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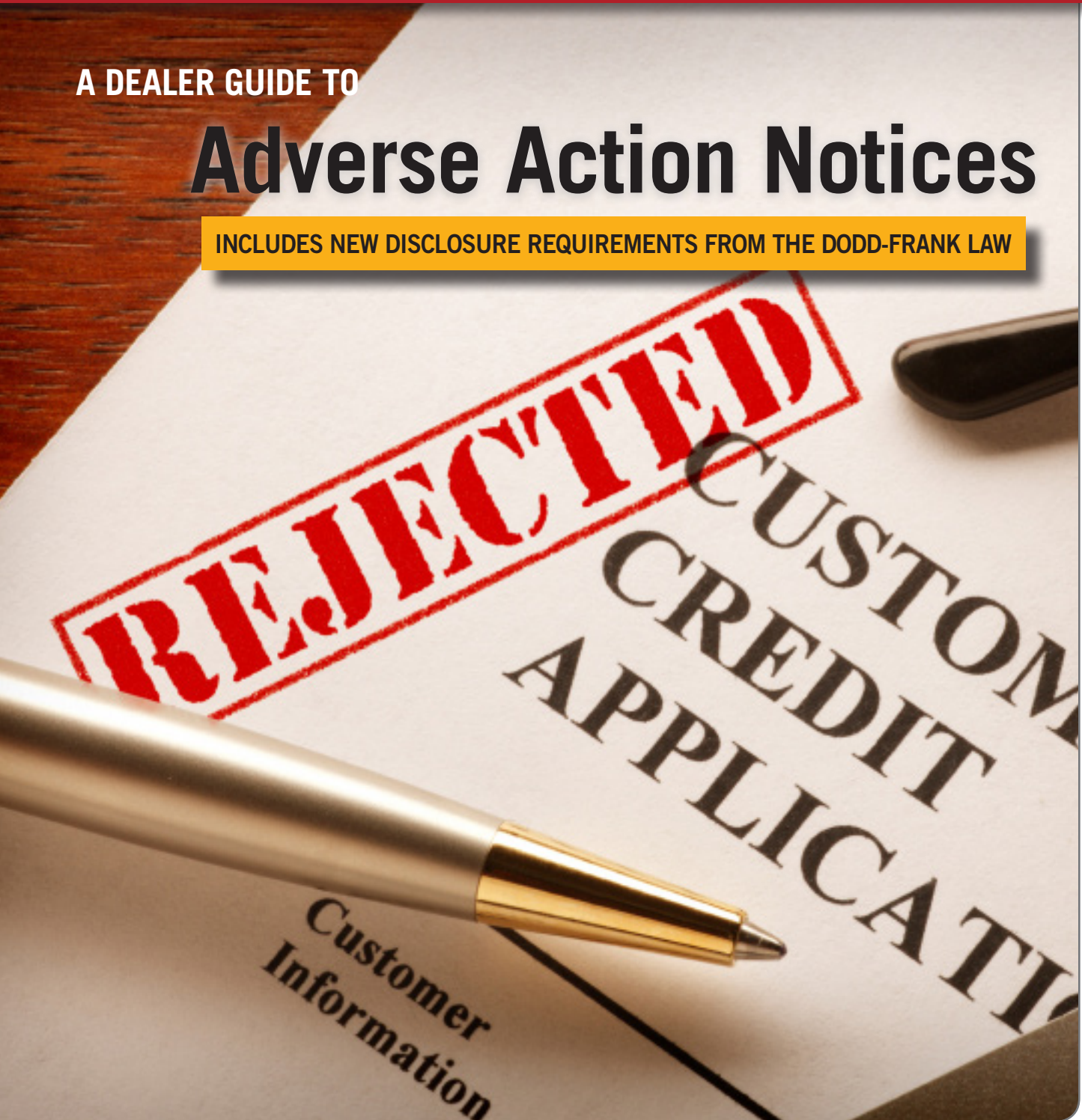
NADA MANAGEMENT SERIES

L49

A DEALER GUIDE TO

Adverse Action Notices

INCLUDES NEW DISCLOSURE REQUIREMENTS FROM THE DODD-FRANK LAW



NATIONAL
AUTOMOBILE
DEALERS
ASSOCIATION

Important Editor's Note

- This publication provides guidance to dealers in an unsettled and evolving area of the law in which many courts and dealer attorneys disagree as to the scope of dealers' compliance obligations.
- NADA would prefer to disseminate this guidance after the law is further defined in this area, but it is uncertain when (and if) this will occur, and dealers need compliance guidance in the interim.
- Consequently, NADA has arranged for Anne Fortney, Esq., and Lisa Delessio, Esq. and R. Glenn Knirsch, Esq. of Hudson Cook, LLP, to prepare this guide for our members. Lead author Fortney is recognized as one of the leading experts in the nation in this area.
- The authors explain different aspects of the law and walk through scenarios that may give rise to the obligation to issue an adverse action notice. They have taken a cautious approach to these scenarios to help minimize dealers' liability exposure.
- Please note that any views or interpretations expressed in this guide are the authors' and not necessarily those of NADA.

This guide is presented for informational purposes only and is not intended as legal advice. It is imperative that you stay abreast of developments in this area and consult an attorney who is familiar with adverse action notice requirements in your jurisdiction to determine the full range of your compliance obligations.

The presentation of this information is not intended to encourage concerted action among competitors or any other action on the part of dealers that would in any manner fix or stabilize the price or any element of the price of any good or service.

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A DEALER GUIDE TO Adverse Action Notices

EXECUTIVE SUMMARY

The Equal Credit Opportunity Act (ECOA) makes it unlawful for a creditor to deny a request for credit on a prohibited basis, such as a person's race, color, religion, national origin, sex, marital status, or age. In addition to this general prohibition against discrimination, the ECOA requires creditors to issue an "adverse action" notice to customers when the creditor refuses to grant credit on substantially the terms requested, where it terminates a customer's account, or where it refuses to increase the amount of credit upon request. A related law, the Fair Credit Reporting Act (FCRA), also may require a creditor to give an adverse action notice (which may be combined with the ECOA notice) if a credit report or information from a third party other than a consumer reporting agency (CRA) is involved in an adverse credit decision. Each law requires certain information to be included in the adverse action notice.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Law) requires additional information to be included in adverse action notices issued under the FCRA where a creditor used a consumer's credit score in taking adverse action. Beginning July 21, 2011, additional information that must be provided in adverse action notices includes: (i) the consumer's credit score; (ii) the date the score was created; (iii) the range of possible credit scores under the model used to generate the score; (iv) the key factors that adversely affected the consumer's credit score in the model used (you must list up to four key factors provided by the CRA or up to five key factors if one of the factors is the number of recent inquiries

made with respect to that credit report); and (v) the name of the person or entity that provided the credit score (which will likely be the same CRA from which you obtained the consumer's credit report). The Federal Reserve Board has revised its model adverse action forms to reflect these new disclosures by adding these five items along with the following additional statements: (i) that the creditor obtained the consumer's credit score from a CRA named in the notice; (ii) that a credit score is a number that reflects the information in the consumer's credit report; and (iii) that the consumer's credit score can change, depending on how the information in the consumer's credit report changes.

This guide identifies who is required to issue adverse action notices, when the requirement is triggered, how the rules apply when multiple creditors take action on the same credit application, the time period in which the notice must be sent, what the notice must include (including the new information required by the Dodd-Frank Law, if applicable), how it should be sent, what rules apply to incomplete credit applications, what records should be retained, what procedures will assist dealers with their compliance responsibilities, and what rules apply to adverse action taken in the context of business credit. The guide presents numerous scenarios to explain the application of these requirements. It also provides a flow chart to help you determine when the adverse action notice requirement is triggered, and it contains sample forms for creating the notice. The guide does not, however, address all legal obligations. It covers only obligations under federal law, and does not reach obligations you may have under state or local law.

