

NADA Update



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NADA Regulatory Affairs

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What We'll Cover

- **Ecosystem Principles**
- **Electric Vehicles**
- **Constitutional Challenge to Franchise Laws**
- **Catalytic Converter & LIFO Legislation**
- **Employee Retention Tax Credit**
- **Proposed Vehicle Shopping Rule**
- **Proposed Junk Fee Rule**
- **Spot Delivery Petition**
- **Small Business Credit Applications**
- **Service Contracts Study**
- **Subprime Acquisition Fees**

Principles to Guide Auto Retail's Future



NADA Guiding Principles on

Evolving Business Models and the Dealer Franchise System

NADA POSITION STATEMENT ON

Evolving Business Models and the Dealer Franchise System



NADA and its dealer members recognize that the dealership business model is in a dynamic period of evolution, driven largely by technology and increased expectations of the customer experience.



NADA fully supports the dealer franchise system as the most consumer-friendly, effective, and efficient model of distribution and service for motor vehicles (ICE or BEV) in the U.S.



Both dealers and OEMs should publicly recognize and acknowledge these facts.

Source: NADA

GHG and CAFE



Proposed Mandates From EPA and NHTSA

Too far.
Too fast.

EV Tax Credits



EV Tax Credits



SECTION 30D

New Clean
Vehicle Credit



SECTION 45W

Commerical Clean
Vehicle Credit



SECTION 25E

Used Clean
Vehicle Credit



2024 ISSUES:

Cash-on-Hood

.....
Reimbursement

Constitutional Challenge to Franchise Laws

Case 2:22-cv-02982-SSV-DPC Document 107-5 Filed 11/10/22 Page 1 of 35

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

TESLA, INC., TESLA LEASE TRUST,
AND TESLA FINANCE, LLC

Plaintiffs

CIVIL ACTION NO. 2:22-cv-02982

JUDGE SARAH S. VANCE

VERSUS

LOUISIANA AUTOMOBILE DEALERS
ASSOCIATION, in itself and on behalf of
its members, Executive Committee, and
Board of Directors, ET AL.

Defendants

MAG. JUDGE DONNA PHILLIPS CURRAULT

MEMORANDUM IN SUPPORT OF DEFENDANT LOUISIANA AUTOMOBILE DEALERS ASSOCIATION INC.'S MOTION TO DISMISS PURSUANT TO RULE 12(b)(6)

INTRODUCTION

The complaint here must be dismissed in its entirety. The basic allegation in this case is that a trade association successfully lobbied a state legislature to amend a statute in a way that benefits the association's members and then lobbied a state agency to interpret a related law to similar effect. The core complaint here, in other words, is that defendant Louisiana Automobile Dealers Association ("LADA" or the "Association") exercised its First Amendment right to petition and was persuasive. That is both commonplace and constitutionally protected; as this Court has long recognized, "allegations that [a trade association] sought to influence the [government] and succeeded" are not the stuff of antitrust liability. *Ehlinger & Assocs. v. La. Architects Ass'n*, 989 F.Supp. 775, 785 (E.D. La.), *aff'd*, 167 F.3d 537 (5th Cir. 1998).

Indeed, such conduct is wholly immune from liability under the Sherman Act and other laws policing anticompetitive behavior precisely because it is protected by the First Amendment.

2420338.v1

Case 2:22-cv-02982-SSV-DPC Document 169 Filed 02/01/23 Page 1 of 3

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CIVIL ACTION NO. 2:22-cv-02982

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LOUISIANA AUTOMOBILE DEALERS
ASSOCIATION, in itself and on behalf of
its members, Executive Committee, and
Board of Directors, ET AL.

Defendants

MAG. JUDGE DONNA PHILLIPS CURRAULT

DEFENDANT LOUISIANA AUTOMOBILE DEALERS ASSOCIATION, INC.'S MOTION TO DISMISS PURSUANT TO RULE 12(b)(6) OF THE FEDERAL RULES OF CIVIL PROCEDURE

NOW COMES Defendant, Louisiana Automobile Dealers Association, Inc. ("the Association"), which files this Motion to Dismiss the Plaintiffs' Complaint, with prejudice, for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Based on the entirety of the allegations made in Plaintiffs' First Amended Complaint for Declaratory and Injunctive Relief ("First Amended Complaint"), all claims made against all Defendants should be dismissed, with prejudice. The Association is made a Co-Defendant to all claims pursuant to Count VII [Doc. 151, ¶¶384-386], which incorporates all of the claims made in the First Amended Complaint against every Defendant, and seeks a declaration of liability accordingly. In support of this motion, the Association submits the attached memorandum in support.

