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Save the Date!
2011 WANADA Open
May 16
Lakewood Country Club
Rockville, MD

Focus and shape of Bureau of Consumer Financial Protection begins to emerge

Franchised auto dealers concerned about the shape and direction of the forthcoming Bureau of Consumer Financial Protection (BCFP) are beginning to get some news that is both encouraging and cautionary.

On the encouraging front, there have been two appointments made thus far that attorneys who represent the auto dealer community generally see as positive, according to an article in *Spot Delivery*, a monthly legal update for auto dealers and finance companies. The first is the naming of Len Chanin to the position of BCFP "rule writer in chief." Mr. Chanin is a veteran of the Federal Reserve Board and is considered to be "smart, knowledgeable, and reasonable," and likely to give auto dealers a "fair shake." The second appointment of note is that of Peggy Twohig, a former FTC attorney who will oversee regulation of auto dealers. Twohig is known as an experienced credit lawyer and considered to be "smart and long on intellectual integrity," and likely to give everyone a fair hearing, the attorneys group says.

The "fairness" credentials of these two key appointments will be critical as the BCFP ramps up because it is becoming increasingly likely that the new regulatory agency, established under the Finance Reform law, will be pressed hard by consumer advocates to deal with three dealer F&I practices: spot delivery, negative equity financing and dealer participation in the loan process, which they see as harmful to consumers.

Advocates believe spot deliveries put consumers in a vulnerable position and that the practice should be banned or severely restricted. Similarly, they believe there should be a limit on the loan-to value ratio of vehicle sales, primarily to limit negative equity sales and the selling of additional products that might be financed with a sale of a vehicle.

Finally, consumer advocates would like to ban or severely restrict dealer participation in customer finance arrangements, apparently not understanding that the dealer is the initial creditor on retail installment contracts.

The Federal Trade Commission will hold a number of “town hall” type meetings across the U.S. this year to determine what “issues” consumers have with dealers. Attorneys representing dealers expect that consumer advocate groups will be omnipresent at these and will raise the issues described above.

Meanwhile, congressional observers now believe that Elizabeth Warren, the Harvard professor and current special adviser to the president tasked with setting up the BCFP, has a chance of becoming the bureau’s permanent director. They cite her recent outreach efforts to Senate Republicans and a rift that has developed between the U.S. Chamber of Commerce, the American Bankers Association, and the Mortgage Bankers Association to assist her in gaining the nod for the job.

NADA challenges National Labor Relations Board on proposed notice requirement

A proposed mandate that businesses put up a poster with detailed information on employees’ rights under the National Labor Relations Act (NLRA) is an overreach on the part of the National Labor Relations Board (NLRB) and “another posting burden small business does not need,” NADA has told the agency.

NADA made the comment in a written filing to the agency which says the posting is required under Department of Labor rulemaking mandating that federal government contractors post a “NLRA rights” notice as a condition of their contracts. NADA says few, if any, dealerships contract with the federal government and that dealership employees already have available to them “virtually limitless sources of information on the NLRA and the NLRB.”

The NLRB’s proposed poster outlines in great detail various aspects of an employee’s right in connection with the organization and certification of a union. NADA says that approach is patently unfair as it contains almost no information explaining an employee’s right to seek decertification of an established union, or such rights as not pay dues in a right-to-work state, standing to sue a union for unfair representation, and the prerogative of a secret ballot election.

“There has never been a period of less practical justification for a posting mandate in the 75 year history of the NLRA,” NADA said, and this is no more than the NLRB “proposing a fix for something that isn’t broken.”

In objecting to the rulemaking, NADA joined in with the Coalition for a Democratic Workplace, which had earlier challenged the NLRB on its proposal.

GM and VA dealers don't see eye-to-eye on new enacted facilities upgrade sourcing law

Automaker threatens to terminate corporate upgrade funding program in Virginia

GM told its Virginia dealers that it will terminate its Essential Brand Elements (EBE) program by the end of March if legislation just passed by the General Assembly that would prevent the company from requiring requirement to upgrade facilities if such an upgrade occurred within the past 10 years and allows dealers to source certain elements from non-GM authorized vendors, is signed by the governor.

The GM EBE program is designed to assist dealers with the cost of upgrading their facilities and is funded by a 1% addition to the invoice of all vehicles purchased by GM dealers. The Virginia Automobile Dealers Association has insisted from the outset that the legislation is “not directed to and has no impact” on the EBE program that is already in effect in the commonwealth. GM sees it differently, however, and has notified its Virginia dealers that it views the legislation as “incompatible with the EBE’s purpose and intended operation” and that it will terminate the program in Virginia, effective March 31, 2011.

