



Understanding Indirect Lending Compliance: A Guide for Dealer Counsel

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Welcome & Purpose

Objective:

- Provide a creditor-side view of regulatory risk and compliance expectations in indirect auto finance.

Why this matters:

- Understand where creditor liability starts and how it is impacted by dealer conduct.
- Identify legal exposures tied to pricing, F&I practices, and financing.



Federal Regulatory Outlook

At the Federal level, change is constant...

✦ CFPB – Where are we?

- Chopra fired.
- Treasury Secretary Scott Bessent is Acting Director for less than a week.
- Russell Vought, Director of the Office of Management and Budget, becomes Acting Director over a weekend.
- Trump then nominates Jonathan McKernan to become the next permanent Director, subject to Senate confirmation.
- Fights continue in the courts over employees and funding.
- CFPB Memo. to staff outlining new Supervision/Enforcement priorities for 2025

✦ FTC – What's the latest?

- Lina Khan steps down.
- Andrew N. Ferguson is named the new Chairman.
- Trump appoints Mark Meador as FTC Commissioner to replace Khan, subject to Senate confirmation (now confirmed).
- President Trump fires two remaining Democrat FTC Commissioners.
- Alvaro Bedoya and Rebecca Kelly Slaughter sue to get their jobs back.

State Regulatory Outlook

States may now lead the way in 2025

- ✦ CFPB has shown the states the way – former CFPB Director Chopra and former CFPB General Counsel Seth Frotman published an article in the Harvard Law Journal on Legislation on January 15, 2025 titled “State Enforcement as a Federal Legislative Tool.” *Press release:* [CFPB Director Rohit Chopra and General Counsel Seth Frotman article on state enforcement as a federal legislative tool](#) and [Article - STATE ENFORCEMENT AS A FEDERAL LEGISLATIVE TOOL](#).
- ✦ CFPB also issued new recommendations and a “[Guidance Compendium](#)” of circulars, bulletins, advisory opinions and interpretive rules to the states in a blog post on Jan. 14: “[Strengthening State-Level Consumer Protections](#)”
- ✦ AG enforcement – CARS Rule vacated, but state AGs enforce UDAPs; State AGs and regulators will likely “pick up the slack” and take a more active role in enforcing the CFPB and state laws (mini-CFPBs, state AGs etc.).
- ✦ Plaintiff’s attorneys also likely to “pick up the slack”

Federal Legal Framework

What Governs Sales Finance Companies?

✦ **FTC Holder Rule:**

- FTC's Preservation of Consumers' Claims and Defenses gives consumers the right to assert claims they have against the original dealer, against the assignee or holder of the contract.
- Many states have mini-holder rules.
- Used by consumers, as well as federal & state enforcement agencies (as a defense and affirmatively).

