

A DEALER GUIDE TO THE FTC Privacy Rule and the Model Privacy Notice

FACTS

Why? WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?

Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.

What? The types of personal information we collect and share depend on the product or service you have with us. This information can include:

- Social Security number and [income]
- [account balances] and [payment history]
- [credit history] and [credit scores]

How? When you are no longer our customer, we continue to share your information as described in this notice.

All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Rev. [insert date]

Reasons we can share your personal information	Does [name of financial institution] share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

Questions?

This guide explains the Federal Trade Commission (FTC) Privacy Rule, recent amendments to the Privacy Rule, related duties under the Fair Credit Reporting Act, and instructions for using the Model Notices. In Appendix A, it provides samples of the notice required under the Rule, and in Appendix B, it provides examples of the three model form templates. This guide does not address other federal or state restrictions that may apply to the gathering, storage, use and/or sharing of personal financial or other information. This guide supersedes the 2001 NADA publication, *A Dealer Guide to the Federal Consumer Financial Privacy Regulation*, in its entirety. It supplements, but does not supersede, the 2010 guide *A Dealer Guide to the FTC Affiliate Marketing Rule*, the 2003 guide *A Dealer Guide to Safeguarding Customer Information*, and any other related NADA guides or educational materials.

This guide provides general guidance. It does not, and cannot, address the specific facts and circumstances of every dealership, as they vary greatly. Additionally, this guide does not cover all details of the Gramm Leach Bliley Regulation, the Fair Credit Reporting Act, or other federal laws. Also, your state may have more stringent privacy rules. You should consult with your dealership's legal counsel to verify that your compliance approach is appropriate to the facts and circumstances of your dealership, that it complies fully with the regulation, and that it complies with state law.

This guide provides examples of privacy notices. Dealers should not adopt these samples "as is." Instead, they must review their own privacy practices and policies and tailor their Privacy Notices to accurately reflect those policies and practices.

The National Automobile Dealers Association has prepared this management guide to assist its dealer members in compliance with federal regulatory requirements. 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.

Nothing in this guide (including the appendices) is intended as legal advice.

Driven

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FTC Privacy Rule and the Model Privacy Notice

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FTC Privacy Rule and the Model Privacy Notice

EXECUTIVE SUMMARY

Since 2001, dealers have provided a privacy notice, pursuant to the FTC's Privacy Rule, to certain of their customers describing the ways that the dealer collects and shares customer information. The FTC (and other agencies) recently issued a revised Model Privacy Notice, and as of January 1, 2011 dealers will have "safe harbor" protection under the Privacy Rule *only if they use this new model notice*. As a result, there is little reason for dealers not to adopt the new Model Privacy Notice as the template for their privacy notices. What this means is that your dealership's privacy notice is very likely going to look different by January 1, 2011.

The FTC has provided several templates of the Model Privacy Notice, as well as detailed instructions on how to complete the new form. This guide provides details for dealers about choosing the proper Model Privacy Notice template, and explains how to properly fill in the required fields on that template.

However, in order to properly complete the Model Privacy Notice, a dealer must first understand the requirements of the Privacy Rule and related requirements under the Fair Credit Reporting Act ("FCRA"). Therefore, this guide is broken down into two main sections: Part One includes a comprehensive review of the FTC Privacy Rule and two FCRA Rules addressed in the new Model Notice, and Part Two provides detailed instructions on how to complete the new Model Privacy Notice.

In addition, this guide contains appendices that will be helpful to dealers in properly completing the Model Privacy Notice, including: (a) two example Model Privacy Notices showing how a "typical" dealership's privacy notice may look using the new model form; (b) three Model Privacy Notice templates and a sample of the opt-out mail-in form, and; (c) a copy of the FTC publication entitled "The FTC's Privacy Rule and Auto Dealers: FAQs," which addresses a number of common questions relevant to dealers.

Remember, once you choose the proper template and properly complete the form, you will have safe harbor protection under both the FTC Privacy Rule and FCRA. However, it is vitally important that you get it right, and to do so, you must understand the relevant rules, accurately review your business structure and business practices, and carefully follow the instructions to ensure that your new privacy notice is accurate and complete.

FTC Privacy Rule and the Model Privacy Notice

I. OVERVIEW

The overwhelming majority of vehicle sales and leases are funded by a bank, finance company, or other third-party source. The banks' and finance companies' willingness to take assignment of credit and lease contracts entered into between dealers and their customers depends on the ability of dealers to gather a great deal of personal and financial information from prospective purchasers or lessees. As a result of the essential role that dealers play in gathering this information from their customers, they have become subject to an increasing number of regulatory requirements and restrictions governing the way that information is stored, shared, and used.

One such requirement for dealers, pursuant to the FTC Privacy Rule under the Gramm Leach Bliley Act ("GLB Act"), is the provision of a "Privacy Notice" to individuals who provide personal information to the dealer in the course of financing or leasing a vehicle. For nearly 10 years, dealers and others subject to this requirement have provided Privacy Notices pursuant to the Privacy Rule. Over that time, most dealers have based their notices on the "Sample Clauses" provided by the FTC in an appendix to the 2001 Privacy Rule. Using those samples as the basis for their Privacy Notice provided dealers with a "safe harbor"—meaning that they were deemed to be in compliance with the FTC Privacy Rule.

Recently, the FTC replaced those Sample Clauses with a new "Model Privacy Notice" form. The new

Model Privacy Notice rules have been in effect since December 31, 2009, and use of the new Model Notice will provide dealers with a "safe harbor" in providing the required disclosures under the Privacy Rule, while the safe harbor previously available for using the Sample Clauses expires by **December 31, 2010**. This guide will provide a detailed look at this new Model Notice, and will provide an overview of the Privacy Rule and several other related regulatory requirements implicated by the new Model Notice.

II. BACKGROUND

This guide focuses on the Model Privacy Notice and the customer data privacy provisions of the two primary federal statutes implicated by the Model Privacy Notice: (1) the GLB Act and (2) the Fair Credit Reporting Act ("FCRA"). Before we look at the Model Notice in detail, we will review the relevant requirements under these statutes.

Congress passed the GLB Act in late 1999. The GLB Act sets standards for financial institutions' disclosure of nonpublic personal information to nonaffiliated third parties. The GLB Act required the Federal Trade Commission (FTC) and other government agencies that regulate financial institutions to implement regulations to carry out the Act's financial privacy provisions. To implement the GLB Act, the FTC issued, and is responsible for enforcing, its Privacy of Consumer Financial Information Rule ("Privacy Rule"), which is designed to protect the privacy interests of individuals in the informa-

tion financial institutions obtain about them when providing financial products or services.

FCRA was originally passed in 1970 and was significantly amended by the Fair and Accurate Credit Transactions Act (“FACT Act”) in 2003. FCRA sets forth legal standards governing the collection, use, and communication of credit and other information about consumers—including disclosure of consumers’ nonpublic personal financial information to affiliates, and use of that information by the affiliate for marketing purposes. The GLB Privacy Rule does not “modify, limit, or supersede the operation of the Fair Credit Reporting Act.” Thus, both the Privacy Rule and the FCRA may apply to a financial institution’s disclosure of certain consumer information.

