

# Dealer

## F&I Special Section

by Gil Van Over



## News Flashes and New Processes

*To keep you on your compliance toes*

The gloomy and doomy media, the sensationalists who still insist on calling themselves journalists, will occasionally provide a nugget of information that can help auto dealers avoid future compliance issues. Three recent news flashes, from both inside and outside the industry, provide such nuggets. A prudent dealer will review his processes when these nuggets portend a change in the way the sharks view his business and adopt appropriate processes.

### News flash!

A headline from Automotive News: "GAP insurers adopt risk-based pricing as costs continue to increase." The article reports:

"As the cost of underwriting Guaranteed Automotive Protection, or GAP, policies increases, insurers are raising rates and capping coverage. Although underwriters once offered unlimited GAP coverage, some now are setting coverage ceilings. Such limits range from 110 percent to 150 percent of the sticker price of new vehicles and 110 percent to 150 percent of retail book value for used vehicles."

This had to happen. Like my mom told my brother after I sent him spinning a couple of tumbles in the dryer, "If you didn't want to go for the ride, you shouldn't have been hiding in the dryer."

Don't believe me when I say that insurers are losing money on GAP? Just think about putting your GAP premiums into a reinsurance position. See what I mean?

Because your GAP provider is likely to find creative ways to mitigate its GAP exposure, the language in your GAP policies you provide to consumers will change, if it hasn't already.

The disconnect is in the word tracks your F&I managers may be using to sell GAP and in the GAP descriptions on your menu. If your F&I manager is still describing GAP as an option that will "cover the difference between your loan balance and your vehicle's value," she may be inadvertently making a deceptive statement to induce someone to purchase a product, one of the basic definitions of fraud.

Worse yet, if your menu's GAP description reads something like "Pays deficiency from insurance settlement for total loss due to accident, fire, theft, etc." and there is a limitation on the coverage, your potentially fraudulent statement is in writing in your files.

Discuss this situation with your F&I product provider and your menu provider if they are not the same. Instruct your product provider to conduct training with all of your F&I managers with word tracks that are reflective of your GAP coverage. Instruct your menu provider to change the product description on your menu to properly describe the product.

**News flash!**

Then this item from USA Today.com: "FCC Fines Clear Channel Communications." The online report noted:

"In early June, radio station owner Clear Channel Communications agreed to a record \$1.75 million settlement with the Federal Communications Commission to resolve indecency complaints against (Howard) Stern and other radio personalities - complaints often lodged by listeners who claimed to be shocked to hear adult language on the notorious programs."

I have a real concern that our federal government is realizing it can help fill the coffers by enforcing existing regulations. Exhibit A is the FCC's recent actions against shock jocks, radio stations and television networks, culminating in record fines.

How does that relate to the car business? In the early '90s, the Federal Trade Commission (FTC) started conducting sweeps of used car dealers looking for violations of the FTC Used Car Rule. These sweeps resulted in fines of up to \$11,000 per violation, potentially one violation for every vehicle on the lot. However, the last documented occurrence of an FTC sweep was in 2001, finding two-thirds of the dealers non-compliant.

I would not be surprised to see the FTC begin sweeps of used car dealers and used car lots at franchised new car dealers because, quite frankly, it appears that dealers have become extremely lax at properly executing their requirements under the Used Car Rule.

I am particularly perplexed at dealers' inability to comply with the rule as the Used Car Rule is one of the best written, easiest-to-understand rules that the government publishes as they pertain to auto dealers. But then again, many of my fellow students failed open-book math tests in college.

**Used Car Rule review**

Here are the areas you should review:

1. Does every vehicle offered for sale on the lot have a Buyer's Guide prominently displayed?
2. If your dealership transacts business in Spanish, does every vehicle offered for sale have a Spanish translation Buyer's Guide prominently displayed?
3. Does the Buyer's Guide indicate that there is a limited warranty or a warranty remaining? If your state allows you do to so, you can substitute "as is" for "limited warranty."
4. Does every Buyer's Guide that shows a warranty remaining properly delineate the parts or systems covered, the duration of coverage and the covered percentage of parts and labor?
5. If you disclose that the remainder of factory warranty is available, are you disclosing the specific language as required by the rule? "Manufacturer's Warranty Still Applies. The manufacturer's original warranty has not expired on the vehicle. Consult the manufacturer's warranty booklet for details as to warranty coverage, service location, etc."
6. Are the dealership's name, address and contact listed on the backside of the Buyer's Guide?

