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Participation fees in the spotlight

Reacting to the trends affecting
interest rate markups

Transparency. It's the new buzzword in the automotive industry. F&I practices are increasingly under scrutiny, and dealers are experiencing more pressure to reveal their pricing arrangements with finance companies and banks – or even place financial caps on those arrangements. Such trends require F&I departments to be more proactive than ever. RPM talks with Chris Choate, AmeriCredit's chief financial officer and former general counsel, about how dealers can use this movement to make customers for life – and still turn a profit.

RPM: When did dealer participation fees begin to be so closely watched?

Choate: About 18 years ago, most auto finance litigation surrounded acquisition fees. After reaching its peak in the 1990s, acquisition fees took a backseat to claims about dealer participation. Customers said that, because F&I employees didn't disclose interest rate markups, they breached their duty to offer the best rate possible. A flurry of lawsuits ensued. Many of these cases alleged that dealers practiced "discriminatory lending" or "predatory lending," which occurs when dealers take advantage of customers' limited information to secure a higher fee.

RPM: What do trade associations say about participation fees?

Choate: In February 2003, an American Financial Services Association (AFSA) affiliate and the National Automobile Dealers Association (NADA) worked with the Federal Trade Commission (FTC) to educate consumers about this issue by producing a brochure, "Understanding Vehicle Financing."

In January 2004, NADA, AFSA and the Consumer Bankers Association (CBA) publicly stated that they support expanded disclosures for vehicle financing. Members of these organizations agreed to print a statement on their finance contracts that says the dealer may keep part of the finance charge or the rate may be negotiable. Lastly, when the National Association of Attorneys General (NAAG) discovered the participation issue after lawsuits were filed, it also became extensively involved in consumer advocacy regarding interest rate markups.

RPM: How have discriminatory lending cases played out in the courtroom?

Choate: Recently, WFS Financial and the lending arms of General Motors, Nissan and Honda each settled a class-action discriminatory lending case. Plaintiffs claimed that these organizations singled out minorities for higher interest rates. As part of the settlement, the companies agreed to cap their dealer participation fees. When RPM went to press, two divisions of Ford Motor Credit were also in the midst of litigation.

RPM: What does all this mean for dealers?

Choate: Customers are becoming increasingly sophisticated, and so are consumer advocacy groups. In this day and age, if you don't run a transparent finance operation, you'll be challenged. You may end up in the courthouse or, possibly worse, on one of the network TV news shows. Make it a priority to

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Take the Advantage

Coming soon to an auction near you...the AmeriCredit Advantage program. Based on feedback from dealers across the nation, we've created a line-up of advantages you're sure to love. Here are just some of the benefits:

- **Assured Program** – As a buyer, you'll gain peace of mind knowing that every vehicle with an Assured seal of approval is frontline-ready. From the engine to the exhaust, these used cars pass an extensive test to make the grade.
- **80+ Program** – Remove the uncertainty from purchasing higher mileage vehicles. After a test drive performed by the auction, only the highest quality vehicles with more than 80,000 miles receive a "green light," which assures the car is mechanically sound, reliable and in good working condition.
- **Global Arbitration Guidelines** – As part of our commitment to auction industry best practices, we created these guidelines to ensure our high standards are followed in every AmeriCredit lane. The guidelines provide consistent methods for resolving issues with any vehicle.
- **Elite Sale Events** – Experience the fun and excitement at these special auction events that exclusively sell AmeriCredit's repossessed vehicles. The stand-alone sales, often held in conjunction with major sporting or promotional events, offer incentives to dealers.



AmeriCredit is currently piloting AmeriCredit Advantage at the following locations:

Fort Worth, Texas – DFW Auto Auction
 Jacksonville, Fla. – ADESA Jacksonville Auto Auction
 San Diego, Calif. – ADESA San Diego Auto Auction
 Mechanicsburg, Pa. – Harrisburg Auto Auction
 Bolingbrook, Ill. – Arena Auto Auction
 Nashville, Tenn. – Tennessee Auto Auction

A phased rollout will be completed for remaining locations. For a list of sale dates for auctions selling AmeriCredit vehicles, visit <http://auctions.americredit.com>.

Participation fees in the spotlight

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stay involved in your state's dealer association. It will keep you aware of the latest lawsuit developments, industry news and ways you can protect your dealership.

RPM: How can dealers balance the need for transparency with the need to make a profit from arranging financing?

Choate: Dealers are legally entitled to profit from extending credit to a customer. The markup covers the costs involved in offering this service, such as equipment, software and employee salaries. However, it's still the dealer's job to help the customer understand what they are agreeing to. No matter how many written disclaimers you include on a contract, many consumers will not read them. Instead, they will pay attention to your honesty and willingness to patiently explain complicated issues. That's how you keep customers coming back.



Chris Choate

RPM: How can F&I employees steer clear of predatory lending?

Choate: The first rule of thumb – don't be greedy. Remember the real reason you receive participation fees and what they are intended to compensate the dealership for. Then, if you find yourself thinking, "I can take advantage of this person's gullibility or poor negotiating skills and mark up the rate a little higher than an average customer," – particularly if the person is in a protected class – alarm bells should ring in your head. This kind of thinking is a bad business practice, and it may be illegal.

For more information, visit NADA's Web site at www.nada.org, NAAG's Web site at www.naag.org or the Web site of your state's dealer association. You may also want to visit the Web sites of consumer advocacy groups to help you see the issue from a different perspective.

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