



COMPLIANCE

Compliance and the Dealership in 2018

Highlights and Suggestions for New Year Planning

Some automotive retailers are looking at regulatory compliance through a new lens these days: not as a duty or burden, but as a best practice to protect their customers and businesses. Auto dealers are beginning to feel an urgency to adopt the right mentality and practices for compliance to protect their customers and assets under current state and federal laws.

Experience teaches that the best outcomes are achieved when the dealership owner/operator and general manager make compliance practice a part of their culture and ensure that the right oversight and accountability of their processes, practices, and people is happening. No dealer embracing compliance today should ever doubt their store's ability to correctly defend actions should litigation occur or regulatory agents descend upon them unexpectedly.

Best practice, today, includes using compliance systems that provide reporting and tracking accountability to monitor business activities. Various technology systems have simplified how dealers can comply with various aspects of compliance, including:

- Newer F&I platforms that improve aftermarket products presentation, so consumers better understand how vehicle service contracts, GAP, or tire and wheel, for instance, may benefit them. This technology also makes the F&I process transparent, an outcome compliance seeks to drive.
- E-signature capture and electronic recordkeeping and storage that help dealers comply with consumer identification protection laws like the Safeguards Rule. Paperless document capture systems eliminate or reduce exposure risk associated with paper service repair orders, deal jackets, and other instruments containing consumer personal and financial information.
- Compliance management systems (CMS) that combine software and human expertise to manage the many and varied compliance laws that regulate the car business and ensure consumer financial protection. A CMS includes ownership and management oversight, preparation and regular auditing of required compliance programs and documentations, and tracking and reporting mechanisms for responding to consumer complaints. Any CMS program must include a requirement to train employees on the dealer's compliance policy and procedures.

Technology, while a useful and convenient tool, may not always provide the right perspective and depth you desire for your business. Individuals who understand and have experience with both auto dealership operations and regulatory law and practice can scrutinize compliance records, evaluate workspace hazards, review F&I practices, and provide education and training to help staff understand the compliance obligations that govern their jobs and how to comply with them. Compliance is grounded in three essential basics:

1. Know the laws regulating your business.
2. Train personnel working in the areas affected by these rules how to comply with these standards and what process changes these rules will require.
3. Document what you have done and currently do to comply with regulations—from the FTC Information Safeguards Rule to Truth in Lending Act (TILA) and Occupational Safety and Health Administration (OSHA) workplace regulations.

Whether you consider compliance fulfillment at your dealership a convenience or a complication, it is a necessity. To neglect compliance puts the dealership, its ownership, and its customers at risk of resource theft, litigation, class action lawsuits, negative publicity, and a damaged reputation.

Given the dangers, it's important to determine and consider the essential compliance risks. We consulted online resources and interviewed leading dealership compliance experts to provide the following information on eight of those essential risks. The compliance experts we consulted include Gil Van Over, founder and president of gvo3 & Associates; Terry Dortch, founder and president of Automotive Compliance Consultants, now a KPA company; and, Erik Nachbahr, president of Helion Technologies, an information technology managed services provider for auto dealerships.

Here are eight essential compliance areas to give your attention in 2018:

1. Improper Disclosures

Improper price disclosures remain an issue in the industry. Using menus helps alleviate this risk. Menu technology eliminates subjectivity in the products presentation by delivering price transparency and product-value clarity to consumers. They deserve to know the price they will pay for any add-on item they are considering and how that purchase or those purchases will adjust their payment or lease terms. Dealerships can also have customers sign the accepted product disclosures as part of the menu process.



Disclosure should also include what effect the purchase of F&I products will have on the monthly payment. The difference between the base payment and the final payment with add-on products is known as the “payment walk,” and it should be presented to purchasers.

Proper disclosure complies with Reg. Z and TILA. Proper disclosure means aftermarket product pricing is individually disclosed and not bundled. Time pressure can tempt F&I to bundle to reduce negotiation time, but this practice shortcuts customers’ rights to consider each product and how its purchase will modify the total transaction cost and monthly payment.

The Equal Credit Opportunity Act (ECOA) requires creditors who take “adverse action” on consumer credit applications to provide a “statement of reasons” for the adverse action. Some F&I systems trigger the distribution of adverse action letters for compliance, giving dealers the assurance this paperwork was executed.

2. Fraud

Both bank and consumer fraud continue to be a problem in the vehicle retail business. Van Over of gvo3 & Associates believes fraud will be one of 2018's biggest challenges for dealerships and is advising clients to sharpen oversight of business practices and departments where this fraud can most easily be perpetuated.

- Bank fraud includes credit application manipulation, straw purchases, and falsified down payments that defraud the bank. It also includes power booking or inflating the invoice price quoted to the lender to obtain more funding than needed to pack in aftermarket products.
- Consumer fraud includes payment packing, which occurs in the showroom where dollars are added to the net payment on the worksheet, enabling F&I to pack aftermarket products into the deal without it appearing that the addition of those products is adding cost to the consumer.



One area of fraud that is often overlooked is when a person makes a perceived attempt to circumvent a finance source's underwriting guidelines. For example, many finance sources require a previous address or employment information if the customer has less than two years' stability in either area. Some F&I managers will increase the customer's time frames to two years to avoid having to provide previous information. These efforts are an attempt to circumvent the finance source's guidelines.

3. Identity Theft

Identity theft can be external or internal. Although many dealerships have the proper policies in place and the software programs to determine potential thieves, employees are sometimes lax in the execution of these policies or they just arbitrarily ignore any failing scores determined by the software.

