

**UNITED STATES OF AMERICA
CONSUMER FINANCIAL PROTECTION BUREAU**

In the Matter of

**Dealers' Financial Services, LLC,
Lexington, Kentucky**

**ADMINISTRATIVE PROCEEDING
File No. 2013-CFPB-0004**

CONSENT ORDER

The Consumer Financial Protection Bureau (“Bureau”), through its examiners and other staff, has conducted a target review of the Military Installment Loans and Educational Services (“MILES”) program, an automobile loan program that Dealers’ Financial Services, LLC (“DFS” or “Respondent”) helped develop. DFS marketed the MILES Program and was its primary service provider. In this targeted review, the Bureau has identified violations of sections 1031 and 1036 of the Consumer Financial Protection Act (“CFPA”), 12 U.S.C. §§ 5531 and 5536 (the prohibition on unfair, deceptive, or abusive acts or practices) for: (a) deceptively marketing the prices of an add-on vehicle service contract and an add-on GAP insurance product, and (b) deceptively marketing the scope of the coverage of a vehicle service contract.

DFS, by and through its President and a duly authorized Director of its parent company, Dealers’ Financial Holdings, Inc., has executed a “Stipulation And Consent to the Issuance of a Consent Order,” dated June 25, 2013 (“Stipulation”), which is incorporated by reference and is accepted by the Bureau. By this Stipulation, Respondent has consented to the issuance of this Consent Order by the Bureau under sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563 and 5565, without admitting or denying any of the findings of fact or conclusions of law, except that Respondent admits the Bureau’s jurisdiction over Respondent and the subject matter of this

Consent Order.

Accordingly, the Bureau hereby issues, under 12 U.S.C. §§ 5563 and 5565, this Consent Order.

I. Findings of Fact

The Bureau finds the following:

1. DFS is a company headquartered in Lexington, Kentucky, which exists solely to operate the MILES Program.

2. DFS and U.S. Bank National Association (“U.S. Bank”) jointly developed the MILES Program as a loan program for U.S. military servicemembers (“servicemembers”) to finance the acquisition of new or used cars in dealer-assisted transactions. Since 2001, the MILES Program has provided financing for more than 110,000 automobile purchases by servicemembers. DFS and U.S. Bank entered into a MILES Preferred Lender Agreement on June 25, 2001. This agreement, along with subsequent amendments, governs the respective roles of DFS and U.S. Bank in the MILES Program.

3. DFS recruits and maintains the 700-plus members of the MILES auto dealer network (“MILES dealers”), maintains the MILES Program website, makes customer calls that include marketing of add-on products, creates and disseminates the MILES Program marketing and promotional materials, and gathers and reviews credit applications before sending them to U.S. Bank for final approval. Dealers in the MILES auto dealer network enter into separate contractual arrangements with DFS and with U.S. Bank, and a DFS Dealer Operating Agreement is incorporated into the MILES Preferred Lender Agreement between DFS and U.S. Bank. DFS does not provide financing and is not a creditor for MILES loans.

4. U.S. Bank serves as the primary lender for the MILES Program, providing loans to

servicemembers who meet U.S. Bank's criteria, resulting in U.S. Bank's making a substantial majority of the MILES loans.

5. U.S. Bank provides DFS with blank U.S. Bank MILES installment note forms and retail installment sales contract ("RISC") forms, and DFS then provides the MILES dealers with the blank U.S. Bank MILES installment notes and RISCs.

6. MILES dealers fill in the U.S. Bank installment notes and RISCs, including the TILA disclosures, and present them to servicemember customers in the dealership.

7. DFS's Dealer Operating Agreement, which is incorporated into the MILES Preferred Lender Agreement between U.S. Bank and DFS and which DFS and each MILES dealer sign, obligates MILES dealers, when offering the MILES Program, to require servicemembers to use allotments for repayment of their loans. In accordance with that agreement, the installment notes and RISCs require servicemembers participating in the MILES Program to repay their loans via a military pay allotment and warn servicemembers that if they discontinue their allotments, they will be in default on their loans.

