Extensions on extensions: Financing despite low inventory

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Dealers continue to struggle with inventory shortages that frustrate sales staff and potential customers. In many cases, potential customers are ready, willing and able to finance a specific vehicle or type of vehicle if it becomes available within a month — or possibly within two, three or even four months in the current environment. This raises questions about how dealers can respond when customers want to finance vehicles that may remain unavailable for months.

When can the dealer obtain a consumer report about a potential customer?

A dealer can obtain consumer report information only when it has a “permissible purpose” for doing so under the federal Fair Credit Reporting Act (FCRA). This is true regardless of whether the dealer receives a credit application, a preapproval or prequalification request, or no financing request at all. In this context, the dealer will have a permissible purpose only when: (1) it acts in accordance with the “written instructions” of the potential customer; or (2) it will use the information in connection with a credit transaction involving the extension of credit to the potential customer. As a general rule, a potential customer will need to sign written instructions authorizing the dealer to obtain consumer report information except when it receives the customer’s application for credit. There are subtle but important differences between a credit application and a prequalification request.

What’s the difference between an application and a prequalification request?

The federal Equal Credit Opportunity Act (ECOA), as implemented by the **Consumer Financial Protection Bureau** (CFPB)’s Regulation B, requires that the creditor notify applicants of action taken on their credit applications and retain records of those applications. An application generally means a request for an extension of credit made in accordance with the procedures the creditor uses for the type of credit requested. Not every person who asks the dealer about credit or even asks to receive prequalified offers from the dealer has submitted an application for credit.

Whether a customer’s prequalification request becomes an application depends on how the creditor responds to the consumer, not on what the consumer says or asks. For example, a creditor may treat a prequalification request simply as an inquiry if the creditor evaluates specific information about the consumer and then tells the consumer a loan amount, rate and other credit terms for which the consumer may qualify under various credit programs. However, if the creditor evaluates information about the consumer, decides not to approve the request and communicates the decision to the consumer, then the creditor has treated the consumer’s prequalification request as an application.

When must the dealer notify consumers about action taken on their applications?

A creditor's duty to provide the notice of action taken or notice of incompleteness arises only when the consumer has submitted a request that qualifies as an application or when the creditor decides not to approve a consumer's prequalification request and communicates the decision to the consumer. Within 30 days after the creditor receives a completed application, the creditor must notify the applicant about the creditor's approval of, counteroffer to, or adverse action on the application. Within 30 days after taking adverse action on an incomplete application, the creditor must notify the applicant about the action taken, unless the creditor delivers a notice of incompleteness specifying the information needed and how long the consumer has to provide that information.

How can a dealer use prequalified offers to maintain a potential customer's interest when inventory is low?

Dealers can ask potential customers whether they want to receive prequalified credit offers, even when the customer hasn't decided yet on a specific vehicle or when the vehicle the customer prefers is unavailable and cannot be specifically identified anytime soon. Of course, dealers must be careful about how they receive and respond to customer requests for prequalified credit offers.

For example, consumer reports can become stale and unreliable after a relatively short period of time, so any prequalified offer the dealer makes should disclose when the initial offer expires. The dealer's prequalified offer should also disclose conditions and common reasons that can prevent customers from receiving credit in the future, even if their preferred vehicle becomes available and they submit an application before the prequalified offer expires.

In all cases, dealers should ask the customer to sign a document expressly authorizing the dealer to obtain consumer report information for the purpose of making prequalified credit offers. If the dealer intends to obtain the customer's consumer report information on more than one occasion after the creditor's initial offer expires, the consumer's signed authorization should describe the scope and duration of the dealer's authorization to obtain the consumer report. Asking the customer to sign an authorization that permits the dealer to obtain an indefinite number of consumer reports, and without any stated time limit, will create trade practice and FCRA risk for the dealer.

And, in cases where the dealer advises a customer that he or she is not eligible for any prequalified credit offers, the dealer must provide the customer with adverse action notices that make disclosures required by the ECOA and the FCRA.

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