THE CAPITOL FORUM

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Credit Acceptance Corporation: Company Lending Data Shows Importance of Wage Garnishment to Business Model; Signs of Problematic Practices Create Regulatory Risk

Credit Acceptance's Use of Wage Garnishment

Credit Acceptance Corporation markets itself to both its dealer-partners and its eventual customers on a simple pitch: As this marketing flyer makes clear, the company guarantees credit approval to every customer, regardless of how likely that customer is to default. In the past articles in this series, we examined the system the company uses to make this work, as well as the consequences and costs for consumers, and trends in CFPB complaints about the company. In this article, we look at an action that has the most serious consequences for borrowers who default and is also a factor in determining risk and cost for borrowers: post-judgment wage garnishment.

As we explain below, the company's extensive use of garnishment creates much potential for consumer harm. The company relies on the fact that most lawsuits it files will run to a default judgment, to the extent that it will not bring cases to trial if a borrower contests the case. Because of this, the company's lawsuits show many problems, including failing to substantiate the amount due with documentation and potential robosigning on affidavits in uses as proof of the debt. Once a judgment has been obtained, there are cases of seeking garnishments on consumers who never received notice of the lawsuit, consumers who had entered a payment program, judgments more than a decade old, or consumers who had been induced into waiving statutory garnishment protections.

These issues would be worrisome to the CFPB, who has entered into settlements with large creditors over UDAAP during collection litigation, including robosigned affidavits and similar issues. They may also be of interest to activist consumer protection regulators in states where garnishment is allowed, including Massachusetts and New York (where investigations of the company are pending) as well as Illinois and California.

Background on the use of garnishment. Credit Acceptance reports a 66% collection rate in its 3Q 2016 10Q, comprising the "total forecasted collections we expect to collect on the Consumer Loans as a percentage of the repayments that were contractually owed on the Consumer Loans at the time of assignments. Contractual repayments include both principal and interest." While this forecast is based upon contractual repayments made before borrowers have defaulted, the company has a significant debt collection operation for post default borrowers, from pursuing payment to repossessions to filing collections suits for the remaining debt.

In this last stage, the company relies upon the court system to secure monetary judgments, which then allows it, where permitted by state law, to garnish wages, levy bank accounts and create liens on real property. Since the company guarantees credit to anyone and does not appear to use a meaningful underwriting process, as we have explained in previous articles, wage garnishment is crucial to the company's lending model. A garnishment order acts as direct access to a debtor's assets and is very difficult for consumers to stop or modify once in place.

The Effect of Garnishment on Loan Terms and Cost: A Look at Company Data

The ability to garnish wages after default and judgment is so important that Credit Acceptance uses it as one of the risk factors in calculating the estimated return on a loan in CAPS (the company's dealer financing software which we explained previously) which determines the advance the dealer will make on the loan. The tables below are based on our analysis of the May 2016 advance report data, which we have analyzed further in our previous coverage. In CAPS and in the accompanying advance report, loans in states that do not allow wage garnishment are flagged, making it possible to compare data on loans from garnishment states with those from non-garnishment states.

The chart below compares the vehicle advance percent, which is the advance paid relative to the total amount financed, between garnishment and non-garnishment states. For a customer who borrows a total of $10,000 including add-ons and fees, which is near the median deal size, being in a garnishment state comes out to about a $200 difference in the advance. For more lucrative deals, it can mean a difference of over $500, similar to the difference that adding GAP insurance or a GPS-starter interrupter device would make in the advance.

Vehicle Advance Pct

Dealer Cost	Count	Percentage	Average	5th %ile	25th %ile	50th %ile	75th %ile	95th %ile
Can Garnish Wages	21,097	86.2%	63%	35%	52%	63%	75%	93%
Cannot Garnish Wages	3,375	13.8%	60%	35%	51%	61%	70%	85%
All Costs:	**24,472**	**100%**	**63%**	**35%**	**52%**	**63%**	**74%**	**92%**

The advance percentage is defined as the advance paid divided by the total amount financed, which includes car price, add-ons, dealer fees and state taxes and fees, less down payment and value of trade-in. The company tracks it within CAPS, presumably as a performance metric. The difference in the advance based on garnishment may then have an effect on the way dealers do business in non-garnishment states (identified in the advance report as Texas, Pennsylvania, North Carolina and South Carolina). A source familiar with company policy explained that given the significant difference in advance in non-garnishment states, dealers in those states have a harder time putting together a deal with an acceptable amount of profit. So typically, contract volume for dealers in those states tends to be lower.

