

LEGAL UPDATES

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New California Class Action Highlights Recent Focus on Autopay Cancellations

Last month, a cardholder filed a class action lawsuit in California against a national bank alleging that the bank failed to inform the consumer that his automatic payment enrollment would be canceled after a period of credit card inactivity. Over the summer, the Consumer Financial Protection Bureau (CFPB) shared in its Supervisory Highlights concerns about autopay cancellation practices that the CFPB observed during exams of supervised entities. In light of these developments, financial services providers should review their autopay authorizations and their policies on changing or cancelling automatic payments.

A new class action complaint

In *Chen v. Bank of America Corporation*, currently pending in federal court in California, a cardholder alleges violations of California's Consumer Legal Remedies Act, False Advertising Law, and Unfair Competition Law and seeks class-wide relief. See Case No. 23-cv-1762-LAB-DEB (S.D. Cal.). The cardholder claims that he had a credit card at the bank and enrolled in the bank's autopay program to make payments on the card. After about a year of the cardholder not using the credit card, the bank allegedly cancelled the cardholder's autopay enrollment without notifying him. Without autopay, the cardholder claims his account went unpaid, which negatively affected his credit score.

Relying on the autopay enrollment documents and the bank's promotional and advertising materials for the autopay program—including various pages on the bank's website—the cardholder argues that the bank failed to warn him that the bank could cancel his autopay enrollment following a period of card inactivity. He claims the bank not only “failed to disclose” but “intentionally

withheld” information and knowingly “published and disseminated inaccurate and misleading data, containing misinformation and false statements” about the possibility of autopay cancellation. He now seeks class-wide damages and injunctive relief for all the bank’s credit card holders who are enrolled in the autopay program.

CFPB highlights autopay cancellations in supervisory work

In its summer 2023 Supervisory Highlights, CFPB examiners asserted that an auto loan servicer engaged in an unfair act or practice by cancelling a consumer’s automatic payments prior to the final loan payment without sufficient notice to the consumer that the consumer would have to make a manual final loan payment. According to the CFPB, the autopay authorization contained a “small print disclosure” that the auto loan servicer would not automatically withdraw the final loan payment. The servicer did not send any additional communication to consumers regarding the servicer’s practice of turning off autopay. The CFPB viewed the autopay authorization as providing inadequate notice for consumers to avoid the harms of missed payments or late fees.

What this means for you

Providing autopay as a repayment option can benefit both consumers and creditors. Historically, we have seen more scrutiny on autopay enrollment versus autopay cancellation. The new California class action and the CFPB’s recent Supervisory Highlights could represent a shift in regulatory focus. These developments should prompt creditors to revisit their autopay authorizations and practices, particularly when a consumer could be enrolled in autopay for a long period of time.

Contact us

We have helped clients draft autopay authorizations and work through the complexities of payment changes for autopay customers both with installment loans and revolving credit products. We have also helped clients defend class actions, particularly in the consumer financial services space, assisting these clients in formulating the most efficient way to tackle the enormous exposure these cases often involve. Please contact Susan Seaman, Scott Helfand, Rebecca Bavlsik, or your Husch Blackwell attorney if you have any autopay questions.