

advisory

POTENTIAL IMPACT OF PROPOSED FEDERAL RULE ON THE AUTO INDUSTRY

In an effort to address deceptive advertising, bait and switch marketing and the use of hidden add-on expenses, the Federal Trade Commission (“FTC”) recently issued a Notice of Proposed Rulemaking, which was focused on the sale and leasing of motor vehicles by dealers. If adopted in its present form, this proposed FTC Rule (“Proposed Rule”) would have a significant impact on how motor vehicles are sold, leased and financed by dealers. Some of the major issues addressed in the Proposed Rule include the following:

Increased Breadth of FTC Authority

The FTC’s power and authority to seek substantial civil penalties would be expanded to include certain additional activities. In some cases, these fines could exceed \$40,000.

Enhanced Disclosure Requirements

The Proposed Rule would also require that dealers make additional disclosures to consumers, such as including a statement of the true offering price, which excludes only taxes and governmental fees. Dealers also must obtain “expressed informed consent” to any charges related to the sale or leasing of a vehicle. These include add-on expenses for goods and services and a statement of whether those goods and services are optional or are required to be purchased by the consumer. There must be clear, truthful and conspicuous disclosure of this information, both in writing and orally in the case of face-to-face meetings between the dealership and the customer. A list of add-on options and their costs must also be posted on the dealer’s website.

Prohibition on Certain Sales; Record Keeping

Finally, the Rule prohibits dealers from selling add-on goods or services to consumers that do not provide a benefit. For example, charging for nitrogen in the vehicle’s tires where the concentration of nitrogen is the same as the concentration in the ambient air.

The Proposed Rule would also require that dealers create and maintain for two years files documenting their compliance with the Proposed Rule.



Some Practical Considerations

The Notice of Proposed Rulemaking seeks public comment to the Proposed Rule. Comments must be submitted within sixty (60) days of publication of the Notice of Proposed Rule Making in the Federal Register. Dealers should seriously consider a careful review of the Proposed Rules and filing of comment(s) pursuant to the Administrative Procedures Act.

If you have further questions on the FTC's Proposed Rule on the auto industry or other business matters, please contact PLDO Partner William F. Miller at 508-420-7159 or email wmiller@pldolaw.com.



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