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Supervisory Highlights: Special Edition Auto Finance

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Consumer Financial Protection Bureau

Table of contents

1. Introduction

This edition of *Supervisory Highlights* focuses on the Consumer Financial Protection Bureau's (CFPB's) work to put the brakes on wrongdoing in the auto-finance market. The impact of this market on American families is significant. Auto loan debt exceeds all other household-debt categories except for home mortgages. As of the second quarter of 2024, Americans owe $1.616 trillion in auto loan debt.[1]

The auto-finance market enables people to buy vehicles necessary for important life functions, such as driving to work, school, and medical appointments. But when auto-finance companies violate the law it can have serious consequences for families, from having to pay money they do not owe to losing their vehicle.

This *Supervisory Highlights* issue covers significant findings across all aspects of consumers' experiences with the auto-finance market. It reports on consumers being lured in through deceptive advertising about available loan terms and failing to receive accurate and complete disclosures at origination, having their payments misapplied or incorrect information about their payment history reported to credit reporting companies (CRCs), and finding their car had been repossessed, though they had made their payments as promised.

This issue also highlights a trend of significant violations related to the handling of add-on products, also known as optional or ancillary products. Consumers generally finance these add-on products at loan origination, with the product premium paid upfront and then included in the amount financed. Auto-finance companies profit from these products through the original cost, the finance costs over the life of the loan, and, in some cases, from the failure to ensure refunds when consumers can no longer use the products. Although add-on products may benefit some consumers, examiners have identified unfair, deceptive, and abusive acts or practices throughout the lifecycle of add-on products. From auto loan originators including add-on products without consumers' consent, to servicers failing to allow consumers to cancel the products during the initial cancellation period, failing to provide the benefit of the product, or failing to ensure consumers receive refunds when the loan terminates early, add-on product administration represents a significant risk to consumers that the CFPB will continue to monitor.

[1] Federal Reserve Bank of New York, *Household Debt and Credit Report (Q2 2024)* is available at: https://www.newyorkfed.org/microeconomics/hhdc.html

The auto-finance market is subject to various laws and regulations the CFPB enforces. Under the Consumer Financial Protection Act (CFPA), all covered persons or service providers are prohibited from committing unfair, deceptive, or abusive acts or practices. Examiners' findings of unfair, deceptive, and abusive acts or practices in auto-finance reviews are included in this issue of *Supervisory Highlights*.

The findings in this edition of *Supervisory Highlights* cover select examinations related to auto-finance that were generally completed between November 1, 2023, and August 30, 2024.

To maintain the anonymity of the supervised institutions discussed in *Supervisory Highlights*, references to institutions generally are in the plural and the related findings may pertain to one or more institutions.[2] We invite readers with questions or comments about *Supervisory Highlights* to contact us at CFPB_Supervision@cfpb.gov.

[2] If a supervisory matter is referred to the Office of Enforcement, Enforcement may cite additional violations based on these facts or uncover additional information that could impact the conclusion as to what violations may exist.

2. Supervisory Observations

2.1 Origination disclosures

Examiners identified two issues with auto-finance companies' disclosures at origination. Specifically, examiners identified issues with how auto-finance companies marketed annual percentage rates (APRs) and how they disclosed prepayment penalties.

2.1.1 Misleading "as low as" APR marketing

Examiners found that subprime auto loan originators engaged in deceptive acts or practices. A representation, omission, act, or practice is deceptive when (1) the representation, omission, act, or practice misleads or is likely to mislead the consumer; (2) the consumer's interpretation of the representation, omission, act, or practice is reasonable under the circumstances; and (3) the misleading representation, omission, act, or practice is material. [3]

Examiners found that subprime loan originators engaged in deceptive acts or practices through service providers when the service providers mailed prescreened advertisements marketing rates "as low as" specified APR rates to consumers who in fact had no reasonable chance of qualifying for or being offered rates at or near that level. The lowest interest rate offered to consumers by the servicers was more than twice the advertised rate. These marketing materials were likely to mislead borrowers. Borrowers would be reasonable to interpret the "as low as" rate as a rate for which they had a reasonable chance of qualifying or being offered since the advertisements indicated the recipients had been prescreened based on information in their credit reports. And the prominent "as low as" rate was material to the prospective borrowers' decision whether to pursue the offer.

In response to these findings, the auto loan companies were directed to: (i) cease the deceptive practice, whether by the originators directly or through their service providers, of advertising specified "as low as" rates to consumers who in fact have no reasonable chance of qualifying for or being offered rates at or near that level; (ii) revise policies and procedures to ensure service providers offer prescreened marketing advertisements that include financing terms that are not misleading and are consistent with the type of financing terms the companies' borrowers have a

[3] Whether an act or practice is deceptive is informed by decades of precedent including that involving Section 5 of the Federal Trade Commission Act. *See* CFPB Exam Manual at UDAAP 5.

reasonable chance of obtaining; and (iii) ensure against originating consumer contracts through service providers that advertise and market rates not offered by the companies.

