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Best practices – Adverse action notices

by *Gil Van Over*

Adverse action notification may not seem to fit in a continuing discussion of compliance best practices. After all, adverse action notices are required under two federal laws, Equal Credit Opportunity Act and Fair Credit Reporting Act. The problem is the laws as written are vague enough that a dealer's requirements to send these notices are being formed by conflicting case law.

Dealers are Creditors

In most states, a customer signs a Retail Installment Sales Contract between the customer and the dealer. The dealer then assigns, or sells, the receivable to a willing third party lending institution.

Because dealers are creditors, they are required to follow the various federal and state laws governing creditors. Two of these federal laws require that a creditor provide an adverse action notice to consumers with whom an adverse action has occurred.



The problem is that the laws do not fully define adverse action. The lawyers and the courts are in the process of doing so.

Current Thinking

Many of the industry's legal minds have voiced the opinion that a dealer should send an adverse action notice if the dealer:

- Accepts a credit application, runs a credit bureau report and does not submit the application to a financing source for consideration.
- Accepts a credit application, submits it to financing institutions and none of them approve the credit application. The adverse action notice sent by the financing institution may not fulfill the dealer's obligation to send the adverse action notice.
- Spot delivers a deal, is unable to secure funding and unwinds the deal.

Layman's Interpretation

I ain't an attorney. Sometimes I tend to get confused with legalese and try to find a way to interpret legalese into layman's terms.

My interpretation of the lawyer's opinion is this.

If you take a credit application on a consumer and do not sell that consumer a vehicle, you need to send an adverse action notice within 30 days of accepting the credit application.

The NADA just released a guide to help dealers navigate the adverse action notification waters. You may want to get a copy of the guide and set the processes in place. If you need help implementing the process, drop me an e-mail and I will steer you toward a company that can provide help.

Gil Van Over is the President and founder of gvo3 & Associates, a nationally recognized F&I and Sales compliance consulting firm (www.gvo3.com).

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