

## Twelve Steps to a Compliance Program

June 27, 2017 | [Thomas B. Hudson](#) and [Eric L. Johnson](#)

We have spoken at many dealer conferences over the years. Our topics are nearly always some facet of dealer compliance with federal or state consumer laws. Afterward, dealers line up to ask us a version of this question:

"Can you give me a basic playbook to help me set up a compliance program that will keep the Federal Trade Commission and the Consumer Financial Protection Bureau from flogging me in the public square and throwing me in jail?"

Evidently, these dealers have taken the compliance message to heart.

That oft-asked question is usually accompanied by a caveat that the compliance program must be one that won't break the bank. Legal and compliance services can be pricey, so that last request can be a tough one.

This article outlines some steps you can take toward setting up a serious compliance program, followed by a guesstimate of the "hard costs" involved, not including management time, implementation time and the time your employees spend studying, training and researching.

Step 1: Make the decision to become a squeaky-clean operation. Without this step, none of the rest of the steps will work. The decision to create a "culture of compliance" needs to come from the top of the organization, and if your organization has had compliance problems, all hands need to understand it is a sea change and not just window dressing. Your people need to be told that anyone who does not treat customers honestly and ethically will be fired. Anyone who doesn't buy into the new culture of compliance should be told to hit the road. Cost: \$0.

Step 2: Appoint a privacy officer and a Red Flags officer. Federal law currently in force says you are required to have a privacy officer and a Red Flags officer. While you're at it, make that same person your compliance officer. If your organization is large enough, this person may need help in the form of a small compliance committee. The compliance officer should report directly to the highest-ranking person in your organization (that will underscore the culture of compliance mentioned in Step 1). Have signs made for your dealership showroom that identify that person. Cost: \$5 for the signs.

Step 3: Give your compliance officer a real budget so he or she can actually get stuff done. Having no budget for privacy and compliance will assure a compliance program that's not worth a hoot. Several of the tools the compliance officer will need, such as copies of the federal Truth in Lending Act and Regulation Z, the federal Equal Credit Opportunity Act and Regulation B, the federal Gramm-Leach-Bliley Act, the Federal Trade Commission's privacy regulation, the Red Flags Rule, the Safeguards Rule and

the Risk-Based Pricing Rule, can be found online, although your compliance officer might need some training to access them. As part of that compliance budget, allocate enough money to send as many people as you can afford through a compliance certification course (your mechanics are trained; your F&I people need training, too). Have your compliance officer obtain and read all the books on F&I compliance that he or she can find and subscribe to online legal compliance services. Cost: Start with at least \$5,000, but you easily can spend a lot more.

Step 4: Train, train train. You probably have a fairly high turnover of sales and finance personnel, and this compliance stuff can be less than memorable. So, you need to train your revolving sales and finance force and periodically retrain the ones who stick with you. There are third-party trainers, some of whom are quite good, but if your compliance officer turns out to be a crackerjack, he or she might well be able to handle the training. Cost: \$0 in-house, \$10,000 for outside training twice a year.

Step 5: Download and print copies of "Understanding Vehicle Financing." This 16-page consumer education pamphlet is free on the National Automobile Dealers Association website (see <https://www.nada.org/CustomTemplates/GeneralPage.aspx?id=21474839117>) and is available in English and Spanish. It provides an overview of how indirect financing at dealerships works and bears the seal of approval of the FTC. It deals with car financing, but nearly all of it applies to indirect RV financing. Everyone in your organization will benefit from reading it. It could be an excellent first chapter for your training program. Cost: The download is free; plan on up to \$1,000 for printing, depending on how many copies you need.

Step 6: Require every employee involved the sales and financing process to carefully read your buyer's order, retail installment sales contract and privacy policy, arbitration agreement, and all other documents you ask the customer to sign or that you give to the customer. These documents should include credit life and accident policies and certificates, GAP addenda, warranties, vehicle service contracts, and anything else the customer sees. Make up a test to determine how much of this material your staff actually understands. Cost: \$0.