2.1.2 Inaccurate disclosures about prepayment penalties

The origination of automobile loans is governed by the Truth in Lending Act (TILA) as implemented by Regulation Z.[4] Examiners found that auto-loan originators violated Section 1026.17(c)(1) of Regulation Z because their disclosures did not accurately reflect the terms of the prepayment penalty. Section 1026.17(c)(1) states that the disclosures shall reflect the terms of the legal obligation between the parties. The TILA disclosure stated "Prepayment — if you pay early, you may have to pay a penalty." In contrast, the associated retail installment sales contract stated that there was no finance charge if the loan is paid early.

In response to these findings, the entities modified their disclosures to come into compliance with Regulation Z.

2.2 Repossession activities

To secure an auto loan, lenders require borrowers to give creditors a security interest in the vehicle. If a borrower defaults, a creditor may exercise its contractual rights to repossess the secured vehicle. The magnitude of repossessions is significant, with the number of repossessions in 2024 estimated to reach 1.6 million.[5] Servicers collect and process auto loan or lease payments from borrowers and are either creditors or act on behalf of creditors. Generally, servicers do not immediately repossess a vehicle upon default and instead attempt to contact consumers before repossession, usually by phone or mail. Servicers may give consumers in default the opportunity to avoid repossession by catching up on past-due payments or making promises to pay. Servicers generally use service providers to conduct repossessions. While some repossessions are unavoidable, Supervision pays particular attention to servicers' repossession of automobiles. Loan holders and servicers are responsible for ensuring that their repossession-related practices, and the practices of their service providers, do not violate the law. [6]

[4] 12 C.F.R. Part 1026.

[5] Cox Automotive, *Q2 Manheim used vehicle value index call*, July 9, 2024 available at: https://www.coxautoinc.com/wp-content/uploads/2024/07/July-9-Q2-2024-Manheim-Used-Vehicle-Value-Index-Call-Presentation.pdf

[6] CFPB bulletin 2022-04: *Mitigating harm from repossession of automobiles* is available at: https://www.consumerfinance.gov/compliance/supervisory-guidance/cfpb-bulletin-2022-04-mitigating-harm-from-repossession-of-automobiles/

2.2.1 Wrongful repossession

Examiners found that servicers engaged in unfair acts or practices. An act or practice is unfair when it causes or is likely to cause substantial injury to consumers; the injury is not reasonably avoidable by consumers; and the injury is not outweighed by countervailing benefits to consumers or to competition.[7]

Examiners found that servicers engaged in unfair acts or practices when they erroneously repossessed consumers' vehicles (a) when their representatives or service providers failed to cancel orders to repossess vehicles, or act on those cancellations, when consumers had made payments or obtained extensions that should have prevented repossessions; and (b) when consumers had requested, or the servicer had approved, a COVID-19 related loan deferment or loan modification, consumers had otherwise made timely payments, or consumers made arrangements to pay an amount sufficient to cancel the repossession.

These practices cause or are likely to cause substantial injury because they create a substantial risk that consumers will be erroneously deprived of their vehicles. Borrowers who are deprived of their vehicles are likely to suffer injury in the form of inability to travel to work and resulting lost wages and by inability to use their vehicles for other critical daily needs. Consumers could not reasonably avoid the injury because borrowers had no control over the servicers' repossession practices, including errors relating to payment processing, repossession orders, repossession holds, and their COVID-19 related deferment practices. The injury was not outweighed by any countervailing benefits to consumers or competition.

In response to these findings, the servicers were directed to cease repossessing vehicles and failing to promptly return vehicles when consumers have made timely payments or payment arrangements or have obtained a loan modification sufficient to prevent repossessions. Some servicers also have implemented policies and procedures to ensure that they do not repossess vehicles when consumers have made payments or obtained extensions sufficient to prevent repossessions.

2.2.2 Repossessing third parties' vehicles without a recorded lien

Examiners found that servicers engaged in unfair acts or practices when they failed to record liens and then repossessed vehicles without a valid lien. When assigning vehicles for repossession, servicers did not verify that they had a valid lien. As a result, they repossessed

[7] 12 U.S.C. §5531.

vehicles from consumers who did not have any prior affiliation with the servicers. Servicers had no right to repossess these vehicles because they did not have a valid lien and, by repossessing them, they caused substantial injury in the form of lost wages, the costs of arranging alternative transportation, or being deprived of the ability to meet other important needs. Consumers could not reasonably foresee that their vehicle would be repossessed by servicers with which they did not have any prior relationship or affiliation. The injury to consumers was not outweighed by countervailing benefits to consumers or competition, including the cost of implementing controls to prevent wrongful repossessions.

In response to these findings, servicers implemented policies and procedures to ensure that they recorded liens for all vehicles and repossessed vehicles only when they had recorded a lien.

