

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

ADMINISTRATIVE PROCEEDING

File No. 2020-BCFP-0017

In the Matter of:

Nissan Motor Acceptance Corporation

**CONSENT ORDER**

The Bureau of Consumer Financial Protection (Bureau) has reviewed repossession and servicing activities by Nissan Motor Acceptance Corporation (Respondent, as defined below) and has identified the following law violations: (1) Respondent wrongfully repossessed some vehicles despite having agreements in place with consumers to prevent repossession; (2) Respondent, through repossession agents, kept personal property that was located in consumers' vehicles at the time of repossession and would not return that personal property until consumers paid a fee for its storage; (3) Respondent, through its service provider, deprived consumers making auto-loan payments by phone of the ability to select a payment option with a significantly lower fee than the one they were

charged; and (4) Respondent made a deceptive statement in its agreements to extend consumers' auto loans that appeared to limit consumers' bankruptcy protections. These actions violated the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531, 5536. Under Sections 1053 and 1055 of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5563, 5565, the Bureau issues this Consent Order (Consent Order).

**I**  
**Jurisdiction**

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

**II**  
**Stipulation**

2. Respondent has executed a "Stipulation and Consent to the Issuance of a Consent Order," dated October 5, 2020 (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 facts necessary to establish the

Bureau's jurisdiction over Respondent and the subject matter of this action.

### **III Definitions**

3. The following definitions apply to this Consent Order:
  - a. "Accounts" means retail installment sales accounts and lease accounts maintained and serviced by Respondent.
  - b. "Affected Consumers" includes all consumers whose Accounts were serviced by Respondent and who were subjected to a Wrongful Repossession from January 1, 2013 through the Effective Date, as determined by the independent review process set forth in Section VIII of this Consent Order or otherwise identified by Respondent.
  - c. "Board" means Respondent's duly-elected and acting Board of Directors.
  - d. "Effective Date" means the date on which the Consent Order is issued.
  - e. "Identified Consumer Accounts" refers to the list of potentially Affected Consumers compiled by the Bureau which identifies Accounts to be reviewed by the independent review process set forth in Section VIII of this Consent Order.

- f. “Regional Director” means the Regional Director for the Southeast Region for the Office of Supervision for the Bureau of Consumer Financial Protection, or his or her delegate.
- g. “Related Consumer Action” means a private action by or on behalf of one or more consumers or an enforcement action by another governmental agency brought against Respondent based on substantially the same facts as described in Section IV of this Consent Order.
- h. “Respondent” means Nissan Motor Acceptance Corporation (“NMAC”), and its successors and assigns.
- i. “Wrongful Repossession” means a repossession of a consumer’s vehicle that occurred even though one of the conditions set forth in sub-paragraphs 3.i.a or 3.i.b, below, was satisfied or existed, subject to the limitations set forth in sub-paragraph 3.i.c:
  - a. Before Respondent assigned the vehicle for repossession:
    - (i) Respondent entered into an agreement with the consumer under which the consumer promised to make a payment and the promised action date was still outstanding; (ii) Respondent agreed to an extension agreement with the consumer to bring the Account current and the consumer had not become delinquent again after the extension agreement was applied; (iii) Respondent entered into

an agreement with the consumer, reflected in Respondent's system notes, phone recordings, or electronic or other written communications (together, "Respondent's Records"), and told the consumer that the repossession would be postponed for a certain amount of time due to an action that the consumer took, but Respondent failed to honor that agreement; or (iv) the consumer had made a payment sufficient under Respondent's policies, procedures, or practices to avoid the vehicle's being assigned for a repossession.

- b. After Respondent assigned the vehicle for repossession: (i) the consumer brought the Account current; (ii) the consumer entered into an agreement, reflected in Respondent's Records, that was accepted by Respondent to cancel or postpone the repossession; or (iii) the consumer made a payment sufficient under Respondent's policies, procedures, or practices to stop the repossession.
- c. A repossession will not be deemed a Wrongful Repossession under this Consent Order if it occurred less than six (6) business hours after the Respondent's Records reflect either that the consumer notified Respondent of the payment described in subpart 3.i.b(i) or 3.i.b(iii) or Respondent's acceptance of the agreement

described in subparagraph 3.i.b(ii). Further, where a consumer made a payment described in subpart 3.i.b(i) or 3.i.b(iii) through Respondent's online payment portal, and Respondent's Records do not reflect that the consumer notified Respondent that the payment had been made, a repossession will not be deemed a Wrongful Repossession under this Consent Order if it occurred less than one business day after the consumer's payment was made. Finally, where a consumer made a payment described in subpart 3.i.b(i) or 3.i.b(iii) through a channel other than Respondent's online payment portal, and Respondent's Records do not reflect that the consumer notified Respondent that the payment had been made, a repossession will not be deemed a Wrongful Repossession under this Consent Order if it occurred less than six (6) business hours after the consumer's payment posts to the consumer's Account.

