

Conducting An F&I Risk Assessment

The recently announced federal sentencing guidelines recommend that businesses put a loss control program in place that is designed to eradicate criminal activity, including fraud, from the business' practices. If a business has certain elements in place, the judge has the latitude to reduce the penalty and/or fine by up to 95 percent in the event a rogue employee does perpetrate fraud outside the scope of his or her responsibilities. One of the elements included in a loss control program is a risk assessment. Here are some of the risk assessments you should conduct at your dealership.

Truth In Lending Act (TILA)

The primary areas a dealer is susceptible to TILA claims are:

- Not properly disclosing third party payments. All third party payments must disclose who the monies are being paid to, what the monies are for and how much it costs. This is normally the disclosures on line four on the Retail Installment Sales Contract (RISC). If the payee is blank or incorrect, you have a technical TILA violation.
- Failing to sign the RISC before giving the customer his or her copy. Very basic contract law requires an offer to be made by the seller, accepted by the buyer, and then accepted by the seller. This means your F&I Manager must sign the RISC as the seller prior to giving the customer his or her copy of the RISC. An unsigned RISC could be presented back to you by the customer's attorney saying that the contract was not properly executed and now the customer wants out of the deal.
- Not giving the customer the TILA disclosures in a form he or she can keep prior to consummating the transaction. This means your F&I Manager must physically give the RISC to the customer before reviewing any of the terms on the RISC. The customer can keep a copy, even to the point of taking it from the dealership premises.
- Improperly increasing the sale price and the trade allowance to allow for negative equity. When TILA was first enacted in 1968, there was not such thing as negative equity. Now, of course, negative equity is pervasive. TILA states that the creditor cannot disclose a negative down payment on the RISC, so dealers have always adjusted the sale price and trade allowance to cover the negative. Regulation Z was recently updated and provides two methods to properly disclose negative equity. Review your RISC and discuss with your third party lenders which way they want negative equity disclosed.
- Backdating recontracts to the date of delivery, not the date of the resigning. Long story short, backdating a contract when resigning a customer can lead to interest being improperly assessed because of the actual consummation date. You should establish a policy that contracts are to be dated the day they are signed, not the day the car was delivered.

First Pencil Methodology

Dealers continue to struggle with allegations of payment packing in every corner of the country. A properly outlined first pencil methodology will help you to contest these

allegations. The key to fighting payment packing charges is to consistently quote an accurate payment for the vehicle without optional F&I products included.

Depending on when you pull the credit bureau report in your sales process, either you can use an average rate or you can develop a rate matrix driven by bureau score.

An average rate must be just that. I recommend that you take the new (strip out any subvented rates) and used rates from the last three months, calculate the average, and use those rates as your average rates.

If you pull a bureau first, then develop a rate matrix. The three columns should be New, Current Year to 3 year old, and over 3 years old. The four rows should be the bureau score: over 700, 650 – 699, 600 – 649 and under 600. Determine what your primary lenders charge in each category, add 200 basis points for dealer reserve and start using the matrix.

FTC Used Car Rule

I never cease to be amazed at the laxity many dealers take with the FTC Used Car Rule. The rule has been around for an awful long time, and any Used Car Manager knows how to fill out the Buyer's Guide and that it must be conspicuously present on the vehicle before it is offered for sale. Yet when the F&I Manager executes the form for the customer and the customer's file, she normally misses up to five critical requirements:

- Inadequately describing the warranty. Often the phrase "Balance of factory warranty" is scribbled on the Buyer's Guide, in direct violation of the Used Car Rule. The FTC provides safe harbor language that must be used.
- The dealer's name, address and contact are not completed on the backside of the form. Get this information preprinted on your forms so that there is no excuse.
- The customer did not sign the copy in file. While the FTC says that a signature is optional, if your form calls for a signature, you should be getting one.
- The customer's copy is in the file. Your obligation under the rule is to give the customer a copy of the guide, not to have a signed one in the file.
- "Se Habla Espanol" is painted on the dealership windows, scrolls across the TV ads, blares out on the radio commercials and is in big red font in the Sunday ad. Guess this means that the dealership will transact business in Spanish. Guess what...a Spanish translation Buyer's Guide is required to be conspicuously displayed on every used vehicle offered for sale on your lot.

Privacy notices

Once a year you get a copy of the bank's privacy policy stuffed into your credit card bill. You didn't sign anything.

Use this example to remember your obligation under the FTC Privacy Rule. You must provide your customers with a copy of your privacy policy. Not to have a signed one in file.

If your F&I Managers are having customers sign a photocopy of your privacy policy and including it in the file, I doubt seriously that your customer received a copy of your privacy policy. You should order a three-ply form, the original goes to the customer, the second ply to the co-customer and the third ply in the customer's file.

Another confusing point about privacy notices is that some sales people will allow customers to cross out certain sections of the privacy policy or to opt out. If you are using the short form of the privacy notice, and are not selling your customer list to marketers, the customer does not have an opt out right. The customer is only signing the notice stating that he or she acknowledges receipt of a copy of the privacy notice, not that they are in agreement with your policy.

If a customer refuses to sign the policy, or the Sales and F&I Managers missed getting a signature, simply mail a copy to the customer and document the file that a copy was mailed and the date it was mailed.

This list is by no means complete...my book will be out soon. However, it is a good start to conducting your risk assessment and covers many of the issues I see on a regular basis when conducting file reviews.

© 2005 by Gil Van Over. All rights reserved.