

Consumer Finance Monitor (Season 7, Episode 7): The CARS Rule: What You Need To Know About the Federal Trade Commission's Final Motor Vehicle Dealer Trade Regulation Rule, Part I

Speakers: Alan Kaplinsky, John Culhane, Mike Guerrero, Brian Turetsky, and Rick Hackett

Alan Kaplinsky:

Welcome to the award-winning Consumer Finance Monitor podcast, where we explore important new developments in the world of consumer financial services and what they mean for your business, your customers, and the industry. This is a weekly podcast show brought to you by the Consumer Financial Services Group at the Ballard Spahr Law Firm. I'm your host, Alan Kaplinsky, the former practice group leader for 25 years, and now senior counsel of the Consumer Financial Services Group at Ballard Spahr. And I'll be moderating today's program.

For those of you who want even more information, either about the topic that we'll be discussing today, or anything else in the consumer finance world, don't forget to consult our blog, consumerfinancemonitor.com, goes by the same name as our podcast show. We've hosted the blog since July 21st, 2011 when the CFPB became operational. So there is a lot of relevant industry content there. We regularly host webinars on subjects of interest to those in the industry. So to subscribe to our blog or to get on the list for our webinars, please visit us at ballardspahr.com. And if you like our podcast, please let us know about it. You can leave us a review on Apple Podcasts, Google, Spotify, or wherever you obtain your podcasts.

Also, please let us know if you have any ideas for any other topic that we should consider covering or speakers that we should consider as guests on our show. Finally, I'm very pleased to let our listeners know that our podcast show was recently ranked by Good2bSocial as the number one podcast show among law firm podcast show within the United States devoted exclusively to consumer financial services. Good2bSocial is a prominent law firm consulting firm owned by the company Best Lawyers. We're very gratified by this recognition from one of the country's leading social media consultants for law firms. So, today's podcast show is repurposed from a webinar that we conducted on January 23rd that was entitled The Cars Rule, what You Need to Know about the FTC's Final Motor Vehicle Dealer Trade Regulation Rule. This will be a two part series. Part two of our repurposed webinar will take place and will be released next week.

So, what we're going to do today is obviously talk about the new FTC Cars Rule. It got announced, that is, it was finalized and released on December 12th of last year. And, there are a lot of new requirements, and a lot of things that are covered by this rule. And, we're going to try to cover it all. But before we get into the nitty-gritty of the rule, as soon as I'm done with my introduction, I'm going to turn it over to Brian Turetsky in our firm who I'll introduce in a moment. And, Brian is going to talk about the recent order issued by the FTC in which it agreed to stay implementation of the rule because of a lawsuit that was filed by the National Automobile Dealers Association against the FTC challenging the legality of the rule. Actually, it's referred to, not as a lawsuit, but as a petition for review, that is, was filed directly before the Fifth Circuit Court of Appeals. No surprise that they would file the petition before that particular court. That's the same court that not so long ago decided that the CFPB was unconstitutionally funded.

So, as you look at the agenda, you can see after we deal with the litigation and why this is still an important topic, this isn't going away anytime soon, I think, even if there's something that the Fifth Circuit doesn't like about what the FTC did, they will probably correct that and there will be a rule and it may not look too much different than what you have in front of you right now. We'll then talk about the history and the events leading up to the rule, which started a long time ago with the enactment of Dodd-Frank. We'll talk about the scope of the rule, who's covered by it, who's not covered by it, and key definitions that you have to understand, and then we'll talk about misrepresentations that are prohibited under the rule, new disclosure requirements on dealer advertising and sale communications, how the final rule impacts the sale of add-on products.

And then, item eight, really important for those of you that are sales finance companies as distinguished from dealers, those of you who buy retail installment sale contracts, well, you're not covered by the rule as such. We'll explain to you how the rule nevertheless can affect you in a very significant way. And then finally, we will wrap it up talking about best sales practices for auto sales finance companies to help navigate the new requirements. And, if you are a bank, let me just say at the outset, while this rule deals with non-banks that are supervised... Not supervised, but regulated by the FTC, banks can be affected by this indirectly. And we'll explain why later in the program.