WHEREFORE, the Louisiana Automobile Dealers Association, Inc. prays that, after all proceedings be had, this Motion be granted, and all of the claims made against the Louisiana

Preventing Auto Recycling Theft (PART) Act



118TH CONGRESS
1ST SESSION

H. R. 621

To prevent the theft of catalytic converters and other precious metal car parts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 30, 2023

Mr. BAIRD (for himself, Ms. MCCOLLUM, Ms. CRAIG, Mr. FEENSTRA, and Mr. GUEST) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on the Judiciary, and Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To prevent the theft of catalytic converters and other precious metal car parts, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Preventing Auto Recy-
5 cling Theft Act" or the "PART Act".



118TH CONGRESS
1ST SESSION

S. 154

To prevent the theft of catalytic converters and other precious metal car parts, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 30, 2023

Ms. KLOBUCHAR (for herself, Mr. BRAUN, Mr. WYDEN, and Mr. VANCE) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To prevent the theft of catalytic converters and other precious metal car parts, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Preventing Auto Recy-
5 cling Theft Act" or the "PART Act".

6 SEC. 2. REQUIREMENTS FOR NEW MOTOR VEHICLE REGU-
7 LATIONS RELATING TO CATALYTIC CON-
8 VERTERS.

9 (a) IN GENERAL.—Not later than 180 days after the
10 date of enactment of this Act, the Administrator of the

Supply Chain Disruptions Relief Act



118TH CONGRESS
1ST SESSION

H. R. 700

To treat certain liquidations of new motor vehicle inventory as qualified liquidations of LIFO inventory for purposes of the Internal Revenue Code of 1986.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 1, 2023

Mr. ARRINGTON (for himself and Mr. KILDEE) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To treat certain liquidations of new motor vehicle inventory as qualified liquidations of LIFO inventory for purposes of the Internal Revenue Code of 1986.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Supply Chain Disrup-
5 tions Relief Act”.



118TH CONGRESS
1ST SESSION

S. 443

To treat certain liquidations of new motor vehicle inventory as qualified liquidations of LIFO inventory for purposes of the Internal Revenue Code of 1986.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 2023

Mr. BROWN (for himself, Mr. SCOTT of South Carolina, Ms. BALDWIN, Mr. BLUMENTHAL, Mr. CARDIN, Mr. CARPER, Mr. COONS, Ms. CORTEZ MASTO, Ms. DUCKWORTH, Mrs. FEINSTEIN, Ms. HASSAN, Mr. KELLY, Mr. KING, Ms. KLOBUCHAR, Mr. MANCHIN, Mrs. MURRAY, Mr. PADILLA, Mr. PETERS, Mrs. SHAHEEN, Ms. SMITH, Ms. STABENOW, Mr. TESTER, Mr. VAN HOLLEN, Mr. WARNOCK, Mr. BARRASSO, Mrs. BLACKBURN, Mr. BOOZMAN, Mr. BRAUN, Mrs. CAPITO, Mr. CASSIDY, Mr. CORNYN, Mr. CRAMER, Mr. CRAPO, Mr. DAINES, Mr. GRASSLEY, Mr. HAGERTY, Mr. HOEVEN, Mrs. HYDE-SMITH, Mr. JOHNSON, Mr. LANKFORD, Ms. LUMMIS, Mr. MARSHALL, Mr. MORAN, Mr. RISCH, Mr. ROUNDS, Mr. RUBIO, Mr. SCOTT of Florida, Mr. THUNE, Mr. TILLIS, and Mr. WICKER) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To treat certain liquidations of new motor vehicle inventory as qualified liquidations of LIFO inventory for purposes of the Internal Revenue Code of 1986.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

Employee Retention Tax Credit

“Employers warned to beware of third parties promoting improper Employee Retention Credit claims”

– 10/19/22

Employee Retention Tax Credit

“IRS issues renewed warning on Employee Retention Credit claims; false claims generate compliance risk for people and businesses claiming credit improperly”

