

# Compliance – When Everything Old Becomes New Again

By Joshua Sonnier



As dealers race to become leaders in the compliance arena, most are asking, “What is the next big thing?” The regulatory landscape and the much sought after “next big thing” have many intriguing twists and turns. However, the overall direction of dealership compliance has remained constant.

So, what is the next big thing – the revised interpretations, rules, and guidelines for existing laws?

The practice of reviewing, revisiting, and reinterpreting laws in and of itself is not a new development. However, the speed and determination with which revised interpretations are being completed today are new developments. The passage of the Dodd-Frank Act in 2010 and the creation of the Consumer Financial Protection Bureau (CFPB) in 2011 helped to bring compliance to the forefront. Even regulatory agencies that were not directly addressed in the Dodd-Frank Act, have used the Act and the CFPB as the catalyst to push their enforcement efforts with a renewed vigor.

Currently, there are no less than 24 principal federal laws that apply to today’s dealerships, not to mention the numerous state laws that also apply based on where a dealership is located. Most of these laws were enacted some time ago, so most dealerships and industry organizations have tried and true methods to address the potential compliance exposure. However, therein lies the possible danger. When federal and state regulatory agencies revise their interpretations, it gives existing laws and regulations the potential to affect your dealership in

previously unforeseen ways. Suddenly, those tried and true methods become less and less effective.

To illustrate this point, let’s review one of the most recent revised interpretations, the Magnuson-Moss Warranty Act (Mag-Moss). On July 20, 2015, revised interpretations and rules for Mag-Moss were published in the Federal Register. The Federal Trade Commission’s revised interpretations of Mag-Moss acknowledges that, under certain conditions, a consumer may be led to believe that they are required to obtain all warranty and non-warranty repairs from a specific provider in order to maintain warranty coverage, despite a lack of any expressed statement or tying provision. For this reason, the Federal Trade Commission’s revised interpretation now extends to both express and implied tying provisions.

The recent update to Mag-Moss may seem like a small change, but this revised interpretation has the potential to negatively affect warranties that have maintenance requirement provisions, the companies that market them, and ultimately the dealerships offering these warranties to their customers. The expressed verbiage and sales processes associated with these warranties are now open to potential exposure that did not exist before. Mag-Moss is just a single example of a revised interpretation, with the list of actual revisions being widespread and touching all areas of today’s dealership.

What can the typical dealer do to successfully operate with this constant flow of change from regulators? Rededicate themselves to the major principals of compliance.

First, ensure that your dealership has either a dedicated compliance officer or a consultant who can effectively review all laws that affect your dealership and, more importantly, see potential changes on the horizon before



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they happen.

Next, verify that any organization your dealership works with, such as a partner vendor, shares your dealership's views on compliance. Your dealership is only as compliant as the "weakest link in the chain." Keep in mind, you will ultimately be held responsible for the actions of your vendor partners, either directly or indirectly.

In addition, galvanize your efforts by continuously reviewing and amending your dealership's compliance policies to keep up with revised interpretations, rules, and guides for existing laws (in addition to any new laws). All policies that are created for your dealership to successfully operate should be as, if not more, adaptable than the laws and regulations they address.

Lastly, acknowledge that your dealership will not be 100% compliant from a proactive perspective. Conduct internal audits to identify specific incidents of non-compliance and integrate reactionary procedures to address the identified violations. Finally, report the violation and your subsequent attempt to correct said violation to the proper regulating authority.

Don't let your search for the next big thing in compliance pull you away from monitoring how the principal laws and regulations affect your dealership. A commitment to regularly revisit the cornerstones of compliance will keep your dealership in a great position to address any revised interpretations.

The next big thing, constantly update your dealership's compliance policies with today's new rules and regulations – the old becomes new again!

