

TO: Franchised New Vehicle Dealers

FROM: National Automobile Dealers Association  
American International Automobile Dealers Association  
National Association of Minority Automobile Dealers

SUBJECT: Promoting Compliance with Fair Credit Laws

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Each of our associations is committed to providing our members with educational resources to serve the needs of their customers and to help them comply with the laws and regulations governing their dealership operations. As part of this commitment, we frequently make available to our members dealer guides, seminars, and workshops that explain the requirements of federal law and possible actions dealers may wish to consider to satisfy those requirements. Our latest effort in this regard is the attached *NADA Fair Credit Compliance Policy & Program*.

Treating customers in a fair and consistent manner and strictly abiding by all anti-discrimination laws is central to the mission and success of our dealer members. The attached NADA publication is designed to further this mission by providing dealers with an optional *Fair Credit Compliance Program* they can adopt which: (i) establishes a *Fair Credit Policy* for the dealership that sets forth an unambiguous commitment to fair credit compliance; and (ii) creates a general framework for promoting compliance with fair credit laws. Dealers who adopt this or a similar approach would individually establish a pre-set amount of compensation their dealership would include in credit offers to every consumer, unless any one of several pre-determined and pro-competitive reasons for deviating from that amount is present in the transaction. The approach also provides that any person offering an extension of credit must record and document any deviation from the dealership's pre-set amount of compensation. Finally, it establishes a periodic review process for management personnel to examine the documentation and, if necessary, take corrective action.

This voluntary approach to fair credit compliance is designed to help dealers who adopt it to both promote their commitment to fair credit compliance and strengthen their ability to demonstrate that they have taken a consistent approach to the pricing of consumer credit. Fulfilling these goals is particularly important in light of recent allegations by the federal Consumer Financial Protection Bureau (CFPB) that finance sources that purchase credit contracts from dealers create a "significant risk" of fair credit violations when they allow dealers to exercise discretion in determining the amount they earn for qualifying and extending credit to consumers. The CFPB maintains (and has already entered into a consent order with one finance source) that such dealer discretion unintentionally results in certain groups of consumers (based on race, color, national origin, and other factors) paying more dealer compensation than similarly situated consumers in other groups. While our associations take these allegations seriously, we – along with a large bipartisan group of U.S. Senators and House Representatives – have not received essential

information from the CFPB demonstrating that such unintentional discrimination exists. However, the nature of the CFPB's allegations underscore the importance of strengthening the compliance resources that are available to our members in this area.

The *NADA Fair Credit Compliance Policy & Program* is based on a compliance program that two dealers adopted in 2007 consent orders to resolve Department of Justice (DOJ) allegations of unintentional credit discrimination. While neither DOJ nor any other federal agency have stated that adopting this approach satisfies the requirements of federal law, it nevertheless provides a useful template for dealers to consider in developing their own approach to fair credit compliance. The publication contains: (i) a brief overview of this issue; (ii) general and specific instructions for completing the *Fair Credit Compliance Program* template; and (iii) the actual *Program* template. ***Dealers are not required to adopt this Program. If dealers decide to adopt this Program (or any part of it), it is essential that they make dealer specific entries where noted in the template and otherwise modify the Program to reflect their operational circumstances. It is imperative that dealers consult with qualified legal counsel when making these individual decisions.***