

# ***FRB Philadelphia Biennial Auto Conference***

## **Gearing Up to Protect Consumers: An Update on the FTC's Auto Work**

**July 12, 2023**

**Helen Clark | Staff Attorney, Division of Financial Practices**



# Overview

- **Introduction**
- **Enforcement Update**
- **FTC's Proposed Auto Rule**



# Enforcement Update



# Ed Napleton Auto Group

*FTC v. North American Automotive Services, Inc., et al. (N.D. Ill.)*

- Multi-state auto dealer group (~46 dealerships)
- Case focused on parent company, 8 dealerships, and GM of two IL dealerships
- Filed in partnership with the Illinois Attorney General in April 2022
- Counts:
  - FTC Act (Section 5 UDAP), state law
  - Advertising + Disclosures (TILA, state regs)
  - ECOA



# Ed Napleton Auto Group

*FTC v. North American Automotive Services, Inc., et al. (N.D. Ill.)*

- Section 5: Prohibits unfair or deceptive acts or practices affecting commerce.
- Add-on products
  - GAP insurance
  - Paint protection
  - Service contracts and warranties
- Added junk fees for these products to consumers deals even though consumers didn't want them, costing consumers hundreds or even thousands of \$\$.



# Ed Napleton Auto Group

*FTC v. North American Automotive Services, Inc., et al. (N.D. Ill.)*

- How (allegedly)?
  - Waited until the end of a long car-buying process to sneak the fees into contracts, even after consumers specifically declined them or confirmed prices without them; or
  - Falsely told consumers the add-ons were free or were required to purchase or finance the vehicle (i.e., that the financing company requires XYZ add-on).
- \$100s/\$1,000s in the amount financed, spread out over monthly payments = more difficult to detect.



# Ed Napleton Auto Group

## *Consumer vignettes & Survey*

- Told consumer that maintenance package and windshield protection came w/vehicle. Consumer lived far from dealership, and didn't need windshield protection. Negotiated discount on extended warranty. Later discovered he had been charged \$426 for oil changes, tire rotation and windshield protection, charged the full amount (\$3,937) for extended warranty. Charged \$289 for window etching without authorization. (*Section 5 unfairness*)
- Told consumer the Napleton maintenance package (2 oil changes + tire rotation) was mandatory for \$2,495. (*Section 5 deception*)
- Consumer survey: Over 80 percent of Napleton consumers were charged for add-ons without authorization or as a result of deception.



# Ed Napleton Auto Group

*FTC v. North American Automotive Services, Inc., et al. (N.D. Ill.)*

- ECOA: “It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction on the basis of race, color, religion, national origin, sex or marital status,” among other reasons.
  - Dealers are considered creditors b/c they accept applications and refer applicants to creditors (Reg B)





# Ed Napleton Auto Group

*FTC v. North American Automotive Services, Inc., et al. (N.D. Ill.)*

- Allegations: Napleton charged Black consumers more for:
  - (1) arranging their financing; and
  - (2) add-on products.
- Black customers were charged about \$190 more in interest (or 18 basis points) than non-Latino White customers
- \$99 more for similar add-ons than non-Latino White customers.



# Ed Napleton Auto Group

## *Stipulated Order*

- \$10 million judgment (redress + \$50k to IL state consumer ed fund)
- Prohibits several types of misrepresentations
- Prohibits Napleton from charging consumers except with their express, informed consent
- Prohibits Napleton from violating ECOA
- Requires Napleton to adopt a fair lending program
  - Requires non-discriminatory reasons for charging fees and interest rate markups.
  - If marking up, must clearly and conspicuously disclose that it's negotiable.



# Passport Auto Group

*FTC v. Passport Automotive Group, Inc., et al. (D. Md.)*

- Based in Maryland
- 9 dealerships around the Washington D.C. area
- Case involved 7 dealerships and two individuals (owner/President and VP)
- Repeat players (2018 case re fake recall notices)
- Filed in October 2022



# Passport Auto Group

*FTC v. Passport Automotive Group, Inc., et al. (D. Md.)*

## Main Allegations:

- Misrepresented that (1) certain vehicles were available at specific prices, and (2) certain fees were required to purchase vehicles.
- Violated both ECOA and Section 5 of the FTC Act (*unfairness*) by charging Black and Hispanic borrowers higher markups and fees than White borrowers.