– 3/7/23

Employee Retention Tax Credit

“IRS Commissioner signals new phase of Employee Retention Credit work; with backlog eliminated, additional procedures will be put in place to deal with growing fraud risk”

– 7/26/23

Visit irs.gov/ERTC

The FTC Transition



Rebecca Slaughter
Commissioner (D)



Lina Khan
Chairwoman (D)



Alvaro Bedoya
Commissioner (D)



Andrew Ferguson
Commissioner Nominee (R)



Melissa Holyoak
Commissioner Nominee (R)

Proposed Vehicle Shopping Rule

FTC Proposes Rule to Ban Junk Fees, Bait-and-Switch Tactics Plaguing Car Buyers

As auto prices surge, agency launches rulemaking to protect consumers' pocketbooks and level the playing field for honest dealers

June 23, 2022



Tags: [Consumer Protection](#) | [Bureau of Consumer Protection](#) | [Automobiles](#) | [Advertising and Marketing](#)

The Federal Trade Commission has [proposed a rule](#) to ban junk fees and bait-and-switch advertising tactics that can plague consumers throughout the car-buying experience. As auto prices surge, the Commission is seeking to eliminate the tricks and traps that make it hard or impossible to comparison shop or leave consumers saddled with thousands of dollars in unwanted junk charges. The proposed rule would protect consumers and honest dealers by making the car-buying process more clear and competitive. It would also allow the Commission to recover money when consumers are misled or charged without their consent.

"As auto prices surge, the Commission is taking comprehensive action to prohibit junk fees, bait-and-switch advertising, and other practices that hit consumers' pocketbooks," said Samuel Levine, Director of the FTC's Bureau of Consumer Protection. "Our proposed rule would save consumers time and money and help ensure a level playing field for honest dealers."

In the last ten years alone, the FTC has brought more than 50 law enforcement actions related to automobiles and helped lead two nationwide law enforcement sweeps that included 181 state-level enforcement actions in these areas. In spite of these actions, complaints from consumers related to automobiles remain in the top ten complaint types received by the FTC, with more than 100,000 complaints from consumers annually over the past three years.

Today, the FTC is taking a first step toward establishing a set of guidelines that would provide consumers with key protections against dealers who unlawfully charge junk fees without their consent or engage in bait-and-switch advertising. In the Notice of Proposed Rulemaking announced today, the Commission is seeking comment on proposed measures that would:

- **Ban bait-and-switch claims:** The proposal would prohibit dealers from making a number of deceptive advertising claims to lure in prospective car buyers. This deal deception can include the cost of a vehicle or the terms of financing, the cost of any add-on products or services, whether financing terms are for a lease, the credit limit,

Assessment of Costs Associated with
the Implementation of the Federal
Trade Commission Notice of
Proposed Rulemaking
(RIN 2022-14214), CFR Part 463

Publication submitted to:
National Automobile Dealers Association (NADA)

“Thus, while the FTC estimates the proposed rule will generate USD 29.7 billion in net consumer benefit over a ten-year period, CAR’s analysis reveals that the proposed rule would actually cost consumers USD 38.1 billion over those same ten years.”

Appropriations Rider

“SEC. 530. None of the funds appropriated by this Act may be used to finalize, implement or enforce the rulemaking entitled “Motor Vehicle Dealers Trade Regulation Rule” (87 Fed. Reg. 42012 (July 13, 2022)).”

— House Financial Services and General Government Appropriations Bill (7/13/22)

REDO Act

118TH CONGRESS
1ST SESSION

S. _____

To establish requirements for the Federal Trade Commission with respect to certain rules related to automotive retailing, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. MORAN (for himself and Mr. MANCHIN) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To establish requirements for the Federal Trade Commission with respect to certain rules related to automotive retailing, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Federal Trade Com-
5 mission Review of Expensive and Detrimental Overregula-
6 tion Act” or the “FTC REDO Act”.



[Home](#) / [Business Guidance](#) / [Business Blog](#)

Business Blog

FTC proposes junk fee rule to put a stop to bogus and hidden charges

“Motor vehicle dealers that must comply with 16 CFR 463, requiring motor vehicle dealers to disclose the full cash price for which a dealer will sell or finance the motor vehicle to any consumer, and prohibiting motor vehicle dealers from making misrepresentations, are exempted from the definition of “Business” for all purposes under this part.”

comments again.