#### **IV**

##### **Bureau Findings and Conclusions**

The Bureau finds the following:

4. Respondent is an auto financing subsidiary of Nissan North America, Inc. that services loans and leases.
5. Nissan and Infiniti dealerships nationwide originate and then assign the loans and leases to Respondent.

6. Respondent's auto loan servicing operations are based in Irving, Texas.
7. NMAC services millions of Accounts, representing billions of dollars in outstanding principal. In 2018, dealerships assigned NMAC over 382,000 new loans and 299,000 new leases. That same year, NMAC serviced \$49.3 billion in outstanding loans and leases.
8. Respondent is a "covered person" under the CFPA because it is in the business of servicing Accounts. 12 U.S.C. § 5481(6), (15)(A)(i).

#### **Findings and Conclusions as to Unfair Acts or Practices**

9. Sections 1031 and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531, 5536(a)(1)(B), prohibits covered persons from engaging "in any unfair, deceptive, or abusive act or practice."
10. An act or practice is unfair if it causes or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers and that is not outweighed by countervailing benefits to consumers or competition. 12 U.S.C. § 5531(c)(1).

#### **Respondent Wrongfully Repossessed Consumers' Vehicles**

11. When NMAC consumers miss Account payments, Respondent asks them to make a promise to pay by a certain date, or to enter into an agreement to extend their loan, known as an extension agreement, to avoid repossession.

12. Respondent periodically attempts to contact consumers concerning missed payments from the time consumers miss the first payment until the vehicle is repossessed.
13. From 2013 through at least 2018, Respondent's policy was not to refer an Account for repossession when the consumer had an active promise to pay—meaning the consumer had made a promise to pay by a date that had not yet passed—or had recently entered an extension agreement to resolve the consumer's delinquency.
14. Respondent informed consumers that it would not repossess their vehicles if the consumers paid to decrease their delinquency to under 60 days past due, kept a promise to pay, or entered into an extension agreement.
15. Respondent also informed consumers that it would not repossess vehicles if the consumers' payments were less than 60 days past due.
16. From 2013 through September of 2019, Respondent repossessed the vehicles of hundreds of consumers who had: (i) made payments that decreased their delinquency to less than 60 days past due; (ii) made and kept promises to pay; (iii) made promises to pay by a future date that had not yet passed; or (iv) agreed to extension agreements with Respondent. Each of these actions taken by consumers should have prevented repossessions.



17. As a result of Respondent's Wrongful Repossessions consumers lost the use of their vehicles. Many also experienced other consequences, such as missed work, expenses for alternative transportation, repossession-related fees, detrimental credit reporting, and vehicle damage in the repossession process.
18. Respondent's Wrongful Repossessions caused or were likely to cause substantial injury to consumers that was not reasonably avoidable or outweighed by countervailing benefits to consumers or competition.
19. Thus, Respondent engaged in unfair acts and practices, in violation of the CFPA. 12 U.S.C. §§ 5531(c), 5536(a)(1)(B).

**Respondent, Through its Repossession Agents, Engaged in Unfair Acts and Practices by Withholding Consumers' Personal Belongings Until the Consumers Paid an Upfront Fee**

20. Respondent contracts with "repossession forwarders" to manage repossessions of consumers' vehicles on behalf of NMAC.
21. After Respondent identifies a vehicle for repossession, Respondent assigns it to a repossession forwarder to manage the process.
22. Respondent's repossession forwarders then assign Respondent's repossessions to repossession agents, who pick up consumers' vehicles on behalf of Respondent.

23. Respondent provides information to the repossession forwarders indicating that a vehicle should be repossessed.
24. Respondent does not advise its consumers the date or time when a repossession will occur.
25. After repossessions occur, Respondent sends communications to consumers whose vehicles have been repossessed indicating that the repossession has occurred and noting what consumers will have to pay to recover their vehicles.
26. Consumers' vehicles in many instances contain the consumers' personal property. Consumers reported that items such as children's car seats, college textbooks, and prescription sunglasses were in their vehicles when the vehicles were repossessed.
27. From at least early 2014 through late August 2017, Respondent's repossession agents in many instances imposed fees on consumers for holding personal property contained in repossessed vehicles. These repossession agents often refused to return consumers' personal property unless and until the consumers paid the fees.
28. Respondent knew that its repossession agents often refused to return consumers' personal property until after the consumers paid the upfront fees.

