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Legal & Regulatory Group

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SUBMITTED ELECTRONICALLY

Federal Trade Commission
Office of the Secretary,
Room H-113 (Annex J), 600
Pennsylvania Avenue NW,
Washington, DC 20580.

Electronic address: <https://ftcpublic.commentworks.com/ftc/RegsBEMZpra>

Re: “Regs BEMZ, PRA Comments, P084812”

The National Automobile Dealers Association (“NADA”) represents more than 16,000 new car and truck dealers, both domestic and import, with more than 32,500 separate franchises and nearly one million employees nationwide. NADA is submitting these supplemental comments in response to the FTC’s second request for comments on its proposal to extend through April 30, 2015, the current PRA clearances for information collection requirements contained in four consumer financial regulations – Regulations B, E, M, and Z -- enforced by the Commission (“Request for Comments”).

NADA is particularly focused on the regulatory burden imposed by the FTC and other federal agencies that promulgate or enforce regulatory requirements affecting our members. Because NADA’s automobile and truck dealer members routinely conduct lease or finance advertising and assist consumers in arranging financing for the purchase of new and used vehicles, NADA members face recordkeeping, disclosure, and other related compliance requirements under some or of all of the regulations at issue in this Request for Comments -- in particular Regulations B, M, and Z.

On April, 9, 2012, NADA submitted comments in response to the FTC’s initial Request for Comments related to these regulations, where NADA provided several examples of the perceived understatement of the burden, and noted that in addition to anecdotal objections, we hoped to gather and submit specific data from dealers regarding the actual time and expense burden associated with Regs B, M and Z. On April 27, 2012, the Commission announced that it was providing NADA and the general public an extended opportunity to submit comments on this regulatory burden issue.

NADA would first like to thank the Commission for the opportunity to gather and provide the data in Exhibit A. We also note our agreement with the premise that creating accurate time

burden estimates is indeed an imprecise and difficult task given the complexity of the regulations involved, the variation in business operations, size, and practices, and the difficulty in clearly distinguishing time and expense spent to comply from ordinary business operations. In submitting these comments, NADA certainly does not seek to impugn the Commission's efforts in establishing burden estimates; indeed, we faced many of those same challenges in gathering this survey data. However, NADA increasingly hears from dealers about the overall regulatory and paperwork burden they face, and the negative effect of this burden on dealers and consumers.¹ And as noted in our initial comments, our discussions with automobile dealer compliance personnel generally lead us to believe that many of the time burden estimates for Regs B, M and Z in particular understate the true compliance burden associated with those regulations for dealers.

In an effort to quantify that burden, NADA conducted a number of interviews with automobile dealership personnel and compliance experts, and conducted an online survey soliciting data on the compliance burden dealers face related to Regs B, M and Z. We present a summary of the responses to that survey as Exhibit A to these comments. We hope that the Commission and any others who consider the data provided by dealers regarding Regs B, M, and Z will do so not simply standing alone, but also in the context of the overall regulatory burden faced by dealers.

While NADA devotes a great deal of its resources toward helping dealers meet their regulatory obligations by publishing compliance guides, on-line training materials, and numerous in-person seminars and workshops to help dealers keep up-to-date with the latest regulations, dealers are left facing this daunting burden generally on their own. In addition, many dealers are small businesses that do not benefit from sophisticated records retention or computer systems, and cannot leverage robust compliance structures. Even larger dealer groups often do not have the economy of scale necessary to justify in-house legal counsel, compliance staff, or other expert or technical resources. As a result, they rely heavily on outside counsel, consultants, and computer and other experts to help them to comply with their regulatory obligations – and pay the concomitant fees associated with those third party services.

In addition, even the daily compliance burdens at a dealership often must be handled by managerial, not clerical staff. For example, it is dealer managers (often in conjunction with outside third parties), not clerical staff, who review advertisements for Reg Z or Reg M compliances. It is also dealership managerial staff who oversee vehicle sale and lease negotiations and thus are often responsible for Reg Z and Reg M transactional compliance, or interact with consumers seeking credit approval and thus are often responsible for ensuring that adverse action notices pursuant to Reg B are properly completed, sent and tracked. This may explain, for example, why the data provided by automobile dealers shows that a greater

¹ For example, a recent speech by Earl Hesterberg, CEO of Group 1 Automotive in which he noted that vehicle purchase paperwork may require “up to 56 signatures, and 9 initials,” and that Group 1 Automotive sends out over 9,000 adverse action notices each month. See http://www.autonews.com/article/20120111/FINANCE_AND_INSURANCE/120119949/1142. (Note that Group 1 includes approximately 95 dealership locations (source: Group 1 2010 10-K), which means that Group 1 sends an average of approximately 1,137 adverse action notices per dealership, per year, a figure that is relatively consistent with the numbers reported in the survey results in Exhibit A.)

