

# Consumer Finance Monitor (Season 5, Episode 21): A Conversation with Special Guest Phil Weiser, Colorado Attorney General

Speakers: Matt Morr and Phil Weiser

Matt Morr:

Welcome to the Consumer Finance Monitor Podcast, where we explore important new developments in the world of consumer financial services and what they mean for your business, your customers, and the industry. I'm your host, Matt Morr. I'm a partner in Ballard Spahr's Denver office, and I'll be moderating today's program. For those of you who want even more information, don't forget about our blog, [consumerfinancemonitor.com](http://consumerfinancemonitor.com). We've hosted the blog since 2011, so there's a lot of relevant industry content there. We also regularly host webinars on subjects of interest to those in the industry. So to subscribe to our blog or to get on the list of our webinars, visit us at [ballardspahr.com](http://ballardspahr.com). If you like our podcast, let us know, leave us a review on Apple Podcasts, Google, or wherever you get your podcasts.

Matt Morr:

Today I have the pleasure of being joined by Phil Weiser, the Colorado attorney general. He was a Supreme court clerk for Justice Byron White and Justice Ginsburg. The deputy assistant attorney general in the Justice Department's Antitrust Division during the Obama administration. And he also served on President Obama's National Economic Council. Phil, I appreciate you taking the time to speak with us. We know you're very busy, particularly during an election year.

Phil Weiser:

Well, happy to be with you.

Matt Morr:

Being in Colorado, we know that you've been very focused on a number of issues such as the opioid crisis and things like water rights. Today, I'd like to talk with you more about the consumer finance services industry. While we welcome all listeners, our key listeners are consumer finance companies, banks, mortgage, servicers auto lenders, student loan, servicers fintech companies, and other companies that offer financing to purchase products. So this is a great opportunity for you to speak directly with those companies and the people that make decisions for those companies. So what I'd really like to do is talk about as attorney general, where have you been focusing your efforts in consumer finance?

Phil Weiser:

So Matt, we've had a range of activities. Let me start with what is a new development that's really important. We have an office of financial empowerment we've set up, and one of the things we're focused on, this is something that we hope people in the industry engage in, is what we're calling a bank on initiative. What many of us may not reflect on is how many people don't have a relationship with the financial institution. They don't have a bank account. And part of the challenge is many people who get a job, they're not going to give them a check anymore that you can bring to some check casting service. You may be in a situation where you need a bank account to get paid. If you want to build up credit to get a loan, you may need a bank account and a relationship. And so we're going to work hard to build, if you will, financial knowhow, financial literacy, and financial muscle, and help more people develop these relationships. So our office of consumer empowerment, financial empowerment is now up and running. Carmina Lass is really a rockstar, who's our first head of it. And we're going to be building these collaborations and partnerships around the state. For those financial institutions who want to be a part of it, please reach out to our office.

Matt Morr:

What kind of companies are you trying to work with on this new initiative?

Phil Weiser:

Any companies who want to be involved. So there are going to be new fintech companies who have different types of operations, who may say, "We're committed to working to build better financial literacy and financial empowerment." It's worth underscoring, by the way, that we had a settlement with a fintech issue, and in that settlement, the company agreed, they were going to put money into this initiative we have in Colorado called Money Wiser. No relationship to Phil Weiser, they spell it differently, W-I-S-E-R. And Money Wiser is a valuable program that is helping young people learn how to manage their financial issues. And that's something that is not easy to do, because a lot of young people don't start with a base of knowledge of how to balance a checkbook or how to think about debt. So we'll welcome everybody from traditional large banks, from community banks, to fintech. Any organization who wants to lean in and to manage this challenge with us, come on board.

Matt Morr:

And where would these companies go to find out more information?

Phil Weiser:

So if you go to [coeg.gov](http://coeg.gov), you can go to our whole website. And in there, if you go for the financial empowerment, you'll see our operation. And they'll be, obviously, at this point, a more skeletal plan because we don't have as much up. But be in touch. We want partners. We're in the formative stage about developing how we work together and we need partners. By the way, just for people looking for the email address, it's [ofe@coeg.gov](mailto:ofe@coeg.gov). You can just go ahead and send an email and that's how you can come on board.

