

What Are These Laws We Have to Worry About, Anyway?

July 25, 2017 | [Thomas B. Hudson](#) and [Eric L. Johnson](#)

In our article, "[Twelve Steps to a Compliance Program](#)," we discussed the steps a dealer can take toward setting up a compliance program. If you implemented those 12 steps, you didn't spend so much that it broke the bank, and you have the beginnings of a compliance program. Now, it's time to bring the program to the next level.

In Step 2 of that article, we recommended you appoint your privacy/red flags officer as your compliance officer. One of the first challenges your compliance officer will face is knowing what federal and state laws may affect your sales and finance business. We like to call these the landmines that make up the consumer law minefield. Here's a map to the minefield.

Federal Laws and Regulations

Consumer Leasing Act (CLA) and Regulation M: The CLA governs disclosures in consumer lease transactions. The CLA is actually Chapter 5 of the federal Truth in Lending Act (TILA), but it is usually referred to as if it is a separate law. Reg. M is a regulation of the Federal Reserve Board (FRB) and the Consumer Financial Protection Bureau (CFPB) implementing the CLA.

Controlling the Assault of Non-Solicited Pornography and Marketing Act ("CAN-SPAM"): CAN-SPAM was enacted to regulate the delivery of commercial email.

Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA): The DFA, enacted in 2010, was a reform of federal laws regulating financial institutions. One of the principal parts of the DFA created the CFPB. Under the DFA, all covered persons or service providers are required to refrain from committing unfair, deceptive or abusive acts or practices (UDAAP) in violation of the DFA. Also, the CFPB expects every regulated entity under its supervision and enforcement authority to have a Compliance Management System (CMS) adapted to its business strategy and operations.

Electronic Fund Transfers Act (EFT Act) and Regulation E: The EFT Act establishes the rights and liabilities of consumers and the responsibilities of all participants in electronic funds transfer activities. Reg. E is a regulation of the FRB and the CFPB implementing the EFT Act.

Electronic Signatures in Global and National Commerce Act (ESIGN): ESIGN facilitates the use of electronic records and electronic signatures in interstate and foreign commerce.

The general intent of ESIGN is that a contract or signature may not be denied legal effect, validity or enforceability solely because it is in electronic form.

Equal Credit Opportunity Act (ECOA) and Regulation B: The ECOA prohibits credit discrimination on the basis of race, color, religion, national origin, sex, marital status or age (provided the applicant has the capacity to enter into a binding contract); the fact that all or part of the applicant's income derives from any public assistance program; or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act or any state law for which an exemption has been granted by the FTC or CFPB. Reg. B is a regulation of the FRB and the CFPB implementing the ECOA. Step on this mine and you could activate the "disparate impact" pressure plate and not even know it until it is too late.

Fair Credit Reporting Act (FCRA) and Fair and Accurate Credit Transactions Act (FACT Act): The FCRA regulates consumer reporting agencies (CRAs), the furnishers of information to CRAs, and the users of consumer reports. The FACT Act amended the FCRA to permit a consumer to obtain a free credit report, to establish the Red Flags Rule (requiring a written Identity Theft Prevention Program) and to require the secure disposal of consumer information. Reg. V is a regulation of the FRB and the CFPB that implements the FCRA. The FACT Act also mandated the Risk-Based Pricing (RBP) Rule, intended to inform higher risk consumers that a creditor's "risk-based pricing" decision could result in the consumer receiving less favorable terms than those offered to other customers.

Fair Debt Collection Practices Act (FDCPA) and Regulation F: The FDCPA was designed to eliminate abusive, deceptive and unfair debt collection practices. It applies to the collection of debt incurred by a consumer primarily for personal, family or household purposes. Reg. F is a regulation of the CFPB implementing the FDCPA.

Federal Arbitration Act (FAA): The FAA provides that parties to a dispute may agree to arbitrate the dispute, rather than settling the matter in court. The CFPB is currently tinkering with this mine and may make it more deadly for businesses.