You can't look through the public comments we received in response to the 2022 [Advance Notice of Proposed Rulemaking](#) without concluding that when it comes to junk fees, people are put out, fed up, and ticked off. Commenters noted the widespread prevalence of junk fees in a broad variety of consumer transactions – booking hotels, buying concert tickets, renting an apartment, getting food delivered, renting a car, and paying telecom bills, to name just a few examples cited in the just-announced [Notice of Proposed Rulemaking](#).

Spot Delivery Petition



1215 17th St NW, 5th Floor, Washington, DC 20036, (202) 452-1989

April 29, 2022

Federal Trade Commission
Office of the Secretary, Suite CC-5610,
600 Pennsylvania Avenue NW,
Washington, DC 20580
Via: electronicfilings@ftc.gov

Request for Rulemaking Concerning the Finality of a Car Purchase (Spot Delivery and Yo-Yo Financing)

The National Association of Consumer Advocates, the Consumer Federation of America, the Center for Responsible Lending, Consumers for Auto Reliability and Safety, the National Consumer Law Center, on behalf of its low-income clients, and U.S. PIRG respectfully request that the Federal Trade Commission (FTC or Commission) promulgate a rule requiring that a credit contract between a consumer and an auto dealer constitutes the final terms of a car sale. Under this proposal, the terms of the signed retail credit contract (also known as the retail installment sales contract-RISC) between the buyer and commercial seller of a car are treated as final, and would include a requirement that the consumer was fully approved for the credit terms in the contract before the signing, and that the credit terms in the contract remain effective whether or not the contract is or will be assigned to a third party. As discussed below, many sellers represent to car buyers that the sales transactions are complete with knowledge that the sales may actually be incomplete, causing costly additional negotiations and damage to buyers. The requested regulatory revisions would provide guidance to the auto retail sales industry with a bright line rule and bring clarity to help ensure that car buyers receive accurate, non-conflicting information regarding the final terms of the transaction.

The FTC has no formal regulation establishing an auto dealer's responsibilities regarding the finality of a car purchase. It has exclusive jurisdiction over car dealers that first extend credit to car buyers and then assign financing to third-party lenders. It is specifically authorized to issue a rule to curb unfair and deceptive practices relating to the sale, servicing, and leasing of motor vehicles.¹

Under this proposal, dealers would be required to include specific language in the credit contract that would protect both buyers and sellers, and ensure that all parties to a contract that sets forth the credit terms of a car sale can reasonably rely on the finality of those terms.

¹ 12 U.S.C. 5519(d).

Spot Delivery Petition to the FTC

“ We recommend the following language for a rulemaking:

A. Every consumer credit contract for the sale of a vehicle by a dealer shall include the following paragraph:

“BY PRESENTING THIS CONSUMER CREDIT CONTRACT TO A CONSUMER FOR SIGNATURE, THE DEALER AS CREDITOR AFFIRMS THAT THE CONSUMER HAS BEEN FULLY APPROVED FOR THE CREDIT THAT IS BEING EXTENDED. ANY TERMS THAT ASSERT THAT THIS CREDIT CONTRACT IS “CONDITIONAL” OR “NOT YET APPROVED” OR SIMILAR TO THAT EFFECT SHALL BE VOID AND UNENFORCEABLE. ONCE SIGNED BY THE CONSUMER, THIS CREDIT CONTRACT CANNOT BE WITHDRAWN BY THE DEALER WHETHER OR NOT THIS CREDIT CONTRACT IS ASSIGNED TO A THIRD PARTY.”

B. Regarding a consumer credit contract for the sale of a vehicle by a dealer, misrepresenting the credit contract as conditional after the consumer has signed it is an unfair and deceptive practice under 15 USC Section 45(a).





“The Petition is unfounded, unsupported, ill-defined, and unnecessary because (1) there is no data to support that there is a problem with conditional auto finance contracts or that the concerns outlined are widespread, and (2) the Petition seeks to address issues that are already prohibited or addressed by various other current federal and state laws and regulations. In addition, the proposed “solution” outlined in the Petition would do little to address the concerns raised, but would unnecessarily raise costs, interrupt commerce, and inconvenience consumers, particularly credit challenged consumers, with no attendant benefit.... NADA urges the FTC to reject the Petition.”

