



Select Compliance Issues That May Arise Under Current Market Conditions

The current new and used automotive market is experiencing a “perfect storm” of unprecedented conditions. Extremely limited new vehicle supply and historically high used car prices, coupled with strong consumer demand, have created an environment where retail prices for new vehicles are at historic highs. Many dealer questions have arisen regarding potential regulatory pitfalls raised by these market conditions – specifically, circumstances where market prices exceed the manufacturer’s suggested retail price (“MSRP”).[\[1\]](#)

As a general matter, dealers should be free to set prices for new or used vehicles at whatever level the market demands, including over MSRP, provided its pricing comports with applicable law and any contractual obligations and restrictions. The following information provides a non-exhaustive summary of several considerations in this regard.

First, dealers should ensure that they do not run afoul of any restrictions from, or contractual obligations owed to, their manufacturer regarding new or certified used vehicle pricing. Dealers should consult with their legal counsel regarding any such limitations or restrictions.

Second, as always, dealers must ensure that any advertising that includes a price clearly and accurately reflects the price of the vehicle offered for sale.[\[2\]](#) Remember that what the FTC considers to be an “advertisement” is very broad and includes commercial messages in any medium. This includes much more than print, website, or online advertisements; indeed, social media, text messages, e-mails, and other forms of communication could all be considered advertisements.

As a result, dealers should exercise particular caution in communicating a price for a vehicle in any format or circumstance. This includes your website and, in particular, any content on your website controlled or influenced by your manufacturer. For example, the posting of an “MSRP” price on your website – even if you did not post that price yourself – could be deemed an advertisement.[\[3\]](#)

A related issue raised by tight new car inventory is the advertising of vehicles that are not physically located on your lot. While there is little federal guidance directly on this issue, dealers should, at a minimum, ensure that any vehicle advertised for sale (or reservation) that is not physically on the dealer lot is clearly and conspicuously marked as such so that consumers clearly know that the vehicle is not available for immediate delivery. Dealers should exercise particular caution in posting prices of vehicles not available for sale to avoid claims of “bait and switch” advertising.[\[4\]](#)

A related advertising issue that the FTC has focused on in recent years is so-called “Drip Pricing,” which the FTC defines as “ a pricing technique in which firms advertise only part of a product’s price and reveal other charges as the customer goes through the buying process.”[\[5\]](#) As a general matter, the advertised price should be the amount a consumer would be expected to pay to purchase the identified vehicle as equipped, excluding government-imposed fees and taxes. However, it is important to consult state law, as a number of states specifically regulate what charges may be excluded from a dealer’s advertised vehicle price and how the excluded charges must be disclosed to consumers.

Another issue that has become more prevalent in the current market relates to the end of a consumer lease. Most leases provide a contractual right for the lessee to purchase the vehicle upon lease termination for a fixed price (the "Lease Purchase Option Price"), and Reg M (the regulation that implements the federal Consumer Leasing Act) generally requires that the Lease Purchase Option Price be honored - inclusive of fees related to the exercise of the purchase option by the consumer. While many leasing companies enlist the assistance of dealers to complete the lease turn-in, dealers should exercise caution to ensure that the price offered to the lessee for purchase, and any fees the dealer charges to the consumer related to the purchase of the leased vehicle (or the turn-in of that vehicle), are consistent with both Reg M and the contractual provisions under the lease.^[6]

With microchip availability and other supply chain concerns continuing for the foreseeable future, dealers may be facing product shortages and other unique market challenges for some time to come. Dealers are encouraged to work with counsel and other advisors to ensure they are taking the proper steps to avoid regulatory pitfalls in the areas outlined above and many others.

This memorandum is offered for informational purposes only and is not intended as legal advice. Consult an attorney who is familiar with federal, state, and local law addressing these topics and your operations for guidance on the legal sufficiency of your pricing, advertising, and disclosure practices.

^[1] For example, some dealers, in an attempt to fight against the market pricing pressures and better serve their local customers, have sought to institute surcharges for "out of state" or "out of market" purchasers, or placed restrictions on resale of vehicles purchased at or below MSRP. These practices are intended to avoid the market arbitrage taking place where the market price of a new vehicle far exceeds MSRP and purchasers seek dealers selling at MSRP and then immediately resell that vehicle for well above MSRP. This memo does not address any state or local advertising or consumer regulatory implications of such a practice, and dealers should consult with legal counsel about engaging in these or related practices.

^[2] This memo discusses only a small portion of potential federal advertising issues **and does not address state or local advertising issues**. Federal advertising requirements are explained in NADA's [A Dealer Guide to Federal Advertising Requirements](#). **It is essential that dealers consult their legal advisor to determine what additional advertising and disclosure issues may arise under federal, state, or local law.**

^[3] For an example of this type of assertion, see <https://www.autonews.com/dealers/koons-kia-settles-unadvertised-fee-allegations-md-ag-could-owe-1m-plus-refunds>.

^[4] The FTC defines "bait and switch" advertising as "advertis[ing] a product when the company has no intention of selling that item, but instead plans to sell a consumer something else, usually at a higher price." For more information, see the [FTC Guides Against Bait Advertising](#).

^[5] See [FTC Warns Hotel Operators that Price Quotes that Exclude 'Resort Fees' and Other Mandatory Surcharges May Be Deceptive | Federal Trade Commission](#).

^[6] For more details see NADA's [A Dealer Guide To Federal Consumer Leasing Act Requirements](#), at pp. 13-14.