A DEALER GUIDE TO Adverse Action Notices

I. INTRODUCTION

Federal law prohibits discrimination in any aspect of a credit transaction. Under the Equal Credit Opportunity Act (ECOA), you may not treat a credit applicant less favorably because of color, religion, national origin, sex, marital status, age, or because the applicant relies on social security, welfare, or other public assistance. This law also requires you to provide a notice, called an “adverse action notice,” under certain circumstances, such as denying a request for credit. A related law, the Fair Credit Reporting Act (FCRA), also may require you to give an adverse action notice (which may be combined with the ECOA notice) if a credit report or information from a third party other than a consumer reporting agency (CRA) is involved in an adverse credit decision.

This guide explains the wide range of issues related to adverse action notices. However, it does not address all legal obligations. It covers only obligations under federal law, and does not reach obligations you may have under state or local law.

II. WHO NEEDS TO SEND AN ADVERSE ACTION NOTICE?

The ECOA applies to all “creditors” as defined in the Act and its regulations. The adverse action notice requirements apply to “participating creditors”—that is, creditors who “regularly participate in a credit decision,” including setting the terms of the credit. A bank, finance company, or credit union that regularly buys retail installment sales contracts from auto dealers is a “participating creditor” because it

“regularly participates” in the decision to finance the sale of the vehicles.

As a dealer, you also are a “participating creditor” if you “regularly participate in a credit decision.” In contrast, if you only refer customers or prospective customers to creditors, or select or offer to select creditors from whom the customer will directly request credit, you are what is called a “referral creditor.” Referral creditors are not required to give adverse action notices, although they are still subject to the ECOA’s rules against illegal discrimination.

Unfortunately, the ECOA and its regulations are unclear as to what it means for a dealer to “regularly participate in a credit decision.” The courts have reached different conclusions in answering this question. In some cases, a dealer has been deemed to “participate in a credit decision” when the dealer merely forwards the customer’s application to a bank or finance company for its determination. Dealers also have been deemed to “regularly participate in a credit decision” in a spot delivery credit sale. Under some interpretations, a dealer may “regularly participate in a credit decision” because the dealer regularly signs the retail installment sales agreement before sending it to a bank or other finance source.

Because of the uncertainty as to how this important question will be resolved by a court, if you regularly sign retail installment sales agreements with your customers, you should follow the ECOA rules for a “participating creditor,” including the adverse action notice requirements.

If you follow these ECOA requirements, you may sometimes be giving an adverse action notice when you are not required to do so. There is no penalty and little risk if you give a notice when you are not required to do so. However, if you do not give the notice, there is a risk you will be sued, and may even be found liable if a court decides that you should have given it.

The FCRA also requires you to send a notice whenever your “adverse action,” as defined in the ECOA, is based on a consumer report or on other information from a third party. (A “consumer report” includes such items as a credit report or credit score from a credit bureau.) Therefore, if you are a “participating creditor” under the ECOA and you use a consumer report in taking an “adverse action,” you need to send an FCRA adverse action notice, which can be combined with the ECOA adverse action notice.

III. WHEN DOES A PARTICIPATING CREDITOR NEED TO SEND AN ADVERSE ACTION NOTICE?

A. General Rules

1. Under the ECOA

A dealer who is a participating creditor must issue an adverse action notice if it has taken “adverse action.” The term “adverse action” means refusing to grant credit in substantially the amount or on substantially the terms requested in a written or oral application. Significantly, “adverse action” includes the making of a counteroffer to grant credit in a different amount or on other terms unless (and only unless) the customer uses or expressly accepts the counteroffer. If the customer doesn’t use or expressly accept the counteroffer, then there is adverse action.

Examples of when you need to send an adverse action notice:

- You take a credit application from a customer to finance the sale of a vehicle, you cannot find a buyer for the retail installment sales contract, and you are unable to offer other financing to the customer; or

- You are unable to find a bank or finance company that will buy a retail installment sales contract involved in a spot delivery, unless you and the customer agree to a deal on different terms and a financing source agrees to purchase a contract with those terms; or
- The customer applies for credit on certain terms (such as the APR), you offer the deal on different terms (a higher APR), and the customer rejects your counteroffer. (The rules for counteroffers are discussed in more detail below.)

Examples of when you do not need to send an adverse action notice:

- You submit a credit application to a bank or finance company and the customer expressly accepts or uses the credit offered; or
- The customer applies for credit on certain terms (such as down payment amount), you offer the deal on different terms (a larger down payment), and the customer accepts your counteroffer. (The rules for counteroffers are discussed in more detail below.)

What happens when you take an application over the telephone?

- If a customer makes an application by telephone and you cannot offer the credit requested, you must request the customer’s name and address so that you can send the written adverse action notice. If the customer declines to provide that information, then you have no further notification responsibility.

Similar considerations apply if you take credit applications over the Internet. As discussed below, the FCRA notices, including the Dodd-Frank Law notices, may be delivered electronically, if you comply with ESIGN. Otherwise, any Internet credit application

should require, at a minimum, the customer's name and address so that you can provide the appropriate notices.

2. Under the FCRA

If you use information in a credit report as the basis for denying a customer's credit application, your adverse action notice must contain additional information required by the FCRA.

If you deny the application based on information from a third party other than a CRA, such as an employer, you must give other additional information required by the FCRA.

You may combine the FCRA notice information with the ECOA notice information on one form (See Section V below).

Scenarios illustrating when you need to send an adverse action notice:

Scenario: You take a credit application from a customer who wants to finance the purchase of a \$15,000 car, and the application does not specify any particular rate. After you review the application, you pull a credit report, and you realize that no finance source will buy a credit contract involving that customer. You don't bother to send the application to any finance source for consideration. Have you taken "adverse action" that requires you to send a notice?

Response: Yes. You are the sole creditor in this case because you decided based on a credit report that the customer would not qualify for financing, and you must send an adverse action notice to the customer with the information required under both the ECOA and the FCRA (See Section V).

Scenario: You take a credit application that does not specify any particular rate. After you review the application, you pull a credit report and based on the consumer's credit score, you think that only subprime finance sources will

purchase the contract and only if the customer makes a \$2,500 down payment, so you negotiate a deferred downpayment option with the customer. When you shop the contract, none of the subprime finance sources agrees to offer credit and you decline to finance the deal yourself. Have you taken "adverse action" that requires you to send a notice?

Response: Yes. The application was made to you as the original creditor and you participated in setting the terms of the credit when you negotiated the deferred downpayment to strengthen the customer's application. The credit report was used in your decision to offer the application to finance sources that rejected it. You have not provided the requested financing. You must give all the information required in an adverse action notice under both the ECOA and the FCRA (See Section V).

Scenario illustrating when you do not need to send an adverse action notice:

Scenario: Same initial facts as the previous scenario. (The customer does not specify any particular rate. After you review the application, you pull a credit report and based on the consumer's credit score, you decide to send it only to subprime finance sources). This time, however, a subprime lender offers credit. You offer the customer a deal with a high APR. The customer rejects it, saying he thinks he can do better elsewhere. Have you taken adverse action that requires you to send a notice?

Response: No. The customer's credit application did not request any particular APR. You offered the customer a deal that was consistent with the application. You have not refused to provide the requested financing.

Appendix A contains a flow chart to help you visualize when you must issue an adverse action notice.

General Rule: Give an adverse action notice whenever you cannot offer a customer financing on the terms requested (APR, amount, monthly payment, downpayment, etc.)—either because of your own assessment of the likelihood of financing or because you can't get a finance source to buy a contract—unless a customer accepts a counteroffer (see discussion below). There is no penalty if you give an adverse action notice when you aren't required to do so.