So, let me now turn to who's going to be talking to you today. And, we have a very special guest, Rick Hackett. I've known Rick, I think, probably for 30 years, maybe even longer than that. He has practiced in the area in private practice initially, more recently, former assistant director of the CFPB, responsible for auto finance regulation. He currently serves on the board of F&I Sentinel, which supports lender compliance in the auto F&I industry. This is the first time Rick has been on one of our webinars, but he has been on a podcast that we did when the proposed rule was first published.

I'm also very pleased to be joined today by my colleagues, John Culhane, Mike Guerrero, and Brian Turetsky. John's compliance practice in this area of law involves counseling clients on the development and implementation of motor vehicle sales and lease financing programs, and includes counseling on add-on sales, fair lending, credit reporting, and other servicing and collection issues, his regulatory defense practice includes preparing clients for state agency and CFPB compliance exams as well as assisting in the defense of consumer class actions, attorney general investigations, and other agency enforcement actions, particularly those that challenge dealer pricing, credit reporting, repossession, and collection practices.

Mike Guerrero co-leads our firm's FinTech and payment solutions team. He has advised automotive finance companies, banks, professional sports teams, FinTech companies, and retailers on the creation of financial products and on ongoing compliance matters. He advises companies on consumer protection, consumer financial services issues, including clients that offer a point of sale, personal property financing and leasing, rent to own products, earned wage access, and installment loans. And not too long ago, he co-chaired the California Lawyers Association's Consumer Financial Services Committee. And finally, I want to introduce Brian Turetsky, who is the newest member to join our consumer financial services group. He focuses on counseling and representing clients and consumer financial services matters and compliance and regulatory matters across a wide variety of products. But he has a particular focus on auto finance matters including add-on products and unfair and deceptive acts and practices in the auto finance space. So now, let me turn the program over to Brian.

Brian Turetsky:

Thanks Alan. So, in the spirit of full disclosure, when we were initially planning the webinar, we were going to discuss potential litigation and legislative challenges to the Cars Rule at the end of the presentation. But before we even get into the history behind the rule, and its prohibitions, and requirements, and impact on auto finance companies, we wanted to address the elephant in the room and discuss the fact that the FTC was taken to court the day after the rule was published in the Federal Register. The end result of which was a decision by the commission last week to postpone the rules effective date. The litigation that led to the FTC's decision to stay what should have been a July 30th effective date was a petition that Alan mentioned filed by the National Automobile Dealers Association and the Texas Automobile Dealers Association seeking judicial review of the rule.

Now, under the FTC Act, any interested person can file a petition within 60 days after promulgation of a rule to ask for this type of judicial review. And, that can be filed in the court of appeals for either the District of Columbia or for the circuit in which the person resides, or as their principal place of business. Now usually, we see these petitions filed in the DC circuit, but NADA and the Texas Auto Dealers filed this one in the Fifth Circuit, which as Alan mentioned happens to be the same circuit that's sided with the Community Financial Services Association in its challenge against the CFPD challenging its constitutionality of its funding.

So presumably, it's a more friendly forum for the petitioners. In that petition, the petitioners challenged the rules on the grounds that it's arbitrary, capricious, and abuse of discretion, and was promulgated without observance of procedure required by law. They also filed a motion for a stay and for expedited consideration of the court's review in light of the substantial burden and harm to dealers to build out compliance systems and get ready to implement the rule when it may end up being struck down or changed.

The FTC, in response to this, on January 18th issued an order staying the effective date, which mooted that motion and it was withdrawn by the petitioners. And, in that order, the FTC says the petitioner's arguments are mischaracterization. So, it basically says, "We disagree." But they conceded that in the interest of the justice, the rules should be stayed for now. The FTC also filed an unopposed motion for expedited consideration, which the court granted yesterday. The court's order agreeing to expedite the case is very succinct. And the FTC in its motion had proposed a briefing schedule that's not actually incorporated explicitly or implicitly in the court's order. But, assuming that the parties stick to that schedule, the matter should be fully briefed by mid-June and oral argument should take place at some point this summer.