✦ **TILA and Regulation Z:**

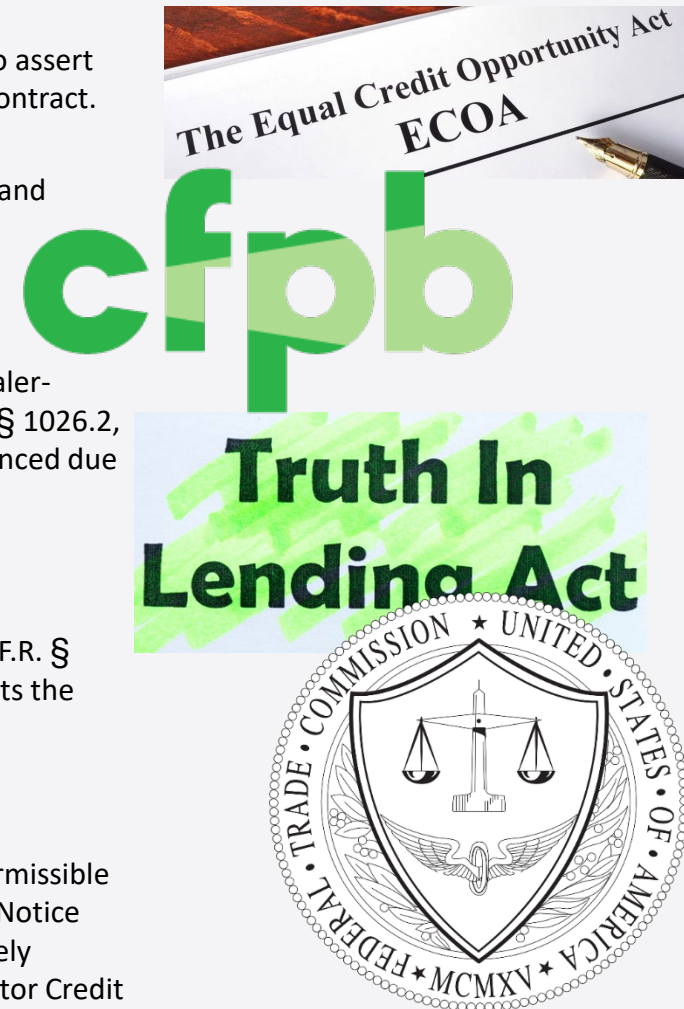
- Creditors are liable under the Truth in Lending Act, 15 U.S.C. § 1601 et seq., for dealer-originated errors in disclosures such as APR and payment schedule (see 12 C.F.R. §§ 1026.2, 1026.17). Common issues include misstatements in the itemization of amount financed due to improperly disclosed add-ons, taxes, or manipulated terms.

✦ **ECOA and Regulation B:**

- The Equal Credit Opportunity Act, 15 U.S.C. § 1691 et seq., and Regulation B (12 C.F.R. § 1002.9) apply to dealer-originated credit applications. Even when the dealer submits the application, the creditor should issue an Adverse Action Notice to applicant(s).

✦ **FCRA and Regulation V:**

- Under the Fair Credit Reporting Act, 15 U.S.C. § 1681b, creditors must ensure a permissible purpose exists for any credit report used. If creditor pulls a credit report, it has AA Notice duties. Though the credit pull may originate with the dealer, the creditor is ultimately responsible for verifying the data. See CFPB Enforcement Action against Toyota Motor Credit Corp., 2023-CFPB-0015.



State Laws

Dealer Reserve, Markups & Fees

✦ Reserve Caps:

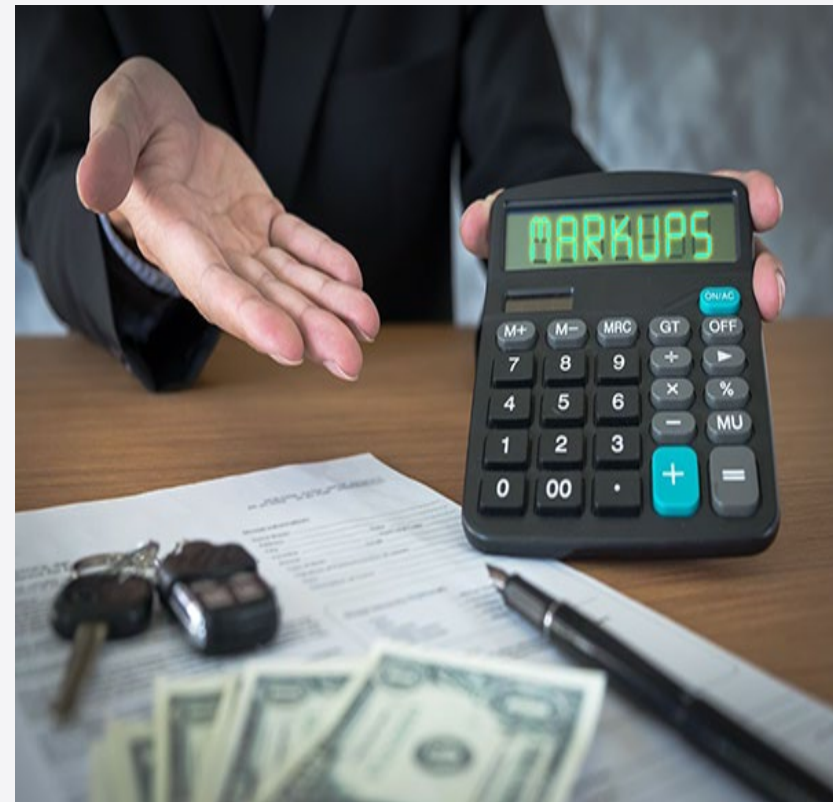
- While some states do not impose a statutory cap on dealer reserve, many creditors voluntarily limit participation to 2.5% for longer-term contracts to mitigate fair lending risk. These limits are often implemented via Dealer Agreements.

