course of action that the Commission intends to follow. This rule of agency procedure does not constitute an agency regulation requiring notice of proposed rulemaking, opportunities for public participation, prior publication, and delay in effective date under 5 U.S.C. 553 of the Administrative Procedure Act (''APA''). The provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), which apply when notice and comment are required by the APA or another statute, are not applicable.

Dated: February 18, 2022.

On behalf of the Commission,

Allen J. Dickerson,

Chairman, Federal Election Commission.

[FR Doc. 2022–04358 Filed 3–2–22; 8:45 am]

BILLING CODE 6715–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

Bulletin 2022–04: Mitigating Harm From Repossession of Automobiles

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Compliance bulletin and policy guidance.

SUMMARY: The Consumer Financial Protection Bureau (Bureau or CFPB) is issuing this Compliance Bulletin regarding repossession of vehicles, and the potential for violations of sections 1031 and 1036 of the Dodd-Frank Wall Street Reform and Consumer Protection Act's (Dodd-Frank Act's) prohibition on engaging in unfair, deceptive, or abusive acts or practices (collectively, UDAAPs) when repossessing vehicles.

DATES: This bulletin is applicable on March 3, 2022.

FOR FURTHER INFORMATION CONTACT: Pax Tirrell, Counsel, Office of Supervision Policy at 202–435–7097; Tara Flynn, Senior Counsel for Enforcement Policy and Strategy, Office of Enforcement at 202–435–9734. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In recent months, there has been extremely strong demand for used automobiles. Since the start of the COVID–19 pandemic, the average list price for used automobiles has continued to climb. While there are many factors contributing to high prices, the Consumer Financial Protection Bureau is concerned that these market conditions might create incentives for risky auto repossession practices, since repossessed automobiles can command these higher prices when resold. To mitigate harms from these risks, the Bureau is issuing this bulletin to remind market participants about certain legal obligations under Federal consumer financial laws.

To secure an auto loan, lenders require borrowers to give creditors a security interest in the vehicle. If a borrower defaults, a creditor may exercise its contractual rights to repossess the secured vehicle. Servicers collect and process auto loan or lease payments from borrowers and are either creditors or act on behalf of creditors. Generally, servicers do not immediately repossess a vehicle upon default and instead attempt to contact consumers before repossession, usually by phone or mail. Servicers may give consumers in default the opportunity to avoid repossession by making additional payments or promises to pay. Servicers generally use service providers to conduct repossessions.

While some repossessions are unavoidable, the Bureau pays particular attention to servicers' repossession of automobiles. Loan holders and servicers are responsible for ensuring that their repossession-related practices, and the practices of their service providers, do not violate the law. The Bureau intends to hold loan holders and servicers accountable for UDAAPs related to the repossession of consumers' vehicles.[1]

II. Unfair and Deceptive Acts or Practices in Supervision and Enforcement Matters

This Bulletin summarizes the current law and highlights relevant examples of conduct observed during supervisory examinations or enforcement investigations that may violate Federal consumer financial law.

Under the Dodd-Frank Act, all covered persons or service providers are prohibited from committing unfair, deceptive, or abusive acts or practices in violation of the Act. An act or practice is unfair when (i) it causes or is likely to cause substantial injury to consumers; (ii) the injury is not reasonably avoidable by consumers; and (iii) the injury is not outweighed by countervailing benefits to consumers or to competition.[2]

Whether an act or practice is deceptive is informed by decades of precedent involving Section 5 of the Federal Trade Commission Act.[3]

The Dodd-Frank Act prohibits two types of abusive practices. First, materially interfering with the ability of a consumer to understand a term or condition of a product or service is abusive. Second, taking unreasonable advantage of statutorily specified market imbalances is abusive. Those market imbalances include (1) a consumer's lack of understanding of the material risks, costs or conditions of a product or service, (2) a consumer's inability to protect their interests in selecting or using a product or service, or (3) a consumer's reasonable reliance on a covered person to act in their interests.[4]

a. Unfair or Deceptive Practices During the Repossession Process

In its Supervisory and Enforcement work, the Bureau has found the following conduct related to repossession of automobiles to be UDAAPs.[5]

Wrongful Repossession of Consumers' Vehicles

Many auto servicers provide options to borrowers to avoid repossession once a loan is delinquent or in default. Failure to prevent repossession after borrowers complete one of these options, where reasonably practicable given the timing of the borrowers' action, may constitute an unfair act or practice.