B. Multiple Creditors

If an application is sent to multiple creditors and the customer accepts or uses the credit offered by any one of them, then no adverse action notice needs to be sent by any creditor even if some of the creditors declined to offer financing. (Creditors who decline the customer's application often send an adverse action notice since they do not know whether the customer has accepted financing from another creditor.)

If an application is sent to multiple creditors, and no credit is offered by any of them, then each participating creditor who takes adverse action and each creditor who takes adverse action based on a credit report must send an adverse action notice directly or through a third party. However, a dealer cannot simply rely on the notice that another creditor sends about itself. Although some courts conclude differently, the fact that more than one creditor sends an adverse action notice in connection with the same deal doesn't mean the notices are duplicative or that one creditor is relieved of its obligation because another creditor already sent a notice.¹

Scenario illustrating when you need to send an adverse action notice:

Scenario: You send the customer's credit application to three finance sources—two banks and a finance company. The two banks reject the application. The finance company would buy it, but with no dealer participation. You decline to finance the sale. Your agreement with each source doesn't state who is responsible for

sending the notice. Should you send your own notice even if you think that the two banks are going to send a notice of their own?

Response: Yes. You have ultimately decided not to offer credit. You cannot rely on the fact that another source sent a notice in connection with the same deal, or the fact that more than one creditor declines credit for the same reason. You must send an adverse action notice with all the required information (although some courts have come out the other way and found that dealers don't need to send a notice when the finance source does).

Scenarios illustrating when you do not need to send an adverse action notice:

Scenario: The customer applies for financing with \$0 down and a 5% APR. You submit the application to three finance sources to determine if they will offer credit, and two decline. One source states that it will offer credit on the terms requested. You tell the customer and the customer accepts. Do you need to send an adverse action notice because two declined?

Response: No. You have no obligation to send an adverse action notice even though two of the three sources declined to offer credit because the customer accepted credit from one of the creditors.

Scenario: A customer wants to finance \$15,000 of the vehicle purchase and does not request

¹To be sure, an adverse action notice may be given on behalf of multiple creditors, provided the notice includes the name and address of each creditor and either gives the principal reasons that each creditor denied the application or discloses the customer's right to a statement of each creditor's specific reasons for denial if requested within 60 days of the notification. You may be able to contract with the bank or other finance source to which you submit applications to give adverse action notices on your behalf when they send their own adverse action notices. This obligation typically is not present in dealer agreements with finance companies, but you should check your agreements to be sure. If you do provide notice through a third party, then you must send the information about the denial to the third party in enough time for the third party to give notice to the customer, and you must maintain reasonable procedures to ensure that the notices are being sent.

any other specific terms. You send the application to one finance source that agrees to buy a contract at an 8% buy rate. You tell the customer that you can do the deal with 9.5% APR. The customer declines the offer and does not purchase the vehicle. Do you need to send an adverse action notice?

Response: No. You have agreed to finance the \$15,000 and you have not declined to provide financing on the terms requested by the customer (because no other terms were requested).

C. Counteroffers

If you make a counteroffer to provide financing in a different amount or on terms that differ from those a customer requests and the customer does not expressly accept or use the credit offered in a counteroffer, the ECOA requires that you send an adverse action notice to the customer. In the event you used the consumer's credit report or information from a third party in assessing the consumer's eligibility for the terms initially requested, you must also send a notice under the FCRA.

If the customer expressly accepts the counteroffer or uses the credit, no adverse action notice is required.

If an application is submitted to multiple finance sources, and one creditor makes a counteroffer that the customer expressly accepts or uses, no adverse action notice is required from any creditor.

If a counteroffer is made by one or more creditors, and the customer does not accept or use any credit offered, each creditor taking adverse action must give an adverse action notice directly or through a third party.

Scenarios:

Scenario: The customer applies for financing and requests a \$300 monthly payment. You negotiate the price of the new car and the trade-in with the customer and help establish a payment term to meet the customer's needs. You submit the application to three potential

finance sources and all decline to purchase the contract on terms that will result in a \$300 monthly payment. One bank offers to buy a contract, but the customer will need to pay \$350 per month. You offer those terms to the customer who rejects them. Have you taken adverse action?

Response: Yes. You have declined to offer credit on the terms that the customer requested and the customer has rejected the counteroffer. You must send an adverse action notice with all the required information (See Section V).

Scenario: A customer wants to finance \$15,000, which is the total cost of the vehicle. You submit the application to several finance sources, which all refuse to offer credit unless the customer puts down \$1,000. You tell the customer that she needs to put down \$1,000 and the customer decides not to complete the deal. Are you required to send an adverse action notice?

Response: Yes. You have declined to provide financing on the terms requested by the customer (no downpayment). You must send an adverse action notice with all the required information (See Section V).

IV. WHAT IS THE TIME PERIOD FOR SENDING AN ADVERSE ACTION NOTICE?

If you do not provide the requested financing, you must send the adverse action notice to the customer within 30 days after receiving a completed application.

If you make a counteroffer that the customer does not accept, you must send the adverse action notice within 90 days after notifying the customer of your counteroffer.

If you receive an incomplete application and you neither receive the missing information nor send a "notice of incompleteness" (see Section VI), you must send an adverse action notice to the customer within 30 days after receiving the incomplete application.

V. WHAT SHOULD THE NOTICE INCLUDE AND HOW SHOULD IT BE SENT?

A. Notices Under the ECOA

Under the ECOA, an adverse action notice must be in writing and include all of the following information:

1. A statement that adverse action has been taken (although you are not required to use the term “adverse action”);
2. The name and address of the creditor;
3. An ECOA anti-discrimination notice, with substantially the following language:

The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Federal Trade Commission [include regional address or Equal Credit Opportunity, Washington, DC 20580];

4. (a) A statement of the specific reasons for the action taken; or
(b) A disclosure of the customer's right to a specific statement within 30 days, if the statement is requested within 60 days of your notification. This disclosure (which we refer to as a “simplified notice”) must also include the name, address, and telephone number of the person or office where the customer can obtain the statement of reasons. If you choose to provide the reasons orally,

you must also tell the customer that he has the right to have the reasons confirmed in writing within 30 days after you receive a written request for confirmation from the customer.

The ECOA does not expressly require a specific manner of delivery of the adverse action notice. A creditor can give the notice to the customer in person or send it by regular mail, fax, or electronically. However, the creditor can send the notice electronically only if the creditor complies with the Electronic Signatures in Global and National Commerce (ESIGN) Act and the ECOA, and first obtains the customer's affirmative consent to receive notices electronically.

You will have to determine whether you use an adverse action notice that contains a statement of specific reasons (see 4(a) above) or a simplified notice that discloses the customer's right to receive a specific statement if requested within 60 days of your notification (see 4(b) above). A sample simplified notice derived from the Federal Reserve Board's model forms for this type of notice is contained in Appendix B of this guide.

If you choose the simplified notice (4(b)) and the customer requests a specific statement within 60 days of your notification, you may provide the specific statement orally or in writing. If you choose to do so orally, you also must provide a written statement if requested by the customer. You should consider designating a finance manager who is knowledgeable about adverse action law, and trained in your dealership's adverse action notice procedures to respond to all customer requests for a specific statement of reasons. The designated finance manager should also be able to determine the reasons for the adverse action taken. This will help reduce the possibility of error in fulfilling your adverse action notice responsibilities.

The following scenarios assume you use the simplified notice (4(b)) and that the customer has sought the specific statement within 60 days of your notification.

Scenarios:

Scenario: You submit a customer application for vehicle financing to three potential finance sources, all decline to purchase a vehicle financing contract between the dealership and the customer, and none provide you with the reason(s) for their decision. What specific reason for the adverse action do you give to the customer?