In Depth: Harm to Consumers From Collection and Garnishment

Credit Acceptance functions like a large-scale debt collection operation. While the company collects its debts as a first party creditor, it appears that the company operates with a similar cost structure to third-party debt collectors, and risks causing many of the same consumer harms. In its FY15 10K, Credit Acceptance explains its debt collection practices, "the Consumer Loan is serviced by either: (1) our internal collection team, in the event the consumer is willing to make payments on the…balance; or (2) where permitted by law, our external collection team, if it is believed that legal action is required to reduce the…balance owing on the Consumer Loan. Our external collection team generally assigns Consumer Loans to third party collection attorneys who work on a contingency fee basis."

According to a 2014 Kroll bond rating report, the company's servicing group has 650 total employees for both current and delinquent accounts. In most cases, defaulted customers' vehicles are repossessed and sold at a wholesale auction, after which the sale price is credited to the outstanding loan balance; a debt collection lawsuit is subsequently filed for the deficiency. In other cases, such as when the vehicle cannot be located, is stolen, or is

totaled in an accident without sufficient insurance to pay off the loan balance, there is a collection action on the unpaid balance of the loan without a repossession.

When the company sues a customer for a shortfall on their debt, the most common scenario is that the case will run to a default judgment without an answer from the debtor, as in most collection suits. And like a third party collector, the company's collection model depends on this being the predominant outcome. The company's model for collection is so centered around consumers not answering suits that the company will not pursue collection suits to trial. Working through third-party collection attorneys hired on a contingency basis, Credit Acceptance will take the minimum steps to provide the debtor notice of the suit as required by the local rules, but if a consumer finds a lawyer and contests the case, the company is much more likely to simply settle for a much smaller amount or choose not to pursue the case to trial.

How soon the company abandons the case if the consumer finds a lawyer appears to vary by jurisdiction. According an attorney in New York City experienced in collection cases, the company will continue with the case but will not carry on past a Motion for Summary Judgment, after which the next stage is a trial. And in California, a judge presiding over a class-action suit made this statement in a ruling based on evidence presented by the plaintiff: "What emerges from Cross-Complainants' evidence is an apparent practice of initiating court proceedings, moving for a default judgment when the defendant does not answer, and when the defendant does answer, serving requests for admissions followed by motions to deem unanswered requests for admissions admitted. When a defendant appears through counsel, as Cross-Complaints all did, Cross-Defendant's practice appears to be simply to dismiss the complaint."

After a consumer has been sent the legally required notice of a suit, they must file a response with the court within a specific number of days set by state law. In the most common scenario, when the alleged debtor fails to respond, the company asks the court to enter a default judgment for the claimed amount, substantiated or not, plus attorneys' fees, court costs, and in many cases prejudgment interest. The vast majority of debt collection cases result in a default judgment granted against the defendant in the amount stated in the lawsuit, which can extend the life of the debt for up to 20 years in many states while allowing the debt to continue accruing interest, and empowers the company to get court-ordered wage and bank account garnishments and property liens where allowed by state law.

Collection litigation elevates risks for consumer harm, according to regulators. The CFPB stated in its July 28, 2016 proposals for debt collectors and debt buyers that the Bureau "believes that consumers face a higher risk of harm during litigation than during other points in the collection process. Many consumers fail to defend in litigation, making it easier for collectors to obtain judgments against the wrong consumer, for the wrong amount, or where the collector had no legal right to collect…Because of the higher risk of consumer harm from claims of indebtedness made without reasonable support in complaints filed in litigation, the Bureau believes that a higher level of support is needed to make claims in litigation than in most initial collection activity."

In 2009, the FTC hosted Debt Collection Roundtables and subsequently issued a report. Default judgments, issued by the court upon the plaintiff's request against a defendant who does not respond to a debt collection lawsuit, were covered in the combined report, which related that "panelists from throughout the country estimated that sixty percent to ninety-five percent of consumer debt collection lawsuits result in defaults, with most panelists indicating that the rate in their jurisdictions was close to ninety percent."

In Depth: Problematic Collection Practices and Regulatory Concerns

Potential robo-signing issues. *The Capitol Forum* reviewed over 200 Credit Acceptance debt collection complaints filed in Florida, Ohio, South Carolina, Pennsylvania, California, and New York state courts. The vast majority of Credit Acceptance's affidavits that we reviewed were executed by Josetta Jenkins, who is listed on LinkedIn as a legal coordinator at Credit Acceptance. Since her name is on so many of the affidavits, it is uncertain how much time Ms. Jenkins devotes and how thoroughly she reviews the customer accounts to ensure the accuracy of the affidavits she executes. However, based on accounts of the way the company handles contested cases, it is unlikely that Ms. Jenkins has provided further review or testimony on individual customers' accounts. Using this method of mass signing may cause regulatory concern.