8. The MILES Program effectively requires servicemembers to use Military Assistance Company, LLC ("MAC") for processing allotments. MAC collects, and shares with DFS, a \$3 monthly fee for allotment processing.

9. The Bureau has also identified violations of the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601 et seq., and Regulation Z (Truth in Lending), 12 C.F.R. Part 1026, associated with the mandatory use of military pay allotments – violations committed by another entity involved in the MILES Program and for which redress is provided in a separate Bureau order.

10. The MILES Program offers optional products to servicemembers ("add-on products"). The MILES Program requires dealers, when offering the MILES Program to a servicemember, to

offer the servicemember two add-on products: GAP insurance, which covers the difference, if any, between the insurance payout for the vehicle and the outstanding principal in the event that the vehicle is stolen or declared a total loss, and a Vehicle Service Contract (“VSC”), which covers certain repairs and costs.

11. The cost of the add-on products is typically financed by the servicemember.

12. The MILES Program add-ons were marketed by DFS through telephone calls to servicemembers, a DFS-managed website, brochures, and by the MILES dealers.

13. The MILES Program VSC brochure contained a statement that purchasing the Vehicle Service Contract would add “just a few dollars to your monthly payment.”

14. The cash price of the VSC ranges from about \$1,100 to \$4,000, and it varies based on the contract term and the car’s make, model, age, and mileage. Thus, the total cost of the VSC, calculated based upon the typical interest rate of 17.95%, ranges from about \$1,600 to \$6,000, depending on the contract term. The average cost paid by servicemembers for the VSC is about \$2,600, including interest. On a five-year loan, this translates to a monthly average cost of over \$40 for a financed VSC.

15. The DFS call script included statements that the “service contract covers mechanical breakdowns” and that “[i]f you visit any MILES dealership for a repair of a covered mechanical breakdown, you will pay \$0,” but did not prominently disclose the parts excluded from coverage. The MILES Program brochure listed covered parts, but did not prominently disclose the parts excluded from coverage, beyond: including the statements “Comprehensive coverage – includes most major components of the vehicle” and “[t]he MILES Program Vehicle Service Contract provides you with comprehensive coverage for almost every part of your vehicle;” including a list of “the major vehicle components” covered; and, in a six-point-font footnote at the bottom of

the page, stating that “For detailed coverage information, please refer to the Vehicle Service Contract for full coverages and exclusions.” Only the VSC contract executed by the servicemembers described the exclusions from coverage.

16. In the calls that the MILES Program required all borrowers to participate in before their loan approval, DFS employees sometimes made off-script comments that the GAP insurance would “add just a few cents to your car payment” or that it would cost “only a few pennies a day.”

17. The cash price of the GAP insurance is the lesser of the maximum permitted under state law and \$495, paid as a single premium. Including interest at the typical interest rate of 17.95%, the typical cost for the GAP insurance is \$753, including interest. On a five-year loan, this typical cost translates to a monthly cost of \$12.55, or over 40 cents a day, including interest.

II. Conclusions of Law

The Bureau finds the following:

18. The Bureau has jurisdiction over this matter pursuant to sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563 and 5565.

19. U.S. Bank is a “covered person” as that term is defined by section 1002(6) of the CFPA, 12 U.S.C. § 5481(6).

20. DFS is a “service provider” to U.S. Bank under section 1002 of the CFPA because DFS “participates in designing, operating, or maintaining” the MILES Program, which offers and provides MILES automobile loans, which are “consumer financial products or services” as that term is defined by section 1002(5) of the CFPA, 12 U.S.C. § 5481(5). 12 U.S.C.

§ 5481(26)(A)(i). In particular, DFS recruits and trains the MILES dealers, operates the MILES

website, and is responsible for the marketing aimed at selling MILES Program loans and add-on products.

21. As described in Paragraph 9, the Bureau has concluded that the mandatory use of military pay allotments resulted in violations of TILA.