29. Respondent represented to some consumers that it had no control over the fees repossession agents charged, but in some instances Respondent directed repossession forwarders to have repossession agents lower the fees charged to consumers.
30. Some consumers whose vehicles were repossessed could not recover their personal property because they did not pay the fees. Others were denied access to their personal property until they paid the upfront fees.
31. The practice of withholding consumers' personal property unless consumers paid an upfront fee to recover it caused or was likely to cause substantial injury that is not reasonably avoidable or outweighed by countervailing benefits to consumers or competition.
32. Respondent is liable for the actions of its repossession agents related to detaining consumers' personal property.
33. Respondent, through its repossession agents, therefore engaged in unfair acts and practices, in violation of the CFPA. 12 U.S.C. §§ 5531(c), 5536(a)(1)(B).

**Respondent, Through its Service Provider, Deprived Consumers of the Ability to Choose Pay by Phone Options with Significantly Lower Fees**

34. Respondent permits consumers to make Account payments online, telephonically, by mail, or through an auto-debit program.

35. Respondent engaged a third-party payment processor to handle consumer calls regarding telephonic payments and to process those payments.
36. This payment processor handled over 18 million payments for Respondent between 2012 and 2017. The payment processor's agents spoke to consumers on Respondent's behalf to obtain payments on Respondent's Accounts.
37. From 2012 through late 2017, the payment processor charged Respondent's consumers \$5 for payments by electronic check or in-network debit-card payments and \$12.95 for credit-card and out-of-network debit-card payments. In-network debit-cards are cards that could be processed without a PIN over the Star, NYCE, Pulse, or Accel ATM networks.
38. Until at least late 2017, some of Respondent's consumer-facing materials, such as billing invoices, stated that "transaction fees may apply" for telephonic payments.
39. None of Respondent's consumer-facing materials disclosed the fee amounts for telephonic payments or the considerable price difference between available methods of payment by phone.
40. Many of Respondent's customers called and made payments by phone through Respondent's third-party phone-payment processor. Many of

those consumers elected to make credit-card or out-of-network debit-card payments. In many cases where consumers elected one of those options, Respondent's third-party phone-payment-processing vendor failed to tell consumers about significant differences in the fees.

41. This practice caused or was likely to cause substantial injury to consumers. Numerous consumers were charged \$7.95 more to make a phone payment than they would have been if they had selected a different payment option, and they often made those selections without information about the lower-fee options.
42. This injury was not reasonably avoidable or outweighed by countervailing benefits to consumers or competition.
43. Respondent is liable for the acts of the third-party payment processor.
44. Respondent, through the third-party payment processor, therefore engaged in unfair acts and practices, in violation of the CFPA. 12 U.S.C. §§ 5531(c), 5536(a)(1)(B).

#### **Findings and Conclusions as to Deceptive Acts or Practices**

45. An act or practice is deceptive under the CFPA if (i) there is a representation or omission of information that is likely to mislead consumers acting reasonably under the circumstances; and (ii) that information is material to consumers.

### **Respondent's Extension Agreements Misrepresented Consumers' Bankruptcy Rights**

46. Respondent offers loan extension agreements to some consumers who are experiencing financial difficulties.
47. From at least January 2012 through February 2017, Respondent's extension agreement contracts, as well as written confirmations it sent to consumers who agreed to extensions orally, included the following language:

As a condition of you making this request, you represent that you have not filed and agree that you will not file for bankruptcy protection within 120 days after the date of this correspondence, and that an extension is contingent upon the absence of any such filing. If you should so file for bankruptcy protection, then this agreement is void for misrepresentation, and we may seek payment of the extended payments as originally scheduled and may deem such payment to be in default.

48. From 2012 through 2016, Respondent sent extension agreements or written confirmations of oral agreements including this language to between 50,000 to 150,000 consumers each year.
49. Respondent's extension agreements created the net impression that consumers could not file for bankruptcy.
50. In truth and in fact, consumers *could* file for bankruptcy. An agreement to waive an individual's right to file for bankruptcy is void as against public policy.