So, potentially, you may still have a final rule that's effective by the end of the year. Why are we still proceeding with this webinar if all of this is on hold? The requirements are sweeping. And the FTC in its order staying the effective date mentioned that it thinks that it's really only going to result in a delay of a few months. So, initially, the rule was announced in December, the final rule, and it was published on January 4th. The effective date was July 30th. So there are a little more than seven months from issuance until it was effective, which is a very tight timeframe. And right now, nobody knows how much time anybody will actually have before it's effective if the court sustains the rule. It's not a given that it's going to be seven months, it's not a given that it'll even be six months. So it could be a fire drill to come in a compliance with this rule if it's upheld.

So, it's really not too early to start to think about the impact and the requirements of the rule. And, as we're going to discuss, a lot of what's in the rule is going to look familiar to a lot of you, because it's really the regulatory expectations of the FTC and the CFPB specifically around what constitutes an unfair or deceptive practice when it comes to certain auto sales practices. So, even before it's enacted, it gives us a roadmap for those expectations. I wanted to very briefly address some of the legislative challenges. There's already a buzz in the house about zeroing out funding in the appropriations process for the implementation of the rule. But, I think more importantly we also expect a challenge under the Congressional Review Act. And there may be traction for a CRA challenge, because concern about the impact of the rule on dealers and the scope of it may be something that has bipartisan appeal.

There's also a bill in the Senate called the FTC Redo Act, which stands for Review of Expensive and Detrimental Overregulation Act. In my next life I want to come back as the person who gets to name all of these pieces of legislation. This, I think, is notable, because it really takes aim at some of the procedural issues that NADA takes issue with in its petition, namely a lack of quantitative support, testing, economic analysis before propagating the rule. The bill would mandate that all of those are requirements for any future rulemaking, and also require an advanced notice of proposed rulemaking which did not occur here. And that's one of the procedural issues that the petitioners take issue with in their petition for review. So, before a rule could be finalized, implemented and enforced, the FTC would need to go through all of those steps. With that, I'm going to hand this off to Rick who's going to get us back on track by actually talking about the rule and how it came about. Rick?

Rick Hackett:

Thanks, Brian. And before I launch into hopefully a quick historical context, I want to thank you and Alan especially for inviting me to the Rolling Stone of legal webinars. I've always wanted to be on the cover. I think it's useful to look at this rule in the context of the history of regulation of auto dealers in the last 12, 14 years, because I think that the policies and the people involved tend to keep showing up and they will inform where this goes next. So this is just a quick history. So in 2010, Dodd-Frank was enacted and surprisingly because it exempted the third-largest form of consumer credit from regulation, at least at origination in the auto dealerships, and at the same time as a trade-off, it gave a special authority to the FTC, which they're using in this rule to enact rules under section five, the unfair and deceptive acts and practices rule or statute, with respect to auto dealers.

Now, it is useful context to understand that the future leadership of the bureau was involved in providing arguments to the legislature as to why that would be a silly idea, exempting car dealers and how important and risky to consumers the auto loan origination process could be. Be that as it may, when I showed up in 2011, we didn't have authority. The FTC had authority. There was a general MOU signed, memorandum of understanding, on cooperation between the two entities. But, what I didn't see, and I did talk to the FTC appropriate people, was any interest in issuing a rule under this authority. And that was 2011. 2012, the FTC held some round tables and did some qualitative surveys regarding auto retailing, but did not do any

quantitative analysis of the scope or extent of alleged unfair deceptive practices in auto retailing. And then, the issue went away at the FTC.

In 2013, CFPB showed its, as I've suggested, ingrained discomfort with the origination process for auto loans in the auto finance discrimination initiative that I participated in to apply pressure to the auto retail loan process and the retailing process, in particular the markup of auto finance rates. All that time, by the way, my friend, Rohit Chopra, was there working with me and with primarily the issue of student lending, but also very much involved in everything that markets section was doing.

