



Automobile Dealers Association of Indiana, Inc.

BULLETIN

Bulletin #1206 – August 27, 2012

ALERT - DOC FEES REVISITED *(Updated September 10, 2012)*

It looks like there is another round of doc fee audits taking place throughout the state. So far this has occurred mainly in the northern part of the state but there has been at least one incident in central Indiana. Dealers have been issued civil investigative demands by the Attorney General's office. These require that you respond setting forth certain information relative to the substantiation of your doc fee charge. You may remember that the informal safe harbor negotiated by your Association is \$150.00 based upon a full financed transaction. We are aware that in several instances the amounts charged for doc fees charged by dealers have crept up, for some reason, to higher amounts in the upper \$100.00 to mid \$200.00 range. Dealers will be hard pressed to substantiate that high of a number.

The statute covering document preparation fees is I.C. 9-23-3-6.5. There are five elements to charging a doc fee:

1. The fee must reflect the expenses actually incurred for the preparation of documents;
2. Must be disclosed by the dealer (on a separate line item and not mixed in with any other charge);
3. Negotiated by the dealer and purchaser – if a customer balks at paying a doc fee, it is perfectly acceptable, indeed beneficial, to drop the fee. By having a record of varied fees, it shows that the fee is open to negotiation. For example, in employee purchases the doc fee is negotiated down by the terms of the factory program. The fee should be consistent for credit, cash and lease deals, because if it's higher for credit/lease deals it could be argued that it's a hidden finance charge and therefore a Truth in Lending Act violation.
4. The fee is not to be charged for the preparation, handling or other documentation incidental to the extension of credit – in other words, you can't charge a fee for processing the retail installment contract credit app or other similar items.
5. The fee must be clearly set forth in the Buyer's Order by a means other than preprinting. It is okay to have your computer program fill in the amount but it is even better to have it handwritten based upon the transaction. Do not have the amount printed on the form itself by any means other than the computer program.

We are aware of some situations where the doc fee has been mixed in with other fees. For example, coupon books, oil change programs, etc. This is not permissible. The doc fee must be set out as a separate line item.

DO NOT try to complete these civil investigative demands on your own. These are serious legal documents that can have significant repercussions for your dealership. There are methods of presenting some expenses that can be allocated to the preparation of document fees. Care must be taken with regard to the preparation of the responses to the civil investigative demand. If you prepare those responses on your own, be aware that you will be stuck with them in future dealings with the Attorney General. **DO NOT** agree to any remedy without the advice of counsel. **DO NOT** include title processing fees in the doc fee calculation. They should be separately stated.

For further information, contact Marty Murpy, ADAI, Executive Vice President or ADAI's retained law firm, Stewart & Irwin, Ron Smith or Donn Wray will be available to assist you at 317-639-5454.