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## 2009 Ill. DOC fee max is \$151.65

The maximum amount that Illinois dealers can charge in 2009 for documentary preparation fees is \$151.65, the Illinois attorney general's office announced Dec. 17.

The \$1.65 increase over the 2008 maximum fee reflects a 1.1 percent rise in the federal Consumer Price Index for the 12-month period ending Nov. 30. The index is tracked by the U.S. Department of Labor. As always, the DOC fee is taxable and must be substantiated upon request by the attorney general's office.

The CATA developed a poster about the DOC fee that dealer members can post. On the poster, the DOC fee amount is left blank for dealers to fill in; any amount up to the maximum allowed may be charged, but all customers should be charged the same amount. Systematically charging one group but not another—all males but no females—could bring charges of profiling.

Two copies of the poster are included with this newsletter for dealers. **IMPORTANT:** The new maximum fee cannot be charged before Jan. 1.

## Automaker concessions win them up to \$17.4 billion in financing

Saving the companies from bankruptcy filings, President Bush on Dec. 19 approved \$13.4 billion in short-term financing for General Motors and Chrysler, and another \$4 billion loan in February if certain restructuring conditions are met.

"The terms of the loans," Bush said in the announcement, "will require auto com-

panies to demonstrate how they would become viable. They must pay back all their loans to the government and show that their firms can earn a profit and achieve a positive net worth.

"This restructuring will require meaningful concessions from all involved in the auto industry — manage-

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## Be wary of vendors who offer 'free' ID theft protection products

BY SALLY SALTZBERG

Many Chicago area dealers have been approached recently by dealer services companies offering what seem like terrific deals on compliance tools to meet a number of new federal requirements like the FTC's new Red Flag Rules.

These companies claim that they can provide a compliance manual, identity theft audits, employee training, and all of the necessary updates a dealer needs to be in compliance with the rules.

In exchange, all the dealer has to do is to sell his identity theft protection program to every new- and used-car customer for a "wholesale" price, the cost of which varies by dealership.

You even might have been told to pre-print the identity theft package and its cost on your buyer's order so that customers are more likely to buy it.

But don't be fooled. The practice is likely to be considered a violation of state and federal law.

Here's why:

First, the Federal Trade Commission and other government agencies view identity theft protection products with great suspicion. Many so-called identity theft products are of little or no value to the very small percentage of consumers who end up actually trying to use the product. In fact, most of the services offered by identity theft companies are available free to consumers.

But more important, no matter what services the identity theft company claims to provide and who provides that service, when a consumer complains to the FTC or the attorney general about the services, it is the dealership that sold the product that likely will be on the hook for any problems.

Even worse, some of the companies that have been approaching area dealers appear to be contracting out the identity theft compliance portion to another entity — one whose conduct and

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## ID theft

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adherence to the law are entirely unknown. Some of these dealer service companies even reserve the right to change the identity theft service provider at any time.

Another reason not to fall for this pitch is that you cannot pass off the cost of your Red Flag compliance (or any other part of your overhead) by labeling it as something else and then selling it to your customers. That's deceptive and a clear violation of federal and state consumer fraud laws. You could find yourself potentially liable to each consumer for damages and attorneys fees.

Even worse, if the FTC knocks on your door and asks to see your Red Flag compliance manual, when they ask you what it cost and who prepared it, you would have to explain that it was "free" as long as you sold a sufficient number of identity theft programs. That's not a position you want to be in when talking to the FTC.

In tough economic times, no dealer wants to incur additional costs for compliance with federal law, but the long-term cost of having to respond to an FTC inquiry regarding your sale of identity theft packages or the cost of defending a consumer fraud lawsuit could far exceed any savings.

*The author, a partner with the Chicago law firm of Loftus & Saltzberg, P.C., formerly served as chief of the Illinois Attorney General's Consumer Protection Division and as an attorney with the Federal Trade Commission.*

## Relief

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ment, labor unions, creditors, bondholders, dealers, and suppliers."

John Phelan, who is chairman of the CATA and who retails Chevrolet and Dodge and two import lines, welcomed the federal relief for the domestic automakers.

"This is the first step toward restoring consumer confidence," Phelan said. "When you have the government declaring its confidence and commitment to U.S. auto manufacturers, it helps reassure the American public that domestic automakers will be around for the long term. This sends a clear message: Consumers can now consider any car from any manufacturer with confidence."

In earlier letters, the NADA asked for the Small Business Administration to provide greater access to working capital for dealers and referenced the importance of a healthy dealer network to the success of any government intervention.

"A well capitalized, financially sound dealer network," the letters stated, "is essential to the success of every automobile manufacturer, especially a manufacturer facing economic challenges."