In 2018, Rohit having left the bureau and worked for a while at ED, became a commissioner of Federal Trade Commission, and was a very vocal member with respect to consumer protection. In 2021, Rohit Chopra became the director of the CFPB. So it moved from commissioner of the FTC to director of the CFPB, which perhaps by coincidence started turning up the heat of the servicing of add-on products by lenders under the CFPB jurisdiction. Literally, a few months after Rohit had left the FTC, the FTC proposed the Cars Rule that we're talking about today with particular focus on add-on products. We now are in a situation where we have the final rule, but its effective date has been stayed, because I think as the commission anticipated, litigation was always going to happen.

So what's my takeaway from this? In the DNA of CFPB is a concern about auto finance product originations. The people involved are the people who have moved through the CFPB and over at the FTC, which then took action on an issue it had initially for 10 years not wanted to take any action on. And now, those folks are back at the CFPB. The tea leaves that I read are that the CFPB is very well aware of the issue with add-on products in origination, and it will show up to the extent of the bureau's jurisdiction in the supervisory process as it has already showed up in the servicing over several years now. So we already know about servicing of add-on products being of great concern in the supervision of lenders.

So what are we talking about for this rule? Let's talk about some key definitions. Who and what is covered? Well, we're first talking about covered motor vehicles, which is a self-propelled vehicle designed for transporting persons or property on a highway, street or road. It should be obvious to you that it does not include boats, or trailers, or sliding campers, but because of vehement comments, for some reason, exclusion from the definition that didn't cover it was provided. And meaningful definitions are provided for motor homes, motorcycles, scooters, electric bicycles, and golf carts. Basically, it's cars and trucks that you finance. And, what dealers are covered? Well, I read this definition from the bottom up. The subsection three is the definition in 1029 of the dealers that the CFPB does not have jurisdiction over and the FTC does. Frankly, I don't know how you can be a dealer with either taking ownership or physical custody of a vehicle. Interestingly, the licensing requirement, so you have to be predominantly engaged, take ownership or custody, and have a license to be covered.

Theoretically, both excluded products, add-on products that are provided by a manufacturer, more importantly, might include the more recent direct to consumer sales of automobiles themselves, think Tesla. But, that was discussed in some of the comments. This is where the commission decided to land. So, you have a dealer who's predominantly engaged, has a license, and he is dealing vehicles that are self propelled and on the road. Clearly and conspicuously, this is used in connection with numerous disclosures that we'll talk about in just a few minutes. And I've parsed it, because it takes up a whole page. Hang onto these ideas, it's difficult to miss and it's easily understandable. And then, in six very detailed rules, your takeaways are, it's in the same medium or channel as related information. So, if it's an auditory radio disclosure, well it's going to be an auditory. If it's written, it's going to be written. And then, specifically, if it's TV or similar, you have to use both at the same time.

So you can't just flash up a quick disclosure in a TV ad for, "Buy an X, Y, Z car for 3.99." You have to then put the disclosable information in your oral presentation. Visuals must stand out. The volume, speed, and cadence must allow of... An oral disclosure must allow the consumer to hear and understand. That's addressed in part to what I call the screamer truth and lending disclosures that happen on a lot of local ads. Electronic disclosures must be unavoidable, that's going to ban your clickthroughs. And language must be understandable to ordinary consumers. And, critically, but very consistent with everything the FTC has said about deception, the disclosure must not be contradicted, or mitigated by, or inconsistent with anything else in the communication that triggers the disclosure.

So, we're going to talk later on about add-on products. What's an add-on product? It's anything that is not provided to the consumer or installed in the vehicle by the manufacturer, and for which the dealer directly or indirectly charges the consumer. I'm going to flag directly, indirectly, because there are a lot of products in the auto retailing business that are free, a word that all of you should be afraid of in the context of the FTC. Next slide gets me to the next presenter.