2.3 Servicing practices

Examiners identified two issues related to general servicing practices. First, servicers failed to adhere to their disclosed payment-allocation methodology for post-maturity loans. Second, servicers failed to timely provide consumers with title after loan payoff.

2.3.1 Improper payment allocation

Examiners found that servicers engaged in both a deceptive and unfair act or practice by applying borrowers' auto-loan payments to post-maturity loans in a different order than that disclosed to consumers on their websites, which resulted in borrowers having to pay late fees.

The websites disclosed a particular payment allocation order with no indications that the disclosed order did not apply to post-maturity loans. For post-maturity loans, the servicers applied payments in a different order than that disclosed on the websites. The websites stated that payments would be applied to the current payment due, including both interest and principal, before outstanding late charges. The servicers, however, applied payments on post-maturity loans first to the most recent payment due, then to other charges (such as late fees), and then to other payments due. Examiners found that the payment allocation order the servicers used for such payments resulted in the principal balance not being paid off on schedule, and that the servicers then assessed late fees.

The representation on the websites was likely to mislead consumers with post-maturity loans because it was a false statement, and there was no indication that the disclosed order did not apply to post-maturity loans. Consumers may reasonably take the websites at face value regarding the payment-application order. The disclosures are material because consumers may use information about the payment-application order to make decisions about the amount and timing of their payments. Borrowers may use this information to attempt to avoid late fees and ensure that their loans are fully paid off as planned.

This practice was also unfair. It was likely to cause substantial injury because it prevented consumers from submitting payments in a way that could allow them to pay off their principal balances on schedule and avoid late fees. The injury was not reasonably avoidable because consumers had no reason to anticipate that the servicers would apply their payments in a manner that contradicts the information on its website. The injury is not outweighed by any countervailing benefits to consumers or competition.

In response to the findings, servicers revised their policies and procedures to ensure that payments are applied to all loans in the order that is disclosed to consumers and ensured full remediation for all accounts that incurred late fees due to payments being applied in a different order than that disclosed on the website.

2.3.2 Excessive delay in providing title

Examiners found that auto-loan servicers engaged in unfair acts or practices because consumers suffered substantial injury when the servicers failed, through service providers, to timely deliver the titles to vehicles after a loan or lease payoff or when consumers requested the title in connection with transferring vehicle registrations to a different state. Examiners found that the servicers' policies are generally to provide title documentation within two business days but that delivery times significantly exceeded this timeline. Consumers who do not have possession of their vehicle title document suffer harm, most significantly the inability to legally sell their vehicles, the incurrence of additional insurance expenses, and the threat of having their vehicles towed. Consumers had no ability to make the servicers, or the service providers, more quickly process or deliver the titles. And the injury was not outweighed by countervailing benefits to consumers or to competition.

In response to these findings, the servicers were directed to cease delaying the delivery of vehicle titles after a loan payoff, lease buyout, or request to transfer registration to a different state.

2.4 Add-on products

When consumers purchase an automobile, auto dealers and finance companies typically offer consumers add-on products. These products generally fall into one of two categories, credit products and vehicle products. Credit products will assist with the remaining loan balance owed by the consumer under certain circumstances; these products cease to provide any benefits when the loan is terminated. For example, "guaranteed asset protection" (GAP) products are credit products that are offered to help pay off the loan if the car is totaled or stolen. Vehicle products relate to the vehicle itself; these products may continue to provide benefits after the loan is terminated. For example, consumers may purchase a vehicle service contract to pay for the cost of certain repairs. The add-on products apply only for specific periods, and only under certain circumstances.[8]

Dealers and finance companies often charge consumers all payments for add-on products as a lump sum at origination. Dealers and finance companies generally include the lump sum cost of add-on products as part of the vehicle financing agreement, and consumers typically make payments for these products throughout the loan term. The add-on products often allow consumers to cancel early for a partial refund of the product cost.

Upon early termination, the account generally is eligible for a pro rata refund of the prepaid premiums for the unused portion of the products – often called "unearned" premiums. In the default scenario, the refund amount should be applied to any deficiency balance, and the borrower receives any remaining refund amount. For early payoffs, the full amount of the refund should go to the borrower.

When the loan terminates early, credit products no longer offer any possible benefit to consumers because coverage is tied to the financed loan, which is paid off. Absent a refund, consumers may wind up paying for services they can no longer use, as the relevant products terminate when the loan terminates. In addition, vehicle products such as service contract coverage terminate upon default, when the borrower no longer possesses the vehicle.

