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Insights

Indiana DFI Issues Advisory Letter Reinforcing Position on Dealer Convenience Fees

June 7, 2018

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The Indiana Department of Financial Institutions (the "IDFI" or the "Department") recently issued Consumer Credit Advisory Letter 2018-02 (the "**Advisory**") providing further guidance to financial institutions and auto dealers who assess an electronic auto title recording fee ("Convenience Fee" or the "Fee"), and additional charges under the Indiana Uniform Consumer Credit Code (the "IUCCC") on auto loans. The Advisory reiterates the Department's position in the recent enforcement action against Webb Ford, discussed in our May 9, 2018 Client Alert, available **here**.

The Advisory provides the following recommendations for compliance with the IUCCC when charging convenience fees:

1. Require that all customers, cash and credit, pay the Fee in the same dollar amount;
2. Present the Fee as optional to all customers, cash or credit, in the same dollar amount, if elected; or
3. If not assessed equally to cash and credit customers, properly disclose the amount of the Fee as a finance charge and reflect it in the Annual Percentage Rate ("APR") pursuant to the Truth in Lending Act ("TILA"), not to exceed the maximum rate allowed by the IUCCC. A Convenience Fee that is imposed as an incident to or a condition of the extension of credit is a finance charge that must be disclosed as such. In this case, the Fee is a prepaid finance charge. Therefore in order to be permissible as a finance charge, the Convenience Fee must be disclosed as a finance charge and disclosed in the APR in compliance with TILA in the following two situations:

    a. When the Convenience Fee is required of all customers but is assessed to finance customers in a dollar amount greater than to cash customers;
    b. When the Fee is required on all finance transactions and not required on all cash transactions.

The Advisory provides that in essence, the electronic title recording service and Fee must be presented in the same manner. In order to determine whether the Fee meets these requirements, the Department may consider, among others the following:

1. Policies of the Registrant, either written or unwritten;
2. Statements made by the Registrant's staff;
3. The dollar amount of the Fee assessed to all credit customers compared to the dollar amount to all cash customers;
4. Disclosures provided to and signed by consumers; and
5. Presentation of the Fee to consumers.

The Department advises that if the dealer is retaining a portion of the Convenience Fee, this fact must be disclosed, and where past practices are found not to be in compliance, refunds should be made to consumers and documentation should be retained.

Financial institutions engaged in indirect auto lending in Indiana to should review the Advisory, and incorporate its recommendations in their Compliance Management System