

NEWS BULLETIN

Maine Automobile Dealers Association

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PPP LOAN FORGIVENESS

A recently-issued SBA procedural notice outlined the process by which PPP lenders must review loan forgiveness applications and noted that lenders could begin submitting loan forgiveness decisions to SBA on August 10. Dealerships with PPP loans should review the SBA notice with their lenders and, as necessary, with outside advisors such as CPAs and attorneys. Additional PPP loan forgiveness information is available from NADA's Coronavirus Hub, including Guidance on the Use and Forgiveness of PPP Loan Proceeds, a recent webinar and CARES ACT FAQs – last week NADA sent an email to all dealers which included links to the most recent guidance, and your MADA office re-sent that NADA communication on August 8 to all Maine dealerships.

The loan forgiveness process begins when a PPP borrower files a forgiveness application (or EZ forgiveness application) with its PPP lender. A PPP borrower may file its application after it has used all loan proceeds for which it seeks forgiveness. The best time to file a forgiveness application will reflect a careful consideration of several factors related to maximizing loan forgiveness and ensuring that all required supporting documents are available. PPP lenders must review forgiveness applications in good faith and in accordance with SBA – specified procedures, and must work with borrowers to resolve any errors or omissions they identify.

A PPP lender has 60 days after receipt of a completed forgiveness application to issue a decision to SBA. A lender may approve an application in full or in part, deny it (in which case the lender must immediately notify the borrower), or deny it pending SBA review. SBA has 90 days after it receives a complete, error-free forgiveness decision from the lender to remit any loan forgiveness notice to the lender. The lender must then notify the borrower of the forgiveness amount, indicating when the borrower's first payment is due for any loan amount not forgiven. Loan amounts not forgiven must be treated by both borrowers and lenders as a PPP loan.

SBA may decide on its own to review any lender decision to deny a forgiveness application. In addition, a borrower has 30 days to request that its lender ask SBA to conduct such a review, in which case the lender has five days to notify SBA of the borrower's review request. If SBA declines to conduct such a review, it must notify the lender. If it agrees to conduct such a review, it must notify the lender and the borrower of the outcome.

SBA may, at its discretion, decide to review *any* PPP loan to determine if a borrower was eligible to apply for a PPP loan, eligible for the loan amount borrowed or eligible for the forgiveness amount sought. SBA will notify the lender of any decision to conduct such a review, after which the lender has five days to both notify the borrower and submit certain documents to SBA. SBA's procedural notice does not set a deadline for the conduct of such reviews, but does indicate that borrowers will have a right to appeal unfavorable outcomes.

MEMBERSHIP GOLF TOURNEY – CANCELLED

MADA's 2020 Membership Golf Tournament was scheduled for Thursday, September 10, at Martindale Country Club in Auburn. Unfortunately, we have had to cancel this year's event because of concerns and issues around the COVID-19 virus. Historically, MADA has annually welcomed 130 or so participants to this tourney – dealers, dealership personnel, guests, associate members, and vendors. The participants hail from all parts of Maine, and many states beyond Maine. That geographic variety was one concern. So too were the restrictions as to number of persons (4) in each group, at social gatherings, meals and award presentations (100 – all socially distanced). All in all, cancellation seemed the prudent decision.

MADA very much appreciates the dealer participation as well as the sponsorships of our Associate Members and dealership vendors at previous Membership Tourneys. We look forward to again welcoming everyone at the September, 2021 tourney.

OSHA RECORDKEEPING CLASS

Safety Works Maine presents this workplace injury/illness recordkeeping class in a thorough and comprehensive six-hour training for both new and experienced safety and human resources personnel. Attendees will learn the OSHA rule (29 CFR 1904) regarding recording and reporting work-related injuries and illnesses as it applies to your organization. This class includes several hands-on activities on how to correctly fill out the required injury reporting forms. Class runs from 8:30 a.m. – 3:30 p.m. Upcoming classes will be held in Bangor on September 18; in Augusta on November 13 and December 4, 2020.

This class is free and you can sign up online at safetyworksmaine.gov. Sign up early because they currently have limited seating at the Safety Works facility. There is a 2 person limit from the same business. This class will clarify many questions regarding the OSHA 300, and the OSHA 300A that needs to be posted every year by February 1.

NADA FAIR CREDIT COMPLIANCE PROGRAM – AMERICAN BAR ASSOCIATION

On August 3, the American Bar Association (ABA) approved a revised resolution urging governments at all levels to adopt laws and policies that promote a nondiscrimination compliance system for dealer compensation in arranging and/or originating a vehicle finance contract by offering a safe harbor against pricing discrimination claims for dealers that faithfully implement the NADA Fair Credit Compliance Policy & Program.

The federal Consumer Financial Protection Bureau (CFPB) once alleged that finance sources which 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.

In response, in 2014, NADA provided dealers with an optional Fair Credit Compliance Program. The Program (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.

The recent resolution by ABA recommended "safe harbor" protection to dealers who faithfully adopt the NADA fair credit program. Previous ABA proposals recommended that governments consider requiring dealer finance compensation to be in the form of a non-discountable fixed fee. This "safe harbor" was one of several significant improvements that was made to the original resolution which sought to impose a series of new duties and restrictions on dealer financing.

Dealers are encouraged to implement and use the NADA Fair Credit Compliance Policy & Program, if they are not already doing so. Information and guidance is available online at www.nada.org/faircredit.