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CFPB Reveals Auto Financing and Servicing Concerns in Latest Report

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On October 7, 2024, the Consumer Financial Protection Bureau (CFPB) released its most recent **Supervisory Highlights** report, which largely focuses on auto finance issues identified in examinations completed by the CFPB between November 1, 2023, and August 30, 2024.

The Supervisory Highlights report also provides an overview of recent supervisory program developments, including publications and rulemaking efforts, and enforcement actions taken.

Add-on products

The CFPB has long focused on potential unfair, deceptive and/or abusive practices in the sale and financing of add-on products – e.g., guaranteed asset protection (GAP) and vehicle service contracts – which this report describes as a "trend."

The CFPB explains that examiners found that certain auto finance companies engaged in abusive acts or practices where they charged consumers for add-on products but failed to explain, as part of their marketing and origination processes, that those add-on products were optional. The CFPB noted that those auto finance companies also failed to obtain consumers' consent to purchase the add-on products.

Importantly, although these add-on products were marketed and administered by third-party service providers, the CFPB still found the auto finance companies responsible for the alleged issues. The CFPB directed the auto finance companies to, among other things, revise their policies and procedures to ensure their service providers did not create or distribute marketing materials with potentially misleading terms.

Other add-on product practices that examiners viewed as abusive included:

- Financing GAP that had no value to the consumer given that the vehicle had a salvage title.
- Making it overly difficult to cancel add-on products – including by requiring consumers to make multiple in-person visits to dealerships to exercise their cancellation rights.
- Denying consumers' requests to cancel add-on products for a pro rata refund (where required), providing inaccurate refund amounts and failing to timely apply refunds to borrowers' accounts.
- Collecting payments after a total loss event where a GAP product covered the outstanding balance on the contract.

Repossession

The report also focuses on repossession practices. In particular, examiners found that entities engaged in unfair acts or practices by repossessing vehicles:

- After consumers had made payments sufficient to avoid the repossession or were granted an extension that should have prevented the repossession.

- Before confirming that they had a valid lien on the vehicle.

The CFPB contends that these repossessions cause substantial harm to consumers – including lost wages – and, therefore, amount to unfair acts or practices. As has been emphasized in previous **Supervisory Highlights**, the CFPB maintains that such injury is not reasonably avoidable because, in each case, consumers had taken action that they believed would halt repossession.

The report acknowledges that repossession activities are often handled by service providers, but the CFPB emphasizes, **as it has in the past**, that contract holders and servicers are ultimately "responsible for ensuring that their repossession-related practices, and the practices of their service providers, do not violate the law."

Disclosures

The report also calls attention to issues with marketing annual percentage rates (APRs) and disclosure of prepayment penalties. To that end, examiners found that auto loan originators' marketing of available "as low as" rates identified APR rates to consumers who were unlikely to qualify for such amounted to a deceptive act or practice.

Examiners also found that auto loan originators violated Regulation Z due to inconsistencies between the Truth in Lending Act disclosure – which reflected that there may be a prepayment penalty if the contract was paid off early – and the retail installment sales contract, which suggested the opposite.

Servicing

Examiners found that servicers of auto finance contracts engaged in unfair and deceptive acts and practices by applying payments made by borrowers for post-maturity loans in a manner that differed from the payment allocation method disclosed to consumers on the servicers' websites. The CFPB noted that the payment allocation order used resulted in principal balances not being paid off on time, thus leading to the assessment of late fees by the servicer.

The CFPB also highlighted that some auto loan servicers failed (through their service providers) to promptly deliver vehicle titles to consumers following a payoff, or when consumers requested a title for purposes of transferring their vehicle registrations to another state. Examiners concluded that such delays in delivering titles could prevent consumers from legally selling their vehicles and/or cause them to incur extra insurance costs.

Furnishing

The report also describes key observations with respect to auto finance companies' furnishing of information to consumer reporting agencies (CRAs). Specifically, examiners found that auto furnishers violated the Fair Credit Reporting Act by:

- Furnishing inaccurate information to CRAs, such as incorrect payment details or dates of delinquency. The CFPB noted that those inaccuracies were, in certain instances, caused by the furnishers' use of systems "not adequately designed to accurately furnish information about auto loans."
- Furnishing inaccurate information to CRAs for more than a year – for example, after discovering errors through internal audits and not promptly correcting such information.

Looking ahead

The CFPB has in recent years pushed for greater monitoring of the auto finance market. Earlier this year, the **CFPB formally sought approval** to collect data annually from auto finance companies originating as few as 500 loans per year. The information the CFPB is seeking to collect from auto finance companies includes information on add-on products and repossessions – each of which is addressed within this most recent Supervisory Highlights report. Auto finance companies that could be subject to future CFPB data collections should therefore take note.

Furthermore, as reflected in this report, the CFPB is not only interested in monitoring auto finance companies, but also is focused on ensuring that such auto finance companies effectively oversee service providers – in particular, those who handle critical functions like the marketing and sale of add-on products or repossessions. This is consistent with guidance provided to examiners in the **CFPB's Auto Finance Examination Procedures** to determine how supervised entities ensure that service providers "effectively manage compliance with Federal consumer financial laws." Service provider oversight in the auto finance context has been – and likely will continue to be – something the CFPB is keenly focused on.

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