22. In offering the MILES Program VSC and the GAP insurance, DFS made deceptive statements regarding the cost of the add-on products and the scope of coverage of the Vehicle Service Contract, which violated the CFPA's prohibition on deceptive acts and practices, 12 U.S.C. §§ 5531, 5536(a)(1)(B).

III. Definitions

For purposes of this Consent Order, the following definitions shall apply:

23. "Affected Consumer" shall mean any current or former servicemember who was granted credit through the MILES Program during the period between January 1, 2010 and December 31, 2012 and who purchased GAP insurance or a Vehicle Service Contract, with the exception of those servicemembers who received a refund of all of their GAP insurance and VSC premiums, if DFS is able to determine that they received the refund.

24. "Auto Loan Programs Directed to Servicemembers" shall mean auto loan programs under which loans are offered or provided primarily to active-duty servicemembers.

25. "Board" shall mean the Board of Directors of Dealers' Financial Holdings, Inc.

26. "Clearly and prominently" shall mean:

- a. In textual communications (*e.g.*, printed publications or words displayed on the screen of an electronic device), the disclosure shall be of a type, size, and location sufficiently noticeable for an ordinary consumer to read and comprehend the

disclosure, in print that contrasts with the background on which it appears;

b. In communications disseminated orally or through audible means (*e.g.*, radio or streaming audio), the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend the disclosure;

c. In communications disseminated through video means (*e.g.*, television or streaming video), disclosure that is provided in writing shall be in a form consistent with Subsection (a) and shall appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend the disclosure.

Disclosures provided orally or through audible means shall be in a form consistent with Subsection (b);

d. In communications made through interactive media such as the internet, online services, and software, the disclosure shall be unavoidable and presented in a form consistent with Subsection (a); and

e. In all instances, the disclosure shall be presented prior to the consumer incurring any financial obligation, in an understandable language and syntax, and with nothing contrary to, inconsistent with, or in mitigation of the disclosures used in any communication with the consumer.

27. “Effective Date” shall mean the date on which this Consent Order is issued.

28. “GAP insurance” shall mean any insurance or other agreement with a consumer which provides payment to cover the difference, if any, between the insurance payout for the vehicle and the outstanding principal in the event that the vehicle is stolen or declared a total loss.

29. “Regional Director” shall mean the Regional Director for the Northeast Region for the Bureau’s Office of Supervision Examinations.

30. “Respondent” or “DFS” shall mean Dealers’ Financial Services, LLC and its successors and assigns and, with respect to Paragraphs 33 through 35, shall mean Dealers’ Financial Services, LLC, DFS Holdings, Inc., and their affiliates, officers, employees, and agents – whether acting directly or indirectly.

31. “Service Provider” shall have the same meaning as set forth in section 1002(26) of the CFPA, 12 U.S.C. § 5481.

32. “Vehicle Service Contract” or “VSC” shall mean a vehicle service contract or other agreement with a consumer to repair certain covered parts.

IV. Order to Cease and Desist and to Take Other Affirmative Action

IT IS HEREBY ORDERED, pursuant to sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563 and 5565, that DFS, whether acting directly or through any corporation, subsidiary, division or other device, shall cease and desist from the conduct described in Paragraphs 33 through 35 and take the affirmative actions set forth in Paragraphs 35 and 36:

Conduct

33. DFS shall cease and desist from any further violations of sections 1031 and 1036 of the CFPA, 12 U.S.C. §§ 5531 and 5536 with respect to Auto Loan Programs Directed to Servicemembers.

34. Within 60 days of the Effective Date, DFS shall not require the establishment of military pay allotments in connection with Auto Loan Programs Directed to Servicemembers and shall not process lender applications where military pay allotments are a required condition of credit to servicemembers. Nothing in this provision shall limit the offering of optional incentives to consumers related to the use of military allotments in connection with Auto Loan Programs

Directed to Servicemembers.