✦ Disclosure Requirements:

- Some states (e.g., California, New York) require dealers to disclose their financial interest in financing arrangements. Where not required by law, creditors often require such disclosures contractually. *See* Cal. Civ. Code § 2982.5.

✦ Fee Restrictions:

- States impose various limits on documentation and ancillary fees. For example:
 - ♦ Illinois caps doc fees under 815 ILCS 375/11.
 - ♦ California introduced its own CARS Act (SB 766).
 - ♦ State & FTC Enforcement Actions. *See* Fed. Trade Comm'n & Illinois v. North Am. Auto. Servs., Inc., No. 1:22-cv-01690 (N.D. Ill. filed Mar. 31, 2022).



Dealer Oversight

How Creditors Monitor Risk

✦ Master Dealer Agreements:

- Creditors use these agreements to enforce compliance with applicable federal and state laws, such as TILA (15 U.S.C. §§ 1601–1667f), the FTC Act (15 U.S.C. § 45(a)), and/or Consumer Financial Protection Act (12 U.S.C. § 5531). They typically authorize audits, suspension of funding, deal repurchase, or termination for non-compliant conduct.

✦ Oversight Practices:

- Includes retrospective contract audits (e.g., lookback sampling to identify markup disparities that could trigger disparate impact risk under ECOA, 15 U.S.C. §§ 1691–1691f), scoring of dealer performance (e.g., error rates, complaint trends), and mandatory compliance certifications.

✦ Common Findings:

- Violations can include 'powerbooking' (inflating vehicle equipment to increase loan-to-value), submission of falsified income or identity documentation, and failure to refund canceled ancillary products in violation of state UDAP laws. *See Consumer Financial Protection Bureau v. USASF Servicing, LLC*, No. 1:23-cv-03433 (N.D. Ga. filed Aug. 2, 2023).



Risk Signals

What Creditors Flag Internally

✦ **Powerbooking:**

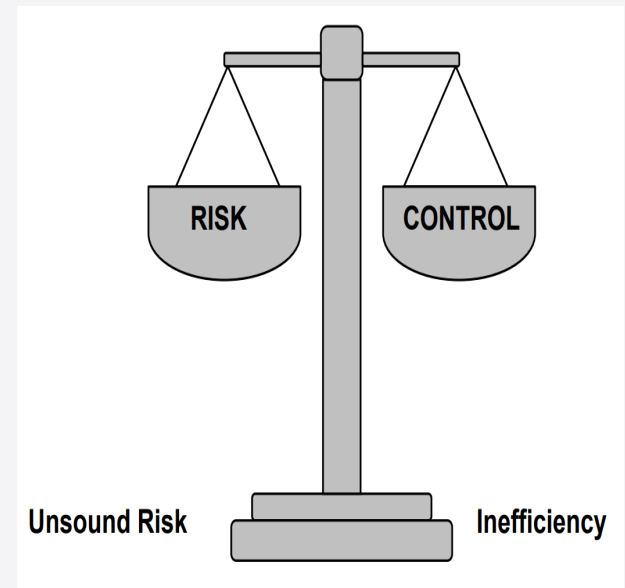
- The inflation of vehicle equipment or options to boost loan-to-value ratios, often through misrepresented aftermarket accessories or trade-in valuations. This practice may constitute a deceptive act under Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45(a). See *Consumer Financial Protection Bureau v. USASF Servicing, LLC*, No. 1:23-cv-03433 (N.D. Ga. filed Aug. 2, 2023).