Matt Morr:

That's a great new development. I had not heard about that before, so I'm excited to learn more about it as it goes forward. I asked you before about where your focus was, and you mentioned this new development. Where else are you focusing your efforts?

Phil Weiser:

So in terms of other efforts, let me take another dimension. There are companies out there who might be trying to cut corners or have deceptive fees that consumers don't know about. For me, this is a real bee in my bonnet. It should not take a law degree to be able to be treated fairly. And what sometimes happens is companies will say, "Hey, we want to introduce this new fee," but they do it in a way that might be deceptive. One real concern is they start offering people a service that they think is maybe a one time service, but it's auto-renewing. We actually went to the legislature to get a law addressing auto-renewing services so that companies wouldn't start providing a service that consumers thought was only one time, but it was actually auto-renewing. And so that is an area of focus that I'm really worried about.

Phil Weiser:

Another area that we'll talk about is this guaranteed automobile protection, which is a related area, because there you're getting this service. If you are having a car and you are worried, "Hey, if the car gets totaled, I'm going to have to pay the whole loan, and there's going to be a gap between what my insurance pays and what the loan is. I get this guaranteed automobile protection, it covers that gap." But what if you pay off your car? Well, at that point, there's no exposure anymore, because by definition, the concern is no longer relevant. But if you keep getting charged for this policy that is really not of any value to you, that's a problem, because they're just taking advantage of your inertia or your lack of awareness. And so this issue about unfair fees or deceptive fees or auto-renewing fees is absolutely something we're taking a close look at.

Matt Morr:

I want to come back to the gap fees. You mentioned the auto-renewal as part of the deceptive fees. And there's a new Colorado statute about the auto-renewals. Can you tell me a little bit more about that?

Phil Weiser:

Yes. The basic idea is that if you want to offer an auto-renewing service, you have to in a very clear, notorious way, tell people, "This service will renew. If you don't want it to renew, here's how you avoid it renewing." And that's important, because before this law, there was a real risk that consumers were getting charged for services that they didn't even know were renewing. We have a few enforcement actions we took just along those very lines. One example was a lawn maintenance service, which individuals signed up for a one-time deal, but then kept getting charged, even though they didn't know that it was an auto-renewing service.

Matt Morr:

And with the law being so new, have you had any enforcement actions under the new law yet?

Phil Weiser:

We have not. Our main goal is wherever possible to educate both consumers and to also educate businesses to enable sound compliance. And so in this law, a real focus has been on educating and creating more awareness.

Matt Morr:

Making sure that companies that have auto-renewal are giving the disclosures that they need to be giving.

Phil Weiser:

Absolutely.

Matt Morr:

Let's go back and talk more about gap insurance. And this is an area I'd say the last couple years, your office has been very active in. Have you come to an agreements with companies? Have you had any enforcement actions?

Phil Weiser:

So this is an important point. I want to start philosophically and then I'll go down from there. I won't bring an enforcement action until I've had the chance to sit down and say, "Here are our concerns. Give me your side of the story. Let me think hard about this. And ultimately, if we disagree, that's what courts are there for, they can settle disputes." In the gap situation, we had heard about this concern that these policies were being managed in ways that were contrary to law, and they were taking advantage of consumers. I gave you a clear example where a consumer has such a policy that they think is protecting them in case their car gets totaled while their loan is still outstanding, but then if they pay off their loan and they keep getting charged these gap fees, our view is that's wrong. That's taking advantage of consumers. So thankfully, thus far, those institutions who are providing this product have said to us, "We've looked at what we've done, and we realized we were out of compliance with the law. We weren't treating consumers fairly. We're refunding them the money." And this has been in the well north of 10 million that we've been able to get back for consumers just in this gap area alone.

Matt Morr:

And while there's certainly some bad actors, fortunately the clients that we work with, they want to comply with the law. And I do understand that there can be some confusion in the gap area, because sometimes the consumer will be working with the dealership, and there can be some confusion about whether that the gap refund is being applied to a down payment or

whether it's been refunded otherwise. And so I think very often companies want to be complying, and it's a matter of making sure that their ducks are in a row.