35. DFS, when offering or providing any add-on product in connection with Auto Loan Programs Directed to Servicemembers, shall not, and within 60 days of the Effective Date shall require and take reasonable steps to ensure that MILES dealers do not, misrepresent: (a) the monthly cost and total price of such add-on products; (b) the scope of coverage of such add-on products and the exclusions from coverage; or (c) any other material terms of such add-on products.

36. Within 30 days of the Effective Date, DFS shall submit to the Regional Director for non-objection a Disclosure Form or forms that clearly and prominently (a) discloses the total cash price of such add-on products; (b) states that all add-on products are optional; (c) states that the consumer is not required to finance add-on products; (d) states that a difference in cost exists for paying cash for add-on products versus financing add-on products; (e) states that the product is cancellable, and (f) clearly and conspicuously informs servicemembers of the existence and nature of exclusions from the coverage provided by VSCs. Within 30 days of the Regional Director's non-objection, DFS shall require MILES dealers to provide the Disclosure Form(s) to servicemembers who are purchasing add-on products under the MILES Program.

Role of Board

37. The Board shall review submissions of plans, reports, programs, policies, and procedures required by this Consent Order prior to submission to the Bureau.

38. Although this Consent Order requires DFS to submit certain documents for review and determination of non-objection by the Regional Director, the Board shall have the ultimate responsibility for proper and sound management of Respondent, and for ensuring that DFS complies with federal consumer financial law and this Consent Order.

39. In each instance in this Consent Order in which the Board is required to ensure adherence to, or undertake to perform certain obligations of DFS, the Board shall: (a) authorize and adopt such actions on behalf of DFS as may be necessary for DFS to perform its obligations and undertakings under the terms of this Consent Order; (b) require the timely reporting by DFS management of such actions directed by DFS to be taken under the terms of this Consent Order; and (c) take corrective action relating to any material non-compliance with such actions in a timely and appropriate manner.

Compliance Plan

40. Within 15 days of the Effective Date, DFS shall submit to the Regional Director for review and determination of non-objection the name of a proposed qualified independent consultant (“Compliance Plan Consultant”) to assist in the development, revision, review, and implementation of DFS’s compliance plan, as set forth below.

41. Within 90 days of the Regional Director’s non-objection to the Compliance Plan Consultant, DFS shall review, revise, and/or develop a risk-based compliance management system and submit to the Regional Director for review and determination of non-objection a comprehensive written compliance plan designed to ensure that DFS, including when offering or providing Auto Loan Programs Directed to Servicemembers or offering or providing add-on products in connection with such programs, complies with all applicable federal consumer financial laws and the terms of this Consent Order (“Compliance Plan”). The Compliance Plan shall include, at a minimum:

- a. Detailed steps for addressing each action required by this Section of the Consent Order;
- b. Training materials for DFS’s employees to ensure compliance with this Consent

- Order and with all applicable federal consumer financial laws;
- c. Training materials for MILES dealers to ensure compliance with this Consent Order;
 - d. Detailed steps for creating and implementing compliance policies and procedures and a compliance monitoring and review program for the MILES Program to be implemented and overseen by compliance personnel;
 - e. Detailed steps for updating DFS's internal audit scoping; and
 - f. Specific timeframes and deadlines for implementation of the steps described above.

42. The Regional Director shall have the discretion to make a determination of non-objection to the Compliance Plan or to direct DFS to revise it. In the event that the Regional Director directs DFS to revise the Compliance Plan, DFS shall make the revisions and resubmit the Compliance Plan to the Regional Director within 30 days.

43. Upon notification that the Regional Director has made a determination of non-objection to the Compliance Plan, DFS shall implement and adhere to the steps, recommendations, deadlines, and timeframes set forth in the Compliance Plan.

V. Redress

IT IS FURTHER ORDERED, that:

44. DFS shall provide redress for the violation identified in Paragraph 22 by providing restitution to Affected Consumers, totaling \$3,300,000 in accordance with the provisions set forth below.

45. Within 30 days of the Effective Date, DFS shall develop and submit to the Regional

Director a comprehensive plan for providing redress consistent with this Consent Order to Affected Consumers (“Redress Plan”).