Brian Turetsky:

Thanks, Rick. So, section 463.3 of the Cars Rule makes it a UDAP under section five of the FTC Act to make a misrepresentation expressly or by implication regarding material information about 16 different categories of a motor vehicle sales transaction. Material is defined to mean likely to affect a person's choice or conduct, so it's very broad. These prohibitions are intended to prevent UDAPs under the disclosure and the add-on provisions of the rule, which we're going to discuss in more detail later. The 16 categories include prohibitions against misrepresentations about pricing and financing terms across a broad category. So, these include the cost or terms of purchasing, financing, or leasing a vehicle. And, this is addressed in the disclosure section of the rule as well, which requires specific disclosure throughout the sales process. Also prohibits misrepresentations about any cost limitations, benefits, or other aspect of an add-on product or service. We're also going to discuss that at length later, because it's clear that add-on products are one of the main targets of this Cars Rule.

The third category is whether the transaction is for financing the purchase of the car or for a lease, which you would think is already clear under TILA and the FTC within the comments to the rule seems to concede that it is, but that they don't really feel there'd be any customer harm with layers of disclosure. So, that remained in the final rule. The next category is the availability of any rebates or discounts included in the advertised price but not available to all consumers. We've seen this one in FTC actions, enforcement actions alleging that dealers failed to offer all available cash rebates to a customer. So they advertised a price, it was contingent on a rebate being included, and then when a consumer came in to purchase the car, the price was higher because the rebate wasn't available to them.

And then, the availability of vehicles at an advertised price. And, this prohibition includes misrepresentations from a dealer telling a consumer that a vehicle is already reserved for another customer or that they need to purchase it soon because there's only one car left and there may actually be 100 cars on the lot, but they're trying to pressure in the eyes of the FTC by making that misrepresentation. The next category is a prohibition on misrepresentations about whether a consumer is pre-approved or guaranteed any product, service, or term. This is targeted at dealer representations along the lines of, "We finance anyone." Or, "No credit rejected." Or, "We accept all credit." When in fact that may not be true. Also prohibited are misrepresentations about a consumer's application information. So, this could include income information that's different with the consumer actually told the dealer, changing the down payment amount from the amount the consumer actually paid, or representing that the vehicle is being sold or leased with add-on products that it didn't actually include.

And again, all of this comes out of UDAPs that the FTC has found in the past. The next two prohibitions deal with when exactly a transaction is final or binding. These are aimed at spot delivery and yo-yo financing, which is what regulators have labeled situations where a dealer delivers a vehicle to the consumer on the spot before the financing or releasing has been finalized, leading, they say, a customer to confusion. The consumer is still negotiating the transaction although they may not realize it, so they have to return the vehicle if they don't agree to the actual final terms or regulators are concerned and they also may feel pressured into an agreement because they thought they were done, and now they have finalized the terms. The FTC didn't go as far as requiring a finality clause within the agreement with the customer, which is good on the one hand, but it also punts to the dealers as to how exactly you document the finality of a transaction in a transaction.

Obviously, the conversation continues for some time before it's final. And then, a related prohibition prevents dealers from keeping down payments, or trade in vehicles, or charging fees and scenarios where the transaction hasn't actually been finalized, which again, comes out of what the FTC views as scenarios that they've seen before from dealers. Next is the prohibition for misrepresenting whether a dealer will pay some or all of the financing or at least on a trade-in. Representations like this have long been a focus of the FTC and they've found UDAPs when it doesn't actually occur. When a consumer is told that, "We will finance your trade-in or pay off your existing lease or car payments." And then, that doesn't actually occur for a particular transaction.

The next prohibition concerns misrepresentations about whether a dealer has received endorsements, including manipulation of consumer reviews. And, on the next slide, related to this is whether the dealer or their products or services are endorsed or somehow associated or affiliated with the government or the military, specific callouts to the Department of Defense. The FTC believes a lot of reviews online about the car buying experience and customer satisfaction are bogus. That seems to be what the impetus for this prohibition is. Not quite sure what the support for that is. But, this rule would prevent a fake review, which would inflate the 4.7 out of 5 stars that a particular dealer may get off of reviews available online, and therefore in their mind be material to a consumer's decision to go to that particular dealer.

