Despite Comment Time, Little Can Slow CFPB's Rule Proposal

Judith Fox, clinical professor of law at the University of Notre Dame School of Law and the Economic Justice Clinic in Indiana, shared her experiences working in auto finance.

By Nick Zulovich, Editor

CARY, N.C. — The 60-day comment period connected to the Consumer Financial Protection Bureau's proposed changes for what is classified as a larger participant in auto financing ends Dec. 8. No matter how intense the comments in opposition might be, auto finance legal expert Michael Thurman isn't expecting dramatic changes from what the bureau outlined during its field hearing this fall.

"I'm aware of no obstacle that would prevent the CFPB from implementing this rule," Thurman told *SubPrime Auto Finance News*. "The way the process works, the agency will take comments from all sources including consumers, the industry and legislators. But at the end of the day, the CFPB has spent a significant amount of time making its determination of what an appropriate level is to set the barrier for being a larger participant. The agency has the authority to do that under the Dodd-Frank Act. I don't expect any substantial changes to the rule from what we're seeing. In fact, I'd say there's a good chance that the rule we're seeing now will be the rule that's adopted.

"That doesn't mean the agency won't consider the comments that are made, but I don't see them making any significant alterations in, for example, the definitional changes their proposing or the calculation by which they're going to determine larger participants of this industry," continued Thurman, a former partner at Loeb & Loeb who opened his own firm in Pasadena, Calif., earlier this year.

To recap, if a finance company makes, acquires or refinances 10,000 or more vehicle loans or leases in a year, the CFPB is looking to become that operation's primary regulator stemming from a proposal disclosed during a bureau event on Sept. 18 in Indianapolis.

The bureau said this proposed rule would generally allow the CFPB to supervise nonbank auto finance companies to ensure they are complying with federal consumer financial law. Bureau officials estimated that about 38 auto finance companies would be subject to this new oversight.

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>
> **Michael Thurman**
> Thurman Legal

Organizations such as the American Financial Services Association didn't need 60 days to make a comment. Senior vice president Bill Himpler was part of a panel discussion during September's field hearing and made concerns known immediately.

"AFSA remains concerned that the bureau continues to issue larger participant rules that capture market participants that, for lack of a better term, are not large by any stretch of the imagination," Himpler said.

"Many of the market players that will be subject to the proposed rule have well below 1 percent of market share. According to Experian data, companies below the top 30 have less than a half a percentage point of market share in vehicle finance," he continued.

"Above all, the vehicle finance industry wants to comply with the law and the regulations that are set forth by the bureau, as well as continue to play a positive role in the American consumer experience. The industry stands ready to work with the CFPB to develop regulations that protect consumers and simultaneously ensure that Americans have access to safe and affordable consumer credit," he went on to say.

Despite the objections, Thurman acknowledged the latest moves the CFPB made were not unexpected.

"It's something that we've been looking for since late in the spring when the CFPB indicated it would heading in this direction. And even going farther back to 2012 when it initially announced the direction it was heading with respect to indirect lending and its fair-lending practices in the fact that they view it as applicable to loans that are being

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Researcher: CFPB Lacks Authority to Publish Complaints

ARLINGTON, Va. — A George Mason University researcher and Yale School of Law graduate found three significant issues with the Consumer Financial Protection Bureau wanting to publish consumer complaint narratives online — including the CFPB lacking the authority to make such a move.

Hester Peirce sent a nine-page letter to the CFPB articulating the position, stressing the bureau's plan to expand the database to include consumer complaint narratives is outside its statutory authority. Despite the CFPB's contentions to the contrary, Peirce also stated the strategy is also inconsistent with open government directives such as Office of Management and Budget's Open Government Directive.

"The other government databases that the bureau cites as parallels to its own are not appropriate models for the bureau to follow," said Peirce, a senior research fellow within the financial markets working group at George Mason's Mercatus Center.

Hester Peirce
George Mason University

Peirce, along with research assistant Vera Soliman, told the CFPB in the letter that Congress did not authorize the bureau to launch a public consumer complaint database. They recapped that the CFPB makes a case for the database because of its goals to ensure that "consumers are provided with timely and understandable information to make responsible decisions about financial transactions" and "markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation."

However, Peirce contends that publicizing complaint narratives as the bureau intends would work counter to both of these objectives, creating possible dire consequences.

"The consumer complaint database invites consumers to rely on incomplete and potentially inaccurate anecdotal information in their financial decision-making. By potentially harming the reputations of high-quality providers of consumer financial products and services, the consumer complaint database could adversely affect markets," she said.

Before tackling the question of authority, Peirce also informed the CFPB that "the expanded database is a solution in search of a problem," and "costs of the proposed database expansion outweigh the benefits."

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done by dealers that are ultimately financed by auto lenders," he said.