2.4.1 Collecting and retaining amounts for add-on products consumers did not agree to purchase

Examiners found that subprime auto-finance companies engaged in abusive acts or practices. The CFPA prohibits two types of abusive practices. First, materially interfering with the ability of a consumer to understand a term or condition of a product or service is abusive. Second, taking unreasonable advantage of one of the three statutorily specified market imbalances is abusive. Those market imbalances include (1) a consumer's lack of understanding of the

[8] *See generally* CFPB *Supervisory Highlights*, Issue 28 (Fall 2022), available at: [Supervisory Highlights, Issue 28, Fall 2022 | Consumer Financial Protection Bureau (consumerfinance.gov)]

material risks, costs or conditions of a product or service, (2) a consumer's inability to protect their interests in selecting or using a product or service, or (3) a consumer's reasonable reliance on a covered person to act in their interests.[9]

Examiners found that subprime auto-finance companies engaged in abusive acts or practices when they collected and retained amounts for optional add-on products that consumers did not agree to purchase. The companies contracted with service providers to market refinance loan options to existing borrowers and prepare origination documents. The companies' contracts with the service providers included provisions requiring that refinanced loans include a minimum number of so-called "tangible benefits." The tangible benefits included add-on products, such as an extended service contract or other vehicle protection product, and an optional GAP waiver product. Recorded calls between the service providers and borrowers during which the service providers walked the borrowers through the process of signing the refinanced loan agreement electronically revealed that the service providers had failed to disclose or explain the add-on products that had been included and financed as part of the refinanced loans. The companies had failed to conduct comprehensive compliance monitoring of the service providers.

By collecting and retaining amounts for add-on products that consumers did not agree to purchase, without policies or procedures to ensure or verify that consumers authorized these purchases, servicers took unreasonable advantage of consumers' inability to protect their interests in selecting or using a product or service. Consumers who did not know about or consent to being charged for add-on products were not able to protect their interests.

In response to these findings, the entities were directed to cease collecting and retaining amounts for optional products that consumers did not agree to purchase or that they agreed to purchase based on misrepresentations as to products' voluntary nature or cost. The entities were also directed to engage qualified external consultants to advise, report, and evaluate the entities' remediation plans to ensure that they captured all consumer harm related to these findings, and to provide remediation to all consumers identified by the external consultants. In addition, the entities were directed to update and revise language in contracts with their service providers to set forth clear expectations about the service providers' compliance with and consequences for failure to comply with applicable Federal consumer financial laws.

The companies were further directed to enhance their risk-management program to mitigate unwarranted risks to consumers from service providers and to ensure that service providers understand their consumer compliance responsibilities and comply with Federal consumer financial laws. The entities were directed to enhance compliance monitoring and audit practices

[9] 12 U.S.C. § 5531(d).

for all consumer-facing service providers and any staff that facilitate the purchase of optional products to ensure compliance with all applicable Federal consumer financial protection laws.

Finally, the entities were directed to ensure that consumers understand the voluntary nature and cost of optional products and that there are no efforts in place to coerce consumers into buying such products. They were directed to include, as part of compliance monitoring and audit practices, the recording of all calls. They were further directed to conduct second-level reviews of all retail installment contracts prior to funding and to regularly review calls between service providers and consumers where the terms and features of potential auto loans are discussed.

2.4.2 Financing of void add-on products on salvage vehicles

Certain add-on products, like GAP products, are void, and therefore lack any value to the consumer, if the vehicle has a salvage title, meaning it had loss events recorded on the vehicle's title history (e.g., a record of an accident or damage associated with the vehicle). Before financing a vehicle, servicers may perform a title check to determine whether a vehicle has a salvage title.

Examiners found that auto servicers engaged in abusive acts or practices by taking unreasonable advantage of consumers' lack of understanding of material risks, costs, or conditions by suspending title check procedures for certain originating dealers and then financing GAP products that were void due to loss events recorded on the vehicles' title histories. As a result of not checking title histories, the servicers financed auto loans with GAP products that delivered no benefit to consumers but increased the amounts financed and the monthly payments. Additionally, servicers paid for title checks in some situations but not when financing GAP contracts originated by certain preferred lenders. Failing to conduct title checks in these instances also provided servicers with cost savings. In obtaining these benefits, servicers took unreasonable advantage of consumers' lack of understanding of material risks, costs, or conditions associated with the GAP product. The consumers paid for GAP coverage but did not benefit from the coverage because of the exclusion for salvage vehicles.

In response to these findings, the entities were directed to develop and implement policies and procedures to conduct title history searches to determine the condition of vehicles' eligibility for add-on products.

2.4.3 Failure to identify payee of add-on products

Examiners found that auto loan originators violated Section 1026.18(c)(1)(iii) of Regulation Z because the itemization of the amount financed disclosures failed to identify the payee for optional products purchased by the consumer. Section 1026.18(c)(1)(iii) requires a separate written itemization of amounts financed that includes any amounts paid to other persons by the creditor on the consumer's behalf. The provision also requires the creditor to identify those persons. The entities did not identify (or bought retail installment sales contracts that did not identify) the payee for optional products purchased by the consumer in the itemization of amount financed.

