

ALERTS

Substantial Penalty Against Major Bank Highlights Aggressive CFPB Enforcement

December 21, 2022

The Consumer Financial Protection Bureau (“Bureau”) reached a consensual resolution with Wells Fargo, N.A. (the “Bank”), which calls for restitution to consumers totaling \$2 billion, in addition to a \$1.7 billion civil penalty — the largest penalty to date.[1] The historic fine will go into the CFPB’s Civil Penalty Fund, which the CFPB can use to provide relief to victims of consumer financial law violations in future cases.

The practices at issue affected auto and mortgage loans, as well as deposit accounts. With respect to the Bank’s lending, the Bureau found consumers faced improper fees and charges, made payments that were misapplied, and in some circumstances wrongfully had their cars repossessed or homes foreclosed upon.[2] With respect to deposit accounts, the Bureau identified unwarranted charges including “surprise” overdraft fees.

Although the bottom line value of this settlement stands out, it reflects several of the Bureau’s current priorities. First, the Bureau is keenly focused on identifying and penalizing the providers it views as repeatedly violating consumer financial law. Second, the Bureau continues to leverage its expansive authority to address unfair, deceptive, and abusive acts and practices (“UDAAPs”), which are the only violations cited in this order. Third, the Bureau is closely scrutinizing add-on products and comparing how providers’ practices line up with their advertising disclosures.

In public remarks, Director Chopra classified the Bank as a “repeat offender,” referring to earlier fines the Bank paid under the Bureau’s watch. [3] He stressed the need for “long-term reform”[4] and suggested that the Bureau would continue to be vigilant. This framing matches several statements and initiatives by the Bureau,[5] including most recently its proposed rule seeking to create a “registry” of offenders to assist the Bureau and other regulators in identifying the providers of consumer financial products and services that qualify (in the Bureau’s view) for harsher penalties on account of their “recidivism.”[6]

The order also furthers the trend of the CFPB relying on its UDAAP authority to impose penalties and revised procedures on companies. Indeed, every practice the Bureau found to violate federal consumer financial law was on the basis of its UDAAP authority, rather than a violation of any regulations applicable to the Bank.

Specifically, the Bureau determined that the Bank’s automobile-loan-servicing systems experienced a number of failures that caused the Bank to misapply payments, charge improper fees, and make improper repossessions, and concluded that such acts and practices constituted an unfair practice.[7] Likewise, the Bureau considered certain mortgage servicing failures to be unfair practices, including computer errors that caused the Bank to misclassify certain borrowers as ineligible for loan modifications. Further, the Bureau determined that it was an unfair practice to charge overdraft fees on deposit accounts in situations where the account had a sufficient balance at the time of the transaction, even where processing the amount (at the time and in the order the Bank processed it) in fact resulted in a negative balance.[8] Finally, the Bureau found it unfair that the Bank’s fraud detection systems sometimes resulted in freezing a consumer’s entire account for up to two weeks, rather than only the amount of the suspicious transaction.[9]

Consistent with another recent theme in Bureau enforcement, the Bureau found that the Bank’s handling of certain add-on products was an unfair practice. For example, many auto loan consumers entered into Guaranteed Asset Protection (“GAP”) contracts. A GAP contract protects the consumer from paying the outstanding balance of the loan beyond the depreciated value of the car following a major accident or theft. In several instances, consumers rolled the cost of their GAP contracts into their auto loans but the Bank did not refund the unearned portion of the GAP fees when the consumer repaid the loan early.[10]

Notably, even though GAP contracts are governed by applicable state law, the Bureau required the Bank to agree that it will refund unused portions of GAP contracts nationwide.[11]

In addition, the Bureau considered the Bank charging monthly service fees where account holders satisfied the conditions specified in the Bank's advertisements and disclosures for a waiver of those fees to be a deceptive practice.[12] Regulators have indicated they will closely review the accuracy of consumer-facing advertisements compared with the financial product or service consumers ultimately receive.[13]

Finally, in what may be early signs of an emerging trend, the CFPB flagged that it's "work here" is not "done," and that it, alongside other partner authorities, will hold individuals accountable.[14] In this regard, the CFPB is seeking to match the enforcement models of other authorities, to look inside companies to find and hold responsible the individuals involved in illegal conduct.

The CFPB's action against the Bank is illustrative of the Bureau's overall priorities and demonstrates that the Bureau will continue to wield its enforcement authority to alter practices it disfavors.

Schulte Roth & Zabel's lawyers are available to assist you in addressing any questions you may have regarding these developments. Please contact the Schulte Roth & Zabel lawyer with whom you usually work, or any of the following attorneys:

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[1] Press Release, CFPB Orders Wells Fargo to Pay \$3.7 Billion for Widespread Mismanagement of Auto Loans, Mortgages, and Deposit Accounts (Dec. 20, 2022), available here. The Bank consented to the issuance of the order without admitting or denying any of the findings of fact or conclusions of law, except with respect to the Bureau's jurisdiction. Order ¶ 2.

[2] As of the date of the order, the Bank had already provided \$1.3 billion in remediation to 11 million auto loan borrower accounts. Order, *In re Wells Fargo, N.A.*, No. 2022-CFPB-0011 (Dec. 20, 2022) ¶ 8, available here.

[3] Prepared Remarks of CFPB Director Rohit Chopra on the Wells Fargo Law Enforcement Action ("Speech") at 1 (Dec. 20, 2022), available here.

[4] Press Release at 1; Speech at 2.

[5] *E.g.*, Director Chopra, "Reining in Repeat Offenders," 2022 Distinguished Lecture on Regulation, University of Pennsylvania Law School (Mar. 28, 2022), available here.

[6] SRZ Client Alert, *CFPB Proposes Rule to Establish Public Registry of Nonbanks with Consumer Financial Law Enforcement Orders* (Dec. 19, 2022), available here.

[7] Order ¶¶ 7-22.

[8] Order ¶¶ 43-47.

[9] Order ¶¶ 31-37

[10] Order ¶¶ 17-19.

[11] Order ¶ 50.

[12] Order ¶¶ 38-42.

[13] *E.g.*, Press Release, CFPB Warns that Digital Marketing Providers Must Comply with Federal Consumer Finance Protections (Aug. 10, 2022),

available here; Press Release, FTC Puts Hundreds of Businesses on Notice about Fake Reviews and Other Misleading Endorsements (Oct. 31, 2021), available here.

[14] Speech at 2 (“While today’s order addresses a number of consumer abuses, it should not be read as a sign that . . . the CFPB’s work here is done. Importantly, the order does not provide immunity for any individuals, nor, for example, does it release claims for any ongoing illegal acts or practices.”)

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