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CFPB eyes unfair, deceptive acts: Here are some tips to avoid scrutiny

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With a new administration comes new priorities for federal agencies, and the **Consumer Financial Protection Bureau** (CFPB) is no different. During the Trump administration, the Bureau focused on "educating" consumers. Under President Biden, the CFPB has signaled, through words and actions, a return to significantly more aggressive supervision and enforcement actions.

In recent weeks, and due to the current economic climate, the CFPB has indicated this new approach will focus in part on the automobile lending and servicing industries. Like many other goods and services, the price of vehicles has skyrocketed, leading many consumers to borrow more money to finance the purchase of a vehicle. In the past year, data from the Consumer Price Index shows the price for used vehicles has increased by an incredible 40%, with little sign of abating.

The CFPB recently issued two bulletins highlighting its concerns with business practices in the auto finance and servicing industries as a result of inflation and the potential for increased vehicle prices to exacerbate risky repossession practices.

The CFPB is closely monitoring a number of unfair and deceptive acts or practices (UDAAP) that automobile finance and servicing companies should be aware of, particularly regarding the use of technology and in the repossession context.

Ensure UDAAP compliance

The Bureau's actions evidence a clear intent to prioritize investigating and prosecuting auto finance and servicing companies for UDAAP violations in the age of inflation. To avoid finding yourself the subject of an enforcement action, or to ensure a smooth supervision and examination process, here are a few considerations, including some highlighted by the Bureau, to ensure your company is UDAAP compliant:

- Ensure that if you are utilizing newer technology for servicing auto loans, your policies and procedures explain the reasoning for the technology and identify any benefits that said technology provides for consumers.
- Review policies and procedures, including call scripts, as well as any written representations on your company website (or elsewhere) for accuracy concerning steps a customer can take to avoid repossession.

- Ensure you have sufficient policies and procedures regarding the cancellation of repossession orders. This includes: (a) ensuring cancellations are done in a timely manner; (b) that the cancellation is timely communicated to repossession vendors and agents; (c) that a system for monitoring third-party compliance with cancellation orders is in place; and (d) that your company is monitoring for wrongful repossessions and has a corrective action plan in place to reimburse consumers as necessary for wrongful repossessions.
- Review policies and procedures regarding payment allocation and ensure they are consistent with the order outlined in contracts with consumers and other consumer-facing disclosures. Similarly, review and monitor for all fees charged pre- and post-repossession and ensure there is a good faith basis for the charge and/or that the charge is expressly authorized by the applicable contract.
- 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, regarding their practices.
- Monitor any FPI program to ensure that consumers are not charged for unnecessary FPI. This may include review of FPI cancellation rates.

This article is the first in a two-part series. The second installment outlines the CFPB's particular focus on the use of technology and consumer privacy issues, as well as auto finance practices in the repossession context.

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