In response to these findings, the entities changed their practices to come into compliance with this provision of Regulation Z.

2.4.4 Onerous requirements to cancel add-on products

Examiners found that servicers engaged in abusive acts or practices by requiring consumers to make two in-person visits to a dealership to cancel contracts for add-on products. An act or practice may be abusive when it takes unreasonable advantage of the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service.[10]

Servicers sold and administered add-on products that were included in the financed amount and were cancelable for a pro rata refund. The contract required consumers to visit the dealerships in person to cancel the product. The servicers' practice was to require consumers to make two in-person visits when cancelling the product, one visit to cancel where the servicers required the consumers to speak to the general manager of the dealerships and a second to pick up the refund check.

Servicers took unreasonable advantage of consumers by requiring consumers to make two in-person visits and speak with the general managers of the dealerships to cancel the add-on products. The servicers gained an advantage because they avoided paying a refund when the consumer could not make the two in-person visits and the advantage was unreasonable because the servicers controlled the process and created onerous refund processes involving multiple in-person visits to prevent consumers from exercising their cancellation rights. Consumers were unable to protect their interests because the contracts for the add-on product required cancellation in-person but did not disclose a requirement that consumers make two trips to the

[10] 12 U.S.C § 5531.

dealership. Requiring two separate visits can interfere with consumers' ability to protect their interests because of the excessive time and effort needed to extricate themselves from the contract.

In response to these findings, servicers updated their policies and procedures to be consistent with contractual terms.

2.4.5 Failure to honor contractual cancellation rights

Examiners found that servicers engaged in abusive acts or practices when add-on product contracts allowed for cancellation with a pro rata refund within the first year, but the servicers denied consumers' cancellation requests.

Servicers sold and administered add-on products that allowed consumers to cancel the product for a pro rata refund within the first year. Despite the contract allowing for refunds, servicers refused to provide refunds when consumers requested them.

Servicers took unreasonable advantage of consumers by refusing to allow consumers to cancel add-on products when the products were cancellable under the contract. The servicers gained an advantage because they avoided paying refunds and the advantage was unreasonable because the servicers controlled the process and prevented consumers from exercising their contractual cancellation rights. Consumers were unable to protect their interests because even though the contract for the add-on product allowed for cancellation the servicers did not honor the provisions and consumers had no alternative method to obtain refunds.

In response to these findings, servicers updated their policies and procedures to be consistent with contractual terms.

2.4.6 Failure to ensure refunds of unearned premiums

Examiners found that servicers engaged in unfair acts or practices by failing to ensure consumers received refunds of unearned premiums for add-on products upon early termination of their auto loans in all states, either by ensuring that dealers or administrators provided refunds or by providing the refunds themselves.

This practice caused or was likely to cause substantial injury to borrowers because these products were of no value once borrowers' loans were terminated due to early payoffs, repossession, or total loss (or in the case of some products, such as service contracts, only once the vehicles were repossessed or declared a total loss), and thus borrowers ended up paying for products they could no longer use. This practice results in inflated payoff and deficiency balances. Consumers could not reasonably avoid the injury because the servicers retain substantial control over their refund processes and the calculation of payoff and deficiency balances, and consumers may not understand that they cease to retain any benefit from the products following early termination of their auto loans or that they are eligible for a refund. The injury is not outweighed by any countervailing benefits to consumers or competition.

In response to these findings, servicers implemented processes to ensure consumers receive refunds of unearned premiums for ancillary products in all states, including those that do not mandate such refunds. This applies in instances of default or total loss, and upon early payoff where the products no longer provide benefits at the termination of the loan. Servicers also identified and remediated consumers from all states who did not receive such refunds.

2.4.7 Inaccurate add-on product refund amounts

Examiners found that servicers engaged in unfair acts or practices by failing to provide the correct refund amount for add-on products after early termination of auto loans.

In certain cases, servicers cancelled consumers' add-on products and provided refunds but miscalculated the refund amount due. This happened when, for example, the servicers used the date of a deficiency notice for making a pro rata calculation instead of the date of the repossession. In other instances, servicers rely upon calculations performed by third parties that were not consistent with the terms of the add-on product contract.

This practice caused substantial injury to consumers because they did not receive refunds to which they were entitled. Consumers cannot reasonably avoid the injury because they do not have control over how servicers calculate the refunds and consumers reasonably relied upon their servicers to correctly calculate the refunds. The injury is not outweighed by countervailing benefits to consumers or competition.

In response to these findings, servicers remediated consumers and implemented revised policies and procedures to ensure accurate calculations.

2.4.8 Delays in applying add-on product refunds

Examiners found that servicers engaged in unfair acts or practices by failing to timely apply refunds of the unused portion of add-on product premiums to borrowers' accounts. In one matter, for example, refunds were applied an average of 84 days after the post-repossession sale of the vehicle sale, with at least one up to 423 days afterwards; in another matter, the refund delays ranged from 150 days to 664 days. Even if a consumer is ultimately granted a refund, the consumer may be injured by the delay in the interim, during which the consumer does not have access to funds to which they are entitled.

