



CATA Bulletin



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Important reminder on FTC used-car rule

The Federal Trade Commission's Used-Car Rule requires dealers to affix a properly completed Buyers Guide window form to its used vehicles and to cross-reference the window form in its consumer sales contracts.

The cross-reference must read: "The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale."

When dealers conduct a used-vehicle sale in Spanish, the window form and the cross reference to it in the sales contract must be in Spanish.

For more information, including a Spanish translation of the cross-reference, see the page on the National Automobile Dealers Association's Web site, www.nada.org/regulations (NADA member login required).

FTC staff issues do-not-call guidance on consumer inquiries to lead generators

Staff of the Federal Trade Commission have issued guidance on whether, for purposes of the National Do-Not-Call (DNC) rules, a consumer inquiry to an Internet lead generator forms an established business relationship (EBR) between the consumer and lenders who receive the lead.

The FTC staff (a) believes such inquiries generally do not form an EBR between the consumer and such lenders, but (b) likely would not recommend an enforcement action against lenders who make such calls provided the lead generator makes certain disclosures before the consumer divulges his or her phone number.

The following summarizes key points in the FTC staff advisory opinion. The entire four-page staff opinion is at www.ftc.gov/bcp/telemarketing/HudsonCookAdvisoryOp.pdf. **Dealers should review the entire opinion to understand the context in which the following points are made.**

- The opinion assumes that a consumer visits a Web site which offers to arrange for several lenders to compete for the consumer's business. The consumer provides the lead generator with his or her contact information, including the consumer's telephone number;
- In this scenario, the lead generator has an inquiry-based EBR with the consumer, which permits the lead generator to initiate a telemarketing call to the consumer within 90 days of the consumer's inquiry;
- Lenders that receive a consumer's contact information from a lead generation mechanism generally do not have an EBR with the consumer;
- However, FTC staff likely would not recommend filing a DNC enforcement action against a lender that calls the consumer, provided the lead generator "clearly

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DriveChicago.com traffic report tracks viewers, what they search

See the flyer included in this newsletter for a recap of aggregate traffic on the DriveChicago.com portal during August. The report tracks the various activities—e-mail inquiries, click-throughs to dealer Web sites and the like—of all visitors to the portal.

During the first week of each month, dealers receive e-

mails with traffic reports specific to their dealerships, useful for measuring leads delivered by DriveChicago to the dealership and monitoring inventory listed via the portal.

All CATA dealer members—and only CATA dealer members—are featured on the Web portal as a free benefit of association membership.

NADA launches national radio campaign to mark franchise system

To celebrate the 100-year anniversary of the new-car and truck franchise system and enhance the image of dealers, the NADA has launched a national radio campaign under the theme "Every Dealer Matters."

The 30-second commercial highlights the impact dealers have on the economy and in their communities.

The spot is airing in 30 states on 1,680 radio stations for a 13-week period. In all, it will air nearly 110,000 times, making an estimated 67 million impressions on adults 25-54.

Dealers, the ad notes, account for 20 percent of all retail sales in the country. Dealers also support hometown charities, civic groups, schools and sports teams.

"Every dealer matters," the commercial declares. "It was true 100 years ago; it's still true today."

The first car sold in this country, a Duryea Motor Wagon, was sold factory-direct in 1896 to a man in Norwood, Mass.

The first independent new-car dealer was a Detroit bicycle "tradesman," as the term was then. In 1896, he bought several Waverly electric cars from the factory and displayed them in his bicycle shop. The next year he completed the first known sale of a car by a dealer.

OSHA tips for workplace first aid program

Employers and employees can develop workplace first-aid programs and review key elements of other successful programs, including how to plan and conduct safe and effective first-aid training, using a new publication by the Occupational Safety & Health Administration.

"Best Practices Guide: Fundamentals of a Workplace First-Aid Program," can be downloaded free at www.osha.gov/SLTC/medicalfirstaid/

OSHA's medical service and first-aid rule requires that dealerships ensure the availability of:

- medical personnel for consultation on matters of workplace health,
- physician-approved first-aid kits, and
- eyewash facilities in areas where corrosive materials (e.g., battery acids) are used.

The medical service and first aid standard also requires dealerships not located within four minutes of a medical facility to designate employees as responders to workplace emergency situations. These responders must be trained in basic first aid. Moreover, OSHA's blood-borne pathogens rule expands the responsibilities of dealerships and their designated responders.

While dealerships are not typically workplaces where employees are exposed daily to blood or other potentially infectious material (OPIM), compliance is required to the extent that:

- An accident could occur that would create an exposure incident involving blood or OPIM; and
- The dealership is not within four minutes of a clinic, hospital, or infirmary.

