

Watching Out for the Boomerang Effect

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January 01, 2007

I'm not an expert at reading body language, but after a while you can tell when someone doesn't fully comprehend the question you are asking. Some people squint, others tilt their head to one side, a few look upward with a pondering look, and then there's always the "deer in the headlights" glare.

As compliance consultants, gvo3 & Associates' primary goal is helping dealerships understand their risks and exposure with regard to compliance issues in the sales and F&I departments. We accomplish this through an interview process and a very thorough review of the documentation found in the deal jackets. During the course of a compliance review, one of the questions we always ask the dealership's management staff is if they would describe their adverse action notice process. This is when we usually get the funny looks. Then we ask the same question by substituting adverse action notice with the words "turn down letter." This usually puts everybody back on the same page. What we find is that most dealerships do not have a defined process to deal with adverse action notices.

Several prominent attorneys and other industry experts have written excellent articles on the subject in industry publications such as F&I Management and Technology. If you haven't read them, I would strongly suggest you do. In this article, I will focus on identifying areas of potential exposure, developing a documented process, and offer my insights on implementing an automated solution to address the issue.

Co-applicants

When going through a deal file, we look at each completed credit application, the credit reports and the fax backs from each lender. We can determine from these documents whether all of the applicants have been submitted for consideration to a lender. At some point in the sales or F&I process, the dealership has taken the credit application on the buyer and co-buyer to run a credit report on both applicants. Occasionally, one of the applicants may have a significantly lower credit score than the other. The F&I manager or desk manager decides not to submit one of the applicants because he or she could affect the tier level or deal approval. This is probably the right thing to do to get the deal approved, but it is also one of those situations where you are required to send a notice informing the applicant of your actions.

Special Event Sales

Special event sales are designed to generate a lot of floor traffic in a short period of time — typically two or three days. These may occur at the dealership or at an offsite location (e.g., a stadium used-car sale). There is always some form of promotion, giveaway, or enticement to draw customers — which can sometimes attract hundreds of potential buyers to the event. The sales staff is challenged to quickly sort through the traffic to find the qualified buyers. This is usually accomplished by requiring each visitor to complete a short registration form in order to qualify for the promotion. Many times, the registration form includes blanks for the customer's name and address, social security number, date of birth, and language in micro print authorizing the dealership to check his or her credit history. Note that this practice would probably not make the top 10 list of recommended ways to comply with Reg. B, ECOA, FCRA and FACTA regulations. There is typically a stack of screened credit reports that were not submitted to lenders and a stack of conditioned deals that never got delivered at the end of the promotion. All the paperwork is put in the dead deal file. At the end of the day the closed deals are counted, the cash spiffs are paid, and everybody is giving high fives. Does anyone ever remember the dealer or GM asking, "OK, whose turn is it to send out the adverse action notices?"

Internet/BDC Activity

Today, I would find it quite unusual for a dealer not to be involved with some form of Internet marketing. In addition to their own Web site, dealers are linked to their manufacturer's Web sites and subscribe to a variety of third-party lead providers. The leads generated from these sources are typically managed through the dealership's Business Development Center (BDC). The goal of the BDC is to convert leads into dealer visits and dealer visits into sales. During this process, it is not uncommon for a potential customer to submit a credit application or to have the BDC request that they go to the dealer's Web site and submit a credit application.

Dealerships actively pursuing this market segment could be screening hundreds of credit applications and credit reports every month. Many dealerships are sensitive to each lender's "look-to-book" ratio. As a result, some do not submit every credit application for consideration. I don't recall ever seeing "send adverse action notice" as the last step in a BDC's standard operating procedures. If you're an F&I director, you're probably asking:

- Who in the world is going to keep track of all these adverse actions and who is going to be responsible for sending out the notices?
- What should be included in an adverse action notice and who should the customer call if he or she has questions?
- How should I send the notice — by traditional mail, through delivery receipt requested or by certified mail?
- What if the customer won't sign for it? These are all good questions. Now, you might be thinking that you'll just submit every application you get to your lenders and leave it to them to send the required notices. Wait, not so fast. If you've read expert opinions on the subject, you would know this is not a fail-safe solution. You really only have two choices: develop a manual process or find a third-party provider who takes care of the entire process.

If you elect to go the manual route, the first step is to determine who is going to monitor this activity and send the notices. Next, you will have to select an attorney-approved adverse action form and familiarize yourself with how to complete it and when to send it. You should also understand what to say when a customer, who received a notice from your dealership, calls and wants to know why he or she received the notice and what it means. You will find yourself having a much closer relationship with the dead deal file.

The second option is to hire a third-party provider, one who has automated the entire process. One such company is Automotive Compliance Center (ACC). Based in Arizona, this company offers dealers the opportunity to integrate its patented solution, which incorporates all DMS or CRM applications. All credit reports are filtered to capture those customers to whom a letter should be sent. Cooperating with F&I staff, ACC sets parameters based on each dealer's requirements. This ensures the dealer is compliant with FCRA and ECOA regulations. In fact, each transaction is insured with a \$1 million liability policy.

A real bonus to ACC's program is its 24/7 call center, which is staffed with experienced and former dealership personnel. They answer the questions so your staff is not bogged down with irritated applicants, which means they can sell more effectively. All letters bear the dealership name, but carry the return address and phone number of ACC.

Neil Leverenz, the firm's executive vice president, said that sending notices as a matter of standard business practice helps protect a dealership from litigators on the prowl, as well as substantial penalties. Dealers who have used companies such as ACC have found it to be an economical and secure way to protect themselves.

There is one more option and that is to do nothing, although the risks and exposure of lawsuits and fines increases significantly. Remember, you are a creditor in an auto sales finance transaction and assume the same responsibilities as your lenders do when it comes to adverse action notices.