Regulatory risk in CFPB case law. The CFPB has demonstrated concern about unlawful practices in creditors' use of affidavits to prove indebtedness, including deceptive statements and robosigning the documents themselves. The agency brought an enforcement action against Chase for robosigning the affidavits used in its collections suits, a practice that it defined as "deceptive affidavits and other documents that were prepared without following required procedures, because for example, they were at times signing without personal knowledge of the signer." The consent order goes on to allege that Chase employees "prepared the sworn statements in bulk using stock templates," and "often were not prepared and reviewed" by the individual who signed them, "at times lacked personal knowledge of the information they were attesting to and did not perform the review or follow the signing and notary procedures required by law."

The consent order included the requirement that declarations offered as proof of the debt "must be signed by hand, must reflect the actual date of signing, and must be based on the direct knowledge of the person signing and their review of Chase's business records." These failures resulted in the sworn declarations "containing misleading representations" and in Chase "lacking a proper evidentiary basis to prove the debt," denying consumers of a chance to challenge them in court. The CFPB found similar issues with misleading affidavits signed by staff who had no knowledge of the underlying account in parallel enforcement actions against Portfolio Recovery Associates and Encore Performance Group. It should be noted that in most cases these large debt collectors did not have the documentation to begin with, which has not been at issue with Credit Acceptance. However, in deeming their use a deceptive practice, the CFPB stated the robo-signed affidavits were materially misleading "because they are likely to affect a Consumer's choice or conduct regarding how to respond to a lawsuit," without regard to whether the companies had the underlying documents.

The CFPB has also taken other enforcement actions against debt collectors for filing lawsuits with similar issues of unsubstantiated claims and inaccurate or deceptive court filings. These include the action against Frederick J. Hanna & Associates, a Georgia based law firm, for filing affidavits as evidence to collect debts without the signers specifically knowing the details of what they were attesting to, and against debt collection law firm Pressler & Pressler, LLP for such improper litigation tactics as filing collection suits that relied on summary data.

Lawsuits for unsubstantiated amount due. States and sometimes individual municipalities set their own requirements for how much documentation is required to file a valid collection suit and prove the amount owed, which may include a requirement to include a copy of the original contract, an affidavit signed by a document custodian, or other documentary proof of the amount owed. However, enforcing these requirements in suits where the defendant does not respond often falls to the judge overseeing the case and the clerk of court. In many cases, dockets overloaded with a high volume of collection suits mean that judges give little scrutiny to suits or filings

for default and garnishment. This trend has allowed many debt collectors, including attorneys working for Credit Acceptance, to rely on filing suits with a lack of documentation or other signs of corner-cutting—an effect that is most pronounced in jurisdictions that have not adopted rules specific to collection cases.

Without broad standards, judges are placed in the role of enforcers. Many of the complaints filed by Credit Acceptance that we reviewed disclosed little information about the underlying transactions, and provided few, if any, supporting documents that would substantiate the plaintiff's calculation of the amount owed. Nonetheless, default judgments are routinely entered for Credit Acceptance without further inquiry into whether or not sufficient documentation is filed in their collection cases. There are rare examples of judges who hold Credit Acceptance to the evidence standards they are required to meet in that jurisdiction. In a New York debt collection case, *Credit Acceptance Corp. v Yerry*, when CAC's attorneys asked for a default judgment against the defendant, a judge in Albany County issued an opinion that stated, "Plaintiff's proof leaves the Court unable to ascertain damages with mathematical precision. Ms. Jenkins' affidavit fails to establish the terms of the contract (no contract is even attached)."

The opinion even criticized the affidavit on damages, stating that it only stated a total of $3,627.90 "in the most conclusory fashion," without any information on payments, fees or interest that would allow the court to calculate damages. The court granted a default judgment but withheld ruling on the amount of damages pending a hearing that was ordered to take place a few weeks later when Credit Acceptance was to produce witnesses and documents to "establish damages in accordance with the rules of evidence." The online docket reflects that no one showed up for the April 25, 2016 hearing. Then, on October 4, 2016, Credit Acceptance filed a Stipulation Discontinuing Action that disposed of the case.

