

ATCIR No 9850

May 2, 1985

To the Bank Addressed:

Enclosed is a notice by the Board of Governors of the Federal Reserve System of its decision not to adopt a rule for banks substantially similar to the Federal Trade Commission's "Used Car Rule." The notice has been reprinted from the Federal Register of March 26, 1985.

Questions on this matter may be directed to our Regulations Division (Tel. No. 212-791-5914).

Circulars Division
Federal Reserve Bank of New York

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Decision Not To Adopt a Substantially Similar Rule for Banks on the Sale of Used Motor Vehicles

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of the Board's decision not to adopt a rule for banks that is substantially similar to the Federal Trade Commission's trade regulation rule on the sale of used motor vehicles.

SUMMARY: On November 19, 1984, the Federal Trade Commission published a final trade regulation rule on the sale of used motor vehicles. The rule, commonly referred to as the "Used Car Rule," will take effect on May 9, 1985. Generally, the Board is required by the Federal Trade Commission Act to issue a substantially similar rule for banks whenever the Commission adopts a final trade regulation rule under its authority to prohibit unfair or deceptive acts or practices. The Board has concluded, however, that since banks do not engage in the activity being regulated by the Commission—the sale of used motor vehicles in a retail sales environment—adoption of a rule substantially similar to the Commission's Used Car Rule that would be applicable to banks is unnecessary.

FOR FURTHER INFORMATION CONTACT: Gerald P. Hurst, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202) 452-3667.

On November 19, 1984 (49 FR 45692), the Federal Trade Commission (the "Commission") published a final trade regulation rule on the sale of used motor vehicles, with an effective date of May 9, 1985. The rule, referred to as the Used Car Rule, includes a list of acts or practices that the Commission views as unfair or deceptive (16 CFR 455.1 (a) and (b)) and requires dealers to prepare and display a window sticker, referred to as the "Buyers Guide," on the side window

of a used motor vehicle before offering the vehicle for sale to a consumer (16 CFR 455.1(c), 455.2, and 455.3). The Buyers Guide would include information about the warranty coverage offered, the meaning of an "as is" sale, and other related information.

The rule also prohibits the making of any statements, oral or written, or taking any actions which alter or contradict the Buyers Guide; requires a dealer conducting sales in Spanish to make the required disclosures in that language; and contains standards that will be used by the Commission in determining whether a state may obtain an exemption from the rule.

Section 18(f)(1) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(1)) provides that when the Commission issues a rule under its authority to prescribe unfair or deceptive acts or practices, the Board is required to issue a substantially similar rule, within 60 days of the rule's effective date, prohibiting acts or practices of banks that are substantially similar to those prohibited by the Commission. The Board is not required to issue a similar rule if it finds that such acts or practices of banks are not unfair or deceptive, or that implementing similar regulations for banks would seriously conflict with essential monetary and payments systems policies of the Board, and publishes the findings and reasons for them in the *Federal Register*. In addition to these two exceptions, the Board is not required to consider adoption of a substantially similar rule if banks do not engage in the activity being regulated by the Commission. Generally, if banks do not engage in the activity being regulated, there will not be any acts or practices of banks that are substantially similar to those prohibited by the Commission. The Board believes that this is the case with the Used Car Rule.

Banks do engage in the sale of used motor vehicles—for example, vehicles that have been repossessed. However, it

appears that banks do not engage in the activity the Commission sought to regulate in adopting the Used Car Rule, that is, selling in a retail sales environment. The Commission narrowed the scope of the Used Car Rule by defining a "dealer" so as "to remove from the scope of the Rule used car sales where the absence of a retail sales environment substantially diminishes the risk of the deceptive practices . . . found to be characteristic of used car sales presentations." (49 FR 45708, November 19, 1984). The Commission concluded that banks and other financial institutions do not engage in the sale of used motor vehicles in a retail sales environment and specifically excluded banks from the rule's "dealer" definition. The Board contacted Reserve Bank examiners and bankers about the methods used by banks to dispose of used motor vehicles. These inquiries support the Commission's conclusion that banks do not engage in the sale of used motor vehicles in a retail sales environment. In addition, the Board agrees with the Commission's conclusion that, in the absence of a retail sales environment, the risk of deceptive practices, such as misrepresentations concerning vehicle warranties or the condition of the vehicles, is substantially diminished.

Since generally banks do not engage in the activity being regulated by the Commission in the Used Car Rule—the sale of used motor vehicles in a retail sales environment—the Board has concluded that it is not required to issue a substantially similar rule for banks on the sale of used motor vehicles.

By order of the Board of Governors of the Federal Reserve System, March 20, 1985.

William W. Wiles,
Secretary of the Board.

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