THE WANADA® BULLETIN

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

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Headlines…



*Special Report*

# WANADA dealers turn out for fair credit briefing

## *Regulatory overreach by Feds raises prospect of legal actions*

WANADA's fair credit briefing at the Ritz/Tysons drew crowd of dealers and F&I directors.

WANADA dealer principals and finance and insurance directors came together last week to gain a full understanding of where the highly publicized assault on the automobile business by the newly established Consumer Financial Protection Bureau is headed with its claims that dealers discriminate against minorities in arranging credit for car buyers. The charges by CFPB, which began in earnest last year, are curious as they are troublesome. Curious, with the new regulatory agency -- created pursuant to President Obama's *signature* Finance Reform law -- not having any direct jurisdiction over auto dealers. Troublesome, because the CFPB is working to impact the automobile business by pressuring the financial institutions it does regulate to modify their business relationships with dealers.

In raising the spectre of discrimination against classes of people protected by the civil rights laws in the application process for vehicle loans, banks working with dealers as credit arrangers are being told they will be held accountable by CFPB should the agency find discrimination by dealers. From there, banks are being told by CFPB that they can reduce their risk of car loan discrimination by going to flat fee compensation to dealers as opposed to the current industry practice of dealers rating consumer loans on the basis of credit worthiness of the applicant.

Beyond the problem to dealers of their banking partners going to flat fees is the fall-out of dealers being subjected to regulatory reprisals from other law enforcement agencies, along with the prospect of costly lawsuits from plaintiffs' lawyers alleging civil rights law violations.

With this forming the backdrop of auto dealer industry concern, WANADA organized a panel of authoritative presenters to brief dealer members: Chris Stinebert, CEO, American Financial Services Association, the advocate organization for the consumer credit industry; Paul Metrey, NADA legal group; and Mike Charapp, WANADA's government relations advisor and renowned dealer lawyer with Charapp and Weiss.

## Independent, autonomous agency

Chris Stinebert of AFSA -- who is also chairman of AWARE, Americans Well-informed on Auto Retailing Economics -- launched the briefing with a contextual presentation on the unprecedented, extensive and unaccountable powers of Obama's CFPB. Unlike other federal agencies, CFPB is run by one person, who is nominated for a five-year term. Its funding comes from a percent of the Federal Reserve budget rather than from annual appropriations, like other agencies. That makes the CFPB an independent, autonomous agency, Stinebert said, and enormously powerful.

Speakers at the fair credit briefing, left to right: NADA attorney Paul Metrey; dealer attorney Michael Charapp, Charapp and Weiss, and Chris Stinebert, AFSA.

President Obama named Richard Cordray as CFPB director in a recess appointment. The Republicans in Congress eventually approved his five-year appointment with some conditions, one of which was that auto dealers would be exempt from the agency's jurisdiction. But Richard Hackett, who oversaw installment lending markets at the CFPB and has since resigned, said in a private meeting that the agency would reach dealers through lenders, according to Stinebert.

The point of contention is dealer reserve (which the government calls dealer markup). The CFPB looked at the difference between the markup rate and the contracted rate to see if there was evidence of "disparate impact," unintentional racial discrimination resulting from a lender's apparently neutral policies.

In its March 2013 guidance on auto lending, the CFPB advised lenders either to look at their portfolio and monitor dealers for discriminatory practices or to use flat fees for all finance deals. Earlier this year, Ally Bank and the Justice Department settled a charge of discrimination for $98 million.

One regional bank in the Midwest has gone to flat fees. Nobody has followed, Stinebert said, because lenders think the current system works. And flat fees, indeed, might make discrimination worse.

## CFPB pushes lenders to monitor dealer practices

But the CFPB is still pushing for lenders to examine their portfolios – in other words, to examine the practices of their dealers – even if there's no discrimination, said Stinebert.

NADA panelist Paul Metrey, with lawyerly understatement, said the CFPB "has created a very unsettled situation." After much research and several meetings with the Justice Department, NADA has created a Fair Credit Compliance Policy and Program, available here. Panelist Mike Charapp praised Metrey and NADA for developing a approach dealers can implement in their

F&I operations to effectively check specious claims of discrimination as the cause for less desirable credit offers to certain car consumers as opposed to the *real* basis, which is credit worthiness.

As long as dealer staff make their lending decisions based on a business case, said Metrey, they are legal. “But that’s not enough to protect yourself.” Every finance decision must be documented and filed.

“Banks are required to monitor dealer contracts, and dealers must be able to explain pricing differentials,” Metrey said.

Every dealership must choose its own standard dealer participation rate (dealer reserve) and apply it consistently. But seven exceptions are allowed. Under the NADA policy, dealer staff must record the reason for the pricing deviation for every finance deal. The *exceptions* are:

1. Dealer reserve is limited by the finance source.
2. The customer has a monthly payment constraint (specify amount).
3. If the customer has a better offer from another lender, the dealership may offer a rate below the store’s standard rate. Dealership staff must record the name and rate of the other lender.
4. A special promotion is offered to all customers on the same terms.
5. The customer qualifies for factory incentive pricing.
6. The customer qualifies for an employee incentive program.
7. The store is offering a special rate to reduce inventory.

The NADA template provides a form that dealers can use to document each finance deal.

Training is critical to the program. The trainer should explain to F&I staff the conditions that must be present for the exception to be allowed. The policy must be approved by the dealership’s Board of Directors.

