

# CFPB eyes unfair, deceptive acts: Technology and repossessions

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The **Consumer Financial Protection Bureau** (CFPB) recently issued two bulletins highlighting its concerns with business practices in the auto finance and servicing industries as a result of inflation and the potential for increased vehicle prices to exacerbate risky repossession practices. In these bulletins, the CFPB indicated that it will be closely monitoring unfair and deceptive acts or practices (UDAAP) in the auto finance industry that automobile finance and servicing companies should be aware of, particularly regarding the use of technology and in the repossession context.

## UDAAP, technology, and privacy

The CFPB highlighted several areas of concern in automobile lending in its recent blog post titled “Rising car prices means more auto loan debt.” Technology and its impact on consumers, particularly when it comes to how the use of technology may “disproportionally impact certain communities,” was a primary focus of this bulletin.

Specifically, the CFPB referenced concerns about lenders requiring “access to GPS locators so that they always know where a car is physically located, ... technology that blocks a borrower who has missed even one payment from starting the car, or ... license plate recognition (LPR) technology.”

So what steps might the CFPB take to further investigate the impact technology has on consumers? Automobile finance and servicing companies can expect the CFPB to utilize its supervisory and examination authority over “larger participants” in the automobile financing market and conduct an examination of businesses’ practices and procedures with respect to the use of technology. An automobile finance company subject to such an examination can expect the CFPB to utilize its UDAAP standards to identify conduct that misleads or is likely to mislead a consumer, causes a substantial injury to a consumer and is difficult for a consumer to understand, among other factors.

Ensuring that your company has a compliance management system in place that is tailored to the company’s size and business model will help ensure that any such examination goes as smoothly as possible. After all, the CFPB is not only looking for some violation of the law when it conducts such an examination but also is looking to ensure that the business has the necessary tools in place to self-identify and remedy any violations.

## UDAAP and repossessions

On Feb. 28, the CFPB also issued Bulletin 2022-04, “Mitigating Harm from Repossession of Automobiles,” which highlights a number of acts and practices in the context of repossessing consumer vehicles that it considers a UDAAP violation.

### Failure to comply with loss mitigation to avoid repossession

The Bulletin highlighted the Bureau's concern with auto service providers offering loss mitigation options to consumers to avoid repossession but then failing to stop a repossession when a consumer elects such an option. As an example, the Bureau highlighted a recent enforcement action where an automobile finance company allegedly repossessed hundreds of consumers' vehicles after the consumers complied with the loss mitigation options offered to them. That enforcement action resulted in \$1 million in damages and a civil monetary penalty of \$4 million, along with certain equitable relief.

The CFPB also noted that recent supervisory examinations had uncovered systemic issues in this area, where repossessions that should have been canceled or stopped due to loss mitigation were not.

Auto finance and servicing companies should work to ensure that their business practices, policies, and procedures avoid such actions, especially on a systemic basis. The Bureau's release of this bulletin highlights the Bureau's concern in this area and signals its intent to more closely monitor potential UDAAP violations in connection with motor vehicle repossessions.

### Failure to abide by the bankruptcy code's automatic stay

The Bankruptcy Code imposes an "automatic stay" that bars collection activity, like repossessing a vehicle, the instant a consumer files a bankruptcy petition. The CFPB indicated that it found numerous servicers violated the automatic stay by failing to halt repossessions, an act it considers unfair and deceptive. Such activity could give rise to an enforcement action by the CFPB; it could also result in an order from the bankruptcy court seeking to hold the auto finance or servicing company in contempt for violating the stay order.

### Payment and fee issues that lead to default and repossession

The CFPB also highlighted its concern with auto servicing companies providing incorrect information to a consumer, which ultimately led to repossession of a vehicle. For instance, the CFPB noted that through its supervisory authority, it found that auto loan servicers sometimes conveyed the incorrect amount needed to avoid repossession to a consumer, leading to repossession when the consumer paid the incorrect amount.

The Bureau also expressed concern with misapplied payments leading to repossession. As the CFPB noted, payment application is usually governed by the retail installment contract between the parties. However, the CFPB found through supervision that some companies were not applying payments in the order specified by the contract. Rather, they were applying payments in a different order (e.g., to late fees first), which led to some consumers being deemed "more delinquent" and, ultimately, to repossession of the vehicle.

Similarly, the CFPB identified issues with unlawful fees being charged to consumers, which ultimately led to default and repossession of a vehicle. As an example, the CFPB highlighted a recent enforcement action for UDAAP violations where the business obtained lender-placed insurance policies when they were unnecessary and, in some cases, continued to maintain the lender-placed policy even when the consumer provided proof of coverage. These unnecessary fees sometimes led to a default and repossession of a vehicle.

Finally, the CFPB expressed concern with post-repossession fees that could constitute a UDAAP violation. Specifically, the CFPB found that some companies charge a fee for storing personal property found in a repossessed vehicle. The CFPB has brought at least one enforcement action targeting this behavior. Its most recent Bulletin goes a step further, indicating that a storage fee charged by a repossession company that must be paid prior to return of personal property could be considered a UDAAP violation by the auto finance or servicing company.

The Bureau's actions evidence a clear intent to prioritize investigating and prosecuting auto finance and servicing companies for UDAAP violations in the age of inflation. To avoid finding yourself the subject of an enforcement action (or to ensure a smooth supervision/examination process), lenders can work to ensure they are UDAAP compliant by closely reviewing policies, procedures, and contractual documentation and consulting with experienced counsel.

*This article is the second in a two-part series. Read the first part [here](#).*

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