For example, in a public enforcement action, the Bureau found that an entity engaged in an unfair act or practice when it wrongfully repossessed consumers' vehicles.[6] The servicer told consumers it would not repossess vehicles when they were less than 60 days past due. Additionally, the servicer maintained a policy and told consumers that it would not repossess vehicles of consumers who had entered into an agreement to extend the loan, or who had made a promise to make a payment on a specific date and that date had not passed or who successfully kept a promise to pay. Nevertheless, the servicer wrongfully repossessed

[1] Although the focus of this bulletin is UDAAPs, the Bureau notes that certain provisions of the Fair Debt Collection Practices Act and its implementing Regulation F may also apply to the repossession of automobiles. Fair Debt Collection Practices Act, 803(6), 15 U.S.C. 1692a(6); 12 CFR 1006.2(i)(1) (effective November 30, 2021).

[2] Dodd-Frank Act sections 1031, 1036, 12 U.S.C. 5531, 5536.

[3] *See* CFPB Exam Manual at UDAAP 5.

[4] 12 U.S.C. 5531(d).

[5] For convenience, this document generally refers to historical findings by ''the Bureau'' in both Supervision and Enforcement, even though in Supervisory matters the findings are made by the Bureau's examiners rather than by the Bureau itself.

[6] *In the Matter of Nissan Motor Acceptance Corp.,* 2020–BCFP–0017 (Oct. 13, 2020).

vehicles from hundreds of consumers who had:

- Made and kept promises to pay that brought the account current;
- Made payments that decreased the delinquency to less than 60 days past due;
- Made promises to pay where the date had not passed; or
- Agreed to extension agreements.

Each of these actions taken by consumers should have prevented repossessions of their vehicles. The Bureau found the servicer's wrongful repossessions constituted an unfair act or practice. They caused substantial injury by depriving borrowers of the use of their vehicles, and many consumers also experienced consequences such as missed work, expenses for alternative transportation, repossession-related fees, detrimental credit reporting, and vehicle damage during the repossession process. Such injury was not reasonably avoidable, and the injury was not outweighed by countervailing benefits to the consumer or to competition.

Supervision has identified similar unfair practices in numerous examinations.[7] Supervision observed that these violations frequently occurred, after consumers acted to prevent repossession, because of one of the following errors:

- Servicers incorrectly coded consumers as delinquent;
- Servicer representatives failed to cancel repossession orders that had previously been communicated to repossession agents; or
- Repossession agents failed to confirm that the repossession order was still active prior to repossessing a vehicle.

Other Practices Causing Wrongful Repossession

Supervision has also identified other practices related to repossession that resulted in unfair acts or practices. For example, the Bankruptcy Code imposes an automatic stay that bars collection activity, including repossession, from the moment a consumer has filed a bankruptcy petition. Supervision found that when servicers received notice that consumers had filed bankruptcy petitions and their accounts were subject to an automatic stay, the servicers committed an unfair act or practice by repossessing vehicles subject to such automatic bankruptcy stays.

Additionally, Supervision has identified that servicers committed an unfair act or practice by wrongfully repossessing vehicles after communicating inaccurate information. For example, Supervision has found that some servicers sent consumers letters stating that loans would not be considered past due if the consumer paid the amount due by a specific date. Consumers reasonably expected the servicers not to repossess before the date listed in the letter. When the servicers repossessed the vehicles prior to that date, they committed an unfair act or practice.

Representations of Amounts Owed

Supervision has also identified that servicers committed deceptive acts or practices by failing to provide consumers with accurate information about the amount required to bring their accounts current. For example, when consumers called to determine what amount would bring their accounts current, servicing personnel erroneously represented to consumers an amount due that was less than what was actually owed. As a result of this misrepresentation consumers paid an amount insufficient to avoid delinquency and the consequences of delinquency. This later led to repossessions that would not have occurred had consumers received accurate information. This conduct was deceptive because the servicer told consumers that an amount would bring their accounts current when, in fact, that amount would not bring their account current.

b. Unfair or Deceptive Practices That May Lead to Repossession

The following are examples of practices that lead to repossession of consumers' vehicles that the Bureau has considered to be UDAAPs.

Applying Payments in a Different Order Than Disclosed to Consumers, Resulting in Repossession

Payment application for auto loans is governed by the finance agreements between servicers and consumers. Supervision has found that entities engaged in a deceptive act or practice when they made representations to consumers that payments would be applied in a specific order, and then subsequently applied payments in a different order. For example, Supervision found that servicers represented on their websites that payments would be applied to interest, then principal, then past due payments, before being applied to other charges, such as late fees. Instead, the servicers applied partial payments to late fees first, in contravention of the methodology disclosed on the website. Because servicers applied payments to late fees first, some consumers were deemed more delinquent than they would have been under the disclosed payment allocation order, and these servicers repossessed some consumers' vehicles.

