

## **New Federal Credit Regulations Impacting Dealers**

Dealers should be aware of several important recent credit developments. First, as part of its ongoing implementation of the FACT Act of 2003, the Federal Trade Commission (FTC) has issued three more final rules impacting dealers.<sup>1</sup> The most significant, the FTC “Red Flags” Rule, will require dealers to develop comprehensive procedures to prevent identity theft. Second, the Federal Reserve Board (FRB) has issued final rules establishing uniform standards for making disclosures to consumers electronically under several regulations, including Regs B, M, and Z. Finally, on a more favorable note, the Department of Defense (DOD) has adopted a NADA requested clarification that excludes dealership financing from several new restrictions on credit extended to service members and their families.

We have set forth below a very brief description of each of these rules. NADA will issue more in depth guidance well in advance of each rule’s final compliance date.

### *New FACT Act Rules*

#### 1) FTC Red Flags Rule

This extensive new rule generally requires creditors and financial institutions to: (i) develop a written Identity Theft Protection Program that contains reasonable procedures to identify, detect, and respond to "red flags" indicating the possibility of identity theft; (ii) update the program periodically to reflect changing identity theft risks; (iii) train staff who implement the program; (iv) exercise appropriate oversight of service providers; and, (v) involve the board of directors, a committee of the Board, or a senior management employee in approving the initial written program and implementing and administering the program thereafter. Dealership staff who are responsible for administering the program must provide the Board or its designee with an annual report detailing the dealership’s compliance activities.

#### 2) FTC Address Discrepancy Rule

This related rule generally requires users of credit reports who receive a notice of address discrepancy from a credit reporting agency (which credit reporting agencies must send to users when there is a substantial difference between the consumer address the user provided when ordering a credit report and the address the credit reporting agency has on file for the consumer) to develop and implement reasonable procedures to verify the identity of the consumer for whom the notice was sent.

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<sup>1</sup> This is in addition to several other FACT Act duties already in effect, including: Victim Requests for Records (6/2/04), Fraud and Active Duty Alerts (12/1/04), FTC Disposal Rule (6/1/05), Prescreening Opt-Out Format Rule (8/1/05), Medical Information Rule (Reg FF)(4/1/06), and Truncation of Credit & Debit Card Numbers (bifurcated implementation dates -- 1/1/05 and 12/4/06). For information on these rules, see [www.nada.org/factact](http://www.nada.org/factact). As of this date, the FTC and the Federal Reserve Board have not proposed a joint rule implementing the Risk Based Pricing Notices requirement contained in section 311 of the FACT Act.

Although the foregoing two rules take effect January 1, 2008, compliance is not required until November 1, 2008. The final rules for each are available at: [www.ftc.gov/os/2007/10/r611019redflagsfrm.pdf](http://www.ftc.gov/os/2007/10/r611019redflagsfrm.pdf).

### 3) FTC Affiliate Marketing Rule

This intricate rule generally requires a business's customers to be offered the opportunity to "opt-out" of receiving solicitations from the business's affiliates (meaning any company that is related to the business by common ownership or corporate control). This limitation on an affiliate's ability to use information it receives about a business's customers is in addition to the existing Fair Credit Reporting Act limitation on a business's ability to share certain information about customers with its affiliates in the first place (consumers also have the right to opt-out of such information sharing). Dealers may consolidate the opt-out notices for sharing and using this information (along with the opt-out notice required by the FTC Privacy Rule if triggered by the dealership's disclosure practices). Although the Affiliate Marketing Rule takes effect January 1, 2008, compliance is not required until October 1, 2008. The final rule is available at: [www.ftc.gov/opa/2007/10/affiliate.shtm](http://www.ftc.gov/opa/2007/10/affiliate.shtm).

#### *New Amendments to Regs B, M, and Z*

The FRB has issued new rules clarifying the requirements for providing disclosures to consumers in electronic form under several of its regulations, including Regs B, M, and Z. Although the final rules take effect December 10, 2007, compliance is not required until October 1, 2008. The rules are available at:

Reg B - <http://edocket.access.gpo.gov/2007/pdf/E7-21697.pdf>

Reg M - <http://edocket.access.gpo.gov/2007/pdf/E7-21699.pdf>

Reg Z - <http://edocket.access.gpo.gov/2007/pdf/E7-21700.pdf>

#### *Service Member Credit Restrictions*

Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007 was enacted to address certain abuses in the payday loan industry. It imposes several restrictions on *consumer credit* extended to active-duty service members and their dependents, including new written and oral "mandatory loan disclosures," a new APR limit, and a prohibition on items such as requiring covered members to submit to arbitration, using a vehicle title as security for a credit obligation, and refinancing credit that the creditor initially extended to the consumer.

To ensure that dealership financing of new and used vehicles was excluded from the new restrictions, NADA sought and obtained from DOD the following clarification in the final rule: "For purposes of this part, *consumer credit* does not mean... (ii) Any credit transaction to finance the purchase or lease of a motor vehicle when the credit is secured by the property being purchased or leased." Consequently, dealer extended credit and lease agreements will not be impacted by the new DOD restrictions.