## Form 8300 written notice due Jan. 30

A Jan. 30 deadline looms regarding Form 8300, the Internal Revenue Service document used for sales transactions involving cash payments over \$10,000.

As a merchant, any dealer who filed a Form 8300 with the IRS in 2008 must notify the related customer in writing by Jan. 30. On-the-spot notification does not relieve merchants of the written obligation. An example of notice wording:

"Dear Customer: We are required by the Internal Revenue Service to report transactions involving more than \$10,000 in cash and "cash equivalents," under the provisions of 25 U.S.C. 60501. We filed a Form 8300 with the IRS on (mm/dd/2008), indicating that you provided us with (dollar amount) in connection with the purchase of a (Year/Make/Model). We want you to know that we have complied with this federal reporting requirement. Again, we thank you for your patronage."

A dealer's legal advisor should review the exact wording of the notification.

The IRS revised Form 8300 in March. Be sure the latest version is used. All Form 8300 correspondence between dealers, customers and the IRS should be documented using certified mail; and dealers should keep copies of the correspondence.

## In Memoriam

Max Cohen, 77, an area new-car dealer until he retired in 2003, died Dec. 12.

Mr. Cohen was an Oldsmobile salesman from the late 1950s until he became an Oldsmobile dealer in the early '70s. He became a Cadillac dealer in 1982.

He is survived by his wife, Anida "Cookie" Cohen; one sister; one nephew and one niece; and many great-nephews and great-nieces.

Contributions may be made to the Chicago Academy for the Arts, (312) 421-0202, the Service Club of Chicago, (312) 220-9600, or the Chicago Zoological Society and Brookfield Zoo, (708) 688-8400.

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Listings of items for sale are subject to the approval of the CATA. Candidates for employment must submit a full resume to the Editor.

Review past editions dating to 1998 or search by subject at <http://cata.drivechicago.com>.

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## The 7 deadly sins of F&I

The combination of the current economic conditions and the modern litigious environment makes paying close attention to regulatory compliance and best practices a must for dealers across the US.

The Seven Deadly Sins of F&I are the seven most common errors that cause dealers to become the targets of media exposes, class-action lawsuits, and high-dollar regulatory fines.

### 1. The Word “Best”

You can NEVER use the word “best” when discussing the finance charge (APR). It isn’t a sin (or against the law) to post a reasonable markup over the buy-rate. The F&I practitioner (on behalf of the funding source) solicits, negotiates, processes and discloses the installment sale agreement, and as such, should be fairly compensated for this work.

But to a reporter or a plaintiff’s lawyer, the word “best” implies that the rate quoted is either the dealer’s buy-rate or the lowest rate known to man. To the F&I practitioner it’s the buy-rate, plus a couple of points.

You have no idea what funding resources are available to the customer, and as such simply have no way of knowing what the best rate for that customer might be. There is nothing wrong with telling customers that they are free to explore whatever rates are available to them, but if they want to finance where they buy the car, the rate quoted is the rate available. If a customer poses the question, your response should be, “If you wish to finance here, this is the rate that’s available.” And that’s it.

### 2. Forging Signatures

Under no circumstance should a customer’s signature be forged on any purchase document, funding document, or any other document relating to the acquisition of an automobile. Anyone who does this is committing a felony.

### 3. Overstating Income

Overstating the customer’s income on a credit application may convince someone to purchase the deal (and increase the amount of your paycheck in the immediacy). Unfortunately, it won’t generate the extra income necessary for the customer to make the monthly payments. It’s a recipe for repossession and charge backs — and it is against the law.

### 4. Non-Compliant Menu Sales

Human nature being what it is, what was intended as a sales aid is now being used as a scam. Menus are being configured to hide the loaded payment or altered after the fact to document acceptance of products the customer did not agree to buy. Since an altered menu becomes a

documented lie, when handed to the jury as Plaintiff’s Exhibit 1, the results are predictable.

Within this same vein, the more basic question might be, “Is the menu I’m using legally compliant to start with?” Unfortunately, there isn’t a single statute to consult to test compliance. There are, however, very specific standards for determining what constitutes acceptable business practices. If a menu is being employed, it is recommended that a copy of it be kept on file with a letter from a qualified attorney affirming it has been thoroughly reviewed and found to meet the established legal and fair practices standards.

### 5. Packing Payments

The payment quoted a customer during the purchase process must be limited to the agreed-to cash price (or trade difference) of the vehicle (and, if applicable, the taxes and fees) at a representative APR and term — and nothing more. Regardless of how sophisticated or subtle, any additional margin will be viewed as a deceptive practice (even if it is simply the result of non-duplicitous acts like rounding up or down for quicker math). Simply put, the government wants the customer to be told how much the car will cost, not the price of the car plus a hidden \$15 a month to offset the cost of a VSC.

