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Manufacturer's forms may cause TILA problems

by Gil Van Over

One would assume that a form provided by the manufacturer to document a sales transaction would be a legal form, one that does not expose a dealer to potential Truth in Lending violations. Bad assumption. Apparently, the sales division's attorneys do not always run these forms past the credit company's attorneys.

One manufacturer permits its dealers to add a subprime acquisition fee to the purchase price of a vehicle on employee purchases. The regional office provides instructions to the dealer on how to complete the employee purchase paperwork to support a higher purchase price than the employee price.

A second manufacturer provides written instructions on its employee pricing incentive plan that permits dealers to add both negative equity and secondary finance fees to the vehicle purchase price.

One is verbal and apparently has not resulted in any chargebacks on its employee purchase program.

The second is written and is designed to prevent any chargebacks on its incentive program.

To be clear, a subprime acquisition fee added to the purchase price of a vehicle is a finance charge that has to be included in the APR calculation. Just about every dealer in the country can tell you that this fee has to be taken as a cost of sales to avoid a Truth in Lending violation.

The negative equity maelstrom continues. Many dealers are properly disclosing negative equity on the Retail Installment Sales Contract or Lease Agreement instead of adding it to the cash price or gross cap cost.

Yet, if dealers follow the advise of these two manufacturers, they run the risk of Truth in Lending violations.

I doubt that the manufacturers will come to the rescue and pay any settlements.

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