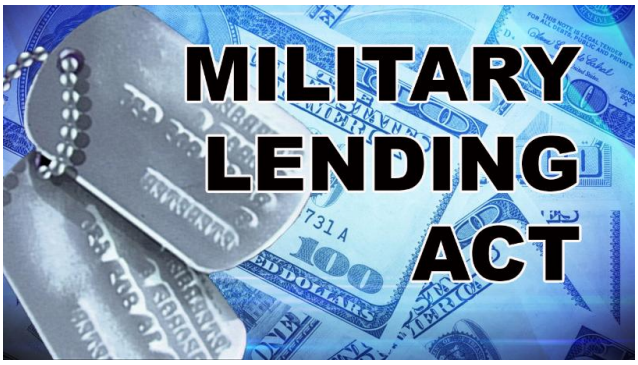
WVADA
WEST VIRGINIA AUTOMOBILE DEALERS ASSOCIATION

November Newsletter



Military Lending Act Lawsuit

On October 22, 2019, a class action complaint was filed against a dealer in federal district court in Florida for alleged violations of the Military Lending Act (MLA). This is the first MLA lawsuit against a dealer that has been reported.

Background
On December 14, 2017, the Department of Defense (DOD) issued an interpretation of its regulations on the MLA, stating that vehicle financing with active duty military personnel and their dependents that includes GAP protection and/or credit insurance requires compliance with the MLA.

What is the Military Lending Act?
The MLA was enacted to protect members of the military on active duty and their dependents from predatory lending practices. It limited the military annual percentage rate (MAPR) of credit to no more than 36%.

Under the DOD's definition of the MAPR, any costs or fees associated with products that are considered "credit related products" must be used to determine or calculate the MAPR. Based upon the interpretive questions and answers by the DOD, I am of the opinion that products such as GAP waiver or insurance, life, health, and disability insurances are "credit related products" which could dramatically impact whether a dealer is complying with the MLA.

The MLA applies to all customers who are "active service members and their dependents." Fortunately, a normal credit reporting agency credit report should show whether or not a customer is a "covered member" of the military. Moreover, and I stress very important, the DOD has set up a website, if checked by the dealer, will provide a safe harbor for the dealer going forward. That address is as follows: https://mla.dmdc.osd.mil/mla/#/home.

It is very important that a dealer maintains documentary evidence that it checked this website and the credit report to show that they attempted to determine if the customer was a "covered member or a dependent" under the

DOD's guidelines related to the MLA.

So that is some of the legal background. Practically, what can a dealer do to avoid running into an over calculation with the MAPR? These are my suggestions.

- Obviously ask the customer is they are active military service or a dependent. If in doubt, pull a credit reporting agency credit report and check the DOD's website to determine if the person is an active service member or a covered dependent. You have now complied and are in save harbor on the issue of whether they are a covered borrower.

- It is perfectly okay and exempted from the MLA to sell a covered borrower, such as an active military member or their dependents, products which are specifically related to the motor vehicle. Consequently, such products as a service contract, wheel and tire protection, paint protection, and key protection, are exempt and are not included in the MAPR. Accordingly, one can keep doing business in the normal fashion with these products.

- However, if the person is a covered borrower, i.e. an active military service member and their dependents, I would not recommend that a dealer sell them a GAP debt cancellation waiver, or health, life, accident and disability insurances. If the customer requests such products, I would recommend the dealer politely advise the customer that because of our business model, it does allow us to comply with the MLA, and therefore, we are unable to provide these products to them.

I realize that this may seem harsh, but to determine the MAPR would be very difficult to do and I do not believe that a dealer's DMS systems are set up to calculate this MAPR. This is extremely important because if a dealer violates this Act, there are both civil and criminal penalties and the contract is void as a matter of law. Consequently, we can see the significant exposure that can arise from violating the MLA.

Unfortunately, the new interpretative rules do allow the Federal Trade Commission to do a look-back on any violations into the calendar year 2016. There is nothing we can do about this and I would simply advise our members to be in compliance moving forward and show that the safe harbor search was used, when faced with a customer who is active military and their dependents. We may need to train our salesman, service managers, or F&I managers to determine if the person is a "covered borrower" under the MLA.

Consequently, future compliance can be relatively simple by determining if the

person is a covered borrower by using the safe harbor website, and if so, not selling any “credit related products” to that customer, such as GAP, or any accident or health, life, or disability insurance policies. All products specifically related to the motor vehicle, are exempt, and would not affect the MAPR.

While this may be of limited exposure in West Virginia, there are several National Guard bases in our state, and I suspect that people who work there on a full-time basis are a covered borrower. Consequently, be safe and always check the safe harbor website provided by the Department of Defense.

