

HOW TO STAY OUT OF THE COURTROOM

Awareness of how and where mistakes can occur is the best way to guard against them. **Establish procedures that make compliance the only way to do business.**

BY RONALD J. REAHARD

Whenever the topic of compliance comes up, many dealers and even some experienced F&I managers sound like *MAD* magazine's Alfred E. Neuman, "What, me worry?" Their typical response is "We've never had a problem. Besides, we always disclose everything on the contract before the customer signs it."

My advice to every dealer and F&I manager, is to worry. Every day, every deal, every customer ... worry. Worry as to whether the payments quoted by the sales department were accurate, and they included the amount financed, the APR and the term. Worry as to whether the customer was promised the "best rate" by a salesperson in an effort to sell the car. Worry that every menu is properly and completely filled out, and there is one in every deal jacket. Worry that every product is being offered to every customer every time. Worry whether the information on "customer statement" is accurate, and it's been verified by an F&I manager prior to submission to a lender. Worry about whether the customer's information is being safeguarded.

Worry that customers are who they say they are. Worry about whether they might be a terrorist or drug dealer. Worry that the "i's" were dotted and the "t's" were crossed, and that everyone involved in the sale has complied with all the laws and regulations that impact F&I on a daily basis. Worry about attorneys obtaining the new-car registration lists, and sending out postcards to customers who

recently bought a car in an effort to get them to sue you!

Worried yet?

Because if you are, maybe you'll decide you need to implement a process to ensure compliance in the F&I office. A major part of an F&I professional's job today is helping protect the dealership from potential litigation. While this is by no means a complete list, the following are some of the things your F&I managers need to confirm on every deal as they review and complete the customer's paperwork.

VERIFY ALL INFORMATION ON BUYER'S ORDER

When the write-up, worksheet or buyer's order comes into the F&I office, it's critical that your employees confirm:



The buyer(s) shown is the actual buyer. A straw purchaser is someone who fronts for an undisclosed person whose credit standing or insurability may not be acceptable to a lender.

☑ The year, make and model of vehicle they are buying is correct, and has all equipment listed. Any additional accessories or equipment to be added to the vehicle being purchased must be shown on the buyer's order or on a separate "We Owe" document.

☑ The owner's name(s), year, make, model and VIN shown on title or registration of trade-in corresponds to the vehicle being traded in.

There is a photocopy of the buyer's driver's license(s) and the photo matches the appearance (and age!) of the person buying the vehicle. Identity theft and true name fraud is a huge problem today.

The price of the vehicle being purchased was not increased to offset negative equity in trade-in. According to Regulation Z, negative equity can be disclosed in one of two ways: a) applying a customer's down payment toward any negative equity, and disclosing any remaining difference on line 4 of the installment sales contract, or b) disclosing the

☑ Exactly what customers were told regarding their ability to obtain financing, and the interest rate used to calculate the payment they agreed to. If anyone involved in the sales or F&I process promises a customer they'll get them the "best rate," it creates legal liability for the dealership when the rate is marked up.

☑ Verify the source of down payment shown. Is it really their cash, or did the price of the vehicle inflated to show a down payment?

☑ The customer(s) has signed in all appropriate places, and the signature matches signature(s) on their driver's license(s).

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full amount of the negative equity on line 4 of the installment sales contract.

What you cannot do is inflate the price of the car they're buying and the trade-in allowance to hide the negative equity!

☑ The payment quoted by the sales department is accurate. The payment may be rounded off to the nearest \$5, or reflect no more than a \$5 range, and must include the amount financed, APR and term. The only legitimate variable is the number of days until the first payment. Any payment quote can take this into consideration, but that's the extent of an acceptable range, unless you also include the APR for both payments in the range.

☑ No products have been included in the payment without the customer's knowledge and consent. "Payment packing," a deceptive trade practice, occurs when a customer is quoted an inflated monthly payment. If he or she accepts this amount, the dealership includes optional products (alarms, service contracts, paint/fabric protection, etc.) to reach the inflated payment.

ACCURATE CREDIT APPLICATIONS DETERMINE LENDER RELATIONS

Your F&I professionals have a responsibility to your dealership and the sales force to obtain an approval for every deal possible. The overriding consideration must be the development of a long-term mutually beneficial relationship with your finance sources based upon trust. A lender must feel comfortable that all the information shown on the credit application has been verified. When reviewing the application with the customer, always confirm:

☑ The credit application is fully completed, all the information shown is correct, it is signed (and the signature matches the driver's license!) and it includes at least two references.

