced the term “abusive” and defined it as an act or practice that either:

[1] materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or

[2] takes unreasonable advantage of [either]:

(A) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;

(B) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or

(C) the reasonable reliance by the consumer on a covered person [such as a bank or other financial institution] to act in the interests of the consumer.

12 U.S.C. § 5531(d) (2012).

<sup>4</sup> Consent Order, [In re \*GreenSky, LLC\*, 2021-CFPB-0004 \(July 12, 2021\)](#). A separate stipulation was filed on the same date in which the parties agreed to certain facts cited in the consent order.

servicing on behalf of participating banks for point-of-sale financing. Most participating merchants sell home improvement products and services, health care services, or retail products. The CFPB alleged that the company would train participating merchants who would then market the company's financing platform to consumers and shepherd them through the application process. The CFPB alleged that during a five-year period, some merchants would submit loan applications without a consumer's knowledge, leading to numerous complaints by consumers when they later learned of the loan application. The CFPB further alleged that the company's complaint resolution practices exacerbated the issue, as the company often took months to investigate and resolve complaints, and often failed to remedy unauthorized loan complaints.

The CFPB alleged the following practices were unfair:

- Engaging in loan origination and servicing activities without a consumer's authorization; and
- Failing to establish origination and servicing oversight, controls, and processes to properly train and manage merchant partners and investigate and address consumer complaints.

The order compels the company to verify consumers' identities and confirm their authorizations before lending funds. The order further directs the company to implement consumer complaint management and merchant control programs. The order requires the company to provide up to \$9 million in consumer redress via refunds and loan cancellations. The order also imposes a \$2.5 million civil money penalty.

B. *Better Future Forward, Inc.* — September 2021 (Income Share Agreements).<sup>5</sup>

Better Future Forward, Inc.; Better Future Forward Manager, LLC; Better Future Forward Opportunity ISA Fund (CP1), LLC; and Better Future Forward Opportunity ISA Fund (CH1), LLC (collectively, the "company") offer students income share agreements ("ISA") as a way to finance their postsecondary education. Under an ISA, the company finances the student's education costs, and in exchange, the students agree to pay a percentage of their income (once their income exceeds a certain threshold) until they reach a payment cap or a certain period of years has elapsed. The CFPB alleged

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<sup>5</sup> Consent Order, [\*In re Better Future Forward, Inc., et al.\*, 2021-CFPB-0005 \(Sept. 7, 2021\)](#). A separate stipulation was filed on the same date in which the parties agreed to certain facts cited in the consent order.

that the company specifically markets the ISAs as “NOT A LOAN”, despite the ISA functioning like a credit transaction. The CFPB alleged that the company’s payment cap is calculated using a “base number” (*i.e.*, the amount funded) with a “growth component,” which adds to the payment cap in functionally the same way that interest adds to a loan’s outstanding principal balance. The CFPB alleged that since the company did not treat the ISAs as loans, the company failed to provide consumers with certain required consumer credit disclosures, which prevented them from fully evaluating their financial options.

The CFPB alleged the following practices were deceptive:

- Including a notice in the company’s application and disclosure materials stating in all-capital letters that an ISA is not a loan,
- Including in ISA application and disclosure materials a table comparing ISAs with “Loan Products”,
- Including statements in the approval disclosures that an ISA does not create a debt and does not constitute a loan or scholarship, and
- Representing on the company’s website that an ISA is a financing option when loans are unavailable.

The CFPB also alleged violations of the Truth in Lending Act (“TILA”) and Regulation Z. The order compels the company to stop representing that ISAs are not loans or do not create debt. The order also compels the company to provide disclosures required under TILA and Regulation Z. The order further compels the company to not object to any discharge of a student’s ISA in bankruptcy and enjoins the company from imposing any prepayment penalties. The CFPB did not impose financial penalties “in consideration of [the company]’s demonstrated good faith and substantial cooperation with the Bureau.”

C. *LendUp Loans, LLC* — September 2021 (Small Dollar Lending).<sup>6</sup>

The CFPB filed a complaint<sup>7</sup> against LendUp Loans, LLC (the “company”) concerning the company’s marketing of its “LendUp Ladder” program that purports to offer benefits, like lower interest rates and larger loan amounts, to repeat customers who earn “points” by taking free courses and making timely loan payments. The CFPB alleged that many repeat

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<sup>6</sup> Stipulated Final Judgement and Order, [Consumer Financial Protection Bureau, No. 3:21-cv-06945 \(N.D. Cal. Dec. 30, 2021\)](#).

<sup>7</sup> Complaint, [Consumer Financial Protection Bureau v LendUpLoans, LLC, No. 3:21-cv-6945 \(N.D.Cal. Sept. 8, 2021\)](#).

borrowers did not receive lower interest rates; instead, they received rates greater than or equal to their prior loans. Similarly, the CFPB alleged that the company's reward tiers for larger loan sizes were not universally available in all states, and in some instances, the consumer's available loan amount did not increase at the higher rewards tier. In September 2016, the CFPB and the company entered into a consent order,<sup>8</sup> which enjoined the company from misrepresenting the benefits of borrowing with the company.

