



F&I

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Sub-prime Acquisition Fees Being Attached

So...what do you do when a self-professed liar and thief who used to be one of yours now turns his back on the industry and canoodles with the dark side?

Get your house in order, because he knows where the cockroaches are hiding. And he has no compunction about shining the light and watching the cockroaches scatter.

Duane Overholt recently confessed in a Houston television expose that he "Ripped off customers, cheated them, lied to them. I was a liar, thief and a crook." He is the driving force behind what is sure to be a wave of lawsuits against dealers for not correctly handling sub-prime acquisition fees.

This potential attack is probably an easy one for plaintiffs' attorneys to start filing a barrage of lawsuits. It has all the elements of public and bench sympathy:

- A "hidden fee"
- Consumers who have bad credit, obviously through no fault of their own
- Perceived increased cost to these consumers
- No disclosure

Sub-prime fees defined

Many third-party lenders who deal with sub-prime credits charge dealers a fee for the privilege of purchasing retail installment sales contracts. I've seen these fees range from \$99 to \$7,500.

This fee is a business to business fee and cannot be passed along to the consumer. This means that if a dealer increases the vehicle's sale price to include the fee, it has been passed along to the consumer.

Why can't it be passed to the consumer?

Many dealers logically ask, "Since the consumer is the one responsible for his or her low credit score, why should I absorb the fee?"

The illogical, but correct answer is that by increasing the vehicle cost to cover the sub-prime fee, the consumer is paying a fee that a cash customer would not pay. In other

words, if the sub-prime customer is paying cash, and can buy the vehicle for \$10,000, you have to sell that same customer that same vehicle, at that same price (or less) if you decide to arrange financing.

If the sub-prime fee is \$995 and you in turn sell the same vehicle to the consumer for \$10,995, you have charged the consumer the sub-prime fee.

Since the consumer would not have paid the fee in a cash transaction, the sub-prime fee charged to the consumer now becomes an item that is considered a finance charge and must be included in the APR calculation.

By increasing the cash price, and not properly allocating the fee to a finance charge category that your DMS recognizes as a finance charge, you in effect have a hidden finance charge and have violated the Truth in Lending (TILA) disclosure requirements for the APR disclosure.

Beyond the TILA disclosure issue, a dealer could potentially face charges of selling vehicles for more than the advertised price if the advertised price is increased to cover the acquisition fee.

What's the solution?

Let's start with the non-acceptable solution some dealers offer up. "Get the customer to sign a document approving the price increase!" I hear some dealers say. Unfortunately, you cannot ask a consumer to knowingly break a federal law to sell a vehicle.

Please remember that, when you and the customer have agreed on the price of the vehicle and then you learn that the only third-party lender that will buy the paper is going to charge an acquisition fee, you must make a choice, because the fee must come out of the gross profit of the deal:

Does the deal still have sufficient gross profit, even after we pay the acquisition fee, to make sense? If so, continue to do the

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deal with the customer, and pay the fee out of gross.

If there isn't sufficient gross after the fee comes out, do not increase the price of the car in an attempt to pass on the fee to the customer. Instead, find one or more different cars that might work for the customer, and start the negotiations over again on those different cars.

Continued good luck and good selling. 

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