

## CFPB Watch for Auto Dealers

May 31, 2016 | [Michael A. Benoit](#)

The Consumer Financial Protection Bureau announced that it has rolled out a new website - you might want to check it out. The CFPB also announced a few leadership position changes. Elsewhere, the CFPB seemed to be fixated on areas other than auto financing and leasing, namely arbitration. We found a couple of items that were not expressly related to auto financing and leasing but might be of interest to those in the auto sales, finance, or leasing business. Things were a bit livelier over at the Federal Trade Commission, as you'll see throughout the items below.

**FTC Targets VW Ads.** On March 29, the FTC charged that Volkswagen Group of America, Inc., deceived consumers with an advertising campaign promoting its supposedly "clean diesel" VWs and Audis, which, the FTC has alleged, Volkswagen fitted with illegal emission defeat devices designed to mask high emissions during government emission tests. The FTC is seeking a court order requiring VWG to compensate consumers who bought or leased affected VWs between late 2008 and late 2015 and an injunction to prevent the company from engaging in such acts again.

**And Not Just VW's Ads.** On April 18, the FTC issued an enforcement policy statement on deceptively formatted advertisements, including advertising and promotional messages integrated into and presented as non-commercial content. The statement lists principles of general applicability on which the FTC will rely in determining if any particular advertising format is deceptive, in violation of Section 5 of the FTC Act. The statement summarizes the principles underlying the FTC's enforcement actions, advisory opinions, and other guidance that address various forms of deceptively formatted advertising. The FTC will find an advertisement deceptive if it misleads reasonable consumers as to its nature or source and the misleading impression is likely to affect consumers' decisions or conduct regarding the advertised product or the advertising. Friendly suggestion: Review your website!

**FTC Privacy Confab.** The FTC announced that it will host a second PrivacyCon event to take place on January 12, 2017. PrivacyCon is designed to expand collaboration among leading researchers, academics, industry representatives, consumer advocates, and the government to address the consumer privacy and security implications of emerging technologies. The FTC has published a call for presentations for the event.

**As We Bid a Fond Farewell to Arbitration.** Fulfilling industry's expectations, the CFPB on May 5 issued a proposed rule limiting mandatory arbitration clauses in a wide variety of contracts. The CFPB is seeking comment on a proposal to prohibit companies from using class action waivers in pre-dispute mandatory arbitration clauses with consumers. Companies would still be able to include arbitration clauses in their contracts, but for contracts subject to the proposal, the clauses would have to say explicitly that they cannot be used to stop consumers from being part of a class action in court. The

proposal provides the specific language that companies must use. The proposal also requires companies with arbitration clauses to submit to the CFPB claims, awards, and certain related materials filed in arbitration cases to allow the Bureau to monitor consumer finance arbitrations to ensure that the arbitration process is fair for consumers. The Bureau is also considering publishing this information in some form so the public can monitor the arbitration process as well. The CFPB will evaluate the comments and issue a final rule, but industry observers predict that the final rule will reflect this proposed rule.

**CFPB Targets Debt Collectors.** On April 25, the CFPB announced that it obtained consent orders against Pressler & Pressler, LLP, a debt collection law firm, and New Century Financial Services, Inc., a debt buyer, for unfair and deceptive collection practices, in violation of the Fair Debt Collection Practices Act and the Dodd-Frank Act. Specifically, the CFPB alleged that the defendants filed collection lawsuits against consumers without sufficiently verifying the validity of the debts, did not properly respond to consumer disputes of the debts, and relied on an automated claim-preparation system and non-attorney support staff to determine which consumers to sue. The orders require Pressler to pay a penalty of \$1 million and New Century to pay a penalty of \$1.5 million to the Bureau's Civil Penalty Fund.

**Color the FTC Curious about Marketplace Lending.** Marketplace lenders are a fast-growing credit sector offering new ways for many consumers and small businesses to secure credit. Marketplace lenders are typically online financial platforms leveraging technology to reach potential borrowers, evaluate creditworthiness, and facilitate the extension of credit. If you have attended an industry conference lately, you have heard about these companies and have heard musings about how they might disrupt, or at least change, the world of auto financing. On April 14, the FTC announced that it will host a forum in Washington, D.C., on June 9 to explore marketplace lending and its implications for consumers. This forum is the first in a series of FTC events looking at consumer protection across different areas of emerging financial technology. The forum will examine the various models used by companies in this area, potential benefits to consumers, and possible consumer protection concerns and will look at how existing consumer protection laws might apply to companies participating in this space.

So, there's this month's report. See you next month.

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