



To: National Independent Automobile Dealers Association
From: Shaun K. Petersen
Re: May 2015 Regulatory Update
Date: May 29, 2015

I. Consumer Financial Protection Bureau

A. Spring 2015 Rule Making Agenda

The Bureau released its spring rule making agenda with the following significant activities noted:

- Auto finance larger market participant rule: Final rule expected in June 2015
- Installment and auto title loans larger market participant rule: Pre-rule activities to begin in January 2016
- Debt collection rule: Additional pre-rule activities including the convening of a small business panel to be held in December 2015
- Arbitration: The Bureau indicates that it is considering whether rules governing pre-dispute arbitration agreements are warranted and sets September 2015 as a date for pre-rule activities.

B. Arbitration Study

The arbitration study released by the Bureau earlier this year is garnering significant attention from advocates on both sides of the issue. 58 members of Congress led by Senator Al Franken (D-MN) sent a letter to Director Cordray asking him to immediately promulgate a rule banning the use of pre-dispute arbitration agreements. A copy of the letter can be found here: <http://www.franken.senate.gov/files/documents/150521CFPBarbitrationLetter.pdf>

Additionally, 5 trade associations including the US Chamber of Commerce, American Bankers Association, and American Financial Services Association sent the CFPB a letter calling on the Bureau to solicit public comments on its arbitration study before making any

decision on rulemaking activities. A copy of that letter can be found here: <http://www.cfpbmonitor.com/files/2015/05/cl-Joint-Arbitration2015May-2.pdf>

C. Credit Visibility Report

The Bureau issued a report with findings pertaining to consumers' credit histories. Among the Bureau's findings are the following:

- 26 million consumers are credit invisible which equates to one in 10 Americans
- 19 million consumers have unscored credit records which is roughly 8 percent of the adult population.
- Of the consumers who live in low-income neighborhoods, almost 30 percent are credit invisible and an additional 15 percent have records that are unscored.
- Black and Hispanic consumers are considerably more likely to be credit invisible or have unscored credit records than White or Asian consumers.

A copy of the report can be found here:

http://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf

D. Meeting with Ombudsman's office

On May 11, I met with representatives of the CFPB's Ombudsman's office to discuss our concerns with the Bureau's process for inviting BHPH dealers and their RFC's to sign up for the Bureau's on-line complaint portal system. Among the concerns I raised with staff was the lack of clarity as to the reasons why certain entities were receiving invitations. I also addressed concerns that the messaging used in the invitation gave the impression that signing up for the portal was mandatory and created a false sense of urgency.

The Ombudsman's office has had meetings with the Bureau's departmental staff to address these concerns and indicated to me that they will reach out to me once a final conclusion has been made.

II. **Department of Justice**

A. Settlement with Evergreen Bank – Indirect Lending/Disparate Impact Allegations

The Department settled with Evergreen Bank Group of Oak Brook, Illinois, for alleged violations of the Equal Credit Opportunity Act (ECOA) for charging 2,200 minority borrowers higher interest rates through its FreedomRoad Financial motorcycle lending program. Through this program, consumers would apply for credit through dealers. The

program allowed dealers to mark up the rate, and according to DOJ, such discretion came without guidance or direction from the bank. This discretion led to the charging of higher rates for minorities compared to Caucasian borrowers.

As part of the settlement, Evergreen will eliminate or limit the discretion it gives to motorcycle dealers to increase interest rates. Evergreen will also pay \$395,000 in compensation for victims of Evergreen's past alleged discrimination.

A copy of the settlement agreement can be found here:

<http://www.justice.gov/file/evergreen-consent-order/download>

III. Department of Labor

No significant updates.

IV. Environmental Protection Agency

No significant updates.

V. Federal Trade Commission

A. Bi-weekly Payment Program Settlement

In follow-up part of Operation Ruse Control announced in March, the FTC approved a final consent order with National Payment Network (NPN) over claims in deceptively advertised its bi-weekly auto loan program. The company is required to issue \$1.5 million in refunds and waive \$949,000 in current fees. NPN is also prohibited from making deceptive claims about its payment program or other add-on products or services.

