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WHAT CAN BHPH LEARN FROM THE SMALL LOAN INDUSTRY?

NABD East Coast Conference, November 3, 2015

Orlando, FL

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Lessons Learned

- Keep a low profile (oops - too late for this one).
- The CFPB does not care whether you go out of business.
- Watch for end runs from the regulators (i.e. Operation Chokepoint).

Lessons Learned

- Worry about the CFPB employing tactics that they've used in payday and other areas.
- Don't forget about state law.
- Pay attention to cash sales.

Lessons Learned

- “All-in” APRs, with a usury cap that isn’t a cap
 - “If you’re gonna lend at over 36%, you have to follow tougher rules”
- Car prices capped at 125% (or whatever) of Blackbook?
- LTVs at X% (in effect, a ban on negative equity)

Lessons Learned

- Required warranty coverage (one way to reduce “tricks and traps”)???
- Ban on arbitration for BHPH
- Ban on GPS/SIDs?
- Go political – sell the need for BHPH

Lessons Learned

Unfairness – The CFPB Is Not Fair –

- Some companies in similar businesses will be victim of higher scrutiny. If CFPB thinks you charge higher rates/charges, you'll be subjected to a higher standard of review by the CFPB. If you locate near military bases, you'll be subjected to higher scrutiny. Low-rate credit providers and those clustered away from military bases get more leeway.

Lessons Learned

Unfairness – The CFPB Is Not Fair –

- Optional add-on fees won't be considered optional just because the consumers are required to sign/initial their selections. You'll need scripts, training, and monitoring to ensure the scripts are stated each time. Even then, if your "take rate" is too high, the CFPB may not think your optional products are optional.

Lessons Learned

Unfairness – The CFPB Is Not Fair –

- In examinations, the exam team on the ground may give a glowing exit report. Then, when negative results emerge, it's almost always because “the team in Washington” took the exam in a different direction.

Lessons Learned

Unfairness – The CFPB Is Not Fair –

- In regulatory agenda meetings, you'll be promised flexibility and time. But, the CFPB meets with consumer advocates pushing the opposite agenda, and they appear to be cozier with those folks. You won't get as much flexibility or time as you need.

Lessons Learned

Credit Criteria

- Ability to repay doesn't mean "ability to repay you." To the CFPB, it means the ability to pay all existing obligations, all living expenses, and then with any residual left in the consumer's budget, the consumer has the ability to make the scheduled payment to you.

Lessons Learned

Credit Criteria

- Do you think that young-adults pay worse than middle aged and older adults? The CFPB may refer you to the DOJ if you deny credit to those 18-21, based on their age, because age discrimination violates the ECOA (even if those provisions were intended to protect the elderly).

Lessons Learned

Third Party Oversight

- Oversee your third party service providers, including repossession companies. If they are calling people before repossession or obtaining third-party data to help find the consumer's car, they're going to get you in trouble.

Lessons Learned

Collection/Repayment Activity

- Don't be too excited about technical differences in the law. You may think the FDCPA doesn't apply when you call your customers, because it doesn't. But, if you violate its principles, the CFPB will say you're committing UDAAP.

Lessons Learned

Collection/Repayment Activity

- You may think its all right to visit your customers' workplace to discuss repayment with the customer. That's UDAAP too. Home visits may also be a risky venture.

Lessons Learned

Recordkeeping

- Are you sure you keep records and copies of federal disclosures you give or mail to customers? Simply keeping a record of sending adverse action notices is not enough. Keep a copy for at least 25 months as the ECOA requires.

Forecasting the Future?

- March 2015, the CFPB announced preliminary proposal on the regulation of small dollar lenders and industry
- Proposal focuses on Ability to Repay and Collection Practices
- Provides insight into future “lessons learned”


Questions?

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