

What We Know

ARTICLES & INSIGHTS

ABOUT THE AUTHOR



[Caren Enloe](#) leads Smith Debnam's consumer financial services litigation and compliance group. In her practice, she defends consumer financial service providers and members of the collection industry in state and federal court, as well as in regulatory matters involving a variety of consumer protection laws. Caren also advises fintech companies, law firms, and collection agencies regarding an array of consumer finance issues. An active writer and speaker, Caren currently serves as chair of the Debt Collection Practices and Bankruptcy subcommittee for the American Bar Association's Consumer Financial Services Committee. She is also a member of the Defense Bar for the National Creditors Bar Association, the North Carolina State Chair for ACA International's Member Attorney Program and a member of the Bank Counsel Committee of the North Carolina Bankers Association. Most recently, she was elected to the Governing Committee for the Conference on Consumer Finance Law. In 2018, Caren was named one of the "20 Most Powerful Women in Collections" by *Collection Advisor*, a national trade publication. Caren oversees a blog titled: [Consumer Financial Services Litigation and Compliance](#) dedicated to consumer financial services and has

CFPB Enters Consent Order with Buy Here Pay Here Auto Dealer

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In its first enforcement order of the year, the CFPB took aim at the financing practices of a *buy here pay here* auto dealer. "Buy here pay here dealers" sell the car and originate the auto loan without selling it to a third party.

The CFPB in its press release noted the dealer engaged in abusive financing schemes, hid auto finance charges and misled consumers. The consent order requires the dealer pay \$700,000.00 in restitution to consumers and levies a civil monetary penalty of \$100,000.00 on the dealer. The civil penalty has been suspended based upon the dealer's inability to pay. Additionally, the CFPB once again sets forth specific remediation requirements that those in the auto industry should review carefully and always consider.

According to the findings, which are set forth in the Consent Order and are neither admitted nor denied by the dealer, the dealer sold used cars and provided onsite financing to consumers. According to the Consent Order, 98 percent of all purchases were financed onsite and over a two-year period, the dealer offered auto-financing to approximately one thousand people per year. The dealer required consumers to complete credit applications before being shown any cars. Once the dealer determined the monthly payment the consumer could afford, the dealer would only show the consumer vehicles in the dealer's inventory that met the monthly payment ability of the consumer. None of the cars on the lot displayed purchase prices and the purchase price was not disclosed to the consumer until after the consumer had test driven the car and was ready to purchase the car. The dealer required that, as a condition of providing financing, the consumers agree to purchase a \$1,600.00 service contract and a \$100.00 GPS payment reminder device. As part of the dealer's regular practice, the dealer would not negotiate the purchase price of the car with finance customers, though the dealer would negotiate purchase prices with cash customers. Put simply, customers who obtained financing were treated differently by being required to pay full price, purchase a service contract and a GPS reminder device.

Pursuant to the Consent Order, the dealer violated the Truth in Lending Act, as well as the Dodd-Frank UDAAP provision as follows:

been published in a number of publications including the Journal of Taxation and Regulation of Financial Institutions, California State Bar Business Law News, Banking and Financial Services Policy Report and Carolina Banker.

- The amounts charged for the service contract and GPS payment reminder device were finance charges because they were charges payable directly or indirectly by the consumer and imposed by the creditor as an incident or condition of the extension of credit. By requiring credit consumers to purchase the same but not cash consumers, the dealer imposed a finance charge and therefore needed to disclose the same as a cost of credit. By failing to do so, the dealer's inaccurately disclosed the finance charges and APR;
- The CFPB additionally considered the fact that credit customers were required to pay the full price of the car, but cash customers were often provided with discount purchase prices, and concluded that credit customers essentially paid a markup and the same should have been disclosed as a finance charge and APR;
- The dealer's advertised APR was inaccurate as a result of its failure to take into account the costs of the required service contract, payment reminder device and "markup"; and
- The dealer's failure to post sticker prices or disclose the asking price until the consumer indicated it would purchase the car, coupled with the TILA disclosure violations set forth above, resulted in an unfair and deceptive practice because it "lured consumers with misleading advertising and then kept them in the dark about the true cost of financing the cars they were purchasing."

Auto dealers should review the Consent Order and take note of several points:

- The relative scope of the violation was minimal: 2,000 loans over a two-year period and yet, the Consent Order requires \$700,000.00 in restitution. The clear indication is that the CFPB is not limiting its focus to large players but also is focused on particular practices;
- Required charges are finance charges for purpose of the Truth in Lending Act and should be disclosed as such;
- The remediation provisions of the Consent Order should be considered as a likely expectation of the CFPB moving forward and require:
- Purchase prices are clearly and prominently displayed on all vehicles available for sale; and
- The dealer provide an initial disclosure and receive a written acknowledgement of the disclosures prior or simultaneous with offering a car to the consumer or soliciting a commitment from the consumer to purchase:
 - The make, model and VIN of the vehicle;
 - The duration of the retail installment contract
 - The timing, number and dollar amount of periodic payments;
 - The total number of payments required before the consumer acquires full ownership of the vehicle;
 - The purchase price;

- The finance charge;
- An itemization of any additional products to be included in the financing transaction; and
- The APR

Buy here pay here dealers are encouraged to review their current policies and procedures in light of the Consent Order and adjust their practices accordingly.

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