The CFPB alleged the following practice was deceptive:

- Misrepresenting the benefits of repeat borrowing from the company by failing to offer access to larger loans at lower rates for certain consumers.

The CFPB also alleged that these misrepresentations violated the terms of the 2016 consent order. In addition, the CFPB alleged violations of the Equal Credit Opportunity Act and Regulation B. In December 2021, the CFPB and the company entered into a stipulated final judgment and order, which enjoined the company from: (i) offering or providing consumer credit; (ii) collecting, selling, or assigning its outstanding consumer loans; (iii) selling consumer information; or (iv) making misrepresentations in the sale or collection of consumer debt. The order also imposes a \$40,500,000 redress judgment, which is suspended upon the company's payment of \$100,000 in civil money penalties..

D. *American Advisors Group* — October 2021 (Reverse Mortgage Origination).<sup>9</sup>

American Advisors Group (the "company") engages in the business of originating reverse mortgage financing. In December 2016, the company and the CFPB entered into a consent order that prohibited the company from engaging in further violations of consumer financial protection law for five years.<sup>10</sup> The CFPB alleged that the company sent written marketing materials that contained inflated estimates of the value of consumers' homes, which, in turn, misled consumers regarding the available payments that consumers could receive in connection with a reverse mortgage with the company. According to the CFPB, these misleading marketing materials caused

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<sup>8</sup> Consent Order, [In re Flurish, Inc. d/b/a LendUp, 2016-CFPB-0023 \(Sept. 27, 2016\)](#).

<sup>9</sup> Complaint, [Consumer Financial Protection Bureau v. American Advisors Group, 8:21-cv-01674 \(C.D.Cal. Oct. 8, 2021\)](#). A separate [stipulated final judgment and order](#) was filed on the same date and entered on October 25, 2021, in which the parties agreed to settle and resolve the matters arising from the conduct alleged in the complaint.

<sup>10</sup> Consent Order, [In re American Advisors Group, No. 2016-CFPB-0026 \(Dec. 7, 2016\)](#).

consumers to enter into negotiations with the company instead of shopping around for better terms. The CFPB alleged that after the entry of the 2016 consent order, the company performed no analysis related to the estimated home values that it advertised in its marketing materials to consumers.

The CFPB alleged that the following practices were deceptive:

- Using inflated estimated home values (by 18%, on average) in its written marketing materials, which induced consumers to enter into negotiations with the company; and
- Misrepresenting in its written marketing materials that the company made every attempt to ensure the home value information it provided was reliable.

The CFPB also alleged violations of the 2016 consent order. The stipulated final judgment and order enjoins the company from misrepresenting home values or other material facts to consumers. The order also requires the company to pay \$173,400 in consumer redress and a \$1.1 million civil money penalty.

E. *JPay, LLC* — October 2021 (Prepaid Debit Cards).<sup>11</sup>

JPay, LLC (the “company”), in coordination with corrections departments across the country, provides financial products and services to incarcerated consumers. The company also provided prepaid debit cards to formerly incarcerated consumers upon their release from custody (“debit release cards”). Debit release cards would hold consumers’ remaining commissary or trust funds and money provided to individuals upon their release to ease their transition out of incarceration. Generally, the company’s debit release cards were the only mechanism for formerly incarcerated consumers to receive their funds upon release. The CFPB alleged that in many jurisdictions, consumers have no mechanism to close their account without incurring a fee. In other jurisdictions, the CFPB alleged that consumers could only close their account by phoning a request within a week of obtaining the card and requesting that a check be sent via mail, all of which requires reliable access to a phone and mailing address.

The CFPB alleged that the following practice was unfair:

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<sup>11</sup> Consent Order, [In re JPay, LLC, 2021-CFPB-0006 \(Oct. 19, 2021\)](#). A separate stipulation was filed on the same date in which the parties agreed to certain facts cited in the consent order.

- Imposing fees on consumers who were required to receive money owed to them upon release from detention on a debit release card without a reasonably available method to close the account and obtain the balance of the debit release cards; and
- Causing fees to be charged to consumers before their debit release cards were loaded with additional funds, contrary to the terms of the cardholder agreements.

The CFPB alleged that the following practices were abusive:

- Forcing consumers to receive their funds in the form of a debit release card from the company without a reasonably available method to close the account and access funds without incurring a fee, and
- Entering into contracts with departments of correction for debit release cards as a way to earn other contracts with those departments of correction.

The CFPB alleged that the following practices were deceptive:

- Misrepresenting to consumers in “green sheet” disclosures about the existence, nature, or amount of certain fees for the debit release cards, which contradicted the terms of the cardholder agreement.

