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Adverse-action letters seen as potential liability

Dealers ensure lenders - not sales desks - make credit decisions

A customer selects a vehicle and your sales manager gets permission to pull a credit report. The manager sees a history of troubled credit and knows most lenders won't take the deal. What should the manager do?

Send the application to a cross-section of primary and secondary lenders, and do not allow the manager to suggest the customer needs to visit a buy-here, pay-here store to get a deal done, advise F&I consultants and trainers.

The reason: The manager has made a credit decision that requires your store to give or send the customer an adverse action letter that explains why they have effectively been denied credit, says **Gil Van Over**, head of gvo3 Consulting, which provides F&I audits and guidance for dealers. The requirement falls under the Fair Credit Reporting Act (see right for details).

Van Over and others see a risk for dealers: With more credit-challenged customers, and more dealers vying for their business, plaintiff attorneys are on the hunt stores that overlook the adverse action letter requirement. "It's potentially the next wave of lawsuits" for dealers, Van Over says.

He and others offer two remedies:

1. Establish a process of vetting all deals with lenders. At Hendrick Automotive, F&I trainer Randy Watkins instructs sales and F&I managers to send applications for credit challenged customers to a cross-section of lenders. "We leave it up to the institution that provides the financing to make the determination," Watkins says. By doing so, the lenders - not the individual stores - are then required to send the adverse action letters to the customers. Some dealers may worry this will impair lender relations as it affects look-to-book. But few experts expect this practice to have a negative impact on lender-dealer relationships.

2. Ensure lenders take responsibility for sending the letters. Most dealer-lender agreements contain representations that affirm the lender will send adverse action notices to customers to whom they deny credit, but "you need to look at all of them" to make sure, Van Over says.

The adverse action letter requirement also applies to spot delivery deals that fail to get fully financed, forcing you to unwind a deal with a customer. Example: A customer applies for a \$25,000 deal and you spot-deliver the vehicle on the condition that a lender will approve the deal terms.

But the lender only approves a portion of the amount needed to finance the deal. In those instances, the lender has not denied credit, the customary trigger for sending



an adverse action letter. That leaves your store on the hook for giving the notice to the customer.

FTC credit law update: Longer safe-keeping of deal documents

F&I experts say the FTC's Fair and Accurate Credit Transaction Act is mostly intended to require lenders and credit bureaus to provide consumers more access to their credit reports, to ensure they're aware of their credit standing and to prevent identity theft.

But there's a provision that appears to affect dealers: The new act requires dealers to retain credit-related documents on deals you didn't complete for 60 months, rather than the 25-month time period that had been required under the Equal Credit Opportunity Act.

The purpose: The FTC wants to prevent unauthorized access to consumer credit reports and ensure a paper trail if consumers believe someone has accessed their credit reports without permission.

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