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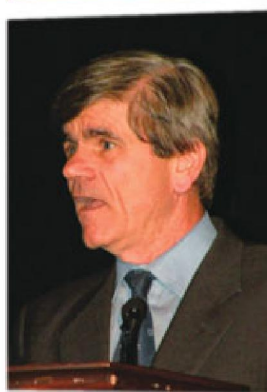
# F & I

MANAGEMENT & TECHNOLOGY

## F&I CONFERENCE & EXPO: FINANCIAL CRISIS TAKES CENTER STAGE



*FI Conference*



*G. Borst*



*L. Loquasto*



*M. Wells*



*Networking Session*



*Exhibit*



*Networking*



*Networking*

**AFSA** BREAKS DOWN THE FINANCIAL RELIEF PACKAGE

SHOWING A PULSE SAVING THE 'I' IN 'F&I'





PHOTO: ©ISTOCKPHOTO.COM/GARY GOLDEN

# Reversing Bad Debt

Bad debt is a big problem these days, which is why it's imperative dealerships understand the rules protecting consumers against collectors. A keen understanding can be the difference between letting your next customer walk or rehashing a deal.

By Steven Palmieri

**T**he availability of credit has definitely stolen the spotlight this year, but what's been equally important to the lending community is collections. This month we'll focus on the laws, policies and procedures governing how creditors and collectors operate while trying to reverse a bad debt or a debt in default. Understanding how a charged-off account should be reported on a credit profile could allow an F&I manager to more effectively

identify erroneous information, which could be used to rehash a deal.

A growing number of customers are entering dealerships with credit profiles containing charged-off credit accounts. What most dealers don't understand are the rules and regulations that govern when an account is deemed a charge-off.

"I am seeing more customers with 400 and 500 credit scores riddled with charged-off accounts and late payments," said Neil Merrick, general sales man-



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A dealership's customer who is sufficiently in debt can benefit from trying to renegotiate the terms of the debt with the creditor. The end result will be a customer who is more creditworthy because the term of the debt is now more affordable. Furthermore, the customer would ultimately free up some monthly income, making the vehicle more affordable and lowering the debt-to-income ratio so the loan may be more easily refinanced after the sale.

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ager of Lee Kia in Fort Walton Beach, Fla. "What are the laws and regulations that determine when an account can be charged-off?"

### When Debt Goes Bad

Four government agencies published in a June 2000 edition of the *Federal Register* that open- and close-end retail loans 90 days past due should be classified as substandard. Close-end retail loans past due by 120 cumulative days and open-end loans 90 days past due from the contractual due date should be classified as a loss and charged-off.

Under most circumstances, a lender has this limited timeframe to collect delinquent payments before the credit account must be legally charged off for accounting purposes. Doing so allows a creditor to keep accurate accounting records of the company's true assets. The creditor also receives a tax benefit from this loss when the credit is charged off. The creditor can still collect the debt after it is charged off, but any money collected must then be considered by the creditor as new taxable income for accounting purposes.

A creditor can also sell the rights to a bad debt to a third-party debt collector. In this event, the third-party debt collector will profit from any money collected from the consumer. Charging off the debt does not eliminate a credi-

tor from filing suit against the consumer for repayment of the debt. Each state has a different statute of limitations and wage-garnishing laws governing how long a creditor can file suit and how much income, if any, can be garnished

for a bad debt.

Section 605(c)(1) of the Fair Credit Reporting Act (FCRA) specifies that the seven-year period to report a charge-off on a credit report begins "upon the expiration of the 180-day period beginning on the date of the commencement of the delinquency which immediately preceded the collection activity, charge to profit and loss, or similar action." This means a creditor has up to 180 days of delinquency before the creditor is required to report a delinquent account as a charge-off on a credit bureau. After the account is charged off, then it can legally remain on a consumer's credit report for seven additional years.

If a consumer is experiencing a long-term financial hardship, a creditor may also renegotiate the terms of a consumer's delinquent or charged-off debt in order to make the terms more affordable to the consumer. Knowing that a delinquent account must be charged off after 180 days of non-payment, many creditors may allow substandard delinquent debt to be negotiated down to a lower APR and/or a lower principal balance in order to avoid the imminent charge-off.