✦ **Undisclosed Fees:**

- Bundling GPS devices, window etching, or service contracts without consumer consent or clear disclosure may violate federal UDAP standards and applicable state unfair or deceptive acts or practices (UDAP) laws. Pricing discrepancies between the buyer's order and final contract are a red flag for deceptive conduct.

✦ **Falsification:**

- Submission of falsified income or identification documentation by dealers has prompted enforcement actions under the FCRA, 15 U.S.C. § 1681s-2. Creditors are expected to detect and prevent fraud using scoring tools and verification databases. See *In re Santander Consumer USA Inc.*, No. 2020-BCFP-0027 (Dec. 22, 2020); *see also* Consumer Financial Protection Bureau, Supervision and Examination Manual (Jan. 2023).



Regulatory Scrutiny & Complaints

Triggers

✦ CFPB Supervision:

- Ongoing focus on fair lending, add-on product sales, and servicing practices under ECOA (15 U.S.C. § 1691 et seq.) and the CFPB (12 U.S.C. § 5531). In 2023, the CFPB sued USASF for allegedly misrepresenting GAP coverage benefits. CFPB v. USASF Servicing, LLC, No. 1:23-cv-03433 (N.D. Ga. filed Aug. 2, 2023).

✦ FTC & Lingering Ghost of CARS Rule:

- The FTC's Vehicle Shopping Rule emphasized clear pricing, optional product disclosures, and prohibited deceptive advertising. Despite its demise, liability may arise under Section 5 of the FTC Act, 15 U.S.C. § 45(a), even without a final rule.

✦ Complaints:

- Creditors track complaint volumes and themes as part of dealer risk scoring. High complaint volumes may trigger contract reviews, mandatory audits, or contract repurchase.



Dispute Resolution

Indirect Model

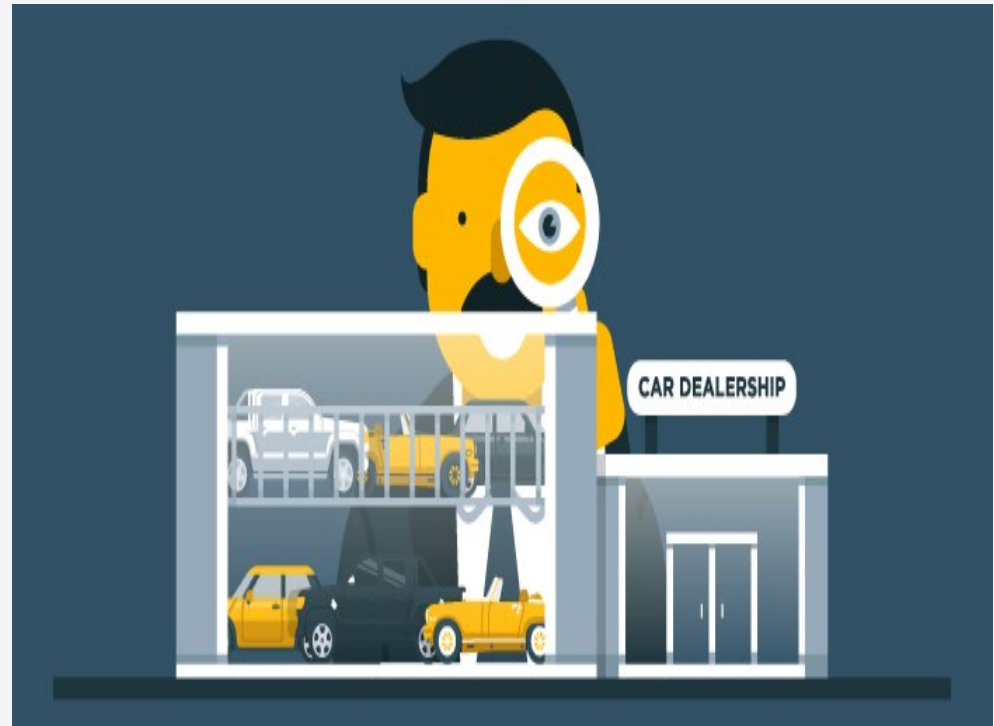
- ✦ Creditors face the customer post-funding—even for dealer-originated issues under joint liability doctrines and assignment principles.
- ✦ **Common Disputes:**
 - The failure to disclose optional products.
 - Misrepresentation of terms.
 - Denial of cancellation refunds.
 - These may implicate TILA (15 U.S.C. §§ 1601–1666j) or UDAAP standards under the CFPA (12 U.S.C. § 5536(a)(1)(B)).
- ✦ **Creditor Response:**
 - Typically includes tracing issues to dealer documentation, initiating corrective action, or demanding repurchase. *See* Consumer Financial Protection Bureau, Supervision and Examination Manual (Jan. 2023).



