

# THE WANADA BULLETIN

NEWS AND INFORMATION FOR AND ABOUT FRANCHISED NEW CAR DEALERS IN THE WASHINGTON AREA

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## CFPB looks to ban arbitration clauses that prohibit class action suits; final rule likely next year



Arbitration would effectively be banned if the CFPB's proposed rule takes effect.

The Consumer Financial Protection Bureau (CFPB) has issued a proposed rule that would bar consumer contracts –like those from vehicle sales-- from requiring dispute resolution by arbitration instead of going to court. At this point, the rule looks likely to take effect next year since it does not require Congressional approval.

Reaction from the business community was swift.

“The CFPB is proposing to give the biggest gift to plaintiff’s lawyers in a half century – all at the expense of the consumers the agency is charged with protecting,” said the U.S. Chamber of Commerce in a statement.

“The CFPB’s own study concludes that arbitration empowers consumers to resolve disputes easily and quickly on their own without having to hire a lawyer. Nevertheless, the CFPB’s rule will have the practical effect of eliminating arbitration for most consumers.”

The rule will affect dealers in three ways, said dealer lawyer and WANADA Kindred-line member, Michael Charapp of Charapp and Weiss, LLP.

1. It will affect the availability of affordable financing and leases if lenders cannot protect themselves against class actions through arbitration.
2. The language that will be required in credit documents potentially affects the ability of dealers to protect themselves from credit and lease class action suits from plaintiffs’ lawyers representing consumers.

3. Even if the language does not improperly subject dealers to class action lawsuits, dealers will still face liability through indemnification agreements with lenders who get sued in class actions.

The proposal does not ban the required use of arbitration outright. But arbitration clauses in contracts would have to say explicitly that they cannot be used to stop consumers from joining a class action suit. The rule will provide specific language that companies must use.

Attorney Alan Kaplinsky of Ballard Spahr, who opposes the rule, said in testimony at the CFPB hearing where the rule was announced that it is a “*de facto* ban” on arbitration. “If this proposed regulation becomes final, most companies will simply abandon arbitration altogether.”

Contracts with arbitration clauses signed by all parties before the final rule next year will be grandfathered in. The rule will take effect after a 90-day public comment period followed by a comment review before the CFPB writes the final rule. Ballard Spahr said that process means the effective date would be the second quarter of 2017 at the earliest. The American Bankers Association, Consumer Bankers Association and the National Association of Federal Credit Unions have all told the CFPB they oppose the rule.

## Takata airbag recall doubled; parts shortage persists

NHTSA has expanded the number of cars with defective airbags that must be recalled by 35 to 40 million, as NHTSA Administrator Mark Rosekind urged consumers to stay in touch with their dealer.

Replacement of the 28.8 million airbag inflators previously recalled has been slowed because of a parts shortage in different parts of the country, including the Washington area. (Some of those owners may ask for loaners.) NHTSA said in April that eventually, more than 85 million airbags may have to be recalled.

The expansion brings the total of recalled vehicles to 63 million in the United States, close to nearly 25 percent of the cars on the road. Vehicles with the greatest potential danger are those more than six years old in humid, warm climates, where temperatures fluctuate from warm to hot. That description means our region is not at highest risk. Most of the deaths from the airbags – 13 worldwide – occurred in vehicles more than seven years old. Rosekind said that most of the recalls in the new batch are for passenger-side airbags, which present less of a danger because of the way they deploy.

A full list of vehicles in the most recent group of recalls may not be available for a few weeks. Automakers need to check which vehicles had the faulty airbag inflators. The recall will take place in five phases through December 2019, depending on the age of the inflators and weather-related risk factors.

Because Takata plans to phase out the use of ammonium nitrate -- the chemical that created the danger in the airbags -- by 2018, some consumers will have to replace their airbags twice, according to the *Washington Post*. Once will be for the currently defective airbags, and the second time will be for the new airbags without the problematic chemical.



Nearly one in four cars on the road could eventually be affected by the airbag recall.

## Maryland MVA Bulletin to dealers on trade-ins and registration fees

The following alerts came from the Maryland Motor Vehicle Administration to dealers last week in the form of an MVA Bulletin, dated May 6, 2016. The Bulletin dealt with trade-in allowance and registration fees.

### Trade-in allowance



Maryland dealers are warned not to overvalue for trade-ins to help make a sale.

MVA has determined that auto sales transactions to consumers involving trade-ins are being processed by dealers with trade-in valuations that are too high and not substantiated by acceptable used car value publications and/or proper documentation. Whether the value is overstated to be higher than it should be, or not documented with backup paper work, MVA reminds dealers of their obligation to correctly value trade-ins as part of the sales transaction, to include supporting paper work.

According to MVA, proper documentation includes the following:

1. Evidence of the amount required to release the lien on the trade-in;
2. Evidence of vehicle customization that increases the vehicle value;
3. A current valuation from an alternative used car value book, acceptable to MVA; or,
4. The actual resale price of a vehicle taken in trade that has been sold.

