Co-Applicant Vs. Co-Signer: What’s the Difference?

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My thought is…good question! Motor vehicle dealers and those in the industry frequently use the terms co-applicant, co-buyer, co-borrower and co-signer interchangeably. We have all heard the term “co-signer” improperly used to refer to someone who signed the same purchase agreement, sales documents, and retail installment contract that the purchaser of the vehicle signed. In other situations, the term may have been used more broadly to refer to someone who signed a separate instrument, such as a guaranty agreement. While many think the distinction between these terms is merely academic, they have different meanings and have an impact on your business practices.

Consider the Credit Practices Rule, which is more commonly referred to in the motor vehicle industry as the “Notice to Co-Signer” Rule. This Rule covers all consumer credit transactions, except those involving the purchase of real estate, and requires creditors to provide a written notice to consumers before they co-sign obligations for others. The purpose of the Notice is to advise them about their potential liability if the other person fails to pay the debt.

For purposes of the Credit Practices Rule, a co-signer is defined as a person who will be liable on the credit contract, but does not receive or use the proceeds or goods purchased with the credit. Put another way, a “co-signer” undertakes liability as a favor to the main debtor who would not otherwise qualify for credit. A co-buyer or co-borrower, on the other hand, would share the purchased goods and/or loan proceeds. Since they receive a benefit from the contract, they are not considered co-signers under the Rule and you are not required to provide them with the Notice to Co-Signer.

So, as is often the case in consumer credit transactions these days, when more than one consumer completes a credit application, how do you know whether they are a co-applicant or a co-signer? Finding your answer begins with the credit evaluation of the individuals and how they represent themselves during the credit application process. Let’s start with the credit application itself. It is important to record whether the applicant requested individual credit and needed a co-signer, or whether two or more people jointly applied for credit. If the applicants are co-applicants, which would be defined as two individuals jointly applying for credit, their debt and income are typically combined for evaluation purposes. If one of the applicants is going to act as a true co-signer, the debt-to-income levels are evaluated separately to see if either person can “back up” the extension of credit. Regulation B (which implements the Equal Credit Opportunity Act) specifically requires that an individual’s intent to be a joint applicant is captured at the time of applying for credit and should help dealers to recognize and record the applicants’ intentions.

Remember, the applicant’s intentions will likely impact not only whether you give them a Notice to Co-signer, but also what other documents you have them sign. A co-buyer will typically sign all of the documents that the buyer of the vehicle signs, and will be identified as an owner on the Certificate of Title. A true co-signer, however, will only have to sign the retail installment contract or guaranty and those documents that are necessary for the lender to obtain a security interest in the vehicle. Keep in mind that your state laws may have special definitions or create special rules for co-applicants and/or co-signers. For example, for purposes of the Credit Practices Rule, a spouse whose signature is required on a credit obligation to perfect a security interest pursuant to state law is not considered a co-signer for purposes of the Rule.

While you consider these issues, take the opportunity to review and update your credit application. Legal and regulatory exposure arising from the credit evaluation process exists in the motor vehicle industry, but you can prevent legal claims from being brought against your dealership by making sure that all of the questions you ask your credit applicants are related to their creditworthiness. Consider including statements in your credit applications indicating that the dealership does not discriminate against applicants based on membership in a protected class. You should also institute and maintain comprehensive discrimination policies and offer regular training to all managers and employees to ensure that all applicants are treated the same. As with many areas within your Dealership, the easiest way to handle these problems is to prevent them from occurring in the first place.

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