proportion of the time spent complying with Regs B, M, and Z is spent by managerial staff than estimated by the Commission.²

THE SURVEY RESULTS

A few things to note about the survey and the results presented. Rather than issue the survey to all NADA members, we targeted our requests in an effort to get the most accurate and complete responses we could get. First, in an effort to get as broad a perspective as possible, we sought responses from dealerships of various sizes, from small, single franchise dealers, to large, publicly-traded dealer groups. Second, we solicited the help of over 60 state and metro-area dealer associations in order to get responses from dealers in all regions across the country. Lastly, we asked those state and metro associations, as well as dealer consultants, attorneys, and others, to seek responses from dealership personnel most likely to fully understand and accurately track their compliance obligations. The survey was anonymous, contained a total of 18 questions, and the results include responses representing over 260 dealerships.

The data presented represents mean averages of the responses received.³ In order to present the most accurate macro-level data, NADA removed a number of the higher-end data outliers in creating averages. In other words, the average amounts reported in Exhibit A do not include several responses that reflected time or cost estimates that were materially higher than the average. We did not exclude any responses for being materially lower than the average, and therefore the figures in Exhibit A are a conservative reflection of the survey responses.

Unfortunately, the limits of the survey and the complexity of the task prevented us from gaining more specific insights into the reasons and justification for some of the responses. Generally speaking, however, the data and responses reflected in Exhibit A stand on their own. A few noteworthy highlights from the data:

- (1) The total compliance hours reported by dealers vastly exceed the current estimates.

Perhaps the most obvious outcome of the survey is that it demonstrates that the compliance burden under Regs B, M and Z, at least as perceived by automobile dealers, far exceeds the current estimates. Even if there is some overestimation in the data reported by dealers, and even if dealers mistakenly classify some time spent keeping records or performing tasks they would keep or perform in the ordinary course of business that does not explain the vast difference between the time burden reported by dealers and the Commission's current estimates. In just one example, the dealers report spending an average of 424 hours each year complying with Reg B, of which 72.1 hours is for recordkeeping.⁴ That figure would translate to well over 1,000,000

² Indeed, in many dealerships, unlike larger financial institutions, there simply are no "skilled technical"-level personnel, and therefore compliance tasks tend to fall more heavily on managerial staff.

³ While the data are simple mean averages, the questions sought responses on a per dealership basis. In other words, if a respondent owned or was responsible for 10 dealerships, their responses were to be based on each of the 10 stores, not all 10 in total. As a result, the responses do not control for the size of the dealership, but should not be affected by the number of stores reflected in the response.

⁴ This may include, for example, time spent retaining and maintain records of credit transactions (including those not completed), as well as adverse action notices, along with records of the reason for the adverse action. Note that while the required Reg B retention is 25 months for consumer credit, most dealers maintain records for a period of 5

hours per year for dealerships to comply with Reg B,⁵ while the current estimate (“carve-out”) for motor vehicles is 76,549.

- (2) The total cost of those hours exceeds the current estimates, because compliance is handled mostly by Managerial staff.

The survey results indicate a much higher level of managerial time spent complying with the regulations than estimated. The data suggests that 53%-61% of the reported compliance time burden is spent by managerial staff, compared to the current estimates where the overwhelming majority of the time is spent by lower-cost clerical staff. Some of the explanation for this difference in the dealership context is discussed above. Whatever the reason, the result is that both the hours spent, and the costs associated with that time are much higher than estimated.

- (3) Dealers incur substantial “other” costs of compliance, not currently reflected in the estimates.

The survey results suggest that dealers incur additional costs ranging from \$6,800 to nearly \$14,000 per dealership per year to comply with Regs B, M, and Z. Some of the potential reasons for these expenditures are outlined above. Whatever the reason, cumulatively automobile dealers report spending nearly \$31,000 each year to comply with these three regulations alone. That represents an annual industry-wide total of nearly \$465,000,000.

NADA sincerely hopes that these comments are received in the manner they are intended – to aid the Commission (and others, including the Federal Reserve and the CFPB) in making accurate burden assessments relative to these federal regulations. We would like to again highlight the growing concern that not only these regulations raise for dealers and their consumers, but the cumulative effect of federal, state and local regulation. We understand the difficulty of the task facing the Commission in setting these estimates, and hope that this data can help in that process. Thank you again for this opportunity to comment, and your consideration of this data and these comments. Please feel free to contact us if you have any questions.