Response: It should be acceptable to explain to the customer that none of the finance companies to which you sent the application would buy a vehicle financing contract between the customer and your dealership.

Scenario: Same as the previous scenario, except this time all three finance sources inform you of their reason(s) for declining to purchase a vehicle financing contract between the dealership and the customer. Each identifies as a reason that the customer previously filed for bankruptcy, and two of the three also identify that the customer's income is too low. What specific reason(s) for the adverse action do you give to the customer?

Response: It should be acceptable to explain to the customer both that (i) none of the finance companies to which you sent the application would buy a vehicle financing contract between the customer and your dealership, and (ii) it is your understanding that one or more of the finance sources would not buy the contract because the customer previously filed for bankruptcy and the customer's income is too low.

Scenario: You submit an application for vehicle financing for a customer with a poor credit rating to two potential finance sources. One finance source will purchase a contract between the customer and the dealership if you pay a finance acquisition fee of \$700. The other will purchase a contract between the customer and the dealership if you pay a finance acquisition fee of \$550. Because these amounts exceed the dealer participation you would earn on the

contract, you decide not to finance the sale. What specific reason for the adverse action do you give to the customer?

Response: It should be acceptable to explain that none of the finance companies to which you sent the application would buy a vehicle financing contract between the customer and your dealership on terms that would allow the dealership to earn sufficient income in connection with the finance transaction.

Scenario: A customer applies for credit on no particular terms. In reviewing the application, you determine that the customer's income is too low and that none of your finance sources would buy the contract, so you don't send it to anyone. How specific must you be in giving the reason?

Response: It should be acceptable to explain to the customer that the customer's income is too low, and because of the customer's low income, you determined that none of the finance companies that you do business with would buy a vehicle financing contract between the customer and your dealership. It is unacceptable to state that the customer failed to meet your minimum standards. Indefinite and vague reasons are impermissible.

Scenario: A customer wants to finance \$8,000 to purchase a 7-year-old car. In reviewing the application, you determine that none of your finance sources will buy a contract if a vehicle is more than 5 years old, so you don't send it to anyone and you are not going to finance the sale. What do you tell the customer after she requests a statement of specific reasons for the denial?

Response: It should be acceptable to explain to the customer that you denied the application because of the age of the desired vehicle and that none of the finance companies that you do business with would buy a vehicle financing contract between the customer and your dealership for a car of that age.

Scenario: A customer applies for credit on no particular terms. In reviewing the application, you identify the following six reasons why the customer will not qualify for financing: (1) the customer's income is too low; (2) the customer provided only family members as credit references; (3) the customer has too many other financial obligations; (4) the customer has lived at his current address for only one week; (5) the customer's employment is only temporary; and (6) the customer checked the box indicating that he previously filed for bankruptcy. You decide that you will need to deny the credit application without sending it to any finance source. In your statement of specific reasons, do you tell the customer all of these reasons or just some of them?

Response: You should tell the customer the principal reasons you are taking adverse action. Giving more than four reasons is not likely to be helpful to the customer. Therefore, you should determine which ones on the list are most important in making your credit decision and will be most helpful to the customer in understanding why you denied the application.

- The customer's right to dispute with the CRA the accuracy or completeness of any credit report information.

If the information upon which you base the credit decision includes the consumer's credit score, you must provide the following additional disclosures in your adverse action notices beginning July 21, 2011:

- The consumer's credit score;
- The date on which the score was created;
- The range of possible credit scores under the model used to generate the score;
- The key factors that adversely affected the consumer's credit score in the model used (list up to four key factors provided by the CRA or up to five key factors where one of the factors used in making the adverse credit decision is the number of recent inquiries made with respect to the consumer's credit report; and
- The name of the person or entity that provided the credit score.

B. Notices Under the FCRA

1. Notice of Action Based on Information in a Credit Report

If you base a credit decision on information contained in a customer's credit report, the FCRA requires you to provide additional information in your adverse action notice to the customer. Under the FCRA, such notice must include all of the following information:

- A statement that the adverse credit decision was based in whole or in part on information obtained from a CRA;
- The contact information of the CRA that provided the credit report;
- A statement that the CRA did not make the decision;
- The customer's right to obtain a free copy of his or her credit report from the CRA if requested within 60 days after receiving the notice; and

(Note that listing the key factors that adversely affected the consumer's credit score in the model used does not constitute "a statement of the specific reasons for the action taken" under ECOA (see Item 4(a) under section V.A above).)

The Federal Reserve Board has revised its model adverse action notice forms to reflect the inclusion of these five disclosures. It also has added the following statements to those forms: (i) that the creditor obtained the consumer's credit score from a CRA named in the notice; (ii) that a credit score is a number that reflects the information in the consumer's credit report; and (iii) that the consumer's credit score can change, depending on how the information in the consumer's credit report changes. At your option, you may also provide a sentence that tells the consumer to contact the CRA if the consumer has any questions regarding his or her credit score.

The credit score related disclosures are mandated by section 1100F of the Dodd-Frank Law. They do not need to be included in your adverse action notice if you (i) do not use a credit report in taking the adverse action, or (ii) you use a credit report, but not a credit score, in taking the adverse action.

The Federal Reserve Board has indicated that it may consider a finance source's use of a credit report or credit score in taking an adverse action to be imputed to the dealer who sent the credit application to the finance source. As a result, dealers who do not obtain credit reports or credit scores may nevertheless be deemed to "use" a credit report or credit score if the finance source uses a credit report or score. Therefore, the conservative approach is for dealers to take steps to ensure that the Dodd-Frank Law disclosures are included in their adverse action notices even in cases where they would not otherwise obtain a credit report or credit score. That means that dealers must determine whether their finance sources use a credit score, and if so, obtain the information necessary to include the Dodd-Frank Law disclosures in their adverse action notices. If you or your finance sources use a proprietary credit scoring model in taking an adverse action, you should consult legal counsel to determine how to meet your disclosure obligations under Dodd-Frank.

If you obtain more than one credit score for a consumer and you use those scores in taking adverse action, then you may choose which credit score to disclose, and you must provide the information that pertains to that credit score, and you must ensure that the name of the CRA you chose is listed in your adverse action notice form in lieu of the phrase "this consumer reporting agency." If an applicant has no credit score, you may either omit the Dodd-Frank Law disclosures altogether, or, if you wish, you may provide notice to the customer that no credit score was available from a CRA.

If you receive a joint credit application and you use a credit score on each applicant in making an adverse action decision on the application, you must give the Dodd-Frank Law credit score disclosure

notice to each applicant. If, in the case of a joint application, you obtain the credit score only on the primary applicant and you use that score in taking adverse action, you must give the Dodd-Frank Law credit score disclosure to that applicant when you give the ECOA and FCRA adverse action notices.

A guarantor or co-signer is not required to receive an adverse action notice under either the ECOA or the FCRA. The credit applicant would, however, receive an adverse action notice, even if the adverse action decision were based solely on information in the guarantor's or co-signer's consumer report. That adverse action notice should not include the guarantor's or co-signer's credit score.

Scenarios:

Scenario: The credit score you obtain from a credit bureau on your customer is 620. You believe that only a subprime finance source will consider a credit application with that low of a score. You negotiate a deal with your customer that includes a monthly payment of \$600, but your subprime finance sources decline to offer financing based on the credit application because the monthly payment amount exceeds their minimum payment-to-income ratio. You decline to offer financing yourself. You have taken adverse action based on information from a CRA. Have you used a credit score in making the adverse action decision?

Response: Yes. You used the customer's low credit score in deciding which finance sources would be offered the contract. You must include the Dodd-Frank Law credit score disclosures in your ECOA and FCRA adverse action notices.