The second prohibition regarding government affiliation really addresses a regulatory focus we've seen across agencies on protecting service members. The CFPB, DOJ, and the FTC have all taken steps and taken action where they believe that sales or advertising your military bases is taking advantage of military customers. And, one theme that runs through some of those enforcement actions is a perceived affiliation with the military and the dealer. The next prohibition concerns sweepstakes. And, the FTC is vigilant when it comes to representations and accuracy of representations about prizes and sweepstakes. So, the Cars Rule joins as just the latest FTC rule that prohibits misrepresentations about them. So you can't say you're going to win a prize to induce somebody to come into the dealer, and then that doesn't actually happen.

And then, finally, the rule prohibits misrepresentations about any territorial restrictions about where you can take the vehicle once you purchased it, when a vehicle can be repossessed, and any of the required disclosures that are required by the act. So, we're going to talk about those next, but failure to provide those or misrepresenting any of those disclosures will also be a UDAP under this section. All of these misrepresentations, again, are UDAPs for the dealer. Later on, Mike is going to discuss how these also present an issue from the perspective of a finance company, which somehow is going to need visibility into all of this. Again, as Rick mentioned, all of these are prohibitions on the dealer. So, gaining comfort as the purchaser of an installment contract when you weren't involved in these negotiations or representations is going to be a challenge to make sure that the dealer complied and didn't run afoul of any of the prohibitions.

And, before I finish, I would just note, we've seen a lot of this before in the FTCs enforcement actions, especially around prices, fees, terms, and especially add-on products. One thing that's interesting is the FTC did not include any prohibition in any version of the rule about dealer markups, such as requiring dealers to provide the same markup rate to all consumers beyond the underwritten financing on the installment contract. That's not in the rule, but I would just note we expect the FTC will continue to target dealer markups under eCOA and section five of the FTC Act. With that, I will pass it off to John.

John Culhane:

Thanks, Brian. So I'm going to talk about disclosure requirements on dealer advertising and sales communications. Let me start with some general observations about what's happened here. Three things I'd like to comment on. First, just in general, industry organizations and dealers were pretty uniform in criticizing various aspects of the disclosure requirements on the grounds that they're vague, or complex, or burdensome, or even that they conflict with federal and state laws that require other disclosures. The FTC gave all of these comments the back of its hand. It seemed to have no difficulty concluding that none of its requirements are vague. And here, I think, what we're all concerned about are requirements that you not do anything directly or indirectly in particular to not do anything indirectly, whatever that means, that its requirements are not complex, they're not burdensome, and of course, they're consistent with other federal and state laws. And, in the FTCs view, largely repeating requirements that have been established through agency, enforcement, and supervision, both by the FTC and the CFPB.

The second thing I'd like to point out is, we're talking about new disclosure requirements on dealer advertising and sales communications, but the FTC did not provide a definition of advertisement, nor did it provide a definition of communications. And, when we talk about some of the other implications with other laws, we'll come back to this, because we don't really know where the boundaries are for an advertisement or a communication. Presumably, we're taking at least that part of Regulation Z that defines an advertisement as a commercial message in any medium that promotes a sales transaction, maybe a sales and financing transaction. And, communications presumably is more specific and relates to the communication or delivery of information to a potential buyer of a vehicle through any medium whatsoever.

Again, we don't have express definitions. The last thing I want to note is, there are a lot of nuggets of information scattered through the supplementary information to this rule. The FTC typically does not provide commentaries, unlike the Federal Reserve Board or the CFPB. And, while they may supplement this at a later date, there's nothing really to point to now. So, it's very important to look through the supplementary information and I'll call out a few things as we go along. So, what are we talking about here? We're talking really about trigger terms for advertisements and communications. And, the new disclosure requirements that are placed on dealers relate to disclosing an offering price, saying that add-ons are not required, disclosing what the car will actually cost, the total of payments and consideration, which is the down payment or any trade-in, and disclosures that are required when comparisons are made about monthly payments that might be available.