Step 7: Adopt a true, transparent "menu" process for the sale of additional products. Work with your lawyer to prepare the menu and the script. Dealers who use a menu say the transparent sales process costs them some sales they might otherwise make, but offering every product to every customer every time through a menu more than makes up for those losses. Follow up with your employees to make sure they're actually using the menus you've adopted in the way they are supposed to be used. Cost: \$1,000.

Step 8: Appoint a person to help customers with complaints. Sometimes referred to as an "ombudsman," such a person helps the customer work through a complaint with the dealership. You don't want customers resolving complaints with the dealer representatives they originally dealt with-and who often caused the complaint and get defensive as a result. You want someone who did not take part in the sales and financing process and who can look at the customer's complaint dispassionately. Having a formalized complaint-resolution process might deter some customers from taking their gripes to a lawyer, the Better Business Bureau, your state's attorney general or the CFPB. Cost: \$0.

Step 9: Have your compliance officer periodically search the web. He or she should check the site of your state's attorney general so you'll know what the AG's current hot buttons are. Another site to check is that of your state's dealer regulatory body. Also, on a regular basis, check the CFPB's website (<http://consumerfinance.gov>), the FTC's website (<http://ftc.gov>), the NADA website (<http://nada.org>),

your state and local dealer association websites, and any other sites you've discovered that are useful. Also, check the consumer "gripe" sites for complaints against your dealership (see complaints mentioned in Step 8). Your compliance officer should use scheduling software, such as Microsoft Outlook or another email/calendar client, to set up a weekly or monthly reminder to do these searches. Cost: \$0.

Step 10: Mandatory, pre-dispute arbitration agreements are a dealership's best first line of defense against class-action lawsuits. If your dealership isn't using one in its sales and financing transactions, consider doing so. The CFPB has issued a proposed rule that would prohibit the use of class-action waivers in mandatory, pre-dispute arbitration agreements, and that proposed rule may become final. But given the uncertainty of the CFPB's future caused by a recent court challenge and the hostility toward the CFPB by the Trump administration, we may have a few additional years before we see a ban, if we ever do. Until we have a ban, using an arbitration agreement can be an effective defense against those predatory class-action lawyers. Some state-association-produced buyer's orders contain arbitration language, or you can buy freestanding arbitration agreements off the shelf from vendors such as Reynolds and Reynolds ( <http://reyrey.com>). (But make sure your state permits the use of additional documents and doesn't have a so-called single document rule.) Regardless of which way you go, have a lawyer knowledgeable about consumer arbitration agreements look over the agreement you intend to use. Cost: \$2,000, plus any ongoing printing costs.

Step 11: Have a forms and policies and procedures review and a written compliance program. All your sales and F&I forms and procedures, underwriting procedures, and servicing and collections procedures should be reviewed by a lawyer knowledgeable in consumer financial services law. All these procedures should be documented and maintained in a compliance manual. You and your lawyer should periodically review your manual because laws and regulations change. Use your scheduling software to remind yourself to book a review at least every six months. Cost: \$5,000 to \$10,000.

Step 12: Make a record. At each meeting of your governing group (board of directors, executive committee, etc.), have your compliance officer brief and educate those charged with running your company's business about the company's compliance status and initiatives. The presentation should be written and oral. The written report will create a record that supports the company's culture of compliance efforts. If you don't write it down, it didn't happen. Cost: \$0.

So, there you are. If you implement these 12 steps, you'll spend less than \$30,000. You still won't have a first-class compliance program, but you'll be miles ahead of where most dealers are. Once you get these measures in place, we can start talking about how to bring the program to the next level.

Not willing to invest serious money in compliance? Maybe it's time to think about closing the dealership and opening a bait shop.

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7037 Ridge Road, Suite 300, Hanover, Maryland 21076  
410.684.3200

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