In Depth: Problematic Garnishment and Post-Judgment Practices

Abusive servicing of garnishments. There are cases where Credit Acceptance may begin to seize funds even when a borrower has made payments with the company to pay the judgment. In this CFPB complaint, a servicemember from Tennessee who was a cosigner on a Credit Acceptance auto loan explains how he was blindsided twice by CAC's debt collection attorney's strategies: first by a default final judgment after he had not received notice of the suit, and again by the seizure of the funds in his bank account after complying with voluntary payment arrangements.

"…The sheriff delivered me a final judgment, entered by default... Upon receiving this, I called XXXX, …who identified themselves as debt collectors for CA saying the balance due as of judgment is now {$6900.00} & to call for payment arrangements…On XXXX, I hesitantly made the first payment of 9 for the {$75.00} arrangement agreement to XXXX from my … checking and have the records. The most recent payment cleared XXXX…. Within that time period, I've only received XXXX notices from XXXX, the most recent dated XXXX, stating the amount due was {$7400.00} & that their "client has informed them of a special opportunity to fully satisfy this debt by payment of a significantly reduced amount". No other forms of correspondence attempted. Last Thursday … I went to use my debit card and it was declined even though I had over {$1700.00} in my account & had just deposited my payroll. XXXX bank informed me that my account was levied by CA & without any prior notice from my bank or CA. The telephone # I was given sends me to a TN county clerk & that is all the contact info provided. I still have yet to receive any notice from my bank or XXXX or CA regarding the levy & questioning if all this is legal practice…"

Following consumers, extending judgments and resuming collection unexpectedly. Subprime auto delinquencies have risen dramatically this year, which is likely to spur Credit Acceptance to ramp up its collection activities to boost revenue. Credit Acceptance appears to monitor the location and assets of debtors who are subject to a judgment; it can do so by working with skip-trace services and various other vendors that serve the debt-collection industry.

Through its attorney network, the company files requests for wage garnishments and bank account levies, relocates judgments to follow debtors when they move to a new state, requests judgment renewals to extend the time collection can be allowed, and even contests debtors' attempts to claim exemptions to garnishment. In these instances, state laws protect the consumer's funds from garnishment and consumers may attempt to assert their rights to claim a valid exemption. However, if the consumer fails to attend a mandatory hearing, which occurs frequently, CACC is likely to be granted an order allowing the garnishment or levy free of exemptions.

Garnishment a decade or more after judgment. *The Capitol Forum* also reviewed several instances of Credit Acceptance acting through third party attorneys to file court actions to relocate very old judgments to a consumer's current county of residence and then asking the court to enter an order allowing wage garnishment, bank account levies, and property liens.

- On July 19, 1999, the Cuyahoga County, OH court granted to Credit Acceptance a default final judgment in the amount of $5,737.12 against Raymond Diaz. Sixteen years later, in the Palm Beach County, Florida court, Credit Acceptance opened a case to ask the court to relocate the judgment, issue an ongoing garnishment order to Mr. Diaz's employer and tack on additional collection costs to Mr. Diaz's outstanding debt.

- On September 20, 2005, the Passaic County, NJ Superior Court granted Credit Acceptance a final judgment for $4,642.66 against Irene M. Martinez. A decade later Credit Acceptance opened a case in Palm Beach County, Florida to ask the court to move the judgment and issue an order to Ms. Martinez' employer for an ongoing wage garnishment.

- In 2015, Tonya Coker commented on an Alabama consumer protection law firm's website, "On July 10 2015 when I got my paycheck a garnish was taken out of my check saying I Ole Credit Acceptance for a car I brought back in 1999 the car was repossessed in 2002 and I did not receive no information about what happened to the car or anything I did get no court paper about being sued I just no when I received my paycheck a garnish was coming out of my check what can I do about this."

Potential problems with inducing consumers to waive garnishment protections. In some cases, dealers may even convince customers to sign away statutory protections against garnishment as part of obtaining financing. Some of Credit Acceptance's Florida contracts contained a Head of Household Garnishment Waiver that the borrowers signed at time of vehicle purchase. Florida law allows anyone who provides more than 50% the support for a child or other dependent to exempt 100% of their wages from garnishment unless they voluntarily waive that right in writing, in which case, only disposable weekly earnings greater than $750 are subject to garnishment. We have not seen enough cases to know whether the company has incentives or requirements in place that result in borrowers who would be eligible for the protection signing these waivers at the time of financing. However, since about one in three Credit Acceptance borrowers will end up in default, borrowers are very likely subject to future risk when they sign a head of household waiver without being fully apprised of the implications and the important statutory protections they are signing away.