Phil Weiser:

And by the way, to your point, we haven't sought to be punitive, our goal has been to be restorative. When companies said, "We made a mistake, we're going to fix it," we have said, "God speed." To your point, we will be more, let's say accountability minded when we know they're bad actors who are willfully trying to play games. We haven't had any such cases, we haven't had to bring enforcement actions, but we would, and we could, and we have against other such actors.

Matt Morr:

Phil, earlier, you mentioned auto-renewal fees is something you were concerned about. What other types of deceptive fees are you worried about?

Phil Weiser:

So another deceptive fee I worry about is when customers are getting a service and then somehow, somehow that service is no longer a true service, it's no longer of any value, but they keep getting charged for a service that other customers aren't charged for because it's not a standard charge anymore. I'll give you an example. Direct TV, for years we charged people a fee to get high definition telephone service. And they eventually said, "You know what? Everyone's got high def, we're not charging you anymore for it." But the people who were paying that legacy HD fee kept getting charged for it. So we took action and made them stop doing this to help people essentially be held harmless with others who were signing up for the service and not paying it, because that's only fair. I'd like to see companies more vigilantly and proactively examining this question themselves, asking always, "Are we giving consumers something of value?"

Phil Weiser:

A second concern is when we see companies tell consumers that they're going to hold a fee at a certain level, but then they keep raising the fee, despite having said it was going to be held. And in the case of CenturyLink, they had a price lock guarantee that they promised to consumers. But then they kept raising an associated fee from 99 cents to 3.99. We made them give back \$8 million to consumers who were charged a fee they shouldn't have been charged. So those are two of the fees that, in addition to the auto-renewal context, are examples of things companies should not do.

Matt Morr:

When we were talking beforehand, you mentioned something with Netflix that you really appreciated. What was that?

Phil Weiser:

So one thing I would just give companies an example of is if you notice that there is some type of fee or some type of service that consumers are getting and/or getting charged for, but they're not using, it's an extremely consumer friendly thing to ask customers, "You're paying for this. Doesn't appear you're using it. Are you sure you want it?" Netflix actually did that recently. And my theory of the case for all companies, building consumer loyalty will pay forward big time. When you build trust with your customers, when they believe they care about you, it's going to pay dividends. And this is something I believe is going to be a lesson from the pandemic. It applies to companies and customers. It applies to employers and employees. It applies to friends and family members. During the pandemic, a lot of people were vulnerable. We talked to people in the financial services area about providing grace and forbearance. Those who did that well, I believe will be rewarded for it.

Matt Morr:

Another piece I want to talk to you a little bit about, and this goes to your background in really working with businesses for innovation. In the consumer finance world, there's new innovations all the time in how to communicate with customers, contact them, where to offer them services. How is your office keeping on top of these new innovative developments?

Phil Weiser:

This is a really important question. And you're correct, my background is in technology. I start with a humility. I mentioned before, if you will, the due process value of always hearing any companies out before we take action. One of the worries I have as attorney general is that we could take action or adopt regulations, and I know we'll talk about consumer privacy in a bit, that could undermine innovation. We need dynamism in all sectors of our economy. And one of the risks is you could have regulatory systems and rules or enforcement actions that actually protect legacy business models and/or undermine innovative business models. I don't want to do that. I was actually the only democratic AG who joined the last administration's innovation council as part of the CF, Consumer Financial Protection Bureau, because I'm a big believer in innovation. Your question is how do we keep abreast? And the short answer is, we try to keep an ongoing dialogue. We try to stay current with different developments in both business models and technology, but it's hard. And the world we're in with cryptocurrency and other developments that are continuing to move apace, this is one of the real challenges for anyone in an enforcement position or a public policy maker, because the world is moving quicker than ever before.

Matt Morr:

So my experience with your office is that if we have a dispute with one of my clients, we've been able to get on the phone early and really talk it out. Is there that same type of opportunity for companies that are working on innovation? And what sort of strategies would you recommend those companies use in order to make sure that they're on the right side of the wall?