In response, VADA arranged for an amendment to the measure that provides specifically that the new measure “shall not apply to a program that is in effect with more than one dealer in the commonwealth on the effective date of the measure.” GM has not yet responded to VADA’s action or correspondence from VADA president Don Hall wherein he says that GM, at a minimum, will be obliged to return any vehicle surcharges for EBE it assessed to dealers should the company persist in ending the program.

This just in! VADA and GM have come to terms on the EBE program! Stay tuned!

National Black Chamber of Commerce joins estate tax reform effort

ASSET (Americans Standing for the Simplification of the Estate Tax), the largely volunteer effort to square away the inequities of the current estate tax code, has a new member, the National Black Chamber of Commerce. The group joins ASSET, which is spearheading an effort to rewrite the estate tax code so as to maintain revenues while preventing the damage to family estates and job losses that are the direct result of the current law. Among dealers leading ASSET are WANADA members Jack Fitzgerald, Fitzgerald Auto Malls, and Tamara Darvish of DARCARS.

Harold Alford, president and CEO of the National Black Chamber of Commerce, says the current estate tax rules are “forcing too many private businesses to sell and causing more harm than good. We welcome the chance to be involved with ASSET,” he said.

ASSET continues to meet with congressional staff, elected officials and think tanks with the goal of coming to terms on appropriate legislation and the right bill sponsors. ASSET hopes to have a

bill introduced this year as Congress explores all avenues to bring the U.S. budget crises under control, simplify the tax code and boost job growth in the U.S.

Scam alerts from NADA

NADA is warning dealers to be on the lookout for possible fraudulent activity related to dealers' retail loan portfolios.

Certain individuals have recently targeted dealers with a scam promising to "bundle a dealership's car loans and market them to investors," essentially selling the car dealers' collectible debt. The individuals then require dealers to pay car buyers' first two to three months' payments up front. These individuals collect the fees, but then never market the loans. One such group of individuals in the state of Washington was recently sentenced in federal court for its role in such a scheme. This group operated under several names, including Auto Credit Solutions, Sub-Prime Financial Services, Easy Credit Store, Instant Funding Systems, Great Northwest Financial Services, and Western Empire Financial Services.

Dealers are encouraged to be diligent in selecting business partners, and if a dealer suspects that fraud is afoot it should contact the Internal Revenue Service Criminal Investigation, U.S. Postal Inspection Service, or local police.

NADA's legal affairs department is also investigating an email, Web site, and survey that falsely claim to have a connection to NADA. Dealers and others may have received email messages from "NADA Dealer Services" (nadanews@nadadealerservices.com) referring to an "AdTrack" survey described as an "NADA program" that rates automotive direct mail companies. NADA did not conduct such a survey, and NADA does not have an "AdTrack" program. NADA's legal affairs department is taking the necessary steps to stop these misrepresentations.

Influence the future of Rockville Pike

The Rockville Chamber of Commerce is in the process of preparing its response to the Rockville Pike Plan and is soliciting input from its business members and the business community at large.

WANADA members will recall that the Rockville Pike Plan has proposed to dramatically alter the look and feel of the major Montgomery County thoroughfare (Route 355) and could have a significant impact on dealership operations in the immediate vicinity. WANADA dealer member Sue Seboda of Congressional Motors has been particularly active in monitoring the development of the plan, providing input and urging dealers with stores along The Pike to participate in the plan's development.

Dealers who wish to add their comments to the Chamber of Commerce response can read the plan by visiting <http://www.rockvillemd.gov/rockvillespike/2010DraftPlan/index.html> and send their comments by March 18 to Brian Barkley at bbarkley@barkenlaw.com

Boycott group boycotts!

A reminder for dealers on antitrust rules

From time to time, everyone can get non-plussed at editorials from news organizations or contractor business practices that seem to be at odds with them and their industry. That's natural and OK. Where it becomes a problem, and violative of antitrust laws, is when competitor businesses get together and agree to retaliate with things like boycotts.

Agreements between you and your competitors to boycott another business could be found by state and federal law enforcement agencies to be "illegal restraints of trade" carrying steep civil and criminal penalties, if established.

Dealers should keep these points in mind:

- Never discuss with other dealers refusals to advertise or put limitations on advertising in media outlets. Actions can be and have been taken against group media boycotts by state attorneys general and by the U.S. Justice Department.
- Never discuss with other dealers refusals to deal or put limitations on dealing with a manufacturer. Such activities have been the target of federal Department of Justice and FTC investigations.
- Never discuss with other dealers refusing to deal or putting limitations on dealing with suppliers. That could subject dealers to supplier lawsuits and governmental action.