Publication of OSHA's Guide coincides with a heightened concern regarding cases of septic shock being reported in association with contaminated "flood cars" from last year's hurricane zones. Apparently, some cars submerged in the flood waters were infected with septic toxins that have the potential to reside in the vehicle for a considerable length of time, posing a health risk to vehicle technicians who receive a cut or scratch while working on such vehicles.

Dealers who have additional questions or concerns after reviewing the OSHA guide can contact the NADA's regulatory affairs department at regulatoryaffairs@nada.org or 703-821-7040.

Congratulations!

Winners of the 2005 DaimlerChrysler Service Contract Inner Circle Award, for selling the most vehicle protection contracts, include **Crystal Lake Chrysler-Jeep, Mancari's Chrysler-Jeep** (Oak Lawn), **Mancari's of Des Plaines**, and **Mancari's of Orland Hills**.

Libertyville Lincoln-Mercury Sales and Wickstrom Ford (Barrington) are winners of the Ford customer service division's 2006 2nd Quarter Never Settle Challenge.

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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/>

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Fuel economy, not advertised incentives, is best sales motivator: study

The most effective vehicle sales incentives are a vehicle's economy and reliability, not special financing offers, a recent study found. Further, Consumer Reports said most in-market consumers do not fully understand how incentives work.

To understand the role incentives play today, the Consumer Reports National Research Center conducted a random nationwide telephone survey from Aug. 3 to Aug. 7 of adults 18 and older who are considering a new vehicle purchase in the next 24 months.

When asked to identify the most important considerations, survey respondents were less influenced by incentives than product features, perhaps reflecting a blasé attitude shaped by perpetual promotions. Fuel economy (27 percent) led the list of considerations, followed by reliability (25 percent), purchase price (14 percent), and safety features (12 percent). Only 5 percent of car shoppers said that manufacturer or dealer incentives were the most important factor in their purchase decision.

But incentives do play a role, with 69 percent of shoppers reporting that

they may time their purchase to coincide with incentives. In addition, 18 percent of shoppers claimed in stronger terms that they definitely will plan their purchase around incentives. This behavior is more prevalent in older, higher-income consumers, according to the survey.

As the adage goes, everyone has a price. Consumers said that an incentive must be quite large in order to affect their next new vehicle choice. Almost 25 percent of respondents claimed it would take \$5,000 or more to turn their head, with \$3,000 being the median value. These amounts are greater than most manufacturer offerings.

The most compelling incentive proved to be 0 percent, or discount, financing (32 percent of shoppers). Free extended warranty (23 percent), free gas for a year (20 percent), and cash rebates (14 percent) were the other significant influencers. The reduced-rate financing appealed most to men and high-income consumers.

However, a majority of shoppers have misperceptions about incentives. The marketing messages are compel-

ling, yet the true deal may be different from what the customer expects. Split evenly between men and women, 63 percent believe that every customer is eligible for the same new vehicle incentives, despite the common "for qualified buyers" in small print.

A larger 80 percent believe that incentives can be combined, such as zero-percent financing and cash-back rebates. This is quite rarely the case, leaving consumers to calculate at point of purchase if it would be advantageous to reduce the purchase price, and therefore the amount needed to finance, or to take advantage of a low interest rate.

Shoppers learn about incentives primarily from dealership or manufacturer radio and television advertising, trailed by printed ads, and third-party automotive Web sites.

Eighty-five percent of respondents said that they negotiate the purchase price even when using an advertised incentive. The other 15 percent should note that employee pricing-type programs do not always provide a better price than could be otherwise negotiated.

Changes to state's Minimum Wage Act mean more penalties for violations

Illinois legislation signed recently by Gov. Rod Blagojevich gives workers who allege they have not been paid their proper wages the right to pursue new penalties under the Illinois Minimum Wage Act. The law also grants the Illinois Department of Labor (IDOL) additional authority to investigate employers it suspects of violating state wage and hour laws.

The amendment to the Illinois Minimum Wage Act strengthens Illinois' wage and hour laws in several ways. First, the law grants employees the right to collect a penalty of 2 percent of the amount they are underpaid per month for the length of the violation.

The penalty applies to employers who 1) fail to pay overtime; 2) pay less than minimum wage; or 3) otherwise fail to pay employees the wage to which they are entitled. Prior to the amendment, only the IDOL could pursue the penalty, and it seldom did.

Also, if an employee's claim is successful, the employer must pay for the employee's court costs and attorney fees, in addition to the amount of the underpayment. The IDOL also may assess a penalty of 20 percent of the total underpayment against employers for violations it finds to be "willful," "repeated," or done with "reckless disregard" for the law.