This practice caused or was likely to cause substantial injury to borrowers because many consumers were unable to access funds to which they were entitled for significant amounts of time. The injury was not reasonably avoidable because the servicers controlled their refund processes. The injury is not outweighed by any countervailing benefits to consumers or competition.

In response to these findings, servicers updated their policies and procedures to ensure consumers receive timely and accurate refunds of unearned premiums for add-on products.

2.4.9 Continuing to collect payments when consumers are covered by a GAP product and miscalculating refunds

Examiners found that servicers engaged in unfair acts or practices by collecting monthly payments even after they knew the GAP waiver would cover the outstanding balance, and then failing to accurately reimburse consumers who made these payments.

Consumers often purchase GAP waiver agreements at the time they finance the vehicle in an effort to prevent owing a balance on their loan if the vehicle is totaled. After a total loss event, proceeds from auto insurance typically cover only the actual value of the vehicle at the time of loss, which generally is less than the amount financed. The GAP waiver generally waives the amount owed under the retail installment contract or loan as of the date of the total loss, less any unpaid loan payments or similar charges, and less the actual cash value of the collateral as of the date of a total loss. Servicers continued to collect monthly payments from consumers for months after a total loss event despite knowing that these consumers purchased GAP waivers to cover the outstanding balance. The servicers eventually refunded the payments made after the total loss event after the GAP waiver claim was finalized, but miscalculated the amount owed to consumers, resulting in underpayments.

This practice caused substantial injury to consumers in two ways. First, servicers injured consumers because consumers were deprived of the use of funds for the months between the improper payment and the insufficient refund. During this period consumers may be forced to make multiple car payments, one for their totaled vehicle and another for a new vehicle. Second, servicers injured consumers when servicers miscalculated the amount due back to consumers after the GAP waiver processed, causing insufficient refunds. Consumers could not reasonably avoid the harm because they had no control over servicers’ practices. If consumers ceased making these payments servicers would furnish negative credit reporting information. And the injury is not outweighed by countervailing benefits when servicers are aware that the amounts, they are collecting will be waived under the terms of the GAP waiver.

In response to these findings, servicers remediated consumers and implemented new policies and procedures to cease collecting these amounts.

2.5 Furnishing deficiencies

Auto lenders and servicers that furnish information to CRCs for inclusion in consumer reports (auto furnishers) are subject to requirements under the Fair Credit Reporting Act (FCRA) and its implementing regulation, Regulation V.[11] For example, the FCRA and Regulation V require auto furnishers to reasonably investigate disputes and to furnish data subject to the relevant accuracy requirements. In recent reviews, examiners found deficiencies in auto furnishers' compliance with the FCRA accuracy requirements.

2.5.1 Reporting information with actual knowledge of errors

Section 623(a)(1)(A) of the FCRA prohibits furnishers from furnishing any information relating to a consumer to any CRC if the furnisher "knows or has reasonable cause to believe that the information is inaccurate."[12] However, a furnisher is not subject to this prohibition if it "clearly and conspicuously specifies to the consumer an address for" the submission by consumers of notices that specific information is inaccurate.[13] The FCRA does not require a furnisher to specify such an address. Though, if a furnisher clearly and conspicuously specifies such an address, the furnisher is instead subject to Section 623(a)(1)(B) of the FCRA, which provides that a furnisher violates its duty to furnish accurate information to the extent it furnishes information after it has been notified by the consumer, at the address specified for such notices, that certain information is inaccurate and such information is, in fact, inaccurate.[14]

In reviews of auto furnishers, examiners found that furnishers furnished information to CRCs while knowing or having reasonable cause to believe such information was inaccurate because the information furnished did not accurately reflect the information in the furnishers' systems and/or conflicted with other information the furnishers reported about consumers' accounts. For example, examiners found that furnishers reported inaccurate information about hundreds, and in some cases thousands, of consumers, including: inaccurate amounts past due for

[11] 12 C.F.R. Part 1022.
[12] 15 U.S.C. § 1681s-2(a)(1)(A).
[13] 15 U.S.C. § 1681s-2(a)(1)(C).
[14] *Id.* (cross-referencing 15 U.S.C. 1681s-2(a)(1)(B)).

charged-off accounts; inaccurate scheduled monthly payment amounts for paid or otherwise closed accounts with zero balances; outdated payment ratings that corresponded with prior reporting cycles rather than the current reporting cycle; inaccurate dates of first delinquency; and inaccurate actual payment amounts following a payoff or settlement. In some instances, the furnishers' reporting errors were attributed to the furnishers utilizing systems not adequately designed to accurately furnish information about auto loans.

