

Is the CFPB Seeking to Expand the Definition of Credit and Its Regulatory Reach? The Bureau Sues Snap Finance and Asserts That Snap's Transactions are "Credit" Under Federal Law

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On July 19, the Consumer Financial Protection Bureau (CFPB) filed a complaint against Snap Finance LLC and its affiliates (Snap RTO LLC, Snap Second Look LLC, Snap U.S. Holdings LLC, Snap Finance Holdings LLC) (referred to herein as "Snap") in the US District Court, District of Utah, for alleged violations of the Consumer Financial Protection Act (CFPA), the Electronic Fund Transfer Act (EFTA), the Truth in Lending Act (TILA), and the Fair Credit Reporting Act (FCRA), as well as applicable implementing regulations, relating to personal property lease-purchase (aka "rent-to-own") transactions. In the lawsuit, the CFPB takes aim at Snap's lease-purchase transactions and even asserts that the transactions constitute "credit" under the CFPA, thereby bringing into play numerous credit-related regulations.

Challenged Practices

The CFPB alleges that Snap engaged in unfair, misleading, and/or unlawful business practices stemming from its advertising, contracting, and servicing (including collection) of rent-to-own agreements, which the CFPB refers to as "Purchase Agreements." The areas of focus are:

Advertising to Consumers. Snap allegedly used the misleading phrase "100 Day Cash Payoff" in advertisements for its transactions and omitted any further explanation of the terms. The CFPB also complains that:

- Snap's 100-day early payout option totals more than the "cash" price of the merchandise or service.
- Consumers must affirmatively schedule a new payment amount or make a balloon payment before their 100-day deadline, even though they reasonably believe their automatically scheduled payments would fulfill their payment obligations by the close of the 100-day period.
- Consumers who miss the 100-day deadline pay significantly more than the "cash" price of their merchandise/service.

Misleading Contracting Practices. The CFPB alleges that Snap's merchant-based application and contracting process materially interfered with consumers' ability to understand the terms and conditions of their lease-purchase transactions, noting the following:

- In most cases, the application and contracting process was completed entirely on the merchant's computer or tablet.
 - Merchants would frequently sign and submit agreements on behalf of consumers without the consumer's prior review of the agreement.
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- Snap relied on its partner merchants to explain those agreements without providing the merchants any written guidance for doing so.
- Consumers were required to pay a processing fee before receiving a complete summary of the terms of their agreements and before seeing or signing the final agreement.

Automatic ACH Payment Terms and EFTA Violations. The CFPB further alleges that Snap’s transactions are “credit” and that, in turn, Snap had improperly conditioned the extension of credit on consumers’ repayment by preauthorized electronic funds transfers.

Returns and Termination. The CFPB asserts that Snap refused to allow termination of the agreements “until [consumers] made all payments due and past due through the end of their recurring 60-day term.” Consumers also were “required to contact” Snap to learn how to terminate their agreement. In addition, Snap’s internal trainings allegedly contradicted the terms pertaining to returns and surrenders, including by discouraging returns and surrenders of merchandise. Additionally, the CFPB complains that certain merchandise (e.g., mattresses, auto-related) would not be accepted for return at all.

TILA and Regulation Z. The CFPB alleges that Snap violated TILA and Reg. Z, specifically asserting that Snap is a creditor whose lease-purchase agreements qualify as “credit” and “credit sales” under TILA/Reg. Z, and that Snap failed to provide legally required disclosures.

Termination, Servicing and Debt Collection Practices. The CFPB asserts that Snap violated the CFPA in connection with many of its servicing and collection practices, including through the following alleged conduct:

- Snap allegedly misrepresented that: (1) consumers may not terminate their agreement absent a merchant agreeing to accept the merchandise as a return; (2) consumers cannot surrender their merchandise to Snap Finance, and thus must continue making payments (including for mattresses, tires or merchandise damaged through no fault of the consumer); and (3) the “best” or “only” option for consumers who no longer want their financed merchandise is entering into a new “buy-back” settlement agreement with Snap Finance and keeping the merchandise.
- Snap allegedly refused to honor their own agreements in which consumers were permitted to end their payment obligations by “surrendering or returning” the merchandise directly to Snap or to a place that Snap designates.
- Snap also allegedly misrepresented in collection emails that the company may imminently take “further action” due to a consumer’s non-payment, when in fact, Snap has never forcibly repossessed merchandise due to non-payment, or otherwise taken legal action against a consumer due to non-payment under lease-purchase agreement.

Leases as “Credit”

Of the many allegations, one of the most significant assertions made by the CFPB is that Snap’s consumer lease-purchase transactions constitute “credit.” Specifically, the CFPB alleges that Snap’s transactions, which are modeled along traditional state-specific rent-to-own agreements, are “credit.” The CFPB asserts three separate grounds, including: (1) the auto-renewing agreements “allow consumers to (sic) ‘to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase;” (2) the leases are “the functional equivalent of a purchase finance arrangement under 12 USC Sect. 5481(15)(A)(ii); and (3) Snap led consumers “to reasonably believe they are financing the purchase of property... and are thus subject to the CFPA by ‘offering’ a consumer financial product or service.”

The position taken by the CFPB appears to conflict with various court decisions regarding personal property leases, that, up until now, have held that consumer lease-purchase transactions are not credit. *See, e.g., Dorton v. Kmart*, 229 F. Supp. 3d 612, 625 (E.D. Mich. 2017) (consumer lease program granting consumer right to purchase an item after

lease period was not credit); *Maul v. Aaron's, Inc.*, 2013 WL 12090304, at *3 (W.D. Okla. Mar. 19, 2013) (holding that leases were not credit, and stating: "... plaintiff had the right to return the leased property without further obligation at any time after the initial lease term, and, thus, there could be no 'debt' or deferred payment of debt."); *In re Hanley*, 135 B.R. 311, 314 (C.D. Ill. 1990) (holding that rent-to-own payments were not subject to TILA).

Key Takeaways and Considerations for Lease-Purchase Providers

- The CFPB takes the position, seemingly for the first time, that a lease-purchase provider is engaging in "credit" transactions for purposes of the CFPB and other federal statutes.
- Lease-purchase providers should evaluate the terms of their transactions with consumers to avoid risk of re-characterization as "credit."
- Lease-purchase providers should ensure that accurate and complete information is provided to partner merchants for the advertisement and marketing of lease-purchase transactions to consumers.
- Lease-purchase providers should have sufficient life-cycle communications with their consumers to ensure that consumers are consistently reminded of their rights under the agreements and under applicable lease-purchase laws.
- Lease-purchase providers must appropriately and consistently educate merchant partners through training and have adequate controls in place for transactions originating with merchant partners.
- Lease-purchase providers should make sure that practices pertaining to the return or surrender of leased property conform to the terms of the consumer agreements, and should ensure that merchants are also complying with such provisions.
- Lease-purchase providers should implement appropriate policies and procedures to ensure the accuracy of consumer information that is furnished to credit reporting agencies.

CONTACTS

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