-0035.

“NADA” published a petition for groups.¹

“NADA” represents over 16,000 used cars and trucks, often the protection of consumers’ and parts sales to consumers nationwide. A significant Business Administration.

“NADA” is insufficient to thoroughly address, nonetheless, NADA submits

“NADA” regarding “concerning the conduct relating to the

¹ For example, the various caselaw and other authority refuting the Petitioners’ arguments under various state laws, the federal Odometer Act, and TILA require a great deal more time and space to fully address. It is important to note here that those arguments have been rejected by many courts, are inconsistent with the statutory schemes and purposes, and do not support the consideration of this Petition. There are already ample reasons why the Commission should reject this Petition, but should any further action be necessary with respect to this Petition in the future, such issues can be addressed in greater depth.



Section 1071 Rulemaking



Trade Credit Exclusion

“ Trade credit is not a general-use business lending product—that is, trade creditors generally extend credit as a means to facilitate the sale of their own goods or services, rather than offering credit as a stand-alone financial product or as more general credit product offered alongside the sale of their own goods or services. The Bureau believes that... tradecreditors... are not primarily financial services providers, nor do they have the infrastructure needed to manage compliance with regulatory requirements associated with making extensions of credit. The Bureau understands that trade credit can be offered by entities that are themselves very small businesses; these entities, in particular, may incur large costs relative to their size to collect and report small business lending data in an accurate and consistent manner. Taken together, requiring trade credit to be reported... could lead to significant data quality issues. The Bureau also wants to avoid the risk that the fixed costs of coming into compliance with the rule could lead these businesses to limit offering trade credit to their small business customers, which may run contrary to the business and community development purpose of section 1071. ”

Modification to “Trade Credit” Exclusion

“...credit extended by a business providing goods or services to another business is not trade credit... where the supplying business intends to sell or transfer its rights as a creditor to a third party, such as a financial institution.”

Optional Dealer Compliance Policies



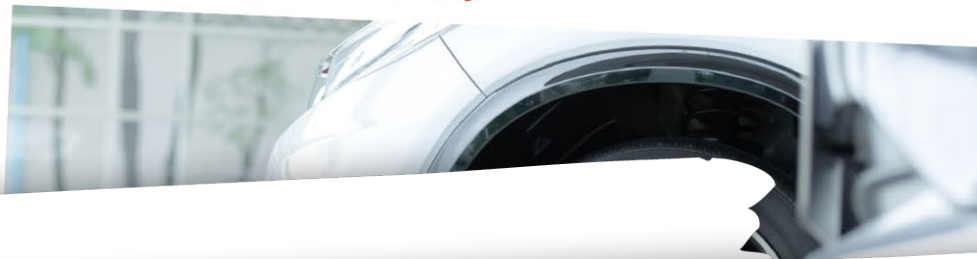
GAP Waiver Study

**The Consumers and Guaranteed Asset Protection
("GAP Protection") on Vehicle Loans and
Sales-Financing Contracts: A First Look**



