Volume 107, No. 7 April 19, 2010

White House fights exemption for dealer-assisted financing in new consumer agency; dealers urged to contact senators for their support

With the Senate expected this month to consider legislation to reform the nation's financial system, President Obama has indicated he wants to overturn a provision in the House-passed bill that excludes auto dealers from a newly proposed consumer financial protection agency.

The Senate is to debate legislation creating a Bureau of Consumer Financial Protection. The agency would have sweeping powers to fundamentally alter or even potentially regulate out of existence auto financing at dealerships.

The new bureau also would have the authority to reduce or eliminate dealer compensation for arranging a loan or lease, and even could limit a salesperson's commission connected to a sale if the vehicle is financed.

Sen. Sam Brownback (R-Kan.) said April 14 that he would offer an amendment to exclude auto retailers from the bureau's jurisdiction. But the amendment faces a steep uphill battle as consumer groups and the Obama administration have come out in full-force against the idea of exempting auto dealers from the jurisdiction of the new bureau.

Treasury Department Deputy Secretary Neal Wolin made it clear during a briefing with reporters last week that the White House would not accept a bill that exempts dealers. He said "a carve-out for auto dealers would be a paradigmatic example" of a move weakening the bill.

The National Automobile

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NADA director nominating ballots set to mail

Incumbent Scarpelli stepping down

Ballots to nominate a candidate to serve as the NADA director representing metropolitan Chicago will be mailed May 7 by the NADA in McLean, Va. Ray Scarpelli Sr., who has held the post since 2003, said this month that he would not seek re-election.

Nominating ballots must be returned to the NADA postmarked by May 28, and the election will be this summer. The victor's three-year term begins next February at the annual NADA convention.

Eligible nominees must be an NADA member in good standing; must have an equity interest in the dealership he/she represents; must be the manufacturer/distributor-recognized Dealer/General Manager/Executive Manager of the dealership; must be actively engaged in the dealership's management; and must have his/her principal dealership in the state or metropolitan region he/she represents.

The NADA defines metropolitan Chicago as Cook, Lake, and DuPage Counties. Another NADA director, Rick

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CATA: Working for you

The BBB-CATA Advertising Review Program strives to level the playing field by making sure all dealer ads comply with the Illinois Motor Vehicle Advertising Regulations.

Exemption

CONTINUED FROM PAGE 1

Dealers Association and the American International Automobile Dealers Association lobbied heavily in the House and were successful in exempting dealers from the financial bill that passed in December.

The dealer groups are rallying all dealers to contact their senators in support of the Brownback amendment, including Illinois Sens. Dick Durbin and Roland Burris, and Indiana Sens. Evan Bayh and Richard Lugar.

"Brownback is looking to introduce language similar to what passed in the House so that the vast majority of transactions at auto dealerships aren't subject to additional banking regulations," said Brian Hart, a spokesman for Brownback. "Auto dealers are retailers, not banks, and are already subject to a host of federal and state regulations that protect consumers."

The NADA distributed an e-mail last week to members supporting the amendment.

David Regan, the NADA's vice president of legislative affairs, said: "Auto dealers did not cause the credit meltdown, and auto loans did not contribute to the worst financial crisis since the Great Depression.

"Financial reform legislation should focus on what led to the economic crash in 2008, and not be used as a means to increase regulation on dealers."

The administration's point: Auto loans can be deceptive and abusive and should be policed. The industry's point: We didn't cause the financial crisis. Don't blame us.

"Dealer efforts to educate the Senate on this important issue are critical," said Regan. "Banks and finance companies that underwrite and service auto loans would be covered by the new Bureau of Consumer Financial Protection, making further regulation of auto dealers costly and unnecessary."

Auto loans already are "policed" by the Federal Trade Commission and state consumer protection agencies, and would remain fully regulated under the Brownback amendment. The proposed Bureau of Consumer Financial Protection would have near dictatorial powers over auto finance, including the power to end third-party financing and to subject dealers to intrusive examinations without cause.

"Increasing regulation of dealers while failing to articulate any reason why such a change is necessary is an example of the Administration exploiting the 2008 Wall Street crisis to increase government control over Main Street businesses," said Bailey Wood, an NADA legislative spokeswoman.

The legislation is part of overall financial regulation, in a process in which hopes are fading for a bipartisan deal in the Senate to advance the matter. To avoid a filibuster, Democrats need the support of at least one Republican.

Obama said he won't accept a weakened bill simply to pass something.

Used-vehicle prices up but will decline on looming supply glut

Manufacturer incentives over time will draw consumers to new-vehicle purchases, and the resultant increased supply of used vehicles will cause their prices to fall, according to an analysis by an editor of the NADA Used-Car Guide.

