

Dealer

F&I Special Section

by Gil Van Over



Who's Your Compliance Cop?

I am not a big fan of government commissions. Their formation generally seems tied to assessing blame. Conspiracy theorists, though, would argue that the Warren Commission simply perpetrated a cover-up.

Admittedly, I haven't read the 9/11 Commission's report, but instead have relied upon the talking heads for their assessment. I recall one of them reporting that a key finding from the Commission's report was the lack of a single American agency responsible for overseeing our terrorist prevention efforts. Supposedly, all the pieces to the puzzle were there to prevent the attack, but we did not have a chief puzzle-meister. Instead, we had (have) a loose affiliation of different agencies, all fighting turf wars for the preferred aphrodisiac in our nation's capital, an aphrodisiac called power.

Somewhat loosely sounds like F&I compliance.

Who ensures your compliance?

The evidence is out there. Consider: Lawsuits in every state (some lawsuits more public than others, in Colorado and Wisconsin for example); the IRS telling dealers about potential \$25,000 fines for failure to properly report qualifying transactions over \$10,000; the FTC snooping for Safeguards violations; likely sweeps of used car lots looking for Used Car Rule violations; and attorneys general publishing inflammatory rhetoric against car dealers on their web sites.

The problem is there's no central clearinghouse to help dealers with their compliance efforts. As a result, a number of players that sell products or services to dealers have put on their compliance hats and pledged that they are the compliance company.

It doesn't matter whether your F&I product provider is as strong as a freshly mowed field of garlic or as weak as Bud Selig's steroid testing program. Your F&I provider cannot be your compliance cop.

Your F&I product provider must be a resource for compliant sales training, compliant sales processes, compliant forms and compliant menus.

Your F&I product provider cannot be the independent reviewer to ensure that the execution of these processes and forms is compliant.

Why not?

Your F&I product provider can't be your compliance cop for three reasons:

- 1) Discoverability of results
- 2) You can't audit what you have a direct economic interest in, and
- 3) You pay these vendors for production

Let's examine each of these.

Discoverability of results: Your trusted product provider sets up a monitoring process in which the sales rep will review a sampling of menus, retail installment sales contracts, lease agreements, product enrollment forms (both his and the competitors') and checks for adherence to pricing guidelines.

What happens if this provider learns your F&I manager is stuffing products into deals without the customer's knowledge? Or finds numerous forgeries on service contract enrollment forms? Or uncovers a pattern of discriminatory pricing against protected classes? Or worse yet, finds out that one of the managers he recommended and placed into your dealership is the culprit?

Who should he report it to? If he does not report these practices, he may be just as complicit in the potential fraud or deceptive practices as the F&I manager. If he does report these practices to the dealer principal, the information is probably not protected by attorney-client privilege and puts the agency at odds with the dealer should a lawsuit or governmental inquiry arise.

You can't audit what you have a direct economic interest in: Who does your year-end financial, your office manager or your CPA? Independence in auditing, monitoring or reviewing production is essential. Since your F&I product provider has an economic interest in a number of service contracts, he lacks any semblance of independence in reviewing compliance.

I fully believe (and so stated in my April Dealer article, "They Ain't Got Your Back") that the F&I product providers must play a key role in your compliance efforts. They must champion and teach compliant processes and word tracks. They must watch for deceptive practices such as bundling or bundling products. Their forms must provide as much safe harbor and best practices protection as possible.

They simply cannot be responsible for administering your compliance program.

You pay them for production: I have met a number of representatives from the various product providers over the last 20 years. For the most part, they are great people. They work hard. They work long hours. They have the dealer's interest at heart. But they exist because of one reason: To provide the dealer with a profit center.

However, just like all of us, they are stretched thin with too many accounts to handle and with performance objectives to not only maintain and grow business at existing dealerships, but to acquire new accounts.

Last month I wrote that a pay plan is a job description. Ask your F&I product provider how much of his pay plan is dedicated to compliance efforts versus production and new account acquisition. Case closed.

And it should be that way. You pay them to generate production in your F&I profit center. Let them focus on that task and not dilute those efforts by being your compliance cop.

Your compliance cop

We know your F&I product provider should not be your compliance cop. So who should be?

Your compliance cop must be someone with the independence, capability and experience to handle the massive task. You should start with your attorney and accountant to see if they are comfortable handling this task. If not, there are a few consultants who do it for a living.

Regardless of your selection, make sure the cop's compliance program checks for adherence to all of the state and federal laws and regulations that govern our industry as well as the ability to catch deceptive practices.

These include, but are not limited to the following legislation: Truth in Lending Act, Consumer Leasing Act, Fair Credit Reporting Act, Fair and Accurate Credit Transaction Act, Equal Credit Opportunity Act, Privacy Act, Safeguards Rule, Do Not Call Rule, and the Disposal Rule. Also, they should provide you with compliance adherence to this additional legislation: Office of Foreign Assets Control, Used Car Rule, Magnuson-Moss Warranty Act, USA Patriot Act, and the FinCEN 8300 Reporting Prohibited Practices (See Dealer, August and September 2004).

Having the right compliance cop in place just might help keep you off the I-Team's next broadcast alleging deceptive practices. Choose this person or company wisely.

Gil Van Over is the president of gvo3 & Associates (www.gvo3consulting.com). He assists dealers in developing and implementing a litigation defense strategy for the F&I office.

For more information contact [Gil Van Over](#)

[Return to Table of Contents](#)