How lenders can maximize loan deferral and extension compliance

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In February, the Federal Reserve Bank of New York issued its Quarterly Report on Household Credit and Debt, which showed a record seven million Americans were 90 days past due on their auto loan payments at the end of 2018. “That is more than a million more troubled borrowers than there had been at the end of 2010 when the overall delinquency rates were at their worst,” according to economists at the New York Federal Reserve Bank.[1]

With a larger group of borrowers at risk for delinquency, it’s important for lenders to develop loss mitigation programs and review those programs for compliance with applicable federal and state laws. Providing an extension or deferral is a common way for lenders to combat would-be delinquencies and prevent the likelihood of a subsequent default. However, lenders must be careful to ensure compliance with state laws and federal guidance when implementing such programs. Although extensions and deferrals may provide an immediate solution for distressed borrowers, poor practices can result in liability.

Extension and deferral practices are a common area of focus of the Consumer Financial Protection Bureau (CFPB) and the Federal Trade Commission (FTC). For example, in the summer 2016 Supervisory Highlights, the CFPB highlighted UDAAP risks associated with the way in which the extension or deferral is explained to the consumer. The CFPB criticized lenders who omit informing consumers that the payment following the extension or deferral would be applied to the interest earned on the unpaid amount financed from the date of the last payment received. This way of applying the payment could result in the consumer paying more finance charges than originally disclosed, which could be deceptive. The CFPB and FTC have included similar UDAAP claims related to extension and deferral practices in consent orders against auto finance companies.

State regulators are similarly interested in extension and deferral practices. The formalities of extension and deferral agreements and the permissibility of associated fees are governed by state law and are often included within state examinations. State law may require extensions and deferrals to be in writing, signed by the consumer, and to include specified disclosures. For example, on September 5, 2017, the Texas Office of Consumer Credit Commissioner issued a Deferment Charges Bulletin answering frequently asked questions about deferment charges for motor vehicle retail installment contracts. The bulletin provides guidance on the disclosure, written agreement, and fee calculations for extensions and deferrals, and also confirms that due-date changes must be documented in writing and signed by the buyer. Failure to follow these rules results in violations of state law.

In short, given the potential federal and state law risks and potential liability, it is important that lenders carefully develop extension and deferral policies, procedures, scripts, and documentation. These practices and associated documents should be periodically reviewed for compliance with applicable federal and state law, as well as interpretive guidance and enforcement actions.

1 Andrew Haughwout, Donghoon Lee, Joelle Scally, and Wilbert van der Klaauw, “Just Released: Auto Loans in High Gear,” Federal Reserve Bank of New York Liberty Street Economics (blog), February 12, 2019, https://libertystreeteconomics.newyorkfed.org/2019/02/just-released-auto-loans-in-high-gear.html.

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