

The Compliance Side of Menu Selling

October 01, 2007

It wasn't too long ago that my grandchildren went through that faze of not wanting to try food they hadn't eaten before. It was easy to get them to eat just about anything when they were toddlers. All you had to do was make some airplane noises and wave the food around in the air. They'd open their mouth and it was mission accomplished. Then all of a sudden they developed this skill set that allowed them to determine whether or not they wanted to venture into a new food group by simply looking at their plate.

The process was probably similar to the one the industry experienced when menus were first introduced. All it took was for F&I managers to give menus a chance. Once they did, they probably learned to like it. Over time, F&I managers became more comfortable with the tool and saw their product penetration and incomes go up. Throughout this time, the F&I menu also evolved into a great compliance tool. In fact, from my auditing experience, I can say unequivocally that there is a direct correlation between how well the F&I menu is executed and the overall compliance level of the dealership's sales and F&I departments.

In this article I'm not going to focus on the menu as a production tool. We all know the 100/100/100 rule: Present 100 percent of the products to 100 percent of the customers 100 percent of the time and you will sell more products. What I would like to focus on is the compliance side of the F&I menu, and look at it from two different perspectives — the design of the form and the execution of the form.

Menu Benefits and Design

New and improved menu features are being added all the time. However, there are several components required for a well-designed menu. Let's take a look at what makes for a well-groomed menu.

- **Electronic vs. Manual:** When first introduced, all menus were manual or pre-printed so all of the variable information had to be handwritten. Today, most menus are Web-based and are integrated into dealer management systems (DMS), making it much easier to generate a professional and personalized menu. The electronic version is recommended because it provides more selling time, makes it much easier to customize the product offerings to the customer's needs, minimizes errors and makes it virtually impossible to manipulate the menu to the customer's disadvantage.
- **Customer's Name and Vehicle Description:** Confirms for whom and what vehicle the menu was created.
- **Review of Agreed-To Deal Terms:** For this discussion, we have to back up into the sales process. If the dealership is using some type of desking system, I look for two things. First, does the dealership have a well-documented first pencil payment methodology? Second, are

the final deal terms clearly disclosed and agreed to by the customer? The deal terms should include the cash selling price, trade allowance, payoff, down payment, and, if a payment was quoted, the payment, term and rate. Assuming they are properly disclosed, the final agreed-to terms on the sales documents should be the same as the deal terms at the top of the menu.

In addition to the deal terms, the top of the menu should also disclose the tax, title and license fees, as well as the DOC fee — which, when added to the deal terms, equals the amount financed. This is a very important part of the menu because it can help provide a very defensible position should you be accused of payment packing — the practice of including room in the payment for F&I products without full disclosure to the customer.

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- **Base Payment Without Products:** The base payment should be the same as the payment quoted on the sales documents. It is also a best practice to have the customer put his or her initials next to the base payment, acknowledging that it was disclosed during the menu presentation.
- **Product Descriptions and Benefit Statements:** Each product should include a brief description and related benefits. Make sure any term or mileage limitations disclosed agree with the associated product enrollment form. GAP disclosures should also disclose the upper limit of the benefit (i.e., 150 percent of MSRP or NADA Retail).
- **Product Pricing:** Each product should be individually priced. The price can be expressed as a whole dollar amount or as the incremental monthly cost. Watch out for product enrollment forms that offer both a service contract and pre-paid maintenance contract on the same form. We tend to see these products combined and not disclosed separately on the menu, buyer's order and RISC.
- **Packaged and Custom Product Offerings:** It's more convenient to try and have the customer purchase a packaged offering, but it would be impossible to have all the possible combinations available on one menu. A "custom" column let's you design a plan specific to your customer's needs and eliminates the practice of making handwritten entries on the menu.
- **Final Payment With Products:** This is the final payment agreed to by the customer and should agree with the payment disclosed on the RISC. Again, it is a best practice to have a customer place his or her initials next to the payment to acknowledge that it was disclosed.
- **Additional Disclosures:** At a minimum, provide the following disclosures to avoid any potential claims of unfair or deceptive sales practices:
 - All F&I products are optional
 - The products can be purchased separately and through another source

- The purchase of optional products is not required to secure financing
- The purchase of optional products does not impact the interest rate
- The annual percentage rate is negotiable and the dealer may be retaining a portion

Again, it is best to have customers acknowledge that they have read all disclosures.

- **Date-and-Time Stamp:** The date-and-time stamp is important for a couple of reasons. It demonstrates that the menu was run with the customer there and not after the fact. It should also log the time sequence between the first and final menu, as well as when the acknowledgement form is signed.

- **Acknowledgement Page:** The acknowledgement page is designed to provide an additional closing opportunity to sell more products. It also allows the customer to confirm the products he or she agreed to purchase and the ones he or she didn't. This should put to rest any future accusations that products weren't offered. This page should also eliminate the need for all the extra product waivers you have the customer sign.

{ +PAGEBREAK+ } **Legally Correct Menu Execution**

One of the more interesting points about the F&I menu is that it was introduced, developed and evolved within the industry. There are no federal or state laws mandating the use of the menu. However, using a menu is not a get-out-of-jail-free card. Let's review a few best practices that can help you avoid getting into compliance hot water.

A great way to start a menu presentation is by using a process called "clearing the top of menu." This process allows the F&I manager to confirm the deal terms the customer just agreed to in sales. This allows the customer to know what additional products and services are available for consideration. A common word-track is, "Mr. Jones, these are the terms and conditions of which you can take delivery of the vehicle today, although many of our customers have found value in additional products and services that we offer. May I continue?"

Just as in the sales process, we look for an initial menu and a final menu. The initial menu being the one that matches the final deal terms agreed to by the customer in sales. The final menu is the one that agrees with the RISC. I understand there will be changes in the menu structure from the time the customer walks into F&I until the time he or she leaves. The term, rate and down payment can all be negotiated. The point is that you want to ensure that you can show a logical sequence from the first pencil to the RISC. The documents in the file must support the dealer's assertion that the transaction was conducted in a fully transparent fashion, and that the customer fully understood and agreed to the transaction as documented in the file.

Always make sure you run a new menu when recontracting a customer. If you don't, you will have inconsistencies between the menu and the RISC. Picture yourself being deposed and

the plaintiff's attorney holds up both documents and asks you to explain why there is a difference between them. If you find yourself in a position where you forgot to run the menu on a recontracted deal, by all means, don't feel so pressured that you resort to running a menu after the fact and forging a customer's signature. You'll be much better off just putting a note in the file explaining what happened. The first thing I look for when I see a menu run after the fact is whether the signature on the menu is consistent with the signature on the other documents.

Some menu providers also include an automatic OFAC search in the menu process. This is a good best practice because it forces you to run a menu on all your customers, including retail purchase, retail lease and cash customers.

Updating your deal checklists can also improve your execution of the menu. This applies to the F&I manager, the F&I secretary, the office staff, outside auditors and product provider reps conducting compliance reviews. Most deal checklists just have a check on whether or not there was a menu in the deal file. A better practice would be to include checks for:

Is the menu date the same as the deal date?

Were all acknowledgements initialed and signed by the customer?

Does the final payment match the RISC?

Is the pricing consistent throughout the documentation?

Are there any handwritten entries on the menu?

Proper execution and a well-designed menu will help you prove that profitability and compliance are not mutually exclusive. Try it, you'll like it.

Joe Bartolone is an associate with gvo3 & Associates, a nationally recognized sales and F&I compliance consulting company. For more information visit www.gvo3.com.

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