

**2022 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, 2022 and December 31, 2022, 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, 2022 and December 31, 2022, the CFPB engaged in ten 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 practices, prepaid debit cards, credit reporting, fintech service offerings, and overdraft services.

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. Populus Financial Group, Inc. d/b/a ACE Cash Express, Inc. — July 2022 (Debt Collection Practices).*<sup>4</sup>

The CFPB filed a complaint against Populus Financial Group, Inc.

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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> Complaint, *Consumer Financial Protection Bureau v. Populus Financial Group, Inc., d/b/a ACE Cash Express, Inc.*, 3:22-cv-01494-G (July 12, 2022).

d/b/a ACE Cash Express, Inc. (the “company”) in connection with the company’s debt collection practices. The company is a payday lender doing business in multiple jurisdictions. In July of 2014, the CFPB and the company entered into a consent order<sup>5</sup> concerning the company’s refinancing practices. The prior consent order prohibited the company from abusively inducing borrowers to take out new loans to payoff existing loans. As part of the prior consent order, the company agreed to allow borrowers in 10 jurisdictions one free repayment plan (payments in four equal installments with no additional fees or interest). Despite the requirements of the prior consent order, the CFPB alleged that the company concealed the free repayment plan.

The CFPB alleged the following practice was deceptive:

- Concealing the lower cost option of a free repayment plan for borrowers entitled to that option.

The CFPB alleged the following practices were unfair:

- Inducting borrowers to refinance existing loans with costly new loans.
- Withdrawing funds from borrower’s debit card-linked deposit accounts without authorization.

The CFPB alleged the following practices were abusive:

- Concealing the lower cost option of a free repayment plan for borrowers entitled to that option.
- Inducting borrowers to refinance existing loans with costly new loans.

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. *Bank of America, N.A.* — July 14, 2022 (Prepaid Debit Cards).<sup>6</sup>**

Bank of America, N.A. (the “company”) has contracts with multiple state and local jurisdictions to provide unemployment insurance and other government benefit payments to consumers through prepaid debit cards.

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<sup>5</sup> Consent Order, *In re ACE Cash Express, Inc.*, 2014-CFPB-0008 (July 10, 2014).

<sup>6</sup> Consent Order, *In re Bank of America, N.A.*, 2022-CFPB-0004 (July 14, 2022). A separate stipulation was filed on the same date in which the parties agreed to certain facts cited in the consent order.

During the COVID-19 pandemic, a surge in consumer unemployment claims led to increased issuance of the company's prepaid debit cards and increased fraud claims. Consumers asserted unauthorized electronic fund transfers ("EFTs") under federal Regulation E. During the COVID-19 pandemic, the company changed how it investigated consumer prepaid debit card fraud claims to use certain automated fraud tools. The CFPB alleged that this change resulted in the improper freezing of consumer deposit accounts and denial of fraud claims.

The CFPB alleged the following practices were unfair:

- Automatically determining, without any further investigation, that no error had occurred for consumer fraud notices alleging unauthorized EFTs.
- Automatically freezing consumer deposit accounts in response to receipt of a notice from a consumer concerning alleged unauthorized EFTs.
- Forcing consumers to submit fraud claims by telephone through an inadequately staffed call center.

The CFPB alleged the following practices were abusive:

- Retroactively reversing previous deposit account credits based on automatic determinations, without any further investigation, that no error had occurred for consumer fraud notices alleging unauthorized EFTs.

The consent order compels the company to cease use of the noted automatic fraud tools to deny unauthorized EFT claims and freeze consumer deposit accounts. Under the order, the company must conduct an investigation of consumer fraud claims following applicable Regulation E requirements. The order also requires the company to provide adequate call center staffing, make appropriate redress to impacted consumers, and pay a \$100 million civil money penalty.

C. *Hyundai Capital America* — July 2022 (Credit Reporting).<sup>7</sup>

Hyundai Capital America (the "company") is a large non-bank vehicle finance provider. The company purchases and services retail

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<sup>7</sup> Consent Order, *In re Hyundai Capital America*, 2022-CFPB-0005 (July 26, 2022). A separate stipulation was filed on the same date in which the parties agreed to certain facts cited in the consent order.

installment contracts and vehicle leases in multiple jurisdictions. As part of servicing activities, the company provides consumer credit experience information to nationwide credit bureaus. The CFPB alleged that the company's credit reporting submissions contained numerous inaccuracies and the company failed to properly respond to consumer notices to correct such information.

The CFPB alleged that the following practices were unfair:

- Failing to establish appropriate internal credit reporting policies/processes.
- Failing to invest in appropriate credit reporting technology while using ineffective manual credit reporting processes.
- Failing to promptly correct credit reporting errors.
- Failing to respond to consumer requests to correct inaccurate credit bureau information.

