

Are You Compliant?

A Review of Recent Developments

You may be aware of these five compliance rules, but do you know how to stay off the radars of regulators and plaintiff attorneys? Compliance expert provides a quick review, and offers his secrets for keeping regulators and attorneys at bay.

Every vehicle needs a regular tune-up to keep it running at peak performance. And a car dealership's compliance efforts are no different. Even the most comprehensive compliance program needs to be reviewed and updated regularly. Otherwise, just like the cars we sell, compliance can break down and lead to serious headaches.

By **Todd Clarke**

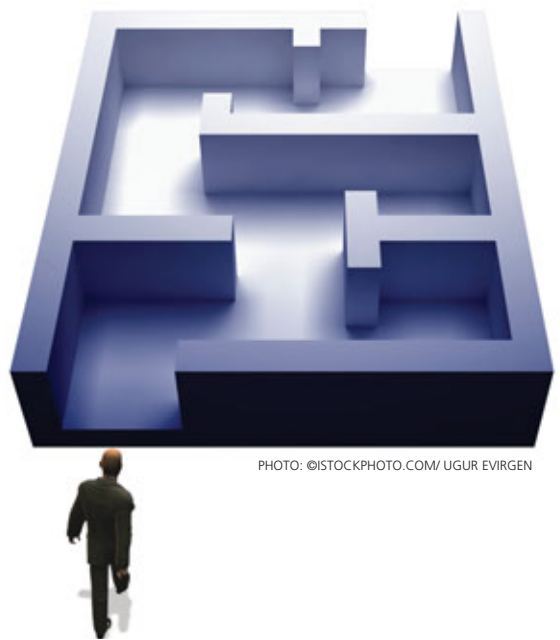


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► ADVERSE ACTION NOTICES

One of the most significant compliance issues to arise in 2007 has to do with adverse action notice requirements. These are the notices sent to customers when they are turned down for credit, or when they are offered different credit terms than what was originally applied for. There hasn't been a lot of formal guidance on when dealers are required to send out notices. Many dealers have made it a practice of sending all their deals to a finance company regardless of the customer's creditworthiness. They do this in an attempt to transfer the responsibility of sending the notice to the finance company. The problem is, even if that practice is compliant, which is debatable, you are putting your dealership in the hands of someone else. If the matter went to court, what would you do if you had to prove that the finance company did send the notice?

Recognizing the lack of guidance in this area, the National Automobile Dealers Association (NADA) recently

issued dealer guidelines covering an array of scenarios. Now, these guidelines are just suggestions on how to navigate this regulation, but many courts and regulators tend to rely on these guidelines since they represent the only formal guidance available to dealers. And that's good news for you.

Here's what the guidelines say about when a dealer is required to send an adverse action notice:

- When a customer's credit is so bad that you don't send the deal to any finance company
- When you send a deal out to one or more finance companies and no one extends credit to the customer
- When you send a deal out, the finance company wants to extend credit with different terms and the customer refuses the new terms

Additional legwork on the part of the dealer may be required, but compliance will be in their own hands instead of someone else's. And that's a good thing.

► DOCUMENT DISPOSAL

Under the authority of the Fair and Accurate Credit Transactions (FACT) Act, the Federal Trade Commission (FTC) developed the Disposal Rule. It went into effect in 2005. Under the rule, dealers must dispose of sensitive information included in their customers' credit reports. The rule is simple: "You have to take reasonable and appropriate measures." While the rule doesn't define what "reasonable" is, it does suggest certain measures that a dealership should consider. These include having a written disposal plan; hiring a certified destruction contractor; audit-



ing the contractor to make sure data is properly destroyed; and taking appropriate measures to dispose of both physical and electronic data.

How the recommendations protect the dealer is similar to how the NADA guidelines work. The rule only asks for reasonable efforts when disposing of a customer's personal information. But if you get sued by a customer because his or her data was not disposed of properly, the court may ask if you followed the FTC recommendations. If you didn't, it may look like you didn't take the reasonable steps.

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► DOCUMENT PREPARATION FEES

Many dealerships charge various fees when a vehicle is delivered, including a document preparation fee. However, the so-called "doc fee" frequently comes under fire. Recently, consumer attorneys have developed a new attack on the doc fee. They are now arguing that a dealership is essentially practicing law without a licence by charging a fee to prepare documents. And as you know, that's illegal. Just like you need to be a doctor to practice medicine, you need to be a licensed attorney to practice law. I don't buy the



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argument that charging a doc fee equates to the unauthorized practice of law, but several courts have. This is why many states regulate the fees dealers charge. While dealers need to be familiar with these laws, they may not always help defend against this new attack on doc

fees. If you're charging a document preparation fee, it may be a good idea to contact your legal counsel to discuss the matter.

➤ CREDIT CARD TRUNCATION

Under the FACT Act, credit card numbers on receipts have to be truncated so only the last five digits are shown. However, did you know the rule also requires that receipts not show expiration dates? Unfortunately, many people miss that part of the rule.



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There was a lot of litigation about the expiration date after the rule went into effect at the end of 2006, especially in California. The good news is that this is an easy matter to handle. You just need to check every credit card machine in the dealership and make sure they're all printing out receipts with the card numbers properly truncated — and without the expiration date. ■

➤ PRIVACY RULES

Most dealerships know about their general responsibilities for safeguarding their customers' personal, non-public information under the Gramm-Leach-Bliley Act. But do they know all the details? For instance, the Safeguards Rule requires a dealership name a specific employee to oversee safeguard activities.

The rule also requires a written information security plan that is periodically reviewed. Do you have a written plan? Has your dealership designated someone to oversee the program? Have you yet to fill the position after the person you designated left the dealership? Have you done the required periodic evaluations?

Now, you may be doing your best to comply with the rule, but you aren't compliant if you aren't



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meeting the detailed requirements of the Safeguards Rule.

Just remember that many of these rules governing how we operate our business act like moving targets. This is why periodic reviews of your compliance efforts is required. Just remember, even the best compliance programs can get better. Thankfully, there are plenty of resources available to help. So take advantage and don't get caught with an outdated policy.

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