

PUBLICATION

CFPB Appears Poised to Increase Its Focus on Auto Lending

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July 25, 2016

The CFPB utilizes a risk-based analysis in its approach to its supervisory and enforcement efforts. The Bureau's risk-based approach includes factors such as the potential risk to a consumer from products offered in the market and complaints generated by consumers. In light of these publicized criteria, the auto lending space seems particularly ripe for increased scrutiny by the CFPB.

A recent report issued by Experian titled "*State of the Automotive Finance Market; A look at loans and leases in Q1 2016*" highlights some troubling facts relative to the industry:

- Portfolio balances have reached record levels as loan amounts continue to grow to all-time highs;
- There have been increases in both 30- and 60-day delinquency rates, as the percentage of loans in the subprime portion of open portfolios grow; and
- Loan amounts and payments reached all-time highs for new loans, while loan terms are extended to new lengths.

These developments and others have led some in the industry to question the health of the auto lending market as a whole. Last month, J.P. Morgan Chase & Co. Chief Executive James Dimon stated in a Wall Street Journal article that, "While he doesn't see an auto-market downturn as imminent, he does see increased risk due to higher default rates from increased subprime lending, the growing use of longer repayment periods for borrowers and the potential for used-car prices to drop in coming years, [all of] which could hurt the value of lenders' collateral when borrowers default." His concerns are applicable not only to lenders, but also to the consumers responsible for these loans.

If industry leaders are taking note of these increased risks, one has to assume that CFPB regulators are doing so, as well, and will very likely take action against industry participants in pursuit of its stated goal of protecting consumers. Last month the CFPB released a report entitled, "Consumer Voices on Automobile Financing," which focused on complaint narratives received from consumers. Some of the buyer grievances highlighted in the report were:

- A lack of comparison shopping;
- Challenges in understanding and negotiating on vehicle loan terms;
- Promises of refinancing or better terms in the future
- Loans that last beyond the expected life of the vehicle;
- Complications with add-ons;
- Loan applications obtained without the customer's permission; and
- Unexpected credit inquiries.

Some of the concerns raised in the customer complaints, market snapshot and industry self-indentified risk, echo the concerns of the mortgage markets pre-2008. While the auto lending market lacks the overall size of the mortgage market, the risk of consumer harm remains. As such, it is quite likely that the CFPB will remain interested in this sector and perhaps go deeper by initiating investigations and audits of auto finance institutions.

In light of the information and the narrative emanating from the CFPB on auto lending, in addition to what many consider to be an overheated auto lending market, the Bureau will certainly continue to increase its scrutiny thereof. As a result, our team recommends that our auto finance clients take the time to review their products, marketing materials and servicing standards, with the caveat that even this action may present some regulatory risk.