



CATA Bulletin



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NADA: Best for dealers to send adverse action notice to all customers who are denied credit

By DENNIS M. O'KEEFE
CATA LEGAL COUNSEL

A July 5, 2004, edition of the CATA Bulletin advised that dealers who fail to submit a completed credit application to a bank or finance company must notify the consumer that their credit has been denied and the reasons why, inasmuch as a failure to submit the application is tantamount to denying a customer credit.

This so-called "Adverse Action Notice" is the subject of a new 28-page NADA publication, "Adverse Action Notices Guide," which the NADA mailed in June to its membership.

In its Guide, the NADA stresses that it is providing "guidance to dealers in an unsettled and evolving area of the law in which many courts and dealer attorneys disagree as to the scope of dealers' compliance obligations." Notwithstanding this caveat, the Guide urges dealers to undertake general acts to safeguard themselves.

The operative part of the Guide states as follows:

"The adverse action notice requirements apply to 'participating creditors'—that is, creditors who 'regularly participate in a credit decision,' including setting the terms of the credit. . . . As a dealer, you are a 'participating creditor' if you "regularly participate in a credit decision."

If a dealer regularly signs retail sales installment agreements with his customers, he should follow the ECOA rules for a 'participating creditor,' including the adverse action notice requirements.

"In contrast, if you only refer customers or prospective customers to creditors, or select or offer to select creditors from whom the customer will directly request credit, you are what is called a 'referral creditor.' Referral creditors are not required to give adverse action notices, although they still are subject to the ECOA's (Equal Credit Opportunity Act) rules against illegal discrimination.

"Unfortunately, the ECOA and its regulations are unclear as to what it means for a dealer to 'regularly participate in a credit decision.' The courts have reached different conclusions in answering this question.

"In some cases, a dealer has been deemed to 'participate in a credit decision' when the dealer merely forwards the customer's application to a bank or finance company for its determination.

"Dealers have also been deemed to 'regularly participate in a credit decision' in a spot delivery credit sale. Under some interpretations, a dealer may 'regularly participate in a credit decision' because the dealer regularly

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JMIC Life Insurance faces class action suit

The CATA has been made aware of a class action lawsuit filed against JMIC Life Insurance Co., alleging that JMIC failed to return unearned premiums to consumers who purchased credit life and disability insurance and paid off their vehicle loans before the policies expired.

A second issue in the litigation is whether consumers were obligated to notify JMIC and request a refund, or whether the burden to notify rests solely on the insurance company.

The litigation has been certified as a nationwide class action. JMIC has been ordered by the Superior Court of Muscogee County in Georgia to prepare and send a letter to its dealers with

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DOC fee bill awaits action by governor

Illinois Gov. Rod Blagojevich has until about Aug. 20 to act on legislation to increase to \$150 the state's maximum permissible documentary service fee.

House Bill 1657, which cleared the General Assembly last spring, was delivered to the governor June 20, when the 60-day clock began ticking for him to sign or veto the bill.

The current maximum DOC fee that dealers can charge is \$58.48.

Compliance Chart helps dealers abide with federal standards, regulations

Every day, in every dealership, issues arise regarding federal regulations and how to comply with them. Are coolant and antifreeze disposed of properly? Do consumer privacy efforts meet federal standards as outlined in the Gramm-Leach-Bliley Act? Are service and body shop technicians using personal protective equipment in accordance with OSHA guidelines?

Dealers need a resource to help them find answers to these and many other questions affecting dealership management. The "NADA & ATD Federal Regulatory Compliance Chart" is exactly that resource. Dealers can order the print version of the chart by calling 800-252-6232 ext. 2. NADA members can order a free PDF of the chart by phone or online at www.nada.org/mecatalog.

The compliance chart provides a checklist-style overview of many federal rules that apply to automobile and

truck dealerships. The NADA/ATD Regulatory Affairs staff has attempted to make this list complete. However, due to the large number of potentially applicable regulations and the ever-growing nature of the federal government, developing a 100 percent complete list is impossible (particularly in the area of tax). This second edition of the chart supersedes the first edition from 2003.

The chart is organized alphabetically by regulatory agency. A short summary of each rule includes sources for further information. Symbols indicate where an NADA guide or bulletin is available. A key detailing each symbol is located at the beginning of the chart.

The chart also notes if the rule generally applies to car dealers, truck (medium- and heavy-duty) dealers, or both. Lastly, a check-off column is provided since the chart is designed in part to assist with internal compliance reviews.

Here's one example of how the chart works: By looking under the listings for the Federal Trade Commission, dealers can find the section for the Gramm-Leach-Bliley Act (GLB Act): Privacy Rule, along with a brief note explaining the GLB Act and a notice that the Act generally applies only to car dealers.

The entry then lists a publication and other materials that are available through NADA's Regulatory Affairs Office. Dealers also would find links to further information available online through the FTC.

Note: The chart covers only federal regulations. Many state and local rules also apply to dealerships. For specific legal matters affecting dealership operations, contact your dealership attorney.