46. The Redress Plan shall, at a minimum, specify how DFS will: (a) calculate restitution for each Affected Consumer on a pro-rata basis based on the total amount (including principal and related finance charges) of the GAP insurance and/or VSC premiums the Affected Consumers are obligated to pay in relation to the total redress of \$3,300,000; (b) reimburse each Affected Consumer either through a credit posted to the credit account associated with their MILES Program loan, or through a check in the event (i) an Affected Consumer is without an outstanding credit account associated with their MILES Program loans, or (ii) DFS demonstrates that it is otherwise impracticable to credit an Affected Consumer’s account; and (c) provide validation that Affected Consumers received redress consistent with the Redress Plan. The Regional Director shall have the discretion to make a determination of non-objection to the Redress Plan or to direct DFS to revise it. In the event that the Regional Director directs DFS to revise the Redress Plan, DFS shall make the requested revisions and resubmit the Redress Plan to the Regional Director within 20 days.

47. Within 7 days after the Regional Director notifies DFS that he or she has made a determination of non-objection to the Redress Plan, DFS shall implement and adhere to the steps, recommendations, deadlines, and the timeframes set forth in the Redress Plan.

48. Upon completion of the Redress Plan, if the amount of restitution credited and paid to Affected Consumers is less than \$3,300,000, within 30 days of the completion of the Redress Plan DFS is ordered to pay to the Bureau, in the form of a wire transfer to the Bureau or to such agent as the Bureau may direct, and in accordance with wiring instructions to be provided by counsel for the Bureau, the difference between the amount of restitution provided to Affected

Consumers and \$3,300,000.

49. Any funds paid to the Bureau under Paragraph 48 shall be deposited in the U.S. Treasury as disgorgement.

50. DFS shall not attach any conditions to the restitution provided to Affected Consumers, including requiring consumers to waive any rights.

51. Respondent shall relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law and no part of the funds shall be returned to Respondent.

52. With regard to any redress that DFS pays pursuant to this Section, DFS may neither seek nor receive, directly or indirectly, any reimbursement or indemnification from any insurance policy, and shall treat such payments in the ordinary course for tax purposes and may claim lawful deductions but shall not seek any extraordinary tax credit or other treatment.

VI. Compliance Provisions

IT IS FURTHER ORDERED, that:

Reporting Requirements

53. DFS shall notify the Bureau of any change in DFS that may affect compliance obligations arising under this Consent Order, including but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Consent Order; the proposed filing of any bankruptcy or insolvency proceeding by or against DFS; or a change in the name or address of DFS.

54. DFS shall report any change in the information required to be submitted under this Section at least 30 days prior to such change. Provided, however, that with respect to any

proposed change about which DFS learns less than 30 days prior to the date such action is to take place, DFS shall notify the Bureau as soon as is practicable after obtaining such knowledge.

55. DFS shall provide the Bureau notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against DFS within 14 days of its filing.

56. Within 90 days of the Effective Date, and again prior to one year after the Effective Date, DFS shall submit to the Regional Director a true and accurate written compliance progress report (“Compliance Report”), which has been approved by the Board, which, at a minimum: (a) describes in detail the manner and form in which DFS has complied with this Consent Order and ensured compliance by the Board members and DFS’s executive officers, as well as its managers or employees who will have responsibilities to carry out the subject matter of this Consent Order; and (b) attaches a copy of each Consent Order Acknowledgment obtained pursuant to Paragraph 60 of this Consent Order, unless previously submitted to the Bureau.

57. After submitting the one-year Compliance Report, DFS shall submit to the Regional Director additional true and accurate Compliance Reports within 14 days of receiving a written request from a Bureau representative.

Consent Order Distribution and Acknowledgement

58. Within 30 days of the Effective Date, DFS shall deliver a copy of this Consent Order to each of its board members and executive officers, as well as to any managers, employees, or other agents and representatives who will have responsibilities to carry out the requirements of the Consent Order.