To help ensure compliance with the law, MVA is asking for one of these forms of documentation to justify higher trade-in values:

- A copy of lien release, with payoff amount of trade-in;
- A copy of page from national publication of used-car values that displays the trade-in vehicle's make, model, year, VIN and listing of customized values selected; or
- A statement from the dealer -- on dealership letterhead -- identifying the trade-in vehicle by make, model, year, and VIN, along with a listing of customized items and the value assessed.

### Registration fees

On another front, MVA reports they are concerned that dealers aren't charging current registration fees. MVA uncovered this through audits of the dealers by its Business Licensing Division. Dealers are reminded that the buyer's order must show the same fees as the fees noted on the transaction receipt from MVA and the vendor's software. If the dealer's system defaults to the higher registration fee, the dealer should contact his or her vendor immediately to resolve the issue.

The fees collected from the customer should be accurate and compared with the buyer's order before submitting the transaction electronically, or through a field office. If a customer is overcharged, the additional fees should be immediately refunded by the dealer.

Visit <http://www.mva.maryland.gov/vehicles/registration/fees.htm> for the current listing of registration fees. Questions should be directed to the MVA at [mvablcsd@mva.maryland.gov](mailto:mvablcsd@mva.maryland.gov).

## Calling all dealers!

# It's time to register for the WANADA Golf Open, June 8!

## Special tournament within the tournament



The WANADA Golf Open on Lansdowne's championship courses Photo: [Creative Commons](#).

Early registration is advised for WANADA's popular Golf Open, which is just around the corner, set for Wed., June 8, at the popular Lansdowne Resort in Leesburg, Va.

New this year, WANADA dealers may opt to be in an exclusive *dealer versus dealer* event in a play-your-own-ball format. Whether you sign up for the general tournament, or the *dealer versus dealer*, foursome positions on each course are limited, which is another reason to register early!

Non-golfers, of course, are welcome to stop by the cocktail reception and dinner, which is typically as much of a hit with attendees as the golf tournament. The event will run from the 9:00 am registration, with the tournament(s) starting about 11

am, on through to the reception and awards dinner at about 5 pm, with everything concluded by 7:00 pm.

Sponsorships are still available: click [here](#) to view the opportunities. Contact Bob Storin, 202-237-7200 ext. 18, or [rs@wanada.org](mailto:rs@wanada.org), for more sponsorship information.

All WANADA members can register by clicking [here](#). Direct questions about the Open to Kathy Teich, 202-237-7200 ext. 27 or [kt@wanada.org](mailto:kt@wanada.org).

## Auto sales keep on rising, especially trucks

April saw yet another month of seemingly unstoppable auto sales, up 3.3 percent year to date, at a SAAR of 17.42 million. The big story is still the strength of truck sales, as gas prices remain low. Other factors driving sales are available credit, some pent-up demand and rising incentives.

Some automakers, such as Ford, increased sales by boosting fleet share. Others, such as GM, intentionally cut back on fleets. The average transaction price rose for nearly all automakers, especially the Detroit Three, according to Kelley Blue Book, with the industry average at a healthy \$33,865.



The Ford F-150 again was the best-selling vehicle for the month.

Truck share rose 11 percent, while cars were down 6 percent. "Consumer preference for SUVs and pickup trucks continued unabated in April," said Reid Bigland, FCA's senior vice president for North America sales.

Sales of 1.5 million vehicles for the month beat the April record set in 2005, said Kelley Blue Book – but driven this time by consumer demand more than incentives.

Potential future concerns: an overall increase in fleet sales and the possible need to put more incentives on cars to move them off the lot as truck sales continue to dominate. What's more economic growth appears to be slowing, as shown by the recent lackluster hiring figures.

## Car colors get exotic names and a philosophy

Forget white, gray, blue and black as the most popular car colors. Coming next: raingarden (metallic silver), primordial soup (a deep, blood red inspired by the heart) and aerialist wish (black embedded with silver). That's the word from the annual car colors report by BASF Corp.

Color specialists don't just think in terms of hues, but in overarching societal themes. This year's colors, said Paul Czornij of BASF, illustrate the fluid boundary between virtual and physical reality. They also reflect an increasing interest in urban themes. On a more concrete level, the three colors can all change depending on the viewer's vantage point.

The color report is not designed to give automakers paint swatches to choose from. Rather, they are concept colors meant to get the companies thinking about the exact look they want from their vehicle line ups.

## Fuel economy drops slightly in April

The increase in truck sales does have a downside. The average fuel economy of new vehicles sold in April was down 0.1 mpg from March, to 25.2 mpg, according to a report by the University of Michigan. Fuel economy is down 0.6 mpg from the peak in August, 2014, but up 5.1 mpg since October, 2007, when the researchers began keeping records.

Still, automakers are on track to meet EPA's fuel efficiency standards for 2025, reports the Consumer Federal of America. The percentage of vehicles with an EPA rating of 23 mpg or more increased from 52 percent in 2015 to 56.1 percent in 2016. One of the biggest gains was in the over-30-mpg category, which increased from 11.7 percent to 13.4 percent.

New vehicles are the most significant barometer of a company's progress, said CFA, and that group had an even bigger jump, with 63 percent that are CAFE-compliant in 2016 compared with 41 percent last year.

### Staying Ahead...

Socialism ultimately fails when socialists run out of other people's money to spend on government.

--Margaret Thatcher

