

**2022 SURVEY OF ACTIVITIES IDENTIFIED AS UNFAIR, DECEPTIVE, OR ABUSIVE UNDER THE
DODD-FRANK ACT,
PART ONE**

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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.¹ This article covers relevant UDAAP activity that occurred between January 1, 2022 and June 30, 2022, surveying enforcement actions and other statements by the CFPB in reports that discuss UDAAP violations.² These activities provide insight into the specific types of practices that could be considered UDAAP violations in the future.³

¹ 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).

² 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.

³ 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, 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. 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;

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 January 1, 2022 and June 30, 2022, the CFPB engaged in seven⁴ 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 debt collection, student lending and loan servicing, consumer reporting, remittances, debt relief services and garnishment processing.

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. *United Holding Group* — January 2022 (Debt Collection).⁵

The CFPB filed a complaint against Craig Manseth, Jacob Adamo, Darren Turco, United Debt Holding LLC, JTM Capital Management, LLC, UHG, LLC, UHG I LLC (also known as United Holding Group), and UHG II LLC (collectively, the “company”) in connection with the company’s debt collection practices. The CFPB alleged that the company purchased defaulted consumer debt and used third-party collectors who used false threats and misrepresentations. The CFPB alleged that the company was aware of hundreds of complaints by consumers against the company’s collection agents. The CFPB further alleged that the company failed to take meaningful action to correct its agents’ practices and, instead, continued to place accounts with the same agents for collection.

The CFPB alleged the following practices were deceptive:

- Misrepresenting, expressly or implied through its collection agents, that consumers would be sued if they did not settle their debts, despite having no intention to sue the consumers.
- Misrepresenting, expressly or implied through its collection agents, that consumers’ credit scores would be affected if they paid or failed to repay their debts, when the

(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).

⁴ One matter was brought by the CFPB and the New York Attorney General.

⁵ *Complaint, Consumer Financial Protection Bureau v. Craig Manseth, et al.*, 1:22-cv-29 (Jan. 10, 2022). The CFPB later filed an amended complaint against the company. *Amended Complaint, Id.* at Doc. 16 (Feb. 23, 2022).

company and its agents did not furnish information on the debts to consumer-reporting agencies.

- Knowingly using collection agents that made false threats to consumers that their failure to repay a debt would result in criminal charges, arrest, or jail time.

The CFPB also alleged violations of the Fair Debt Collection Practices Act. The complaint seeks to permanently enjoin the company from engaging in further violations of law. The complaint also seeks damages, redress, disgorgement, and civil money penalties.

B. *Edfinancial Services, LLC* — March 30, 2022 (Student Loan Servicing).⁶

Edfinancial Services, LLC (the “company”) services student loans from private companies (Federal Family Education Loan Program (FFELP) and directly from the Department of Education (Direct Loans). Under the Public Service Loan Forgiveness (PSLF) program, student loan borrowers working in public service who make 120 qualifying loan payments may have their student debt forgiven. In order to become eligible for PSLF, FFELP loans must be consolidated into Direct Loans. The CFPB alleged that the company’s representatives made deceptive statements to its borrowers over a four-year period concerning aspects of the PSLF program.

The CFPB alleged the following practices were deceptive:

- Misrepresenting to FFELP borrowers that their loans were ineligible for PSLF and failing to advise those borrowers on how to become eligible or that their job was likely a qualifying public-service job.
- Misrepresenting to borrowers with FFELP loans that FFELP loans could not become Direct Loans.
- Misrepresenting that FFELP borrowers were making qualifying payments under PSLF before they consolidated their FFELP loans into Direct Loans.
- Failing to advise borrowers of the PSLF option when responding to inquires regarding loan forgiveness options.

The order compels the company to contact all of its FFELP borrowers to advise them of the limited waiver program (set to expire on October 31, 2022) which will enable past non-qualifying payments to count toward PSLF. The order also imposes a \$1 million civil money penalty.

