CFPB Targets Automotive Finance Program Directed to Military Borrowers in Latest Enforcement Action

July 19, 2013

The latest enforcement action by the Consumer Financial Protection Bureau ("CFPB") focuses on the military allotment process, fees associated with this method of repayment and one of the agency's favorite topics – ancillary products. In its June 26, 2013 Consent Order, the CFPB found U.S. Bank violated the Truth in Lending Act ("TILA") by failing to accurately disclose the finance charge, annual percentage rate, payment schedule and total of payments for Military Installment Loans and Educational Services ("MILES") loans and retail installment contracts; violated Sections 1031 and 1036 of the Consumer Financial Protection Act ("CFP Act") by failing to accurately disclose the finance charge, annual percentage rate, payment schedule and total of payments for MILES loans and retail installment contracts; deceptively marketing the prices for service contracts; and deceptively marketing the coverage of service contracts.

According to the Consent Order, U.S. Bank developed the MILES program with Dealer Financial Services, LLC ("DFS") to allow service members to finance the acquisition of new or used motor vehicles in dealer-assisted transactions. The CFPB found military borrowers participating in the MILES program were required to repay their loans via a military pay allotment through Military Assistance Company, LLC ("MAC"), which charged a $3.00 monthly fee that it shared with DFS. The CFPB found the $3.00 monthly fee for processing military allotments was a finance charge because it was assessed as a condition of receiving credit. The fee was not reflected in the TILA disclosures, resulting in understated finance charges, annual percentage rates and total of payments.

The Consent Order also explained that the Department of Defense draws funds for allotments from each paycheck, which is typically twice per month. However, the Department of Defense only transmits allotment funds once monthly. The TILA disclosures did not reflect the semi-monthly payments and while the MILES website disclosed funds are taken for allotments twice a month, it failed to state that the funds are only credited to the account once a month.

Based on these alleged violations, U.S. Bank was ordered to cease and desist from further violation of the TILA and Sections 1031 and 1036 of the CFP Act and was further prohibited from conditioning an extension of credit to a consumer on the consumer's repayment through the allotment process (incentives for payment by allotment are expressly permitted; however, this practice is generally discouraged by Holly Petraeus in her CFPB

blog post that accompanied this Order). The Order also contains specific injunctive relief, including detailed board involvement, the submission of a comprehensive compliance plan, reporting, record-keeping and notice provisions.

The Order also requires U.S. Bank to develop and submit a comprehensive plan for redress of at least $3,200,000 that includes, at a minimum, the following:

1. **reimbursement of all allotment fees** paid within the applicable period when the fee was not included in the disclosed finance charge or APR either through credits or through a certified or bank check; and
2. **reimbursement of the difference between the total amount the consumer would pay if payments were credited timely and the total payment due as actually credited to the account** either through credits or through a certified or bank check

The Order prohibits U.S. Bank from seeking or receiving, directly or indirectly, any reimbursement or indemnification from any insurance policy for the amounts paid in redress.

In addition, DFS was ordered to provide redress in an amount not less than $3,300,000 through a plan that must include, at a minimum:

1. a **calculation for restitution** on a pro-rata basis based on the total amount (including principal and related finance charges) of the GAP insurance and/or VSC premiums the affected consumers are obligated to pay in relation to the total redress of $3,300,000; and
2. **reimbursement to each affected consumer** either through a credit posted to the account associated with their MILES Program loan, or through a check in the event (i) an affected consumer is without an outstanding credit account associated with their MILES Program loans, or (ii) DFS demonstrates that it is otherwise impracticable to credit an affected consumer's account; and
3. DFS was also prohibited from seeking or receiving, directly or indirectly, any reimbursement or indemnification from any insurance policy.

Unlike many of the CFPB's earlier consent orders, neither U.S. Bank nor DFS was ordered to pay a civil money penalty. Perhaps this is due to their cooperation with the CFPB, consistent with the CFPB's recent bulletin, "Responsible Business Conduct: Self-Policing, Self-Reporting, Remediation, and Cooperation" (read our discussion of that guidance here).