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What compliance looks like - TILA disclosure

This year's columns have been dedicated to describing this whole thing called compliance. We are now in the process of describing best practices that, if implemented, are designed to help reduce exposure to litigation and regulatory inquiries. Today's topic is Truth in Lending Act (TILA) disclosures.

Background

The Truth in Lending Act was passed many, many moons ago. It is effective enacted and periodically updated by Regulation Z. The intent was to provide a disclosure law for the significant points of credit so that consumers could make comparisons between credit offerings. TILA is not a law that dictates rate caps, or contract consummation, or the proper dating of contracts.



TILA is a law that dictates how the interest charges are to be disclosed (as an APR), what components of the transaction are considered interest which must go into the APR calculation and the acceptable variance on the APR disclosure.

TILA is used by the dark side's warriors to trap some dealers on technicalities. For example, TILA permits a twelve and a half variance on the APR disclosure, meaning that the APR can be off by .125% and still be in compliance with the law. This variance is sometimes exceeded when recontracting a deal and backdating the new contract to the date of delivery. More on this a little later.

Technical Trappings

TILA is voluminous, confusing, descriptive and technically ambiguous. Ergo, the ability of creative dark siders to use it to sue car dealers. Some of the technical points include:

- Timing of disclosure
- Components of the APR calculation
- Acceptable APR variance

Timing of disclosure – TILA requires that the disclosures represented in Federal Box on the Retail Installment Sales Contract (RISC) be **given** to the consumer prior to consummating the transaction. This means that the consumer must take possession of the disclosure before your F&I Manager starts going through the numbers.

Best Practice – Print the RISC. Turn it around and hand it to the consumer. Ask the consumer if you spelled his or her name correctly, that the address is right and to verify the year, make and model of the vehicle. Then tell the consumer that you will go through the rest of the information once he is ready. Then shut up and wait for the customer to hand the RISC back. You now have a process you can testify to that you give the consumer the TILA disclosure in a form that she can keep prior to consummating the transaction.

A word of caution, if the consumer wants to take the TILA disclosure home to review, you must let him. Just give him the customer copy and set up an appointment to return to complete the deal. Do not delivery the vehicle until you have a signed RISC.

Components of the APR calculation – TILA offers up a number of potential charges and fees that must be included in the APR calculation. Suffice it to say that the basic definition of a charge that must be included in the calculation is any fee that a credit customer pays that a cash customer does not have to pay. Two examples help illustrate the difference.

Both cash and credit customers pay a doc fee, therefore the doc fee is not included in the APR calculation.

Alternatively, a sub-prime company' acquisition fee is only assessed on credit transactions. The cash price to the customer must be the same as if she were paying cash for the vehicle.

Best Practice – You must always take the sub-prime company's acquisition fee as a cost of goods sold. You are not permitted to increase the cash price of the vehicle to absorb any part of the fee.

Acceptable APR variance – As previously stated TILA permits a .125% variance on the APR disclosure. This disclosure requirement may come into play when you recontract a deal and backdate the new contract to the date of delivery. A court has ruled, and the dark side has pounced upon, that a contract is considered consummated the date the final contract is signed. Therefore, backdating a contract effectively charges interest for a period of time when there was not a valid contract. When the APR is recalculated using the court-defined contract date, the APR disclosure is sometimes off by more than the allowable .125% variance.

Best Practice – Date every contract the date that it is being signed. I understand that this may affect rebates or incentives or residuals or book values if the new date is after the end of the month. The courts don't care. The general feeling is that you are the expert; the consumer is a naïve participant. You sell cars every day. The consumer buys a car maybe every four years. If you took the risk to spot deliver a customer, you accepted the responsibility to do it right. If you made a mistake, the consumer should not be penalized.

I disagree with this notion, but it is a notion that is pervasive in the dark side's playbook.

TILA Can Be Your Friend

Two limits within TILA can work to your advantage if you are sued on a TILA violation.

First, unless a deceptive practices claim is also alleged, TILA has a one-year statute of limitation for any claim.

Second, any transaction exceeding \$25,000 is exempt from TILA disclosures. Now, this does not mean that you should disregard TILA if you are selling Rolls Royces, but it may help to get a TILA claim dismissed if the amount financed is \$25,001 or higher.

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