Sincerely,

/s/

Bradley T. Miller

Associate Director, Legal and Regulatory Affairs

years because of the 5 year statute of limitation under ECOA. It is unclear under the Commission’s definitions whether the burden associated with the full five years would be included in the estimate, as opposed to 25 months, although we would suggest that the full five years should be considered as it is a direct result of the requirements of the regulation, and would not generally be done by dealers in the ordinary course of business.

⁵ For ease of reference, we assume there are 15,000 dealerships subject to the relevant regulations in the United States. Note that NADA represents over 16,000 members, but there are a small number of dealerships who are not NADA members, and a number of dealers are solely commercial truck dealers who do not sell to consumers and thus would not be subject to many of the requirements in Regs M, or Z (and subject to a lesser degree to many of the requirements of Reg B). Note that this figure only represents franchised new car dealers, not independent dealerships.

EXHIBIT A

Survey Questions and Responses:⁶

REG B:

Question:

Please provide the total number of hours per year, per dealership to comply with Regulation B:

Average Response:

424 hours per year.

Question:

Of the total hours required to comply with Regulation B (listed above), please indicate the percentage of time spent by each of the three staffing categories listed below (must equal 100%).

Average Response:

% managerial staff	53.9%
% skilled technical staff	23.8%
% clerical staff	22.4%

Question:

Please provide a breakdown of total annual Reg. B compliance hours spent⁷.

⁶ The following is a summary of (and in some cases a paraphrase of) survey questions and responses received by NADA from franchised new car dealers during late April and early May 2012. The questions were accompanied by some limited explanation of the requirement under each Regulation. The respondents represent over 260 dealerships nationwide.

⁷ Note that the total of these figures is slightly different than the total reflected in the response above. As with the similar responses to Regs M and Z below, a few of the respondents skipped this question or entered slightly inconsistent data, which affected the average figures.

Average Response:

Recordkeeping	72.1 hours
Disclosure	95.7 hours
Set-up	35.5 hours
Monitoring	82.5 hours
Transaction-related	133.5 hours

Question:

Approximately how many transactions, per year, per dealership require compliance with Regulation B⁸?

Average Response:

2,111 transactions

Question:

Please provide the total additional dollars spent per year, if any, per dealership to comply with Regulation B:⁹

Average Response:

\$10,204

⁸ This survey question notes that the response should include, for example, the total number of adverse action notices sent.

⁹ This survey question noted that this should include the cost of sending adverse action notices.

REG M

Question:

Please provide the total number of hours per year, per dealership to comply with Regulation M:

Average Response:

208 hours

Question:

Of the total hours required to comply with Regulation M (listed above), please indicate the percentage of time spent by each of the three staffing categories listed below (must equal 100%).

Average Response:

% managerial staff	61.5%
% skilled technical staff	24.7%
% clerical staff	13.9%

Question:

Please provide a breakdown of total annual Reg. M compliance hours spent.

Average Response:

Recordkeeping	27.2 hours
Disclosure	36.8 hours
Set-up	18.2 hours
Monitoring	20.4 hours
Transaction-related	65.9 hours
Advertising-related	23.7 hours

Question:

Approximately how many transactions, per year, per dealership require compliance with Regulation M?

Average Response:

859 transactions

Question:

Please provide the total additional dollars spent per year, if any, per dealership to comply with Regulation M.¹⁰

Average Response:

\$6,849

¹⁰ This survey question noted that this amount could include, for example, costs associated with legal or other outside review of lease advertisements.

REG Z

Question:

Please provide the total number of hours per year, per dealership to comply with Regulation Z:

Average Response:

583 hours per year.

Question:

Of the total hours required to comply with Regulation Z (listed above), please indicate the percentage of time spent by each of the three staffing categories listed below (must equal 100%).

Average Response:

% managerial staff	60.4%
% skilled technical staff	23.9%
% clerical staff	15.8%

Question:

Please provide a breakdown of total annual Reg. Z compliance hours spent.

Average Response:

Recordkeeping	115.3 hours
Disclosure	145.0 hours
Set-up	60.5 hours
Monitoring	35.8 hours
Transaction-related	220.8 hours
Advertising-related	51.6 hours

Question:

Approximately how many transactions, per year, per dealership require compliance with Regulation Z¹¹?

Average Response:

2,163

Question:

Please provide the total additional dollars spent per year, if any, per dealership to comply with Regulation Z¹²:

Average Response:

\$13,913

¹¹ This survey question noted that the response should include, for example, the total number of credit transactions and credit advertisements.

¹² This survey question noted that this amount could include, for example, costs associated with legal or other outside review of credit advertisements.