

# Congress of the United States

## Washington, DC 20515

November 17, 2022

The Honorable Jerome Powell  
Chair  
Board of Governors of the Federal Reserve System  
Washington, DC

Dear Chairman Powell:

We are writing to express our concern with the recent “Motor Vehicle Dealers Trade Regulation Rule” (Proposed Rule) released by the Federal Trade Commission (FTC) on July 13, 2022 [87 FR 42012]<sup>1</sup>. This broad proposal includes several new and untested consumer disclosures that, if adopted, would come into conflict with existing Truth in Lending Act (TILA) requirements as implemented by Regulation Z (Reg Z). Given the complex nature of auto-dealer disclosure obligations, we also believe the Proposed Rule will create further confusion for tens of millions of consumers each year as they shop for new and used vehicles.

While the FTC has the power to enforce violations under TILA and Reg Z, it does not have the authority to implement or interpret TILA or Reg Z. As you know, that responsibility rests with the Federal Reserve Board.<sup>2</sup> The Proposed Rule contains numerous duplicative disclosures that are in direct conflict with Reg Z disclosures promulgated by the Fed. For example, the Proposed Rule would require several new “cash price” disclosures<sup>3</sup> that differ from the TILA/Reg Z “cash price” disclosures—creating conflicting “cash prices” for the same vehicle. Similarly, the Proposed Rule would impose new disclosures related to the “total amount a customer would pay”<sup>4</sup> and cash down payments<sup>5</sup> that are conflicting and inconsistent with the well-established Reg Z disclosures.

In promulgating Reg Z, the Federal Reserve Board correctly relied on extensive consumer testing to ensure specific TILA disclosures worked during the sales process. This testing focused on the *timing and the content* of key disclosure terms, including studies to assess consumers’ understanding of specific disclosure forms. This approach is necessary to compare the existing TILA disclosures to the new disclosures in the Proposed Rule to better facilitate compliance and avoid confusing consumers in general.

---

<sup>1</sup> Federal Trade Commission, Federal Register Notice, “Motor Vehicle Dealers Trade Regulation Rule,” July 13, 2022, <https://www.federalregister.gov/documents/2022/07/13/2022-14214/motor-vehicle-dealers-trade-regulationrule>.

<sup>2</sup> Sections 1029(a), 1029(c), and 1100A(7) of the Dodd-Frank Act. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 124 Stat. 1376 (2010).

<sup>3</sup> 16 C.F.R. Part 463.2(c)

<sup>4</sup> 16 C.F.R. Part 463.4(d)(1)

<sup>5</sup> 16 C.F.R. Part 463.4(d)(2)

Unfortunately, the FTC relied upon a small, qualitative study from 38 Washington D.C. residents as a justification for the Proposed Rule and without considering any specific quantitative data. The FTC's limited exposure to data is evident in the Proposed Rule which itself states "the costs of the proposed rule provisions as enumerated . . . provide preliminary quantitative estimates where possible and describe costs that we can only assess qualitatively."<sup>6</sup>

Furthermore, we believe the FTC's rulemaking process regarding the Proposed Rule may have violated the agency's own procedures for issuing Unfair or Deceptive Acts or Practices (UDAP) rules pursuant to Section 5 of the Federal Trade Commission Act. The FTC published the Proposed Rule without an Advanced Notice of Proposed Rulemaking (NPRM), which is unusual given the magnitude of this rule. The FTC also failed to include this Proposed Rule in the Spring 2022 Regulatory Agenda and only allowed for a 60-day comment period. We believe this speaks to the rushed process undertaken by the FTC to issue this Proposed Rule without the necessary data points and industry feedback.

To mitigate the potential unintended consequences for consumers arising from the conflicts between the Proposed Rule and TILA, we ask that you please respond to the following questions:

1. Does the FTC have the authority to promulgate a rule under Reg Z?
2. Is it the Federal Reserve's view that the Proposed Rule would in any way alter, conflict with, or change the disclosures currently required in Reg Z?
3. Has the FTC consulted the Federal Reserve Board to assess the impact of the Proposed Rule on the current efficacy of TILA/Reg Z/Reg M disclosures?
4. If yes, please provide the related communications from, and to, the FTC.
5. If no, will you commit to consulting with the FTC regarding the effect of the Proposed Rule on existing TILA/Reg Z disclosures in auto retailing, and the need for quantitative consumer testing in the design and implementation of the Proposed Rule? And will you report to us the outcome of that consultation?

We would appreciate your response to these questions by November XX, 2022. Thank you again for your attention to this critical issue.

Respectfully,



---

Blaine Luetkemeyer  
Member of Congress



---

David Scott  
Member of Congress

---

<sup>6</sup> 87 Fed. Reg. at 42039

CC     The Hon. Lina Khan  
Office of the Chairwoman  
Federal Trade Commission