CFPB Bites of the Month – 2023 Annual Review – Auto

January 18th, 2024 | Patricia E.M. Covington, Eric L. Johnson and Justin B. Hosie

In this article, we share a timeline of our monthly "bites" for 2023 applicable to the auto finance industry. We think it's safe to say that the auto finance industry was top of mind to the CFPB. Read on to learn more (or remind yourself) what should be top of mind to companies to stay out of the CFPB's crosshairs.

Bite 10: CFPB Announces Auto Finance Data Pilot

On February 23, 2023, the CFPB announced a new auto finance pilot and required auto finance companies to provide data as part of the CFPB's ongoing monitoring for consumer risks. The CFPB noted that the auto finance market has changed significantly over the past 2 years, due to rising car prices, larger transaction amounts, and higher monthly payments. The CFPB's data shows that delinquencies are rising, and some consumers are being priced out of the market. As a result, the CFPB issued orders to 9 large auto finance companies, requiring those companies to provide information about their portfolios. The CFPB identified three areas that are guiding the pilot efforts: "lending" channel differences, data (granularity, consistency, and quality), and "loan" performance trends. The CFPB noted that it reserves the right to use and internally share the information it receives for any lawful purpose. If a creditor has written policies or procedures that contain responsive information, it must provide those documents to the CFPB with the creditor's answer. The CFPB indicated that it may also issue follow-up requests in connection with a creditor's responses.

Bite 9: CFPB Launches Initiative on Immigrant Access to Fair Credit

On October 12, 2023, the CFPB launched an initiative on immigrant access to fair credit, and started investigating the financial experiences of immigrants. The CFPB noted that immigrant borrowers, including those protected under the Deferred Action for Childhood Arrivals Program have been denied credit based on their immigration status. These include denials for various credit products, including vehicle financing. According to the CFPB, it has received complaints from consumers who received positive feedback from lenders about their credit scores and income, but were ultimately denied because of their immigration status alone. The CFPB and the Department of Justice also issued a joint statement on fair lending and credit opportunities for immigrant borrowers under the Equal Credit Opportunity Act (ECOA). Under the ECOA, the CFPB noted that lenders are not prohibited from considering a borrower's immigration status, but they are prohibited from using that status to discriminate based on national origin, race, and other protected characteristics. The CFPB's statement seeks to remind lenders that they cannot use immigration status to justify unlawful discrimination.

Bite 8: CFPB Issues Guidance to Address Abusive Conduct in Consumer Financial Markets

On April 3, 2023, the CFPB issued a policy statement explaining the federal prohibition on "abusive conduct" and summarizing a decade of CFPB activity. The CFPB noted that abusive conduct generally includes (1) obscuring important features of a product or service or (2) leveraging certain circumstances—like gaps in understanding, unequal bargaining power, or consumer reliance—to take unreasonable advantage. The policy statement also describes how abusive conduct can arise from the use of what the CFPB calls "dark patterns," business models that set consumers up to fail, kickbacks, self-dealing, and profiteering from captive customers. The public will have until July 3, 2023, to submit comments.

Bite 7: Junk Fees Supervisory Highlights Special Report

On March 8, 2023, the CFPB released the latest edition of its Supervisory Highlights, this time focused on junk fees. The CFPB addressed types of financial services including deposit accounts, auto finance, mortgage servicing, small dollar lending, and student lending. For deposit accounts, the supervisory highlights addressed authorized positive fees for overdraft and charging multiple NSF fees for a single item. In auto finance, the CFPB addressed excessive late fees, inflated repossession fees, and pay-to-pay fees.

Bite 6: New Supervisory Highlights Report finds Violations Across Array of Financial Products

On July 26, 2023, the CFPB released its latest Supervisory Highlights, addressing concerns, particularly UDAAP concerns, across various financial services. The Supervisory Highlights also addressed new examinations involving nonbanks. The CFPB claimed that auto finance companies misrepresented vehicle options, and that servicers engaged in illegal collections practices."

Bite 5: CFPB Publishes Special Edition of Supervisory Highlights

On October 11, 2023, the CFPB published a special edition of its Supervisory Highlights, focused on fees the CFPB (and FTC) call "junk fees." The CFPB took issue with organizations charging fees for: (1) multiple payment re-presentments returned unpaid; (2) authorized positive, settle negative overdraft; (3) printing and mailing undelivered statements; (4) depositing unpaid checks; and (5) add-on products in auto finance (including miscalculating add-on product refunds). This special edition also referenced program developments, a circular on overdraft fees, a bulletin on returned deposit fees, and an advisory opinion on pay-to-pay fees.