A dealership's customer who is sufficiently in debt can benefit from trying to renegotiate the terms of the debt



PHOTO: ©STOCKPHOTO.COM/PALI RAO

with the creditor. The end result will be a customer who is more creditworthy because the term of the debt is now more affordable. Furthermore, the customer would ultimately free up some monthly income, making the vehicle more affordable and lowering the debt-to-income ratio so the loan may be more easily refinanced after the sale.

### Consumer Protection Rules

Added to the Consumer Credit Protection Act in 1978, the Fair Debt Collection Practices Act ((FDCPA) 15 U.S.C. 1692) is a statute that regulates how a debt can be collected by a debt collector. The FDCPA also outlines specifically how a debt collector communicates with a consumer.

The 1978 FDCPA was designed to address several concerns Congress had, including curbing the abundant use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Congress hoped to address these issues after it discovered abusive debt collection practices contributed to the number of personal bankruptcies, marital instability, job loss and individual privacy invasion.

The passing of the FDCPA was intended to eliminate abusive debt collection practices by debt collectors while ensuring that debt collectors who refrained from such abusive practices were not competitively disadvantaged. Additionally, the FDCPA was intended to promote consistent state action to protect consumers against debt collection abuses. The

exception is the state of Maine, which was the first state in 1994 to be granted an exemption for adhering to certain sections of the FDCPA. The exemption was granted by the Federal Trade Commission (FTC) because Maine State law was found to be substantially equivalent to the FDCPA.

It is important for auto dealers to be familiar with the FDCPA because the guidelines also apply to common duties carried out by the dealership. For instance, calling to collect money from a customer who wrote a bad check to the service department or trying to recover a vehicle delivered and contracted via spot delivery can lead to a violation of the rule.

The FDCPA also provides guidance to a debt collector attempting to locate a consumer through another source. In these instances, the debt collector must identify himself to the source and state that his purpose is to confirm location information about the consumer. A debt collector is prohibited from stating to the source the reason for the inquiry. They also can't communicate with any sources more than once. A collector also can't communicate with any other party once he learns the consumer has hired an attorney to represent him or her.

The debt collector also has specific guidelines he or she must adhere to while communicating with a consumer. The collector must not communicate with a consumer after learning that the time or place of the communication

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It is important for auto dealers to be familiar with the FDCPA because the guidelines also apply to common duties carried out by the dealership. For instance, calling to collect money from a customer who wrote a bad check to the service department or trying to recover a vehicle delivered and contracted via spot delivery can lead to a violation of the rule.

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is inconvenient for the consumer. The debt collector also can't communicate with a consumer once it is known the consumer is being represented by an attorney. The debt collector also can't communicate with the consumer at his or her place of employment if the debt collector knows the consumer's employer prohibits phone calls for personal business.

Perhaps the most useful part of the FDCPA is it allows a consumer to demand a debt collector to cease and desist all communication. Section 805 of the FDCPA permits a consumer to send a debt collector a written cease and desist notice, which only allows the debt collector to call the consumer once more after receiving the notice. However, the debt collector or creditor may resume communication with the consumer after filing suit to collect the debt.

Other prohibited actions by a debt collector include collecting on an amount that is larger than allowed by law, harassing or using profane language, threatening legal action that is not permitted by law or that is not intended to be followed through by the debt collector, publishing the consumer's name in a "bad debt" list, or reporting or threatening to report false information on a credit report.

A debt collector must also notify the consumer of his or her right to dispute the debt within five days of communicating with the consumer. The customer must also be notified of his or her right to ask for validation of the debt within 30 days. Upon written request, the debt collector must also provide the consumer the name and address of the original creditor within 30 days.

Enforced by the FTC, the FDCPA carries fines of up to \$1,000 per violation. It is important to note the FDCPA only applies to consumer debt, as business debt is excluded.