This article is adapted from the second edition of the NADA & ATD Federal Regulatory Compliance Chart.

New minimum wage poster can be downloaded from CATA Web site

Updated workplace posters that all employers must display for their workers can be gathered from the CATA Web site, <http://cata.drivechicago.com>. Illinois businesses must obtain new posters to reflect the state's increased minimum wage rates, effective July 1.

Along the top of the site's homepage, a black bar identifies several information categories, each with a drop-down menu of topics. The rightmost category, Resources, is where the workplace posters are maintained.

All the federal posters, plus all state posters mandated by Illinois and Indiana, are posted—all in English versions and most in Spanish versions.

All of the increasing resources available on the CATA Web site are available free to members. The existing design misleadingly suggests that a password is necessary to navigate the site, but that will be corrected when the site is redesigned.

Passwords are needed only for dealers to manipulate the inventories they list at www.drivechicago.com—another membership benefit offered free by the CATA.

Scarpelli re-elected NADA director

Ray Scarpelli Sr. won re-election in June for a three-year term as the NADA's director of metropolitan Chicago, a post he has held since 2002. The NADA region encompasses Cook, Lake (Illinois) and DuPage Counties.

Scarpelli, president of Raymond Chevrolet and Kia in Antioch, and Ray Chevrolet and Suzuki in Fox Lake, begins the new term in February in San Francisco, at the annual NADA convention. Another NADA director, Richard Gregg, represents dealers in Illinois's other 99 counties.

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Listings of items for sale are subject to the approval of the CATA. Candidates for employment must submit a full résumé to the Editor.

Review past editions dating to 1998 or search by subject at <http://cata.drivechicago.com/>

Jerry H. Cizek III President, Publisher
Erik K. Higgins Editor, Director of Dealer Affairs

Some dealers spending a mint (or mints) to improve customer service

By **JIM KOSCS**, CONTRIBUTING EDITOR

AMERICAN INTERNATIONAL AUTOMOBILE DEALERS ASSOCIATION

How customers perceive the showroom transaction and subsequent dealer service ultimately can influence their perception of the entire brand. Several companies put us in touch with dealers they feel are helping build brand customers for life. Investment ranges from a few dollars to a few million.

At Volkswagen of America headquarters in Detroit, they're keeping a close eye on Ron Esserman's Miami VW store. For the past three years, employees at Esserman Volkswagen have been wearing curious buttons that say only "Yes." It's an acronym for "You're Empowered to Satisfy" and tells the customer that the employees will do their best to answer all questions and meet reasonable requests.

"The customer doesn't come here to hear anyone say 'no,'" said owner Ron Esserman. "We cannot say 'yes' to every single request, but we promise to try our best," he said. The "Yes" can be for little things, and if there's a billable expense, it's filed under goodwill. Or it can be something like the service department going to bat for the customer over a warranty issue.

Esserman said his dealerships have always operated this way, but the "Yes" program formalized the effort with training and made it more visible to customers. It appears to be working. Esserman said his VW store is now fourth or fifth in the country. "We were quite a ways down before this program," he said.

- Walk into Scott Fink's brand-new Hyundai store in Wesley Chapel, Fla. and notice what you don't hear: There are no phones in the showroom. Fink explained that keeping phones used for follow-up in a separate area enables a salesperson to devote full attention to an individual customer.

"I'm a firm believer that all consumers—and I include myself—like to do business in a clean, comfortable, fresh environment," said Fink. The new facility boasts a completely open floorplan, with management offices separated only by transparent walls. "The old days of the salesman disappearing from customer view to talk to a manager are gone," he added.

Fink, of course, did not become one of the top-volume Hyundai dealers by just making the showroom comfortable. His first store, in nearby New Port Richey, has sold 13,500 Hyundais in its first four years of operation. "This is one of the handful of dealers who helps set the standards for Hyundai in volume, professionalism and CSI," Fink said. "We take advantage of every program Hyundai offers."

A key customer benefit is one year's free maintenance with every new-vehicle purchase. And making that first-

year maintenance easier and faster are quick-lube lanes in the service areas. Both of Fink's Hyundai stores have loaner fleets, as well.

Fink said the customer-focused practices have resulted in a loyal following for his "big store" in New Port Richey. The name recognition, he added, helped successfully launch the Wesley Chapel store, which sold 118 vehicles in its first full month versus planning volume of 50.

- At Olathe Toyota-Scion in Olathe, Kan., the top Toyota dealer in its region, it's all about going big and keeping customers comfortable. Last month, Olathe re-opened with a newly renovated \$5.5 million 46,000-square-foot facility, nearly twice the size of its original dealership.

The new facility was designed with the customer in mind, according to dealership president Kenny Thomas. It has added a car wash, and a new customer lounge features four computers for customer use, along with wireless Internet access and an automated coffee station. Customers can sip coffee while watching a 54-inch high-definition television.

