

Fair Credit Compliance Policy & Program at a Glance



In January 2014, the National Automobile Dealers Association (NADA), the American International Automobile Dealers Association (AIADA), and the National Association of Minority Automobile Dealers (NAMAD) released to their members the *Fair Credit Compliance Policy & Program*. The following is a brief overview of the program.

PURPOSE

The *Fair Credit Compliance Policy & Program* is an optional program that is designed to strengthen a dealership's efforts to comply with fair credit laws.

BACKGROUND

Dealers and the auto lenders to which they sell their credit contracts may be sued by a federal or state regulator and/or by an individual plaintiff for a fair credit violation if they are found to have discriminated against a credit applicant based on his or her race, national origin or other prohibited factor. This applies to both intentional and unintentional "disparate impact" discrimination.

(Disparate impact discrimination is generally proven by looking at past transactions and comparing the amount of dealer participation—also known as dealer reserve—paid by different groups of consumers who are similarly situated. If there is a pricing disparity between these groups that cannot be explained by legitimate business factors, the dealer and the auto lender may be held liable for a fair credit violation.)

BASIS AND DESCRIPTION OF THE PROGRAM

In 2007, the Department of Justice (DOJ) entered into consent orders with two dealerships to resolve allegations of disparate impact discrimination. The program is modeled on the fair credit compliance program contained in these consent orders. The core of the program is as follows:

- The dealership establishes a pre-set Standard Dealer Participation Rate (SDPR) which the dealership uniformly adds in each transaction to the wholesale buy rate it has chosen to determine the APR that the dealership offers to the customer.
- The dealership only deviates from that APR if an allowable business reason (i.e., a good faith, pro-competitive reason unrelated to the customer's background) exists to include a lower amount of dealer participation in the offer of credit to the customer.

ADOPTING THE PROGRAM

A dealership that chooses to adopt the program should complete the steps below and ensure the program is tailored to its individual needs and circumstances.

STEP 1

Create a *Fair Credit Policy* that states the dealership's strong commitment to fair credit compliance and consider prominently posting the policy where it can be viewed by both consumers and employees. (A fair credit policy template is available for this purpose at Appendix A of the program.)

STEP 2

Create a *Fair Credit Compliance Program* as described in Steps 3-6 that carries out the *Fair Credit Policy*. The dealership's leadership (board of directors or other governing body) must review and formally adopt the program.

STEP 3

Identify who and what is covered by the program and the purpose of the program.

STEP 4

Appoint a program coordinator (PC) to develop and oversee the program. The PC should have the necessary time, expertise and seniority to perform this function.

STEP 5

Direct the PC to establish the dealership's pre-set SDPR and provide that the dealership will only deviate from the SDPR if an allowable business reason exists to include a lower amount of dealer participation in the offer of credit.

- Identify the allowable business reasons when the dealership may deviate from the SDPR. (The program includes seven allowable business reasons that support a deviation, such as the need to satisfy a customer's monthly budget constraint, the need to meet or beat a more competitive credit offer or the existence of a manufacturer subvention program for

which the customer qualifies. These are the same seven reasons that are contained in the DOJ's 2007 consent orders.)

- Require each dealership employee who makes a credit offer to record on the Dealer Participation Certification Form at Appendix D (i) the SDPR, (ii) the final dealer participation rate, and (iii) where the two differ, the allowable business reason for deviating from the SDPR.
- Ensure that the PC or his or her designee reviews the form to ensure it was properly completed. If it was not, have the PC take necessary corrective action. (The reviewer should not have been involved in the transaction.)

STEP 6

Establish the training, oversight and reporting tasks that the PC must complete to ensure the program is faithfully executed. This includes identifying the documentation that the employee making the credit offer must retain to support a deviation from the SDPR.

MAINTAINING THE PROGRAM

As with any regulatory compliance program, ensure the dealership's "Fair Credit Compliance Policy & Program" is continuously carried out and adjusted as necessary to meet its objective of strengthening the dealership's efforts to comply with fair credit laws.

The NADA/NAMAD/AIADA Fair Credit Compliance Policy & Program is available as a pdf and the template program is available in MS Word format at www.nada.org/faircredit. Review the publication in full (including the disclaimers and limitations associated with the program) and consult with the dealership's legal counsel before deciding whether and how to adopt the program.