The CFPB also alleged numerous violations of the federal Fair Credit Reporting Act ("FCRA") and Regulation V. The consent order requires the company to take steps to prevent future violations of law, pay \$13,200,000 in consumer redress, and pay a \$6 million civil money penalty.

D. *U.S. Bank National Association* – (Deposit Account Services/Credit Reporting).<sup>8</sup>

U.S. Bank National Association (the "company") is a large national bank serving consumers in multiple jurisdictions. The company implemented sales goals on bank employees as part of employee job descriptions and implemented an incentive compensation structure that financially rewarded employees for selling certain products and services. The CFPB alleged that the company issued credit cards and opened other credit facilities and deposit accounts without the knowledge of consumers and without providing required disclosures.

The CFPB alleged that the following practice was abusive:

- Opening credit cards and other credit facilities and deposit accounts without the knowledge of the underlying consumers.

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<sup>8</sup> Consent Order, *In re U.S. Bank National Assoc.*, 2022-CFPB-0006 (July 28, 2022). A separate stipulation was filed on the same date in which the parties agreed to certain facts cited in the consent order.

The CFPB also alleged violations of the federal Truth in Lending Act, Truth in Savings Act, and FCRA. The consent order requires the company to cease unlawful account opening and credit reporting practices, provide appropriate consumer redress, and pay a \$37.5 million civil money penalty.

E. *Hello Digit, LLC* — August 2022 (Deposit Account Services).<sup>9</sup>

Hello Digit, LLC (the “company”) is a fintech that offers consumers an automated savings tool. The company uses a proprietary algorithm to make automated transfers from consumer checking accounts to a separate deposit account held by the company. The company’s offerings promised consumers that automated transfers would not cause overdrafts in the consumer’s checking account and that the company would reimburse consumers in the unlikely event that its tools resulted in overdrafts.

The CFPB alleged the following practices were unfair:

- Misrepresenting to consumers that the company’s automatic transfers would only be in amounts a consumer could afford.
- Failing to make refunds of overdraft fees when automatic transfers processed by the company caused overdrafts in consumer checking accounts.

The CFPB alleged the following practices were deceptive:

- Misrepresenting to consumers that the company did not earn interest on funds automatically transferred under the company’s service offerings, when the company did in fact retain some portion of the interest earned on such funds.

The consent order enjoins the company from making any further misrepresentations concerning its auto-savings tools and requires the company to provide \$68,145 in consumer redress. The company must also pay a \$2.7 million civil money penalty.

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<sup>9</sup> Consent Order, *In re Hello Digit, LLC*, 2022-CFPB-0007 (Aug. 10, 2022). A separate stipulation was filed on the same date in which the parties agreed to certain facts cited in the consent order.

F. *Regions Bank* — September 2022 (Overdraft Practices).<sup>10</sup>

Regions Bank (the “company”) offers deposit accounts, loans, and related products and services to consumers in a number of jurisdictions. In April of 2015, the CFPB and the company entered into a consent order<sup>11</sup> concerning the company’s overdraft practices. The prior consent order prohibited the company from charging overdraft fees for consumers who had not affirmatively opted-in to the payment of one-time debit card and ATM transactions that would overdraw the respective consumer’s account. The prior consent order also found fault with the company’s alleged misrepresentations concerning the repayment terms for certain deposit advance products. Despite the CFPB’s prior scrutiny of the company’s overdraft practices and despite warnings from federal bank regulators, the company charged overdraft fees in situations where consumer debit card transactions were authorized positive, but then settled negative when the transactions were eventually posted by the respective merchants. The CFPB alleged that the company assessed overdraft fees for these types of transactions to make up revenue it lost from discontinuing previously criticized overdraft practices.

The CFPB alleged the following practice was unfair and abusive:

- Charging an overdraft fee when a debit card transaction was authorized positive, but then settled negative when the transactions were eventually posted by the respective merchants.

Under the consent order, the company is prohibited from charging overdraft fees in connection with authorized positive/settled negative debit card transactions. The company must provide \$141 million in consumer redress and pay a \$50 million civil money penalty.

G. *MoneyLion Technologies Inc.* — September 2022 (Military Lending Act).<sup>12</sup>

The CFPB filed a complaint against MoneyLion Technologies Inc., ML Plus, LLC, and other subsidiaries (collectively the “company”). The company is a fintech that offers online installment loans and related credit

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<sup>10</sup> Consent Order, *In re Regions Bank*, 2022-CFPB-0008 (Sept. 28, 2022). A separate stipulation was filed on the same date in which the parties agreed to certain facts cited in the consent order.

