

PUBLICATION

CFPB Shifts Focus to Auto Lending Industry

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Auto lenders and servicers be advised: the Consumer Financial Protection Bureau (CFPB) turns its lonely eyes to you.

On June 17, 2015, the CFPB brought an action in the Southern District of Ohio against Security National Automotive Acceptance Company, LLC, (SNAAC) alleging that SNAAC "engaged in unlawful acts and practices in its collection of consumer debts" relating to borrowers currently active or retired from the United States military.

In particular, the CFPB alleges that SNAAC "threatened to contact delinquent borrowers' commanding officers and has, in fact, contacted commanding officers, disclosing details about borrowers' debt and delinquencies." Moreover, SNAAC allegedly also made misleading statements regarding the impact on borrowers' military status and potential tax liability if they remained delinquent. Notably, one of the more deceptive practices alleged by the CFPB required unsuspecting borrowers to sign an "Addendum to Retail Installment Contract and Security Agreement" which allegedly stated that SNAAC had permission to contact the borrowers' employer/commanding officer to assist in collecting in the event of default. Similar to many prior lawsuits filed by the CFPB, SNAAC also allegedly violated consumer protection laws by making misleading statements regarding its intention to take legal action, when, in fact, the company had not made any decision regarding any potential legal recourse.

To redress the violations, the CFPB is seeking restitution for consumers, as well as a civil penalty and an order prohibiting the company from committing future violations pursuant to the Consumer Financial Protection Act of 2010. CFPB Director Richard Cordray stated during his announcement of the lawsuit that, "[f]or all the security they provide us, service members should not have their financial and career security threatened by false information from an auto loan company."¹

In a publicly released statement, SNAAC indicated that they were surprised by the suit and that they had been working with the CFPB to understand and resolve their concerns.

This is not the first time the CFPB has been involved with the auto lending industry as it relates to service members. In June 2013, the CFPB ordered U.S. Bank and a nonbank partner company, Dealers' Financial Services, to end alleged deceptive marketing and lending practices targeting active-duty military. The CFPB found that the companies violated the Truth in Lending Act and federal laws that prohibit deceptive marketing and lending practices. It ordered that the parties refund approximately \$6.5 million to service members for allegations that the companies failed to properly disclose all fees charged to participants in the companies' Military Installment Loan and Educational Services auto loans program and misrepresented the true cost and coverage of add-on products financed with auto loans.

Given the CFPB's move to oversee nonbank auto companies at the federal level, it is important to have an idea of how to prepare for a CFPB examination if the agency knocks at your door. A few best practices include:

- **Maintain Written Compliance Policies** – The top priority for the CFPB seems to be focused on compliance. Therefore, it is imperative that financial institutions have a written policy to address and

resolve consumer complaints. Moreover, developing an internal assessment program to ensure compliance with consumer laws is beneficial because it helps to identify any potential weaknesses.

- **Monitor Third Party Vendors** – In April 2012, the CFPB released a bombshell on financial institutions: not only could they be held responsible for any violations of consumer protection laws, but now they could also be held responsible for the actions of the companies they used as vendors. Financial institutions are now required to proactively assess, measure, monitor and control the compliance of third party vendors they work with to provide consumer financial products or services.
- **Provide Thorough Training for Employees** – CFPB examiners have the authority to conduct interviews with employees to determine whether they have been trained adequately regarding CFPB requirements and consumer protection laws. Compliance training must be current, complete, effective and directed to appropriate individuals based on roles, as well as the nature and risks to consumers served by the financial institution.

In the ever-changing world of consumer finance protection laws, it is imperative that financial institutions make sure that they are fully compliant with the regulations. Baker Donelson has the experience to help financial institutions navigate this intricate web of compliance with the multitude of federal and state regulations.

¹ Karen Jowers, "Auto Lender Surprised over Consumer Agency Action," *Air Force Times*, June 19, 2015, <http://www.airforcetimes.com/story/military/2015/06/17/military-auto-lender-sued-over-debt-collection-tactics/28876651/>