As discussed, dealers must provide a Privacy Notice to certain individuals who provide personal financial information in the course of obtaining a lease or financing a vehicle purchase. In addition, under both GLB and FCRA, dealers and others may be required to provide individuals with the ability to “opt-out”—that is, to tell the dealer not to share or otherwise use their information. If required, this opt-out opportunity is accomplished under both statutes by providing a notice, which is generally combined with the Privacy Notice. While certain information must be included in these notices, the Privacy Rule allows dealers to design their own notices based on their individual practices, provided they comply with the law and meet the “clear and conspicuous” standard in the statute and the Privacy Rule. While neither GLB nor FCRA technically *requires* that this notice be provided in any specific format, the Privacy Rule does include several “examples” or “Sample Clauses,” and notes that “compliance with the examples will constitute compliance with the rule.” As a result, most dealers and others subject to the notice requirements have generally used the Sample Clauses as the basis for their Privacy Notice.

III. DEVELOPMENT OF THE REVISED MODEL PRIVACY FORM

Because the Privacy Rule allows institutions flexibility in designing their privacy notices, notices have been formatted in various ways. The FTC and the other agencies charged with enforcing the Privacy Rule (the “Agencies”) were concerned about many of the formats and delivery methods used by different companies for their privacy notices, and that the lack of uniformity made it difficult for individuals to compare the privacy practices of financial institutions. As a result, the Agencies determined to revise the notice to make institutions’ information-sharing practices and consumer choices more transparent and to develop an easy-to-read and understandable model privacy notice for consumers. The agencies engaged in lengthy consumer research, including consumer interviews and focus groups, in order to develop just such a form. On October 13, 2006, Congress enacted the Regulatory Relief Act, which directs the Agencies to “jointly develop a model form which may be used, at the option of the financial institution, for the provision of disclosures under [the Privacy Rule].” The Regulatory Relief Act stipulates that the model form shall be a safe harbor for financial institutions that elect to use it.

On December 1, 2009, the Agencies issued a final rule, which amends the Privacy Rule, and provides a model privacy form that financial institutions may use to describe their privacy policies and to provide consumers with the opportunity to opt-out of the sharing of information with nonaffiliated third parties, as required by the GLB Act (“Model Privacy Form”). The Model Privacy Form also addresses relevant opt-outs under FCRA relating to the sharing of information with affiliates, and the use of the shared information by the affiliates for marketing purposes. The rule provides numerous detailed requirements for how the Model Privacy Form must be presented and what information must be included in the Model Privacy Form. The amendments to the privacy rules do not impose any additional recordkeeping, reporting, disclosure, or other compliance requirements on dealers.

A. Model Privacy Notice Replaces the “Sample Clauses” as Safe Harbor

The final rule became effective on December 31, 2009. As noted above, use of the Model Privacy Form is not required but it does provide a “safe harbor” for those institutions that decide to use it. That is, dealerships that use the Model Privacy Form as a template for their Privacy Notices (in accordance with the detailed instructions in the rule) by December 31, 2010 will be deemed in compliance with the GLB Act **as well as the** FCRA notice content requirements for privacy policies and opt-out notices.

In addition, the FTC will eliminate the safe harbor for the existing Sample Clauses in the Privacy Rule. That means that you will no longer have a “safe harbor” if you continue to use a Privacy Notice based on the “old” Sample Clauses after December 31, 2010. Indeed, the Sample Clauses will be removed from the Privacy Rule entirely by January 1, 2012. Technically speaking, dealers may continue to use other types of notices that vary from the model form so long as these notices comply with the Privacy Rule. However, for the vast majority of dealers, there will be little reason not to adopt the new Model Privacy Form by December 31, 2010.

IV. GRAMM LEACH BLILEY / FAIR CREDIT REPORTING ACT REVIEW

Before we address the specific provisions of the new Model Privacy Notice, we must first review the underlying statutory requirements in FCRA and the Privacy Rule. In this guide, we will conduct a comprehensive review of the Privacy Rule, as well as a brief review of several of the privacy provisions under GLB and FCRA that are directly implicated by the changes to the Model Privacy Notice, including: (1) the FCRA restrictions concerning sharing certain financial information with affiliated entities (“Affiliate Sharing Rule”); (2) the FCRA restrictions on use of such shared information by affiliates for marketing purposes (“Affiliate Marketing Rule”); and (3) the GLB requirements to take steps to physically and electronically safeguard information obtained from consumers in financial transactions (“Safeguards

Rule”). Please note that each of these three rules is far too complex to cover in detail here, so we will only cover the basics in this guide. If you need further details on those rules, you should consult the separate **Driven** NADA management guides that address each of these topics in more detail. You can find available **Driven** guides at nada.org. In addition, please note that these are but a few of the many privacy and other requirements under GLB and FCRA.

The intricacies of these rules and their relationship to one another are quite complex and can be difficult to understand. However, if you keep in mind as you are reviewing this guide that the overall goal of each of the rules is to provide transparency regarding how a company plans to use personal financial information and with whom they plan to share that information, and to provide consumers with some control over that process, you will be helped in your understanding of the Rules and your obligations under them as we proceed.

Now for the details:

PART ONE

THE GLB PRIVACY RULE AND FAIR CREDIT REPORTING ACT REQUIREMENTS

I. THE GLB PRIVACY RULE

A. Overview

As noted above, the GLB Act generally governs the disclosure by “financial institutions” of individuals’ personal financial information to nonaffiliated third parties. Specifically, the subsection of the GLB Act captioned “Disclosure of Nonpublic Personal Information” governs a financial institution’s obligations in certain circumstances to provide notice to its “customers” and “consumers” describing the financial institution’s policies and practices with respect to disclosing “nonpublic personal information” (“NPI”) about a consumer to both affiliated and nonaffiliated third parties. The notice also must provide a recipient a reasonable opportunity to “opt-out”—that is to direct the institution generally not to share “nonpublic personal information” about the consumer with nonaffiliated third parties other than as permitted by the statute (such as processing transactions and maintaining customers’ accounts).

The Privacy Notice must also provide, where applicable under the FCRA, a notice and an opportunity for a consumer to opt-out of certain information-sharing among affiliates. (This “Affiliate Sharing Rule” is discussed in more detail below). The Privacy Notice also may, but is not required to, be combined with the notice and opt-out opportunity required under the FCRA “Affiliate Marketing Rule” (also discussed below). The Privacy Rule requires a financial institution to provide a Privacy Notice no later than when a customer relationship is formed and annually thereafter to its customers for as long as the relationship continues. The notice must accurately reflect the institution’s information collection and disclosure practices and must include certain other specific information as set out in the Privacy Rule.

Now let’s look at some of the key terms and concepts you must understand to comply with the GLB Privacy Rule:

1. Financial Institutions

The Privacy Rule applies to “financial institutions”—companies that offer financial products or services to individuals, like loans or financial or investment advice. The Privacy Rule defines “financial institutions” as entities “significantly engaged in financial activities.” However, because the GLB Act was intended to cover all instances where individuals are required to provide NPI in order to obtain credit, it necessarily expanded the historical concept of a “financial institution.” As a result, the Federal Trade Commission was directed to issue privacy rules covering entities over which the traditional bank regulatory agencies do not have enforcement jurisdiction, including automobile and truck dealers.