What Dealer Counsel Can Do

Recommendations include:

- ✦ Help clients understand creditor expectations:
 - Prohibit backdating, enforce fee transparency, and ensure consistent F&I scripting. See 16 CFR Part 233, FTC Guides Against Deceptive Pricing.
- ✦ Audit pricing practices and consent procedures for add-ons:
 - Review opt-in requirements and product bundling disclosures to reduce liability under UDAP laws.
- ✦ Prepare for oversight:
 - Maintain comprehensive and contemporaneous documentation to respond to audit demands or consumer complaints.
- ✦ Manage Customer Complaints:
 - Develop and maintain a customer complaint program to respond to customer complaints.



Building a Stronger Dealer-Creditor Partnership

Strategies for Alignment:

✦ **Review agreements and promote creditor-offered training:**

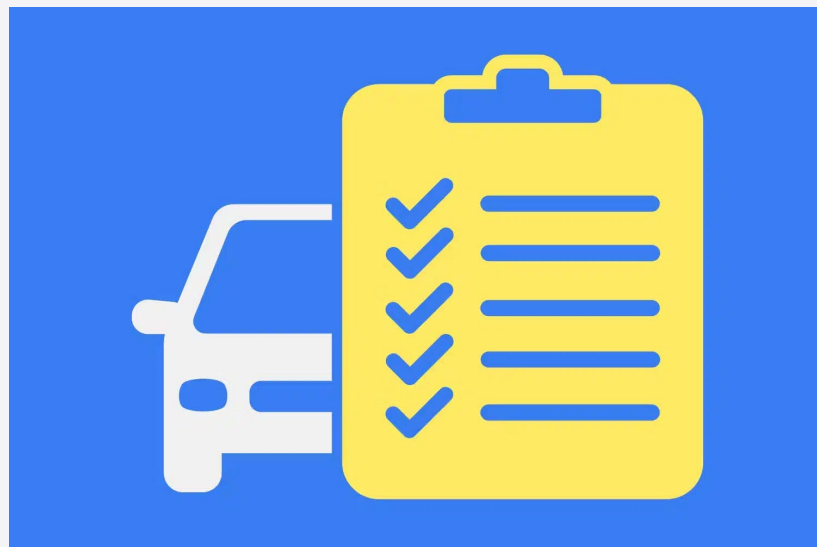
- Stay current on regulatory developments and ensure dealer-side staff are aligned with creditor policies.

✦ **Escalation protocols:**

- Define procedures for dispute escalation and documentation of consumer concerns. Align practices with OCC Bulletin 2013-29 (Third-Party Risk Management).

✦ **Shared Goals:**

- Efficient funding and regulatory compliance support long-term dealer program access and minimize enforcement exposure.



Key Takeaways

Risks and Solutions:

- ✦ Creditors face legal risk from dealer-originated misrepresentations and non-compliance. Supervisory scrutiny continues to grow in areas like pricing fairness, privacy practices, and product sales.
- ✦ Dealer counsel play a key role in mitigating liability exposure through training, audits, and policy oversight.
- ✦ Proactive collaboration strengthens dealer-creditor partnerships and helps ensure consistent adherence to federal and state law.



Questions?

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