Thurman did mention one expectation he said wasn't met by the CFPB in its latest action. He was looking for an addition section to the bureau's supervisory manual that would assist finance companies in knowing exactly what regulatory concerns are covered with respect to auto lending. Thurman suggested the CFPB will continue to focus on several areas of its current manual that are connected to unfair, deceptive or abusive acts or practices (UDAAP), credit reporting, fair lending, debt collection and truth in lending.

"It would have been great for the industry if the agency had come out with a specific set of guidelines that accompany this announcement, because then I think they can focus even further on what they need to be ready for an examination," Thurman said.

AFSA, NADA Defend Industry During CFPB Field Hearing

As consumer advocates and attorneys made scathing accusations about unscrupulous activities that amounted to practices such as payment packing, yo-yo financing and spot delivery, representatives from the American Financial Services Association and the National Automobile Dealers Association pushed back against those charges and more during the latest auto finance field hearing hosted by the Consumer Financial Protection Bureau.

CFPB director Richard Cordray opened the event by recapping the series of moves the bureau made in advance of the event at Hine Hall Auditorium on the Indiana University – Purdue University Indianapolis campus. Cordray reiterated his stance about how vehicle purchases — especially transactions involving consumers with subprime credit histories — must be completed in a transparent way that complies with federal regulations.

NAMAD president Damon Lester offers a comment during the CFPB field hearing on auto finance in Indianapolis.

NADA's Paul Metrey makes a point as Steve Zeisel of the Consumer Bankers Association watches.

"It is important that the financing of these purchases does not come at an unjustifiably high cost," Cordray said. "The Consumer Bureau will continue to work to ensure that people can get fair access to credit, on terms that reflect their actual creditworthiness, that marketing is honest and factual, that the terms of the deal can be made plain and readily understood, that companies are not furnishing wrong information about their customers, and that people are treated with respect and dignity in the debt collection process."

Following Cordray's prepared remarks, the event moved on to a panel discussion that included about a dozen individuals, including AFSA executive vice president Bill Himpler and Paul Metrey, who is chief regulatory counsel for financial services, privacy and tax for NADA.

In structuring questions, regulators often referenced the rise in subprime lending, even though finance companies' appetite for subprime risk appears to be waning, judging by the softening trends Experian Automotive earlier this summer. According to its latest State of the Automotive Finance Market report, Experian determined that the percentage of new-vehicle loans to subprime and deep subprime borrowers began to level off in the second quarter.

"There may be an uptick in lending to subprime customers, but that's not necessarily a bad thing," Himpler said. "We need to remember that credit is an opportunity. What the uptick demonstrates is that following the crisis lenders are willing to, based on performance, go deeper to help folks who need access to transportation to get to jobs. Nobody would question extensions of credit to someone who is carrying around a (Black American Express) card, but in the subprime space, we don't have any problem talking about wanting to ratchet back because they may be taken advantage of.

"At the same time, as regulators you need to be diligent to be sure that they're treated fairly. But we do need to remember we're a credit economy going all the way back before our country was founded. Credit is a good thing. It helps people build wealth, get jobs, and we can't lose sight of that," Himpler went on to say.

In their prepared remarks, both Himpler and Metrey emphasized how much AFSA, NADA and their members are against discrimination of any kind, regardless of credit status, ethnicity or gender. But the final hearing attendee given an opportunity to make a two-minute statement offered one of the most predatory accusations of the entire two-hour event.

Judith Fox now is a clinical professor of law at the University of Notre Dame School of Law and also runs the Economic Justice Clinic for impoverished consumers in Indiana. While her biography and resume on the school website doesn't list specific organizations, it does state that prior to attending law school, Fox was a loan officer at banks in both Pennsylvania and Indiana.

"I became a lawyer because before I was a lawyer I bought loan paper from dealers," Fox told the audience. "We used to have a game in our office that when we looked at the interest rate that came in to guess the race and sex of the buyer. And we were never wrong.

"If it was over 20 percent, it was an African American woman. If it was 7 percent, it was a white male. That's why I became a lawyer," she continued.

"If you want to know what consumers need to know when they go into a dealer, they think they're going into a loan broker who is doing the best they can to get them the cheapest rate. They need to know who their loan was shopped to, what rates they were offered, what rates you're giving. Dealers need to make money, and I understand that. But the consumer needs to know they could have gotten a 7 percent loan, but you're going to give it to me for 12 percent," Fox went on to say

Incidents like what Fox alleged are part of the reason why Cordray and the CFPB are targeting dealer markup so strongly.

"And in our supervisory experience, we have found that when an indirect lender has a policy allowing the dealer to use its discretion to mark up the loan without regard to the actual credit profile of the consumer, and to benefit from that markup, the risk of discrimination increases," Cordray said.

Digital Extra: Four partners from Hudson Cook dissect what the latest moves by the CFPB will mean to finance companies.

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