It is worth noting that the recently enacted California Car Buyer’s Bill of Rights specifically addresses the practice of payment packing. Equally significant, the text is purposefully broad in stating exactly what it is. It is left to the courts to determine what constitutes a packed payment.

In addition, it is recommended that the APR used in this situation be based on the average retail rate charged for that class of buyer (new/used, prime/non-prime) in the store over the past 90 days. This practice gives the dealer a statistically verifiable and legally defensible basis for the rate quoted. Also, the term used to quote payments should be representative of the repayment periods for similar deals.

### 6. Non-Compliant Disclosure

The changes to the Official Staff Commentary to Regulation Z regarding the proper form of contract disclosure are quite specific. The customer must have ample time before being asked to sign the contract to review its contents. You cannot pull the installment sale agreement out of the printer, place it in front of the customer, and start reciting the TILA disclosures. The new mantra is that the customer must hold (to review), not just see, the

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## NADA's free hotline helps dealers

In response to the challenging business conditions facing new-car and -truck retailers, the National Automobile Dealers Association has launched a new hotline phone service to help members seeking assistance with their financial and operational issues, including:

- Frozen capital
- Cash flow
- Absorption
- Warranty administration
- Accounts receivable
- Aged inventory
- Capitalization concerns
- Expense reduction
- Internal processes

The NADA has encouraged its members to use this free, confidential service, if assistance is required. Dealers can schedule an appointment with one of the NADA's industry-leading consultants at [www.nada.org/Lifeline](http://www.nada.org/Lifeline) or (888) 672-5147.

## CATA update

### 20 Group for service managers

By JIM BUTCHER

ILLINOIS AYES MANAGER

The next 20 Group meetings for Service Managers is approaching. Group 1 will meet Jan. 13-14, and Group 2 will meet Jan. 15-16.

Each group is scheduled for their normal day and a half meetings. All classes begin at 9 a.m., and breakfast and lunch will be provided.

If you have not yet participated in these meetings, you are invited to do so on a trial basis. January meetings are open to those service managers interested in the 20

Group format. This is your opportunity to participate in valuable topics for today's service, like how to improve gross per technician, how to improve sales gross, and how to improve hours per repair order.

We guarantee you will take home information pertinent to making your service department more successful.

If you want to attend this meeting on a trial basis, or if you would like more information regarding the 20 Groups for Service Managers, call me at (630) 234-0778.

## F&I

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contract prior to its being disclosed.

If an installment sale contract has been processed (the blanks have been filled in) but it has not been disclosed — and the customer wants to take a copy with him for review — he is to be given one. If the contract has been fully disclosed but the customer doesn't want to sign it — and wants to take a copy with her — she is to be given one. Also note that some states require that the customer must leave with a copy of the contract signed by an officer of the dealership.

### 7. Flying Blind

In a 30-day period, an F&I practitioner will execute more contracts than most lawyers. The F&I process is so awash in a sea of paper, it's easy to forget that the products and services being solicited, negotiated, processed, and disclosed are, in fact, binding legal agreements, and as such, must satisfy the requisites for what constitutes a legal contract.

If the F&I practitioner is the per-

son charged with consummating the contractual agreements relating to the purchase of the vehicle, its funding arrangement, and any owner indemnification products, it should be assumed that this individual is fully cognizant of the terms and conditions found in the documents he or she is asking the customer to sign.

The question the reader needs to answer is "If I am in court and under oath, could I accurately answer questions regarding the covenants found on an installment sale contract, the terms and conditions in the body of a vehicle service contract or GAP agreement, or the good health standards on a credit insurance certificate?" If you couldn't, you're placing your employer and yourself in a highly vulnerable situation.

It is recommended that the F&I practitioner read the binding documents used in the course of business, then write a full explanation of them as he would explain it to a customer or the plaintiff's bar. The interpretations should be passed to the dealer or his or her lawyer for a critique.

Knowing the parameters of the

agreements not only will help avoid an inadvertent error, it also will clearly define what can be done. It's easier to wire marginal deals if there is a clear understanding of the rules governing the transaction.

### Abstinence is better than absolutism

It might seem that the miscreant acts noted above are too obvious to mention. However, the Seven Deadly Sins where drawn from actual lawsuits filed against car dealers. Since F&I is one of those occupations in which naivety will get you into as much trouble as dishonesty, preemptive care should be taken not to be found wanting on either side of this equation.

The regulatory knowledge and ethical standards that comprise it make the AFIP Certification Program the preferred defense for prevention-conscious dealers.

For more information on the AFIP Certification Program or for marketing copies of this article, go to [www.afip.com](http://www.afip.com) or contact the Association of Finance & Insurance Professionals at (817) 428-2434.