Q: What is ‘adverse action’?
A: The denial of a request for credit as it relates to the loan amount, APR, and terms contained in the verbal or written credit application.

Q: What are the requirements for adverse action notices?
A: The Equal Credit Opportunity Act (ECOA) and the Fair Credit Reporting Act (FCRA) require dealers who participate in making credit decisions to provide notice to consumers under certain circumstances when ‘adverse action’ is taken. The applicants must be informed in writing of their right to a statement of reasons for any adverse action. Look for the following conditions:

- You get a credit application but cannot find any lenders who will accept the original terms of the deal.
- You get a credit application but do not send it to any lenders.
- You unwind or re-contract a spot deal.

The FCRA requires the creditor to give an adverse action notice to each consumer whose report was used to deny the application. Because of the potential complexities of ensuring that all consumers who are required to get a notice receive one, some dealers provide all consumers with an adverse action notice if a credit report is requested.

Q: What does Reynolds provide?
A: Reynolds’ Credit Bureau Inquiry solution provides an option to automatically receive adverse action letters with every credit report, as well as store them with the deal.

Q: Why was this rule implemented?
A: To protect the consumer. The ECOA’s purpose is to ensure any entity that extends credit does so “with fairness, impartiality, and without discrimination”. The purpose of the FCRA is to ensure “accuracy and fairness of credit reporting”.

Q: What about credit applications taken over the phone?
A: If you take a credit application over the phone and you cannot offer credit on the terms requested, you must obtain the consumer’s name and address so you can send an adverse action notice. If the customer declines to provide you this information, you have no further obligation to send a notice.

Q: When must the adverse action notice be delivered to the consumer?
A: Delivery requirements include:

- 30 days from the completion/receipt of the consumer’s credit application and denial of credit on the terms requested.
- 90 days after a counter offer is rejected.
- In cases of incomplete applications, if no notice of incompleteness is sent, the notice must be sent to the consumer within 30 days of receipt of the incomplete application.

Q: How should an adverse action notice be delivered?
A: The notice can be delivered in person, by regular mail, by fax, or electronically.

Q: How long does the adverse action notice need to be retained?
A: You must retain a copy of the notice and proof of mailing for 25 months, but many attorneys recommend dealers keep them for five years, which is equivalent to the statute of limitations for a consumer to bring a lawsuit under the FCRA. Copies can be paper or electronic.
Q: Are there differences between who gets the notice under the ECOA and FCRA requirements?

A: Yes. The ECOA allows creditors to send one notice, even if there is more than one applicant. The FCRA does not allow a single notice to serve all customers whose credit reports were used for the denial, even if they live at the same address. Requirements under the ECOA and the FCRA can be combined in one notice and, in that case, you will want to send a notice to each consumer whose credit report was used in the decision.

Q: What if I receive an incomplete credit application?

A: You have a choice of sending, in writing within 30 days, an adverse action notice or a “notice of incompleteness”.

Q: Can the adverse action notice be combined with the credit score exception notice?

A: No, the credit score disclosure exception notice cannot be combined with the adverse action notice.

Q: What do I need to provide if I use multiple credit scores to make the credit decision?

A: You may use any of the credit scores that you used in making the credit decision.

Q: What if there was no credit score available or I didn’t pull a credit report on the consumer?

A: If no score was provided or if a credit report was not pulled, then you do not need to include a credit score in the adverse action notice.

Q: What if I don’t comply?

A: The ECOA and FCRA both assign penalties for violations, which include punitive damages up to $10,000 in individual actions, and up to $500,000 or 1 percent of the creditor’s net worth (whichever is less) in class actions. Court costs and reasonable attorney fees may also be assigned. Also, under the FCRA, the FTC can bring a civil action for $3,500 in the event of a knowing violation. Each failure to give an adverse action notice would likely be considered a separate violation.

Q: How can I learn more about the requirements for adverse action?

A: Visit the following Web page to get more information about adverse action notice requirements and how they affect your dealership: