

Top Compliance Concerns for 2008

by : *Gil Van Over*

There are risks, and there are risks. If you are late to an important appointment, meeting or date, you balance the risk of exceeding the speed limit and making the meeting on time versus the risk of obeying the law and potentially losing face if you are late.

If you are trying to reduce your belt size, you balance the risk of adding pounds versus the pleasure of a Reuben sandwich with cottage fries at lunch.

If you are a movie star or a recording artist, you run the risk of losing your audience when you use your star status to forward an unpopular opinion or belief or religion.

A dealership faces risk every day in every part of the business. The smart dealers understand that they must have the information available to understand how to manage these risks. Here is some information...

Higher risks

There are innumerable risks in a dealership's sales and F&I processes. Some are pretty low risks, while others are a relatively higher risk. Here is my list of the higher risk areas a dealership faces in 2008:

- Identity theft
- Packing payments
- Forging signatures
- Falsifying income
- Power booking
- Straw purchases
- Sub-prime acquisition fees
- Forms execution
- Adverse action notification
- Rebate administration

One at a time

Identity theft – The bad guys are out there and they ain't going away. Many people are focused on the meth heads that use ID theft as a way to fuel their habit. However, many of the articles flowing through the Internet now uncover the ID thieves as employees at dealerships and banks. Make sure that you have a solid Safeguards program in place, including periodic audits and training. Keep a vigilant eye on those employees that have access to consumer's non-public, personal information. Finally, ramp up your organization to embrace the Red Flags Rule requirements. You should have already started to develop and implement the program with a drop dead date of November 1.

Packing payments – This potentially deceptive practice is specifically illegal in California and other states are looking to pass similar statutes. The dark side opines that a consumer has the right to know the right payment amount for the item being negotiated at any point in the negotiations. The judges and juries tend to agree with this notion. With the number of desking systems now available to dealerships, payment packing should become as ancient as 8-track technology, but it still makes occasional

appearances. You should implement a process that prohibits payment packing, whether you use a desking system or a sharpie.

Forging signatures – Logic dictates that this criminal offense should not be on this list because it should not even be a course of action any reasonable person would take. Think again. Perhaps out of laziness, perhaps out of oversight, perhaps out of brazenness, forgeries are happening every day at dealerships. Most of the time it is not on a contract or an enrollment form. Most of the time it is on a menu or an odometer statement or a rebate form. Regardless of the document, any signature not affixed by the consumer is a forgery. You must make it a policy that forgers will be fired and follow up if you find a forgery.

Falsifying income – This is bank fraud. Let me repeat, bank fraud. If the bank or credit union catches you, they will report you to the Feds using a form called a Suspicious Activity Report. I don't know about you, but I shudder to think that my name is associated with a suspicious report on file with the government. A few dealers have had enough SARs filed against them that the banking regulators turned the case over to the FBI, who investigated and raided and still retains the files. You can help avoid the FBI raids by diligently monitoring credit application information. Look for strikeovers on credit applications, or an inordinate amount of Social Security income as additional income. Have your IT people run a scan on your systems looking for paystub templates or Social Security award letter templates. Review a sampling of deals and compare the income in the file to the income listed in Route One, Dealer Track or CUDL transmissions.

Power booking – Bank fraud II. Like falsifying income, dealers found guilty of power booking deals will have an SAR filed against the dealer. Same scenario as above. Too many SARs and the FBI comes calling. Set up a process where a manager is required to sign and date every bookout sheet that leaves the dealership. That person is responsible to accurately represent the vehicle's options and miles. If the manager lies to the bank, the manager is looking for a job somewhere else.

Straw purchases – Bank fraud déjà vu. Straw purchases generate SARs. Straws are also specifically against the Texas state statutes. You need to establish a policy that straws are not acceptable and enforce the policy.

Sub-prime acquisition fees – With the current focus on sub-prime lending, regulators, politicians and opportunistic plaintiff's lawyers will put a magnifying glass on sub-prime transactions. Add to the mix that the vast majority of consumer lawsuits against dealers that I have worked on as an expert witness involve a sub-prime customer as the plaintiff. If you have a process that increases the price of a vehicle to accommodate a sub-prime acquisition fee, you are running the risk of a Truth in Lending based lawsuit. You must take the sub-prime acquisition fee as a cost of goods sold.

Forms execution – As simple as it sounds, it appears to be just as difficult in execution. The forms used to close a deal are pre-printed. The computers used to complete the forms can be programmed to properly fill in the blanks. Some dealers just don't get it and fill them out incorrectly. The lenders continue to accept the deals instead of kicking them. Now, plaintiffs' attorneys are using this as evidence that the dealership intended to confuse the consumer, thus committing fraud. Have your F&I manager

print a sample retail and lease deal. Make sure everything is printing where it is supposed to.

Adverse action notification – This issue is likely the most confusing one that a dealer faces. Should I or shouldn't I? Unfortunately, like those old commercials, we don't have a hairdresser with the magic answer. Some plaintiffs' attorneys are funding their retirement incomes on this single issue. The NADA provided direction late last year with a management guide. You should review the guide with your attorney and decide what you need to do.

Rebate administration – Some manufacturers apparently consider rebate audits as an income center. I have heard of seven-figure chargebacks at single point stores. You should consider conducting your own periodic audits to ensure that you don't owe the factory any more money.

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