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CFPB Issues Consent Order Related to Bank's Duplicative Force-Placed Insurance Policies

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On July 9, 2024, the Consumer Financial Protection Bureau issued a consent order against a nationally chartered bank that, among other things, includes a number of allegations related to the bank's policies regarding force-placed collateral protection insurance or FPI. The consent order serves as a comprehensive checklist of the CFPB's compliance expectations for the policies and procedures that must be in place for a bank or sales finance company to force-place insurance on the consumer credit accounts that it services. In short, creditors must, at minimum:

- make certain that the FPI notices they and their vendors use provide a clear description of the specific proof of insurance required from the car owner to verify his or her physical damage insurance coverage;
- develop internal systems that update car owners' addresses to make sure that FPI notices are actually delivered to car owners and that their systems are constantly updated to reflect undeliverable or inaccurate addresses;
- communicate accurate car owner contact information to FPI vendors that is constantly updated and provided to the vendors in real time;
- consistently educate and train call center employees (and vendors) on FPI policies and procedures so that the employees can effectively assist car owners with questions and complaints regarding FPI;
- properly itemize and disclose the cost of FPI premiums on monthly statements and coupon books;
- create internal reporting mechanisms and audits to track car owner inquiries and complaints about FPI;
- vigilantly monitor vendor compliance with legal/regulatory/contractual requirements related to FPI;
- correct consumer reporting that may be inaccurate due to duplicate FPI; and
- properly inform car owners when electronic fund transfers are adjusted due to FPI.

The consent order was the culmination of the CFPB's examination of the bank's practices regarding FPI. During the relevant time period of the examination (between 2011 to 2020), the bank serviced approximately 2.2 million consumer credit transactions. The retail installment sales contracts and loan agreements entered into by the car owners in these transactions require them to maintain insurance that covers physical damage to the vehicle that serves as the collateral for the retail installment sale or loan. Under the terms of these agreements, if the car owner does not maintain the required insurance, the creditor is permitted to force-place insurance on the vehicle if the car owner does not replace the lapsed insurance within a certain time period (generally 30 days). FPI is different than the physical damage insurance that car owners purchase, in that it generally only covers damage to the vehicle up to the outstanding balance on the underlying credit transaction and does not include coverage for medical expenses or damage to property other than the vehicle. According to the CFPB, the cost of the policy force-placed by the bank was roughly 14% of the outstanding balance of the credit transaction, which added an average of nearly $200 to a car owner's monthly payments under the retail installment sales contract or loan.

During the examination period, the CFPB alleged that the bank forced-placed insurance on more than 32,000 vehicles (47% of the bank's total FPI) where the car owner had always maintained the required physical damage insurance on the vehicle. The CFPB characterized these FPI policies as duplicative and unnecessary, given the physical damage insurance that the car owners independently maintained on the vehicles. In addition, the bank maintained FPI policies on 5,500 vehicles (8% of the bank's total FPI) where the car owner had replaced his or her lapsed insurance within the time period required under the retail installment sales contract or loan agreement. The CFPB alleged that the bank was required to cancel these FPI policies in their entirety when the car owners' lapse of insurance was cured.

Notice and Cancellation of FPI. The CFPB also took issue with the bank's policies and procedures related to FPI. The consent order alleged that the bank's "notice and cancellation processes were so flawed that [car owners] could not reasonably avoid the harm of duplicative FPI and contributed to the FPI program's high rate of placing unnecessary insurance." In many cases, the vendors hired by the bank failed to deliver FPI notices to affected car owners before the bank force-placed the policies. The CFPB claimed that the bank provided its vendors with consumer addresses that its own systems identified as bad addresses or that had a do-not-mail indicator and did not update its records when FPI notices were returned undelivered. According to the CFPB, the bank did not have any process to track undeliverable notices or to update consumer addresses in its systems when its vendors received undelivered FPI notices.