Scenario: The credit score that you obtain from the credit bureau shows that the customer has a credit score of 780. Your customer submits an application to finance the purchase of a \$45,000 car, but is unwilling to make a down payment of more than \$1,000. You know that none of your finance sources will offer financing under those terms and you are also unwilling

to finance the sale. You have taken adverse action, but have you used a credit score in that decision?

Response: No. Although you obtained the credit score, it was not a factor in your adverse action decision, and you need to give only an ECOA adverse action notice.

Scenario: Your customer with the credit bureau score of 780 agrees to increase the amount of the down payment on the application for credit that he makes to you. You offer to sell his contract to multiple finance sources. They all agree to provide financing if you can verify the customer's income on the application, but the customer refuses to give you that information. No one, including you, will finance the sale without proof of income. You have taken adverse action, but have you used the credit score in that decision?

Response: No. Although you obtained the credit score, it was not used in your adverse action decision, and you need to give only an ECOA adverse action notice.

While the assumption in the previous two scenarios is that the credit score was not used in making the credit decision and thus no FCRA notice is technically required, in some cases that may be difficult to definitively establish. Therefore, a conservative approach may be to include the FCRA notice, especially since the credit score and other required information is readily available and as discussed above, there is no penalty for overcompliance.

Scenario: You negotiate the terms of the sales contract with two prospective co-buyers and you obtain a joint credit application from them. When you obtain the credit scores, you find that their credit scores are low, so you decide to forward the joint credit application only to your subprime finance sources. None of those sources are willing to purchase a credit contract involving the joint credit applicants and you also are unwilling to finance the sale. You have used the credit scores in taking adverse

action. Can you give just one Dodd-Frank Law credit score notice to the joint applicants?

Response: No. You must send a separate notice to each joint credit applicant, and each notice must include the credit score and related information for that customer.

The sample simplified notice contained in Appendix B of this guide includes both the new credit-score-related disclosures and the three additional statements that the Federal Reserve Board has added to its model adverse action notices.

2. Notice of Action Based on Information from a Third Party (Other than a CRA)

If you obtain information related to a customer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living from a third party other than a CRA and you use that information in making your credit decision, the FCRA requires you to include the following information in your adverse action notice (in addition to the information required by the ECOA):

- A statement that the adverse credit decision was based on information obtained from a third party other than a CRA; and
- A statement that within 60 days of receiving the creditor's notice, the customer has the right to make a written request for the disclosure of the nature of this information. (The creditor must respond in writing within 30 days of receiving such a written request.)

Scenario: A customer submits an application to you to finance the purchase of a \$40,000 vehicle. You order the customer's credit report and credit score and notice that the customer has a low credit score and has three 90-day delinquencies reported in the last few months. You contact one of the customer's credit references who tells you that the customer made some bad personal investments, is behind in all of his payments to creditors, and is on the

verge of bankruptcy. Because of the customer's credit score, the information in the customer's credit report, and the report from the third party, you decide the customer is a bad credit risk and decline to extend credit. What do you need to include in the adverse action notice?

Response: You need to send a combined four-part notice that includes the four items required by the ECOA, the FCRA information indicating that you received information from a CRA, the new FCRA credit score disclosure information, and the additional FCRA information stating that you received information from a third party. You also must inform the customer about his additional rights under the FCRA. The Federal Reserve Board's template for this type of notice is contained in Appendix C of this guide (Form A).

General Rule: If you obtained the consumer's credit score and are unsure whether you used it in taking adverse action, then you should include the new Dodd-Frank Law credit score disclosures in your adverse action notice, as there is little risk in providing these disclosures in this situation.

VI. WHAT RULES APPLY TO INCOMPLETE CREDIT APPLICATIONS?

If the customer's credit application is incomplete, you have a choice of sending, in writing, within 30 days:

- An adverse action notice denying the application; or
- A "notice of incompleteness"

If you opt to send a notice of incompleteness, you must include three items in the written notice:

- The additional information you need;
- The time within which the customer must supply the additional information (this must be a reasonable period of time); and
- A statement telling the customer that you will not further consider the

application unless the customer gives you the requested information within that time.

If the customer does not respond to the notice of incompleteness, you are not required to send an adverse action notice.

You can also ask for missing information by talking to the customer (for example, via phone call). In that case, though, if the customer does not give you the requested information, you must send a written notice of incompleteness or an adverse action notice. The time for giving this notice after you orally ask the customer for the additional information is 30 days from the date that you received the incomplete application, not from the date when you orally asked the customer for the additional information.

If the application is missing some information, but there is enough for you to make a credit decision, you may evaluate the application, make your credit decision, and notify the customer. If you decide to deny the application, you must send an adverse action notice with the required content, including the specific reason(s) for the denial (note that, in this instance, you cannot give "missing information" or "incomplete application" as the reason for denial) or a disclosure of the customer's right to a statement of specific reasons if requested within 60 days of your notification.

Scenarios:

Scenario: On May 1, a customer fills out a credit application and you request the name and address of her employer to verify income. One week later, you still haven't received the information and you call the customer to ask for it. The customer never responds. What do you do?

Response: By May 31, you must send either an adverse action notice or a notice of incompleteness. If you send an adverse action notice, it must contain all the required content, including the specific reason(s) for denial or a disclosure of the customer's right to a state-

ment of specific reasons if requested within 60 days of your notification. If you send a notice of incompleteness, you must request that the customer provide the employer's information to verify income by a certain date and include a statement that you won't take any action on the application if the customer doesn't provide the information.

Scenario: On May 1, a customer fills out an application for credit, but doesn't provide her social security number. You try to call the customer, but the phone number is wrong. You send a letter on May 15 asking the customer to provide her social security number by May 30. In your letter, you also tell the customer that if she doesn't provide the information to you by May 30, you will not consider the application any further. You never hear back. Are you required to send an adverse action notice?

Response: No. You have sent a letter that includes the three items that must be included in a notice of incompleteness. You have also given the customer two weeks to provide a social security number, which should be a reasonable period of time for the customer to receive the mail and contact you with that information. Because you have sent a proper notice of incompleteness, you don't need to send an adverse action notice as well.

Appendix C of this guide (Form F) contains a "Sample Notice of Incomplete Application and Request for Additional Information." This notice must be appropriately tailored to your business.

VII. WHAT RECORDS SHOULD YOU KEEP?

A. ECOA Requirements

The ECOA requires you to keep a copy of the following documents for 25 months after notifying a consumer about the action taken on an application:

- The credit application itself;
- Any written record of information used in evaluating the application

that is not returned to the customer (including a credit report that you obtained to evaluate the application);

- Any documents that show notice given to the customer, including notes or computer records showing that oral notice was given;
- The statement of specific reasons for adverse action if provided to the applicant in writing or, if provided orally, any notation or memorandum that you made regarding the specific reasons (Note: If you send a customer a simplified adverse action notice and the customer does not request a statement of specific reasons within 60 days, you still must retain a record of your specific reasons for taking adverse action); and
- Any written statement submitted by the customer alleging a violation of the ECOA.

In addition, if you have actual notice that you are under investigation or subject to an enforcement proceeding for an alleged violation of the ECOA or Regulation B (which implements the ECOA), you must retain the records listed above until the matter is finally resolved, unless the agency or court enters an order stating that you may dispose of the records at an earlier time.

If a customer withdraws an application, applies for and receives credit, never uses the credit you offer, or if the application is submitted to multiple creditors and one offers credit (even if you do not), you still need to keep the application and related information for 25 months from the date of the application even though you were not required to send an adverse action notice.

Note: See Section B related to FCRA requirements concerning the advisability of retaining these records for a longer period to protect yourself in the event of a lawsuit.

You may retain the required records in an electronic format, provided you possess a retrieval system that can regenerate the records in an accurate and timely manner.