September 2021

Service Contracts on Vehicle Purchases: Findings from a New Survey

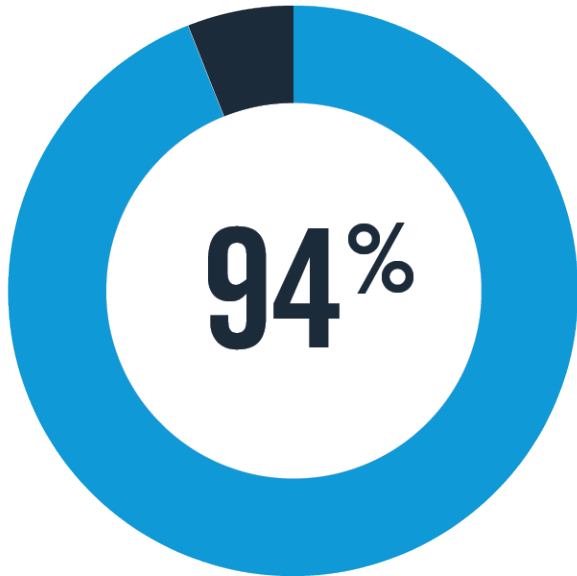


“[D]ealers typically
as part of the vehicle
the sales process
govern the outcome

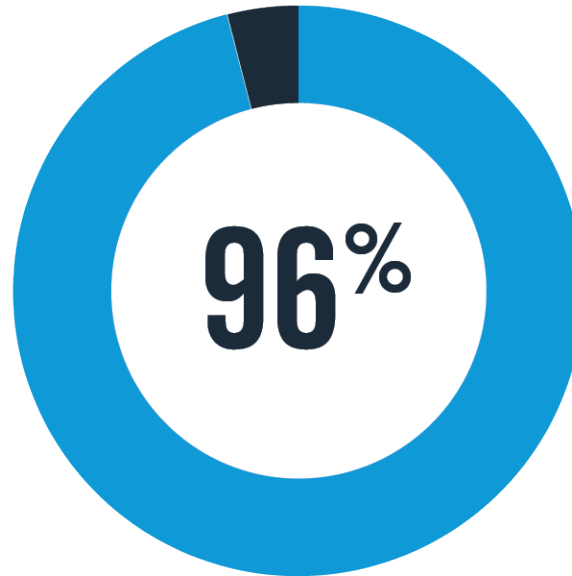
“All of these findings about service-contract
purchase[s] seem eminently reasonable.”

June 2023

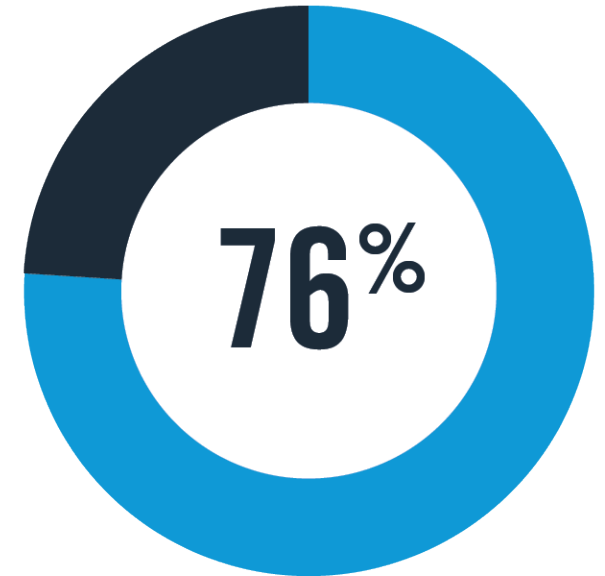
Consumer Experiences with Service Contracts



Dealer explained
costs and features



Consumer understood that
purchase was optional



Consumer would purchase
service contract again

MEMORANDUM

To: Paul Metrey
Senior Vice President, Regulatory Affairs
National Automobile Dealers Association

From: Tom Buiteweg
Admitted in Michigan Only

Date: June 29, 2023

“Dealers should not raise the price of the specific vehicle involved in the RISC to cover the acquisition fee or discount from the [assignee].”

Truth-in-Lending Regulation Z
consumer vehicle buyer an acquisition fee
on with a finance source's purchase of
ment sale contract or "RISC").¹

from the amount the finance
fee often results in the dealer

an amount that is less than
less than the amount financed

goods and services financed under the RISC. Thus, a dealer's first instinct is likely to try to recover the amount of the acquisition fee or discount directly from the buyer under the RISC for which such fees or discounts are assessed.

But if the dealer attempts to recover the acquisition fee or discount directly from the buyer as either an itemized charge under the RISC or by raising the vehicle price to cover the acquisition fee or discount, the dealer will likely face compliance issues under Reg. Z. As discussed below, a court or regulator will

¹ The Truth in Lending Act is codified at 15 U.S.C. §§ 1601 – 1666j. The Federal Reserve Board's Regulation Z is codified at 12 C.F.R. Part 226. Note: The FRB and the Bureau of Consumer Financial Protection ("BCFP") have published separate versions of Reg Z. The BCFP's version of Regulation Z would apply to most assignees of motor vehicle credit sales but both versions of Reg. Part 1026.



Questions?



NADA

The logo features the word "NADA" in a bold, white, sans-serif typeface. Below the text is a white graphic element consisting of two parallel, wavy horizontal lines. The entire logo is centered on a dark red background that has a semi-transparent overlay of a car dealership lot with several vehicles parked.