Keep your regulatory health in check

May 18, 2020

Auto finance customers' concerns about the impact of the coronavirus may be addressed, in part, with traditional loss-mitigation tools.

Deferral and extension agreements are commonly used and typically consumer-friendly. In fact, just under a year ago — which feels like several centuries ago — we published an **article laying out best practices** for loan extensions or deferrals.

A creditor using these tools should ensure compliance with applicable federal and state laws, develop clear communications, and consider practical options for executing documents given the current circumstances. This may preserve "regulatory health" at a time when staying healthy is paramount in our collective consciousness by minimizing regulatory scrutiny, contract enforceability concerns, and potential consumer misunderstanding.

As some states and courts have temporarily suspended repossessions, garnishments, and other specific collection efforts, traditional debt collection tools may be unavailable when customers become delinquent or face financial hardship.

The first step in retooling your loss mitigation program is understanding whether new state regulatory requirements impact your methods. Current regulatory limitations and the unique nature of these financial challenges may lead you to offer contract modifications — like a deferral — to more customers.

If a deferral agreement is appropriate, your second step is designing an offer that complies with any applicable state requirements. Depending on your licensing status or where your consumer lives, check to see if any fees you charge for a deferral are impermissible or trigger disclosure or other requirements.

However, those requirements may exist as some states require an extension or deferral in writing, signed by a consumer. Investor requirements or limitations also may govern the scope of available options.

Third, consider federal requirements. The CARES Act, for example, requires creditors making COVID-19 related payment accommodations to report the affected credit obligations as current. Unfair, Deceptive, or Abusive Acts or Practices should always be a consideration, too.

Assume regulators will scrutinize your disclosures and consumer communications for potentially misleading language. In at least one instance, the **Consumer Finance Protection Bureau** criticized a loss mitigation program that did not disclose to the consumer that its use would result in the payment of more interest over the life of the agreement.

So it is important to ensure that account modifications, including deferrals, extensions, and other repayment plans, are explained clearly to the customer in any related materials, conversations, and the agreement itself.

Also consider any substantive or technical fair lending requirements. It's critical to evaluate your modification-selection criteria and to apply your criteria to consumers uniformly to avoid making distinctions based on Regulation B's prohibited bases. Note that if some applicants for a modification are denied, adverse action notice requirements may apply.

Finally, even before the COVID-19 crisis, creditors often used e-contracting because of its convenience, efficiency, and cost. This may be an optimal solution under the current circumstances if permitted in your jurisdiction.

For a deeper dive regarding deferral impacts, click **here**.

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