For purposes of the Privacy Rule dealers are “financial institutions.” Indeed, the definition of “financial activities” includes “consumer financing” and “leasing personal property.” While the regulation provides no standard for determining whether one is “significantly engaged” in a given financial activity, the regulation does provide examples of what the FTC considers “financial institutions,” including: “[a]n automobile dealership that, as a usual part of its business, leases automobiles on a non-operating basis for longer than 90 days.” The FTC did not include an example regarding installment sales, but of course, most automobile dealers enter into installment sales contracts with consumers (prior to assigning them to a third-party finance source) as a usual part of their business. As a result, the FTC considers the typical dealership’s leasing and credit sale activities to be significant financial activities. Selling or providing insurance is also a financial activity subject to privacy rules, but this area is governed by state law, not by the FTC (discussed in greater detail below).

2. Consumers and Customers

A dealer’s obligations under the Privacy Rule depend on whether the individuals who provide NPI to the dealer are “Consumers” or “Customers”; therefore dealers must understand what these terms mean under the Privacy Rule.

Please note that we will be using the terms “Consumer” and “Customer” throughout this guide. These terms have very specific meanings under the Privacy Rule, and can cause confusion (1) because those meanings are somewhat different from the everyday usage, and (2) because they are so similar. The distinction is important, and as you review the guide, take caution to note the usage of these terms.

The Privacy Rule does not apply to every consumer who walks into your dealership. Instead, the Privacy Rule defines “Consumer” as an individual who initiates the process of obtaining from your dealership a financial product or service to be used for personal, family, or household purposes. Therefore, someone who simply walks into your showroom to shop for vehicles is not a Consumer under GLB, even if he (or she) provides his name and contact information to a salesperson. However, if that individual applies for credit to buy a family car, or even if he simply gives his name and social security number and authorizes you to run a credit check, he is a Consumer—regardless of whether credit is ultimately extended.

A “Customer” is a Consumer with a continuing relationship with your dealership. For example, a person becomes a Customer when you execute a credit or lease transaction with that person. In fact, one example the FTC uses to demonstrate when a “Consumer” becomes a “Customer” is when a Consumer “enters into an agreement or understanding with you [the dealer] whereby you undertake to arrange or broker . . . credit to purchase a vehicle, for the consumer.”

The distinction between “Consumer” and “Customer” is important because dealers have different obligations to each. Dealers are *required* to provide a Privacy Notice to “Customers” – with no exceptions. You must provide the Privacy Notice no later than when someone becomes your Customer, which occurs when you execute a credit or lease transaction. However, dealers are only required to provide “Consumers” with a Privacy Notice if they plan on disclosing NPI about the Consumer to a nonaffiliated third party.

For example, if a dealer wished to sell (or transfer) a list of names and phone numbers of everyone who applied for credit through your dealership (whether they ultimately leased/purchased from your dealership or not) to an unrelated company, the dealer would have to provide every person on the list with an initial privacy notice before doing so.

Medium- and Heavy-Duty Truck Dealers:

The Privacy Rule requires only that financial institutions protect information collected about individuals; it does not apply to information collected in business or commercial activities. Therefore, the Privacy Rule does not apply to the extent that information is gathered from businesses (including sole proprietorships acting in a business capacity).

Of course, as with most general rules, there are exceptions. For instance, you are not required to provide the notice before disclosing nonpublic personal information in order to carry out a transaction a Consumer requests or authorizes. Therefore, you are not required to provide the notice before sending a Consumer’s credit application to a bank or finance company, where the Consumer has authorized you to do so. The exceptions are discussed in more detail below.

Cash customers. *A customer buys a car for cash. Do we need to provide an initial privacy notice or opt-out opportunity?* Generally, the answer is “no.” As long as the cash customer does not provide you with NPI (that is, she does not complete a credit application and you do not obtain the customer’s credit report), the person is not a consumer or customer for purposes of the GLB Regulation, and you do not owe her privacy notices or opt-outs (subject to the sale of insurance, discussed below).

Credit cards. *My service department customer pays with a major credit card. Do I need to give this customer a privacy notice or opt-out opportunity?* No. Taking credit cards does not make the dealership a financial institution for purposes of the credit card transaction. As a result, a person who merely uses a credit card in your service or parts department is neither a consumer nor a customer for purposes of the GLB Regulation.

3. “Non-Public Personal Information”

As discussed, the Privacy Rule does not apply to all information given to a dealer. It only protects a consumer’s “nonpublic personal information” (NPI), which is any “personally identifiable financial information” that a financial institution collects about an individual in connection with providing a financial product or service, unless that information is otherwise “publicly available.” In the dealer context, this generally includes any information a Consumer or Customer provides to obtain credit or a lease (such as information contained on a credit application), or any information about the Consumer or Customer derived from a credit or lease transaction (such as a credit report). Importantly, the fact that a person is or has been your Customer or Consumer for a finance-related product or service is also NPI. NPI includes:

- Any information an individual gives you to lease a vehicle or finance a vehicle purchase (for example, name, address, income, Social Security number, or other information on an application);
- Any information you get about an individual from a transaction involving your financial product(s) or service(s) (for example, the fact that an individual is your Consumer or Customer, account numbers, payment history, and loan balances); or
- Any information you get about an individual in connection with providing a financial product or service (for example, information from a credit report); and
- If you regularly extend credit to individuals in service, parts, etc., any information an individual gives you to obtain such credit.

NOTE: Information you collect through Internet “cookies” in connection with an inquiry about a financial product or service is considered nonpublic personal information. For example, if your dealership website accepts online credit applications, any information you gather during that process via cookies is NPI.

NPI does not include information that you have a reasonable basis to believe is lawfully made “publicly available.” In other words, information is not NPI when you have taken steps to determine that the information is generally made lawfully available to the public, and that the individual can direct that it not be made public and has not done so. For example, while telephone numbers are listed in a public telephone directory, an individual can elect to have an unlisted number. In that case, her phone number would not be “publicly available.”

Information in a list form may be NPI, depending on how the list is derived. For example, a list is not NPI if it is taken from information that isn’t related to your financial activities. A list of all individuals who patronized your service department in the last six months would not be NPI, for example. But a list derived even partially from NPI is still considered NPI. For example, a list of your finance Customers’ names and phone numbers is NPI even if you have a reasonable basis to believe those phone numbers are publicly available, because the existence of the finance relationship between the borrowers and the dealer is NPI. Note also that aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses is *not* considered NPI.

4. Affiliate

To fully understand your duties under the Privacy Rule and the related FCRA requirements, it is important to understand what an “affiliate” is, and how your dealership(s) fit into this definition. The regulation defines “affiliate” as any company that controls, is controlled by, or is under common control with another company. “Control” can arise in any of three

alternative ways: (1) ownership of or power to vote 25 percent or more of the outstanding voting class shares; (2) control over the election of a majority of the directors, trustees, general partners, or similar people; or (3) the power to exercise, directly or indirectly, a controlling influence over the management or policies of the company.