Interaction on policy issues with a dealer association that is considering the position it wishes to take in seeking government action is not a problem. However, a dealer who finds himself or herself in a discussion with other dealers about the terms on which they will stop or they will limit doing business with a media outlet, a manufacturer, or a supplier should insist that the discussion terminate immediately.

Vehicle leasing to see a surge through 2015

ALG, the auto industry benchmark for residual values and depreciation data, says there will be a significant resurgence in the automobile leasing market in 2011 that will continue through 2015. The luxury market is predicted to lead the charge with a lease penetration rate of nearly 43 percent by 2012, while lease penetration in the mainstream market will increase to 17.5 percent over the next two years.

ALG says numerous brands will capitalize on this leasing resurgence, based on current high residual values, which allows them to offer highly competitive monthly lease payments. The luxury brands with the highest residual values ranked from one to five are: 1. Land Rover, 2. Infiniti, 3. Acura, 4. Audi and 5. Lexus. The mainstream brands with the highest residual values ranked from one to five are: 1. Mini, 2. Subaru, 3. Mazda, 4. Honda and 5. Hyundai.

Among luxury brands Land Rover is expected to see the biggest gain in leasing, while Hyundai should see the biggest gains in the mainstream market. ALG also said that the residual gap between brands continues to shrink, indicating an increasingly more competitive leasing landscape for both the luxury and mainstream markets.

"What we expect to see for the next several years is a very positive environment for leasing due to low used vehicle supply resulting in stronger used vehicle values, historically low interest rates and an easing of credit requirements as the overall economic recovery begins to take hold," said Eric Lyman, director, Residual Value Solutions for ALG. "As a result, leasing is emerging as an excellent option for dealers looking to move inventory and for buyers eager to get into new vehicles at competitive prices."

ALG publishes the "Automotive Lease Guide" – the industry standard for residual value projections in North America, and has been forecasting automotive residual values for over 45 years in both the U.S. and Canadian markets

The Auto Auction: Bidders' Tips

This article is excerpted from *A Dealer Guide to Auctions: Controlling Inventory, Increasing Profits*, which is available through NADA University's Resource Toolbox. Visit www.nadauniversity.com to access this and other *Driven* guides.

Sometimes even the best auction bidders can stumble and fall into psychological traps. Two such traps are known as the winner's and loser's curse.

The Winner's Curse: Some people bid just to win. They overpay for a vehicle and erode or even eliminate any potential profit. In addition, if they overpay for a vehicle they are less likely to put money into appearance reconditioning or mechanical repair, thus making the vehicle less attractive to a retail customer.

The Loser's Curse: Some people habitually bid below what an optimal strategy would dictate and regularly lose a vehicle to another bidder. The habitual low bidder may be afraid of risks or simply conservative. Either way, he doesn't win.

The Cure: Search engines available on auction web sites, printed market reports, and guide books provide buyers with current auction values. An accurate appraisal of a vehicle's condition is also critical. If a buyer does his homework and determines a vehicle's actual value and the cost of the purchase before the auction, he is more likely to walk away with the vehicles he needs and make money when a vehicle is sold to a retail customer.

When Selling

Consign Early! The sooner your vehicles can be entered into the auction's database, the better. Buyers can find them earlier and put them on their buy lists.

Know the Market! Study print and online auction Market Reports to determine a vehicle's worth. Take seasonal price adjustments into consideration—convertibles do better in spring and summer and SUVs in cooler months.

Build a Reputation! Although no eBay-style feedback rating at auto auctions exists, buyers quickly form an opinion of you as a seller. The better your reputation, the more bidders you'll have in your lane.

Appearance Matters! Reconditioning and detailing make a difference and can yield good returns.

When Buying

Do Your Homework! Take advantage of auction information systems. The night before the auction use the database search function on the auction's web site to create your final buy list. On auction day, check the database from the kiosk for last-minute consignments. Finally, download the consignment database to your PDA and take it with you in the lots and lanes.

Arrive Early and Walk the Lot! There's no substitute for doing a thorough preview of the vehicles you wish to purchase. Sort and prioritize your best picks and assign values to your favorites.

Make Yourself Known to the Auctioneer! It's important to let the auctioneer or ring man know you are interested in a vehicle. There are many styles of bidding and the auctioneer will take note of yours.

Don't lose the vehicle for the sake of \$100 -- One more bid might get you the car you need.

Staying ahead ...

Never tell everything at once.

--Ken Venturi, golf pro

WASHINGTON AREA NEW AUTOMOBILE DEALERS ASSOCIATION