51. These statements are material because they were likely to affect consumers' conduct in executing the written extension agreement or considering whether to file for bankruptcy.
52. Respondent's representations were false and misleading and constituted deceptive acts or practices, in violation of the CFPA, 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

**ORDER**

**V**

**Conduct Provisions**

**IT IS ORDERED**, under sections 1053 and 1055 of the CFPA, that:

53. Respondent, and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, in connection with servicing of any Account, may not misrepresent, or assist others in misrepresenting, expressly or impliedly:
  - i. That a consumer may not file for bankruptcy; or
  - ii. Any other fact material to consumers concerning their rights related to initiating a bankruptcy proceeding.
54. Respondent and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, must take the following affirmative actions:

- a. Respondent must review its repossession assignment and cancellation process and implement additional system or employee controls and adopt reasonable policies and procedures to avoid Wrongful Repossessions;
- b. Respondent must review its process for monitoring and addressing system-error messages related to cancelling or holding a repossession and develop and implement any changes necessary to ensure errors are flagged and responded to in a timely manner;
- c. Respondent must track all future Wrongful Repossessions. Respondent's tracking must segregate actual Wrongful Repossessions from instances where the Respondent waived repossession fees for consumers as a courtesy;
- d. Respondent must conduct a quarterly review of any Wrongful Repossessions that occur after the Effective Date to identify any patterns or practices that need to be addressed;
- e. Respondent must adopt reasonable policies and procedures to remedy instances of future Wrongful Repossession. Respondent must provide consumers with remediation for such Wrongful Repossessions, including waiver or refund of all repossession-related fees, correction of the consumer's credit report, and a refund of actual costs incurred for both loss of use of the consumer's vehicle (such as alternate transportation



- costs) and other reasonable and verifiable consequential damages incurred by the consumer. Such remediation must be paid to any consumer whose vehicle is Wrongfully Repossessed within the later of seven business days of notification that the repossession was a Wrongful Repossession, or two business days after Respondent's receipt of evidence of actual costs incurred. It is further provided that Respondent must promptly notify the consumer of her right to provide such evidence of actual costs incurred;
- f. Respondent must prohibit its repossession agents (through contract or otherwise) from charging personal property fees to NMAC consumers directly and demanding fees as a condition of returning personal property;
  - g. If Respondent offers consumers the option to make Account payments by phone, Respondent must, on each call during which a consumer makes such a payment, clearly disclose to the consumer the fee for each method of making a payment by phone, before the consumer is asked which method they wish to use;
  - h. If Respondent charges consumers fees to make payments via other channels (*e.g.*, online portal, postal mail), Respondent must disclose all

fees for each method on Respondent's website or its monthly billing statements; and

- i. For all Affected Consumers, Respondent:
  1. Shall complete a review of all information furnished to any consumer reporting agency from October 1, 2013 through the Effective Date to determine whether information Respondent furnished to any consumer reporting agency requires correction or updating consistent with 15 U.S.C. § 1681s-2(a)(2); and
  2. Shall use the results of the review required by paragraph (i)(1) to provide corrected or updated information to the consumer reporting agencies consistent with 15 U.S.C. § 1681s-2(a)(2). In the event that Respondent cannot, after its review, verify that information it furnished about Affected Consumers requires correction or updating, it shall request that the consumer reporting agency delete the furnished information, unless the final account status or payment rating indicates that the account is current. Respondent will not thereafter re-furnish any inaccurate or incomplete information.

## VI Compliance Plan

**IT IS FURTHER ORDERED** that:

55. Within 45 days of the Effective Date, Respondent must submit to the Regional Director for review and determination of non-objection a comprehensive compliance plan designed to ensure that Respondent's Account servicing activities comply with the terms of this Consent Order (Compliance Plan). The Compliance Plan must include, at a minimum:
  - a. Detailed steps for addressing each action required by this Consent Order, including, but not limited to, requirements set forth in Paragraph 68(a)-(k); and
  - b. Specific timeframes and deadlines for implementation of the steps described above.
56. The Regional Director will have the discretion to make a determination of non-objection to the Compliance Plan or direct the Respondent to revise it. If the Regional Director directs the Respondent to revise the Compliance Plan, the Respondent must make the revisions and resubmit the Compliance Plan to the Regional Director within 30 days.
57. After receiving notification that the Regional Director has made a determination of non-objection to the Compliance Plan, the Respondent

must implement and adhere to the steps, recommendations, deadlines, and timeframes outlined in the Compliance Plan.

## VII

### Role of the Board

**IT IS FURTHER ORDERED** that:

58. The Board, or a relevant committee thereof, must review all submissions (including plans, reports, programs, policies, and procedures) required by this Consent Order prior to submission to the Bureau.
59. Although this Consent Order requires Respondent to submit certain documents for the review or non-objection by the Regional Director, the Board will have the ultimate responsibility for proper and sound management of Respondent and for ensuring that Respondent complies with Federal consumer financial law and this Consent Order.
60. In each instance that this Consent Order requires the Board to ensure adherence to, or perform certain obligations of Respondent, the Board, or a relevant committee thereof, must:
  - a. Authorize whatever actions are necessary for Respondent to fully comply with the Consent Order;
  - b. Require timely reporting by management to the Board on the status of compliance obligations; and

- c. Require timely and appropriate corrective action to remedy any material non-compliance with any failures to comply with Board directives related to this Section.

