

**F&I**

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Do you Know your Punishment?

The National Football League is fining players up to \$50,000 for helmet to helmet hits. The government recently fined Barclay's Bank to the tune of \$176 million for violating the OFAC requirements. Some dealers have a fine system in place in which a salesperson may be fined if he or she violates the dealer's safeguards program.

Car dealers are certainly under threat of fines and/or jail time for violations of various federal regulations – do you know what they are?

What fines?

Below are some of the federal regulations auto dealers find themselves required to comply with and the potential fines and/or jail time associated with each regulation. The information within the quotation marks has been pulled directly and verbatim from various federal web sites, including the Federal Trade Commission (FTC), Treasury, and Financial Crimes Enforcement Network (FinCEN).

Office of Foreign Assets Control (OFAC)

The granddaddy of all potential fines! OFAC is the agency within the U.S. Treasury department that compiles a list of terrorists, drug traffickers and money launderers. All U.S. citizens are required to check the OFAC list of these suspected despots prior to entering into a business arrangement.

“Depending on the program, criminal penalties can include fines ranging from \$50,000 to \$10,000,000 and imprisonment ranging from 10 to 30 years for willful violations. Depending on the program, civil penalties range from \$250,000 or twice the amount of each underlying transaction to \$1,075,000 for each violation.”

Used Car Rule

This rule has been around since 1967 and many still struggle with the proper disclosures. This struggle is not necessarily from a willful desire to defraud a consumer, but rather a view that this is just one more piece of paper to complete the deal jacket.

“Dealers who violate the Used Car Rule may be subject to penalties of up to \$16,000 per violation in FTC enforcement actions.”

Gramm Leach Bliley Act (GLBA)

GLBA is the law that spawned the privacy

rule and the safeguards rule.

“The penalties for violating the GLBA are quite severe: A financial institution can be fined up to \$100,000 for each violation; the officers and directors of the financial institution can be fined up to \$10,000 for each violation; and criminal penalties include imprisonment for up to five years, a fine, or both.”

Red Flags Rule

The latest attempt at deputizing car dealers in the fight against identity theft has been the law for a few years now, but the enforcement of the law had been delayed a few times. This simply means the regulators will not be out seeing violators. However, if a dealer experiences a security breach and cannot show that it had a working program in place, it may be subject to penalties.

“The FTC can seek both monetary civil penalties and injunctive relief for violations of the Red Flags Rule. Where the complaint seeks civil penalties, the U.S. Department of Justice typically files the lawsuit in federal court, on behalf of the FTC. Currently, the law sets \$3,500 as the maximum civil penalty per violation. Each instance in which the company has violated the Rule is a separate violation.”

Internal Revenue Service (IRS)

The venerable IRS. It has been rumored to be out actively auditing businesses for compliance with the FINCen 8300 report.

“You may be subject to penalties if you fail to file a correct and complete Form 8300 on time and you cannot show that the failure was due to reasonable cause. You may also be subject to penalties if you fail to furnish timely a correct and complete statement to each person named in a required report. A minimum penalty of \$25,000 may be imposed if the failure is due to an intentional or willful disregard of the cash reporting requirements. Penalties may also be imposed for causing, or attempting to cause, a trade or business to file a required report containing a material omission or misstatement of fact; or for structuring, or attempting to structure, transactions to avoid the reporting requirements. These violations may also be subject to criminal

prosecution which, upon conviction, may result in imprisonment of up to five years or fines of up to \$250,000 for individuals and \$500,000 for corporations or both.”

Risk Based Pricing Notice (RBPB)

The latest regulation to hit auto dealers is a requirement under the Fair and Accurate Credit Reporting Act (FACT Act) to provide certain customers with a RBPB that tells the customer what his or her credit score is and where that credit score ranks with other consumers. The FACT Act modified the Fair Credit Reporting Act (FCRA) but retained the penalties of the previous law.

“The potential monetary penalties include, for those who knowingly violate the FCRA, up to \$2,500 per violation in a civil action brought by the Commission in district court.”

What's a dealer to do with all of these fines?

It truly is all about the process and processes. A dealer must have written policies in place that lay out for the employees how to handle each process so that the dealer is compliant with the requirement. A dealer must periodically train all employees in the approved process. Finally, a dealer must have a checks and balances system in place to make sure that the employees are properly following the approved policies. These checks and balances include checklists and a monthly audit of sample of deals.

Without these processes in place, a dealer really is taking a huge chance with complying with these regulations. 🕒

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