

# SubPrime Auto Finance News

## EFG Companies: Are You Frustrated with CFPB's Compliance Guidelines?

By Steve Klees, EFG Companies  
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IRVING, Texas — If you attended last month's National Automobile Dealers Association Convention & Expo or have simply been following industry news, you know that compliance is this year's hot topic.

In the first quarter of 2013, the Consumer Financial Protection Bureau threw a monkey wrench into standard auto financing practices, causing everyone to rethink the way they do business. Regulators announced their intention to aggressively seek out lenders whose practices could be deemed discriminatory under Regulation B from the Equal Credit Opportunity Act (ECOA).

This regulation prohibits both intentional discrimination and practices that seem neutral but result in negative impact to customers in a protected class. According to the ECOA, customers could fall into a protected class based on their race, color, religion, national origin, sex, marital status, and age, among others.

While the CFPB stated that it would commence audits leading to legal action against lenders, their guidance bulletin left a lot to be desired. In essence, regulators instructed lenders to either:

- Eliminate dealer pricing discretion
- Constrain dealer pricing discretion by monitoring dealership practices and using "controls" to force dealerships to adjust their practices.

Throughout the rest of 2013, lenders and dealers alike continued to ask for clarification on what those "controls" should be and for CFPB's auditing process.

Almost a year has passed with limited clarification. Now, NADA has come out with guidelines on how dealerships can remain compliant. They also provide two options:

### Option One

Establish a means of dealer compensation where the establishment of finance income does not vary on a customer-by-customer basis. To accomplish this, dealerships would charge each customer a fixed rate. This rate could be a flat fee, a fixed percentage of the amount, or a fixed number of basis points over the wholesale buy rate.

While this option makes it very easy to remain compliant, it hampers the dealerships ability to offer competitive pricing, which also limits the customer's ability to shop for the best value.

### Option Two

Start with option one, by establishing a pre-set amount of compensation, such as with a fixed number of basis points over the wholesale buy rate. Then, allow for downward adjustments of that amount should a pre-determined condition occur, such as:

- The customer is not able to make the monthly payment based on the preset amount.
- The customer has a better offer somewhere else.
- The dealer has a promotional offer extended to all customers.
- The transaction is eligible for a lower interest rate from the manufacturer or other finance source.
- The customer is eligible for a dealer incentive program.
- Documented inventory reduction considerations.

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Option two gives dealerships more leeway to negotiate, but necessitates extensive dealership practices to ensure discrimination as defined by the CFPB is not allowed.

What may be keeping you awake at night is that all transactions that deviate from the published policy must be recorded and documented - and we all know how meticulous F&I departments are with details.

The rest of NADA's guidelines include steps to ensure this option will keep dealerships compliant with Regulation B from the ECOA.

### What This Means for You

While these guidelines were meant for dealerships, they offer an excellent starting point for lending compliance practices, as well. As your dealerships determine which option is best for their business, it is equally important that you complete your due diligence. So ask yourself:

- Do I have written compliance procedures?
- Do I have standardized forms for indirect consumer loans?
- Do my employees who interact with dealerships undergo formal compliance training at least once a year?
- Do I monitor and document all training, forms and compliance efforts?
- Do I have a compliance officer or department who is not in any way involved in the loan approval process?

Each one of these elements is vital in explaining pricing disparities that might lead to potential violations. Keep these suggested guidelines in mind when you consult your legal counsel regarding your compliance initiatives. In addition, consider including compliance in your discussions with your dealership partners. Formalize a process and accountability system for your employees should they discover a discrepancy with a dealership. Implement a formal auditing process for both your institution and your dealership partners.

You probably already have many of these measures in place, but haven't sufficiently connected them with CFPB's guidelines. Consulting with your legal counsel is the best place to start taking the frustration out of CFPB compliance.

With over 36 years in innovating and implementing proven go-to-market strategies in the dealership space, EFG Companies understands the balance between ensuring complete compliance, and retaining and building profit margins. That balance lies in the value proposition.

*Steve Klees is the senior vice president of specialty channels with EFG Companies. Klees has a wealth of knowledge in lending, F&I, sales, and product management expertise. Klees started at EFG as a national sales manager where he increased WALKAWAY business to \$1.5 million. He also played a key role on the team that closed Hyundai Assurance and a leadership role in the launch to Hyundai's 780 dealerships across the nation. Prior to EFG, Klees was the vice president of sales for GE Capital where he managed a 140-person sales force. He also directed the national training program for Resource Automotive and served as a trainer for franchised dealers at the NADA Dealer Academy.*

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