



Automobile Dealers Association of Indiana, Inc.

BULLETIN

Bulletin #1101 - January 12, 2011

Risk Based Pricing Rule – Credit Score Disclosure Notice

The purpose of this Bulletin is to provide you with a list of some of the frequently asked questions regarding the Credit Score Disclosure Notice (the “Notice” or “CSDN”) required by the Risk Based Pricing Rule (the “Rule”).

FAQ's

Q Do customers have to sign the CSDN?

Answer: No, customers are not required to sign the Notices. Absent the customer's signature, however, you are left with nothing to prove you provided the notice to the customer. Generally, it is a good practice to have customers acknowledge that you provided them something if you can get in trouble for not providing it. DealerTrack, and potentially other companies, that are providing Notices for your benefit, may have signature blocks on them. You should have customers sign the signature block or indicate in the signature block the customer was not available to sign and the method you used to provide the Notice to the customer – e.g., PROVIDED VIA MAIL ON mm/dd/yyyy, PROVIDED VIA E-MAIL ON mm/dd/yyyy, PROVIDED VIA FAX mm/dd/yyyy, etc.

Q Do I have to pull credit reports to comply with the Rule?

Answer: I have heard arguments on both sides of this question, believe each to have merit, but have to advise that dealers pull credit reports to comply with the Rule. As the Rule is written, there is an argument that a dealer who does not pull credit reports (ever) does not have to provide exception notices. There is language in the Rule supporting this argument; however, Federal Trade Commission representatives and Federal Reserve Board representatives, those who are responsible for the Rule, suggest that dealers who do not pull credit bureaus were not meant to be carved out. They argue that the decision to extend credit is based on the credit report pulled by the lender to which the dealer sends the credit application and that the dealer's credit decision is imputed to have been based on the credit report pulled by the lender thereby triggering the Rule. If the Rule is triggered, the dealer either has to provide the Risk Base Pricing Notices to those required to receive them or the Credit Score Decision Notices to everyone that applies for credit which is not required to receive an Adverse Action Notice. Whether a dealer provides the Risk Based Pricing Notice or the Credit Score Exception Notice, the dealer is required to pull credit reports to garner the information necessary to complete either notice.

Regardless of whether the Rule requires you to pull a credit report, the FTC Red Flags Rule lends support for pulling credit reports. Many of the FTC's illustrative red flags involve credit report analysis. It does not, however, require pulling credit reports. Engaging in credit, lease, or even “one-pay” transactions without a credit report or without ensuring the customer is who they say they are (and credit worthy) is a needless risk given the low cost of obtaining the credit reports compared to the cost of being a victim of fraud.

Continued ...

Additionally, certain lenders use what are called two-party agreements, which basically means the dealer is not a party to the Retail Installment Sales Contract with the consumer. In this case, the lender is required to comply with the Rule and can require you to do its bidding, which is the only reasonable way to comply with the Rule for these lenders. For the lender to comply without your assistance would require the lender to provide notices directly to the consumers prior to you contracting with them. The alternative, therefore, would mean unreasonable delays in delivering cars, which costs you money and potentially sales. Where lenders require you to comply with the rule on their behalf, you would have to pull credit reports to obtain the scores.

This question has been a major discussion among attorneys and the regulatory agencies. Accordingly, there may be additional clarification forthcoming with regard to pulling versus not pulling credit reports. Given the consensus among those in our network, and the alternative reasons, currently, the best approach is to pull the credit bureaus.

Q Do I need a written policy regarding the Rule?

Answer: The Rule does not require you to have a written policy; however, there are distinct advantages to having a written policy. Having a written policy in place and training on that policy can mitigate potential fines for non-compliance in the event you are investigated by the FTC. For this reason alone, it makes sense to have a written policy.

Q When do I have to provide the Notice?

Answer: You are required to provide the Notice as soon as is reasonably practicable after pulling the customer's credit score but in any event you must provide the Notice prior to the customer signing a contract.

Q How do I provide a Notice to customers that provide their credit information over the internet or the telephone?

Answer: You can provide the Notices in any manner which gives the customer a copy he/she can keep, but to do so by e-mail, you must have the customer's written authorization agreeing to accept the Notice by e-mail.

Q Do I have to provide separate notices when there are multiple purchasers?

Answer: Yes, you are required to provide a Notice to each person applying for credit.

Q What score do I disclose when I have pulled multiple credit reports?

Answer: If you use an average of multiple scores as the determinant for the terms of extending credit, you may use any of the scores used to calculate the average. If you receive multiple scores but only use one of them, disclose the score that was used to determine the terms of extending credit—i.e., if you use the lowest score, disclose it; or, if you use the highest score, disclose it. You may disclose each score you obtained, but you must also disclose the other items that go along with those scores—e.g., if you obtain scores from the three credit reports and disclose each, you must also disclose the specifics about the credit reports.

Q If I do not pull credit reports, can I just use the Notice for no credit score?

Answer: No, the Notice for no credit score is applicable to the situation where you pulled a credit report on a consumer that does not have a score. It is not applicable for consumers that have scores but you have not obtained a score.

Q Can I have the customer sign a form indicating the customer's acknowledgement that he/she has received the Notice and other things such as the dealership's privacy policy?

Answer: Yes, as long as the acknowledgment form is not a part of the Notice. The Notice itself must be separate and distinct from other forms—e.g., you cannot have an acknowledgment on the Notice that a customer received a copy of your privacy policy. You can, however, have a form, separate from the Notice, that is a customer's acknowledgement of having received the Notice and other disclosures.

Q To whom do I have to provide a Notice?

Answer: You are required to provide an Exception Notice to every consumer that applies for credit AND that you are not required to provide an Adverse Action Notice. The best practice is to provide every consumer with an Exception Notice whether or not you have given them an Adverse Action Notice. (You are required to provide an adverse action notice to those consumers that you deny for credit or that you deny for the credit that was requested but approve for different terms and the consumer does not accept the alternative terms.) A customer applying to lease a vehicle is not considered to be applying for credit and you do not have to provide such a customer with a Notice; however, if you have obtained a customer's credit information prior to any determination being made about whether that customer is wanting to lease or purchase, you should provide that customer a Notice. Again, it may be the best practice to give everyone the Notice unless you are required to provide an Adverse Action Notice.

If you have any questions regarding this bulletin or the Risk Based Pricing Rule and notice requirements, please contact Mike Shanahan at Stewart & Irwin P.C. at 317-639-5454 or email him at: mshanahan@silegal.com.