Examiners also found that auto furnishers did not clearly and conspicuously specify to consumers an address for notices relating to inaccurate information, and thus were subject to the stricter prohibition under Section 623(a)(1)(A) of the FCRA against furnishing information the furnishers know or have reasonable cause to believe is inaccurate. For example, furnishers disclosed a general-purpose corporate address or other methods of contact on their websites; however, examiners found that the furnishers did not specify to consumers the relevant address for notices relating to inaccurate information.

In response to these findings, auto furnishers are conducting lookbacks and correcting the furnished information for all affected consumers.

2.5.2 Failure to promptly update or correct inaccurate information

Furnishers, including auto furnishers, also are subject to Section 623(a)(2) of the FCRA, which requires furnishers to promptly correct and update furnished information after determining that such information is incomplete or inaccurate.[15] Examiners are continuing to find that auto furnishers are violating the FCRA duty to promptly correct and update incomplete or inaccurate information when the obligation arises. Specifically, in recent reviews of auto furnishers, examiners found that furnishers continued to furnish information for several months, and in some cases over a year, after the furnishers determined through monitoring or audit activities that the information was incomplete or inaccurate.

For example, examiners found that furnishers continued to furnish inaccurate amounts past due and balance information relating to certain consumers' charged-off accounts for over a year and a half after identifying the furnished inaccuracies through internal audits. Examiners also found that furnishers continued to furnish inaccurate payment history profiles and/or account statuses for certain accounts for over a year after identifying the inaccuracies through monitoring. Although the furnishers eventually corrected the inaccuracies after significant delay, examiners determined that the auto furnishers' delayed remediation of, including failure to submit prompt

[15] 15 U.S.C. § 1681s-2(a)(2).

corrections to CRCs with respect to, the identified furnishing inaccuracies was inconsistent with the FCRA duty to promptly correct and update furnished information after determining that such information is incomplete or inaccurate.

In response to these findings, auto furnishers are enhancing policies and procedures, including with respect to internal issue management, to ensure they promptly correct or update furnished information after determining it is incomplete or inaccurate.

3. Supervisory Developments

Set forth below are select supervision program developments including advisory opinions, circulars and proposed rules that have been issued since the last regular edition of *Supervisory Highlights*.

3.1.1 CFPB issued Buy Now Pay Later Product FAQs

On September 17, 2024, the CFPB issued Buy Now Pay Later (BNPL) Product FAQs.[16] The FAQs provide guidance on applying Regulation Z to Pay-in-Four BNPL products, such as how to apply credit card periodic statement requirements to Pay-in-Four BNPL products that are accessed by digital user accounts. These FAQs follow the interpretive rule in May 2024 that the CFPB released to explain how the Truth in Lending Act and Regulation Z apply to BNPL loans.[17] The CFPB recognizes that many BNPL lenders are working diligently and in good faith to come into compliance with the interpretive rule. The CFPB issued the FAQs to support this transition.

In addition, the CFPB has stated it does not intend to seek penalties for violations of the rules addressed in the interpretive rule against any BNPL lender while it is transitioning into compliance in a good faith and expeditious manner. We expect that other federal and state regulators will follow the same path.[18]

3.1.2 CFPB issued an advisory opinion-consumer protections for home sales financed under contracts for deeds

On August 13, 2024, the CFPB issued an advisory opinion which affirms the current applicability of consumer protections and creditor obligations under TILA and its implementing Regulation Z to transactions in which a consumer purchases a home under a "contract for deed."[19] When a creditor sells a home to a buyer under a contract for deed, that transaction will generally meet TILA and Regulation Z's definition of credit. Where the transaction is secured by the buyer's

[16] The FAQs are available at: https://www.consumerfinance.gov/compliance/compliance-resources/consumer-cards-resources/buy-now-pay-later-bnpl-products/buy-now-pay-later-product-faqs/

[17] The interpretive rule is available at: cfpb_bnpl-interpretive-rule_2024-05.pdf (consumerfinance.gov)

[18] The CFPB blog is available at: https://www.consumerfinance.gov/about-us/blog/what-buy-now-pay-later-lenders-are-doing-to-be-upfront-with-borrowers

[19] The advisory opinion is available at: https://www.consumerfinance.gov/rules-policy/final-rules/truth-in-lending-regulation-z-consumer-protections-for-home-sales-financed-under-contracts-for-deed/

dwelling, the buyer will also generally be entitled to the protections associated with residential mortgage loans under TILA.

3.1.3 CFPB joined federal regulators to propose rule to standardize data submitted to Federal financial agencies

On August 2, 2024, the CFPB joined several other federal financial regulatory agencies in announcing a proposed rule to establish data standards for certain information collections submitted to financial regulatory agencies.[20] The proposal would promote interoperability of financial regulatory data across the agencies through the establishment of data standards for identifiers of legal entities and other common identifiers.

