

Every Avalanche Starts With a Snowflake

The FTC's probe of biweekly payment programs was limited in scope and consequence, but it could be a harbinger of further concerns over F&I products and dealer markup.

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In one of my favorite Far Side cartoons, a prehistoric, four-legged, rodentlike mammal walks by a trio of dinosaurs. Two of the dinosaurs point and laugh at the strange creature with its funny-looking fur coat. The third, however, is seen sticking out a paw and looking up as the first snowflakes fall from the sky.

Every avalanche starts with a snowflake. Every ice age, too. But few recognize the shape of the future from the humble harbinger.

Earlier in the year, we saw a flurry of media coverage surrounding the Federal Trade Commission (FTC)'s investigation into the sale of biweekly payment programs at dealerships and the National Automobile Dealers Associations (NADA)'s prompt response. You may be forgiven if you concluded — if only momentarily — that there is something inherently untoward about biweekly payments and that a dealership would be better off not offering them.

Reputable providers of biweekly programs responded immediately.

David Engelman, CEO of SMART Payment Plan, issued a memo stressing that savings on interest charges — the benefit that appeared to be most under attack by the FTC — was one of the least important benefits of biweekly programs. Convenience and better money management are the benefits most attractive to those who choose to participate. Lynn Simmons, president of Economic Advantages Corp. (EAC), sent a letter to their agents and dealers making the same points and adding that the tangible benefits support the cost to the consumer. And Mike Hull,

president and CEO of Equity 4 U, went on record as saying that full disclosure, accurate presentations, and offering an outstanding product have always been their highest priority.

Clearly, the industry was not taking this lying down.

Sound and Fury

Once the dust settled, it became clear the press had overreacted. The FTC issued only one civil investigative demand (CID) that we could confirm, to a single dealership, focusing on one specific biweekly payment administrator: National Payment Network (NPN). There is no broad attack on biweekly payment programs. Of course, like all consumer products presented in the F&I office, they must be accurately described, properly disclosed and rationally priced with no discriminatory intent or impact.

But that may not be the end of the matter. Lost in all the concern over the viability of biweekly payment programs were a few paragraphs in the CID that had nothing to do with that product. Paragraph 3 of the CID reads as follows:



Properly presented and described, biweekly payment programs can be an asset to the F&I office and provide benefits to car buyers throughout the life of their loans.

“Summarize consumer complaints received during the applicable time period by complaint type, including but not limited to complaints relating to National Payment Network Inc. ... or its products and services, including its ‘Biweekly Payment Plan.’”

In plain English, the FTC asks the dealer to summarize all consumer complaints received during the relevant time period, not just those related to NPN. This is consistent with the CFPB’s position that dealerships must have a verifiable complaint management system. Apparently, the FTC agrees. And if the dealer who received this CID can’t demonstrate that they have a meaningful complaint management system in place, follow-up inquiries are likely.

The second concern buried within the CID is found in Paragraph 6:
State:

1. The Company's volume of sales for each product or service sold to consumers attendant to the sale or lease of a vehicle, broken out by product or service category;
2. Revenue earned by the Company for each product or service specified in 6.a., broken out by product or service category;
3. All amounts paid to the Company resulting from sales of the products or services specified in 6.a., providing a response both in the aggregate, and broken out by each discrete product or service;
4. All amounts paid to the Company as commissions, incentives, reimbursements, or any other source of revenue (specify) in relation to for each product or service specified in 6.a., broken out by product or service category;
5. For each response to Interrogatories 6 a, b, c, and d, provide discrete information relating to NPN's "Biweekly Payment Plan," if you have not already done so.

There the FTC seeks detailed financial information concerning all F&I products the dealer sells, not just biweekly. This type of fishing expedition is never good, and the language suggests that the FTC may take the same position with respect to F&I products that the Consumer Financial Protection Bureau (CFPB) took with respect to finance reserve: If consumer cost is negotiated, the dealer may ultimately be called upon to prove the final cost was not influenced by considerations of race, sex, national origin or any other factor that has no bearing upon a fair business transaction.

Finally, the mere fact the FTC is asking about products' costs and profit margins opens the possibility of allegations of unfair and deceptive trade practices. Many F&I products, valuable though they may be, are burdened with a history of unconscionable markups.

The Takeaways

First, biweekly payment programs are a viable part of a compliant F&I presentation. If properly disclosed and rationally priced, they can be of great benefit to dealership customers. Second, if your dealership does not yet have a demonstrable complaint management and resolution system in place, now is the time to establish one. Automated, consumer-facing Web-based programs can be had for less than \$90/month. Even if the feds didn't demand such a system, it could serve as an excellent management tool.

Finally, every dealership should have a written policy with respect to the pricing of F&I products, with as tight a range as possible on acceptable prices and reasonable caps that are never exceeded.

The recent attention biweekly programs received from the FTC could be a one-time thing. Or it could be a harbinger of things to come. Now may be a good time to start shopping for a fur coat.

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