<sup>11</sup> Consent Order, *In re Regions Bank*, 2015-CFPB-0009 (April 28, 2015).

<sup>12</sup> Complaint, *Consumer Financial Protection Bureau v. MoneyLion Technologies Inc., et al.*, 1:22-cv-08308 (Sept. 29, 2022).

products to consumers in multiple jurisdictions. The complaint alleges that the company violated provisions of the federal Military Lending Act (“MLA”) in connection with loans made to active duty servicemembers. The complaint faults the company for imposing membership fees that, when combined with other fees and interest for the respective loans, caused the Annual Percentage Rate (“APR”) to exceed the permissible Military Annual Percentage Rate under the MLA. The complaint also alleges that the company failed to give disclosures required under the MLA.

The CFPB alleged that the following practices were deceptive:

- Making and collecting loans that violated the MLA, including through misrepresentations that consumers were legally obligated to repay loans that were void from inception.
- Failing to allow consumers to cancel monthly memberships, even after representing that recurring membership fees could be cancelled at any time.

The CFPB alleged that the following practices were unfair and abusive:

- Failing to allow consumers to cancel monthly memberships, even after representing that recurring membership fees could be cancelled at any time.
- Using consumers’ investment and credit-reserve accounts to extract unpaid membership fees after consumers had paid off their respective loans.

The CFPB’s complaint seeks consumer redress, injunctive relief, and civil money penalties.



H. *ACTIVE Network, LLC* — October 2022 (Membership Fees).<sup>13</sup>

The CFPB filed a complaint against ACTIVE Network, LLC (the “company”), a payment processor owned by Global Payments, Inc. The company provides enrollment and payment processing services for organizers of certain youth camps and charity race events. The complaint alleges that, when consumers signed up to participate in certain youth camps or charity races, the company also enrolled consumers and charged them for recurring “discount” club memberships without the consumer’s knowledge.

The CFPB alleged that the following practice was abusive and deceptive:

- Failing to adequately disclose the terms of the company’s recurring “discount” membership offers that were deceptively inserted in boilerplate website terms.

The complaint seeks consumer redress, disgorgement, appropriate injunctive relief, and civil money penalties.

I. *Carrington Mortgage Services, LLC* – November 2022 (Mortgage Servicing)<sup>14</sup>

Carrington Mortgage Services, LLC (the “company”) is a nationwide mortgage loan servicer. The company services a large number of federally-insured/guaranteed mortgage loans. During the COVID-19 pandemic, the CFPB alleged that the company failed to properly offer consumers certain COVID-19 forbearance relief under the federal CARES Act (The Coronavirus Aid, Relief, and Economic Security Act .) The CFPB also faulted the company for allegedly requiring consumers to do more than was legally required to obtain forbearance relief, informing consumers that late fees would apply when they would not, and providing inaccurate credit reporting for consumers who were in a permitted forbearance period.

The CFPB alleged that the following practices were deceptive:

- Misrepresenting that consumers with accounts with fraud alerts were not eligible for CARES Act forbearance.
- Misrepresenting that consumers who paid more than one month ahead on a mortgage loan at the time of a forbearance request were not eligible for CARES Act forbearance.

- Requiring that consumers provide specific hardship reasons and certifications at the time of a forbearance request in excess of what was required under the CARES Act.
- Requiring that consumers renew forbearance requests more frequently than required under the CARES Act.
- Misrepresenting the period of forbearance granted to consumers.
- Misrepresenting when late fees were due and when such fees would be incurred.
- Misrepresenting that a lump sum payment of amounts deferred during a forbearance period would be due at the conclusion of a forbearance period.

The consent order also alleges violations of the FCRA and Regulation V. Under the consent order, the company must change customer servicing practices related to forbearance requests, provide appropriate consumer redress, and pay a \$5.25 million civil money penalty.

J. *Wells Fargo Bank, N.A.* – December 2022 (Loan Servicing)<sup>15</sup>

Wells Fargo Bank, N.A. (the “company”) is a large national bank offering deposit accounts, loans, and other financial products and services to consumers in multiple jurisdictions. The CFPB alleged that the company improperly serviced certain auto and mortgage loans, improperly froze deposit accounts in certain situations, and improperly assessed overdraft fees in connection with authorized positive, settle negative debit card transactions.

The CFPB alleged that the following auto loan practices were unfair:

- Failing to properly apply auto loan payments because of system failures (including failing to apply payments timely).
- Improperly assessing late charges and incorrectly charging interest.
- Improperly repossessing consumer vehicles and failing to timely sell repossessed vehicles.

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<sup>13</sup> Complaint, *Consumer Financial Protection Bureau v. ACTIVE Network, LLC*, 4:22-cv-00898 (Oct. 18, 2022).

