
CFPB Flexes Muscles Against Non-Bank Auto Finance Companies

By Joann Needleman / Jun 19, 2015

Two important developments in the Non-Bank Automobile Finance Market.

First, the much anticipated final [Larger Participants Rule for Non-Bank Auto Finance Companies](#) was issued on June 10, 2015 by the Consumer Financial Protection Bureau (CFPB), along with an updated [Examination Procedures and Manual](#) specifically targeted to automobile finance companies.

Some highlights of the Final Rule can be summarized as follows:

- **Leases** - now defined as a "financial service or product" as long as the term is greater than 90 days. The Final Rule concludes that leases are the "functional equivalent of purchase finance agreements."
- **Larger Participants** - defined as those Nonbank Auto Finance Companies (covered persons) that have at least 10,000 aggregate annual originations (loans);
- **Aggregate Annual Originations** - defined as the annual originations of a covered person along with any of a person that was affiliated with that covered person at any time during the preceding calendar year. The inclusion of affiliated persons is a departure from prior definitions of Larger Participants in the debt collection and credit reporting markets.

The Nonbank Auto Finance Market consists of three subsets: (1) specialty finance companies, which serve consumers in specialized markets usually in the sub-prime area, (2) "captive" nonbanks, which are usually affiliated or owned by manufacturers, and (3) "Buy Here Pay Here" (BHPH) arrangements, a hybrid form of a captive associated with certain dealers, predominantly in the used car market. It is estimated that the Final Rule will cover fewer than 40 entities as well as their affiliated companies which originate around 90 percent of nonbank auto loans and leases. Large captives dominate the top tier of this market with the remainder of these companies being either specialty finance or BHPH.

While the Rule was anticipated and did not significantly deviate from the proposal published in October 2014, it's the Examination Procedures and Manual that should be of significant concern for all participants in the auto finance market. The examination procedures have nine (9) modules which cover every aspect of the loan process from initiation to collection and everything in between. The application of federal consumer protection laws from the Truth-in-Lending Act (TILA) to the Equal Credit Opportunity Act (ECOA) apply to any entity's auto financing activity. Key areas of focus during examination will be the marketing and disclosure of auto finance terms, fair lending, accurate credit reporting, and fair treatment during the debt collection process. The Bureau has also made clear in its Manual that its authority to assess risk may not be otherwise specified in any enumerated statute, law or regulatory provision. These risks may include unfair, deceptive and abusive acts or practices (UDAAPs) with respect to lenders or servicers in their consumer-facing interactions.

If there was any doubt on the CFPB's intense scrutiny of this industry, it was confirmed yesterday when the [CFPB announced a significant enforcement action against Security National Automotive Acceptance Company](#), for aggressive debt collection tactics against service members. In a complaint filed in federal court in Ohio, the CFPB alleges that the company used a combination of illegal threats and deceptive claims in order to collect debts. The CFPB is seeking compensation for harmed consumers, a civil penalty, and an order prohibiting the company from committing future violations.

It is vitally important for any auto lender, large or small, to immediately review its policies and procedures for all business lines and departments, and its compliance management systems, as well as its contracts with outside vendors in light of these newly announced examination procedures. The Security National matter was well under way prior to the issuance of the final auto finance rule because of debt collection practices, and not due to any lending or marketing. However, the breadth of the CFPB's current action should make any auto lender fully recognize, the importance of the CFPB's reach and its impact. While the Final Rule sets forth the Bureau's ability to supervise and examine larger participants, smaller entities are still subject to civil investigation demands and requests for documents and other information, as was since in this latest enforcement action.

Benjamin Franklin immortalized it, but it remains true today: "an ounce of prevention is worth a pound of cure."

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