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Employee pricing and subprime fees

by Gil Van Over

One again I get the same question from a different dealer for the third time this year.

"The factory said I can add the subprime fee to the purchase price on a factory employee (or advertised employee pricing) deal. Do you agree?"



The only thing I agree with is that if you follow the factories advice on this one, you are setting yourself up for potential litigation.

Here's why.

Definition

A subprime fee by its definition is a fee that is only applicable for credit customers with subprime credit. If this same customer were paying cash or had arranged for financing outside of the dealership, there would not be a fee.

Under the Truth in Lending Act, one basic definition of a finance charge which must be used in the calculation of the Annual Percentage Rate (APR) is a fee that credit customers pay that cash customers do not pay.

If the subprime fee, which is not charged to cash customers, is added to the cash price of the vehicle for financing purposes, it becomes a hidden finance charge that is not calculated into the APR, so the APR becomes understated.

Basis for a lawsuit.

Documentation

One of the factory reps even stated it is fine to add the subprime fee to the cash price since it does not represent dealer profit, "as long as it is documented."

Yikes!

This rep obviously did not review this response with the corporate attorneys. The Truth in Lending Act does not permit for a separate disclosure outside of the retail installment sales contract. All credit terms must be disclosed in the contract.

Having another form in your deal jacket documenting that you added the subprime fee to the purchase price, or collected it separately from the consumer is what some folks call a smoking gun.

Best Practice

A subprime fee must be taken as a cost of goods sold. It cannot be included in the purchase price of the vehicle.

Alternatively, if you choose to believe the factory rep on this one, get a hold harmless.

Good luck with that one.

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