Disclosures must be clear and conspicuous as Rick pointed out, there's a lot of elaboration on what clear and conspicuous means, much more than we typically see in agency rulemaking. So, it's very important to keep those requirements in mind, make sure that the disclosures are difficult to miss and easily understandable. So let's start with the first disclosure requirements. Dealers have to provide the offering price and a number of circumstances. And, the offering price is the full cash price for which the dealer will sell or finance, but dealers are permitted to exclude required government charges. This is an interesting development, given the focus on government charges like taxes and calling them junk fees with advertisements of airline tickets. But there's quite a variation in government fees here that could apply here. So, I think this makes sense. Again, the offering price is the full cash price, but you can exclude required government charges.

The offering price has to be provided in three specific situations in any advertisement that references a specific vehicle. Now, if there's an inquiry to the dealer... This is one of the things from the supplementary information. If a consumer asks, "Do you have a particular vehicle in stock on your lot?" That's not considered to be a reference to a specific vehicle. It's more a generic question about inventory. So, that doesn't trigger the requirement. Now, it also has to be disclosed in any advertisement that represents any monetary amount or financing term for any vehicle. And finally, it has to be disclosed, not in advertisements, but in communications with a consumer that include a reference either regarding a specific vehicle or any monetary amount or financing term for any vehicle. And, with regard to communications with regard to a specific vehicle, the offering price has to be disclosed in the dealer's first response regarding the specific vehicle for the consumer.

So that's a disclosure that's presumably triggered by an inquiry, or question, or comment on the part of the consumer buyer. And then, if there's communication or response in writing, the offering price has to be disclosed in writing. So let's go on and talk about add-on products. The disclosure for add-on products is pretty clear. And, again, Rick provided the definition of add-on products. If add-on products are optional, then any representation whatsoever expressly or by implication directly or indirectly about an add-on product or service requires the disclosure that the add-on is not required and that the vehicle can be purchased without the add-on if true, and if the representation's in writing, the disclosure also has to be in writing. Another disclosure that's triggered is the disclosures about the total payment and consideration. And these are triggered by representations, presumably advertisements or communications, about a monthly payment for a vehicle.

So if you're the dealer and you want to talk about a monthly payment, then you have to disclose the total amount the consumer will pay to purchase or lease the vehicle at that monthly payment after making all scheduled payments. If the representation's in writing, the disclosure has to be in writing. And, if the total disclosed amount assumes that the consumer is going to provide consideration of some sort, for example, a cash down payment or a trade-in, then the dealer must disclose the amount of consideration that's going to be provided by the consumer. Now, here, directly or when asked about what indirectly advertising a monthly payment amount might be, the FTC posited a dealer trying to get around this disclosure rule by disclosing instead of monthly payments, some form of biweekly payment or some other payment schedule. And, presumably given that those amounts could be added together to get a monthly payment amount, that would be an indirect disclosure of a monthly payment. Again, if the representation is in writing, the disclosure must be in writing.

There's an expectation that a lot of these disclosures are going to have to be given in communications, so they're going to have to be given orally, and we'll talk at the end about best practices to make sure that that's actually happening. Finally, there's a disclosure requirement that's triggered by monthly payment comparisons. So, if the dealer is talking about financing and talking about a particular monthly payment amount and then indicates that a lower monthly payment amount would be available or could be available, then a specific disclosure is required, not surprisingly, that if you pay less, then that's likely to increase the total amount you'll have to pay to purchase the vehicle if true. Keep in mind that this seems to be a disclosure triggered by a generic discussion, because if you disclosed a specific lower monthly payment amount, that would trigger the requirement to disclose that we just talked about the total amount required to be paid in any consideration.

Alan Kaplinsky:

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