What Happens when Law Sees Dealers as Creditors

By Jim Leman
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Dealers who spot deliver vehicles (and then the credit agencies don't finance the buyers) or dealers who simply size up a customer as not credit worthy may be putting their dealership at risk of noncompliance with federal credit regulations, if certain obligations aren't fulfilled.

In either scenario, these actions put the dealership in the role of creditor. As such, the dealership has exposed itself to the adverse-action notification obligations of the Fair Credit Reporting Act and the Equal Credit Opportunity Act.

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Either case will require the dealership to send customers an adverse-action notice. That is a formal notification that creditors are required to send to consumers who seek credit that is denied (an adverse action).

This notice should be sent by dealerships to the customer whenever:

• The spot delivery customer is not financed, after all.

• A decision is made about a customer's credit worthiness based on a subjective reasoning.

• When a customer's credit report is such that a decision is made not to forward the application to finance companies.

Lenders generally are required to send these notices as a first-line defense. But when a dealer spot delivers, the law sees him or her as a creditor responsible for sending the letters. Dealers often don't know this and it can get them into trouble.

To avoid possible costly entanglements, it's suggested dealers err on the side of caution and send adverse-action letters to applicable customers. That's the advice from finance and insurance compliance consultant Gil Van Over of gvo3 & Associates and lawyer Tom Hudson, a legal expert on F&I.

“Dealers need to know what their obligations are and they need to handle those obligations correctly,” says Hudson. “The risk in these consumer laws is not the penalty to violators that is imposed by the statutes, but in the right of the consumer to recover attorney fees and court costs from the dealer should a suit go to trial.”

Here's another scenario where the dealer can get nicked:

A spot delivery goes south, and the declining finance company or companies send the customer the required notices. Van Over says dealers should still send their own notice, because, under the law, they are creditors.

A compliant adverse-action notice must:

• Be sent within 30 days of the adverse action.

• Notify the customer that his or her credit application was not approved.

• Contain the creditor's (or dealer's) name, address, contact name and phone number.

• Disclose the name, address and phone number for all credit bureau reports obtained.

While it is likely that few consumers are aware of this requirement, their lack of awareness isn't reason to rejoice. A consumer led to believe he or she is going to get financed, and then isn't, can get upset.

These bad vibes can open doors to customers' legal action against dealerships

“Plaintiffs attorneys have creative ways to sue dealerships on a law they can understand, and this law is a very simple one: Either you complied with the adverse- action notice law or you did not,” Van Over says.

Violations can cost dealers upwards of $50,000 or more.

It is challenging to comply with all regulations affecting car dealers, “even for dealers who try real hard, because there are so many laws,” Hudson says.

Some help is available though, at least for dispatching adverse-action notices. Neil Leverenz of Automotive Compliance Center says the firm has created software for dealer-management systems that helps ensure dealers that their adverse-action risks are covered.

The software automatically sends an adverse credit notice to customers for whom credit was applied for through the dealership and whose contract was not funded.

Leverenz says sending notices as a matter of standard business practice, whenever a credit request is denied, helps protect a dealership from noncompliance penalties and litigators.

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