Like many modern sophisticated businesses, dealerships can have complex corporate structures. Dealers must ensure that responsible dealership employees are aware of the corporate structure of the dealership so that they can identify how their particular practices are implicated by this rule. For example, one corporate entity may run multiple stores in multiple locations and still be considered one “entity” for purposes of the rule. Therefore, disclosure among these stores will have far different implications under the rule than disclosure between two stores that are separate legal entities located in the same building. They may share the very same offices, but because they are separate legal entities, any disclosure of the relevant information between the two entities requires disclosure to their Customers, and potentially the opportunity to opt-out.

Is the bank or finance company to which I assign contracts an affiliate? Is my OEM an affiliate?

The key to this question is whether the relationship between the bank or finance company and the dealership meets the *control* test. In the typical indirect financing scenario, the relationship between a bank or finance company and a dealership will not meet the control test and, therefore, the finance source will be considered a nonaffiliated third party. The same is generally true for the typical relationship between a dealer and the manufacturer. It is possible that if either a bank, finance company, or manufacturer were to have enough power to exercise, directly or indirectly, a “controlling influence” over the management or policies of the dealer, that it could be deemed an affiliate. However, there is authority finding that no such control exists between a “captive finance” company and a dealer¹, and the informal, non-binding opinion of staff counsel for the FTC is that neither manufacturers nor finance companies are affiliates under this standard.

B. The Privacy Notice

All of these definitions are important primarily because they allow you to determine to whom you must provide a document that describes your information-sharing policies and practices—a “Privacy Notice.” Now, let’s take a closer look at what that document must say and how you must deliver it.

1. Format

As discussed above, there is no required format for the Privacy Notice provided the notice complies with the law and meets the “clear and conspicuous” standard in the statute and the Privacy Rule. However, there is a prescribed format for the Model Privacy Notice and there is little practical reason for dealers not to avail themselves of the safe harbor it affords. The instructions for utilizing the new Model Privacy Notice are explained in detail below.

2. Timing and Means of Delivery of Privacy Notice

Also as discussed above, you must deliver the initial privacy notice to your Customers no later than when the individual becomes your Customer—that is, when you execute a credit or lease transaction. You must deliver your privacy notices in writing, by mail or by hand, or if the Consumer or Customer agrees, electronically. For most dealers, the initial privacy notice should be delivered in person at the time the credit or lease transaction is executed. In addition, it is a good practice to get a signed acknowledgement of receipt of the initial privacy notice from Customers at the time of delivery.²

Again, dealers must only deliver the initial privacy notice to *Consumers* if they plan on disclosing NPI about the Consumer to any nonaffiliated third party. If such a notice is required, it must be delivered to the Consumer long enough before disclosure to the third party to allow the Consumer a reasonable opportunity to opt-out. If you know that you plan on disclosing this information, the notice can be delivered in person at the time the individual is at the dealership (and signed acknowledgement is required, just as above).

NOTE: While many dealers have a policy of obtaining a signed acknowledgement of delivery of the Privacy Notice, occasionally customers refuse to sign the acknowledgement, or seek to amend the Privacy Notice before signing it. Keep in mind that the Notice is a disclosure document only, and *must not be amended*. Dealers are not required under the Privacy Rule to force a customer to accept the notice. If a customer refuses to sign the acknowledgement or to accept the notice, dealers may wish to simply note on the Privacy Form that the customer refused to sign or refused to accept the notice, and maintain a copy of that notation in their files.

3. Electronic Delivery

The Privacy Rule allows, in certain circumstances, for your dealership to provide the required notices electronically—either via email or on your website. If you do provide notice electronically, you must provide the notice in a manner so that each Consumer can reasonably be expected to receive the notice. Such electronic notices have a number of specific requirements, however, which make this option of limited application in the dealer context. Generally speaking, electronic delivery is limited to the following:

- (a) If the Consumer agrees to electronic receipt of the notice, dealers can send the notice by email either by attaching the notice or providing a link to the notice. The electronic notice must be in either PDF or HTML format.
- (b) If the Customer conducts transactions with you electronically, you must clearly and conspicuously post the notice on your website, *and* require the Customer to acknowledge receipt of the electronic notice as a necessary step to obtaining a particular financial product or service.

It is **not** adequate to send the notice via email to a Consumer who is not obtaining a financial product or service from you through electronic means.

In addition, you must ensure your “Customers” can retain your privacy notice and obtain it at a later time. For Customers who obtain a financial prod-

uct or service from you electronically and agree to receive the notice at your website, you may fulfill this standard by making your current privacy notice available at your website (or through a link to another website). If you provide your notice on your website, it must be “clear and conspicuous,” which means you should ensure that Consumers can see the notice or a direct link to the notice and that it is clearly marked on your website. The FTC states that you must “call attention to the nature and significance of the information” by “us[ing] text or visual cues to encourage scrolling down the page,”³ and you must also either “place the notice on a screen that consumers frequently access,” or “place a link on a screen that consumers frequently access” that connects them directly to the notice and “is labeled appropriately to convey the importance, nature, and relevance of the notice.”

Online “Privacy Policies”

Today, almost all dealers have websites that provide a wealth of information to potential purchasers and others. Any online “Privacy Policy,” “Privacy Notice,” or link to a “Privacy Policy” or “Privacy Notice” on your website must display or link to your dealership’s current Privacy Policy. In other words, your online “Privacy Policy” or “Privacy Notice” must be the same as the written Privacy Notice you provide to your customers and consumers. Note also that some dealers work with their manufacturers or vendors approved by their manufacturers in developing their websites. Dealers must ensure that their websites do not link to a manufacturer’s privacy policy or other “standardized” privacy policy that is in any way inconsistent with the dealer’s Privacy Notice, or that could confuse their customers.

PRIVACY ACT NOTICE REQUIREMENTS			
Type of Notice	To Whom	When	Contents
Initial	Customers	Not later than when you establish the Customer relationship.	Description of information-collection and sharing practices, and opt-out notice (if you share NPI with nonaffiliated third parties outside of certain exceptions). Use Model Notice to obtain “safe harbor.”
Initial	Consumers who are not Customers (including former Customers)	Before you disclose their NPI to a nonaffiliated third party outside of certain exceptions	SAME
Annual	Customers with whom you have a continuing relationship	Delivery on a consistent basis at least once in any period of 12 consecutive months for the duration of the Customer relationship	SAME

4. Annual Notice

In addition to the “initial” privacy notice that must be provided to Customers and, in some cases, Consumers, the regulation also requires dealers to give an updated privacy notice annually to any Customers with whom they have a continuing relationship. Recall that a Consumer becomes a Customer when you execute a lease or credit transaction with the individual. You have a continuing relationship

with that Customer until you sell or assign the contract or, if you are running a buy-here-pay-here operation, until the Customer pays the loan in full. In the case of a lease, the Customer relationship lasts until you sell or assign the contract or, if you hold the lease, until the lease ends or is terminated. If you have any continuing relationship with your Customers, you must provide an annual notice once in every 12-month period. There is no specified date

for providing the notice, and you can set a different date for each Customer so long as you use that date consistently for the Customer.