☑ The income shown on credit application is correct, it's verifiable and it's gross income, not net income. Inflating a customer's income in an effort to obtain financing is fraud. Remember, it's your reputation on the line every time you key in that information and submit it online to a lender. Also inquire as to any addi-

COMPLIANCE

tional (and verifiable!) sources of income that may be available to help repay this obligation.

CREDIT BUREAU REPORT HELPS BUILD CASE WITH LENDERS

The F&I manager is also responsible for evaluating the information contained in the credit bureau report to assist the sales department (and the customer!) in structuring a deal prior to submission to a lender and to increase the chance of receiving an approval. Your employees must learn the circumstances and details surrounding any adverse credit information disclosed by customers or revealed by their credit bureau report, prior to submitting the credit application. Remember, you

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only get one chance to convince your paper buyer. When reviewing the credit bureau report with the customer, always make sure that:

The "Notice Concerning Your Privacy" form has been reviewed and signed by the customer. FTC Privacy Rule requires dealers to provide notices of their privacy policies when the dealer discloses nonpublic information to third parties.

You confirm the customer is not on the OFAC list. To comply with the OFAC regulations, dealers must screen potential customers against the Specially Designated Nationals and Blocked Persons (SDN) list to ensure that they don't do business with any individuals or entities sanctioned by the U.S. government. The OFAC regulations apply to all types of transactions, including cash, credit and lease transactions,

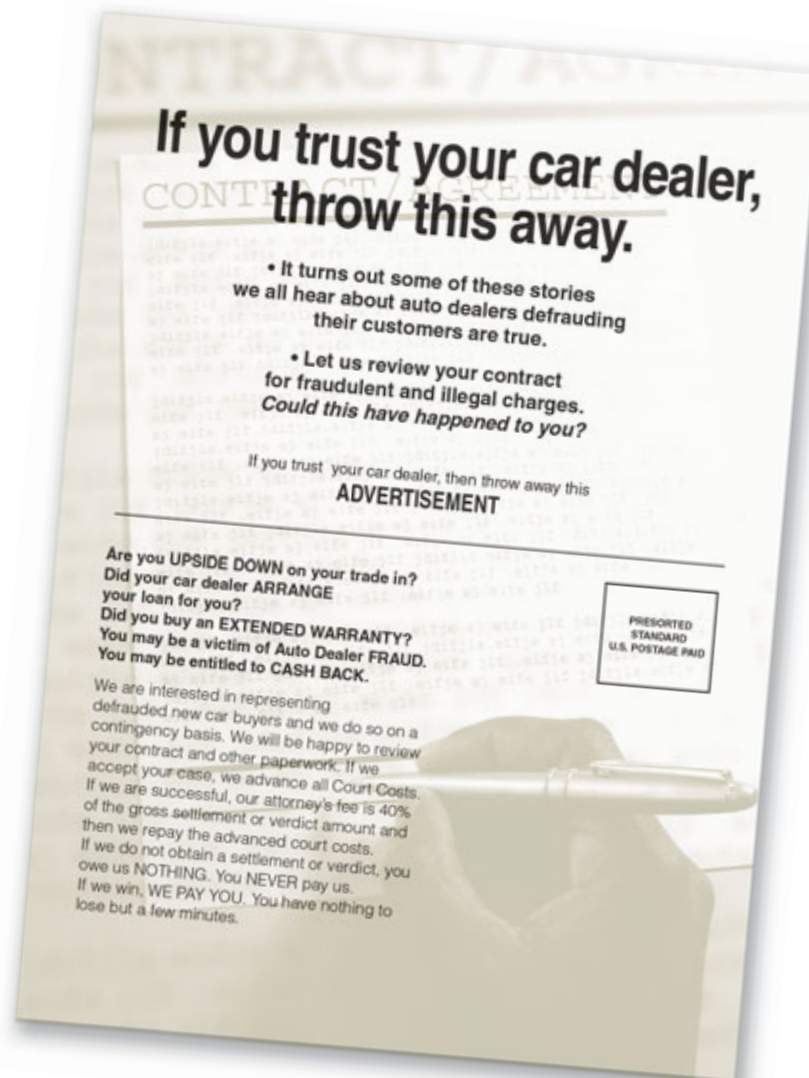
for both consumer and business purposes. If you find numerous similarities or an exact match when comparing the SDN entry with your customer's information, you need to contact the OFAC hotline at (800) 540-6322.

