

Compliance Tour Around the Dealership

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Employment Issues

- Documentation to determine if candidate for employment is citizen
- COBRA – 20 more employees – continue coverage for 18-36 months, depending on circumstances
- Drug testing – no discrimination against employees in drug treatment program so long as not currently abusing drugs
- ERISA – offer retirement plans must provide plan information, fiduciary duties
- Polygraph – no polygraph for pre-employment screening
- FMLA – right to take limited unpaid leave of medical emergencies
- Wage and Hour rules
 - Minimum wage
 - Overtime
 - Equal pay
 - Employing minors
- Wage Garnishment
- Affordable Care Act – applies to companies 50 or more employees – offer insurance or pay penalty
- Americans with Disabilities Act - 15 or more employees - reasonably accommodate disabled workers and job applicants
- Civil Rights Acts – no employment discrimination on basis of race, sex, color, religion, national origin
- Equal Pay Act – no wage discrimination on basis of sex
- Posters - Notices, such as “Your Rights Under the FMLA,” “Equal Employment Opportunity Is the Law,” “Federal Minimum Wage” and “Notice:Employee Polygraph Protection Act,”
- Classification of workers



Advertising

- Do Not Call
- Telephone Consumer Protection Act
 - Call time restrictions
 - Autodialer restrictions/prerecorded message restrictions
- CAN-SPAM Act
 - Identify unsolicited email as advertisement
 - Provide postal address
 - Provide opt-out mechanism
 - Misrepresent identity of sender
- Clear and Conspicuous
- Recalls
- Offers of credit – TILA trigger terms
 - Down payment – number or percentage
 - Amount of payment
 - Number of payments
 - Period of payments
- Trade-ins
- Consumer Review Fairness Act



Retail Installment Sales Act

- Failure to observe interest rate calculations
- APR error calculation/excess of maximum rate
- Failure to abide by proper repossession protocol



Used Car Rule

- Failure to complete the form
- Inaccurately completing the form
- Failure to record the conditions of the sale at the time of sale
- Failure to use Spanish language when required
- New forms required January 2018



Federal Trade Commission Act

- Unfair or Deceptive Acts or Practices
- Payment Packing
 - Use a menu quote payment when you have the customer information
 - Show base payment without voluntary protection products included
- Mercenary sales
 - Use due diligence – licensed salespersons?



Dodd Frank Act - BCFP

- Unfair, Deceptive and ABUSIVE Act or Practices
- Deception
- Debt traps
- Dead ends
- Discrimination
- Vendor Management
- Compliance Management System
 - Board and management oversight
 - Compliance program
 - Written policies and procedures
 - Training
 - Monitoring
 - Consumer complaint management system
 - Compliance auditing



Truth in Lending – Regs. Z & M

- Reg Z – Finance
 - Hidden Finance Charge
 - Failure to appropriately track agreed upon terms
 - Misrepresenting trade-in value
- Reg M – Leasing
 - Misrepresenting mileage limitations
 - Advertising a lease down payment or monthly payment
 - Disclose the following:
 - Is a leased deal
 - Amount due at lease signing
 - Number, amount, and period of payments
 - Whether security deposit is required



GLB – Privacy Rule

- Issue notices of privacy policies when disclose non-public information about consumers to third parties
- Requires contractual limitations of service providers' and other third party access
- Failure to provide privacy notice
- Use privacy notice which does not reflect dealer's organization
- Annual privacy notice requirements



GLB – Safeguard Rule

- Develop, implement, maintain, and audit comprehensive, written security program
 - Protect consumer information
 - Ensure service providers provide similar safeguards
- Failure to implement an Information Security Program
- Failure to appoint a Compliance Officer
- Failure to lock files in a secure place



Equal Credit Opportunity Act – Reg. B

- Disparate Impact
- Reverse redlining
- Misrepresenting applicant's income
- Misrepresenting applicant's number of years employed
- Failure to provide adverse action notice
- Failure to provide risk based pricing notice



Credit Practices Rule & Holder in Due Course Rule

- Provide cosigners with written disclosure before signing installment contract
 - Must be presented and signed at point of sale

Notice to Cosigner

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

- Can't use prohibited contract provisions such as confessions of judgment or wage assignments
- No pyramiding late charges
- Failure to have defined underwriting criteria
- Purchasers rights to raise claims against purchasers of consumer credit contracts
- Must have language in contract

NOTICE

Any holder of this consumer credit contract is subject to all claims and defenses which the debtor could assert against the seller of goods or services obtained pursuant hereto or with the proceeds hereof.
Recovery hereunder by the debtor shall not exceed amounts paid by the debtor hereunder.