3.1.4 CFPB warns against intimidation of whistleblowers

On July 24, 2024, the CFPB issued a circular to law enforcement agencies and regulators explaining how companies may be breaking the law by requiring employees to sign broad nondisclosure agreements that could deter whistleblowing.[21] The circular explains how, in certain circumstances, imposing sweeping nondisclosure agreements that do not clearly permit communication with law enforcement may intimidate employees from disclosing misconduct or cooperating with investigations. This could impede investigations and potentially violate federal whistleblower protections.

3.1.5 CFPB proposes rule on earned wage access

On July 18, 2024, the CFPB proposed an interpretive rule explaining that many paycheck advance products, sometimes marketed as “earned wage” products, are consumer loans subject to TILA.[22] The guidance would ensure that lenders understand their legal obligations to disclose the costs and fees of these credit products to workers.

[20] The proposed rule is available at: https://www.consumerfinance.gov/rules-policy/final-rules/truth-in-lending-regulation-z-consumer-protections-for-home-sales-financed-under-contracts-for-deed/

[21] The circular is available at: https://www.consumerfinance.gov/compliance/circulars/consumer-financial-protection-circular-2024-04/

[22] The interpretive rule is available at: https://www.federalregister.gov/documents/2024/07/31/2024-16827/truth-in-lending-regulation-z-consumer-credit-offered-to-borrowers-in-advance-of-expected-receipt-of

4. Enforcement Actions

The CFPB's supervisory activities resulted in and supported the below enforcement actions.

4.1 Public Enforcement Actions

The CFPB's supervisory activities resulted in and supported the below enforcement actions.

4.1.1 Navient Corporation

On September 12, 2024, the court entered a stipulated final judgment and order against the student loan servicer Navient for its years of failures and lawbreaking.[23] The order permanently bans the company from servicing federal Direct Loans and forbids the company from directly servicing loans issued under the Federal Family Education Loan Program (FFELP) or acquiring, with limited exceptions, any FFELP loans. These bans largely remove Navient from a market where it, among other illegal actions, steered numerous student loan borrowers into costly repayment options. Navient also illegally deprived student borrowers of opportunities to enroll in more affordable income-driven repayment programs and caused them to pay much more than they should have. Under the terms of the order, Navient paid a $20 million penalty and provided $100 million for redress for harmed borrowers.

4.1.2 TD Bank

On September 11, 2024, the CFPB ordered TD Bank to pay $7.76 million to tens of thousands of victims of the bank's illegal actions.[24] For years, the bank repeatedly shared inaccurate, negative information about its customers to consumer reporting companies. The information included systemic errors about credit card delinquencies and bankruptcies. In addition to the redress, the CFPB is ordering TD Bank to pay a $20 million civil money penalty.

[23] The Proposed Order is available at: https://www.consumerfinance.gov/enforcement/actions/navient-corporation-navient-solutions-inc-and-pioneer-credit-recovery-inc/

[24] The Consent Order is available at: https://www.consumerfinance.gov/enforcement/actions/td-bank-na-furnishing-2024/

4.1.3 Fay Servicing, LLC

On August 21, 2024, the CFPB ordered Fay Servicing to pay a $2 million penalty for violations of mortgage servicing laws, as well as for violations of a 2017 agency order that addressed its illegal foreclosure practices.[25] The company failed to implement the order's requirements and continued to break the law. Fay Servicing took prohibited foreclosure actions against borrowers requesting mortgage assistance, failed to offer borrowers mortgage assistance options available to them, and overcharged for private mortgage insurance. In addition to the civil money penalty, the CFPB's order requires Fay Servicing to pay consumer redress of $3 million and to invest $2 million to update its servicing technology and compliance management systems. The order also puts compensation limits on Edward Fay, the company's Chairman of the Board and Chief Executive Officer, if Mr. Fay does not take actions necessary to ensure compliance with the order.

4.1.4 Fifth Third Bank

On July 9, 2024, the CFPB took action against repeat offender Fifth Third Bank for a range of illegal activities that will result in the bank paying $20 million in penalties in addition to paying redress to approximately 35,000 harmed consumers, including about 1,000 who had their cars repossessed.[26] Specifically, the CFPB has ordered Fifth Third Bank to pay a $5 million penalty for forcing vehicle insurance onto borrowers who had coverage. The CFPB also filed a proposed court order that would require Fifth Third Bank to pay a $15 million penalty for opening fake accounts in the names of its customers.[27] The proposed court order bans Fifth Third Bank from setting employee sales goals that incentivize fraudulently opening accounts.

[25] The Consent Orders are available at: https://www.consumerfinance.gov/enforcement/actions/fay-servicing-llc-2024/

[26] The Consent Order is available at: https://www.consumerfinance.gov/enforcement/actions/fifth-third-bank-na-fpi-2024/

[27] The Opinion and Order is available at: https://www.consumerfinance.gov/enforcement/actions/fifth-third-bank-national-association/