Jonathon Banks said: "Used-vehicle prices continued to follow an upward trend during March, and most indicators suggest the used market will continue to support high used prices.

"However, new-vehicle incentives at the current levels will cause the resale values of used vehicles to decline because car shoppers will shift from the used to the new market, while at the same time the used-vehicle supply will increase from trade-ins.

"An indicator to watch will be the new-vehicle Consumer Price Index and new-car incentives. If manufacturer incentives drive stronger new-vehicle sales, used-vehicle prices will moderate in the wholesale lanes at auctions."

'Drive Chicago' on the Big 89

Tune to WLS 890 AM at 8 a.m. each Saturday for the hourlong car show featuring Paul Brian, the CATA's communications director.

Marketplace

Office Manager Professional accountant with 14+ years experience. Top performer in all aspects of business accounting, financial analysis, ensuring accuracy of financial reporting. Outstanding experience in working with management to set up and manage controls. Work well in team or individually to achieve goals and objectives. Margaret LaPiana, (708) 214-5211.

Résumé on file at the CATA.

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Review past editions dating to 1998 or search by subject at www.cata.info.

David E. Sloan **President, Publisher**
Erik K. Higgins **Editor, Director of Dealer Affairs**

NADA Asks SBA to improve dealer floor plan initiative

By Ray Scarpelli Sr.
Metro Chicago NADA Director

Joined by commercial lending executives from four major national banks, NADA representatives met with the Small Business Administration on March 11 to discuss ways to make the SBA's dealer floor plan pilot program work more effectively.

"The SBA clearly recognizes the importance of helping the retail auto industry. But significant changes need to be made to the agency's dealer floor plan program to make it work," said NADA Chairman Ed Tonkin, who participated in the meeting with other NADA representatives.

"We appreciate the opportunity," Tonkin said, "to meet with the SBA to discuss potential modifications to this program, which could lead to improvements that will benefit both lenders and borrowers,"

Bankers and the NADA urged the SBA to make the pilot program permanent, to simplify the program so that it's more user-friendly, and to allow loan advances of up to 100 percent of inventory value with the maximum SBA guarantee.

"We appreciate the valuable input provided by the banking representatives and the receptiveness to their ideas on the part of the SBA," Tonkin said.

In other NADA news . . .

• In a letter to all NADA members earlier this month, Chairman Ed Tonkin justified the **NADA dues increase** and urged dealers to invest in the future of their dealerships and their industry by renewing their memberships in 2010.

Tonkin outlined the association's key achievements in 2009, including: initiating the "cash for clunkers" program and securing an additional $2 billion in funding; freeing TALF funds for inventory floor planning; providing wind-down and terminated dealers recourse through arbitration; and providing substantial input leading to a dialing back of GM's requirements for go-forward dealers.

"Now that the economy is improving and our industry has begun to stabilize, the NADA is still working just as hard on your behalf – taking on dealer issues, ensuring fairness in the marketplace, and protecting us from overreaching legislation," Tonkin wrote. In order to maintain and enhance the level of service and value that NADA members have come to expect, an increase in membership dues is necessary, Tonkin explained.

"We have worked hard to make this increase as small as possible while still meeting our responsibilities to you," he wrote. Questions about 2010 dues can be directed to the NADA Membership Department at (703) 821-7113 or member@nada.org.

• Members of the NADA and the ATD who enroll in NADA University will receive substantial **instruction and resources free**. Complimentary benefits include the Resource Toolbox's complete online series of Driven management publications and Learning Hub's six essential online courses that address cash reporting, cash flow management, diversity education, the FTC "Red Flags" Rule, OSHA safety requirements and EPA standards for hazardous air pollutants.

•NADA University now publishes its Driven Management Series online. "A Dealer Guide to Preventing and Detecting Fraud" teaches dealers, general managers, controllers and CFOs **how to detect and prevent employee fraud**. The various types of fraud are covered in detail, with specific real-life scenarios and detection methods. Also discussed are the internal controls necessary to prevent fraud, insurance coverage, leading indicators of white-collar criminals, and recent statistics on workplace fraud.

NADA and ATD members must enroll in NADA University to gain access to the Driven publications.

• The NADA marked an important milestone March 12 when Chairman Ed Tonkin and immediate past Chairman John McEleney celebrated the graduation of their children, Nancy Tonkin and Drew McEleney, from the **NADA-ATD Academy**.

Nancy Tonkin and Drew McEleney represent the fourth generation of their respective family businesses. The event marked the first time a current NADA chairman and a former NADA chairman had children graduate from the academy together. It was also historic because Tonkin and McEleney are the first NADA chairmen to have been preceded by their fathers in the position. Tonkin's father, Ron Tonkin, was head of NADA in 1989. And McEleney's father, Warren McEleney, led the organization in 1971.