The CFPB also alleged violations of the Electronic Funds Transfer Act and Regulation E. Under the consent order, the company is enjoined from future violations of law. The order also requires the company to pay \$4 million in consumer redress and imposes a \$2 million civil money penalty.

#### IV. UPDATES ON PAST CASES

A. *BounceBack, Inc.* — December 2020 (Debt Collection).<sup>12</sup>

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<sup>12</sup> Stipulated Final Judgment and Consent Order, [\*Bureau of Consumer Financial Protection v. BounceBack, Inc., et al.\*, No. 5:20-cv-06179 \(W.D. Mo. Nov. 1, 2021\)](#).

We previously reported on a complaint that the CFPB filed against BounceBack, Inc. (the “company”). The complaint alleged that the company engaged in deceptive practices by sending notices to consumers in connection with its bad check diversion program, which misrepresented the risk of criminal prosecution and the role of the company’s district attorney’s office clients. Since our prior report, the CFPB filed an Amended Complaint,<sup>13</sup> which added the company’s principal as a defendant. Later, the CFPB entered into a stipulated final judgment with the company and its principal under which the company and its principal were required to pay roughly \$1.4 million in consumer redress, which amount was suspended due to inability to pay and upon payment of a \$30,000 civil money penalty. Further, under the order, the company and its principal are permanently banned from engaging in debt collection.

**B. *BrightSpeed Solutions, Inc.* — Mar. 2021 (Payments).**<sup>14</sup>

We previously reported on the CFPB’s complaint against BrightSpeed Solutions, Inc. (the “company”) and its principal, in which the CFPB alleged that the company engaged in unfair practices by processing payments for tech support clients that the company knew or should have known were defrauding consumers into purchasing unnecessary tech support and software. Since our prior report, the CFPB, the company, and its principal entered into a stipulated final judgment under which the court entered a \$54 million consumer redress judgment, which will be suspended upon payment of a \$500,000 civil money penalty. The judgment also enjoins the company and its principal from the payment processing, consumer lending, deposit-taking, and financial advisory industries and from engaging in debt collection and telemarketing in the consumer financial services industry.

## **V. CFPB Rules Updates and Additional Guidance**

### Supervisory Highlights:

*CFPB Fall 2021 Supervisory Highlights Issue.*<sup>15</sup>

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<sup>13</sup> Amended Complaint, [Bureau of Consumer Financial Protection v. BounceBack, Inc., et al.](#), No. 5:20-cv-06179 (W.D. Mo. Aug. 27, 2021).

<sup>14</sup> Stipulated Final Judgment and Order, [Consumer Financial Protection Bureau v. BrightSpeed Solutions, Inc., et al.](#), No. 1:21-cv-01199 (N.D. Ill. Jan. 19, 2022).

<sup>15</sup> [CONSUMER FIN. PROT. BUREAU, CFPB SUPERVISORY HIGHLIGHTS \(Issue 25, Fall 2021\)](#), [https://files.consumerfinance.gov/f/documents/cfpb\\_supervisory-highlights\\_issue-25\\_2021-12.pdf](https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-25_2021-12.pdf).

Released in December 2021, the highlights note continued UDAAP concerns in several industries.

Credit Cards — Bonus Offers: The CFPB noted instances where credit card issuers advertised bonus offers to existing customers who opened new credit card accounts and met certain spending thresholds. The issuers, however, failed to provide the bonuses to qualifying customers. The CFPB also noted instances where issuers failed to adequately disclose that such bonus offers required the customer to apply online as a condition to receiving the bonus.

Mortgage Servicing: (1) Delinquency Fees. The CFPB noted instances where servicers charged default-related fees to borrowers under the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) forbearances despite the CARES Act’s prohibition against such fees. (2) Failure to Terminate Electronic Funds Transfers (“EFTs”). The CFPB noted instances where servicers continued to initiate preauthorized EFTs despite receiving notice of an account closure, thereby causing customers to incur repeated non-sufficient funds fees. Servicers continued to initiate the EFTs from the closed accounts until the customer affirmatively cancelled the pre-authorized EFT arrangement. (3) Unauthorized Charges. The CFPB noted instances where servicers overcharged customers (between \$3 and \$15) for third-party services, such as home inspection and broker price opinion fees. (4) Inaccurate Transaction History. The CFPB noted instances where servicers misrepresented payment and transaction information in customers’ online mortgage loan accounts.

Payday Lending: (1) Loan Extension Fees. The CFPB noted instances where lenders improperly debited the entire loan balance from customers’ accounts on the due date despite the customers having applied for an extension and the lenders representing to customers that the lenders would only debit an extension fee on the due date. (2) Duplicate Debits. The CFPB noted instances where lenders attempted identical unauthorized debits from customers’ accounts after customers called to authorize a payment by debit card. The lenders’ systems erroneously indicated that payments had not been processed or, due to coding errors, attempted duplicate debits.