

CFPB Supervisory Highlights Provide Guidance on Deficiency Balances and Rebates

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By: [Peter L. Cockrell](#)

Under Richard Cordray's Consumer Finance Protection Bureau (CFPB), it was "compliance malpractice" not to take heed of the Bureau's enforcement actions when determining how to comply with federal consumer finance laws. Both Acting Director Mick Mulvaney and current CFPB Director Kathy Kraninger have stated that the Bureau will no longer engage in such "regulation by enforcement."

While this change in position is both a welcome change in tone and a proper stance under the law with respect to the CFPB's authority, consideration of the CFPB's enforcement actions is warranted as part of a lender's compliance management system. Lenders are also advised to consider other federal regulatory guidance, such as the CFPB's Supervisory Highlights, despite the CFPB's recent interagency guidance confirming that supervisory guidance does not have the force and effect of law, and that the agencies do not take enforcement actions based on supervisory guidance.

To that end, it is worth discussing the CFPB's recently issued Winter 2019 Supervisory Highlights, which were published in March 2019. The Winter Supervisory Highlights generally covered the Bureau's supervision work between June and November 2018 and, among other things, addressed the CFPB's supervision of auto loan servicing activities to assess whether servicers have engaged in unfair, deceptive, or abusive acts or practices (UDAAPs). These recent auto loan servicing examinations identified unfair and deceptive acts or practices related to calculating and disclosing deficiency balances.

Specifically, the examiners looked at ancillary products like extended vehicle warranties. Under the terms of these agreements, if the consumer experienced a total loss or repossession, the servicer or consumer could cancel the ancillary product and obtain a pro-rated rebate of the premium amounts for the unused portion of the product. With respect to at least one captive auto finance company, the examiners observed instances where the servicer used the wrong mileage amounts to calculate the rebate for extended-warranty cancellations. For consumers who financed used vehicles, the servicer incorrectly applied the total lifetime miles of the car to calculate rebates rather than the net mileage actually driven by the consumer. This miscalculation reduced the available rebate, resulting in higher deficiency balances. The examiners found this practice to be unfair.

Additionally, the examiners observed instances where the servicer failed to request rebates for eligible ancillary products after repossession or total loss. After failing to request the rebate, the servicer then sent consumers deficiency notices showing a final deficiency balance that purported to account for all available credits and rebates. The examiners found this to be deceptive because the servicer failed to include the rebate for eligible ancillary products in these deficiency notices. Moreover, the notices stated that the servicer was not aware of any other charges or amounts that would affect the deficiency balance, when in fact the servicer's records showed that the servicer had not sought the eligible rebates.

Although many of the recent changes at the CFPB have been encouraging for the auto finance industry, this is not a signal to stop good compliance practices. Lenders should stay up to date with the CFPB's enforcement actions and guidance, such as the Supervisory Highlights.

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