Federal Odometer Act: The Odometer Act was designed to curb abusive practices dealing with vehicle odometers.

Federal Trade Commission Act (FTC Act): The FTC Act empowers the FTC to prevent unfair or deceptive acts or practices (UDAP) in or affecting commerce. The FTC has promulgated the Preservation of Consumer Claims and Defenses, or "Holder Rule," which permits a buyer under a retail installment contract to assert against the holder of the contract certain claims and defenses the buyer has against the selling dealer, and the Credit Practices Rule, which regulates certain creditor practices.

Gramm-Leach-Bliley Act (GLBA) and Regulation P: GLBA governs the treatment of nonpublic personal information (NPI) about consumers by "financial institutions" which includes RV dealers. GLBA has two main parts - the Privacy Rule and the Safeguards Rule.

Junk Fax Prevention Act: This Act permits faxed advertisements if they are based on an established business relationship or the recipient's advance permission.

Magnuson-Moss Warranty Act (MagMoss): MagMoss regulates warranties on consumer products. Its purpose is to make warranties on consumer products more understandable and enforceable and to provide the FTC with the means to protect consumers.

Servicemembers Civil Relief Act (SCRA): The SCRA protects servicemembers, their dependents, and persons primarily or secondarily liable on obligations with servicemembers from the financial hardships that may result from the servicemembers' call to active duty or transfer of duty station.

Telephone Consumer Protection Act (TCPA): The TCPA regulates contacts with consumers by telephone, text message and telefax.

Telemarketing and Consumer Fraud and Abuse Prevention Act (TCFAPA): The TCFAPA protects consumers from telemarketing deception and abuse. It establishes basic standards prohibiting deceptive and abusive telemarketing acts and practices. The FTC filled in the details of these standards in its Telemarketing Sales (TSR) Rule.

TILA and Regulation Z: The TILA governs disclosures in consumer credit transactions. Reg. Z is a regulation of the FRB and the CFPB implementing TILA.

Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Patriot Act): The Patriot Act assists law enforcement in identifying, monitoring and preventing potential terrorist activity. The Patriot Act requires certain creditors to "know their customers," identify and report suspicious financial transactions, and make reports to and answer inquiries from government officials. Dealers must also comply with the Office of Foreign Assets Control rules.

Other Federal Rules

IRS Form 8300 Cash Reporting Rule: This rule generally requires you to file Form 8300, *Report of Cash Payments Over \$10,000 Received in a Trade or Business*, if your business receives more than \$10,000 in cash from one buyer as a result of a single transaction or two or more related transactions.

Telemarketing Sales Rule (TSR): The TSR, issued by the FTC, is the primary federal telemarketing regulation. It is supplemented by the TCPA.

Used Car Rule: The FTC's Used Car Rule requires a Buyers Guide be displayed on each used vehicle and motorized RV with a gross vehicle weight rating less than 8,500 pounds offered for sale. Plus, certain language must be in the contract of sale.

State Laws

Here's a summary of a few state laws that could affect your sales and finance business:

Retail Installment Sales Act (RISA): Nearly every state has a RISA. RISAs typically regulate finance charge rates, late charges, grace periods, bad check charges, and disclosures in financing agreements between dealers and customers.

Uniform Commercial Code (UCC): The UCC is a uniform act designed to harmonize the

laws of commercial transactions in all states.

Uniform Consumer Credit Code (UCCC): The UCCC is another uniform act promulgated by the Uniform Law Commission, originally in 1968. The UCCC was adopted in nine states: Colorado, Idaho, Indiana, Iowa, Kansas, Maine, Oklahoma, Utah and Wyoming. South Carolina and Wisconsin have enacted consumer protection codes similar to the UCCC.

A state could have buried other mines, such as specific advertising requirements, anti-discrimination laws, collection and servicing laws, privacy laws, security breach notification requirements and more.

Hand this minefield map to your newly appointed compliance officer to make him or her aware of the legal dangers your business must navigate every day.

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