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Compliance Corner: Cash back pitfalls

by Gil Van Over

Manufacturer rebates are commonplace at many automotive retailers. Unfortunately, so is cash back to customers. Providing cash back to customers, for whatever reason, is fraught with potential issues.

Essentially, most dealer-lender agreements contain a covenant in which you warrant that the amount financed is for the purchase price of the vehicle, approved F&I products, fees and taxes. Cash back to a consumer is a side loan and is considered a violation of this warrant, potentially creating recourse paper.

Some banks may consider undisclosed cash back to be bank fraud, which results in the bank filing a Suspicious Activity Report (SAR) with the Department of Justice. Too many SAR's and the DOJ calls the FBI or the state police to investigate your dealership. Additionally, cash back to the customer really is a dealer rebate, which, if not illegal in your state, certainly calls for the appropriate disclosure on the Retail Installment Sales Contract. Finally, I am aware of a mass action lawsuit in which one of the many allegations is that the offer of cash back is a deceptive inducement to get the consumer to buy a vehicle, a.k.a. fraud.

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