

# NEWS BULLETIN

## Maine Automobile Dealers Association

180 Civic Center Drive P. O. Box 2667 Augusta, Maine 04338-2667 DIAL 623-3882  
e-mail: info@maineautodealers.com FAX 623-2318

2021-3

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## SBA UPDATES PPP LOAN FAQ

The Small Business Administration has updated its Paycheck Protection Program (PPP) Frequently Asked Questions [FAQs](#) to address changes made in December 2020 by the Economic Aid Act. Among other things, the Act extended until March 31, 2021 the date by which new PPP loan applications may be filed, including from certain PPP borrowers seeking a second-draw PPP loan. Note that until March 10, 2021, new PPP loan applications may only be filed by certain borrowers with fewer than 20 employees.

SBA's revised FAQ #46 offers new clarity for borrowers seeking second-draw loans. To be eligible for a second-draw PPP loan, applicants must have had a 25% drop in gross revenues between a comparable calendar quarter in 2019 and 2020. As a matter of law, a second-draw loan applicant also must certify in good faith that "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the 'Applicant'". According to FAQ #46, if a second-draw PPP loan applicant can show the required 25% drop in gross revenues, it will be *deemed to* have made the statutory "necessity certification" in good faith. Simply put, while necessity certifications are required of second-draw loan applicants, SBA apparently does not intend to review or audit certifications made by applicants that show the required gross revenue drop in their loan applications.

FAQ #46 also states that SBA will not combine first and second draw loan amounts for purposes of the \$2 million loan threshold that triggers the need for a Form 3509 certification questionnaire when filing for loan forgiveness.

**Reminder:** all dealers, including those who took out PPP loans, should discuss with their financial advisors their eligibility to claim Employee Retention Tax Credits (ERTC). The Economic Aid Act retroactively allows PPP loan borrowers to claim the ERTC for qualified wages not paid for with PPP loan proceeds. It also extended ERTC eligibility through June 30, 2021. To claim the ERTC, a dealership must have had to experience either 1) a full or partial shutdown due to a government order related to the coronavirus pandemic, or 2) a significant decline in revenue in a calendar quarter. Regarding the latter, gross receipts must have fallen by at least 50% for the same calendar quarter from 2019 to 2020, or at least 20% for the same calendar quarter from 2019 to 2021. With respect to the full or partial shutdown, the gubernatorial Executive Order in Maine requiring showrooms to be closed was effective March 25, 2020.

As always, dealers should discuss the foregoing issues with their financial and legal advisors. Dealers can access more information through the [SBA PPP website](#) and [NADA's Coronavirus Hub](#).

## TITLE UPDATE – SOME GOOD NEWS

It is not news that the Bureau of Motor Vehicles (BMV) has a significant title backlog, or that the backlog will continue for quite a time yet. There are many reasons for this situation: a 3½ month self-

imposed shutdown of BMV offices; an inability to do the title work from home; a limitation on the number of personnel allowed in the building when operations resumed; a sales rate which did not reduce as much as expected; the inability, until recently, of BMV to hire and train personnel to replace retiring employees or those who chose to move to a different job within or outside state government.

It is also not news that lienholders are becoming more aggressive in their demands for a title. And here is perhaps some good news. Maine law has a provision which states that a security interest in a vehicle is perfected by the delivery to the Secretary of State of a MCO/MSO or existing title, a completed application for a new title which contains the required lienholder information, **AND** the required fee – all three (3) are necessary. So what does this mean, and how does this help. What it means is that dealerships can obtain a document from INFORME which presents the current status of a title application and, **most importantly**, provides an “entered date” which is the date a lienholder’s security interest is perfected. This “entered date” is significantly earlier than the date the new title is actually issued. Dealerships can provide a lienholder with this INFORME printout to show that a lien is perfected.

The data at INFORME is best obtained with a subscription. Information is available at <https://www.maine.gov/informe/subscribers/index.html>.

The specific language in Maine law is found in MRSA Title 29-A, Section 702, Subsections 1-3, and reads as follows:

### PERFECTING SECURITY INTEREST

1. Valid against creditors, transferees and lienholders. A security interest in a vehicle for which a certificate of title is issued is not valid against creditors of the owner or subsequent transferees or lienholders unless perfected as provided in this subchapter.
2. Method. A security interest is perfected by the delivery to the Secretary of State of:
  - A. The certificate of origin or existing certificate of title or certificate of salvage;
  - B. An application for a certificate of title containing the name and address of the lienholder and the date of the security agreement; and
  - C. The required fee.
3. Date. A security interest is perfected as of the date of delivery under subsection 2.

The INFORME system is designed so that dealerships and others can obtain certain information from State of Maine files. For dealerships, title data is one such use. In addition to the problem described above, dealerships can obtain all lienholder information, current at the time of a trade-in, which indicates whether a Human Services lien exists, whether a SALVAGE or REBUILT designation applies, etc. Dealerships have mentioned the cost of the INFORME system lookups as a factor in how often, or whether, the system is used. MADA recently met with the new leadership of BMV, and that topic was discussed (see next article). The INFORME system can be helpful.

### BMV HAS NEW LEADERSHIP

Maine's Bureau of Motor Vehicles (BMV) is one responsibility of the Secretary of State, a person elected by the Legislature. In December, the Legislature chose Shenna Bellows as the new Secretary of State, succeeding Matt Dunlap. The Secretary selects the Deputy who manages the day-to-day operations. Secretary Bellows recently appointed Cathy Curtis to be the Deputy in charge of BMV, a position Ms. Curtis held previous to her recent position with the American Association of Motor Vehicle Administrators. MADA recently met with both Secretary Bellows and Ms. Curtis. The major topic was title processing issues. Our lengthy meeting covered legislation necessary to help BMV improve its technological capability as well as the potential for dealerships, financial institutions and industry vendors to help with current workflow processes. The legislative work starts next week, with the advisory effort to follow soon thereafter. MADA will periodically update you on that work.

