Compliance Overview

As part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the FTC's Division of Financial Practices was given specific enforcement authority over motor-vehicle dealers. When you examine the enforcement actions against dealers they fall, in terms of the sales and F&I processes, to two main categories: deceptive or unfair practices, and discrimination.

Compliance Myths

Myth 1: Some menus are more compliant than others.

Fact: There are no rules, laws, court cases, or administrative rulings having to do with F&I menus. None. Implying that one menu is more compliant than another is not only misleading but demonstrates a fundamental misunderstanding of what the FTC intends to look for and enforce. *(Either that, or they are trying to sell something).*

The closest thing to any rule regarding menus would be California's Car Buyer's Bill of Rights which does a lot of things, but in terms of disclosure, simply says a dealer must provide an itemized price list for items such as warranties and insurance, etc., if the items are being financed.

Myth 2. The F&I menu is a *disclosure document* **and certain things have to be presented on it to be** *compliant***.**

Fact: The F&I menu is, and always was, a sales tool, nothing more. There are no specific requirements of disclosure that pertain to the F&I menu, any more than a sales brochure or wall poster. It should never be considered a tool for meeting required disclosure rules.

Myth 3. You have to use a menu to stay in compliance.

Fact: No, you don't. You are no more assured of being in compliance with any rule using a menu than if you don't. The F&I menu is a sales tool, not a compliance document. Many F&I managers, who are certainly in compliance, choose not to use a menu.

Myth 4. The bare payment has to be clearly disclosed on the menu.

Fact: Putting the base payment on your menu is fine. But it is irrelevant in terms of the payment packing issue. Waiting to reveal the actual, base payment somewhere on a menu when they get to the F&I office does not meet the rule as defined and enforced.

F&I Magazine's Gregory Arroyo published a good article recently on this very subject. Read his article "Debunking Base Payment Myths" at http://www.fi-magazine.com/Blog/Done-Deal/Story/2012/12/Debunking-Base-Payment-Myths.aspx.

Well then, what *are* they looking for?

One enforcement target the FTC will be looking for happens before the customer ever gets to the F&I manager. It has to do with how payments are quoted during the negotiation with the sales department. They will be looking for what they call "deceptive practices" during the negotiation, and "payment packing". And this is an easy target for them to identify.

What *is* the rule?

(ftc.gov 2013)-The FTC has determined that the Truth in Lending Act requires that, when the customer negotiates a payment with the sales department, before they agree to a final payment, (they call it consummation) they must be given* "written disclosure" *of certain terms of the agreement such as APR, monthly payment amount, length of the loan and a full, written disclosure of any add-ons that were included in the payment calculation". Attorney Generals have also determined that not doing so is a deceptive practice.

Tom Hudson of Hudson Cook alludes to this requirement in an article in F&I and Showroom. Read at: http://www.fi-magazine.com/Article/Story/2012/11/What-s-on-the-Menu.aspx.

How do we meet the disclosure requirements?

We developed the Package Option™ process to work with a "bare" payment quote from the sales department.

In the first 30 seconds the customer is with the F&I manager, built into Step 1 of our process, we insure there was no "payment packing" by having the F&I manager immediately verify, *before offering any F&I products*, that the base payment was properly quoted using the exact "written disclosure" that the sales department used to quote the payment.

We made sure that the sales worksheet, "write-back", sales disclosure, (or whatever form it took), included, in writing, the rate, term, down payment, and the actual "bare" payment it took to buy the vehicle. This assured that "payment packing" was not occurring and developed a "pattern of proper disclosure" in the way the dealership negotiated and quoted payments.

California has mandated this approach we have used for years and other states will probably soon follow. But this has been an integral part of our process for years before California mandated it, unlike any other process we know of.

For a downloadable sample of a sales disclosure form, go to:

http://www.teamonegroup.com/CustomerAcknowledgement.html

What about IPad, tablet, computer screen presentations, and "mobile" menus?

A disturbing trend identified with the use of some of these devices and some of the software being used is that the required written disclosure was not being given to the customer before the products were being presented. There were even cases of software that offered a "payment range" without the written disclosure.

Also, when the required written disclosure was done before the product presentation, the performance of these electronic sales tools went down severely. This created a situation where F&I managers tended to "skim over" the base payment or didn't disclose it at all. No written acknowledgement was given. Based on our understanding of the rule and our experience observing the enforcement actions in the past, it's obvious that this will be considered "payment packing" and a "deceptive practice" by the FTC and Attorneys General