Dealers who send annual notices may continue to rely on the safe harbor for the “Sample Clauses” for annual notices that are delivered to Consumers (either in paper form or by electronic delivery such as email) on or prior to December 31, 2010 until the next annual privacy notice is due one year later. For example, if a dealer provides a notice using the Sample Clauses on or before December 31, 2010, it could continue to rely on the safe harbor for up to one additional year until its next annual notice is due. If an institution provides a notice using the Sample Clauses on or after January 1, 2011, however, it could not rely on the safe harbor. Privacy notices using the Sample Clauses that are posted on a dealer’s website to meet the annual notice requirements of the Privacy Rule would no longer be eligible for the safe harbor beginning on January 1, 2011.

C. Opt-Out Notices

Dealers must also generally provide Customers and Consumers the opportunity to “opt-out” of disclosure of their NPI to nonaffiliated third parties. That is, you must give them the opportunity to direct you not to disclose their NPI to any nonaffiliated third party before you disclose it (outside of the exceptions described below). An opt-out notice *must* be delivered with a Privacy Notice, and it can be part of the Privacy Notice. If it is combined, then the Privacy Notice must explain how—and offer a reasonable way they can opt-out. Again, correctly following the instructions for the Model Notice will provide dealers with a safe harbor for compliance with the opt-out requirements under GLB and under FCRA (discussed below).

So, to use the prior example, if you wanted to sell (or transfer to a nonaffiliated party) a list of names and addresses of people who applied for credit through your dealership, in addition to providing the privacy notice, you would have to provide each *Consumer* on the list with an opt-out opportunity. Of course, you would also need a system for keeping track of

the *Consumers* who exercised their right to opt-out so you do not inadvertently disclose their nonpublic personal information to a third party. (You must also ensure that the Privacy Notice identifies disclosure of information to nonaffiliated third parties.)

Affirmative duty. *Although we disclose NPI to third parties that are not covered by an exemption from the opt-out requirement, my customer has never told me he wants to opt-out of this disclosure. May I disclose his information to a third party?* No, not unless you have provided an opt-out opportunity. This is an affirmative requirement, not a passive one. Therefore, prior to the disclosure described above, you must notify the customer or consumer of his right to opt-out of the disclosure, and give him the opportunity to exercise that right.

1. Exercising the Opt-Out Right

You must give Consumers and Customers a “reasonable opportunity” to exercise their right to opt-out, after you send the notice, before you can share their information with nonaffiliated third parties outside the exceptions. The FTC does not prescribe a time frame that would constitute a “reasonable opportunity” in every situation. However, outside of some limited exceptions that generally would not apply in the dealer context, it appears that the FTC would consider a minimum of thirty (30) days to be a reasonable opportunity. For dealers, the safest policy is to allow at least 30 days. Indeed, the new Model Privacy Notice Form requires dealers to insert a time period of no less than 30 days before information can first be shared according to an institution’s privacy policy (see discussion below).

Note that whether you deliver the opt-out electronically or in person, you generally **cannot** force a Customer to make an opt-out decision at the time of the transaction. In issuing its final rule, the FTC specifically addressed this question noting that while “certain [very limited] situations [not generally applicable to dealers] may warrant an immediate decision,” “financial institutions generally cannot

require consumers to make an opt-out decision at the time of the in-person or electronic transaction.” Instead, the “basic rule is to allow a ‘reasonable’ opportunity to opt-out,” which is generally a minimum of 30 days.

Note also that Consumers and Customers who have the right to opt-out may do so at any time. Once you receive an opt-out direction from your existing Consumers or Customers, you must comply with it as soon as is reasonably possible. This means that you must not only maintain a system to track the opt-outs you receive, but you must also take steps to ensure that you do not share the information prior to the expiration of a time period that provides them a “reasonable opportunity.”

2. Shelf Life of an Opt-Out

An opt-out direction by a Consumer or Customer is effective—even after the Customer relationship is terminated—until canceled in writing or, if the Consumer agrees, electronically. However, if a former Customer establishes a new Customer relationship with you and you are required to provide an opt-out notice, the Customer must make a new opt-out direction that will apply only to the new relationship.

D. Exceptions

1. Exceptions to the Notice and Opt-Out Requirements

The exceptions to the notice and opt-out requirements are found in sections 313.14 (“Section 14 Exception”) and 313.15 (“Section 15 Exception”) of the Privacy Rule. If you share information only under these exceptions, you don’t need to give your *Consumers* a privacy notice, but you will still need to give your *Customers* an initial privacy notice and, if applicable, an annual notice as well. Neither Customers nor Consumers have any right to opt-out of your disclosure of NPI pursuant to one of these exceptions (so no opt-out is required).

Section 313.14 - Exception for processing a Consumer-authorized transaction

Section 313.14 provides an exception for various types of information-sharing necessary for processing

or administering a financial transaction requested or authorized by a Consumer. For example, this exception would apply when you:

- send a Consumer’s credit application to a finance source, provided the Consumer “requested or authorized” you to do so;
- assign a finance contract to a bank or finance company;
- disclose NPI to service providers who help mail account statements and perform other administrative activities for a Consumer’s account.

NOTE: The application of this exception to your disclosure of a credit application to a finance source requires that the applicant has “requested or authorized” that disclosure. This means that at a *minimum*, dealers should obtain written authorization to send the credit application to a finance source. The Privacy Rule does not address how this exception applies to the disclosure of a consumer’s credit application to *multiple* finance sources. While not required, dealers should consider obtaining written authorization from the applicant to disclose the NPI to **each** finance source by either listing all possible finance sources to whom the information may be sent or, alternatively, ensuring that the written authorization specifies that the credit application may be sent to multiple finance sources.

Section 313.15 - Miscellaneous exceptions

Section 313.15 provides a variety of exceptions to both the initial notice and opt-out requirements. The Section 15 Exceptions apply to certain types of information-sharing, including disclosures of NPI:

- with the consent or at the direction of the consumer;
- for purposes of preventing fraud;
- in response to judicial process or a subpoena;
- to comply with federal, state, or local laws;
- in connection with a proposed or actual sale of the dealership;
- to technical service providers who maintain the security of your records;

- to your attorneys or auditors;
- to a purchaser of a portfolio of consumer loans you own;
- to a consumer reporting agency, consistent with FCRA.

Does the information I am required to send to my manufacturer fit within an exception?

The answer depends upon what information the manufacturer requires you to send. If the manufacturer asks only for information to identify the purchaser (e.g. name, address, etc.) and the vehicle (e.g. VIN), and they require this information for all customers without regard to financing arrangements or lack thereof, an **opt-out would not be required**. This type of disclosure is not governed by the GLB Regulation because the information disclosed does not identify the person as a customer for, or someone who inquired about, a financial product or service, nor does it reveal information about the person obtained in connection with an inquiry about, or the provision of, a financial product or service. Conversely, if the manufacturer requires you to provide information such as whether the person financed or leased, where they obtained their financing, the amount financed, payment amount, interest rate, lease terms, information from the person's credit application, or any other information related to the financing side of the transaction, the disclosure is governed by the GLB Regulation. In fact, if the manufacturer simply requires you to segregate the cash customers from the finance or lease customers, in any way, the disclosure is subject to the regulation. Accordingly, you would be required to provide the opt-out opportunity unless an exception applies. It might be argued that the disclosure is necessary to carry out a transaction a consumer requests or authorizes, since the manufacturer requires the dealer to make the disclosure. It is unclear, however, whether this argument would prevail; thus, you should provide the opt-out opportunity if your manufacturer puts you in this situation.