Phil Weiser:

One of my favorite concepts is, you build relationships when you don't need them so you have them when they do. Companies who wait to hear from regulators, public policy makers, because they might be doing something that is concerning, are playing a high stakes game that I don't recommend. A much safer game, if you will, come early and often, meet your regulators, meet public policy makers and say, "We're looking at doing something different that we think will provide some benefits to consumers. Here's why we're doing it. We recognize it may raise some legal issues. If you see any, will you let us know and we can have a dialogue about it?" And the answer might be, "Well, actually our current rules don't allow for this, but we might be able to change our rules," or, "Current law doesn't allow for this. But we'd work with you to change the law." Engaging in self-help or denial is not a good strategy, because even if someone says, "Well, this is a good business," my job is not to be judging what's a good business, my job is to enforce the law. And so willful violations of the law that could have some harm are not going to be looked on kindly. So get out front of these issues, engage in that dialogue, work together to solve problems. It'll put you in a much better situation.

Matt Morr:

Recently, your office released a list of the top 10 consumer complaints you receive each year or received last year. And one of the complaints on there that appears every year was robocalls. The Supreme Court, within the last couple years, narrowed the definition of an auto dialer under the TCPA. So some of the teeth has been taken out of that federal statute, and some states are passing laws or doing things to more stringently enforce laws against robocalls. Can you talk to me a little bit about how your office views robocalls and what sort of strategies you are doing to make sure that companies are in line with the law?

Phil Weiser:

Robocalls and all sorts of automatic dialing programs have basically very limited, if any credibility, because there's so many scammers and fraudsters out there. There was a time when we had a do not call list that companies could work with and consumers home phones and mobile phones could actually be protected from these robocalls. We're not in that world anymore. The advice I give is if you don't recognize the number, do not answer the call. If it's legitimate, they will leave a message for you. The unfortunate reality is consumers are less and less willing to answer their phones because of these robocalls.

Phil Weiser:

What we've worked to do is both educate consumers with the message I just mentioned. We've also worked pushing at the Federal Communications Commission on implementing a technology that was called for under what's called the Trace Act. And that technology, shaken and stir, often joke must be a James Bond fan who came up with it, that technology helps verify what's a legitimate call. And many of us on our mobile phones now have potential spam call or junk call automatically silenced, going to voicemail. And that's helping this scourge of robocalls go down the list of top 10 consumer complaints. It's historically been number one, it was not last year. However, the bad news, we now have more and more spam texts than we've ever had. That's going up. So we got to get to work on that now as well.

Matt Morr:

I think the hard part, speaking on behalf of the industry, is lenders very often have a reason to call their clients. Lenders don't want folks to get behind on their payments. And there are times when they call, they get a hold of the customer, and it's, "Oh, I was on vacation. Thank you for calling, I'll pay it right now." Or, "I'm having some struggles. Can we work out some sort of modification or plan?" With what you talk about, and other people have talked about, but that people aren't answering the phones anymore, it puts the industry in a difficult situation of being able to contact their customers, whether it be in any different form of medium, and then staying on the right side of the law.

Phil Weiser:

Yeah, Matt, this is a problem. And I want to raise the stakes. If someone says to me, "I just got a call from my bank asking me about my payment," I would say, "Don't trust it's your bank calling." I would tell somebody, "Call the number that you know is your bank, so you know it's actually them." So the problem for the industry is there has been such an erosion of trust in these robocalls, for good reason, that if they want customers to get notified, I wouldn't bother, I wouldn't recommend having a live person make a call. I would instead either send an email or a text message, or I would send a voicemail message and basically say, "We think you're behind on your payment. Please check your records or call the appropriate number." And then I would tell consumers, "If you get a message saying, please call the number, don't call the number they give you, make sure you're calling a legitimate number for your banks." And this is a real challenge that I recognize companies have, but we got to figure out how we build environments of trust, because there are so many people out there trying to scam consumers.

Matt Morr:

So part of that for the industry is really making sure that their statements and their communications have very clear ways to be able to contact the company for different purposes, whether to make payment or to talk about issues that they're having.