A copy of the settlement can be found here:

<https://www.ftc.gov/system/files/documents/cases/150515npndo.pdf>

B. Comments to Michigan Legislature Regarding Direct Sales from Manufacturers

The Michigan Legislature is considering a bill that would allow a manufacturer of a certain category of "autocycles" to sell these vehicles, new or used, directly to consumers. The FTC submitted a comment to the legislature arguing that the Michigan Bill, Senate Bill 268, would encourage competition that may benefit consumers. The FTC's comment states that the bill does not go far enough and should permit manufacturers of any motor vehicle to sell directly to consumers "as prevails in most other industries."

A copy of the comment can be found here: https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-regarding-michigan-senate-bill-268-which-would-create-limited-exception-current/150511michiganautocycle.pdf

C. Warranty Rules

In 2011, the FTC sought public comments on the Interpretations, Rules, and Guides under the Magnuson-Moss Warranty Act. The Interpretations provide the Commission's views on terms and provisions in the Magnuson-Moss Warranty Act; the Guides help advertisers avoid unfair or deceptive practices; and the Rules specify disclosure requirements, require that warranty information be available before purchase, and set standards for any informal dispute settlement provisions in a warranty.

The FTC has completed its review and has announced that it will keep them in their present form, with certain changes to the Interpretations. The Commission has revised Part 700.10 of the Interpretations to clarify that implied tying – warranty language that implies to a consumer that warranty coverage is conditioned on the use of select parts or service – is deceptive. It has also revised Part 700.10 to state that, to the extent that the Warranty Act's service contract provisions apply to the insurance business, they are effective if they do not interfere with state laws regulating the business of insurance. The Commission has also updated the citation format in the Interpretations and Rules.

D. Operation Ruse Control Settlement Agreements Approved

The FTC finalized two consent decrees involving automobile dealers that were a part of the Operation Ruse Control sweep announced in March. Under the settlement orders, Jim Burke Nissan of Birmingham, Ala., and Ross Nissan of El Monte, Calif., are prohibited from misrepresenting in any advertisement the cost to purchase or lease a vehicle, or any other material fact about the price, sale, financing, or leasing of a vehicle. The consent orders also address the alleged Truth in Lending Act and Consumer Leasing Act violations by requiring the dealerships to clearly and conspicuously disclose terms required by these credit and lease laws. Jim Burke is also prohibited from representing that a discount, rebate, bonus, incentive or price is available unless it is available to all consumers or the qualification terms are clearly and conspicuously disclosed.

VI. Internal Revenue Service

No significant updates.

VII. National Highway Traffic Safety Administration

A. Takata Air Bag Announcement

The Department of Transportation announced that Takata has acknowledged that a defect exists in its air bag inflators and that Takata has agreed to a national recall of certain types of driver and passenger side air bag inflators. The announcement action expands the number of vehicles to be recalled for defective Takata inflators to nearly 34 million.

Takata has entered into a Consent Order with NHTSA to cooperate in all future regulatory actions that NHTSA undertakes. NHTSA announced its intent to begin a formal legal process to organize and prioritize the replacement of defective Takata inflators under the agency's legal authority.

VIII. National Motor Vehicle Title Information System

No significant updates.

IX. State Legislation

A. California Assembly Bill 265

The California Assembly passed a bill unanimously that will require buy here pay here dealers and finance companies using starter interrupt devices to provide notice 10 days prior to the use of the device of the intent to use the device. This provision is in addition to existing law which requires notice 48 hours prior to the use of the device. The original proposal would have required 30 days prior notice. The Senate has yet to consider the bill.

NIADA submitted a letter to key members of the Senate to express opposition to the bill and encouraging them to withdraw the bill while the BPH Commission develops industry best practices. A copy of the letter is attached.

B. New Jersey Assembly Bill 4033

The New Jersey Legislature is considering legislation that would ban the use of any GPS technology as a condition of financing. The sponsor of the bill has circulated language that would permit the use of the technology under certain circumstances including capping interest rates on contracts where GPS technology is used on that vehicle at 10% less than the state maximum. NIADA is working with NJIADA and other industry partners to oppose the bill.

X. State Attorneys General

A. National Association of Attorneys General Consumer Protection Conference

I attended the NAAG Consumer Protection Conference in Washington, D.C. The primary attendees of the meeting were the Attorneys General's Consumer Protection Chiefs. I had several discussions with several of these chiefs about our consumer protection initiatives. I also advocated for pre-licensing and continuing education requirements for dealers in states where none exists.

B. Multistate Settlement Agreement with Credit Reporting Bureaus

Thirty-one state Attorneys General announced a settlement with the three main credit reporting agencies — Equifax Information Services LLC, Experian Information Solutions Inc., and TransUnion LLC. The settlement stems from an investigation that focused on consumer disputes about credit report errors, monitoring and disciplining data furnishers (providers of credit reporting information), accuracy in consumer credit reports, and the marketing of credit monitoring products to consumers who call the credit reporting agencies to dispute information on their credit report.

The credit reporting agencies have agreed to increase monitoring of data furnishers, to require additional information from furnishers of certain types of data, to limit direct-to-consumer marketing, to provide greater protections for consumers who dispute information on their credit reports, to limit certain information that can be added to a credit report, to provide additional consumer education, and to comply with state and federal laws, including the Fair Credit Reporting Act.

The settlement agreement requires the bureaus to:

- Maintain information about problem data furnishers and provide a list of those furnishers to the states upon request.
- Use a better, more detailed system to share data.
- Cease marketing credit monitoring services to a consumer during a dispute phone call until the dispute portion of the call has ended.
- Tell consumers that purchasing a product is not a requirement for disputing information on their credits reports.
- Implement an escalated process for handling complicated disputes, such as those involving identity theft, fraud, or mixed files (in which one consumer's information is mixed with another's).
- Notify the other agencies if it finds a mixed file.
- Require debt collectors to provide the original creditor's name and information about the debt before the debt information can be added to a credit report.
- Tell consumers how they can further dispute the outcome of an investigation into a dispute, such as by filing a complaint with other agencies.



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May 19, 2015

The Honorable [INSERT LEGISLATOR'S NAME]
[INSERT TITLE]
State Capitol
Sacramento, CA 95814

Re: Concerns with Assembly Bill 265

Dear [INSERT LEGISLATOR'S NAME],

I write on behalf of the National Independent Automobile Dealers Association (NIADA) and its newly created Buy Here Pay Here Commission to express our concerns with Assembly Bill 265 that would impose additional requirements on buy here pay here dealers' use of starter interrupt devices on vehicle's those dealers finance.

By way of background, NIADA is among the nation's largest trade associations representing the used motor vehicle industry comprised of more than 38,000 licensed used car dealers across the country. NIADA has 449 dealer members in the state of California, most of which employ five or fewer employees. The dealers are also members of our state affiliated association, the Independent Automobile Dealers Association of California (IADAC). A portion of our California members are defined as buy here pay dealers under California law.

As issues affecting the buy here pay here industry have risen in the recent past, NIADA members recognized the need to provide greater understanding of this segment of the industry. Thus, in November 2014, NIADA created the Buy Here Pay Here Commission comprised of buy here pay dealers across the country, including one from California, to be a resource for the public, government officials, and the industry itself. Among the Commission's charge is to create and disseminate responsible practices buy here pay here dealers can follow. The Commission will utilize the NIADA network, especially its state affiliates such as IADAC, to circulate these practices.

The Commission believes that the responsible use of Global Positioning System (GPS) devices, including those that have the capability to interrupt a vehicle's starter, is a benefit to consumers and businesses. The responsible use of these devices begins with customers' full consent to install the devices.

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Historically, we have seen the responsible use of these devices improve payment performance and thereby reduce the risk of repossession. Ultimately, this reduced risk may enable consumers to establish better credit histories and ultimately qualify for more attractive financing and newer more high quality vehicles.

A large number of buy here pay here transactions are structured such that the consumer has weekly or bi-weekly installment payments. Thus, the 10 day notice period as is currently contained in the bill may include multiple missed payments making it more difficult for the consumer to come current on their installments after default. This will increase the likelihood that the dealer will be compelled to repossess the vehicle, creating additional costs and burdens on the consumer. We are also concerned that the weekly or bi-weekly installment payment terms will only lead to the multiple notices that will only create unnecessary confusion in the mind of the customer.

Given these concerns, we request that the bill be pulled from consideration and the matter fully studied in conjunction with the development of the Commission's responsible practices to ensure that the benefits of these devices to both consumers and businesses are not compromised.

We appreciate your consideration and welcome the opportunity to work with you on this issue moving forward.

At Your Service,



Steve Jordan
Executive Vice President

cc: Larry Laskowski, Executive Director, IADAC
Jeff Martin, Commission Director
Danny Langfield, Commission Director
Shaun Petersen, Legislative and Regulatory Counsel