



State of New Hampshire

Banking Department

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RONALD A. WILBUR
BANK COMMISSIONER

ROBERT A. FLEURY
DEPUTY BANK COMMISSIONER

January 20, 2012

Dear,

The New Hampshire Banking Department ("NHBD") has become aware that some licensed retail sellers and sales finance companies may be incorrectly disclosing the cash price of the purchased vehicle on Retail Installment Contracts ("RICs").

The NHBD has observed instances on RICs where the cash price of the vehicle to be purchased is inflated and there is a corresponding increase to the actual trade-in value of a consumer's current vehicle that meets or exceeds the payoff amount for the loan on that current vehicle, resulting in hiding the "negative equity" in the new vehicle's loan. This has the effect of financing some or all of the negative equity, while the recording method does not accurately reflect the transaction.

The NHBD has observed instances on RICs where the cash price of the vehicle to be purchased is inflated and there is a corresponding cash downpayment recorded on the RIC when the consumer has actually not paid any out-of-pocket cash in the transaction. This has the effect of leading a lender to believe that a consumer has "skin in the game" by paying some cash out of pocket, where the consumer actually has paid out no cash and the vehicle is 100% financed.

Truth-in-Lending, Regulation Z defines "downpayment" and commentary to Regulation Z further explains the impact when there is an existing lien in place on the trade-in vehicle, and how a cash downpayment can affect the disclosure. When the existing lien on a trade-in exceeds the value of the trade-in, the dealership is required to disclose the negative equity in the itemization of the amount financed and not list a negative number for the downpayment. If there is also a cash downpayment, the dealership has two options on how they can disclose the downpayment/negative equity. The alternative disclosures are known as "netting" and "non-netting".

Netting the downpayment is when the cash downpayment is used to offset the negative equity. For example, a cash downpayment of \$3,000 and negative trade equity of \$2,000 can be shown as a downpayment of \$1,000. In the same scenario when using the non-netting approach, the cash downpayment of \$3,000 would be disclosed as such and the negative equity of \$2,000 would also be

disclosed in the itemization of the amount financed. Both methods reflect the substance of the transaction and either method is acceptable.

What is not acceptable, and would violate Regulation Z and New Hampshire law, is the practice of inflating the cash price to increase the amount financed to hide negative equity or create the impression of a downpayment, or any other similar manipulation in recording the transaction on the RIC. Inflating the cash price for any reason, including reasons such as cash back to the purchaser, is unlawful and may not only be misleading to the consumer, the regulator, the initial and the subsequent lenders in the transaction, but also harmful, as some loans make their way through the securitization process and into the public investment markets.

The RIC should be completed to reflect the actual facts of the financing transaction; it must be transparent. This letter is to remind all licensees that if the NHBD finds such violations, enforcement action will be taken.

We thank you for your continued attention to state and federal law and Department regulations and do not hesitate to call should you have questions.

Sincerely,

Ronald A. Wilbur
Commissioner