

## You May Be Responsible for Adverse Action Notices

By: Gil Van Over

Like it or not, but the decision you made to make spot delivery your primary sales methodology means you are now the creditor in the auto sales transaction. You made the decision to deliver the vehicle before third party approval is obtained, therefore, you are making the credit decision.

One of the requirements that a creditor has according to both the Equal Credit Opportunity Act (ECOA) and the Fair Credit Reporting Act (FCRA) is to provide a customer with a notice whenever an adverse action is taken. In layman's terms, this means that whenever a credit decision is made that is different than what the customer applied for, the creditor has taken an adverse action.

Following are some of the common situations that dealers find themselves faced with, along with recommendations on what a dealer can do to satisfy its requirement with ECOA and FCRA adverse action notification.

- 1) Case where a person completes an application and **they** decide not to pursue the transaction and no further work is performed by us. *The creditor has not made an adverse credit decision therefore, no notice is required.*
- 2) Case where a person completes an application and **we** determine that no bank would take them and elect not to send out the application to the bank and tell the customer that we cannot get a deal done. *The dealership has made a credit decision that is adverse to the applicant's wishes and is required to send an adverse action notice.*
- 3) Case where a person completes an application and **we** determine that no bank would take them **but** do send out the application to the bank and they reject the customer and the bank lets us know that they are sending out an Adverse Action Notice. *Most industry pundits agree that the adverse action notice sent by the third party lender suffices in this situation. I would recommend that you retain a copy of the credit decision fax back from the lender to support your case.*
- 4) Would item 3 above change if we get a rejection letter from the bank, but are not able to determine that any indication from the bank that they actually did send an Adverse Action notice to the consumer? *You may want to get a blanket confirmation from each of your lenders (part of the preferred lender program?) that they comply with both ECOA and FCRA requirements to send an adverse action notice.*
- 5) Case where we spot deliver a vehicle and we are not able to get them financed and we need to repossess the vehicle and **at least** one of the banks notified us that they were sending out an Adverse Action Notice. *Biggest area of risk for the dealership. Most of the cases I read suggest*

*that the third party lender in this situation does not suffice. I would strongly recommend that the dealer send an adverse action notice by certified delivery in every unwind situation. With the small amount of unwinds, it makes sense to protect the dealership's interest in these cases.*

- 6) It is a requirement that each of the financial institutions that **denied credit** are required to notify the customer and therefore since we are the **initial creditor** that we should also send out an adverse action notice? *You are only making the initial credit decision if you spot deliver the vehicle. If you do not spot deliver the vehicle and simply pass along the credit application to a number of third party lenders, you have not made a credit decision and are not required to send an adverse action notice.*
- 7) Does the fact that we have the **rider** that states that we have the right to rescind the contract if we are unable to find another lender to assign the contract to, and the fact that we did not use the credit information to deny them credit, mean that we are not obligated to send out any notice. *The trigger event is spot delivery. The rider helps you to rescind your contract, but does not alleviate you of your responsibility to send an adverse action notice.*