Under these circumstances, servicers' websites provided inaccurate information about payment allocation order. In some instances, the underlying contract provided the servicer the right to apply payments in any order, which did not immunize the company from liability for the deceptive website content.[8]

Unlawful Fees That Push Consumers Into Default and Repossession

Enforcement has brought claims under the CFPB's unfairness authority where unlawful fees push consumers into default and repossession.

For example, in a public enforcement action, the Bureau found that an entity engaged in an unfair act or practice by operating its force-placed insurance (FPI) program in an unfair manner, in some instances resulting in repossession.[9] The entity purchased duplicative or unnecessary FPI policies and, in some instances, maintained the policies even after consumers had obtained adequate insurance and provided adequate proof of coverage. This conduct caused the entity to charge consumers for unnecessary FPI, resulting in additional fees, and in some instances delinquency or loan default. For some consumers the additional costs of unnecessary FPI contributed to a default that resulted in the repossession of a consumer's vehicle. Charging unnecessary amounts to consumers and subjecting them to default and repossession caused or was likely to cause substantial injury. This injury was not reasonably avoidable and was not outweighed by countervailing benefits.[10]

c. Unfair Practices That May Result in Illegal Fees After Repossession

The following are examples of practices that led to illegal fees after repossession of consumers' vehicles that the Bureau has considered to be UDAAPs.

Charging Illegal Personal Property Fees

The Bureau has identified an unfair practice concerning illegal personal property fees. Borrowers often keep personal property in the repossessed vehicles. These items often are not

[7] *Supervisory Highlights,* Issue 16—Summer 2017; *Supervisory Highlights,* Issue 17—Summer 2018.

[8] *Supervisory Highlights,* Issue 24—Summer 2021.

[9] *In re Wells Fargo Bank, N.A.,* 2018–BCFP–0001 (Apr. 20, 2018).

[10] *See also Supervisory Highlights,* Issue 24—Summer 2021.

merely incidental but can be of substantial practical importance or emotional attachment to borrowers. State law typically requires auto loan servicers and repossession companies to secure and maintain borrowers' property so that it may be returned to the borrower upon request. Some companies charge borrowers for the cost of retaining the property.

In a public enforcement action, the Bureau found that an entity engaged in an unfair act or practice by withholding consumers' personal property unless the consumers paid an upfront fee to recover the property.[11] Many of the repossession agents employed by the entity imposed fees on consumers for holding personal property in the repossessed vehicles. The agents often refused to return consumers' personal property unless and until the consumers paid the fees. The Bureau found that the servicer was responsible for its agents withholding consumers' personal property unless the consumer paid an upfront fee to recover it and thus caused substantial injury that was not reasonably avoidable and not outweighed by countervailing benefits to consumers or competition. Supervision has also identified this unfair act or practice at other servicers where the servicers withheld consumers' personal property unless they paid an upfront fee.[12]

Charging for Collateral Protection Insurance After Repossession

Supervision found that servicers engaged in unfair acts or practices by collecting or attempting to collect force-placed collateral protection insurance (FPI) premiums after repossession even though no actual insurance protection was provided for those periods. FPI automatically terminates on the date of repossession, and consumers should not be charged after this date. Despite this, servicers charged consumers for FPI after repossession in four different circumstances. First, servicers failed to communicate the date of repossession to the FPI service provider due to system errors. Second, servicers used an incorrect formula to calculate the FPI charges that needed to be removed due to the repossession. Third, servicers' employees entered the wrong repossession date into their system of record, resulting in improper termination dates. Fourth, servicers charged consumers—who had a vehicle repossessed and subsequently reinstated the loan—post-repossession FPI premiums, including for the days the vehicle was in the servicer's possession, despite the automatic termination of the policy on the date of repossession. These errors caused consumers substantial injury because they paid amounts they did not owe or were subject to collection attempts for amounts they did not owe. This injury was not reasonably avoidable because consumers did not control the servicers' cancellation processes. The substantial injury to consumers was not outweighed by any countervailing benefits to consumers or competition.[13]

III. The Bureau's Expectations

As explained in greater detail above, the Bureau has held auto lenders, loan holders, and servicers accountable if they or their agents commit UDAAPs when repossessing automobiles, including when they:

- 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.