Note the first bullet above—"with the consent or at the direction of the consumer." This "consent" exception would apply where you provide a Consumer with the clear (not hidden or buried) option to consent to the sharing of their information, and they provide such consent. In other words, if a Consumer "opts-in" to disclosure, there is no need to provide an opportunity to opt-out.

Registration information to state DMV or MVA for title and registration purposes: Many dealers are required by law to provide personal information about people who purchase or lease vehicles to the DMV or MVA. Where required, this is a necessary step in carrying out the transaction. Accordingly, this disclosure should be covered by both the Section 15 Exception, and by the Section 14 Exception for processing transactions requested or authorized by consumers or customers. (Requirements may vary by state. Check with your legal advisor.)

2. Exception to the Opt-out Requirement Only

Section 313.13 - Exception for Service Providers and Joint Marketing

Another exception, found in section 313.13 of the Privacy Rule ("Section 13 Exception") applies to NPI shared in two instances: (1) with a service provider, pursuant to a contract, to provide services on your behalf, and (2) pursuant to a joint marketing agreement with another financial institution.

This exception applies to the opt-out notice, but *not* to the initial privacy notice. Therefore, if you wish to disclose NPI pursuant to the "Service Provider" exception to a company that sends holiday cards to your Customers, service reminders and marketing flyers to Consumers and Customers, and provides your salespeople with contact logs—to comply with this exception, you will be required to give each Consumer an initial privacy notice informing him of the disclosure to the third-party service provider as a prerequisite to disclosing his information to the provider. With respect to Customers, your initial

privacy notice will need to notify the Customer of the disclosure to the third-party service provider. You must also have a contract with that service provider that restricts the service provider's use of the NPI to the provision of services to you, and for no other purpose. *(See the FTC's responses to Q&A numbers 6 and 7 in Appendix C for further details.)*

The Section 13 Exception also applies to a joint marketing agreement with one or more other financial institutions. The "joint agreement" requirement requires that you have entered into a written contract with one or more financial institutions about your joint offering, endorsement, or sponsorship of a financial product or service. As with the service provider exception, this agreement must guarantee the confidentiality of the information by prohibiting the third party or parties from using or disclosing the information for any purpose other than the one for which it was received.

Note that the Section 13 Exception does not apply to any kind of joint marketing you do, but only joint marketing with other financial institutions and only the marketing of financial products or services.

E. Insurance

Among the "financial activities" that can cause a business to be a financial institution under the GLB Act is "insuring, guaranteeing, or indemnifying against loss, damage, illness, disability, or death . . . and acting as principal, agent, or broker for purposes of the foregoing." Regulation of privacy in the insurance context is, however, left to the **state insurance authorities** applying state regulations; the **FTC does not have jurisdiction** over this area. You should consult a legal advisor familiar with your state's laws to determine what state-law obligations and limitations your insurance related activities may trigger.

Note also that vehicle service contracts (VSCs) are considered insurance in some states. Where that is true, the state's insurance privacy regulations will generally apply to VSCs. The FTC has not offered any definitive guidance regarding the status of VSCs. Again, you should consult with your legal advisor to determine

whether to treat VSCs as covered by the FTC regulation. If so, you will need to provide an initial privacy notice to each VSC customer—even if the customer, such as a cash customer, was not otherwise entitled to a notice. For credit or lease Customers, the notice you are already providing would suffice; you would not need to give a separate notice for the VSC.

One final caveat about insurance: if you are operating a reinsurance company, or if you have any arrangements other than selling the products of **unrelated** companies, we strongly recommend you secure legal counsel to determine your obligations under the privacy regulations. These arrangements are far too varied and complex to address in a general publication.

F. Limits on Reuse and Redisclosure of NPI

1. Receipt of NPI from Another Nonaffiliated Financial Institution

In some instances, dealers may receive NPI from an outside source. If you receive NPI from a nonaffiliated financial institution, your ability to reuse and redisclose that information is limited by the Privacy Rule. The limits depend on how the information is disclosed to you.

2. Restrictions if NPI is Received Under the Section 14 or 15 Exceptions

If you receive NPI from a nonaffiliated financial institution under the Section 14 or 15 Exceptions—for example, if a finance company's customer requests that you receive their NPI to facilitate the return of a leased vehicle upon the expiration of a lease (identification of the lessee as a lease customer is NPI), you may only disclose and use the information in the ordinary course of business to carry out the purpose for which it was received. That purpose may include disclosures to other parties under the Section 14 or 15 Exceptions in order to carry out that activity, or as otherwise necessary, such as to respond to a subpoena. You may also disclose the information to your affiliates, who are limited in their reuse and redisclosure of the information in the same way as you are, and to affiliates of the originating financial institution.

3. Restrictions if NPI is Received Outside the Section 14 or 15 Exceptions.

Alternatively, you may receive NPI from a nonaffiliated financial institution outside the Section 14 or 15 Exceptions. For example, you may want to purchase another dealer's or other financial institution's customer list in order to market your own products to those individuals. Of course, the dealer or financial institution from whom you received the NPI may only disclose NPI about those Consumers or Customers who were informed about this type of disclosure in the privacy notice, and who did not opt-out after receiving notice and the opportunity to opt-out.

In this situation, you may use the information internally for your own purposes. However, you may only redisclose the information consistent with the privacy policy of the originating financial institution. In other words, in the example above, you would step into the shoes of the dealer who sold you the customer list and may disclose the same kinds of NPI to the same entities as the originating institution. (Note that a dealer should be careful in receiving NPI from a manufacturer who got it from other dealers, because a receiving dealer in that case would step into the shoes of the original dealers, not the manufacturer.) You may also disclose the information to your affiliates, whose redisclosure is limited in the same way as yours is, and to affiliates of the originating financial institution.

4. Other Restrictions

The Privacy Rule also prohibits financial institutions from sharing account numbers or similar access numbers or codes for marketing purposes. This prohibition is unlikely to have a broad application in the dealership context. However, if it applies, it prohibits disclosure even when a Consumer or Customer has not opted-out of the disclosure of NPI concerning her account. The prohibition applies to disclosures of account numbers for an individual's credit card account, deposit account, or "transaction account" to any nonaffiliated third party to use in telemarketing, direct mail marketing, or other marketing through electronic mail to any Consumer. A "transaction account" is any account to which a third party may

initiate a charge. This provision does not prohibit the sharing of an encrypted account number, if the third party receiving the information has no way to decode it.

This prohibition applies to the complete marketing transaction, including posting a charge to an account. However, it does not apply when you disclose an account number to your agent or service provider just to market your own products or services, as long as the party receiving the information can't directly initiate charges to the account.

The Section 313.14 and 313.15 Exceptions do not apply to the disclosure of account numbers for marketing purposes. For example, you may not obtain your Customer's consent to disclose her account number for marketing purposes.

Another provision in the Privacy Rule prohibits "pretexting"—the practice of obtaining customer information from financial institutions under false pretenses. The FTC has brought several cases against information brokers who engage in pretexting.

