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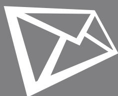
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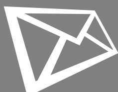
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FAIR CREDIT & FAIR GAIN

By Elizabeth Dahlgren, LGT Communications Coordinator

To know how to make a reasonable profit, to abide by government regulations and to offer fair credit contracts is vital to staying in business and doing good business in the automotive industry. However, it is not an easy task.

Dealers are often allowed to determine the amount they earn for originating consumer credit contracts, known as dealer reserve, with the finance source without the consumer having any control. This can create a risk of discrimination to the consumer and put dealers at risk of violating the federal Equal Credit Opportunity Act (ECOA) and risk having the finance source investigated by the Consumer Financial Protection Bureau (Bureau).

So should dealers utilize this opportunity of determining the percentage of reserve added to the loan? The answer tends to vary based on which party you ask; the dealer, the lender or the consumer.

The Bureau says that it has left the supervising of dealer reserve pricing to the lender. Meaning the dealer can go to the lender and declare an earning percentage for the origination of the credit contract that violates ECOA, putting the lender at risk of consumer discrimination, and ruining that relationship.

The financial source has a solution that can balance the hazards faced by the dealer and the lender, while protecting the consumers ECOA rights by utilizing a flat fee pricing mechanism. In an article NADA recently publish titled 'The Fallacy of Flats,' it explains how adopting flat fee pricing will compensate the dealer for originating the credit contract at a flat dollar amount per transaction, disabling the dealer to exercise any form of pricing discretion (Metrey, 2014). This will resolve the risk the financial source battles with the dealer because there will no longer be an opportunity for the dealer to violate ECOA, leading to an investigation by the Bureau. However, the dealer still has the option of choosing which lender to sell the contract, transferring the possibility of discrimination from "intra-finance source discretion" to "inter-finance source discretion," constructing the option of discrimination to the consumer by the dealer, in turn, creating a risk of liability for the dealer, NADA reports.

As you can see, there is a range of risks and possible solutions for each party, the consumer, dealer and lender. NADA has acknowledged this threatening situation and evaluated it from each stand point in order to provide a tool for dealers to use when selling paper called the NADA Fair Credit Compliance Policy & Program. In 'Fallacy of Flats,' NADA gives the details on the program.

"A dealer who adopts the NADA program generally establishes a pre-set standard dealer participation rate (SDPR) that the dealer (i) adds to the wholesale buy rate offered by the finance source to which the dealer will assign the credit contract and (ii) includes in the offer of credit to the consumer (Metrey, 2014)." This SDPR is comparable to the flat rate fee that a lender would set for the dealer, but the dealer is the one with the power of determination. It is possible to reduce the SDPR in order to offer the consumer a lower cost of credit to compete with other offers, but the SDPR cannot be raised. There must also be an appointed coordinator to review the transaction for proper execution and reporting of the compliance program.

"The NADA Fair Credit Compliance Policy & Program is not required, and has not been adopted as a safe harbor, by any federal agency. Its adoption by a dealer is completely optional. Nevertheless, NADA believes the program provides a dealer who adopts it with a viable means of managing the dealer's fair credit risk – and, in turn, the fair credit risk presented to its customers – while allowing dealer pricing discretion to be exercised in a standardized manner the lowers the cost of credit for consumers (Metrey, 2014)."

There is no mandatory program or solution for dealers or lenders, but these are two options to be considered to avoid investigation by the Bureau and violation of ECOA. NADA advises dealers to consult its legal counsel when determining the adoption of this program or when entering flat fee arrangements and to remember that neither of these will entirely eliminate risk.

This article was composed through information obtained from NADA and is in no way legal or financial advice. Please seek out your legal counsel for more information before making changes to your programs and policies.

References

Metrey, P. D. (2014, May). NADA Releases Fair Credit Guidance for Dealers. Retrieved from National Automobile Dealers Association : http://www.nada.org/NR/rdonlyres/9644E731-D531-4D04-9026-BB5943D918C7/0/FallacyofFlats514.pdf

TAX TIP

New Rule Effective in 2015 - One IRA Rollover Permitted Per Year

May 2, 2014

IRS is following the Tax Court ruling that the limit of one rollover per year applies on an aggregate basis and not on an IRA-by-IRA basis. The IRS withdrew a 1981 proposed regulation and announced that the new ruling will not apply to any rollover that involves a distribution that occurs before January 1, 2015.

Sec. 408(d)(3)(A)(i) permits a tax-free rollover of funds in a taxpayer's IRA as long as the amount distributed to the taxpayer is paid into an IRA for the taxpayer's benefit within 60 days, subject to the one-rollover-per-year limit of Sec. 408(d)(3)(B). The Tax Court in Bobrow, T.C. Memo. 2014-21, held that the limit applies to all of a taxpayer's IRAs, in the aggregate, and that the petitioner in the case, who had made more than one rollover from more than one IRA during the tax year, was taxable on the full amount of the second rollover.

An IRA owner's ability to transfer funds from one IRA trustee to another (as opposed to the taxpayer's getting a check and making the transfer himself or herself) is not considered a rollover and, therefore, is not subject to the one-a-year limit.

If you have any questions, please discuss them with your ATA representative.

For more information about LGT or if you have any questions on matters discussed in this newsletter please contact:

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