## **VIII**

### **Order to Pay Redress**

**IT IS FURTHER ORDERED** that:

61. Within 10 days of the Effective Date, Respondent must reserve or deposit into a segregated deposit account an amount not less than \$750,000 or greater than \$1,000,000, for the purpose of providing Cash Redress to Affected Consumers as required by this Consent Order.
62. Redress will be paid in two forms to Affected Consumers: through checks mailed by Respondent to consumers (Cash Redress), and through credits Respondent will provide to consumers for any repossession fees for Wrongful Repossessions still outstanding on Affected Consumers' Accounts (Credit Redress), as follows:
  - a. Respondent will provide Cash Redress to each Affected Consumer for loss of use of their vehicles for the number of days they were without their vehicle;
  - b. Respondent will provide Cash Redress to each Affected Consumer that paid repossession or other fees to the Respondent due to the

Wrongful Repossession that have not already been credited or refunded to the Affected Consumer by NMAC, in the amount of the fees paid; and

- c. Respondent will provide Credit Redress to each Affected Consumer who has repossession and other fees that still appear on their NMAC Account due to the Wrongful Repossession, in the amount of the outstanding fees.
63. Within 30 days of the Effective Date, Respondent must provide to the Regional Director for non-objection a proposal for retaining an independent third-party administrator (ITPA) for the purpose of conducting a review of consumer files to identify all consumers whose vehicles have been Wrongfully Repossessed and the amount of Cash Redress and Credit Redress owed to each consumer (Independent Third-Party Proposal).
64. The Independent Third-Party Proposal shall identify the ITPA Respondent proposes to retain and must include:
- a. The proposed ITPA's qualifications; and
  - b. A description of all work the ITPA has performed for Respondent in the five years preceding the Effective Date (if any), including the amount Respondent paid the ITPA for each engagement.

65. If the Regional Director directs Respondent to revise the Independent Third-Party Proposal, Respondent must make revisions and resubmit the proposal within 20 days of the Regional Director's request.
66. Within 15 days of receiving written notification that the Regional Director has made a determination of non-objection to the Independent Third-Party Proposal, Respondent shall retain the ITPA to conduct a review of consumer files to identify all consumers whose vehicles have been Wrongfully Repossessed and the amount of Cash Redress and Credit Redress owed to each consumer.
67. Within 30 days of retaining the ITPA, Respondent must submit to the Regional Director for review and non-objection a comprehensive written plan for providing redress consistent with this Consent Order (Redress Plan). The Regional Director will have the discretion to make a determination of non-objection to the Redress Plan or direct the Respondent to revise it. If the Regional Director directs Respondent to revise the Redress Plan, Respondent must make the revisions and resubmit the Redress Plan to the Regional Director within 15 days. After receiving notification that the Regional Director has made a determination of non-objection to the Redress Plan, Respondent must implement and adhere to the steps, recommendations, deadlines, and timeframes outlined in the

Redress Plan.

68. The Redress Plan must:

- a. specify the methodology the ITPA will use to conduct a review of the Identified Consumer Accounts whose vehicles may have been Wrongfully Repossessed, to identify:
  - i. all Affected Consumers;
  - ii. the number of days each Affected Consumer was without his or her vehicle; and
  - iii. the amount of repossession fees due to the Wrongful Repossession that still appear on each Affected Consumers Account or that the Affected Consumer paid to Respondent.
- b. describe the methodology for calculating the portion of Cash Redress for Affected Consumers: (i) due to loss of use of their vehicle, which methodology must account for the number of days the Affected Consumer was without his or her vehicle, including both the calendar day the vehicle was repossessed and the calendar day on which the vehicle was returned, and a plan to compensate each Affected Consumer in the amount of \$74 for each day the consumer was without his or her vehicle, subject to paragraph 70 below; and (ii) who paid repossession or other fees to the Respondent due to the



Wrongful Repossession that have not already been credited or refunded to the Affected Consumer by NMAC, subject to paragraph 70 below;