59. For a period of three years from the Effective Date, DFS shall deliver a copy of this Consent Order to any business entity resulting from any change in structure as set forth in the Reporting Requirements in Paragraphs 54 through 55, any future board members and executive

officers and managers who will have responsibilities to carry out the Consent Order before they assume their responsibilities under the Consent Order.

60. DFS shall secure a signed and dated statement acknowledging receipt of a copy of this Consent Order, with any electronic signatures complying with the requirements of the E-Sign Act, 15 U.S.C. § 7001 et seq., within 30 days of delivery, from all persons receiving a copy of this Consent Order pursuant to this Section.

Recordkeeping

61. Respondent shall create, for at least three years from the Effective Date, and then retain, for at least five years, and make available to Bureau representatives upon request, the following business records: (a) all documents and records necessary to demonstrate full compliance with each provision of this Consent Order, including all submissions to the Bureau; (b) all documents and records pertaining to the Redress Plan, as set forth in Section V above; (c) copies of all sales scripts, training materials, advertisements, websites, and other marketing materials relating to Auto Loan Programs Directed to Servicemembers, including any such materials used by Service Providers; and (d) for MILES Program loans, all consumer complaints and all refund requests that DFS has received directly or indirectly, such as through a third party, and any responses to those complaints or requests. In addition, Respondent shall retain, for at least five years, and make available to Bureau representatives upon request, business records otherwise created sufficient to show the Affected Consumer's name, address, and phone number, and, if known, email address, a description of the products or services that the Affected Consumer purchased in connection with the loan, date credit extended, the price of the vehicle and the price of any other products or services stated separately, amount financed, the annual percentage rate, and the term of the loan.

Notices

62. Unless otherwise directed in writing by a Bureau representative, DFS shall provide all submissions, requests, communications, consents or other documents relating to this Consent Order in writing and by overnight courier (not the U.S. Postal Service) with the subject line of the documents beginning: In re Dealers' Financial Services, LLC, File No. 2013-CFPB-0004, as set out below.

Steve Kaplan
Regional Director, CFPB Northeast Region
Consumer Financial Protection Bureau
330 Madison Ave
New York, NY
10017

Compliance and Extensions of Time

63. Upon a written showing of good cause, the Regional Director may, in his discretion, modify any non-material provisions of this Consent Order (*e.g.*, reasonable extensions of time). Any such modification by the Regional Director shall be in writing.

VII. Administrative Provisions

64. The provisions of this Consent Order shall not bar, estop, or otherwise prevent the Bureau, or any other federal or state agency or department from taking any other action against Respondent.

65. This Consent Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 5563(b), and expressly does not form, and may not be construed to form, a contract binding the Bureau or the United States.

66. This Order shall be effective on the date of issuance, and shall remain effective and enforceable for five years except that any provision herein that applies for a longer period shall

be effective and enforceable for such period or to the extent that, and until such time as, any provision has been modified, terminated, suspended, or set aside by the Bureau.

67. Calculation of time limitations shall run from the Effective Date and shall be based on calendar days, unless otherwise noted.

68. The provisions of this Consent Order shall be binding upon Respondent.

69. The provisions of this Consent Order shall be enforceable by the Bureau. Any violation of this Consent Order may result in the imposition by the Bureau of the maximum amount of civil money penalties allowed under section 1055(c) of the CFPA,

12 U.S.C. § 5565(c).

70. This Consent Order and the accompanying Stipulation contain the complete agreement between the parties. No promises, representations or warranties other than those set forth in this Consent Order and the accompanying Stipulation have been made by any of the parties. This Consent Order and the accompanying Stipulation supersede all prior communications, discussions, or understandings, if any, of the parties, whether oral or in writing.

71. Nothing in this Consent Order or the accompanying Stipulation shall be construed as allowing the Respondent, its Board, officers, or employees to violate any law, rule, or regulation.

IT IS SO ORDERED, this 25th day of June, 2013.



Richard Cordray
Director
Consumer Financial Protection Bureau