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CFPB Still Needs Schooling on Credit Sales

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Maybe I flatter myself, but I think there's a chance that someone at the Consumer Financial Protection Bureau finally might have read one of my rants about the CFPB's constant, annoying, and erroneous use of the term "loan" to include retail installment contracts. In an undated Q&A posting that I think is recent, the CFPB tried to set the record straight, as follows:

> ***What is a retail installment sales contract or agreement? Is this a loan?***
>
> *A retail installment sales contract agreement is slightly different from a loan. Both are ways for you to obtain a vehicle by agreeing to make payments over time. In both, you are generally bound to the agreement after signing.*
>
> *A loan is a transaction between you and a bank or other lender for money, where you use the money to purchase a vehicle and agree to repay the loan balance plus interest. A retail installment sale, on the other hand, is a transaction between you and the dealer to purchase a vehicle where you agree to pay the dealer over time, paying both the value of the vehicle plus interest. A dealer could sell the retail installment sales contract to a lender or other party.*
>
> ***Tip:***
>
> *With a retail installment sales contract, you may have additional rights under your state's law (for example, the ability to stop making payments to the dealer) if there is a defect in your vehicle.*

If this were a law school student's answer to a test question, I'd give it maybe a "D." It would rate an "F" but for the fact that I tend to award effort, and this is one of the very few times that the CFPB has bothered to distinguish between a loan transaction and a RIC.

So, what's wrong with the answer?

There is plenty to criticize. First, a RIC is more than "slightly different from a loan." The laws governing the two transactions are, in many states, completely different - different maximum finance charge rates, different late charges, different NSF charges, different permitted events of default, and different creditor and consumer rights upon default. These are much more than 'slight' differences.

Also, lenders are frequently depository institutions - banks and credit unions. These institutions often have a number of relationships with those who borrow from them. A borrower might have a savings account, a checking account, car loans, and other loans with the institution. That's why the loan documents these lenders use often contain rights to "setoff" the borrower's debt against savings and checking accounts.

Unlike the companies that buy RICs from car dealers, direct lenders frequently have more than one outstanding extension of credit to a borrower. That explains why frequently there are provisions in direct lending loan documents that provide that a default on one loan is a default under other loans and that the collateral securing one loan serves as collateral for other loans. You won't find those sorts of provisions in most RICs. 'Slight' differences? Hardly.

The dealer doesn't sell the RIC to a "lender." The dealer either holds it and collects the payments from the buyer or sells it to a bank, a credit union, or a finance company. When such an entity buys the RIC, it is not engaged in lending. The buyer of the RIC is engaging in a commercial transaction in which it is buying an asset owned by the dealership. Nobody is lending anything to anyone.

The "Tip" is simply puzzling. It seems to refer to the right of a buyer under a RIC to assert against the holder of the RIC any claims and defenses the buyer might have against the dealer. Such a right appears in the RIC and in some loan documents by virtue of a Federal Trade Commission regulation, not because state laws that regulate RICs provide for such a right. It is true that car buyers have rights under Article 2 of the Uniform Commercial Code, but those rights apply regardless of the means of financing the vehicle and even apply in cash deals. Under state laws that regulate RICs, I am not aware of a right that permits a buyer to stop making payments when there is a defect in the vehicle. Indeed, the FTC's rule doesn't go that far: The contractual language describing the right expressly limits the amount a buyer can recover against the holder of the contract to amounts the buyer has paid under the contract. Where there's a very skinny down payment, early in the term of the transaction, the buyer has paid so little that the right to assert a claim or defense against the holder of the RIC isn't worth much.

But the CFPB's real failing, now that it has acknowledged that all auto credit transactions are not " loans," arises from all of the times it has erroneously conflated loans and RICs. There are references in scads of CFPB releases and on its website to "loans" when it is crystal clear that the term includes RICs.

How is a consumer to know that all those references are misleading, sometimes seriously enough to steer the consumer into erroneous conclusions and/or bad decisions? Maybe I should reconsider - and give the CFPB a "D-."

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