



December 29, 2014

## CFPB TAKES ACTION AGAINST “BUY HERE, PAY HERE” AUTO DEALER

The Consumer Financial Protection Bureau (CFPB) has taken action against a “Buy Here, Pay Here” automotive dealer, imposing an \$8 million civil penalty. The action was against DriveTime Automotive Group, Inc., and its finance company, DT Acceptance Corporation (collectively, “DriveTime”), the largest “Buy Here, Pay Here” dealer in the country. In addition to the monetary penalty, DriveTime must change its debt collection practices, alter its credit reporting practices and arrange for affected consumers to obtain free credit reports.

The CFPB specifically found the following practices to be unfair collection practices in violation of the Consumer Financial Protection Act:

- *Workplace calls.* DriveTime collectors allegedly called consumers at work numerous times after those consumers requested not to receive calls from DriveTime at work;
- *Calls to third-party references.* DriveTime required consumers to provide 4 to 8 names and phone numbers as references when applying for financing, and DriveTime allegedly called these references when consumers fell behind in payments. After requests from these references not to call, DriveTime allegedly continued to call the references; and
- *Calls to wrong numbers.* DriveTime allegedly made repeated calls to incorrect third-party numbers which DriveTime located on third-party databases as a result of skip-tracing.

The CFPB also found that DriveTime violated the Furnisher Rule, Subpart E of Regulation V, 12 C.F.R. § 1022.42(a), by allegedly giving inaccurate consumer information to Experian, TransUnion and Equifax regarding the timing of repossessions and dates of first delinquency. The Furnisher Rule requires a furnisher of credit information to “establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to a consumer reporting agency.” 12 C.F.R. § 1022.42(a). The policies and procedures “must be appropriate to the nature, size, complexity and scope of each furnisher’s activities.” 12 C.F.R. § 1022.42(a), Appendix E, §(a). The CFPB found DriveTime’s current procedures inadequate in relation to the nature, size, complexity and scope of its

furnishing activities.

The CFPB specifically found the following practices to be violations of the Fair Credit Reporting Act:

- *Failing to ensure accuracy of consumer credit information.* DriveTime allegedly furnished inaccurate information to consumer reporting agencies that was different from information contained in its database and continued to furnish inaccurate information even though it had reasonable cause to believe the information was inaccurate; and
- *Failing to properly handle credit information furnishing disputes.* DriveTime allegedly received complaints from consumers about inaccurate furnished information and failed to conduct reasonable investigations of these disputes.

The CFPB Consent Order requires DriveTime to do the following:

- DriveTime must not communicate with consumers at their workplaces if consumers have requested that DriveTime not call them there or if DriveTime otherwise knows that the consumers’ employers prohibit communications to their workplaces;
- DriveTime must provide clear and conspicuous notice to customers explaining how they can limit the times of day that DriveTime will call them;
- DriveTime must refrain from furnishing information related to the repossession of a consumer’s vehicle, unless the company has confirmed that the information is correct;
- DriveTime must provide credit reports to consumers about whom DriveTime allegedly furnished inaccurate credit information;
- If DriveTime furnished information to a credit reporting agency that was inaccurate for multiple accounts for similar reasons, DriveTime must provide corrected information to the agency or request that the agency delete the wrong information from the consumer’s file; and
- DriveTime must implement a program for auditing information it furnishes to the credit reporting agencies on a monthly basis and monitoring the disputes it receives.

This is the CFPB’s first action against a “Buy Here, Pay Here” auto dealer and may be instructive regarding where the CFPB is

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headed in its debt collection rule making regarding calls and the furnishing of credit information.

We can assist in reviews of programs and policies. □

✧ *Mike Tomkies and Emily Barlage*