7. If you use an optional signature line, are you disclosing the specific language as required by the rule? "I hereby acknowledge receipt of the Buyer's Guide at the closing of this sale."

8. Does your Buyer's Order contain the required language? "The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale."

9. Most important, do you have a process in place to ensure that the customer is receiving a copy of the front and back of the guide? Does this process include documentation in the customer's file?

The Used Car Rule and examples of properly completed Buyer's Guide are available at the FTC's web site, [www.ftc.gov/bcp/online/pubs/buspubs/usedcarc.htm](http://www.ftc.gov/bcp/online/pubs/buspubs/usedcarc.htm). Some states, such as Wisconsin, have requirements that are stricter than the FTC's requirements and those states' Used Car Rules supersede the FTC's.

#### **News flash!**

Or consider this headline, from Forbes.com: "Barry Bonds Allegedly Gave Girlfriend \$80,000." The article reported:

"(Kimberly) Bell also testified that in 2001, Bonds had given her \$80,000 in cash - earned, she claimed, from his sale of autographed baseballs and other memorabilia - to make the down payment on a house for her in Scottsdale, Ariz., near the Giants' spring training facility," the sources said "She testified that to accumulate the \$80,000 down payment for the house, Bonds had given her cash in lots of as much as \$9,000, instructing her to open four bank accounts to receive the deposits."

This suspiciously sounds like Bonds helped someone to structure a transaction to avoid Internal Revenue Service and Financial Crimes Enforcement Network (FinCEN) reporting requirements. If true, his troubles could run deeper than alleged juicing and his quest to surpass Hank Aaron's career home run record.

Car dealers are a good source for suspected drug dealers, money launderers and terrorists to use to launder money. Thankfully, the Office of Foreign Asset Controls (OFAC), IRS and FinCEN are serious about enforcing money-laundering statutes in the government's war against terrorism.

I believe that a majority of dealers are now properly checking the OFAC list prior to selling a vehicle on a retail basis. The areas where dealers seem to fall a little short on their OFAC requirement is on cash deals and when selling sleds to wholesalers. The OFAC requirement does not say on financed deals only. The OFAC requirement does not state that only retail deals apply. The OFAC requirement applies to every financial transaction. Be aware that you are required to check the list every time it is updated. You can subscribe to an OFAC e-mail alert that will notify you when the list is updated at the government's web site, [www.ustreas.gov/offices/enforcement/ofac](http://www.ustreas.gov/offices/enforcement/ofac).

On a disturbing note, the IRS appears to be stepping up its IRS/FinCEN8300 compliance auditing of automobile dealers in certain areas of the country. After one recent audit, an IRS agent fined a dealer \$25 for each of six violations for failure to properly file the appropriate reports to the IRS/FinCEN. The agent went on to tell the dealer that every dealership within the multi-dealer group was immediately put on notice that all future violations would be fined at \$25,000 per violation, in accordance with the USA Patriot Act. Talk about filling up the coffers!

Take the time to review that your dealership is properly adhering to the following requirements:

1. Completing an IRS/FinCEN 8300 within 15 days of the receipt of a qualifying transaction.
2. Filing the report with the IRS/FinCEN within 15 days of the receipt of a qualifying transaction.
3. Providing a letter to the party remitting the funds to your dealership by January 31 of the following year. Be sure to include all the required information.
4. Filing the required report with the IRS/FinCEN by January 31 of the following year.
5. Retaining filed 8300s for five years.

Remember when in doubt, fill it out.

As I finish this article, another news flash, this one from ESPN2: Maurice Clarett was just drafted by the Denver Broncos. The apocalypse is on us!

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