C. *TransUnion* — April 2022 (Consumer Reporting Agencies).⁷

The CFPB filed a complaint against TransUnion, TransUnion, LLC, TransUnion Interactive, Inc., and John T. Danaher (collectively, the “company”), concerning the company’s marketing and sale of credit scores, credit reports and credit-monitoring products to consumers. The CFPB

⁶ Consent Order, *In re Edfinancial, LLC*, 2022-CFPB-0001 (Mar. 30, 2022). A separate stipulation was filed on the same date in which the parties agreed to certain facts cited in the consent order.

⁷ Complaint, *Consumer Financial Protection Bureau v TransUnion, et al.*, No. 1:22-cv-01880 (N.D.Ill. Apr. 12, 2022).

alleged that the company violated the terms of a prior consent order and has engaged in additional deceptive practices, utilizing so-called “dark patterns” in the company’s website, which may obfuscate information or trick consumers into clicking links to sign up for subscriptions.

In January 2017, the CFPB and the company entered into a consent order (the “2017 Order”)⁸ concerning allegations that the company had engaged in deceptive practices with respect to its marketing and sale of credit services. Specifically, the CFPB had alleged that the company marketed “free” credit scores and “\$1” credit reports, but enrolled consumers into services with automatic monthly charges. Pursuant to the 2017 Order, the company was enjoined from misrepresenting its credit-related services. The 2017 Order further mandated that the company obtain a consumer’s express informed consent before enrolling them in a subscription service.

In this complaint, the CFPB alleged that the following practices were deceptive:

- Misleading consumers into believing the company was offering standalone credit reports or scores when actually, it was offering a credit monitoring subscription.
- Misleading consumers with marketing materials implying that consumers were already signed up for a credit monitoring service.
- Misrepresenting that company requested debit or credit card information that was only for identification verification purposes when the company actually used that information to charge consumers for credit monitoring services.
- Misrepresenting to consumers that the credit scores offered by the company may be the same as those typically used by lenders.
- Misrepresenting that consumers could obtain a free or \$1 credit score or report, when those programs actually required enrollment in a monthly subscription service.
- Misrepresenting to consumers that they could obtain a free credit score in connection with the consumer’s free annual credit file disclosure.
- Failing to provide a simple mechanism for consumers to cancel a purchase of a credit-related product or halt reoccurring charges by forcing consumers to click through several confusing screens and questions before they are able to finalize a cancellation.
- Misrepresenting that cancelling a credit monitoring subscription would leave consumers vulnerable to exposure of their credit report information.

The CFPB alleged that these deceptive practices violated the 2017 Order. In addition, the CFPB alleged violations of the Electronic Fund Transfer Act (EFTA), Regulation E, and Regulation V. The complaint seeks to permanently enjoin the company from engaging in further violations of law. The complaint also seeks damages, redress, disgorgement and civil money penalties.

D. *MoneyGram International* — April 2022 (Remittances).⁹

The CFPB and the Attorney General of New York filed a complaint against MoneyGram International, Inc. and MoneyGram Payment Systems, Inc. (collectively, the “company”) in

⁸ Consent Order, *In re TransUnion, et al.*, 2017-CFPB-0002 (Jan. 3, 2017).

⁹ Complaint, *Consumer Financial Protection Bureau, et al. v. MoneyGram International, Inc., et al.*, 1:22-cv-03256 (S.D.N.Y. Apr. 21, 2022).

connection with the company's remittance transfer business, which is one of the largest in the country. The CFPB alleged that between 2014 and 2016, it conducted supervisory examinations of the company, during which the CFPB identified deficient practices related to, among others, the company's failure to timely release remittances to the intended recipients. The CFPB further alleged that follow-up examinations continued to reveal deficiencies in the company's practices.

The CFPB and the State of New York alleged that the following practices were unfair:

- Failing to make remittance transfers timely available to designated recipients.
- Failing to make refunds timely available to senders.