One resource a customer has if a cred-

itor violates the FDCPA is contacting ACA International, The Association of Credit and Collection Professionals ([www.acainternational.org](http://www.acainternational.org)). The group was established as a non-profit trade association in 1939 to provide a code of ethics for the debt collections industry. A dealer understands car manufacturers look at good CSI results to ensure vehicles are perceived by the public in a manner the manufacturer wants; similarly, the collection and credit industry tries to promote itself in a professional manner. Anybody who has a complaint with a debt collector can e-mail [ethics@acainternational.org](mailto:ethics@acainternational.org). The association will then work with the appropriate member company and the consumer to resolve the complaint.

Despite the negative public perception about the debt collection industry, collection companies have returned \$40 billion to the economy. So the role it plays is clear. "Businesses, large and small, rely on ACA member agencies not only to collect unpaid bills, but also to help keep their prices lower for all customers," said Gary Rippentrop, CEO of the ACA. "Debt collection reduces the risk of loss for business; permits greater business expansion ... and allows for the privilege and convenience of credit as a positive financial tool for American consumers."

In today's market, bad credit knows no boundaries. Dealership employees and customers alike are feeling the pressures of this illiquid economy. When a consumer's debt becomes delinquent, having the knowledge to help weather the storm may be a dealership's greatest asset. ■

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## LETTERS

### Dealers Question Tradition, Agree With George Angus

I have been in the automotive business for 30 years — 10 years in the financial services office. I read George Angus' "Debunking 5 F&I Myths" article in the November issue of *F&I* magazine and I wanted to compliment him on a great article. He must have resolutions for the questions raised and I would love to hear what they are. I look forward to his response.

**Lealand Welsh**  
Financial Services Manager  
Tom O'Brien Hyundai  
Quincy, Mass.

I enjoyed George Angus' article in the November issue of *F&I* magazine. I couldn't help but agree with a lot of what he had to say.

I am writing to pass along a method of interviewing customers without them raising their defenses. The method works off a delivery checklist Ford makes for us. In it there is an area for setting up customers for their first service appointment. It's the perfect lead-in to establishing annual mileage estimates with no customer resistance. My standard line is: "Your first service is set for 5,000 miles. How long will it take you to put that many miles on your new car?"

**Jeff Goyert**  
North Bay Ford Lincoln Mercury  
Santa Cruz, Calif.

I am a regional finance manager for a major dealer group. I work in the Western region and with finance managers in Arizona and Nevada. I read the "Debunking 5 F&I Myths" article in the November issue of *F&I* magazine, and was intrigued by George Angus' arguments against some of the age-old F&I practices, such as the interview and objection handling.

I would be interested in hearing about a better way of achieving what those practices aimed to do. I must say up front that I have little leverage in changing my or-

ganization's finance practices and processes. The reason for my request is to gather personal knowledge and skills, and I was wondering if he has a seminar I can attend in the local area.

**Eli S. Baughman**  
Regional Finance Manager

*F&I performance at the highest levels is science, not theory or opinion. A good example of this is the use of word-tracks. A few years ago we spent a lot of time and money on a project that, on its face, made perfect sense. We went into some of the top performing F&I manager offices and recorded their presentations. From that we developed a fairly complicated syllabus. Then we brought a group of F&I managers to Arizona State University for several days and taught them the exact words to use. When we put them into the dealerships the results were shockingly ineffective.*

*The most effective F&I process allows for the F&I manager's natural way of speaking and communicating. F&I managers are good communicators and a presentation using their verbiage and expression is much more effective, and, in the customer's mind, more genuine.*

*Another area is overcoming objections. While some of the snappy comebacks to customer objections are clever and even funny, they almost always have the effect of alienating the customer. We have learned that customer objections are best handled by skillfully offering alternatives that create a positive interaction between the customer and the F&I manager.*

**George Angus**  
Team One Research and Training

**Correction:** In the article "Reversing Bad Debt" (November 2008), the sentence "...open-end loans 90 days past due from the contractual due date should be classified as a loss and charged-off" was incorrect, and should be 180 days past due.

# F & I

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