New Guidance on FFCRA, PPP Loan Forgiveness

The Department of Labor and the Small Business Administration have each issued new guidance on issues of importance to franchised dealerships.

Coinciding with the start of the 2020-2021 school year, DOL issued advice for businesses reviewing employee requests for emergency paid sick and/or childcare leave pursuant to the Families First Coronavirus Response Act (FFCRA). DOL has clarified the extent to which parents of children facing a variety of school opening scenarios—including all in-person attendance, a mix of in-person and remote attendance and all-remote attendance—may be eligible for paid leave. This advice has been incorporated into NADA's FFCRA FAQs. Additional information is available on DOL's FFCRA webpage.

PPP loan proceeds spent on rent and mortgage interest to third parties generally are expenses eligible for forgiveness. SBA's new forgiveness guidance clarifies that rent paid to a real estate entity owned by a borrower is forgivable only to the extent that the real estate entity makes mortgage interest or lease payments to a third party. Of course, for franchised dealership PPP borrowers most, if not all, of their forgivable expenses will consist of payroll and payroll-related items versus nonpayroll expenses such as rent or mortgage interest. SBA's new guidance has been incorporated into NADA's documents PPP Loans: Use of Proceeds and Forgiveness and CARES Act FAQs. Contact your CPA and lender before filing a forgiveness application that relies on rent payments paid to a related real estate entity.

Questions on these issues can be directed to regulatoryaffairs@nada.org.

KADA LEGAL BULLETIN

DOC FEES AND MANUFACTURER EMPLOYEE DISCOUNT PROGRAMS

As you all know, doc fees are not regulated in Kentucky. However, with regard to federal lending statutes and regulations the stated doc fee must be the same for cash and credit transactions. Doc fees can be negotiated by the consumer and the dealer to something less, however the initial stated charge must be the same.

Ford Motor Company has completed two audits on Ford dealers in Kentucky and has ordered refunds of doc fees in excess of the X plan allowed fees. Most manufacturers' employee purchase programs limit doc fees to $75 or $100. This limitation is generally clearly stated in the employee program discount rules. Since the dealer is choosing to sell under the discount program, the dealer is responsible for adhering to the program rules. The question has arisen as to whether or not charging the lower program fees would be a violation of any state or federal statute or regulation. The answer is NO. It would be a defense to any sort of consumer action for the dealer to simply show the program rules. Any manufacturer or for that matter anyone selling anything to employees on an employee purchase program may dictate the terms of the purchase. Again, doc fees under manufacturer employee purchases need to be initially stated the same for cash and credit deals. Again, the consumers could choose to try to negotiate lower doc fees, but they typically do not since it is a part of the purchase program. In short, dealers need not be concerned that charging a lesser amount for doc fees in an employee purchase program is somehow violative of any law or regulation.

Dealers may want to check the employee purchase program of their manufacturer and make sure that they are complying with the terms and conditions of sales under the program including any limitations on doc fees. Some manufacturers may not limit the doc fees in their employee purchase programs, so it is best to check the manufacturer's program. If no prohibition is found, then the regular above-stated rules apply. For further information you can contact your Stoll Keenon Ogden dealership team:

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