In addition, the CFPB alleged that the FPI notices themselves were inadequate and "were generic and unclear about what constituted sufficient proof of insurance, so [car owners] were not provided the information necessary to avoid or cancel FPI." In particular, the CFPB noted that the notices requested "proof of insurance" or "insurance information" rather than identifying the specific form the consumer would need to produce to demonstrate that he or she had maintained or obtained the required insurance. The notices also provided that car owners could produce proof of insurance by email, online,

fax, or mail or by having the car owner's insurance agent contact the vendor. However, in many cases it was not sufficient for the car owner to send the vendor a copy of his or her insurance card or to have the agent verbally verify physical damage insurance coverage. For instance, one FPI notice stated that the car owner must provide "your current insurance" and requested that the car owner's agent forward the policy or contact the vendor, but in fact the vendor would only accept a declarations page, insurance policy, ACORD certificate, or letter from the insurance carrier or agent. The vendor also required more information to be included in the insurance documents provided by the car owners or their agents than what was listed in the notice, such as the VIN, policy number, comprehensive and collision coverage, dates of coverage, and lienholder name and address. Finally, the CFPB alleged that when car owners attempted to offer proof of insurance that was deemed insufficient, the vendors made no effort to follow up with the car owners to inform them of the type of proof necessary to verify that they had obtained the required insurance.

Monthly Statements and Coupon Books. The CFPB alleged that the bank failed to accurately update the monthly statements and coupon books it provided to car owners, causing them to be delinquent in their payments, resulting in the bank charging them late fees. In particular, the CFPB claimed that monthly statements and coupon books failed to itemize the payments, so it was not clear to the car owner that the FPI policy was the reason for the increased payment.

Call Center Policies and Procedures. The CFPB also took issue with the bank's call center procedures when handling consumer complaints and concerns related to FPI. The CFPB alleged that the bank's employees were not provided with standard documentation about how to respond to car owners seeking assistance with FPI and did not have sufficient information about the forms of insurance that the bank would accept to avoid or cancel FPI. In addition, the CFPB alleged that the bank's own internal reports identified the bank's failure to properly update and process proof of insurance submitted by car owners. The CFPB specifically criticized the practice of having call center employees inform car owners that they "should allow 30 days for resolution and in addition, they should make new payment [sic] until resolved." However, the cancellation process often took less time and could be done in two to four days. The CPFB alleged that "the misrepresentation about the cancellation timeline is material because consumers were likely to elect to make a higher payment that included the duplicative FPI premiums to avoid the consequences of fees, delinquency, and repossession."

Wrongful Repossession. The CFPB alleged that the bank's failure to process updated insurance information and cancellations of FPI caused car owners to pay over $12.7 million in FPI premiums and fees that should have been refunded and caused car owners to be delinquent on their credit transactions, resulting in more than 1,000 improper vehicle repossessions. These car owners were further harmed by additional repossession fees, costs related to being without a vehicle, and additional expenses associated with increased costs of credit due to having a wrongful repossession on their consumer reports.

Right to Cure Letters. When car owners were in default under their credit transactions, the bank sent them right to cure letters that notified them of the default and provided

that if they paid a specified amount by a specified date, they could cure the default. The right to cure letters included the total amount due that, if paid, would make the account current and cure the default. However, the CFPB alleged that the bank used a calculation error in the logic that populated the total amount due in these letters, causing the wrong total amount due to be disclosed in thousands of letters. Specifically, the amounts stated in the letters were lower than the delinquent amounts required to cure the default. According to the CFPB, about 2,000 consumers paid the amounts that were listed in the letters, believing that paying those amounts would make their credit transactions current, but because the listed amounts were incorrect, the consumers did not cure their defaults, continued to experience delinquency, and were charged subsequent improper late fees. The consent order does not clarify whether the notice of right to cure calculation error was related to the bank's FPI practices or was an unrelated compliance issue.

Credit Reporting. With respect to consumer reporting, the CFPB claimed that when the bank ultimately determined that repossessions had been caused by duplicative FPI, it updated the credit reporting information to correct the delinquencies but failed to remove the repossession comments or codes, in violation of the federal Fair Credit Reporting Act. Under the FCRA, when an entity that regularly and in the ordinary course of business furnishes information to one or more consumer reporting agencies determines that it has furnished information that is not complete or accurate, it has a duty to promptly notify the consumer reporting agencies of that determination and correct that information.

Preauthorized EFTs. The CFPB alleged that car owners who made their monthly payments using preauthorized electronic fund transfers were not given advance notice of the addition of an FPI policy, which would cause the EFT to vary from the amount the car owner had authorized, in violation of the federal Electronic Fund Transfer Act. The EFTA requires that when a preauthorized EFT will vary from the preauthorized amount, the payee must "provide reasonable advance notice to the consumer, in accordance with the regulations of the Bureau, of the amount to be transferred." Regulation E, which implements the EFTA, provides that such notice must be given at least 10 days in advance of the payment.

The consent order requires the bank to pay a $5 million fine for the violations described above and to refund car owners for costs associated with duplicative FPI.

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