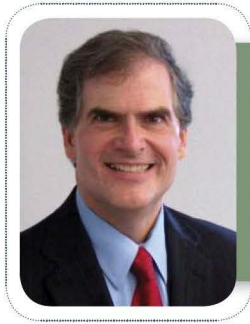


# Exception to the Rule

BY RON REAHARD



The magazine's resident F&I pro takes on a question about the Risk-Based Pricing Rule and its widely used exception notice.

This month's question comes via email from Gerald in Houston, home of the annual Art Car Parade. Unfortunately, if you have a car and you think you're an artist, car art just happens. Gerald writes, "When do you have to give a credit score disclosure? Should it be given any time a payment is done? What if a payment is given without a bureau run?"

Gerald, I first have to make my official disclaimer: I am not a lawyer, so I cannot give legal advice. I'm also not a comedian, but that's obvious.

The Risk-Based Pricing Rule that took effect in 2011 imposed a new notice requirement on creditors. It was intended to alert consumers whose credit applications had been approved, but on less favorable terms than the creditor provides other consumers, due to the existence of negative information in their credit bureau report. Apparently, the government didn't think people with bad credit were aware of it.

The rule provided two alternative methods for determining which consumers must receive risk-based pricing notices. They are the "credit score proxy" method and the "tiered pricing" method. Because of the implementation challenges created by both of these methods, the FTC also adopted an "exception notice" that creditors may use instead of a risk-based pricing notice. Only the government could implement a regulation so convoluted it also had to create an exception to it.

Unlike the risk-based pricing notice, the exception notice must be provided to all consumers who request credit. This eliminates the need for a creditor to determine which group of customers must get the risk-based pricing notice. The exception notice must include the consumer's credit score, along with additional information to help put their score in context. The exception notice is the compliance option used by virtually all automobile dealers.

The exception notice (which I'm assuming you're using) must be provided to all consumers who request credit. If a payment is quoted without pulling a credit bureau, in my opinion, you would not need to provide an exception notice because the customer has not requested credit, and the interest rate and payment quoted is not based on his or her credit score.

However, every dealership should still have a process for determining what rate is used for new- and used-vehicle payment quotes, so there is no chance of discrimination. This includes a documented process for quoting payments before and after a credit bureau has been obtained. Any and all payment quotes prior to obtaining a bureau must be quoted using an average rate, and the required disclosures should also be included.

Once a credit bureau has been obtained, you should then use a rate matrix that takes into consideration the customer's credit score and lender guidelines for any subsequent payment quotes (again, to avoid discrimination) until the deal has actually been submitted to and approved or declined by a finance source. If you would like a copy of our Finance Rates Form, call or email me.

Once you obtain a bureau, you then need to provide the exception notice to the customer per FTC guidelines. If the creditor (your dealership) chooses to provide an exception notice in lieu of a risk-based pricing notice, the exception notice must be provided to the consumer as soon as reasonably practicable after requesting the consumer's credit score but not later than consummation for closed-end credit.

I suggest the exception notice be provided to the consumer in the F&I office prior to signing of the retail installment sale contract. If the deal is not consummated, but F&I or the desk obtained a credit bureau, the dealership still needs to provide the customer with the notice as soon as reasonably practical. If an application is denied and an adverse action notice is provided, a risk-based pricing or exception notice is not required.

Gerald, I hope this answers your question. Your YETI cooler is on the way. And don't forget to submit your own video or email question for a chance to get it answered and receive a free YETI. Because it's a beautiful day to help a customer, or watch a parade! ■

#### ABOUT THE AUTHOR

Ron Reahard is president of Reahard & Associates Inc., a training company providing F&I classes, workshops, in-dealership and online training. Got a question or objection for Ron? Use your mobile phone to record a brief video (shot landscape style!) of your question and upload it to [go-reahard.com/ask-ron](http://go-reahard.com/ask-ron).

"BECAUSE OF THE IMPLEMENTATION CHALLENGES CREATED BY BOTH OF THESE METHODS, THE FTC ALSO ADOPTED AN 'EXCEPTION NOTICE' THAT CREDITORS MAY USE INSTEAD OF A RISK-BASED PRICING NOTICE. ONLY THE GOVERNMENT COULD IMPLEMENT A REGULATION SO CONVOLUTED IT ALSO HAD TO CREATE AN EXCEPTION TO IT."