The CFPB also alleged violations of the Remittance Transfer Rule, Regulation E, and the EFTA. The complaint seeks to permanently enjoin the company from engaging in further violations of law. The complaint also seeks damages, redress, disgorgement, and civil money penalties.

E. *Bank of America, N.A.* — May 2022 (Deposits – Account Garnishment).¹⁰

As a large national bank, Bank of America, N.A. (the “bank”), is served with bank account garnishment orders from across the country. Often, a judgment creditor will obtain a garnishment order from a court outside of the customer/judgment debtor's state of residence. The CFPB alleged that some states (“Restriction States”) have laws that prohibit or restrict garnishment of out-of-state bank accounts. The CFPB alleged that the bank improperly processed certain out-of-state garnishment orders against its customer's bank accounts.

The CFPB alleged that the following practices were unfair:

- Responding to out-of-state garnishment orders from Restriction States without disclosing that the consumer's account was not located in the state from which the garnishment was issued.
- Freezing accounts and turning over funds to creditors, and imposing garnishment-related fees in response to out-of-state garnishments from Restriction States.
- Applying the judgment exemption laws of the state from which a garnishment was issued instead of the state where the consumer resides.
- Including provisions in the required deposit account agreement whereby the consumer “directs” the bank not to contest legal process and under which the bank purports to disclaim liability for accepting legal process related to the account.

The CFPB alleged that the following practices were deceptive:

- Advising consumers that the bank applied the exemption law of the state from which the garnishment was issued, thereby implicitly misrepresenting to consumers which state's exemption law applied.

¹⁰ Consent Order, *In re Bank of America, N.A.*, 2022-CFPB-0002 (May 4, 2022). A separate stipulation was filed on the same date in which the parties agreed to certain facts cited in the consent order.

- Misleading consumers that because the bank’s deposit agreements “directed” the bank not to contest legal process the consumers likewise could not contest legal process related to their accounts.

Under the consent order, the bank is enjoined from future violations of law and must review and revise its garnishment processing system. The order also requires the bank to refund garnishment-related fees and imposes a \$10 million civil money penalty.

F. *RAM Payment, LLC d/b/a Reliant* — May 2022 (Debt Relief).¹¹

RAM Payment, LLC d/b/a Reliant, Account Management Systems, LLC f/k/a Reliant Account Management, Gregory Winters, and Stephen Chaya (collectively, the “company”) offers account maintenance and payment processing services to debt relief companies and consumers. The company would enter into account servicing agreements with consumers that enrolled in debt relief services with certain debt relief service providers. Consumers paid fees to the company in exchange for establishing and maintaining dedicated accounts for consumers, into which consumers would make payments for debt relief services. The CFPB alleged that the company substantially assisted debt relief companies in requesting and accepting advance fees, misleading consumers about disbursements, and disbursing fees despite service cancellation.

The CFPB alleged that the following practices were unfair:

- Disbursing consumers’ funds to an affiliated finance company (without disclosing the affiliation) for unearned fees after consumers unenrolled or cancelled debt relief services.

The CFPB alleged that the following practices were deceptive:

- Misrepresenting to consumers in account agreements that the company provided services as an independent third party when the company was affiliated with a company that provided financing to some of the debt relief service providers.
- Misrepresenting to consumers in account agreements that the company would not release fees to debt relief service providers until the company contacted the consumer to confirm compliance with the underlying debt consolidation agreement.
- Misrepresenting to consumers in account agreements that the company would not release fees to debt relief service providers until the company made a reasonable determination that the debt service relief provider earned its fees.

The CFPB also alleged substantial assistance in violations of the Telemarketing Sales Rule. Under the consent order, the company is enjoined from future violations of law and the company is barred from providing payment processing or account services to debt relief companies

¹¹ Consent Order, *In re RAM Payment, LLC, et al.*, 2022-CFPB-0003 (May 11, 2022). A separate stipulation was filed on the same date in which the parties agreed to certain facts cited in the consent order.

receiving funding from an affiliate of the company. The order also requires the company to refund \$8.7 million to consumers and imposes a \$3 million civil money penalty.