### Senior staff member should review all deals

All finance deals should be reviewed periodically by a more senior staff member who was not involved in the transaction.

“This is an optional program, but you’re in a much better position if you adopt it,” said Metrey. “CFPB is looking at transactions from 2011 to 2013 with unexplained pricing differentials, even if there were no ECOA [Equal Credit Opportunity Act] violation.”

It is important *how* dealers implement the program, said Charapp. “This is very hard because we’ve all done things the same way since the advent of F&I departments 40 to 50 years ago,” he said. The NADA program “takes a lot more work than what you do now, but it’s necessary.”

Charapp cautioned dealers not to think they can make up lost dealer reserve with finance products. “The CFPB is already saying they’ll look at finance products,” he said. “So look at your process for selling products.” His suggestions: (1) Use a pricing matrix. (2) Sell only products that offer value to the customer. (3) Offer customer choice by using menu pricing.

# F&I Professionals' Workshop coming June 19 at WANADA offices

Hot on the heels of WANADA's briefing of Fair Credit (see article, above), the association will again hold its popular F&I professionals workshop, on June 19 in the WANADA offices in Washington. The all-day workshop will teach F&I managers the importance of legal compliance and protecting the dealer's assets.

Topics to be covered: unfair and deceptive trade practices, the Tax Reform Act and FinCen Form 8300, the Truth in Lending Act – Regulation Z, the Consumer Leasing Concept – Regulation M, rate speed, the Equal Credit Reporting Act – Regulation B, the Fair Credit Report and FACT Act, the Gramm-Leach Bliley Act, Magnuson-Moss Warranty Act and USA Patriot Act.

To sign up, contact Kristina Henry at (202) 237-7200 or kh@wanada.org. Click here to register.

# Area auto sales dip in the 1st quarter reflecting harsh winter

Washington's snowy weather at the start of the year negatively affected auto sales.

After weathering the sales downturn during the Great Recession better than the rest of the country, Washington area auto sales dropped 7.6 percent in the first quarter of this year. Figures are from WANADA's Area Report, based on R.L. Polk new-vehicle registration data. Nationwide, new-vehicle sales inched up 1.3 percent in the first quarter. U.S. figures are from NADA/Ward's Automotive.

First quarter sales for DC and 11 other localities from the Maryland suburbs and Northern Virginia totaled 64,030. Not surprisingly, sales were much more robust as spring returned in March (25,185) after the harsh winter of January (19,909) and February (18,465). February sales plunged 18.6 percent from a year earlier.

As has been the case for many years, imports had a much stronger showing in the Washington area than nationally. Non-Detroit 3 sales made up nearly 80 percent of car sales in the first quarter, up from 78.4 percent in 2013. Imports captured 62.3 percent of truck sales, the same level as last year. Nationally, imports sold better than Detroit three vehicles, 54.5 percent versus 45.5 percent.

As always, cars sold better than trucks in the Washington market in the first quarter, but not by much. Cars made up 52 percent of first quarter sales versus 48 percent for trucks. The gap was wider a year ago, with 54 percent of sales going to cars and 46 percent to trucks. Nationally, the picture is reversed, with cars making up 48 percent of first-quarter sales and trucks 52 percent.

For the complete report on third quarter Washington area sales, WANADA members can click here and log in with their email and password.

Be prepared for a challenging course at this year's WANADA Open.

## WANADA Open set for June 16 – Register today to ensure a spot

Join fellow WANADA members for a day of golf at the Lakewood Country Club in Rockville, Md. This Rees Jones-designed course will be all you can handle. If you don't play golf, plan to join us for cocktails and dinner. It's a great opportunity to get some fresh air with good natured competition and a chance to network with friends and associates.

For more information, contact Kristina Henry at (202) 237-7200 or kh@wanada.org. The number of golfers is limited to 128 players, so click here to register.

## Maryland MVA: Titling and registering leased vehicles

The Maryland Motor Vehicle Administration gives these guidelines for titling and registering leased vehicles:

When titling a leased vehicle, obtain the leasing company's soundex number and the lessee's driver's license number. The Application for Title (VR-005) must be completed with lessor's and lessee's soundex/driver's license number, name and address.

A leasing company soundex will always be a company soundex. The leasing company's address may be an out-of-state address. When possible, use the soundex number previously issued to the leasing company.

The Maryland title will print with the leasing company's name and address but will also display the "in care of" symbol (%) in front of the lessee's name. All leased vehicles will be branded as "LEASED."

The registration card will print with the leasing company's name along with the "in care of" symbol (%) and lessee's name and address.

If you have questions, email mvablcsd@mva.maryland.gov.

## Maryland raises EV tax credit, sets up recharging rebates

Gov. Martin O'Malley signed into law this month a measure raising Maryland's electric vehicle tax credit from $1,000 to a maximum of $3,000 or $125 times the number of kilowatt hours of the vehicle's battery capacity, whichever is less. The law will extend the tax credit through June 30, 2017.

The law also establishes an Electric Vehicle Recharging Equipment Rebate Program, which will give rebates to individuals and businesses for the purchase and installation of recharging equipment. The Maryland Energy Administration will administer the program.

## Staying Ahead…

I insist on a lot of time being spent, almost every day, to just sit and think. That is very uncommon in American business. I read and think. So I do more reading and thinking, and make less impulse decisions than most people in business.

--Warren Buffett

WASHINGTON AREA NEW AUTOMOBILE DEALERS ASSOCIATION