- c. provide that each Affected Consumer will receive a Redress Notification Letter and provide an exemplar of the Redress Notification Letter. The Redress Notification Letter must explain how Respondent will provide Cash Redress and, if applicable, Credit Redress; the date by which Respondent will provide Cash Redress and, if applicable, Credit Redress; and that Respondent's Cash Redress and, if applicable, Credit Redress payment is in accordance with the terms of this Consent Order;
- d. provide an exemplar of the envelope in which the Redress Notification Letters will be sent with no other materials other than the approved letters and redress checks, unless Respondent has obtained written confirmation from the Regional Director that the Bureau does not object to including such materials;
- e. require Respondent, when it makes Cash Redress to Affected Consumers by check, to send the check by United States Post Office first-class mail, address-correction service requested, to the Affected Consumer's last address as maintained in Respondent's records;

- f. require Respondent, with respect to any Affected Consumer whose Cash Redress check is returned, to make reasonable attempts to obtain a current address using standard address-search methodologies, including a standard address search using the National Change of Address system, and to promptly re-mail all returned redress checks to current addresses, if any;
- g. require Respondent, if the check for any eligible consumer is returned to Respondent after a second mailing, or if a current mailing address cannot be identified using standard address-search methodologies, to attempt to contact the eligible consumer by the last known email (notification email) or phone number to notify them of their right to Cash Redress; and provide an exemplar of the notification email and a script for the phone call;
- h. require Respondent, if the check for any Affected Consumer is returned to Respondent after a second mailing, or if a current mailing address cannot be identified using standard address-search methodologies, to retain the Cash Redress for that Affected Consumer for 180 days from the date the check was originally mailed, during which period such amount may be claimed by such Affected

Consumer upon appropriate proof of identity and, after such time, dispose of these monies in accordance with Paragraph 70, below;

- i. specify timeframes and deadlines for implementing the steps described above;
  - j. provide for review by Respondent or its counsel of Accounts reviewed by the ITPA to assure compliance with this Consent Order and the Redress Plan, *provided however* that (i) the ITPA retains full and final decision-making rights as to the class of Affected Consumers and amounts of redress due to Affected Consumers under this Consent Order; and (ii) a detailed accounting of any changes or modifications to the class of Affected Consumers or amounts of redress due to Affected Consumers as a result of Respondent's review under this provision shall be documented and provided to the Bureau prior to completion of redress administration; and
  - k. provide that Respondent will pay all costs of administering Cash Redress and Credit Redress as required by this Section.
69. After Respondent has completed redress administration under the Redress Plan, Respondent must submit a report to the Regional Director, and identify how much Cash Redress and Credit Redress was successfully distributed or credited to Affected Consumers.

70. If the total amount of Cash Redress due to Affected Consumers is less than \$750,000, within 30 days of the completion of the Redress Plan, Respondent must pay to the Bureau, by wire transfer to the Bureau or to the Bureau's agent, and according to the Bureau's wiring instructions, the difference between the amount of Cash Redress provided to Affected Consumers and \$750,000. If the total amount of Cash Redress due to Affected Consumers under this Section is greater than \$1,000,000, the amount paid to each Affected Consumer may be reduced pro rata using \$1,000,000 as the total Cash Redress amount available to Affected Consumers and Respondent will not be responsible for any further Cash Redress in excess of \$1,000,000.
71. The Bureau may use any remaining funds due to it under Paragraph 70 to pay additional redress to Affected Consumers. If the Bureau determines, in its sole discretion, that additional redress is wholly or partially impracticable or otherwise inappropriate, or if funds remain after the additional redress is completed, the Bureau will deposit any remaining funds in the U.S. Treasury as disgorgement. Respondent will have no right to challenge any actions that the Bureau or its representatives may take under this Section.
72. Respondent may not condition the payment of any redress to any Affected

Consumer under this Consent Order on that Affected Consumer waiving any right.

## **IX**

### **Order to Pay Civil Money Penalties**

**IT IS FURTHER ORDERED** that:

73. Under section 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law described in Section IV of this Consent Order, and taking into account the factors in 12 U.S.C. § 5565(c)(3), Respondent must pay a civil money penalty of \$4 million to the Bureau.
74. Within 10 days of the Effective Date, Respondent must pay the civil money penalty by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.
75. The civil money penalty paid under this Consent Order will be deposited in the Civil Penalty Fund of the Bureau as required by section 1017(d) of the CFPA, 12 U.S.C. § 5497(d).
76. Respondent must treat the civil money penalty paid under this Consent Order as a penalty paid to the government for all purposes. Regardless of how the Bureau ultimately uses those funds, Respondent may not:

- a. Claim, assert, or apply for a tax deduction, tax credit, or any other tax benefit for any civil money penalty paid under this Consent Order; or
  - b. Seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made under any insurance policy, with regard to any civil money penalty paid under this Consent Order.
77. To preserve the deterrent effect of the civil money penalty in any Related Consumer Action, Respondent may not argue that Respondent is entitled to, nor may Respondent benefit by, any offset or reduction of any compensatory monetary remedies imposed in the Related Consumer Action because of the civil money penalty paid in this action. If the court in any Related Consumer Action offsets or otherwise reduces the amount of compensatory monetary remedies imposed against Respondent based on the civil money penalty paid in this action or based on any payment that the Bureau makes from the Civil Penalty Fund, Respondent must, within 30 days after entry of a final order granting such offset or reduction, notify the Bureau, and pay the amount of the offset or reduction to the U.S. Treasury. Such a payment will not be considered an additional civil money penalty and will not change the amount of the civil money penalty

imposed in this action.

