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## Compliance and the Dealership

In today's business environment operating a dealership is larger task than simply selling and servicing vehicles. In addition to making a profit, the dealership must have certain policies and procedures in place that addresses specific federal regulations.

*I am neither an attorney nor a judge, and am not licensed to practice law. The following is meant to be educational and, as with all legal matters, I recommend individual dealers to seek their own legal counsel.*

**Identity theft** is a growing plague that continues to cost business every day. It seems the only defense a business can have is becoming pro-active and have policies and procedures in place coupled with employee education about the policies and procedures.

Compliance is a continuous effort, it is not something you can do once then place the binder on the shelf and forget about it. You need to periodically review, revise, and re-implement new procedures that meet your business model and your growth.

Regulatory issues begin with documentation. As you are reading this article ask yourself, do I have a safeguard policy and procedures? Do my employees know what is expected of them regarding this topic? How and when do we do to educate our new hires about our policies and procedures? Is the education documented?

When I am in front of dealers and dealership HR personnel, I hear the following –“that everybody receives our handbook / policies and procedures / along with the health insurance, new hire drug testing / and new hire computer passwords.” Well with all this plethora of documentation on the first day, what is a new hire going to pay attention to? Could it be the work schedule, and the computer pass codes they were assigned?

Compliance is not part of their paycheck, nor will it add to their paycheck. Lack of compliance however, can cost you the dealer, any where from hundreds to thousands to your business. Who should be concerned about compliance? My observation, it is the business owner, and investors who should be concerned about compliance. Your customers are entrusting their personal financial information to your company. Are they at risk in your current business model?

Here are the “Hot Topics” as I see them:

## 1) The Gramm-Leach-Bliley (GLB) Act–

A privacy notice should be given to every customer who completes a credit application or credit statement. The privacy notice explains what you do with the customer's information, such as who you share the information with and why. Some states have an opt in box or an opt out box, and some states allow the customer to choose. Whether the information is gleaned in person or online, the customer supplying the information should be provided a privacy notice.

In your current business model, who takes customer credit information? Is it the sales representative or the F&I department? When, if at all, is the customer given a privacy notice? Best practice is to have the same person taking the information to also provide the privacy policy.

Review your privacy policy to ensure the document accurately depicts how the information is shared and properly identifies what measures you take to safeguard the information.

Your state automobile dealer association can provide you with a sample of a privacy notice that is germane to your state.

## 2) Safeguard Rule – May 23, 2003

This is the second part of the GLB Act. You have already given the customer a statement of which you are sharing their information with. The statement usually includes language outlining that the dealership takes measures to safeguard the information physically and electronically.

Now it is time to live up to your word. What information do you safeguard? Non-published information needs to be protected to minimize identity theft.

Non-published information (NPI) refers to Social Security numbers, driver's license numbers, account numbers, credit bureau information, past residence information, and past and current employer information.

As with any federal regulation, the key is to write down policies and procedures, educate employees, conduct self-audits of the policies, perform a risk assessment of the facility, and appoint someone to implement and monitor the policies and procedures.

## 3) OFAC – Office of Foreign Asset Control

The U.S. Treasury Department has a 331-page list of Specific Designated Nationals (SDN) who they are seeking. All businesses must check everyone they do business with against this list. That means everybody - employees, customers and vendors. Customers are everyone who does business with your company, cash deals in addition to credit transactions.

If there is a match, the deal stops and the federal agency must be notified. You hope to get an all clear from someone, or the feds will be coming with rockets. Best practice is to retain records for five years. Think if you are audited how can you prove your policies and procedures were followed. Penalties for noncompliance can be up to \$10 million and 30 years in jail. This is not something you want to ignore, the time for implementation has past, if you do not have written policies and procedures take action call your association or call us.

According to the counsel from Agent Jerry Livigni at the Treasury OFAC office, the following needs to be addressed in order for a dealership to be 100 percent compliant:

1. Comprise a written policy.
2. Train dealership personnel.
3. Do a match test off the Treasury's SDN list on all customers who buy.
4. In the event of a match, follow the instructions.
5. If there is no match, copy the screen showing the "no match" message and keep it in the F&I deal file.

As you are taking all this in, many of you may think of who has been audited, fined and sent to jail. My question is this, do you want to be among the first?

#### **4) Regulation B and Fair Credit Reporting Act (FCRA)/**

##### ***Adverse action notices***

When taking a credit application, the dealership is viewed as the creditor. Think of the "Rule of Three."

1. You take a credit application and never send it into a financing source.
2. You cannot secure finance approval for the terms you got the customer to agree to.
3. You unwind or re-contract a spot delivery.

Adverse action notices must be given or sent to customers within 30 days of the credit action. Notices must identify the credit bureau with a telephone number if that was the reason for adverse action. The notices must have specific wording. Samples can be found in the "NADA Guide to Adverse Actions" in addition to Regulation B. Adverse action notices begin on page 34. If you need a booklet, please notify my office and we will be glad to send you one.

There are many more federal regulations that every dealership must adhere to. We have Regulation Z - Truth in Lending, which governs retail installment contracts, disclosures, advertising, how to calculate the APR, and how to handle negative equity on the trade-in vehicle.

5) The newest regulation is the Red Flag Rule. You have read articles about it, and now it is here. Yes, there is more documentation, more education, and more record keeping of the education.

The Red Flag Rule also includes the “Address Discrepancy Rule”. This is a part of the Fair and Accurate Credit Transaction Act of 2003, modified in 2006 and added to in 2007 and 2008.

Address Discrepancy: Your policies and procedures need to address what course of actions is required when the credit report identifies an address discrepancy on the credit file. What questions and documentation do you ask for from the customer?

Do you know how to “Unfreeze” a customer’s credit file? Who do you contact if the customer cannot recall the pin number to unfreeze the credit?

The Red Flag Rule policies and procedures need to be tailored to your dealership’s size and scope of business. The purpose is to have the dealership’s personnel be alert enough to detect, prevent the possibility of identity theft from occurring during a business transaction at your place of business. Additionally to mitigate any losses the victim may incur during the identity theft activity.

The automotive industry has until May 01, 2009 to become 100% compliant with the red Flag Ruling. From what I hear the regulators are prepared to sweep the industry looking for violations. Additionally the lenders you use will require you to become compliant the alternative to non-compliance is not funding your retail installment contracts. In addition to a \$2500 administrative fine, \$11,00 per incident from the FTC and opening your dealership up to law suits under the states “Unfair and Deceptive Business Practices” Laws.

All of this can be avoided if you will simply take action, get your policies and procedures and attend a compliance seminar, then implement what you learned.

We are in a business where making money is only half of the equation. The other half is protecting our earnings from lawsuits and fines.

*Again, this information is not meant as legal counsel. It is meant as education. It is always best for every dealership to check with their own legal counsel in regards to all legal matters.*

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