

**F&I**

Gil Van Over

## New Year-end Federal Requirements

I admit that I watch too much sports. My time could probably be better spent with constructive activity, but I still tend to veg out a little.

For example, I recently watched some of the Tour de France. Not an active cyclist, still, I got a little mesmerized by the scenery of the French Alps, the sheer number of fans who lined the city streets and the rural roads and the athletic ability of the cyclists.

And then there were the crashes.

I watched more than a few crashes that were caused by the biker avoiding a crash. The cyclist is steaming along, comes up on another cyclist who is slowing down. He moves over to pass and crashes into another cyclist coming on his flank. He dodged once crash and created another one.

Our industry recently dodged a regulatory oversight bullet, but the Federales have two more bullets in the chambers.

### Dodge one bullet

The auto industry has apparently dodged the over-bearing consumer financial services oversight bill. Thanks to the efforts of many, dealers are exempted from the new regulatory agency created by legislation to have an agency to watch the Wall Street wizards to make sure America is not put through another crisis like the recent one.

However...

### Still in the crosshairs

Unfortunately, 2011 is going to bring further regulation, further disclosures and more forms for the ever expanding file folder.

As of the end of the year, dealers should be giving and retaining a copy of a remodeled privacy notice and a new risk-based pricing notice.

Huh?

### Remodeled privacy notice

As a result of the Financial Services Regulatory Relief Act of 2006, the Federal Trade Commission (FTC) and the federal banking agencies were required to develop an optional model form which also serves as

safe harbor for the dealers.

The law's purpose is to have a more understandable privacy notice so consumers can more easily compare the privacy policies of different dealers.

So, these agencies took a simple half page,

***When the ball drops  
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few paragraph form that consumers don't read and throw away anyway and created a two-sided behemoth. This new and improved form will require a dealership to answer a number of questions about its privacy policies so consumers can compare your privacy policies to other dealers while shopping for a vehicle.

Too late to cry foul now. The rule is upon us and dealers must start using the new form by the end of the year to continue to be protected by the safe harbor language.

### New risk-based pricing notice

This next new requirement is even more baffling. The Federal Reserve Board (FRB) and the FTC released the Risk-Based Pricing Rule to the industry in December 2009 as the last major dealer requirement under the FACT Act of 2003.

My question: If this rule was so important to include in the major overhaul of the Fair Credit Reporting Act (FCRA) in 2003, why did it take nine years to get a ruling from the Federales on how to comply with the law?

But I digress.

This Rule takes effect on January 1, 2011, one day after the remodeled privacy

notice deadline.

The Rule's intent is to improve the accuracy of credit reports by alerting consumers whose request for credit is approved or conditioned on less favorable terms than other consumers.

The Rule's requirement is to provide a Risk-Based Pricing Notice (RBPB) to consumers to whom the credit approval or condition is on "material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from and through that person (dealer)."

Good luck! Please define material, favorable and substantial proportion.

So, according to the Rule, you have to figure out the substantial proportion of your financed sales that receive more favorable material terms and then give a piece of paper to the remaining segment of your consumers while singing the "Na Na Hey Hey" song?

Fortunately, NADA was able to secure an option so that dealers can provide all of its customers with an Exception Notice instead of the RBPB. This notice is similar to the one already in play in California and is much easier to complete. It is probably the notice that most dealers will be using to comply with the new Rule.

This notice requires a disclosure of the consumer's credit score to all consumers who apply for credit. It must also include the range of possible credit scores and either a bar graph or a statement telling the consumer where his or her credit score ranks percentage wise with the credit scores of all U.S. consumers.

### Adverse action supplement

The Risk-Based Pricing Rule is also meant to supplement the adverse action requirement contained within the FCRA.


Now, that's great news. Dealers are being frivolously sued seemingly every week for not sending an adverse action notice. Now the dark side has a new allegation to supplement its adverse action complaints against dealers.

Through the implementation of the Risk-Based Pricing Rule, FRB and the FTC further

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cemented the notion that dealers are the initial creditors in a typical dealer-assisted financing process as the reason for declining a request for dealer exemption to the Rule.

**Call to action**

Call your forms providers, credit reporting agencies and DMS programmers and get everything lined up. When the ball drops at midnight in Times Square, your file folders will start getting a little thicker. 

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**You're on a busy thoroughfare in Queens without a lot of real estate. Have you had to secure more land to account for selling more inventory?**

The rumor I kept hearing was that we had bought a lot of land but the truth is we haven't added one square inch of real estate. I always heard from other guys that you needed 100 vehicles to sell 50 cars a month. I think it's the exact opposite. We need 50 cars on the lot to sell 100 – that's if you're managing your inventory right.

**How do you find enough inventory?**

I'm not going to give away all of our trade secrets. But we absolutely do have an active strategy at making sure we have the right inventory. We've figured it out that we need to buy 13 cars a day seven days a week. Now that's the average of what we need to have coming in.

I look at our service department, which does about 180 ROs a day. And most of those are Honda vehicles. I'd say that's a pretty good source for us.

**Is it difficult to get people financed today?**

Honda Financial has been super and has been there for us. We're their top performing dealer year in and year out. We give them first shot at all of our business. If they reject someone, then we'll send that application to a secondary bank. Paul always taught me to make sure we take care of the banks and the manufacturer. Those are the most important relationships we have.

**You jumped all over that Cash for Clunkers program last year.**

We sure did. That was the best economic program the administration has come out with. I think it added a half a point to the GDP. We were ready for it. I ordered the right inventory ahead of time and made sure everything was set up.

Last August was great. We delivered 1,000 new and used Hondas, so it was a great program for us and for everybody.

**We're through the downturn now.**

I don't know if we are through it yet. I've got my yellow caution flag out.

**So how did you make it through 2009?**

In September 2008, when it started getting bad, it was like musical chairs and we were caught. Mrs. Singer, her daughter and I put our heads together and came up with an aggressive ABC plan at getting our house in order. Making sure inventory and expenses were in line.

It took us a few months, though. We had a terrible first quarter. But then the rest of the year was one of our best years on record.

**Were you nervous?**

For awhile -- yes. But Mrs. Singer told me, "Don't worry. We'll be okay." And I can't tell you what that meant to me. Once she said that, things started to turn around.


So we got the expense structure in place, then I called this guy, Sean Wolfington, in May of 2009. I said, "Ok, now I've inhaled. It's time to exhale."

You know him; he's all about offense, which is what I needed at the time. He gave me a questionnaire that caused more pain than what Rikess caused me. He had me rate ourselves in every area and then helped us with solutions.

**Brian, you're going to be sharing during the 9th Digital Dealer Conference some of what's made Paragon so successful. In fact, you're going to part of one of the general sessions. Can you give us some highlights?**

Sure. Sean will be presenting with me because he's been such a help at putting together the plan. There's a lot to it. We're going to talk about Paragon became so strong in certified sales and how we increased our CSI by 45%. I'll share what we're doing in mobile, text and voice marketing.

Of course, we're really focused on Internet marketing and service-related marketing so I'll talk about some of that. But some of the fun stuff will include how we're leveraging iPads in our processes.

It's such a process driven and different mindset. 

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