Phil Weiser:

Absolutely. And I will tell you, I know a lot of companies are trying, and I know it's a cost saving measure to make it harder to find a real person to speak to, but consumers view that as a tax on their time as well. And so these are all tough issues to manage. Figuring out what the best way is to manage, I know a lot of companies are moving towards apps that they can have trust in and ability to communicate to the consumers. We're in a tough transition period as these consumer relationship issues are being worked out.

Matt Morr:

Another issue I've heard you speak a lot about is student loans. And I saw you recently sent a letter to the Colorado US attorney regarding bankruptcy discharges. Can you talk to us a little bit about that please?

Phil Weiser:

I'm not sure it's widely appreciated the extent to which student loans are an incredible burden and to which student loans are actually, I believe, the second leading source of debt right now after home mortgage debt. And what we have lived through is a lot of shenanigans where those with student loans have not always been treated fairly. And there are a few different forms of

mistreatment that have really deeply bothered me. One is when people took out a student loan to go to a for-profit college that didn't deliver the training it promised, and people were left with loans and no ability to work with a purported skill. There's a borrower defense rule that says in those cases, the college should bear the brunt of that debt and not the individual. And we've worked hard to defend people in that position.

Phil Weiser:

Secondly, Navient, one of the major student loan servicing companies, really steered people into the wrong plans to their detriment. And we took action there, getting 35 million back in student debt relief. Third, public service loan repayment is a program that promises to repay student loans after 10 years of public service. But that program has not worked as advertised, and we've been advocating hard on behalf of student borrowers. We actually have in our office, a student loan ombudsman person, another area that we're able to help people who are, in many cases, really struggling with student loans. And finally, to your question, if you're in bankruptcy, there are exceptions for grace under certain circumstances, where the code allows for some forgiveness of student loans. Reflexively, the Department of Justice has generally argued against that grace. We believe in the appropriate circumstances, people deserve that fresh start even from student loans. And there is that space in the code to allow for it, we'd like to see the federal government getting behind that in those cases

Matt Morr:

You mentioned earlier how student loan debt is one of people's highest forms of debt. As a former educator and Dean of the University of Colorado Law School, what's your thoughts on the cost of education?

Phil Weiser:

I've thought a lot about this. And I think we need to have a real reckoning and a social contract around when people are getting debt and whether it's justified and merited. The awareness that people have today about the cost of education is different than it was a generation or two ago. It used to be, because of more support for higher education, there was kind of a reflexive idea, any education is always worth it. What we've seen over the last 20 years, in some cases, I mentioned the for-profit college example, but there are others, people who ended up regretting taking out these student loans. So my first message is to all of those of us in positions where we're administrators working in a context that people are taking out debt for education, we have to ask ourselves, "Is the value proposition worth it?"

Phil Weiser:

When I was the Dean of C Law School, we lowered average in debt from \$116,000 per student to a \$100,000, which still is a ton of money. And I viewed it as our obligation to make sure that people would say it was worth it. I also think part of what we need is a little bit more flexibility and creativity around what types of educational options are around. We're seeing more certificates, we're seeing more forms of creating learning platforms, apprenticeships. This is a converse, if you will, to the consumer financial empowerment, we need individual educational awareness about how do you develop the skills you need in the most cost effective way possible? The level of student debt that has been accumulated because people reflexively thought, "It's always a good idea," has gotten to this point that a lot of people feel buried by it, regret having done it. And we just need to take stock of all that and help others make better decisions.

Matt Morr:

I want to shift topics a little bit. One of the common threads among our listeners is they're very likely to have customer private information. Folks take out a loan and they provide them with name, address, social security number. They have things like credit reports and information about that debt and other debts. And I'm curious to hear where the state is focused on privacy issues.

