

compliance tips for buy here pay here car dealers and fair market value pricing from gotplates.com

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It's no secret (or exaggeration); the topic of compliance is ridiculously huge. Auto dealers have so many different laws, rules and regulations to contend with, it's easy to get confused. In fact, it's almost impossible to not get confused when dealing with the sea of compliance headaches dealers must face today.

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In an effort to alleviate some of the stress caused by trying to understand the compliance issues dealers must contend with, here are new 2013 california car dealer laws, rules and regulations summarized (along with potential penalties for breaking them and helpful links to useful information). Mind you, this list is not all-encompassing and does not cover all compliance issues dealers face, and it is NOT LEGAL ADVICE. For legal advice, dealers should seek assistance from qualified legal counsel.

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Buy Here Pay Here (BHPH) defined by Wikipedia:

Buy Here Pay Here refers to a method of running an [automobile dealership](#) in which dealers themselves extend [credit](#) to purchasers of automobiles.^[1] Typically, purchasers of cars at buy here pay here dealerships have poor credit history, and loans have high interest rates.^[1]



History

The BHPH Industry originated primarily in the early 1970s during the [savings and loan crisis](#). With many similarities to the current [financial crisis](#) (2008 – present) credit was difficult to obtain, [unemployment](#) was rising & the economy was still in a transformation from a production-based economy to a service-based economy.

Automobile dealers who still wanted to sell cars had to find a way to deal with the increasing price of vehicles relative to income. They had to sell these vehicles to wary **consumers** who were unwilling or unable to pay 'cash' for the new purchase. In many cases, when banks would not loan to the consumer, the Automobile dealer would start a related finance company (RFC) and have that **finance company** approve the loan on the vehicle. This was a bold step into the banking business for automobile dealers. The advantage to the dealership of having an RFC finance the sale was decreased risk on the sale and finance of the vehicles sold. Since both companies had the same ownership, dealers could now essentially benefit from the profit on both the sale and the **loan** for a single vehicle. Additionally, the down payment required on a BHPH loan generally larger than the total profit on the sale of the vehicle. Therefore, if the buyer didn't make payments, the RFC could **repossess** the vehicle and sell it again at the dealership. Many of the benefits of separating the RFC out from the BHPH dealership are based in the tax code changes of the **Tax Reform Act of 1986**. In that act it restricted any companies that utilize inventory in their operating business from using cash accounting.^[2]

One difficulty that the dealerships have is **cash flow**. Often, used car dealerships purchase inventory with a floor **line of credit**. The most common flooring line is either a standard line of credit from a bank that is secured with other **collateral** such as **real estate**, or it is a line of credit (MAFS) from the nation's largest automobile **auction house Manheim** owned by **Cox Enterprises**. Typically flooring lines require the automobile to be paid off in full within 90 days of purchase. This means that automobile dealers are operating on the banks money and are trying to turn units as quickly as possible so they don't have to pay off the loan on their **inventory** before they sell it. One difficulty that this presents to BHPH dealers is that when they sell a vehicle to a BHPH customer the RFC needs to produce the loan funds so the dealership will have the funds to pay off the line of credit on that automobile. Often this 'cash crunch' is the primary reason for dealerships to go out of business.

As the Savings & Loans crisis started to abate in the mid-1980s the Buy Here Pay Here industry started to move its focus towards consumers with lower **credit ratings**, and today BHPH has become known as 'bad credit' approval. As automobile dealers began to see a significant portion of their business coming from the BHPH industry the need for lending systems and **software** increased. Most automobile dealers were great at selling, servicing, and repairing vehicles but did not know how to run a finance company.

Regulations

The lending industry has many new regulations and rules that dealers are not used to. Although the RFC's are not regulated as strictly as banks by the **Federal Reserve** they are regulated by the Department of Financial Institutions or **Department of Commerce** on a state level depending on the state. Many of the regulations vary by state such as the maximum **interest rate**, late fee amounts, **grace periods** and so forth.

Some of the companies that have started as RFCs have grown large enough that they became **Industrial Banks** which are **FDIC** Insured banks owned by non-financial institutions. These are primarily used for **credit card** companies such as **American Express**, or **Auto Loan Companies** such as **BMW Finance**, or **GMAC Finance**, most of which are chartered in **Utah**.

The Federal Trade Commission (FTC), the federal bank regulatory agencies, and the National Credit Union Administration (NCUA) have issued regulations (the Red Flags Rules) requiring financial institutions and creditors to develop and implement written identity theft prevention

programs, as part of the Fair and Accurate Credit Transactions (FACT) Act of 2003. The programs must be in place by November 1, 2008, and must provide for the identification, detection, and response to patterns, practices, or specific activities – known as “red flags” – that could indicate identity theft. The Red Flags Rules apply to “financial institutions” and “creditors” with “covered accounts.”

Advancements

Among the difficulties that RFC's of BHPH dealers have is complying with federal, state and local regulations & ensuring accurate loan calculations. Originally, the popular way to calculate loans was at origination to print off an **amortization** schedule and then to simply check off each payment once it was made. This is inaccurate as payoff may occur early, payments may not be the exact amount on the due date, etc. Later a few DOS-based system were implemented that could pull reports and do calculations. These systems were user based (restricted the number of users) and specific computer bases (you had to install it on each computer you wanted to use it on). Recently the **software industry** trend has been to move all software applications online. This trend has been very useful to BHPH dealers & RFC's. Recently with many of the financial regulation changes small dealerships and sub-prime lending companies have become very dependent on the cutting edge software companies to provide Red Flag Rules compliance, fully conform for credit bureau reporting regulations, full disclosure, regulation Z, Truth in Lending Disclosures, and many more government requirements & regulations. Banks & Credit Unions most often & frequently produce their own in-house software applications.