An employer who fails to follow the IDOL's demand to pay wages due to an employee could be assessed a penalty by the IDOL of 1 percent of the amount of the underpayment per day.

The amendments greatly increase the incentives for employees to sue their employers for unpaid wages. In fact, wage-and-hour suits now outnumber discrimination lawsuits against employers.

Although a penalty of 2 percent might seem insignificant, the penalty begins to run the month after an employer fails to pay proper wages, not

New rule: Car buyers must be told about 'black box' . . . in 2010

Rule also requires a uniform set of data to be recorded, making it easier to use

By the 2011 model year, automakers must inform consumers when their car has been equipped with an Event Data Recorder, under a regulation announced Aug. 21 by the National Highway Traffic Safety Administration.

Event Data Recorders, similar to "black boxes" used in commercial airliners, record data about what a car is doing in the moments just before and after a crash. They don't record the voices of occupants but they do record things like speed, steering wheel movement, how hard the brakes are pressed and the car's actual movement.

About 65 percent of model year 2005 cars were equipped with EDRs, according to the NHTSA. Data from the recorders is used by law enforcement and attorneys to recreate events leading up to an accident. Data also is used by car companies to research how cars and drivers perform in actual crashes.

Some privacy advocates have expressed concern that the data, which can be used as evidence in court cases, is being collected without the knowledge of vehicle owners and drivers.

Several states have already passed laws that restrict how the data can be used. Information about the EDR, if one is installed, will have to be included in the vehicle's owner's manual.

The new rule also requires EDRs to collect a uniform set of data. Having uniform data will help investigators to recreate crashes and determine causes, the agency said. More-uniform data will also make it easier to develop systems so that, in cars equipped with automatic 911 emergency notification, data about the crash can also be passed along to paramedics and ambulance crews.

Cambridge deflects unemployment claims

One hundred twenty-five CATA dealer members reported a combined 403 unemployment claims during the second quarter of 2006 to Cambridge Integrated Services Group, Inc., which formerly operated as the Martin Boyer Co. The company's efforts saved those dealers a total of \$783,449 in benefits by contesting the claims.

Cambridge monitors any unemployment claims against its clients. The company counts about 230 CATA dealers among its clients.

Claims that can be protested and subsequently denied help minimize an employer's unemployment tax rate. The rate can vary between 1.1 percent and 8.9 percent of each employee's first \$11,000 in earnings. The 2005 average unemployment tax rate among Illinois

employers was 4.7 percent, or about \$493.50 annually. That is nearly double the 2003 rate.

"The unemployment tax is really the only controllable tax, in that it's experience-driven," said Paul Schardt, senior vice president of Cambridge. An ex-employee's claim affects the employer's tax rate for three years.

Client fees amount to \$2.20 per employee, per fiscal quarter. For the fee, Cambridge monitors all unemployment claims, files any appeals, represents the client at any hearings, verifies the benefit charge statements and confirms the client's unemployment tax rate.

Cambridge has represented CATA members since 1979. To discuss retaining the company at the special CATA rate, call Schardt at 312-381-8241.

FTC

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and conspicuous discloses to the consumer, before the consumer divulges her telephone number, both that the consumer may receive telemarketing calls as a consequence of submitting her telephone number, and the maximum number of entities from which the consumer may receive these calls." If possible, the consumer also should be informed of the identities of the lenders who may call the consumer before the

consumer receives any such calls.

Although FTC staff rendered the opinion in the context of the lending industry, it serves as useful guidance to dealers who call consumers from whom they have received contact information via an Internet lead generator.

However, keep in mind that FTC staff guidance does not bind the FTC, the Federal Communications Commission (which also enforces the National DNC rules) or courts that adjudicate private rights of action for alleged violations of the National DNC rules.

Wage-Hour

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from the date that the IDOL finds an employer has violated the law.

Therefore, if an employer failed to pay an employee \$3,000 in overtime pay in, say, January 2004, and the IDOL finds a violation in July 2006, the employer would owe an additional \$1,800 in penalties.

Add that sum to the settlement of the \$3,000 underpayment, plus employee court costs and attorney fees, and the

matter could cost the employer nearly \$10,000—and even more if the IDOL determines the violation was willful.

An employer's best defense is to make sure his pay procedures comply with all Illinois wage and hour laws.

Particularly, make sure that all employees are paid on time, not permitted to work "off the clock," and checked to ensure that anyone who is classified as exempt actually meets the tests for exemption under Illinois law and the federal Fair Labor Standards Act.