B. FCRA Requirements

The FCRA does not impose a specific record retention requirement related to adverse action notices. However, it is advisable for you to keep records of your procedures and the actions you took to comply with the ECOA and the FCRA, as they can help you defend against customer complaints and lawsuits. For example, if you can show that you maintained reasonable procedures to comply with the adverse action notice requirements under both statutes, you will be better prepared to defend yourself if a customer claims that you failed to give one in his case. Because your records can be useful in defending a lawsuit, you should keep them for the maximum time period within which a consumer may bring a claim under the ECOA and the FCRA, which for both statutes is five years after the date on which the alleged violation occurs (practically, this will be the

later of five years from the date of application or the date on which you send the adverse action notice).

VIII. WHAT PROCEDURES SHOULD YOU HAVE IN PLACE TO COMPLY?

You should adopt policies and procedures to ensure that you are: (i) sending out timely and proper notices as required by the ECOA and the FCRA, and (ii) maintaining proper records. You should implement a policy that, at a minimum, includes the following:

1. A requirement to notify customers who apply for credit about the action you take—whether you accept, reject, make a counteroffer, or determine that the application is incomplete. Your policy should require that you give this notice within 30 days of receiving any credit application.
2. Adopt adverse action notice procedures to ensure that you send ad-

verse action notices when required. You should have a policy of sending notices whenever you are involved in making the credit decision or setting the terms of credit and adverse action is taken. If you send out simplified adverse action notices, designate a finance manager who is knowledgeable about adverse action law and trained in your dealership's adverse action notice procedures to respond to all customer requests for a specific statement of reasons.

3. Adopt and implement record-retention policies as described in Section VII above. In particular, ensure you keep records stating, or otherwise record, the specific reason why you did not provide financing on the requested terms. Your record retention policy should also include procedures for disposing of records as required by other applicable laws and regulations that are not discussed in this guide.
4. Adopt a formal practice of allocating responsibility for sending out adverse action notices. For example, consider including a statement in the dealer/finance source agreements that the finance source is responsible for sending out its own adverse action notices.
5. Conduct periodic, internal audits to ensure compliance with the policies and procedures you adopt.

IX. UNIQUE CONSIDERATIONS FOR BUSINESS CREDIT

You also need to give an adverse action notice if you take adverse action against a business credit applicant. The actions that constitute adverse action against consumers similarly apply to businesses. However, the adverse action notice requirements under the ECOA are slightly different for business credit. (Note: The FCRA does not impose adverse action notice requirements that apply to business credit.)

A. Notices for Small Business Credit Applicants

If the credit applicant is a business with \$1 million or less in gross annual revenues, you may give an adverse action notice orally or in writing. The ECOA doesn't require you to obtain any formal documentation from the business applicant to determine gross revenues. However, you should have a practice in place to ask each business applicant whether the business has \$1 million or less in gross annual revenues so that you can be sure you are properly retaining your records.

You may give the disclosure that the business has the right to request a specific statement of reasons at the time of application instead of when the adverse action is taken. This disclosure must state that the business has 60 days after receiving notice of an adverse action to request a statement of the specific reasons for the adverse action, and the right to have them confirmed in writing within 30 days after the creditor receives a written request for confirmation.

You must also give the ECOA anti-discrimination statement described in Section V. If the application is made solely by telephone, you may satisfy the notice and disclosure requirements by giving an oral statement of the action taken and the business' right to a statement of the reasons for adverse action.

B. Notices for Large Business Credit Applicant

If the credit applicant is a business that had gross revenues in excess of \$1 million in its preceding fiscal year, you may notify the business within a reasonable time, orally or in writing, of the action taken on the application. You must provide a written statement of the reasons for the adverse action and the ECOA anti-discrimination notice if the business makes a written request for the reasons within 60 days of your notification.

Appendix C of this guide (Forms G and H) contains sample notices for business credit provided by the Federal Reserve Board. These notices must be appropriately tailored to your business.

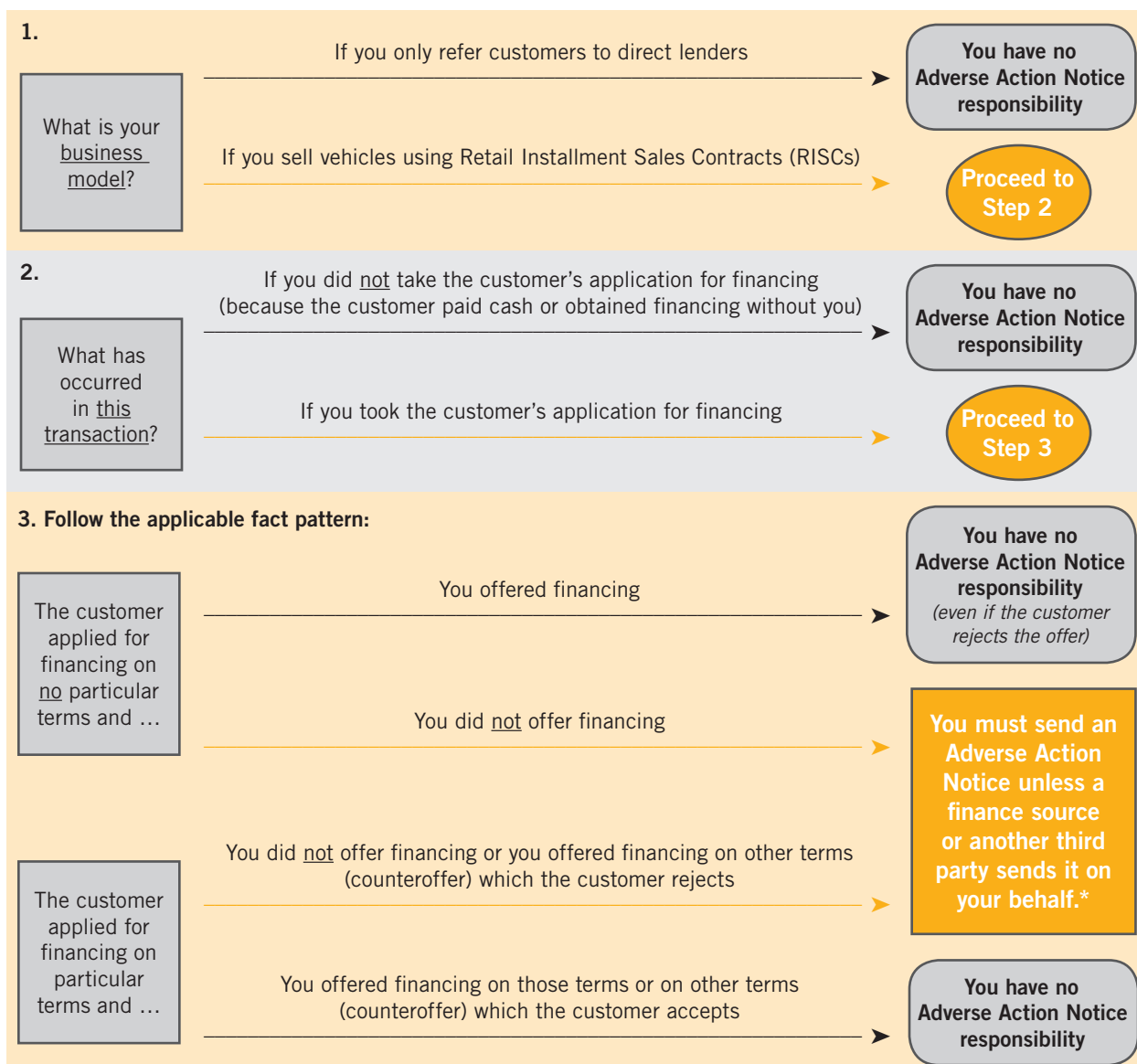
C. Recordkeeping Requirement

If the business credit applicant is small (\$1 million

or less in gross revenues), you must keep records related to the credit application for one year after notifying the business of the credit decision. (Note that, to ensure that you are keeping the required records, you should ask the business applicant whether its gross revenues were \$1 million or less in the preceding fiscal year.) If the business grosses more than \$1 million, you must keep the records on file for at least 60 days after notifying the applicant of the credit denial. However, if the business asks you to keep the records for a longer time, or if the business requests a written statement of the reasons for denial, you must keep the records for one year. If the business does not ask about the reasons for denial within 60 days, you are not required to keep the records.