G. *Frank Ronald Gebase, Jr.* — June 2022 (Debt Relief – Student Loans).¹²

The CFPB filed a complaint against Frank Ronald Gebase, Jr. (the “operator”) concerning his unauthorized withdrawal of funds from consumers’ bank accounts, under the guise of an alleged sham student loan debt relief company. The operator was a former associate of the principal of the Student Aid Institute, which the CFPB had shuttered in 2016.¹³ The CFPB alleged that during a roughly one-year period after the CFPB shuttered the Student Aid Institute, the operator took control over the Student Aid Institute’s customer list and their account information and collected reoccurring fees from those customers without authorization. The CFPB alleged that the operator engaged in unfair practices by collecting unauthorized and unearned fees from consumers.

Under the stipulation, the operator is permanently enjoined from offering or providing debt relief or financial advisory products or services. The order also imposes a \$175,000 civil money penalty.

IV. CFPB Rules Updates and Additional Guidance

Supervisory Highlights:

*CFPB Spring 2022 Supervisory Highlights Issue.*¹⁴

Released in May 2022, the highlights note continued UDAAP concerns in several industries.

Auto Servicing: (1) Wrongful Repossessions. The CFPB noted instances where servicers repossessed vehicles after consumers took action that should have prevented the repossession. (2) Misleading Payoffs. The CFPB noted instances where servicers misled consumers about the final loan payment amount after a deferral period by sending notices with vague conditional statements such as a final payment “may be larger”, without providing further detail regarding the magnitude of the final payment after factoring in a deferral period. (3) Add-on Products. The CFPB cited examples where servicers failed to request refunds for prepaid fees related to guaranteed asset protection products after the servicer repossessed the vehicle and cancelled the Guaranteed Auto Protection (GAP) contract.

Credit Cards: (1) Interest-Free Financing. The CFPB cited instances where companies advertised interest-free financing without disclosing the preconditions for obtaining the financing. (2) Refund Policies. The CFPB also cited instances where companies failed to

¹² Complaint, *Consumer Financial Protection Bureau v. Gebase*, 3:22-cv-00844 (June 9, 2022). A separate Stipulated Final Judgment and Order was filed on the same date in which the parties agreed to certain facts cited in the consent order.

¹³ See Consent Order, *In re Student Aid Institute, Inc., et al.*, 2016-CFPB-0008 (March 30, 2016).

¹⁴ CONSUMER FIN. PROT. BUREAU, CFPB SUPERVISORY HIGHLIGHTS (Issue 26, Spring 2022), https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-26_2022-04.pdf.

process refunds in accordance with the card holder agreements, where the specific accounts included a revolving balance (accruing interest) and a monthly installment balance (which did not accrue interest). The CFPB noted that if a purchase refund resulted in a negative revolving balance, the companies would apply that refund to the installment balance, even though this was not specified in the account agreement.

Debt Collection: The CFPB noted instances where debt collectors failed to timely refund overpayments and credit balances to consumers.

Deposits: The CFPB noted instances where institutions placed multiple holds on mobile check deposits that were deemed suspicious, instead of placing single holds.

Remittances: The CFPB highlighted instances where providers misrepresented the timing of their transfers, such as by stating that the transfers were “instant” or “30 second” transfers, without disclosing that delays could occur.

Student Loan Servicing: (1) Incentive Payments. The CFPB noted instances where servicers failed to make promised incentive payments (such as referral bonuses, early payment incentives, and welcome bonuses) to consumers that were promised in their advertising and contracts. (2) Untimely Refunds. The CFPB noted instances where servicers failed to issue timely refund payments to consumers in connection with loan modifications.