# Passport Auto Group

*FTC v. Passport Automotive Group, Inc., et al. (D. Md.)*

- Advertised cars as “certified”, “reconditioned”, or “inspected” at a specific price, then added extra certification, reconditioning, or inspection fees onto consumers deals.
  - Many manufacturers *specifically prohibit* passing the cost of certification/inspection onto customers
- Falsely told consumers they were required to pay those fees.



# Passport Auto Group

*FTC v. Passport Automotive Group, Inc., et al. (D. Md.)*

- Dealer advertised a “certified pre-owned” 2018 Nissan Rogue for \$24,050. Charged \$2,390 in required reconditioning and certification fees. Consumer ended up paying \$2,390 more than the advertised price. *(Section 5 deception)*
- Dealer advertised a “certified pre-owned” 2016 CX-5 for \$19,900, but then charged a \$695 certification fee. *(Section 5 deception)*



# Passport Auto Group

*FTC v. Passport Automotive Group, Inc., et al. (D. Md.)*

Discrimination allegations (ECOA/Sec. 5 unfairness):

- Charged Black consumers, on average, \$291 more in interest than non-Latino White consumers.
- Charged Latino consumers, on average, \$235 more in interest than non-Latino White consumers.
- Maximum-allowed markup at Passport:
  - Black consumers received the max ~47% more often than non-Latino White consumers.
  - Latino consumers received the max ~38% more often than non-Latino White consumers.



# Passport Auto Group

## *Stipulated Order*

- \$3.38 million in redress
- Prohibited from deceiving consumers about prices and fees
- Prohibited from charging except with consumers' express, informed consent.
- Prohibited from violating ECOA
- Adopt a fair lending program that requires non-discriminatory reasons for charging fees and interest rate markups. Two options:
  - Flat fee
  - Charge flat # basis points (up to 100 bps) above the buy rate on all contracts





# Rulemaking Update



# Why a proposed rule? Why now?

- 81% of new motor vehicle purchases, and nearly 35% of used vehicle purchases, are financed.
- Approximately 70% use dealer-provided indirect financing.
- Motor vehicle financing is the third largest consumer credit market in the U.S., after mortgages and student loans.
- By the end of 2021, consumers had more than 111 million outstanding auto loans, and owed more than \$1.46 trillion thereon.
- Motor vehicle financing is the 3rd-largest source of debt for U.S. consumers under the age of 50, and the 2nd-largest source of debt for those 50 and older.



# Why a proposed rule? Why now?

- Recurrent problems in the industry despite enforcement efforts.
- More than 100,000 complaints in each of the past three years re car sales, leasing, financing, and service & warranties, among other issues.
- Consistently one of the top ten complaint categories.
- Level the playing field across the industry.
- Limitations on FTC's ability to return money to consumers under the FTC act directly.



# Proposed Rule Provisions

- Would prohibit specific misreps in the car buying process, such as (focusing on financing):
  - The costs or terms of purchasing, financing, or leasing a vehicle.
  - Whether the terms/transaction is for financing or a lease.
  - Whether the consumer is preapproved for any product, service, or term.
  - Any material information on or about a consumer's application for financing.
  - When the transaction is final or binding on all parties.
  - Whether or when a dealer will pay off some or all of the financing or lease on a trade-in vehicle.



# Proposed Rule Provisions

- Would require dealers to make key disclosures to consumers, including (focusing on financing):
  - Offering price (or the price of the vehicle excluding only taxes and government fees)
  - Total of payments and consideration for a financed or lease transaction when disclosing monthly payment.
  - When comparing payment options, that a lower monthly payment will increase the total \$\$ the consumer will pay, if true.
- Would require clear, written consent for any optional add-on charge
- Would prohibit valueless add-ons
- Recordkeeping – 2 years



# *FRB Philadelphia Biennial Auto Conference*

## Questions?

Helen Clark, [hclark@ftc.gov](mailto:hclark@ftc.gov)

