

When do you need to issue an Adverse Action Notice on what you “think” is only a pre-qual?

A prequalification is still an application under Reg B (ECOA). But it's not subject to RESPA (unless the six "respa" items are included on the app) and it's not reportable for HMDA. But it IS subject to ECOA.

From ECOA 202.9:

5. Prequalification requests. **Whether a creditor must provide a notice of action taken for a prequalification request depends on the creditor's response to the request**, as discussed in comment 2(f)-3. For instance, a creditor may treat the request **as an inquiry** if the creditor evaluates specific information about the consumer and tells the consumer the loan amount, rate, and other terms of credit the consumer could qualify for under various loan programs, explaining the process the consumer must follow to submit a mortgage application and the information the creditor will analyze in reaching a credit decision. On the other hand, if a creditor has treated a request **as an application**, and is subject to the adverse action notice requirements of 202.9 if, after evaluating information, the creditor decides that it will not approve the request and communicates that decision to the consumer. For example, if the creditor tells the consumer that it would not approve an application for a mortgage because of a bankruptcy in the consumer's record, the creditor has denied an application for credit.

There are a couple issues with this. The largest is IF you meet the definition of creditor. **To be safe, it is best to act as if you are the creditor until the point that you have taken and submitted an application, and then the baton is passed to the creditor who will underwrite and fund the loan. Especially if your license is lender rather than broker. And it is best to treat all pre-quals as inquiries only, that would mean you do nothing until you decide or the client decides to complete an application or turn down the inquiry. If you make a counter-offer, you have now made an offer to take an app and the rule then is 90 days. If they do nothing with an inquiry and it just dies it looks like you don't do anything. But if you made the counter, you do.**

Now let's see the exact language defining when an AAN is required.

§ 202.9 Notifications.

(a) *Notification of action taken, ECOA notice, and statement of specific reasons -*

(1) *When notification is required.* A creditor shall notify an applicant of action taken within:

- (i)** 30 days after receiving a **completed application** concerning the creditor's approval of, counteroffer to, or adverse action on the application;
- (ii)** 30 days **after taking adverse action on an incomplete application**, unless notice is provided in accordance with paragraph (c) of this section;
- (iii)** 30 days after taking adverse action on an existing account; or
- (iv)** 90 days after notifying the applicant of a counteroffer if the applicant **does not expressly accept or use the credit offered**

Now let's look at the "incomplete application" verbiage in the regulation.

(c) *Incomplete applications -*

(1) *Notice alternatives.* Within 30 days after receiving an application **that is incomplete** regarding matters that an applicant can complete, the creditor shall notify the applicant either:

- (i)** Of action taken, in accordance with paragraph (a) of this section; or
- (ii)** Of the incompleteness, in accordance with paragraph (c)(2) of this section.

(2) *Notice of incompleteness.* If additional information is needed from an applicant, the creditor shall send a written notice to the applicant specifying the information needed, designating a reasonable period of time for the applicant to provide the information, and informing the applicant that failure to provide the information requested will result in no further consideration being given to the application. The creditor shall have no further obligation under this section if the applicant fails to respond within the designated time period.

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If the applicant supplies the requested information within the designated time period, the creditor shall take action on the application and notify the applicant in accordance with paragraph (a) of this section.

(3) Oral request for information. At its option, a creditor may inform the applicant orally of the need for additional information. If the application remains incomplete the creditor shall send a notice in accordance with paragraph (c)(1) of this section.

(d) Oral notifications by small-volume creditors. In the case of a creditor that did not receive more than 150 applications during the preceding calendar year, the requirements of this section (including statements of specific reasons) are satisfied by oral notifications.

(e) Withdrawal of approved application. When an applicant submits an application and the parties contemplate that the applicant will inquire about its status, if the creditor approves the application and the applicant has not inquired within 30 days after applying, the creditor may treat the application as withdrawn and need not comply with paragraph (a)(1) of this section.

Respectfully,

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