

Regulation V-Docket No. R-1187

Comments of the National Independent Automobile Dealers Association Directed to the Board of Governors of the Federal Reserve System.

On December 4, 2003, the President signed into law the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). Section 217 of the FACT Act amends the Fair Credit Reporting Act (FCRA) to provide that if any financial institution (1) extends credit and regularly and in the ordinary course of business furnishes information to a nationwide consumer reporting agency, and (2) furnishes negative information to such an agency regarding credit extended to a customer, the institution must provide a clear and conspicuous notice about furnishing negative information, in writing, to the customer. Section 217 further requires the Board to publish a concise model form not to exceed 30 words in length that financial institutions may, but are not required to, use to comply with the notice requirement. A financial institution is not be liable for failure to perform the duties required by Section 217, however, if at the time of the failure the institution maintained reasonable policies and procedures to comply with the section.

Since the term “financial institution” is defined broadly under Section 217 to have the same meaning as in section 509 of the GLB Act, the proposed revisions to the FCRA relating to furnishing negative information may have a significant impact on the retail used motor vehicle industry. For example, if a dealership operates as a “buy here-pay here” dealership, it enters into a retail installment sales contract with a consumer and holds the contract itself for collection. In some cases, dealerships sell receivables generated from retail installment sales at a discount to their own (i.e. related) finance company and hold and service the notes themselves. In both cases, the dealership (or its related finance company) may in the ordinary course of business furnish negative information about customers to a nationwide consumer-reporting agency.

The National Independent Automobile Dealers Association (NIADA) has represented independent motor vehicle dealers for over 50 years. The National Association and its State Affiliate Associations represent more than 18,000 independent motor vehicle dealers located across the United States. In 2002, a record 43 million used motor vehicles were retailed generating more than \$370 billion in revenues. Because vehicles are lasting longer (the average vehicle on the road today is over 8.5 years old), projections of future used vehicle sale volumes suggest that the used vehicle market will maintain its 40-million-plus volume in the years to come.¹ Therefore, NIADA is submitting these comments to indicate its support for the Board’s Proposed Rule to Amend Regulation V to include the Proposed Model Notice.

The language proposed by the Board to provide the required notice to customers prior to furnishing negative information to a nationwide consumer reporting agency benefits both consumers and financial institutions. It is easily understandable by consumers and also affords flexibility for financial institutions to comply with the notice requirement by incorporating it into another notice and to send it either prior to, or within 30 days after, it furnishes negative information.

NIADA would like to thank the Board for the opportunity to comment with respect to the Proposed Rule to Amend Regulation V to include the Model Form. Any questions the Board has regarding NIADA’s comments and the position taken herein may be directed to NIADA’s

¹ The 2003 Used Car Market Report, Manheim Auctions, 1400 Lake Hearn Drive, NE, Atlanta, GA 30319-1464.

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