Bite 4: CFPB Case against an Auto Finance Company Paused in New York

On August 9, 2023, a federal judge in New York paused a lawsuit against an auto finance company that was brought by the CFPB and New York Attorney General Letitia James, citing the pending case before the Supreme Court about the constitutionality of the CFPB's funding. The auto finance company is accused of misrepresenting the cost of credit, and "tricking" consumers into high-cost credit on used cars. The lawsuit's claims included that the company was hiding costs in its credit agreements and setting consumers up to fail. The original lawsuit sought to force the company to stop its practices, to reimburse harmed consumers, to pay back its allegedly wrongfully earned gains, to and pay a penalty. Both the CFPB and the New York AG's office objected to the decision by U.S. District Judge Jennifer Rearden, saying that the CFPB's funding status had no bearing on whether their lawsuit could proceed. Judge Rearden disagreed, stating that "any potential harm to the public caused by delaying this action is outweighed by the benefit to consumers in proceeding in a streamlined fashion." A decision in the Supreme Court case that will decide the constitutionality of the CFPB's funding is expected in 2024.

Bite 3: The CFPB and New York Attorney General Sue a National Auto Company

On January 4, 2023, the CFPB and the NY AG announced that they had sued a national automotive company. The joint complaint alleges that, among other things, the company hid costs in its financing agreements and sets consumers up to fail. The lawsuit seeks to force the company to cease certain practices, reimburse consumers, and pay a penalty. The company publicly responded that it "intends to vigorously defend itself" in the matter.

Bite 2: CFPB Sues Auto "Loan" Servicer for Alleged Illegal Practices

On August 2, 2023, the CFPB sued an auto servicer in federal court alleging illegal practices. Specifically, the CFPB claims the servicer illegally disabled vehicles, improperly double-billed customers, and failed to give required refunds. The CFPB alleges that the servicer improperly activated starter interrupt devices, which allow for a vehicle to be remotely disabled. According to the suit, the servicer incorrectly disabled vehicles at least 7,500 times and caused these devices to play warning tones in vehicles over 71,000 times during periods when the consumer was not in default or was in communication about upcoming payments. The suit alleges the servicer remotely disabled vehicles at least 1,500 times after explicitly promising consumers it would not do so. The suit also claims that the servicer illegally repossessed the vehicles of some consumers who never qualified for repossession or had taken action to stop the repossession, and in some instances, sold the vehicles that it had wrongfully repossessed. The servicer also allegedly failed to provide customers with required refunds for Guaranteed Asset Protection products, and double-charged approximately 34,000 consumers for collateral-protection insurance. The CFPB claims the servicer's actions were unfair under the Consumer Financial Protection Act, is seeking to obtain consumer redress and civil money penalties, as well as a stop to any future violations.

Bite 1: CFPB Orders Auto Finance Company to Pay $60 Million

On November 20, 2023, the CFPB announced that it ordered one of the nation's largest indirect auto companies to pay $48 million in redress to harmed consumers and a $12 million penalty to the civil penalty fund. The order follows allegations that the company prevented borrowers from cancelling products sold with the vehicle, failed to provide proper refunds, and reported incorrect information to credit bureaus. The product included GAP waivers, credit life and health insurance, and extended service contracts, which cost between $700-$2,500 per transaction. According to the CFPB, thousands of consumers complained to the auto finance company that their dealers had lied to them about whether these products were mandatory, included them on contracts without the borrowers' knowledge, or rushed through paperwork to hide buried terms. The CFPB says that despite these complaints, the company made it difficult to cancel these products and failed to fully refund those consumers who were able to cancel. The CFPB alleged that the company directed consumers to a cancellation hotline that would not accept a cancellation request, delayed refunds by applying the amounts to principal payments, withheld refunds, and furnished false data about delinquent payments to consumer reporting companies. In addition to the monetary penalties, the CFPB ordered the Company to cease such practices.

***Extra Bite-* FTC's CARS Rule**

On December 12, 2023, the Federal Trade Commission announced that it finalized a new rule, the Combating Auto Retail Scams (CARS) Rule, which is a modified form of its proposed Motor Vehicle Dealer Trade Regulation Rule, also known as the Vehicle Shopping Rule. Under the new rule, certain motor vehicle dealers will be prohibited from making any misrepresentations about key information, like price and cost, must provide the "offering price," which is the price that any consumer can pay for the vehicle, must tell consumers that optional products are not required, and give information about total payments when discussing monthly payments. The rule also prohibits motor vehicle dealers from charging for any add-on product that does not actually provide value to the consumer, and requires dealers to get a consumer's express, informed consent (a defined term) for any charges that they pay as part of the vehicle purchase. The CARS Rule also includes extensive recordkeeping requirements and additional protections for servicemembers. Absent an injunction, the new Rule will be effective July 30, 2024.

Still hungry? Please join for our next CFPB Bites of the Month. Here is our lineup for 2024. If you missed any of our prior Bites, request a replay on our website