"You are today's young lions and lionesses," Tonkin said. "You bring skills and knowledge to this industry that we've never seen before." McEleney also struck a positive tone, telling the graduates "you've lived through a very difficult time, and I think [because of that] the education you received will mean more to you."

• **NADAFrontPage.com**, the NADA's new online magazine, is fast becoming the go-to source for timely and comprehensive news about the auto industry. More than 44,000 visitors went to NADAFrontPage.com in its first month of operation. The magazine features expanded coverage of auto industry news, quotes from industry leaders and auto stock quotes. It complements the association's daily e-newsletter, NADA Headlines.

AIADA: Incentives help March sales gains

March sales of import brands, which account for 57 percent of all vehicles sold in the United States, were up 53 percent over February numbers, the American International Automobile Dealers Association reported April 2.

Overall sales, including domestic brands and unadjusted for business days, were up 24.3 percent from March 2009 and 15.5 percent for the year. The seasonally adjusted annual rate (SAAR) for light vehicles now stands at 11.78 million, an improvement from 9.72 million units one year ago.

The AIADA credits March's sales growth from pent-up demand and incentive offers that were simply too good for shoppers to resist. In response to customer concerns over it recalled vehicles,

"Last month, consumers took advantage of unprecedented discounts on some of the most reliable, fuel efficient, and safe vehicles on the road," said AIADA president Cody Lusk. "The incentives prove Americans are ready to buy new cars,

Asian brands accounted for 49 percent of the market, up from 44.8 percent in February; European nameplates had a 7.9 percent share, down from 8.7 percent. Domestic brands finished the month with 43 percent of the market, down from 46.6 percent in February.

NADA director

FROM PAGE 1
Gregg of Gregg Motor Sales in Joliet, represents Illinois's remaining 99 counties.


Ray Scarpelli Sr.

To qualify as a nominee, a dealer must receive at least 10 percent of the total nominations cast. If none receives that minimum, further nominations would be sought. If the nominating process qualifies a single dealer, that dealer would be declared elected without further balloting.

Gramm-Leach Privacy Act notices finally get revamped

BY PATTY COVINGTON

On Nov. 17, 2009, the Federal Trade Commission along with other federal regulators adopted final Model Privacy Notice forms for compliance with the Gramm-Leach Bliley Act and its implementing regulation, the FTC's Financial Privacy Rule. The Model Privacy Notice replaces the Sample Clauses, which appear in Appendix B to the Privacy Rule and, as such, now provide the safe harbor for compliance.

The Model Privacy Notice is the product of a six-year quest to make GLBA privacy notices more understandable and readable. In addition, the FTC and Agencies aimed for a form that allows consumers to more easily compare the privacy practices of one financial institution with those of another—something akin to nutrition labels. What resulted is a standardized template that must be completed in strict compliance with the accompanying instructions.

There are three Model Privacy Notice forms. The first does not provide an opt-out. The second provides an opt-out by telephone and Internet, and the third provides an opt-out with a mail-in form.

Each Model Privacy Notice form consists of two pages and may be printed either on two separate sheets of paper or on both sides of a single sheet. The notice may extend to a third page if there is a long list of affiliates or additional information that must be disclosed and which exceeds the space available on Page 2.

There are five parts to the first page: (i) The title, (ii) an introductory section called the "key frame," which provides context, (iii) a disclosure table that describes the types of sharing used by dealers, which types of sharing the dealer actually does, and whether the consumer can limit or opt-out of any of the dealer's sharing, (iv) a box titled "To limit our sharing" (if the dealer offers an opt-out), and (v) the dealer's customer service contact information. The dealer will also identify on the first page, the last date the notice was revised. If an opt-out is offered, the opt-out form is included on the first page.

Page 2 consists of: (i) A heading, (ii) certain frequently asked questions ("Who are we?" and "What do we do?"), (iii) key definitions, and (iv) a section entitled "Other Important Information," where required state disclosures or an optional acknowledgment of receipt form can be provided.

The Model Privacy Notice must be printed in an easily readable type font and, except where specifically provided, it must be in at least 10 point type. Dealers may include their logo on any of the pages so long as it does not interfere with the readability of the notice or the space constraints of each page.

Dealers are not required to use the Model Privacy Notice; it's purely voluntary. If they elect not to use the Model Privacy Notice, they must ensure their notices comply with all of the requirements of GLBA and the Privacy Rule. The benefit of the Model Privacy Notice is that, if completed as required by the instructions and delivered properly, it provides a safe harbor for compliance. Completing the notice precisely as required is vital.

The author is a partner with Hudson Cook, LLP,, a Hanover, Md.-based law firm that represents licensed lenders in the maintenance of consumer mortgage, automobile finance and other credit programs.