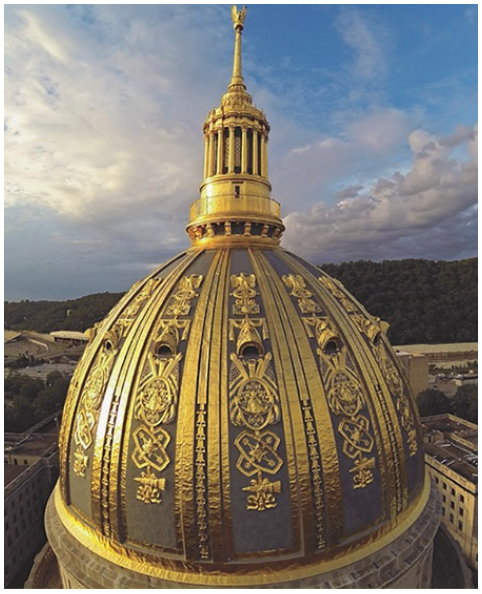
Johnnie Brown
President, NADC

Upcoming Events

2020 WV Legislative Session

The 2020 WV Legislative Session will begin ***Wednesday January 8th and conclude March 7th.***

Your support, as automobile dealers during the Legislative Session is important in order for us to have a voice at our state capitol.



The 2020 West Virginia Auto Show VIP Gala will be Thursday, January 16, 2020.

More details to follow.

WVAS

WEST VIRGINIA AUTO SHOW

Learn the latest strategies and emerging trends through NADA education sessions. NADA Academy instructors as well as top industry specialists teach real solutions for your dealership to build the success your business needs, both now and in the years to come at the 2020 NADA Show in Los Vegas, February 14-17. View the full schedule of NADA Show 2020 Education Workshops HERE.

The Greenbrier Resort

WVADA 87TH ANNUAL FAMILY CONVENTION

SAVE THE DATE

JUNE 7 - 10
OPEN REGISTRATION NOW - JUNE 4TH

Sunday: Welcome reception & Casino Night
Monday: Golf Scramble & Block Party
Tuesday: Sporting Clay Tournament & Chairman Dinner/reception

For more information visit our website at www.wvcar.com

WVADA
WEST VIRGINIA AUTOMOBILE DEALERS ASSOCIATION

WEST VIRGINIA
WVCAR
POLITICAL ACTION COMMITTEE

WVCar is the West Virginia Automobile and Truck Dealers Political Action Committee, and your support is vitally important in order for us to have a voice at our state capitol in Charleston. WVCar is the best platform for our message to be heard by legislators and signify our value in West Virginia communities.

The goal of WVCar PAC is to bring all voices through WVADA to Charleston to make certain our positions are protected and strengthened. Please take the time to contribute to ensure that our voice, as dealers, is heard!

Check out our new **WVCar website** and make your contribution directly through the site or by clicking **HERE**, to fill out the form and submit either a personal check or your credit card information to WVADA.

UPDATE: New Effective Date for E-Odometer Rule

The National Highway Traffic Safety Administration (NHTSA) has ***modified elements of its final rule applicable to increased vehicle populations subject to federal odometer disclosure*** requirements.

The change to the exemption from odometer disclosure requirements will now take effect on January 1, 2021, and will apply to model year 2011 and newer vehicles. The rest of the rule remains intact as published. The extension is the result of the American Association of Motor Vehicle Administrator's (AAMVA's) Petition for Reconsideration, which requested that NHTSA reconsider the effective date for changes to the expansion of vehicles exempt from federal odometer disclosure requirements.

Originally, the final rule mandated that beginning on January 1, 2020, vehicles would be subject to a "rolling implementation" of additional vehicles, to include model year 2010 and newer vehicles. Given the short, 90-day time frame for accommodating the change, AAMVA requested that NHTSA reconsider the effective date to allow for an additional year of implementation, training, and systems modification time.

The NADA regulatory affairs team will work with you, other industry stakeholders, and the American Association of Motor Vehicle Administrators (AAMVA) to facilitate the rule's implementation, and is in the process of revising NADA's *A Dealer Guide to the Federal Odometer Law* to reflect the new changes.

Jennifer Coleman, President, ATAE

New Driven Valuation Guide

NADA recently **issued a new *Driven* Valuation Guide**. *A Dealer Guide to Dealership Valuation*, which was prepared for NADA by Moss Adams, aims to **explain the process of valuing automobile and heavy-truck dealerships**. It covers such situations as buy-sell transactions, estate and gift tax planning, ownership succession planning, litigation settings and more. The guide discusses the importance of analyzing historical earnings and cash flow, estimating future cash flow and determining a reasonable ROI. It outlines the income, market and asset-based approaches to valuation, providing numerous examples, formulas and worksheets. It also addresses special valuation considerations such as personal versus corporate goodwill (Blue Sky) and valuation for federal tax matters, including changes resulting from the Tax Cuts and Jobs Act of 2017.