The new service area more than doubled the number of stalls, from 14 to 37, and is fully air conditioned. "With the new additions to this facility, I am confident that we have raised the bar on customer service to a level not yet achieved by any dealership in the Kansas City area," said Thomas.

- Dave Zoloto, general manager of Porsche North Scottsdale, Ariz., said, "I never think of a customer walking in to the dealership as buying just one vehicle." Instead, Zoloto sees the potential to make a customer for life and sell them more Porsches over the coming years. The experience for the customer begins when entering what a Porsche spokesperson described as "perhaps the most impressive Porsche facility in the country. It is more reminiscent of a race shop with its spotless facility."

Zoloto said the dealership, which opened four years ago, looks as new and clean as on its first day of business. "You could eat off of the service department floor," he said. The facility's impressive cleanliness helps make the customer feel more comfortable.

The dealership builds on the comfort by extending a welcome. A letter personally signed by Zoloto follows the purchase of a new or used vehicle at North Scottsdale. The same thing goes for a service customer after the initial visit.

Customers may appreciate the letters, but what they might like even more is that Scottsdale recently reduced prices for several maintenance procedures. Zoloto said the dealership heard complaints about prices through its outside survey company, which queries all purchase and service customers, not just new-vehicle owners coming in for warranty work. Now, prices are more in line with what customers expect, he said.

AYES summer update

By **JIM BUTCHER**

ILLINOIS AYES MANAGER

The CATA's service technician education program, AYES, is underway with this year's summer intern placements, which were slow but measureable. We have placed 12 students in area dealership service departments and trained an additional nine mentors to work with those students.

The AYES program in Illinois continues to grow with the addition of the Joliet Township High School program. Next year we will add one or more schools in the Rockford area, and we are on schedule to team in 2009 with Carl Schurz High School in Chicago.

AYES (Automotive Youth Educational Systems) works with the local area high school automotive programs that are NATEF-certified. Currently in Illinois, we work with seven high schools:

- Curie Metro High School, Chicago-Midway Airport area
- Hammond Area Career Center, Hammond, Ind.
- Joliet Township High School, Central Campus
- Lake County High Schools Technology Campus, Grayslake
- Parkland College, Champaign
- Streamwood High School
- Technology Center of DuPage, Addison

There are about 120 Illinois high schools offering automotive technology courses. Of those, we work only with the above listed schools. Why, you might ask? Because these schools have agreed to follow the professional standards of the automotive industry.

These schools teach employability skills and work safety skills (OSHA, ANSI, and EPA), and follow NATEF (National Automotive Technicians Education Foundation) certification standards.

NATEF is an affiliate of ASE and certifies the automotive school programs to ensure they are compliant with the automotive industry standards. we work only with NATEF-certified high schools to ensure that each school stays on course to produce the high quality student you seek in your service department.

The AYES program is designed to help your service department grow its own employees. We work with the manufacturer training programs like ASEP, ASSET, CAP and T-TEN.

The AYES program is your best way to obtain young, eager talent for your service department. I can be reached at 630-424-6020.

Adverse Action

CONTINUED FROM PAGE 1

signs the retail installment sales agreement before sending it to a bank or other finance source."

Because of the above, the NADA Dealer Guide concludes that "because of the uncertainty as to how this important question will be resolved by a court, if a dealer regularly signs retail sales installment agreements with his customers, he should follow the ECOA

rules for a "participating creditor," including the adverse action notice requirements.

The Guide contains rules and examples as to when a "participating creditor" needs to send Adverse Action Notices. A sample notice recommended by the NADA is included as a flier in this newsletter.

The CATA urges all its members to closely read the NADA publication and to comply with its recommendations and directives.

JMIC

CONTINUED FROM PAGE 1

updated information regarding former sales of credit life and disability policies.

While the CATA is not aware that any Illinois dealers have received the court ordered letter from JMIC Life Insurance Co., dealers are recommended to consult with their legal counsel in deciding whether to respond.

Because the request for information is extensive, dealers have raised customer privacy issues, and it is unclear what authority the Georgia court has to request such information from dealers who are not parties to the litigation.

Notwithstanding the above, the court-ordered letter threatens dealers with subpoenas for failure to comply.

Congratulations!

Eight area dealers are winners of the 2006 Toyota President's Award: **Bredemann Toyota** (Park Ridge), **Chicago Northside Toyota, Classic Toyota** (Waukegan), **Elgin Toyota, Elmhurst Toyota, Oak Lawn Toyota, Oakbrook Toyota in Westmont, and Schaumburg Toyota.**

Marketplace

Office Manager 20+ years' dealership experience. Organized, efficient, detail-oriented. Strong analytical and problem-solving skills. Proficient with ADP, Toyota Dealer Daily, GM Dealer World, Chrysler Dealer Connect. Office Management skills recognized by General Motors, Toyota and DaimlerChrysler. Marguerite Gnadinger, 630-769-9173.

Résumé on file at the CATA.