<sup>14</sup> Consent Order, *In re Carrington Mortgage Services, LLC*, 2022-CFPB-0010 (Nov. 17, 2022). A separate stipulation was filed on the same date in which the parties agreed to certain facts cited in the consent order.

<sup>15</sup> Consent Order, *In re Wells Fargo Bank, N.A.*, 2022-CFPB-0011 (Dec. 20, 2022). A separate stipulation was filed on the same date in which the parties agreed to certain facts cited in the consent order.

- Failing to properly issue Guaranteed Asset Protection (GAP) refunds.

The CFPB alleged that the following mortgage loan servicing practices were unfair:

- Incorrectly denying mortgage loan modification requests and miscalculating fees and charges due to system failures.
- Improperly assessing late charges and incorrectly charging interest.

The CFPB alleged that the following deposit account servicing practices were deceptive:

- Improperly using automated fraud tools that placed deposit account holds on more accounts than the impacted deposit account or in an amount in excess of what was required under the circumstances.
- Misrepresenting when monthly service fees for deposit accounts would be charged.

The CFPB alleged that the following deposit account servicing practice was unfair:

- Charging an overdraft fee when a debit card transaction was authorized positive, but then settled negative when the transactions were eventually posted by the respective merchants.

The consent order requires the company to make wide-spread compliance changes, make more than \$2 billion in consumer redress, and pay a \$1.7 billion civil money penalty.

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

##### *A. CFPB Fall 2022 Supervisory Highlights Issue.*<sup>16</sup>

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<sup>16</sup> CONSUMER FIN. PROT. BUREAU, CFPB SUPERVISORY HIGHLIGHTS (Issue 28, Fall 2022); [Supervisory Highlights, Issue 28, Fall 2022 | Consumer Financial Protection Bureau \(consumerfinance.gov\)](https://www.consumerfinance.gov/supervisory-highlights-issue-28-fall-2022/).

In November of 2022, the CFPB released its Fall Supervisory Highlights guidance document. The guidance summarizes supervisory observations from examinations in the areas of auto servicing, consumer reporting, credit card account management, debt collection, deposit account practices, mortgage origination/servicing, and payday lending.

The guidance flags these areas in the UDAAP context:

Auto Servicing:

- Failing to ensure that appropriate refunds were made for GAP and other ancillary products.
- Leading consumers to believe that loan modifications would likely be approved, when the majority of modification requests were in fact denied.
- Double billing consumers for force-placed collateral protection insurance.
- Using starter interrupt devices when borrowers were not past due on loan payments.

Credit Card Account Management:

- Misleading consumers about the availability of and/or ability to cancel certain add-on products.
- Misrepresenting the terms of certain fixed payment options/automatic repayment terms.

Deposit Account Practices:

- Using protected funds in deposit accounts to offset loan payments owed.
- Garnishing protected funds in deposit accounts.
- Processing out-of-state garnishment orders in violation of applicable state prohibitions.

Mortgage Origination/Servicing:

- Including waiver language in mortgage loan documents that would likely discourage a borrower from bringing a claim involving deceptive acts or practices.
- Charging sizeable convenience fees for telephone payments.
- Charging late and other fees during a CARES Act period of forbearance.
- Failing to timely process CARES Act forbearance requests.

- Misrepresenting payment amounts that would be due after a forbearance period.

The guidance also provided a list of CFPB statements, circulars, advisory opinions, and rules issued since the prior Supervisory Highlights guidance document. In the UDAAP context, the list included concerns related to assessing unanticipated (surprise) overdraft fees. The guidance focused on debit card transactions that were authorized positive, but then settled negative when processed by the respective merchant; and multiple overdraft fees assessed when the same item was presented multiple times by the payee.

*B. Supervisory Highlights: Student Loan Servicing Special Edition<sup>17</sup>*

In September of 2022, the CFPB released Supervisory Highlights Student Loan Servicing Special Edition guidance document. The guidance summarizes concerns in the student lending area and in the UDAPP context flagged this practice:

- Failing to release final transcripts for borrowers in default under related student loans.

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<sup>17</sup> CONSUMER FIN. PROT. BUREAU, CFPB SUPERVISORY HIGHLIGHTS – STUDENT LOAN SERVICING SPECIAL ADDITION (Issue 27, Fall 2022); [cfpb\\_student-loan-servicing-supervisory-highlights-special-edition\\_report\\_2022-09.pdf](https://www.consumerfinance.gov/system/uploads/attachment_data/file/444444/cfpb_student-loan-servicing-supervisory-highlights-special-edition_report_2022-09.pdf) (consumerfinance.gov).