Phil Weiser:

So you'll notice a theme or two that's gone through my remarks. One is, what does it mean to be a responsible company, thinking about compliance, thinking about how you treat customers right? If you start with that premise, in terms of dealing with our office, you're going to be in good shape. On the privacy issue, there is a lot of room for error. The companies who are least thoughtful on this are apt to collect lots of data, to not store it securely, to not think about who has access to it, to sell it to other people without the customer's awareness, and generally to leave customers feeling creeped out and suspicious. By contrast, the most thoughtful companies are very careful what information they collect, they're very careful how they store it, how long they store it, how they use it. They're very transparent with their customers about it.

Phil Weiser:

As you think about that spectrum, it's no longer going to be, "Do what you want." It's about to become, "You have obligations as a company to assess the data you're collecting and how you're managing it." That's part of our Colorado Privacy Act, to give customers the right to opt out to having information that they may have shared with you be shared with others, and to have even customers look at information you're collecting and ask, "Is it correct?" Because a lot of times companies will acquire different sources of information when making these decisions about people, and the truth is, and this is really true in the financial area, we have protections in the Fair Credit Reporting Act. But other sources of information that get collected about people that inform decisions and algorithms don't necessarily have those same protections where consumers can review it. That's about the change in Colorado. A data profile is going to have to be something that individuals can review and even challenge misinformation.

Matt Morr:

And Phil, you mentioned the new Colorado law, and that goes into effect in 2023. Are you in the process now of working on the regulations that will inform that law?

Phil Weiser:

Yeah. So this is worth underscoring, and for those keeping score, under the last few years in our administration, we've got a new financial empowerment effort. We're really excited to see what that's going to do. We've got a new student loan ombudsman person helping the issues we talked about there. And third, we've got a new privacy team that we've also built. And the goal of that team is to create regulations that are adaptive, that allow for innovation, that are easy to comply with, that protect consumers, and that are compatible with other state laws, notably California's, so businesses aren't actually stuck in a situation where they can't comply with both, for example, the California law and the Colorado law. So we're hard at work. We're going to probably have a formal rule making, I've said September-ish, with the goal of doing the rulemaking over the course of the fall. In the interim, we're having lots of informal conversations. You can look at a recent speech I gave to the International Association of Privacy Professionals and a document we offered related to rule making. We need people to table sharing ideas.

Matt Morr:

For our proactive listeners, what types of things can they start doing to make sure that they're going to be in compliance?

Phil Weiser:

Most proactive listeners probably have a chief privacy officer at this point, that's become a norm within most businesses who collect data. That office is an important one, because that person is going to be in a position to understand what the rules are in Colorado. And chances are, for proactive, particularly more sophisticated companies, you're working through the issues for California. And one of the opportunities in Colorado is we can look at some of these issues and perhaps handle them differently in California, then maybe California will upon reflection look at how we handle it and say, "You know what? Maybe we're going to learn something from Colorado." We're certainly going to be looking to learn from them. We hope they've got the same mindset learning from us. The goal I would say is don't wait until the last minute to decide you need to comply.



Instead, be at the table, helping us figure out the best system on the front end. And then our goal will be to give people plenty of time to get into compliance before the law goes into effect.

Matt Morr:

Well, Phil, we could fill a lot of time just talking about the new privacy law in Colorado. And we actually, coming up in September, you're going to be joining us in the Ballard Denver office for a privacy summit. So we look forward to seeing you there.

Phil Weiser:

I look forward to it as well. And just, Matt, appreciate what you're doing. For listeners out there, if you haven't already taken this message home, be thoughtful, be proactive, think about how you'll be responsible. The companies who approach issues in that way are in much better shape than those who are waiting until they get asked questions about doing things that arguably are the wrong side of what they're required to do.

Matt Morr:

Well, thank you Phil. I appreciate your time here. I also appreciate your willingness to talk with our office when issues come up, and we look forward to having you on again in the future. For our listeners, please make sure to visit our website [www.ballardspahr.com](http://www.ballardspahr.com), where you can subscribe to the show in Apple Podcast, Google, Spotify, or your favorite podcast platform. Don't forget to check out our blog, Consumer Finance Monitor, for daily insights of the financial services industry. If you have any questions or suggestions for the show, please email [podcast@ballardspahr.com](mailto:podcast@ballardspahr.com). Stay tuned each Thursday for a new episode. Thank you for listening.