G. Enforcement

1. Privacy Rule

There is no federal private right of action for violations of the Privacy Rule. The FTC enforces the GLB Act as to automobile and truck dealers.⁴ The states are responsible for issuing regulations and enforcing GLB with respect to insurance products. If the FTC decides to bring an enforcement action, it has the authority to either open an investigation, or file a lawsuit in federal district court. If the FTC opens an investigation, and the facts indicate a violation of the Privacy Rule, the FTC can seek an administrative settlement. These settlements can include both injunctions that require the dealer to comply with the Rule and other reporting obligations. If the agency files a lawsuit to enforce the Privacy Rule, it may seek injunctive and equitable relief. The FTC also has authority to examine privacy policies and practices for deception and unfairness.

2. FCRA Provisions

As discussed in more detail below, the Model Privacy Notice Form also incorporates certain FCRA reporting requirements. There *is* a federal private right of action for violations of the FCRA provisions. The FTC also enforces FCRA as to automobile and truck dealers.⁵ As with GLB, the FTC could pursue an investigation or file a lawsuit. If an investigation leads to facts indicating FCRA violations, the FTC can seek an injunction or other reporting obligations. Unlike GLB however, under FCRA the FTC may also seek civil penalties of up to \$3,500 for each “knowing” violation of FCRA. If the agency files a federal lawsuit, it can seek fines of up to \$16,000 for each future violation, injunctive relief, and/or a long-term consent decree. The civil penalties (up to \$3,500) that may be demanded to resolve the investigation could apply to past violations, while fines stemming from a lawsuit are limited to future violations.

In addition, it also is possible that violations could subject a dealer to state law claims either by state Attorneys General, or by private litigants (including class action claims) under state “unfair and deceptive acts or practices” (UDAP) statutes. These laws typically permit actual and punitive damages, as well as attorneys’ fees and costs.

II. FAIR CREDIT REPORTING ACT REQUIREMENTS

As discussed above, the second statute implicated by the Model Privacy Notice is the Fair Credit Reporting Act, or FCRA. FCRA covers a numbers of areas outside the scope of this guide. For our purposes, we will focus on the two specific requirements under FCRA directly implicated by the new Model Privacy Notice: the Affiliate Sharing Rule and the related Affiliate Marketing Rule. As their names suggest, the Affiliate Sharing Rule governs whether and how certain consumer credit information can be *shared* among affiliated entities, and the Affiliate Marketing Rule applies to how shared consumer credit information is *used* by an affiliate once it has been shared. These two requirements are at issue here because they each require, in certain circumstances, that

(1) a notice be sent to the individual whose credit information is shared, and (2) an opportunity be provided for that individual to “opt-out” of the sharing of that information or marketing using the information. These notices are distinct from, but similar to, the Privacy Notice and its opt-out requirement. In the case of the Affiliate Sharing Rule, the notice and opt-out *must* be combined with the Privacy Notice, while the Affiliate Marketing notice and opt-out *may* be, but is not required to be, combined with the Privacy Notice. One version of the Model Privacy Notice Form includes both the Affiliate Sharing and Affiliate Marketing language with the Affiliate Marketing language being optional. (*See Appendix B*).

As the FTC notes, these “FCRA statutory provisions are quite complex and their legal intricacies are difficult for consumers to understand.”⁶ The goal in this guide is to provide enough information for dealers to be able to choose the proper Model Privacy Notice Form version, and to properly complete the portion of the form pertaining to the Affiliate Sharing and Marketing Rules.

The first key step in meeting this goal for dealers is to determine whether you have any affiliates. If you do not, these FCRA Rules will not apply to you and your corresponding answers in the Model Privacy Notice will be easier to determine; you may proceed directly to the discussion of the Model Privacy Notice instructions in Part Two. If you do, you must next determine (1) whether you share certain financial information with those affiliates, and (2) whether the receiving affiliate wishes to use that information for marketing purposes. Once you have determined the answers to those questions, you can choose the appropriate version of the Model Privacy Notice Form to use in your dealership. With that in mind, let’s take a closer look at these rules.

A. Affiliate Sharing Rule

The Affiliate Sharing Rule governs what types of information may be shared with an affiliated entity, and requires, in certain instances, that your customers be provided a notice and opportunity to opt-out before information is shared. We refer to it here as

the “Affiliate Sharing Rule” for ease of reference, but it is not actually a standalone “rule.”⁷

1. Background

To fully understand the Affiliate Sharing Rule, it is important to understand the meaning of two key terms under FCRA. The first of these is the term “consumer report.” This term is central to determining a business’s duties and obligations under FCRA and it is defined as “any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for credit or insurance to be used primarily for personal, family, or household purposes; employment purposes; or any other [permissible purpose under FCRA.]” In the dealer context, information such as that contained in an individual’s credit report or credit application is a “consumer report” under FCRA.

The second term that you need to understand is “consumer reporting agency,” or “CRA,” (which you will note is mentioned within the definition of “consumer report.”) Determining whether you are a CRA under FCRA can be complicated, but generally speaking, you are deemed a CRA if you communicate credit-related information to another party. The more important concept for dealers is this: you do not want to be deemed a CRA. A full explanation of the reasons why that is to be avoided is outside the scope of this guide, but suffice it to say that such a designation would result in various burdensome and expensive duties and obligations that are to be avoided if at all possible. One way to gain the unwanted distinction of a consumer reporting agency is by providing a consumer report to another party.

Under these general definitions, if a dealer were to provide credit-related information to an affiliate, it would be deemed a CRA under FCRA. But this is where the Affiliate Sharing Rule comes in. The Affiliate Sharing Rule excludes specified types of in-

formation-sharing with affiliates from the definition of “consumer report,” meaning that companies making these communications (under certain circumstances) are not deemed CRAs. Specifically, information about an entity’s transactions or experiences with a consumer is not considered a “consumer report.” Therefore, to the extent it exists, this kind of “experience” information can be shared under the FCRA with both affiliates and nonaffiliated companies. The rule does not define “transaction or experience information,” but it may include information related to an existing account.

Any “other” credit-related information (i.e., credit-related information that is not related to a business’s prior transactions or experience with its consumers) may only be shared with affiliated entities (and not be deemed a “consumer report”) if the consumer (1) is given notice that the sharing may occur, (2) given an opportunity (before the sharing occurs) to opt-out of allowing the information to be shared, and (3) has not opted out. This Affiliate Sharing Rule notice and opt-out **must** be included in the dealer’s Privacy Notice. Therefore, if you share or wish to share credit reports, credit applications, or other “consumer report” information with an affiliate, you must first provide a notice and opportunity to opt-out.

Note about Common Databases: Direct communication between affiliates is not required for affiliates to be subject to the rule. Where eligibility information is placed in a common database, all affiliates with access to that database are deemed to have received that information. A multiple-affiliate business using a common database must be aware that use of that common database may implicate the rule.

B. Affiliate Marketing Rule

The Affiliate Marketing Rule is found in Section 624 of FCRA and addresses how and whether an affiliate that has received the information from an affiliated entity pursuant to the Affiliate Sharing Rule can use that information. The Affiliate Marketing Rule generally provides that information shared among

affiliates—including both transaction and experience information as well as certain creditworthiness information—cannot be used by an affiliate for marketing purposes unless the consumer has received *another* notice of such use and another opportunity to opt-out, and the consumer does not opt-out.

