

# DEALING WITH ETERNAL LIFE

The CFPB remains determined to put the squeeze on dealers, and there's no sign of the agency going away. F&I trainer says it's time to put your house in order before rate markup meets its maker.



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Ronald Reagan once said, “No government ever voluntarily reduces itself in size. Government programs, once launched, never disappear. Actually, a government bureau is the nearest thing to eternal life we’ll ever see on this earth!” Now there is a depressing thought. But the truth is, Ronnie was right.

Here we are in 2014, and the do-gooders at the Consumer Financial Protection Bureau remain bound and determined to justify their existence and expand their earthly kingdom by protecting innocent Americans from evildoer banks and other capitalists, like car dealers. As we all know, the CFPB wants to eliminate dealer discretion in marking up interest rates.

Auto dealers were supposed to be exempt from yet another government agency’s oversight in solving a problem that hasn’t been proven to exist. Unfortunately, the CFPB is already a massive government agency overflowing with lawyers itching to extort huge settlements from whomever they can. In fact, they already got a \$98 million settlement from Ally Financial. Given that the federal government still owns a 64% stake in Ally, the government actually fined itself. Now that’s power.

And the CFPB is just getting started. The last thing any lender or dealer needs is to be slimed by the agency with charges of taking advantage of a protected class. When a government bureau already wields that kind of unfettered power, you know they’re going to be with us forever. As it turns out, the path to eternal life doesn’t lead to faith, it

leads to Washington. All it requires is a little regulatory power and massive amounts of our money.

CFPB Director Richard Cordray and his merry band of lawyers continue to rely on the hocus-pocus theory known as “disparate impact,” which they are only able to do because a case that involved a challenge to this theory was settled before the Supreme Court could rule on it. If the justices had ruled that this made-up theory could not be used in the enforcement action related to the case — which they were expected to do — it would have destroyed the CFPB’s use of disparate impact to identify violations of the Equal Credit Opportunity Act (ECOA).

## SELF-IMPOSED MEASURES

Two industry associations have developed measures dealers can choose to adopt in the hopes of being prepared for any inquest:

- The National Automobile Dealers Association’s **Fair Credit Compliance Policy & Program**, announced shortly prior to this year’s convention, may be our last hope of preserving dealer discretion in marking up interest rates. David Westcott and the NADA have fought the good fight, but even they are now recommending dealers utilize a self-imposed ceiling on rate markup. Under this proposed plan, each dealership would establish a percentage ceiling for its dealer reserve and then, if it dips below that level on a particular transaction, document in writing reasons for the downward deviation.

Unfortunately, there is no guarantee this will satisfy the CFPB gods.

- The Association of Finance & Insurance Professionals (AFIP) already offers a two-part **Dealer Participation Rate Modification Form**. One copy is retained in the deal jacket and the other sent to the funding source for their records, allowing you to document any time there was a deviation from the dealership’s pre-established rate participation.

You are under no obligation to adopt these measures, but one thing is for certain: It’s time to get your F&I house in order. Here are three key steps you must take and best practices you need to focus on right now if you wish to keep from running afoul of the omnipotent consumer protection gods:

## 1. IMPLEMENT A WRITTEN POLICY FOR QUOTING PAYMENTS

It’s critical that every dealer ensures a consistent and compliant process is used when quoting payments from the desk. You also must have a written policy in place to help prevent the potential for disparate impact. That should include the required use of an average interest rate for new and used vehicles prior to a credit bureau being obtained and the utilization of a rate matrix after the customer’s credit bureau has been obtained.

**Best Practice:** Require the use a credit bureau-driven rate matrix to quote payments from the desk, with a fixed F&I markup of no more than 150 to 200 basis points. Sales managers must always use this rate matrix



rather than the lender approval screen to determine the interest rate used to quote monthly payments. The same interest rate markup must be utilized on every deal — no exceptions! — whenever a payment is quoted in the sales process prior to the financing being approved.

All payments quoted prior to lender approval should also include the disclaimer “With Approved Credit” or “On Approved Credit.” The customer’s actual payment and APR can only be determined upon approval by a particular finance source, and the same fixed markup applies in the F&I office. Any downward deviation from this interest rate markup for any reason must be recorded on the AFIP’s Dealer Participation Rate Modification Form, to be filled out, signed and dated by the individual making the deviation.

**2. ELIMINATE PAYMENT PACKING**

Your written policy for quoting payments must also document there is no payment packing when payments are quoted by anyone at the dealership. If you fail to include that rule, your four-square might just get you three squares ... and a cot. The National Association of Attorneys General (NAAG) defines payment packing as:

- Using an undisclosed short term to quote the payment, then stretching out the term while keeping the payment the same,
- Quoting a payment more than \$10 above the quote you expect on the callback,
- Including undisclosed products in the payment quote,
- Using an interest rate at which the dealership cannot reasonably place the paper (i.e. quoting a customer with an 812 FICO score a payment using an APR of 20%) or
- Artificially increasing the payment by any amount, otherwise known as “leg.”

**Best Practice:** Implement an internal written policy that complies with NAAG guidelines—payments are only quoted with products included if the customer actually requests the product, and that artificially inflating a payment or including “leg” in a payment in any form for any reason is unacceptable.

Sales managers are to quote payments with no undisclosed products included, with a maximum payment range of \$5 based on the dealership’s rate matrix. Disclosure

**WHAT IS DISPARATE IMPACT?**

Disparate impact refers to the unintentional practice of creating policies that create an adverse impact on minority members. The term became notorious among auto dealers last year, when

the Consumer Financial Protection Bureau claimed that U.S. dealers and lenders were causing minority members to pay more for vehicles than nonminorities. Dealer associations and

advocates countered by charging the CFPB with using an unreliable and largely secretive system of analysis to determine the presence of an adverse impact on minority car buyers.



Dealers who charge certain customers more for F&I products than others — intentionally or otherwise — are putting themselves at risk in the event of a regulatory inquest. You and your finance team should establish pricing and profit parameters for every F&I product you sell.

of the term and APR used to calculate any monthly payment must be included whenever a payment is quoted during the negotiation process.

**3. DETERMINE F&I PRODUCT PRICING PARAMETERS**

You must establish written pricing and profit parameters to minimize the disparity between what different customers pay for the same F&I product. As the Gunderson case a few years ago clearly illustrated, just because you can make \$5,000 on an etch policy doesn’t mean you should. With finance reserve and F&I profits already in the CFPB’s spotlight, every dealer has to establish the maximum profit they will allow an F&I manager to make when selling a particular product. There is nothing wrong with making a fair profit on every F&I product, but remember: Pigs get fat, hogs get slaughtered.

Establishing pricing parameters will not only ensure compliance, it will improve customer satisfaction and reduce chargebacks.

**Best Practice:** Implement written job descriptions and a code of conduct for F&I personnel that sets forth dealership expectations and establishes the maximum (and minimum) markup for each F&I product. This will help prevent taking advantage of protected classes and the potential for disparate impact, which is not only a primary focus of the CFPB, it’s the right thing to do.

In my experience, trying to negotiate your fate with an omnipotent power that has eternal life doesn’t work very well, especially when it is a government agency accountable to no one. All any of us can do in this life is try to follow a prescribed written code of conduct and prepare the best we can for that inevitable judgment day we all face. ... That, and vote.

**ADM**



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