Office of Foreign Asset Control (OFAC)

- Prohibited from entering into transactions with sanctioned countries, governments and specially designated individuals
- Failure to check the SDN list



Red Flags Rule

- Failure to appoint a Corporate Compliance Officer
- Failure to draft, implement, and update an Identity Theft Prevention Program
- Board approval
- Fail to properly clear a red flag



Fair Credit Reporting Act – Furnisher Rule

- Credit reports obtained only pursuant to consumer written instructions or if consumers initiate a business transaction
- Must have written policies appropriate for size of business aimed to ensure accuracy of information sent to CRA
- Must investigate and respond to consumer disputes on information in reports
- Misusing credit report
 - Get a signed credit application
- Misrepresenting firm offers of credit
 - Clearly draft offer and honor it only if all terms sufficient



Risk Based Pricing Rule

- If you grant credit, but on less favorable terms based on information in a consumer report, you must provide a “risk-based pricing” notice
- Notice must be given before the consumer becomes contractually obligated
- A risk-based pricing notice must tell the consumer:
 - consumer report includes information about the consumer’s credit history and type of information included in that history
 - terms offered based on information from consumer report
 - terms offered may be less favorable than those offered to consumers with better credit histories
- Make sure report accurate - right to dispute information
- identity of each CRA that furnished a consumer report used
- Right to free report and how to get it from CRA
- Visit CFPB website about consumer reports



Adverse Action

- What is adverse action? – denial, revocation, refusal to grant on requested terms, negative change
- Based on information in credit report
- If you take adverse action based on information in a consumer report, you must tell the consumer.
- Notice may be oral, written or electronic
- Include name, address and phone number of the CRA (including a toll-free number for nationwide CRAs) that supplied the report
- A statement that the CRA didn't make the adverse decision and can't explain why the decision was made
- Notice of the consumer's right to a free copy of their report from the CRA if they ask for it within 60 days
- Notice of the consumer's right to dispute information
- The consumer's credit score, if a score was used



Other UD AAP Issues

- Spot Delivery
- GPS disclosures
- FTC Cooling Off Rule



Magnuson-Moss Warranty Act

- Designate, or title, your written warranty as either "full" or "limited"
- State certain specified information about the warranty coverage in a single, clear, and easy-to-read document
- Ensure that warranties are available where products are sold so that consumers can read them before buying
- Cannot disclaim or modifying implied warranties if offer a express warranty
- If offer a "limited" written warranty, can limit duration of implied warranties to the duration of your limited warranty
- No Tie-in provisions - state *or imply* a consumer must buy or use an item or service from a particular company to keep their warranty coverage
- Warrantor can require a consumer to use select items or services if they're provided free of charge under the warranty or the warrantor receiver a waiver from the FTC

“To keep your new Plenum Brand Vacuum Cleaner warranty in effect, you must use genuine Plenum Brand Filter Bags. Failure to have scheduled maintenance performed, at your expense, by the Great American Maintenance Company, Inc., voids this warranty.”

“Necessary maintenance or repairs on your AudioMundo Stereo System can be performed by any company. Damage caused to the AudioMundo Stereo System by you or any non-authorized third party, however, may void this warranty.”



IRS 8300 – Cash Reporting

- Report cash in excess of \$10,000 in a single transaction (within a 12 month period) or two or more related transactions (within a 24 hour period).
- Cash, coin, cashier's check, bank draft, traveler's check or money order
- File within 15 days
- Statement to consumer by Jan 31
- Failure to file or complete properly
- Failure to properly comply with a voluntary Suspicious Transaction filing



Bankruptcy Issues

- Automatic stays
- Lien perfection
 - Perfect within 30 days
- Bankruptcy filing within 90 days could void lien



Collections

- Unlawful in-person collection visits at their homes or workplaces
- Ignored consumers requests to stop calling workplaces
- Deceived consumers with threats of legal action when that was not true
- Required consumers to pay through EFT – cannot condition loan on preauthorizing repayment through EFT
- Made simultaneous attempts to EFT earlier than promised
- Lied to consumer that could not stop EFT payments, collection calls or prepay
- 1099-C



Other Considerations

- Arbitration agreements
- Recall notices
- Odometer Rule – Prohibits odometer removal/tampering and misrepresentation of odometer readings
 - Disclosure statements
 - 10 year exemption
- Airbag disclosures
- Damage disclosures
- Title branding disclosures



Environmental/Safety Issues

- Americans with Disabilities Act – make reasonable accommodations to facilities (i.e. ramps, parking spaces, drinking fountains, doors, toilets)
- Clean Air Act – cannot tamper with, replace, or remove emissions control equipment (ie. catalytic converters)
- Aboveground storage tanks
- Waste disposal rules
- Underground storage tanks
- Used Oil management
- Used batteries
- FTC Used Parts Guide – prohibits misrepresentations that a part is new or about the condition/prior condition, etc; used parts must be identified as used in advertising
- OSHA Asbestos standards – must use certain procedures during brake and clutch inspections to minimize exposure
- OSHA Hazard Communication Standard – must inform employees about chemical hazards they may be exposed to in dealership; keep chemical information sheets on site; train handling of chemicals
- OSHA lock-out/tag-out procedures – explain what employees must do to ensure machines are safely disengaged before being serviced
- OSHA workplace and safety standards
- OSHA Blood-Borne Pathogens Rule – more than 4 minutes from emergency health facility must have program to respond to cuts; have first aid kits



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