Managing nonpublic information (NPI) records is mandated by the Federal Trade Commission (FTC) and the Gramm-Leach-Bliley Act (GLB) or Privacy Rule. Although the Privacy Rule is enforced under GLB, that rule simply requires a dealer to provide a privacy notice to inform the consumer what the dealer intends to do with NPI. While, strictly speaking, a dealer's sole requirement under GLB is for NPI received in the sales process, it is becoming a best practice to protect NPI collected in the service and parts departments as well.



Also pertinent to identity theft prevention is compliance to the federal Safeguards Rule, which requires financial institutions under FTC jurisdiction to have measures in place to keep customer information secure. Besides developing their own safeguards, companies covered by the Rule take steps to ensure that their affiliates and service providers safeguard customer information in their care.

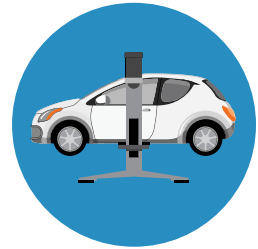
4. OSHA 300 Logs

Under OSHA's recordkeeping regulation, certain covered employers must prepare and maintain records of serious occupational injuries and illnesses using the OSHA 300 Log. Dortch of Automotive Compliance Consultants believes dealers will see more attention to these logs from OSHA in the new year. Should OSHA show up at your door, this log is likely the first document they will request—and your first opportunity to demonstrate your commitment to regulatory compliance and employee safety.



5. Lift Maintenance

Annual inspections should include the hydraulic system, valves, hoses, cables, chains, pins, spindles, electrical system, ramps, runway stops, locks, and safety features of your lifts. A qualified individual with extensive knowledge of all the various kinds and manufacturers of lifts should conduct these inspections. Be sure to compile and properly maintain all lift maintenance records. Review these maintenance documents first, before other inspections. Correct any areas of concern so lifts are in good working order should OSHA suddenly stop by. Lift operators should receive refresher maintenance and safety training. People who operate lifts must be trained on the lift they use. Keep records of all training.



6. Data Security

The likelihood that auto dealerships will experience a customer data breach is high, cautions Erik Nachbahr, president of Helion Automotive Technologies. Companies with fewer than 500 employees are most vulnerable with a 75% breach rate, notes a July 2016 report, “IT Security at Small to Mid-Size Businesses (SMBs): 2016 Benchmark Survey.” Be alert to:



- Hackers planting malware inside of social media posts and emails designed to lure employees of organizations to click on links. If these links are clicked, the malware downloads onto the employee's computer and may compromise the entire organization's network. Security software and firewalls often cannot prevent this type of attack.
- Cyber criminals inserting malware and using surveillance software to track keyboard strokes—capturing nine-number-sequence social security numbers and login and password data to steal customer financial information or gain access to business and customer financial and other accounts. This type of attack can be prevented with two-factor authentication. Contact your financial institutions and credit bureaus to explore this option.
- Poor maintenance of your network—specifically, failure to update systems routinely to ensure upgrades, security patches, and maintenance occur. These updates and new features should also be pushed to device drivers, those applications that enable interaction between your computer and attached devices, such as printers, displays, keyboards, etc. Also, consider switching to a cloud-based/SaaS solution where these types of updates happen automatically. Nachbahr believes 95% of dealerships aren't updating regularly, even though this single step is one of the most important security measures you can take to protect your dealership.

7. EPA Compliance

The federal Environmental Protection Agency regulates how your dealership handles and disposes of waste products that may harm the environment. These products include fluids, chemicals, and waste materials, such as shop towels, and disposal regulation includes how the service department manages shop floor runoff, spill cleanup, storage tanks, and used tires and batteries. EPA regulation also covers numerous other items the EPA defines as hazardous materials or materials dangerous to ecosystems, that require EPA-specified disposal. Service department EPA compliance covers most concerns. Your dealership will need an employee who serves as a first-stop resource for helping you through the maze. A place to start is with an EPA compliance audit of the service department and related facilities, including body shop and storage areas.



8. Form 8300 Compliance

Anytime your dealership receives \$10,000 in cash, whatever the currency—dollars, euros, even Bitcoins—for any single transaction or related transactions (as defined in the first link below), you must file a Form 8300 with the Internal Revenue Service. The purpose of Form 8300 is to assist law enforcement in its anti-money-laundering efforts. By filing Form 8300 when cash transactions meet Form 8300 stipulations, the audit trail helps law enforcement investigate possible tax evasion, drug dealing, terrorist financing, and other criminal activities, according to the IRS.



The nuances of this IRS regulation are challenging, so please do not consider these highlights as complete. Fortunately, the IRS has two downloadable documents you can review: **IRS Form 8300 Reference Guide** and **Report of Cash Payments Over \$10,000 Received in a Trade or Business - Motor Vehicle Dealership Q&As**.

Compliance is an all-season standard that every auto dealer is encouraged to embrace and practice. Doing so protects your business, employees, and customers. Best outcomes occur when dealership management instills and holds the entire team accountable for embracing and practicing compliance oversight and accountability.

¹ Osterman Research, Inc, July 2016, IT Security at SMBs: 2016 Benchmarking Survey
http://pages.cyren.com/rs/944-PGO-076/images/Benchmarking_Survey_IT_Security_at_SMBs.pdf



Autosoft provides a complete dealer management system (DMS) that has received the Highest Rated DMS award from DrivingSales three years in a row. With affordable month-to-month contracts, Autosoft's DMS improves processes and reduces operating costs in over 2,000 franchised automotive dealerships. Easy-to-use and innovative software helps dealers focus on their customers' needs.