To prevent these unfair, deceptive, or abusive acts or practices, entities should consider doing the following:

- Review policies and procedures, including call scripts, to ensure that they provide employees with accurate information about steps consumers can take to prevent repossession.
- Review policies and procedures regarding cancellation of repossession orders to ensure that there is an appropriate process for cancelling repossessions if consumers take steps that should result in cancellation.
- Ensure prompt communications between the servicer and repossession service provider when the servicer cancels a repossession. For example, servicers may call repossession service providers to confirm cancelation or use mobile phone applications that push cancellation updates to repossession service providers' phones.
- Monitor repossession service providers for compliance with repossession cancellations.
- Incorporate monitoring of wrongful repossession in regular monitoring and audits of communications with consumers.
- Ensure that the entity has a corrective action program to address any violations identified and to reimburse consumers for the direct and indirect costs incurred as a result of unlawful repossessions when appropriate.
- Review payment allocation policies and procedures to validate that they are consistent with the payment allocation order disclosed in contracts and other consumer facing disclosures, such as websites.
- Monitor for illegal fees charged after repossession.
- Review consumer contracts to validate that any fees charged to consumers are authorized under the terms of applicable contracts.
- Review consumer complaints regarding repossession and ensure there is an appropriate channel for receiving, investigating, and properly resolving consumer complaints relating to wrongful repossession and illegal fees after repossession.
- Perform regular reviews of service providers, including repossession vendors, as to their pertinent practices.[14]
- Monitor any FPI program to ensure that consumers are not charged for unnecessary FPI. This may include review of FPI cancellation rates.

IV. Conclusion

The Bureau will continue to review closely the practices of entities repossessing automobiles for potential UDAAPs, including the practices described above. The Bureau will use all appropriate tools to hold entities accountable if they engage in UDAAPs in connection with these practices.

V. Regulatory Requirements

The Bulletin constitutes a general statement of policy exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act (APA). It is intended to provide information regarding the

[11] *In the Matter of Nissan Motor Acceptance Corp.*, 2020–BCFP–0017 (Oct. 13, 2020).

[12] *Supervisory Highlights,* Issue 13—Fall 2016.

[13] *Supervisory Highlights,* Issue 24—Summer 2021.

[14] CFPB Compliance Bulletin and Policy Guidance; 2016–02, Service Providers (Oct. 31, 2016), *https://www.consumerfinance.gov/documents/1385/102016_cfpb_OfficialGuidanceServiceProviderBulletin.pdf.*

Bureau's general plans to exercise its supervisory and enforcement discretion for institutions under its jurisdiction and does not impose any legal requirements on external parties, nor does it create or confer any substantive rights on external parties that could be enforceable in any administrative or civil proceeding. Because no notice of proposed rulemaking is required in issuing the Bulletin, the Regulatory Flexibility Act also does not require an initial or final regulatory flexibility analysis. The Bureau has also determined that the issuance of the Bulletin does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2022–04508 Filed 3–2–22; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–1049; Airspace Docket No. 21–ASO–36]

RIN 2120–AA66

Amendment of Class E Airspace; Hampton, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet above the surface for Atlanta Speedway Airport (formerly Clayton County-Tara Field), Hampton, GA by updating the airport's name and geographical coordinates to coincide with the FAA's database. This action also increases the radius and removes excessive verbiage from the legal description of the airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Effective 0901 UTC, May 19, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments, can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; Telephone: (202) 267–8783. FAA Order JO 7400.11F is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order JO 7400.11F at NARA, email *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: John Goodson, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Ave., College Park, GA 30337; Telephone (404) 305–5966.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, part A, subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace extending upward from 700 feet above the surface to support IFR operations in Hampton, GA.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR, 69181, December 7, 2021) for Docket No. FAA–2021–1049 to amend Class E airspace extending upward from 700 feet above the surface for Hampton, GA.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in Paragraph 6005 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic routes, and reporting points.

The Rule

The FAA amends 14 CFR part 71 by amending Class E airspace extending upward from 700 feet above the surface at Atlanta Speedway Airport (formerly Clayton County-Tara Field), Hampton, GA, by updating the airport's name and updating the geographical coordinates to coincide with the FAA's database. In addition, this action amends the radius to 9.2 miles (formerly 6.8 miles) and eliminates excessive verbiage in the legal description.

Class E airspace designations are published in Paragraph 6005 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA