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Increased Consumer Clarity: Guidance on the Proposed and Paused CARS Rule

The Federal Trade Commission (FTC) has finalized a new rule to combat auto retail scams. The rule was set to become effective July 30, 2024, but the FTC issued an order delaying the rule due to an ongoing legal challenge targeting the rule. While the current status of the rule is up in the air, finance companies should still be familiar with its requirements since the rule may still proceed, and the rule reflects current trends in favor of reduced "junk fees" and increased consumer disclosures.

What is the Rule?

The rule, known as the Combating Auto Retail Scams Rule (CARS Rule) requires motor vehicle dealers to provide certain disclosures and prohibits motor vehicle dealers from imposing junk fees and using bait-and-switch tactics to sell vehicles. The rule addresses actions related to both the sale and financing of certain vehicles, so finance companies will likely have to make sure none of their procedures are implicated by this rule and ensure that any dealer agreements protect them from bad practices by dealers.

Rule Impacts

Shortly after the rule was published, the National Automobile Dealers Association and the Texas Automobile Dealers Association filed a petition for Review in the U.S. Court of Appeals for the Fifth Circuit. The petition challenges the CARS Rule on the basis that it is "arbitrary, capricious, an abuse of discretion, without observance of procedure required by law, or otherwise not in accordance with law." The FTC, in response to the petition, issued an order staying the effective date of the CARS Rule.

The CARS Rule as written impacts “Covered Motor Vehicle Dealers” (Dealers) which are defined as “any person, including any individual or entity, or resident in the United States, or any territory of the United States, that (1) is licensed by a State, a territory of the United States, or the District of Columbia to engage in the sale of Covered Motor Vehicles; (2) takes title to, holds an ownership interest in, or takes physical custody of Covered Motor Vehicles; and (3) is predominantly engaged in the sale and servicing of Covered Motor Vehicles, the leasing and servicing of Covered Motor Vehicles, or both.”

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"Covered Motor Vehicles" are vehicles that are "self-propelled" and "designed for transporting persons or property on a public street, highway, or road." The CARS Rule explicitly excludes, motorcycles, scooters, electric bicycles, motor homes, recreational vehicle trailers, slide-in campers, golf carts, recreational boats and marine equipment. FTC commentary further indicates that all-terrain vehicles and snowmobiles are excluded from this definition because they are not designed for use on public streets, highways or roads. Therefore, finance companies that deal only in recreational and powersports products would not be subject to the CARS Rule as their financed products are not "Covered Motor Vehicles" under the CARS Rule.

For those finance companies that do finance Covered Motor Vehicles, some key items to note under the CARS Rule are:

1. Dealers would be prohibited from making any misrepresentation regarding material information about the price, cost and financing terms, among other things. Dealers would also be required to provide consumers with certain disclosures. These disclosures include notifying a consumer of a vehicle's "offering price" in advertisements or communications about specific vehicles, monetary amounts or financing terms for any vehicle, notifying consumers that add-on products or services are not required and that the consumer may purchase or lease the vehicle without the add-on, where this disclosure is applicable. While finance companies may not be directly involved with advertising, finance companies should consider updating any dealer training programs to include training on prohibited misrepresentations and re-enforce the importance of compliance. Similarly, finance companies should monitor whether accurate information is provided to consumers regarding any financing terms.

2. The CARS Rule would prohibit dealers from charging junk fees in the form of add-ons that provide no benefit. Examples provided by the FTC of add-ons with no benefit include duplicative warranty coverage, such as a Guaranteed Asset Protection Agreement that excludes the consumer's vehicle or neighborhood, and "Nitrogen-filled-tire-related products." The CARS Rule would also include, as junk fees, all items charged without the express informed consent of a consumer. In order for there to be express informed consent, consumers must unambiguously assent to a charge shortly after receiving a clear and conspicuous disclosure in writing (and orally for in-person transactions) that explains: (1) what the charge is for; and (2) if the charge is for a product or service, the total amount of the

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charge, including all fees and costs to be charged to the consumer over the period both with and without the product or service. Although the new Rule has been challenged, given the focus on junk fees by multiple regulators, finance companies should review what fees are being charged to consumers and confirm that consumers have affirmatively consented to all charges.

Guidance

Going forward, finance companies should monitor the ongoing challenge to the rule and be prepared to implement procedures to ensure that the motor vehicle dealerships they work with are complying with the CARS Rule. If you would like to discuss how this rule impacts you and your business, contact Jack Brooks or another member of the Consumer Finance Practice.

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