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### 2021 FUEL ECONOMY GUIDE OBLIGATION

The U.S. Department of Energy and the Environmental Protection Agency have released the 2021 Fuel Economy Guide. The guide offers detailed fuel economy estimates for 2021 model-year vehicles, including plug-in hybrids, light-duty trucks, SUVs, crossovers and electric vehicles. By law, dealers must display the guide and give copies to customers when requested. You can print copies or display the website/QR code on your showroom floor. These regulations ensure your customers have ready access to fuel economy information for current model year vehicles.

The online 2021 Fuel Economy Guide is updated every week. Visit [fuelconomy.gov](http://fuelconomy.gov) to review the 2021 guide, then click on the link "Info for Auto Dealers", where you can:

- Download a PDF of the 2021 Fuel Economy Guide and you'll also see a list of previous model-year guides, looking back to 2009.
- Download the letter sent to dealerships in December.
- Automatically get the guide each year by entering your e-mail address.
- Download the printable posters for display at your dealership.

### NADA OFFERS DEALERSHIP WORKFORCE STUDY

NADA is once again offering its members (all Maine franchised dealerships are members) the opportunity to participate in the Dealership Workforce Study – a comprehensive summary report and some analysis of dealership personnel compensation levels, benefits, length of service and workweek. All information provided by dealerships is confidential and not individually identifiable.

There is no cost to participate. With your participation you will receive:

- Complimentary custom report comparing your dealership against aggregated data from your peers across the nation and region, right down to dealerships selling your brand in your state (if there is a sufficient number of respondents to ensure confidentiality).
- Complimentary Payroll and Retention Report with analysis of workforce data across the nation and by region.
- Exclusive one year access to the DWS Database Search Tool: An online-based customizable search tool with archived tenure and compensation data from all NADA Dealership Workforce Studies for over 60 positions.

You will need your NADA Member ID for your single store or Dealer Group to enroll. If you do not have this NADA ID number please contact NADA Customer Service at 800.557.6252. Enrollment for the 2021 Study closes promptly on **April 15, 2021**. Go to [www.nada.org/workforcestudy](http://www.nada.org/workforcestudy) to enroll.

## NHTSA ODOMETER DISCLOSURE RULE REVISIONS

The National Highway Traffic Administration (NHTSA) has amended the "older vehicle" odometer disclosure exemption. Through 2020, used motor vehicles 10 model years (MYs) and older were exempt from the federal odometer disclosure mandates. Starting January 1, 2021, an additional MY becomes subject to the disclosure mandates each year until a full 20 MYs are covered. In other words, starting on January 1, 2021, MY 2011 motor vehicles are no longer exempt and, in 2031, only motor vehicles 20 years old or older will be exempt.

Detailed information regarding the federal odometer law is found in a newly issued revision to NADA's *Dealer Guide to the Federal Odometer Law*. Questions on the federal odometer law and NHTSA's rules can be directed to [regulatoryaffairs@nada.org](mailto:regulatoryaffairs@nada.org).

## FAMILIES FIRST MEDICAL and FAMILY LEAVE – ENDS 3/31/21

At the end of 2020, Congress enacted legislation which extended, **at the employer's discretion**, the FFCRA sick leave and expanded family and medical leave reimbursable payment program until March 31, 2021 (was previously December 31, 2020). An employer is not required to provide such leave after 12/31/20, but may voluntarily decide to do so. Employers had the obligation to provide the FFCRA paid leave from April 1, 2020 through December 31, 2020. The same employer tax credits for paid sick leave and expanded family and medical leave which were available in 2020 are now available until 3/31/21 to employers which voluntarily choose to do so. Specific information on this program is available at <https://www.nada.org/coronavirus/faqpdf> and at <http://www.irs.gov/coronavirus/new-employer-tax-credits>.

## CFPB and FAIR CREDIT COMPLIANCE

The federal Consumer Financial Protection Bureau (CFPB) is changing administration again, so Fair Credit compliance efforts will likely become an enforcement focus. The good news, however, is that the previous CFPB leadership had developed a comprehensive report on consumer credit, including multiple recommendations to improve consumer protection in the marketplace. Among these recommendations are two that could directly affect dealerships. The first recognizes NADA's Fair Credit Compliance Program, an option for dealers, as one method of preventing price discrimination at dealerships. The NADA program has also been recognized by the American Bar Association as a safe harbor against price discrimination if implemented in a good faith manner. The second recommendation recognizes the Federal Trade Commission (FTC) as the oversight agency for dealerships (as opposed to the CFPB enforcing against dealerships through financial institution practices). MADA will email each dealer the NADA Fair Credit Compliance program booklet.

## COVID-19 VACCINATIONS

MADA has received some inquiries from dealers asking about the ability to incentivize or encourage or mandate employees to take the COVID-19 vaccine. A related question, can "essential employees" (all dealership employees are considered "essential" under both federal and state interpretation) get vaccinated early, has been answered in Governor Mills Executive Order setting age (and now educators) as the sole criteria for when a person can get the vaccine.

The legal community has indicated that encouragement and "de minimus" incentives may be the better option, at least until more definitive guidance is issued by federal regulators of Equal Employment, Disabilities, Discrimination, Health and Privacy rules. Two issues are more clear: 1) employers should refrain from endorsing a particular vaccine, and 2) any encouragement program should be clearly labeled as voluntary.

One other note about this vaccination: medical insurance plans such as that available in your MADA Insurance Trust pay 100% of any charge for administering the COVID-19 vaccine – there is no co-pay, nor any balance bill, payable by the person enrolled.