CADWALADER

Cabinet News and Views

Informed analysis for the financial services industry

Cutting Corners in a Competitive Auto Market

By Mercedes Kelley Tunstall
Partner | Financial Regulation

The Consumer Financial Protection Bureau ("CFPB") announced in a press release issued in conjunction with the release of its latest Supervisory Highlights that it is concerned that financial institutions and other companies involved with auto financing might be incented to step up repossession of cars belonging to borrowers in default. While repossession is permissible, it is usually a last-ditch solution to a chronically behind borrower. And, any time physical property is taken from a consumer, additional precautions must be taken. However, the CFPB has observed several situations in its examinations where companies jump to repossess vehicles, without paying close enough attention to their own records. Specifically, the CFPB has identified servicers who repossess cars wrongfully, typically when the borrower is still behind on payments, but has made payments sufficient to stave off repossession. Sometimes that situation occurs because of a lack of communication between the servicer and the third party that actually repossesses the car, and sometimes it occurs because the servicer's systems process the received payments incorrectly or failed to accurately identify the payments needed to avoid repossession. Finally, the CFPB highlighted that servicers who have properly repossessed cars often have personal property belonging to the borrowers, which they sometimes refuse to return without payment of additional fees. Participants in the auto finance industry are well advised to pay heed to the CFPB's recent auto finance compliance bulletin, as well as to carefully scrutinize all aspects of their repossession policies and practices to avoid ending up with an inquiry from the CFPB.