F&I MENU DOES NOT ENSURE COMPLIANCE

If you are using a menu, it must not be deceptive or designed to misinform, mislead or confuse a customer. Using the term Base Payment on a finance menu is a misnomer. Base Payment is a lease term for the monthly lease payment prior to the monthly sales/use taxes being added. A finance menu should call the monthly payment what it is: principal and interest, and

that payment should not be in microscopically small print. In California, with the passage of the Car Buyer's Bill of Rights, the P&I payment is now referred to as the "Installment Payment EXCLUDING Listed Items." Every dealer should consult with his attorney to ensure the menu includes all the necessary disclosures and correct verbiage for the specific state. To ensure compliance:

There should be a fully completed and signed menu in every deal jacket. This documents that you offered every product to every customer, and they wanted what they bought. If there is ever a question on a particular deal, and no menu in the file, it looks like the 18 minutes of missing Watergate tape.



As if you don't already have enough to worry about, attorneys are now soliciting recent car buyers to sue their selling dealer with postcards similar to the one shown here.

“A lawyer is a learned gentleman who rescues your estate from your enemies and keeps it himself.”

— Henry Brougham

A compliance checklist can help you stay out of the courtroom and ensure that you, your estate or your dealership never have to be “rescued” by a lawyer.



☑ Your menu must also include the amount financed, the principal and interest payment, term and APR, and the principal and interest payment must be correct. Every customer must have the option to buy nothing on a menu if he so chooses. Keep in mind, if you put an inflated or “packed” payment on your menu, you have just documented your deception.

☑ Customers should initial beside the payment selected, as well as any changes to the option package or individual product(s) they selected. It’s critical that you be able to reconstruct what happened if there were a question about what product(s) they elected to purchase or decline two years from now. You may also want to print a “Products Declined” menu showing what customers did not purchase if your software has the ability to do so.

ADDITIONAL COMPLIANCE CONCERNS TO KEEP IN MIND

Other compliance issues you need to be concerned about and documents you must ensure are completed (when appropriate) with copies provided to the customer include:

☑ Notice to Co-signer — Under federal law, creditors are required to give co-signers a written notice that explains their obligations before they sign the installment sales contract.

☑ You must physically hand the customer a copy of the installment sales contract prior to signing. According to Regulation Z, creditors must give the required disclosures to the consumer in writing, in a form that the consumer may keep, before consummation of the transaction. The best

way to ensure compliance is to hand the customer the installment sales contract and ask him to verify that the name, address and vehicle information is correct. Then simply state “We’ll continue when you are ready.”

☑ Used Vehicle Disclosures — Your dealership is required to disclose material known facts about a used vehicle, such as if it was involved in a prior accident that caused substantial damages, a lemon law buy back, meaning the vehicle was repurchased by either the manufacturer or dealer under the lemon law because of a defect, or the vehicle was subject to odometer tampering/ malfunction.

☑ Reporting Cash on FinCEN/IRS Form 8300 — Dealers have been required to report currency transactions of \$10,000 or more since the mid 1980s under the Bank Secrecy Act, which was amended by the USA Patriot Act. The Internal Revenue Service and FinCEN now share this enforcement responsibility via the USA Patriot Act. The reporting form is now known as FinCEN/IRS Form 8300. The key to complying with this law is knowing what the government considers cash.

☑ Copies of All Documents Must Be Provided to the Customer — Customers are entitled to, and must be provided, fully completed copies of every document at time of signing, including the installment sales contract, whether or not the loan has been approved by a lender.

☑ Safeguards Rule — The FTC Safeguards Rule applies to individuals or organizations that are significantly engaged in providing financial products or services to consumers, including non-

bank lenders such as automobile dealers. According to the Safeguards Rule, financial institutions must develop a written information security plan that describes their program to protect customer information. Covered financial institutions must:

- Designate the employee or employees to coordinate the safeguards;
- Identify and assess the risks to customer information in each relevant area of the company’s operation, and evaluate the effectiveness of current safeguards for controlling these risks;
- Design a safeguards program, and detail the plans to monitor it;
- Select appropriate service providers and require them (by contract) to implement the safeguards; and
- Evaluate the program and explain adjustments in light of changes to its business arrangements or the results of its security tests.

As Henry Brougham, a lawyer himself, once said, “A lawyer is a learned gentleman who rescues your estate from your enemies and keeps it himself.” Using a compliance checklist can help you stay out of the courtroom and ensure that you, your estate or your dealership never have to be “rescued” by a lawyer. ■

Ron Reahard is president of Reahard & Associates Inc. His workshop “Quoting Payments: The Rules, Risks, and Getting It Right!” was featured at the 2005 F&I Conference and Expo in Las Vegas. To obtain a free copy of a sample “F&I Compliance Checklist,” contact Ron at 866-REAHARD, or www.ron@go-reahard.com.