**ANSWERS**

1. d. It has long been the law that lending fees charged by subprime credit sources may not be passed along to the customer directly or indirectly. Any attempt to do so that can be identified such as listing the fee for the customer to pay on the buyers order, or increasing the price of a vehicle to pay for the fee, or even telling the customer the vehicle could not be further discounted because of the fee the dealer had to cover, can lead to a claim for violation of the Truth in Lending Act.
2. **False.** Advice to a customer on ways to avoid a cash reporting transaction is structuring, and that is illegal. Even if the customer asks whether the cash will trigger a reporting requirement, the answer of the dealership should be “We follow the law,” rather than confirmation that the customer is involved in a reportable transaction.
3. **False.** It has been nearly a quarter century since the Federal Reserve Board expressed its preference for disclosure of negative equity, and there has been no change to its position. According to the FRB, the negative equity must be netted against the down payment, separately disclosed on the RISC as an amount paid to another to satisfy an outstanding obligation, or a combination. Since dealers seldom wish to reduce the down payment because a sizeable down payment is often important to a customer’s ability to qualify for credit or to qualify at specific rates, dealers seldom wish to net negative equity against the down payment. As a result, the proper method for handling it is to show it on the RISC as an amount paid to another to satisfy an outstanding obligation.
4. **False.** Selling a used vehicle “as is” is no protection against a lawsuit if it has known, undisclosed repaired damage that could affect its structural integrity or useful life. Courts have ruled that a dealer who sold a vehicle knowing of such prior damage had an obligation to disclose it. Failure to disclose repaired damage on a used vehicle that could affect its structural integrity or useful life can be the basis for a lawsuit for fraud and for violation of the state unfair and deceptive acts or practices statute. Sale of a vehicle “as is” means simply that express and implied warranties are waived. Sale of a vehicle “as is” does not immunize a dealer from lawsuits for certain common law or statutory claims. If you sell a used vehicle that has repaired damage that affects its structural integrity or its useful life, disclose the nature and extent of the damage. Selling it “as is” may protect the dealership from a breach of warranty claim, but it will not protect the dealership from a lawsuit with more serious claims.
5. **False. There is no such thing as an internet special price.** Advertising on the internet is just that: it is advertising. Under the law, if a dealership advertises a price for a vehicle, that price should be made available to customers whether or not they mention the internet special advertising. That is why sales staff should understand what you are advertising. That a sales manager did not know that a vehicle was being advertised at a price lower than that at which it was sold to a customer who did not know of the advertising will not insulate the dealer from a lawsuit if a customer later discovers the lower advertised price.
6. d. If an extended service agreement is to be exempt from disclosure as part of the cost of credit under the Truth in Lending Act, it must be (i) voluntary and (ii) its price must be fully disclosed. Any requirement to buy an extended service agreement will require that its cost be calculated into the cost of credit as shown on the RISC. Therefore, a dealer should not require that a customer buy a separate extended service agreement under any circumstances.
7. **False.** The best way to protect the company is to carefully follow the law. The I-9 must be completed within three business days of the hire and **the employee must complete section 1 of the I-9**. The employee must present eligible documents – either a document that establishes an identity and employment eligibility (I-9 list A) or that establishes identity (I-9 list B) and employment eligibility (I-9 list C). **It is the choice of the employee** to provide a document either from list A or one document from list B and one document from list C.
8. b. The Truth in Lending Act allows pick up payments provided they are not in more than four installments, and they do not include interest. Consequently, you should not charge interest on a promissory note for the down payment for a vehicle. If you answered that you should not take a promissory note for a down payment, you are correct to be careful. Based on the indirect lending agreements with your finance sources, you likely represent and warrant that the down payment has been fully collected before you assign the RISC. Therefore, while pick up payments are allowed by law, you should be careful to be sure that you have been fully paid before assigning the RISC, or the credit source may have the right to require you to repurchase the obligation.
9. **True.** However, that a dealer need not keep signed credit authorizations is silly. While the law does not require signed authorization to access a customer's credit report, it is a best practice. Otherwise, how do you prove you accessed it for a permissible purpose? If the customer claims you accessed it to determine whether it was appropriate to allow a test drive – not a permissible purpose according to the FTC – how do you counter that? If the customer denies that he or she was ever in your dealership, how do you counter that? While the law may not require a signed authorization, it is a best practice to always get one and maintain it.
10. d. You should keep credit authorizations for both completed transactions and those that were never completed, or so-called dead deals. You are more likely to be challenged about your right to access a credit report by a consumer with whom you did not complete a transaction than one with whom you did complete a transaction. The statute of limitations is two years from discovering that a credit report was accessed, up to five years. That is why we recommend that you keep all credit authorizations for five years.
11. **False.** Only charge fees specifically permitted under the law of your state, whether legislatively permitted or as agreed with regulators. Anything else is asking for trouble. The FTC is on a campaign against dealer add-ons labeling as “junk fees” products and services that unquestioningly benefit consumers such as extended service agreements and GAP. Charging fees not permitted by law can lead to a class action for violation of Truth in Lending or other statute (and that is true even in Virginia that does not provide for class actions for state claims but where federal courts permit class actions for federal claims). Even when the claim is baseless, it can cost you thousands of dollars to defend and settle a class action.