

CFPB Watch for Auto Dealers December 2016

December 23, 2016 | [Michael A. Benoit](#)

This month's report features activity from the Consumer Financial Protection Bureau, the Federal Reserve Board, the Federal Communications Commission, and the Federal Trade Commission. Only a few items we mention this month are expressly auto-related, but the rest might be of interest to those in the auto sales, finance, or leasing business.

CFPB Supervisory Highlights. On October 31, the CFPB released the 13th edition of Supervisory Highlights, focusing on supervisory work generally completed between May and August 2016. The report highlights supervisory observations during that period in the areas of auto financing and repossession and debt collection. Also, the report includes findings for improving communication with, and services for, non-English-speaking consumers. In addition, the report notes that the Office of Fair Lending has identified redlining as a priority area in the CFPB's supervisory work and lists various factors CFPB supervisors will use in assessing redlining risk.

FTC Finally Issues Final Used Car Rule. On November 10, the FTC announced final amendments to its Used Car Rule. For information on this development, see Daniel J. Laudicina's article, [Buyers Guide Gets a Tune-Up](#).

Consumers' Electronic Financial Records. On November 17, the CFPB released a notice and request for information seeking public comment on how consumers access their financial records stored in an electronic format and how the related account information is used. The Bureau is also looking for input on consumers' ability to share financial records with third parties in a manner that maintains the consumers' privacy and control over their records. Comments are due by February 21, 2017.

Text Messages Regulated as Phone Calls. On November 18, the FCC released an Enforcement Advisory confirming that text messages are regulated as telephone calls for purposes of the Telephone Consumer Protection Act's consent requirements. The Advisory also provides a helpful summary of the TCPA's consent standards for people new to the issue or who may feel overwhelmed by TCPA compliance. As the Advisory explains, the TCPA requires "prior express written consent" for advertising text messages and "prior express consent" for other types of text messages, provided that the message is delivered using technology that satisfies the TCPA's "autodialer" definition. That definition is notably broad, and the FCC has expanded it well beyond the original statutory standard. "Robotext" platforms, including text messages from text messaging applications and Internet-to-phone text messaging, can trigger the TCPA's consent standards.

Time to Amend Your Pay Plan? On November 28, the CFPB issued Compliance Bulletin 2016-03 warning supervised financial companies that sales and production incentive programs for employees

and service providers may pose risks to consumers and lead to violations of federal consumer financial laws when those programs are not properly implemented and monitored. The bulletin outlines existing CFPB guidance given in other contexts and highlights examples from the CFPB's supervisory and enforcement experience in which incentives contributed to substantial consumer harm. The bulletin also describes compliance management steps supervised entities should take to mitigate risks posed by incentive programs.

Where is the CFPB Going Next? On November 28, the CFPB announced its fall 2016 statement of regulatory priorities. Short-term priorities of particular interest to those in the auto sales and financing area include: (1) the CFPB is considering a final arbitration rule for spring 2017; (2) there is no timetable for the small-dollar rule or the larger participant rule for installment lenders, both of which might have some unintended spill-over effects on auto finance; (3) the CFPB expects to convene a SBREFA proceeding focusing on companies that collect their own debts; (4) the CFPB is analyzing the results of a survey of consumer experiences with debt collection and testing to determine what information would be useful for consumers to have about debt collection and their debts and how that information should be provided to them; (5) the CFPB continues its research on Section 1071, which requires financial institutions to report information about credit applications by women-owned, minority-owned, and small businesses (the CFPB states that it is in its early stages of implementing Section 1071 and is currently focused on outreach and research to develop its understanding of the players, products, and practices in the business lending markets and of the potential ways to implement Section 1071). Long-term, the CFPB is looking at possible rulemaking for credit reporting and student loans. Of course, with the new administration, these priorities could change.

Which Credit and Lease Transactions are Covered? On November 28, the CFPB and the FRB issued final rules on the method to be used to adjust the thresholds for exempting certain consumer credit and lease transactions from the Truth in Lending Act and the Consumer Leasing Act. The Dodd-Frank Act provides that the TILA and CLA dollar amount thresholds must be adjusted annually by any annual percentage increase in the consumer price index. The final rules provide that if there is no annual percentage increase in the CPI, the CFPB and the FRB will not adjust the prior year's exemption thresholds. The final rules also provide the agencies' calculation method for making the adjustment in years after a year in which there is no annual percentage increase in the CPI. Based on the CPI as of June 1, 2016, the exemption threshold will remain at \$54,600 through 2017. Therefore, TILA and the CLA generally will apply to consumer credit transactions and consumer leases of \$54,600 or less in 2017 - the same thresholds that applied in 2016.

So, there's this month's report. See you in 2017.

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