

Paper or Profit?

*By Emily Marlow Beck**

You say tomato, I say to-maa-to. You eat potato, and I eat po-taa-to. And, when it comes to special finance and buy here, pay here, you say profit, and I say paper.

After all, isn't it usually the rule that the lower the customer's credit score, the higher the number of trees that will be killed in getting the deal done? From a compliance standpoint, the more paperwork required in a deal, the more chances there are to make paper-related mistakes. And, although the rules that govern automobile finance are the same regardless of the customer's creditworthiness or the dealership's department, some compliance errors are more likely to show their ugly heads in the special finance or buy here, pay here departments.

Admittedly, there are great opportunities for dealers who go confidently and compliantly into the sub prime auto finance world (I heard you say "profit" after all). So, before you make like Astaire and call the whole thing off, consider tightening up your paper practices. To help you get started, here are some of the biggest mistakes I see when working with special finance departments and buy here, pay here dealerships:

Adverse Action Notices. The less creditworthy your customers, the greater likelihood that you will turn customers down. Most dealers know that federal law requires creditors to send adverse action notices (or "turn down" letters) to customers when they deny credit to a customer. What many dealers don't know is that the definition of "adverse action" includes more than just when a creditor sends a customer packing. For example, even if you (like many dealers) believe adverse action requirements don't apply to you because you "finance everyone if the conditions are right," federal law may view your "conditions" as "counteroffers" that could, in some instances, warrant adverse action notices.

Confused? You're not alone. There's a whole bunch to say about this topic. Check out the recently published NADA Management Guide, "A Dealer Guide to Adverse Action Notices," for some additional information. You can purchase the guide from the NADA (\$30 for NADA members, \$60 for non-members), and it contains step-by-step guidance on your dealership's adverse action obligations.

Spot Delivery/Unwind Agreements. Just because your dealership doesn't engage in typical "spot delivery" transactions doesn't mean that you don't need "magic language" in your contract to allow you to unwind transactions that aren't funded. For example, do your transaction documents permit you to unwind a deal if the finance company (related or otherwise) kicks the deal back to you because it can't verify that Johnny has worked at ACME Corp. for 18 months? Let's hope so.

A Written Warranty (Maybe). If your cars come with a warranty, are you providing customers with a copy of a written warranty? Federal law requires dealers to provide customers with a written copy of the warranty and sets forth the required contents of that written warranty. Some states have laws that will govern the contents of your written warranty. Marking up the federal Buyers Guide "window sticker" to spell out all the details of the warranty is not enough.

Stips. A typical special finance or buy here, pay here deal will require more stips than other deals. We tell people to treat stips, and other forms of non-public personal information, like toxic waste - once it enters your dealership doors, you've got to make sure it is stored, retained, and ultimately disposed of properly. In these days of identity theft and fraud, this has never been more important.

Side Notes. A special finance or buy here, pay here operation may call for some creative financing solutions, like pick-up payments or repair financing. While it may be tempting to whip out a pen and some paper or grab a retail installment sale contract off the shelf to record this financing arrangement, even the best intended side deal could inadvertently run afoul of federal (and sometimes state) laws that govern credit transactions. I've seen some pretty creative financing arrangements out there, and a few of them were even legal! But, the same creativity that earns you a spirit badge at 4-H camp may earn you a class action lawsuit in Regulation Z-ville. If you're one of those "creative types," it might be best to have a chat with a knowledgeable lawyer who can help you channel that creativity of yours.

Phew! How's that for a good start? Now, you say paper, and I'll say profit, and we'll call the calling off, off. □