Guidance Bulletins

A. *Bulletin 2022-03: Servicer Responsibilities in Public Service Loan Forgiveness Communications*¹⁵

On March 1, 2022, the CFPB issued a bulletin addressing student loan servicers’ communications to borrowers who may be eligible for Public Service Loan Forgiveness (PSLF) programs. In October of 2021, the U.S. Department of Education announced the Limited PSLF Waiver (PSLF Waiver) program, which altered PSLF program eligibility for a limited period of time. The bulletin cautioned servicers to pay particular attention to its communications with borrowers regarding the PSLF Waiver to ensure that they do not engage in unlawful conduct. The CFPB emphasized that in prior Supervisory Highlights, it had observed servicers make deceptive statements to borrowers concerning PSLF eligibility and loan consolidation. In light of the PSLF Waiver, the CFPB noted that it would scrutinize: (i) whether servicers provided complete and accurate information to borrowers regarding the PSLF Waiver; (ii) whether servicers employed adequate policies and procedures to recognize when borrowers are interested in PSLF and PSLF Waiver programs or whose files otherwise demonstrate their eligibility and to direct borrower to appropriate resources; and (iii) whether servicers are taking appropriate steps to promote the benefits of the PSLF Waiver to borrowers expressing interest or whose files demonstrate their eligibility.

B. *Bulletin 2022-04: Mitigating Harm from Repossession of Automobiles*.¹⁶

¹⁵ 87 F.R. 11286.

¹⁶ 87 F.R. 11951

On March 3, 2022, the CFPB issued a bulletin addressing repossession practices in the auto servicing industry. The CFPB noted that the extremely strong demand for used automobiles has caused the value of this collateral to climb. The CFPB expressed concern that these market conditions may cause auto loan servicers to be more inclined to capitalize on the increased collateral value in a manner inconsistent with their legal obligations. The CFPB warned against improper repossession practices, identifying several examples where repossessions led to UDAAPs that the CFPB observed during its supervisory and enforcement work, including:

- Repossessed vehicles if consumers' loan account is current, even if there was a prior delinquency.
- Repossessed vehicles if consumers entered an agreement to extend the loan.
- Repossessed vehicles if consumers followed any instructions the company said would result in avoiding repossession.
- Repossessed vehicles from consumers who have filed for bankruptcy, and thus are protected by an automatic stay of collection activity.
- Repossessed vehicles as a result of processing payments in a different order than had been communicated to consumers.
- Repossessed vehicles after unlawful fees pushed the consumer's account into default.
- Withhold personal property found in repossessed vehicles until consumers pay an upfront fee to recover the property.
- Charged for collateral protection insurance after a vehicle is repossessed.

C. *Updates to Supervision and Examination Manual*¹⁷

On March 16, 2022, the CFPB released updates to its Supervision and Examination Manual (Manual) in connection with an expansion of the CFPB's focus on combating discrimination in the consumer finance industry. The CFPB announced that this expanded review of discriminatory conduct was being made pursuant to its UDAAP authority; specifically, as it pertains to unfair acts or practices. The updated Manual indicates that the CFPB will examine providers of consumer financial products and services to identify potential discrimination in all areas of consumer finance, not just lending products covered by the Equal Credit Opportunity Act or Fair Housing Act. The CFPB indicated that it would examine for unfair discrimination in credit servicing, collections, consumer reporting, payments, remittances and deposit services.

Notably, these areas will be indicators of discrimination:

- Improperly giving inferior terms to one customer demographic as compared with other customer demographics;
- Improperly offering or providing more products or services to one customer demographic as compared with other customer demographics;

¹⁷ CONSUMER FIN. PROT. BUREAU, EXAMINATION MANUAL – UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR PRACTICES; https://files.consumerfinance.gov/f/documents/cfpb_unfair-deceptive-abusive-acts-practices-udaaps_procedures.pdf

- Having customer service representatives who improperly treat customers of certain demographics worse or provide extra assistance or exceptions to customers of certain demographics;
- Using targeted advertising or marketing in a discriminatory way;
- Using decision-making processes in making eligibility determinations, underwriting, pricing, servicing or collections that result in discrimination; and
- Failing to evaluate and make necessary adjustments and corrections to prevent discrimination.