

Automotive News

New forms take hold as defense against discrimination claims

Jim Henry

Automotive News | July 31, 2013 - 12:01 am EST

Dealership vendors and legal advisers are starting to introduce forms that dealers can use to document occasions when they deviate from their standard rate for dealer reserve on an auto loan.

The so-called exceptions forms are aimed at helping dealerships protect themselves against accusations of discrimination in light of greater scrutiny of auto finance by the Consumer Financial Protection Bureau.

The concept starts with establishing a fixed rate for dealer reserve -- the extra interest a dealership adds to the customer's interest rate as the dealership's profit on the loan -- instead of setting the rate on a case-by-case basis.

Some of the publicly traded, new-car dealership groups say they have fixed prices for F&I products such as extended-service contracts. Some of the public groups also have said they have internal caps on dealer reserve, in addition to caps imposed by most auto lenders. However, that's not the same as having fixed rates for dealer reserve.

When queried by e-mail on the topic, some public groups declined to comment and others didn't respond.

After setting a standard rate, legal experts suggested dealerships could use an exceptions form to document "legitimate business reasons" to justify charging a customer less than the standard rate.

For instance, a lender might offer a promotional rate below the dealership's standard rate, or a dealership could mark down a unit that was in inventory too long. Those examples are from an "Exception Rate Justification Form" that dealership software provider Dealertrack Technologies started offering retailers last month.

"It's intended to be an internal document that gives a reason why a lender reduces the standard markup in a given situation. It's not credit discrimination if a dealer has a legitimate, nondiscriminatory reason," Randy Henrick, associate general counsel for Dealertrack, said in a phone interview.

Last month the Hudson Cook law firm in Hanover, Md., suggested a similar form for dealerships during Automotive News F&I Week. The Association of Finance & Insurance Professionals offers dealerships a suggested exceptions form. So does JM&A Group of Deerfield Beach, Fla., says Justina Davis, director of the company's performance development center.

This year, the Consumer Financial Protection Bureau said that by allowing dealerships to set the final interest rate for consumers, lenders create a situation in which legally protected classes of borrowers, such as minorities, could be charged higher interest rates.

Under the CFPB's legal theory, that disparate impact is discrimination even if the end result is unintentional. The CFPB suggested lenders could switch to flat fees instead.

Lenders are responsible for making sure dealerships don't create a disparate impact, the CFPB said. Advocates for dealers responded by suggesting dealerships might want to voluntarily reduce variation in dealer reserve to avoid even the appearance of discrimination.

"We advise dealers to consult their legal counsel," JM&A's Davis says. "But they should clearly document any pricing variation with what are acceptable reasons to vary from a standard rate markup."

PRINTED FROM: http://europe.autonews.com/apps/pbcs.dll/article?AID=/20130731/FINANCE_AND_INSURANCE/307319996&template=printart