



May 2, 2017

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Office of the Secretary
Federal Trade Commission
Suite CC-5610 (Annex J)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: RBP Rule, PRA Comment, P145403

Dear Secretary:

The National Automobile Dealers Association (“NADA”)¹ submits the following comments in response to the Notice seeking comments on the RBP Rule, PRA Comment Notice that the Federal Trade Commission (“FTC” or “Commission”) published in connection with the above captioned matter.²

The Notice outlines the estimated burden for compliance with the Risk Based Pricing rule, (“Rule”) but the Commission’s estimate fails to account for some significant costs associated with compliance with the Rule.

The Rule generally requires franchised car and truck dealers and other businesses that use credit reports and extend credit to consumers to provide a notice, known as a Risk-Based Pricing Notice (RBPN), to consumers who receive credit from them but on terms that are less favorable than the terms received by a "substantial proportion" of their other credit customers.

¹ NADA represents over 16,000 franchised dealers in all 50 states who (i) sell new and used cars and trucks; (ii) extend vehicle financing and leases to consumers that routinely are assigned to third-party finance sources; and (iii) engage in service, repair, and parts sales. Our members collectively employ over 1 million people nationwide. Most of our members are small businesses as defined by the Small Business Administration.

² Available at https://www.ftc.gov/system/files/attachments/press-releases/ftc-nhtsa-conduct-workshop-june-28-privacy-security-issues-related-connected-automated-vehicles/notice_connected_cars_workshop_with_nhtsa_1.pdf

Because of the significant implementation challenges this can create for dealers and other creditors in trying to determine which subgroup of approved credit customers must receive RBPNs, the Rule permits creditors to issue an alternative notice, known as a Credit Score Disclosure Exception Notice (“Exception Notice”), to all their consumer credit applicants. Unlike the RBPN, the Exception Notice may be issued (indeed generally must be issued) to all consumers who request credit. In addition, the Exception Notice must include the consumer’s credit score along with certain contextual information, including comparisons to average credit scores or clear statements indicating how the consumer’s credit score compares to other consumers (e.g., “Your credit score ranks higher than ___ % of U.S. consumers”), the name of the CRA or other entity that provided the score, the date on which the credit score was created, and certain other information that can only be obtained from the credit report itself.

The FTC has concluded that dealers are “original” creditors under the Rule, and therefore must comply with the Rule.³ Most dealers comply with the Rule by providing the Exception Notice. Many dealers do not obtain a credit report as part of the financing process, but simply provide the required applicant information to third party finance sources, who may themselves obtain a credit report from a CRA. Despite the fact that such dealers do not obtain or use a credit report, the FTC has determined⁴ that such dealers are in fact “users” of a credit report, and therefore must comply with the notice requirements. As a result, dealers who do not obtain credit reports for their credit customers and are the original creditor in a credit transaction must obtain a credit report *for the sole purpose* of completing the Exception Notice.

Therefore, many dealers face additional compliance costs associated with (a) obtaining those reports, including (i) the direct costs from the CRA’s, (ii) the personnel costs associated with obtaining the reports, and (b) the direct and indirect costs of properly handling, storing, and disposing of that sensitive personally identifiable information. None of these costs appear to be accounted for in the burden estimate in the Notice, but they should be.

³ See 75 FR 2723.

⁴ Because they “take[] an action based on the decision of a third-party financing source that relies upon the consumer report.” 76 Fed. Reg. at 41,606. See also <https://www.gpo.gov/fdsys/pkg/USCOURTS-dcd-11-cv-01711/pdf/USCOURTS-dcd-11-cv-01711-0.pdf>

We do not have comprehensive figures for the associated costs, but would assume that the hourly burden associated with obtaining, and properly handling, storing, and disposing of the information in the reports easily exceeds the estimated burden for “modify[ing] and distribut[ing]” the notices as outlined in the Notice.

In addition, while costs for obtaining the reports vary, dealers have reported to us that the cost is approximately \$7 - \$10 for each report. There were approximately 17 million new and 29 million used cars sold through dealers last year.⁵ Generally, there are three credit applicants for every vehicle purchased and financed.⁶ A substantial number of dealers obtain the reports solely to complete and provide the Exception Notice. This is clearly a significant cost that is also ignored in the Notice, and we would urge the Commission to include it in the burden estimate.

We appreciate the opportunity to comment on this matter. Please contact me if we can provide further information that would be useful to the Commission.

Sincerely,

Brad Miller
Director, Legal and Regulatory Affairs

⁵ The used vehicle figure includes used vehicle (non-franchised) dealers. Approximately 12 million used vehicles were sold by private parties in 2016.

⁶ Including, for example, consumers who apply for several vehicles while shopping, and those who are not approved for credit.