Attention Heavy Duty Truck Members

Trucking Moves America Forward is inviting all Heavy Duty Truck Members to share stories about charitable acts, community events, and other activities that you organize, support or participate in during the Holiday season. Story submissions can be sent to info@truckingmovesamerica.com by Friday, December. 13.

Federated Insurance's Claim of the Month — Could it happen to you?

A customer on a test drive slid through a stop sign and struck a vehicle, causing damage to the vehicle and injuring an occupant. The test drive took place around 7 p.m. during the late fall-early winter months. It was dark outside, with temperatures around 30 degrees, and there was a light mist in the air, making roadways slippery.

CLAIM AMOUNT: $75,000

After months of the generally clear and favorable driving conditions of summer and fall, winter weather can present a difficult transition for drivers. And when winter is in full swing, things can be even more perilous. Auto dealers must still do business during these tricky times, but need to use extra caution when conducting test drives.

- Ensure your customers are aware of and are comfortable with the driving conditions.
- Ensure your customers are familiar with the vehicle's safety systems — windshield wipers, headlights, etc., before leaving the lot.
- Choose a route that is appropriate for the weather. For example, avoid hills if you can during slick conditions.
- Periodically reinforce your inclement weather test drive policies with your sales staff. They are essential to helping avoid weather-related crashes.

Weather is often unpredictable, so no one can guarantee that a test drive will end safely where it began. But as a dealer, it's up to you to decide if the weather is appropriate for a test drive. Always use your best judgment when sending your vehicles out during potentially hazardous weather. Your customers will likely understand that you have their safety and the safety of your employees in mind.

Federated Mutual Insurance Company is recommended by 19 state and national auto dealer associations for customized insurance programs and value-added risk management services, such as Federated's Shield Network®, the Risk Management Resource Center, and the Federated Employment Practices Network®. Visit federatedinsurance.com or contact your local marketing representative for resources you can use to create or enhance your own risk management program.

This article is for general information and recommendations for risk prevention only and should not be considered legal or other expert advice. The recommendations herein may help reduce, but are not guaranteed to eliminate, any or all risk of loss. All products and services not available in all states. Qualified counsel should be sought with questions specific to your circumstances and applicable laws.

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In The Community

As the holiday season approaches please let WVADA know about any events your dealership is hosting for your local communities. You can contact Andrea Greene at agreene@wvcar.com or 304-343-4158 with any information.

On Nov 11th, 2019 at Toothman Ford in Grafton WV, provided a FREE catered luncheon in the showroom for ALL Veterans or active military! They had door prize drawings as well as plenty of food and beverages. This is just a small way that they said thank you to those who have given so much for us!

On November 13, 2019 McClinton Chevrolet and Mitsubishi loaded up the remaining donations they collected and took them to the Humane Society of Parkersburg. They also donated the money raised from their Adopt-A-Thon Test Drive Fundraiser.

Thank you to everyone who donated time and money to make this initiative a success. It's always great to see local organizations work together to make our community better.

November 22, 2019 Astorg Auto of Charleston teamed up with Charleston Area Human

Society for an event for customers to meet their new best friend and their new favorite car!
There were a variety of cars, puppies, kittens, cats, and dogs!
They also sponsored the first $500 in adoptions on Friday evening!

DMV Motor Vehicle Title and Registration Seminars

In October the DMV and WVADA held 6 Motor Vehicle Title and Registration Seminars across the state. All of the seminars were a great success and had record breaking attendance. Thanks to everyone who helped make this happen and a special thank you to CVR for your sponsorship!

West Virginia dmv
Keeping West Virginia on the move.

Pullin, Fowler, Flanagan, Brown and Poe.

Check under the Hood. Is there performance and reliability? What about your business? Just as you want your automobile to take you safely where you want to go, you need your law firm to guide your business through the variety of legal challenges, internally or externally, with performance and reliability.

Let Pullin, Fowler, Flanagan, Brown & Poe trial attorneys handle the diverse checklist of legal issues your business is confronted with. One law firm creates less confusion and a better understanding of your business – leading to continuity of knowledge for representation. ***It's all under one name.***

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****Please note that the WVADA office will be closed for the Thanksgiving Holiday on Thursday and Friday, November 28th and 29th.**

Happy Thanksgiving to you and your families!