

9 Consumer Finance Issues to Note From CFPB Report

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In July, the Consumer Financial Protection Bureau published a report highlighting various unfair, deceptive, and abusive acts or practices it claims to have uncovered during its supervisory examinations from July 2022 to March 2023.

The summer 2023 report covers, among other things, what the CFPB considers to be unfair and deceptive acts or practices in areas such as automotive loan origination and servicing; consumer reporting; debt collection; deposits; fair lending; information technology (for the very first time); mortgage origination and servicing; payday and small-dollar lending; and remittances.

Here are the most significant issues identified by the CFPB.

1. Auto Originations and Servicing

First, the CFPB examined automotive finance origination and servicing practices, and identified various unfair and abusive practices. These findings could be very significant for the auto finance industry.

With regard to auto finance origination practices, examiners found deceptive marketing of auto loans. The report explained that some institutions were misleading consumers with “advertisements ... [of] pictured cars that were significantly larger, more expensive, and newer than the advertised loan offers were good for.”

Examiners also identified three unfair or abusive practices related to auto finance servicers charging interest on inflated loan balances, canceling automatic payments without sufficient notice, and engaging in improper collection practices after repossession.

First, examiners found servicers were collecting interest on inflated loan balances resulting from fraudulent options that were not actually present on the vehicle. Examiners further found that some servicers were canceling recurring automated payments prior to consumers’ final payments without notifying consumers that the final payment must be made manually. This practice resulted in consumers missing payments and incurring late fees.

Finally, examiners found some servicers were allowing cross-collateralizations by accelerating and demanding repayment on unrelated debts before consumers could redeem their repossessed vehicles.

2. Consumer Reporting

The report further documents deficiencies in consumer reporting companies and furnishers' compliance with the Fair Credit Reporting Act. These deficiencies include a failure to maintain reasonable policies and procedures to limit the disclosure of consumer reports to persons with permissible purposes.

The examiners also found that furnishers, specifically third-party debt collectors and mortgage furnishers, were violating Regulation V of the FCRA by failing to review and update dispute policies and procedures, conduct reasonable investigations of direct disputes, notify consumers of frivolous disputes, inform consumers of the requisite information needed to investigate the disputed information, or provide adequate address disclosures for notices.

3. Debt Collection

The CFPB also uncovered violations of the Fair Debt Collection Practices Act, including debt collectors' continued collection attempts for work-related medical debt after receiving information that the debt was uncollectible under state workers' compensation law.

Additionally, examiners found that debt collectors were making deceptive representations about interest payments. The report highlighted that certain debt collectors represented to consumers that paying the debt in full by a certain date would result in any interest on the debt being reversed. However, the examiners found that these debt collectors were not crediting the consumers' accounts with the accrued interest.

4. Deposits

The report also established that a practice of assessing both nonsufficient funds and line-of-credit transfer fees on the same transaction is an unfair practice. The examiners found this practice causes consumers to be charged two fees on the same denied transaction.

5. Fair Lending

Examiners found lenders violated the Equal Credit Opportunity Act and its implementing regulation, Regulation B, by engaging in pricing discrimination and discriminatory lending restrictions.

First, the CFPB noted that mortgage lenders violated the ECOA by discriminating on the basis of characteristics protected under the ECOA, including race, national origin, sex, or age, when granting pricing exceptions. The examiners attributed the pricing discrimination to the lenders' improper policies and procedures, insufficient training programs, and lack of board oversight.

Additionally, examiners observed discriminatory lending restrictions and found that lenders for certain areas of credit had risky policies and procedures relating to the treatment of applicants' criminal records and income derived from public assistance programs.

The CFPB's examinations uncovered a "common thread" in lenders' policies and procedures where the

discovery of criminal records would prompt a second-level underwriting review without providing any detail on how that review should be conducted.

Examiners also found that certain lenders' policies and procedures excluded income derived from certain public assistance programs or imposed stricter standards in income derived from these programs, which violated the ECOA.

6. Information Technology

For the first time, the supervisory highlights report includes findings from the CFPB's supervision information technology program, which evaluates an institution's information technology controls, including its effectiveness of detecting and preventing cyberattacks.

The CFPB found several institutions engaged in unfair acts by failing to implement adequate information technology controls that could have prevented or mitigated cyberattacks. Specifically, the CFPB emphasized these institutions' weak password management policies, inadequate controls in connection with log-in attempts, and absence of multifactor authentication.

7. Mortgage Origination and Servicing

The CFPB also assessed mortgage origination and servicing operations.

Examiners found institutions violated Regulation Z by compensating loan originators differently for loan product types. With regard to mortgage servicing, examiners found, among other things, that some servicers violated Regulation X by failing to evaluate loss mitigation applications within 30 days of receipt and failing to include the required loss mitigation language on Spanish-language acknowledgment notices.

8. Payday and Small-Dollar Lending

The CFPB identified abusive practices used by so-called payday and small-dollar lenders.

These practices included unreasonable limitations on collection communications designed to prohibit consumers from revoking their consent for the lender to contact them; false collection threats; unauthorized wage deductions; misrepresentations regarding the impact of payment of debt; failure to confirm that certain borrowers were not covered borrowers under the Military Lending Act; and failure to retain for two years evidence of compliance with Regulation Z.

9. Remittances

Finally, the CFPB found that some institutions did not develop written policies and procedures designed to ensure compliance with the remittance rule.

The remittance rule provides that a remittance transfer provider must develop policies and procedures designed to ensure compliance with the error resolution requirements applicable to these types of transfers. The CFPB

emphasized that this continues to be an issue with these institutions.

In addition to providing the CFPB's supervisory observations in the areas identified above, the supervisory highlights report described recent supervision program developments, including the CFPB's intent to use its dormant supervisory authority to compel nonbank entities into voluntarily consenting to the bureau's supervision.

While the bureau has authority to supervise nonbanks in the mortgage, private education and payday loan industries, it also may use its dormant authority to examine nonbanks that pose risks to consumers. The CFPB notes that several entities already have voluntarily consented to the bureau's supervisory authority because of its dormant authority.

Conclusion

As is always the case with supervisory highlights, the CFPB summarizes the agency's recent supervisory activities and outlines the agency's regulatory, compliance and enforcement priorities. Because the recent report shows the aforementioned areas are top-of-mind issues for the CFPB, companies should review their policies and procedures in these areas to ensure compliance with the CFPB's agenda.

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