Buy Here Pay Here seems to be one of the only areas of the Automobile Dealers industry that is surviving this recent **economic downturn** of 2008-current.^[3] Automobile manufactures, new car dealers, banks & auctions have all suffered immensely over the ‘worst time for the car industry ever’. BHPH potential clients seem to be increasing by the thousands, those whose credit is now deteriorated due to the housing collapse, **unemployment**, or a thousand other now common place situations. Banks still have not loosened up lending and dealers seem to have the only way they can turn cars on their lot is to send it to their RFC. As the industry begins to stabilize many industry experts say it will be the BHPH dealers that come out on top.

References

1. ^{a b} "Buy Here, Pay Here' Businesses Move Into Leasing". *All Things Considered*. NPR. 2012-01-19. Retrieved 10 February 2012.
2. [^] <http://www.independentdealer.com/finance/finance6.asp>
3. [^] http://autobulk.com/Deciding_on_a_BHPH_Model.html

AB 1447 (Feuer)

Automobile sales finance: sellers.

The Rees-Levering Motor Vehicle Sales and Finance Act regulates conditional sales contracts for motor vehicles, and, among other things, requires a person selling or leasing a motor vehicle under a conditional sale contract to disclose certain information to the buyer of the vehicle.

A willful violation of those provisions is a misdemeanor and may render the contract unenforceable. A seller who violates the provisions of the act may also be liable to the buyer for monetary damages.

This bill requires a buy-here-pay-here dealer, as defined, to issue a 30-day or 1,000-mile warranty to the buyer or lessee of a used vehicle bought or leased at retail price, and would

require the warranty to cover the engine, transmission, drive axle, front and rear wheel drive components, engine cooling system, brakes, front and rear suspension systems, steering, seatbelts, inflatable restraint systems, catalytic converter or other emissions components, heater, seals and gaskets, electrical, electronic, and computer components, alternator, generator, starter, and ignition system.

The bill requires the buy-here-pay-here dealer to either repair those covered parts that fail or, at the buy-here-pay-here dealers election, to cancel the sale or lease and reimburse the buyer or lessee, as specified.

The bill requires the buy-here-pay-here dealer to pay 100% of the cost of labor and parts for any repairs under the warranty.

The bill voids any sales agreement for the purchase or lease of a vehicle that waives, limits, or disclaims these requirements.

The bill provides that a warranty is deemed to have been issued if a buy-here-pay-here dealer fails to issue a warranty pursuant to these provisions.

The bill prohibits a buy-here-pay-here dealer from requiring the buyer to make payments in person, with the exception of the downpayment for the vehicle,

The bill prohibits the buy-here-pay-here dealer from repossessing the vehicle or charging a penalty following timely payment of a deferred downpayment.

The bill prohibits the buy-here-pay-here dealer from, after the sale of the vehicle, tracking the vehicle using electronic tracking technology and from disabling the vehicle with starter interrupt technology, except as specified, and would make a violation of these prohibitions a misdemeanor punishable by a fine of up to \$1,000.

The bill also makes findings and declarations related to buy-here-pay-here dealers, and would authorize the Department of Motor Vehicles to promulgate any necessary regulations.

The federal buyers guide must be posted to reflect a 30 day 1000 mile warranty if buy here pay here financing is offered within the dealership.

AB 1534 (Wieckowski)

Vehicles: dealers: used vehicle sales: labeling requirements.

Existing law regulates the accuracy of information provided to consumers during vehicle sales, including the information contained in advertising, brochures, and manuals, as specified.

Existing law also requires manufacturers, as specified, to disclose certain information regarding a vehicles engine, as specified, by affixing a label on the vehicle. A violation of these provisions is an infraction.

This bill requires a licensed dealer, as defined, to affix to and to prominently and conspicuously display a label on any used vehicle offered for retail sale that states the reasonable market value of the vehicle.

The bill requires the label to contain specified information used to determine the vehicles reasonable market value and the date the value was determined.

The bill requires a licensed dealer to provide to a prospective buyer of the used vehicle a copy of any information obtained from a nationally recognized pricing guide that the licensed dealer used to determine the reasonable market value of the vehicle.

The bill requires the label to meet all the following conditions:

- a) Be in writing with a heading that reads "REASONABLE MARKET VALUE OF THIS VEHICLE" in at least 16-point bold type and text in at least 12-point type.
- b) Be located adjacent to the window sticker identifying the equipment provided with the vehicle, or if none, located prominently and conspicuously on the vehicle.
- c) Contain the information used to determine the reasonable market value, including, but not limited to, use of a nationally recognized pricing guide for used vehicles, and the date the reasonable market value was determined.
- d) Indicate that the reasonable market value is being provided only for comparison shopping and is not the retail sale price or the advertised price of the vehicle.

The bill defines "nationally recognized pricing guide" as including, but not limited to, the Kelley Blue Book, Edmunds, the Black Book, or the National Automobile Dealers' Association (NADA) Guide.

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