Appendices

Appendix A: When Do I Need To Send An Adverse Action Notice?



* An Adverse Action Notice sent on your behalf must include, among other things, your name and address and either your specific reasons for the action taken or a disclosure of the customer's right to a statement of your specific reasons if requested within 60 days. (See Section V.)

The foregoing chart is offered for informational purposes only and is not intended as legal advice. As the length of this guide demonstrates, the full range of adverse action notice considerations is too extensive to fully summarize on one page. Contact your attorney concerning your adverse action notice compliance responsibilities.

Appendix B: Sample Simplified Adverse Action Notice

The sample simplified adverse action notice on the following page informs the customer that you have denied his or her application for vehicle financing and states the customer's right to contact you to receive a statement of specific reasons for the denial. It is derived from the Federal Reserve Board's model forms for notifying applicants of adverse action in Appendix C to Regulation B. This form is designed to assist dealers that engage in three-party financing (i.e., finance agreements dealers enter into with customers that dealers assign to third-party finance sources such as captive finance companies and banks) and is not designed for dealers that extend their own financing (such as through a "buy here, pay here" operation). It is designed for a dealer who uses a single credit report or credit score. Dealers that extend their own financing should consult the Federal Reserve Board's forms at Appendix C to Regulation B (which are set forth in Appendix C of this guide) for guidance on developing an appropriate adverse action notice for their business.

The adverse action form also contains the information that you will need to include if you use a credit score from a CRA in making an adverse action decision. If you checked "Yes" after the box entitled "DEALER OBTAINED AND USED A CREDIT SCORE," you must include the following information in that box: the credit score, the date on which it was created, the range of possible credit scores, and up to four key factors that adversely affected the consumer's credit score as provided to you by the CRA from which you obtained the score. You must list up to five key factors if one of the factors provided is "Number of recent inquiries on credit report." If this factor is present, remove the brackets around it that appear on the form. If this factor is not present, remove this factor from the form. If you obtain more than one credit score, you may choose which score to disclose, but you will need to indicate which CRA provided the score and information about the score that you disclose. If you obtain and use a credit score of each co-applicant, you will need to give the Dodd-Frank Law credit score disclosures to each applicant whose credit score you used in taking adverse action.

Note that the font size of this sample simplified adverse action notice has been reduced to permit its display on a single page within the formatting constraints of this guide. You may consider increasing the font size in your notice to ensure that the notice is presented in a clear and conspicuous manner as required under Reg B.

NADA does not warrant or represent that this sample simplified adverse action notice will be considered legally sufficient by any reviewing court, administrative agency, or other entity. Consult an attorney who is familiar with the law governing adverse action notices and your dealership's operations for guidance on appropriate notification forms and procedures for your business.

Dealership Letterhead

[Insert dealership name, address, and phone number]

[Applicant's Name]

[Date]

[Applicant's Address]

Dear _____:

Thank you for submitting your recent application to us for vehicle financing. After carefully reviewing your application, we are sorry to advise you that we cannot extend vehicle financing to you at this time.

If you would like a statement of specific reasons why your application was denied, please contact our Finance Director at the address and/or telephone number listed above within 60 days of the date of this letter, and we will provide you with a statement of reasons within 30 days after receiving your request. If we provide reasons to you orally, you have the right to request that we confirm them in writing within 30 days of our receipt of your written request for confirmation.

DEALER OBTAINED A CREDIT REPORT: [] YES [] NO

If we checked YES above, that means we obtained information from a consumer reporting agency as part of our consideration of your application. The box checked below shows the name, address, and [toll-free] telephone number for the consumer reporting agency that provided a report to us. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you received is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency. You can find out about the information contained in your file (if one was used) by contacting:

<input type="checkbox"/> Equifax P.O. Box 740241, Atlanta, GA 30374 (800) 685-1111 www.equifax.com	<input type="checkbox"/> Experian P.O. Box 2104, Allen, TX 75013 (888) 397-3742 www.experian.com	<input type="checkbox"/> TransUnion P.O. Box 2000, Chester, PA 19022 (800) 888-4213 www.transunion.com
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DEALER OBTAINED AND USED A CREDIT SCORE: [] YES [] NO

If we checked YES above, that means we also obtained your credit score from this consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your credit report. Your credit score can change, depending on how the information in your credit report changes.

Your credit score: _____ Date: _____ Scores range from a low of _____ to a high of _____

Key factors that adversely affected your credit score:

[Number of recent inquiries on credit report]

If you have any questions regarding your credit score, you should contact the consumer reporting agency at the address listed above.

DEALER OBTAINED INFO FROM THIRD PARTY ABOUT CREDITWORTHINESS: [] YES [] NO

If we checked YES above, that means we obtained information from a third party other than a credit reporting agency, such as your employer, landlord, or other credit reference you provided. Our credit decision was based in whole or in part on information obtained from the third party. Under the Fair Credit Reporting Act, you have the right to make a written request, no later than 60 days after you receive this notice, for disclosure of the nature of this information.

DEALER SUBMITTED YOUR APPLICATION TO FINANCE SOURCE(S): [] YES [] NO

If we checked YES above, that means we submitted your application to a bank or other creditor(s). You should understand that as a dealer, we generally sell cars on credit only if a third party like a bank or finance company will agree to buy the contract from us on terms that are financially acceptable to us. Regrettably, we could not do that in this instance.

If we checked NO above, that means we made the decision on your application without submitting it to another creditor.

If you have any questions regarding this notice, please contact our Finance Director at the number listed above.

Sincerely,

DEALER

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Federal Trade Commission at Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Appendix C: Sample Federal Reserve Board Notices

[The Federal Reserve Board has provided the following templates to assist creditors in creating notices that comply with the ECOA and the FCRA. You must modify these samples to fit your business. Contact an attorney who is familiar with the law governing adverse action notices and your dealership's operations for guidance on appropriate notification forms and procedures for your business.]

A. Sample Notice Of Action Taken And Statement Of Reasons — ECOA And FCRA

Statement of Credit Denial, Termination or Change

Date: _____
Applicant's Name: _____
Applicant's Address: _____
Description of Account, Transaction, or Requested Credit: _____
Description of Action Taken: _____

Part I: Principal Reason(s) for Credit Denial, Termination, or Other Action Taken Concerning Credit

This section must be completed in all instances.

- Credit application incomplete
- Insufficient number of credit references provided
- Unacceptable type of credit references provided
- Unable to verify credit references
- Temporary or irregular employment
- Unable to verify employment
- Length of employment
- Income insufficient for amount of credit requested
- Excessive obligations in relation to income
- Unable to verify income
- Length of residence
- Temporary residence
- Unable to verify residence
- No credit file
- Limited credit experience
- Poor credit performance with us
- Delinquent past or present credit obligations with others
- Collection action or judgment
- Garnishment or attachment
- Foreclosure or repossession
- Bankruptcy
- Number of recent inquiries on credit bureau report
- Value or type of collateral not sufficient
- Other, specify: _____

Part II: Disclosure of Use of Information Obtained From an Outside Source

This section should be completed if the credit decision was based in whole or in part on information that has been obtained from an outside source.

___ Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

Name: _____

Address: _____

[Toll-free] Telephone number: _____

[We also obtained your credit score from this consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your credit score: _____

Date: _____

Scores range from a low of _____ to a high of _____

Key factors that adversely affected your credit score:

[Number of recent inquiries on credit report] _____

[If you have any questions regarding your credit score, you should contact [entity that provide the credit score] at:

Address: _____

[Toll-free] Telephone number: _____]

___ Our credit decision was based in whole or in part on information obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, no later than 60 days after you receive this notice, for disclosure of the nature of this information.

If you have any questions regarding this notice, you should contact:

Creditor's name: _____

Creditor's address: _____

Creditor's telephone number: _____

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is [the Federal Trade Commission at Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580].

B. Sample Notice Of Action Taken And Statement Of Reasons — ECOA And FCRA

Date _____

Dear Applicant: Thank you for your recent application. Your request for [a loan/a credit card/an increase in your credit limit] was carefully considered, and we regret that we are unable to approve your application at this time, for the following reason(s):

Your Income:

- ___ is below our minimum requirement.
- ___ is insufficient to sustain payments on the amount of credit requested.
- ___ could not be verified.

Your Employment:

- ___ is not of sufficient length to qualify.
- ___ could not be verified.

Your Credit History:

- ___ of making payments on time was not satisfactory.
- ___ could not be verified.

Your Application:

- ___ lacks a sufficient number of credit references.
- ___ lacks acceptable types of credit references.
- ___ reveals that current obligations are excessive in relation to income.

Other: _____

The consumer reporting agency contacted that provided information that influenced our decision in whole or in part was [name, address and [toll-free] telephone number of the reporting agency]. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency. Any questions regarding such information should be directed to [consumer reporting agency]. If you have any questions regarding this letter, you should contact us at [creditor's name, address and telephone number].

[We also obtained your credit score from this consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your credit report. Your credit score can change, depending on how the information in your credit report changes.

Your credit score: _____

Date: _____

Scores range from a low of _____

to a high of _____

Key factors that adversely affected your credit score:

[Number of recent inquiries on credit report] _____

[If you have any questions regarding your credit score, you should contact [entity that provide the credit score] at:

Address: _____

[Toll-free] Telephone number: _____]

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is [the Federal Trade Commission at Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580].

C. Sample Notice Of Action Taken And Statement Of Reasons (Credit Scoring) — ECOA And FCRA

Date _____

Dear Applicant: Thank you for your recent application for _____. We regret that we are unable to approve your request.

Reasons for Denial of Credit

Your application was processed by a credit scoring system that assigns a numerical value to the various items of information we consider in evaluating an application. These numerical values are based upon the results of analyses of repayment histories of large numbers of customers.

The information you provided in your application did not score a sufficient number of points for approval of the application. The reasons you did not score well compared with other applicants were:

- Insufficient bank references
- Type of occupation
- Insufficient credit experience
- Number of recent inquiries on credit bureau report

Your Right to Get Your Credit Report

In evaluating your application the consumer reporting agency listed below provided us with information that in whole or in part influenced our decision. The consumer reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. It can be obtained by contacting: [name, address, and [toll-free] telephone number of the consumer reporting agency]. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

Information about Your Credit Score

[We also obtained your credit score from this consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your credit report. Your credit score can change, depending on how the information in your credit report changes.

Your credit score: _____

Date: _____

Scores range from a low of _____

to a high of _____

Key factors that adversely affected your credit score:

[Number of recent inquiries on credit report] _____

[If you have any questions regarding your credit score, you should contact [entity that provide the credit score] at:

Address: _____

[Toll-free] Telephone number: _____]

If you have any questions regarding this letter, you should contact us at

Creditor's Name: _____

Address: _____

Telephone: _____

Sincerely,

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (with certain limited exceptions); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is [the Federal Trade Commission at Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580].

D. Sample Notice Of Action Taken, Statement Of Reasons And Counteroffer — ECOA and FCRA

Date _____

Dear Applicant: Thank you for your application for _____. We are unable to offer you credit on the terms that you requested for the following reason(s): _____

We can, however, offer you credit on the following terms: _____

If this offer is acceptable to you, please notify us within [amount of time] at the following address:

Our credit decision on your application was based in whole or in part on information obtained in a report from [name, address and [toll-free] telephone number of the consumer reporting agency]. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

[We also obtained your credit score from this consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your credit report. Your credit score can change, depending on how the information in your credit report changes.

Your credit score: _____

Date: _____

Scores range from a low of _____
to a high of _____

Key factors that adversely affected your credit score:

[Number of recent inquiries on credit report] _____

[If you have any questions regarding your credit score, you should contact [entity that provide the credit score] at:

Address: _____

[Toll-free] Telephone number: _____]

You should know that the federal Equal Credit Opportunity Act prohibits creditors, such as ourselves, from discriminating against credit applicants on the basis of their race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract), because they receive income from a public assistance program, or because they may have exercised their rights under the Consumer Credit Protection Act. If you believe there has been discrimination in handling your application you should contact [the Federal Trade Commission at Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580].

Sincerely,

E. Sample Disclosure Of Right To Request Specific Reasons For Credit Denial

Date _____

Dear Applicant: Thank you for applying to us for _____ .

After carefully reviewing your application, we are sorry to advise you that we cannot [open an account for you/grant a loan to you/increase your credit limit] at this time. If you would like a statement of specific reasons why your application was denied, please contact [our credit service manager] shown below within 60 days of the date of this letter. We will provide you with the statement of reasons within 30 days after receiving your request.

Creditor's Name _____
Address _____
Telephone Number _____

If we obtained information from a consumer reporting agency as part of our consideration of your application, its name, address, and [toll-free] telephone number is shown below. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. [You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency.] You have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you received is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency. You can find out about the information contained in your file (if one was used) by contacting:

Consumer reporting agency's name _____
Address _____
[Toll-free] Telephone number _____

[We also obtained your credit score from this consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your credit report. Your credit score can change, depending on how the information in your credit report changes.

Your credit score: _____
Date: _____
Scores range from a low of _____
to a high of _____
Key factors that adversely affected your credit score:

[Number of recent inquiries on credit report] _____

[If you have any questions regarding your credit score, you should contact [entity that provide the credit score] at:
Address: _____

[Toll-free] Telephone number: _____]

Sincerely,

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is [the Federal Trade Commission at Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580].

F. Sample Notice Of Incomplete Application And Request For Additional Information

Creditor's name
Address
Telephone number
Date

Dear Applicant: Thank you for your application for credit. The following information is needed to make a decision on your application:

We need to receive this information by _____(date). If we do not receive it by that date, we will regrettably be unable to give further consideration to your credit request.

Sincerely,

G. Sample Notice Of Action Taken And Statement Of Reasons (Business Credit)

Creditor's Name
Creditor's address
Date

Dear Applicant: Thank you for applying to us for credit. We have given your request careful consideration, and regret that we are unable to extend credit to you at this time for the following reasons:

(Insert appropriate reason, such as: Value or type of collateral not sufficient; Lack of established earnings record; Slow or past due in trade or loan payments)

Sincerely,

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is [the Federal Trade Commission at Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580].

H. Sample Disclosure Of Right To Request Specific Reasons For Credit Denial Given At Time Of Application (Business Credit)

Creditor's name
Creditor's address

If your application for business credit is denied, you have the right to a written statement of the specific reasons for the denial. To obtain the statement, please contact [name, address and telephone number of the person or office from which the statement of reasons can be obtained] within 60 days from the date you are notified of our decision. We will send you a written statement of reasons for the denial within 30 days of receiving your request for the statement.

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is [the Federal Trade Commission at Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580].

ACKNOWLEDGMENT

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