**X**

**Additional Monetary Provisions**

**IT IS FURTHER ORDERED** that:

78. In the event of any default on Respondent's obligations to make payment under this Consent Order, interest, computed under 28 U.S.C. § 1961, as amended, will accrue on any outstanding amounts not paid from the date of default to the date of payment, and will immediately become due and payable.
79. Respondent must relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law and no part of the funds may be returned to Respondent.
80. Under 31 U.S.C. § 7701, Respondent, unless it already has done so, must furnish to the Bureau its taxpayer identification numbers, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Consent Order.
81. Within 30 days of the entry of a final judgment, consent order, or settlement in a Related Consumer Action, Respondent must notify the Regional Director of the final judgment, consent order, or settlement in writing. That notification must indicate the amount of redress, if any, that

Respondent paid or is required to pay to consumers and describe the consumers or classes of consumers to whom that redress has been or will be paid. Such notification will be treated as “confidential information” pursuant to 12 C.F.R. § 1070.2(f).

## **XI**

### **Reporting Requirements**

**IT IS FURTHER ORDERED** that:

82. Respondent must notify the Bureau of any development 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 filing of any bankruptcy or insolvency proceeding by or against Respondent; or a change in Respondent’s name or address. Respondent must provide this notice, if practicable, at least 30 days before the development, but in any case, no later than 14 days after the development.
83. Within 90 days of the Effective Date, and again one year after the Effective Date, Respondent must submit to the Regional Director an accurate written compliance progress report (Compliance Report) that has



been approved by the Board, or a relevant committee thereof, which, at a minimum:

- a. Lists each applicable paragraph and subparagraph of the Consent Order and describes in detail the manner and form in which Respondent has complied with each such paragraph and subparagraph of the Consent Order;
- b. Describes in detail the manner and form in which Respondent has complied with the Redress Plan and Compliance Plan; and
- c. Attaches a copy of each Order Acknowledgment obtained under Section XII, unless previously submitted to the Bureau.

## **XII**

### **Order Distribution and Acknowledgment**

**IT IS FURTHER ORDERED** that:

84. Within 30 days of the Effective Date, Respondent must deliver a copy of this Consent Order to each of its board members and executive officers, as well as to any managers, employees, Service Providers, or other agents and representatives who have responsibilities related to the subject matter of the Consent Order.
85. For 5 years from the Effective Date, Respondent must deliver a copy of this Consent Order to any business entity resulting from any change in

structure referred to in Section XI, any future board members and executive officers, as well as to any managers, employees, Service Providers, or other agents and representatives who will have responsibilities related to the subject matter of the Consent Order before they assume their responsibilities.

86. Respondent must secure a signed and dated statement acknowledging receipt of a copy of this Consent Order, ensuring that any electronic signatures comply 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 under this Section.

### **XIII**

#### **Recordkeeping**

**IT IS FURTHER ORDERED** that:

87. Respondent must create, or if already created, must retain for the duration of the Consent Order, or the time period provided below, 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, described

in Section VIII above;

- c. For a period of three years from the date of the recording, recordings of all phone calls with consumers regarding extension agreements, promises to pay, or between a consumer and the Respondent's collections department responsible for 60 days to 120 days past due Accounts; and
  - d. All records related to repossessions, aside from recordings covered in Paragraph 87(c), including any such materials used by a third party on behalf of Respondent. For the sake of clarity, "any such materials used by a third party" relates to documents in the Respondent's possession, custody, or control.
88. Respondent must retain the documents identified in Paragraph 87(d) for the duration of the Consent Order.
89. Respondent must make the documents identified in Paragraph 87 available to the Bureau upon the Bureau's request.

#### **XIV**

#### **Notices**

**IT IS FURTHER ORDERED** that:

- 90. Unless otherwise directed in writing by the Bureau, Respondent must provide all submissions, requests, communications, or other documents

relating to this Consent Order in writing, with the subject line, “*In re* Nissan Motor Acceptance Corporation, File No. 2020-BCFP-0017,” and send them by overnight courier or first-class mail to the below address and contemporaneously by email to [Enforcement\\_Compliance@cfpb.gov](mailto:Enforcement_Compliance@cfpb.gov):

Regional Director, CFPB Southeast Region  
Peachtree Summit Building  
401 W. Peachtree Street  
Atlanta, GA 30308

## XV

### **Cooperation with the Bureau**

**IT IS FURTHER ORDERED** that:

91. Respondent must cooperate fully to help the Bureau determine the identity and location of, and the amount of injury sustained by, each Affected Consumer. Respondent must provide such information in its or its agents’ possession or control within 30 days of receiving a written request from the Bureau.

## XVI

### **Compliance Monitoring**

**IT IS FURTHER ORDERED** that, to monitor Respondent’s compliance with this Consent Order:

92. Within 21 days of receipt of a written request from the Bureau, Respondent must submit additional Compliance Reports or other requested

non-privileged information, related to requirements of this Consent Order, which must be made under penalty of perjury; provide sworn testimony related to requirements of this Consent Order and Respondents' compliance with those requirements; or produce non-privileged documents related to requirements of this Consent Order and Respondents' compliance with those requirements.

93. Respondent must permit Bureau representatives to interview about the requirements of this Consent Order and Respondent's compliance with those requirements any employee or other person affiliated with Respondent who has agreed to such an interview. The person interviewed may have counsel present.
94. Nothing in this Consent Order will limit the Bureau's lawful use of civil investigative demands under 12 C.F.R. § 1080.6 or other compulsory process.

## **XVII**

### **Modifications to Non-Material Requirements**

**IT IS FURTHER ORDERED** that:

95. Respondent may seek a modification to non-material requirements of this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting requirements) by submitting a written request to the Regional

Director.

96. The Regional Director may, in his or her discretion, modify any non-material requirements of this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting requirements) if he or she determines good cause justifies the modification. Any such modification by the Regional Director must be in writing.

## **XVIII**

### **Administrative Provisions**

97. The provisions of this Consent Order do not bar, estop, or otherwise prevent the Bureau, or any other governmental agency, from taking any other action against Respondent, except as described in Paragraph 98.
98. The Bureau releases and discharges Respondent from all potential liability for law violations that the Bureau has or might have asserted based on the practices described in Section IV of this Consent Order, to the extent such practices occurred before the Effective Date and the Bureau knows about them as of the Effective Date. The Bureau may use the practices described in this Consent Order in future enforcement actions against Respondent and its affiliates, including, without limitation, to establish a pattern or practice of violations or the continuation of a pattern or practice of violations or to calculate the amount of any penalty. This release does not

preclude or affect any right of the Bureau to determine and ensure compliance with the Consent Order, or to seek penalties for any violations of the Consent Order.

99. This Consent Order is intended to be, and will be construed as, a final Consent Order issued under section 1053 of the CFPA, 12 U.S.C. § 5563, and expressly does not form, and may not be construed to form, a contract binding the Bureau or the United States.
100. Duration of the Order: This Consent Order will terminate 5 years from the Effective Date. The Consent Order will remain effective and enforceable until such time, except to the extent that any provisions of this Consent Order have been amended, suspended, waived, or terminated in writing by the Bureau or its designated agent.
101. Calculation of time limitations will run from the Effective Date and be based on calendar days, unless otherwise noted.
102. Should Respondent seek to transfer or assign all or part of its operations that are subject to this Consent Order, Respondent must, as a condition of sale, obtain the written agreement of the transferee or assignee to comply with all applicable provisions of this Consent Order.
103. The provisions of this Consent Order will be enforceable by the Bureau. For any violation of this Consent Order, the Bureau may impose the

maximum amount of civil money penalties allowed under section 1055(c) of the CFPA, 12 U.S.C. § 5565(c). In connection with any attempt by the Bureau to enforce this Consent Order in federal district court, the Bureau may serve Respondent wherever Respondent may be found, and Respondent may not contest that court's personal jurisdiction over Respondent.

104. This Consent Order and the accompanying Stipulation contain the complete agreement between the parties. The parties have made no promises, representations, or warranties other than what is contained in this Consent Order and the accompanying Stipulation. This Consent Order and the accompanying Stipulation supersede any prior oral or written communications, discussions, or understandings.
105. Nothing in this Consent Order or the accompanying Stipulation may be construed as allowing the Respondent, its Board, officers, or employees to violate any law, rule, or regulation.

**IT IS SO ORDERED**, this [7<sup>th</sup>]th day of October, 2020.



Kathleen L. Kraninger

Director

Bureau of Consumer Financial Protection