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## **Handling subprime acquisition fees**

*by Gil Van Over*

If someone gave you written permission to hold him up at knifepoint and steal the Rolex from his wrist, is it still a crime? What if you shot your girlfriend during a dispute and she dies, but you have on tape where she said it was OK, have you violated some law? How about if a subprime customer signs a separate document acknowledging that the sales price has been increased to cover a subprime acquisition fee, is that a compliance issue?

The answer is yes to all three questions.

A reader e-mailed me with the following question: "I am currently involved in powersport financing and have a few questions on disclosing acquisition fees. Is it only considered illegal when the customer is not aware of the fee charged by the lender? Can the customer legally be charged an additional fee for financing a unit with a certain lender?"

The answer, loyal reader, boils down to what you mean by discloses. First, though, a refresher course. The Truth in Lending Act (TILA) and its subsequent governing Regulation Z (Reg Z) defines the finance charge components that must be included in the APR calculation.

One basic definition of a finance charge is a charge that is assessed to credit customers only, and not cash customers. Since adding a subprime acquisition fee to the price of a vehicle for a credit challenged customer is a charge that someone paying cash would not pay, it is by definition a finance charge. If that charge is added to the price of the vehicle and not disclosed in the TILA box on the Retail Installment Sales Contract as a Bank Fee or an Acquisition Fee, it is deemed to be a hidden finance charge.

And let the lawsuits begin. Simply put, a subprime acquisition fee cannot usually be disclosed as a fee to the customer as it probably will raise the APR to a level exceeding state maximum.

Additionally, some states so not permit such fees to be passed along to customers. So, the answer to loyal reader's question is: Sorry, no can do. Subprime acquisition fees must be taken as a cost of goods sold, as an expense. The vehicle's price must be the same for a cash customer as it is for a credit customer. A separate document or a discussion regarding the fee and an increase in the vehicle sales price is not permissible.

Gil Van Over is the President and founder of gvo3 & Associates ([www.gvo3.com](http://www.gvo3.com)). He can be reached at [gil@gvo3.com](mailto:gil@gvo3.com).

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