Specifically, the Affiliate Marketing Rule prohibits businesses from using “eligibility information” about a consumer, received from an affiliate, to make a solicitation to that consumer unless the consumer has received notice of such use and a reasonable period to opt-out, and has not opted-out. “Eligibility information” is defined as “any information, the communication of which would be a consumer report” under the existing affiliate information-sharing provision in the Fair Credit Reporting Act. Therefore, “eligibility information” includes both “transaction and experience” information, as well as any other credit-related information described above. And a “solicitation” under the rule is the marketing of a product or service, initiated by a business to a particular consumer, where the marketing is based on eligibility information obtained from an affiliate, and intended to encourage a consumer to purchase or obtain a product or service.

For example, one dealership (“Sending Affiliate”) could not send a list of all its finance customers from 2006 to its affiliated dealership (“Receiving Affiliate”) in order for Receiving Affiliate to send marketing materials to those customers regarding a special finance promotion, unless Sending Affiliate has given those customers another notice and opportunity to opt-out, and none of those customers had opted-out.

To determine whether the Affiliate Marketing Rule applies to your dealership, and therefore whether you need to provide notices under that rule, you must know:

- Whether your dealership has affiliates;
- Whether you share transaction or experience, or any other credit-related information with your affiliates, and;

- Whether your affiliates use that information for marketing purposes.

If the answer to each of these is “yes,” then you must provide the individuals whose information is being shared with yet another notice, and the opportunity to opt-out of the use of their information before sharing the information for marketing purposes. Yes, this is a *third* notice, and while you could send this notice separately from the other two if you like, the good news is that you can include this notice and opt-out opportunity with your Privacy Notice. The Model Privacy Notice Form includes optional language that may be included if your practices implicate the Affiliate Marketing Rule, and disclosure using the Model Privacy Notice Form language will meet the requirements of the Affiliate Marketing Rule. If you are required to provide this notice, and elect not to include it in your Privacy Notice, you must separately send an Affiliate Marketing notice that complies fully with the Affiliate Marketing Rule requirements.

There is one further feature of the Affiliate Marketing Rule that needs to be considered. The opt-out offered under the Affiliate Marketing Rule must be honored for a minimum of five years or, if a dealer chooses, it can be honored indefinitely. However, if you choose to incorporate the Affiliate Marketing opt-out in the Model Privacy Notice Form, you lose that choice, and any opt-out must be honored indefinitely, consistent with the opt-out required under the GLB Act. If you want to limit the time period for which the opt-out is effective, as permitted under the Affiliate Marketing Rule, you cannot use the Affiliate Marketing opt-out in the model form. Instead, you must comply separately with the specific Affiliate Marketing Rule requirements.

C. Safeguards Rule

One last regulatory requirement that requires a very brief review is the GLB Safeguards Rule. Dealers are familiar with the Safeguards Rule, which among other things requires dealers to implement physical and electronic safeguards to protect customers’ NPI, and to develop, implement, and maintain a comprehensive written information security program.

It also requires dealers to ensure that their affiliates maintain appropriate safeguards, and dealers must select and retain service providers that are capable of maintaining appropriate safeguards for the customer information that dealers share with them. Again, a full discussion of this rule is outside the scope of this guide. (For more details, contact NADA Customer Service at 800.557.6232 for a copy of *A Dealer Guide to Safeguarding Customer Information*.) However, dealers should carefully review their safeguarding practices and written program because the Model Privacy Notice Form also requires certain disclosures regarding those practices (discussed in greater detail below).

SUMMARY OF GLB/FCRA NOTICE AND OPT-OUT REQUIREMENTS			
Type of Notice	Format	Safe Harbor	Other
Privacy	Model Privacy Notice Form	If completed according to instructions, use of Model Privacy Notice Form provides safe harbor under GLB.	If required, may provide for opt-out by mail, phone, or website.
Affiliate Sharing	Must be included in the Model Privacy Notice Form	SAME	If required, may provide for opt-out by mail, phone, or website.
Affiliate Marketing	May be included in the Model Privacy Notice Form	SAME	If included in the Model Privacy Notice Form, opt-out must be indefinite.

PART TWO

THE NEW MODEL PRIVACY NOTICE

I. OVERVIEW

Now that we have reviewed the regulatory requirements implicated by the new Model Privacy Notice Form, let's take a closer look at the Model Privacy Notice Form itself. The Model Privacy Notice Form is a standardized template, available in three different versions, which must be completed in accordance with your dealership's policies and practices. Deciding which version to use and how to properly complete that template depends on your dealership's structure and your information-gathering and sharing practices. The bad news is that in order for the safe harbor to be applicable, you must ensure that your Privacy Notice complies with *each* of the very specific requirements in the Rule. The good news is that the FTC has provided very specific instructions for completing the Model Privacy Notice Form, and has even tried to help by providing an online tool for completing the Notice using the Model Privacy Notice Form.⁸

In Appendix A below, we have provided examples of a Privacy Notice using the Model Privacy Notice Form, as it would be completed by a "typical" dealership ("Typical Motors"). Keep in mind that these are merely examples, provided to give general guidance based on the practices of a "typical" dealership. They cannot and should not simply be adopted "as is." Instead, you must review your dealership's corporate structure and your policies and practices governing information-sharing and use, in order to determine how to properly complete your Privacy Notice.

Note also that the availability of three versions of the Model Privacy Notice Form does not mean that you need to choose which version to send in each particular circumstance. Instead, what you must do is choose *one version*—that version that most accurately reflects your dealership's information-sharing policies and practices. You must properly and completely fill out that version of the Form one time, and then provide that completed notice form to all Customers and Consumers pursuant to the Privacy Rule.

A note regarding online privacy notices: As discussed above, many dealers post their Privacy Notice, or their "Privacy Policy" on their dealership website. Keep in mind that the online version of your notice must be the same as the version you provide in hard copy. Therefore, when you adopt the new Model Privacy Notice Form, you must ensure that your online Privacy Policy is updated to reflect the changes

II. FORMAT OF THE MODEL PRIVACY NOTICE FORM

As noted, the final rule provides three versions of the Model Privacy Form:

1. a model form with no opt-out;
2. a model form with opt-out by telephone and/or online; and
3. a model form with opt-out by mail.

If you do not share any NPI with affiliates or nonaffiliated entities outside of an applicable exception, you should use the first form (with no opt-out). If you do share NPI with affiliates or nonaffiliated entities outside of the exceptions, then you should choose either the second or third form (with opt-out) depending on the method you have chosen to accept opt-out requests.

The final rule provides detailed requirements for the page layout, content, format, style, pagination, and shading of the form. You must carefully follow each of these requirements, and you cannot modify the Model Privacy Form, except where expressly permitted by the final rule, or you risk losing the safe harbor. You can, however, incorporate the model form into another document, so long as it is done in a manner that meets all of the formatting requirements.

III. CONTENTS

Specifically, the Model Privacy Form consists of two pages, which may be printed on both sides of a single piece of paper or on two separate pages. Those pages contain the following:

A. Page One of the Model Privacy Form

The first page of the Model Privacy Form consists of five parts:

1. Title
2. Introductory section
3. Disclosure table relating to the sharing of personal information
4. If appropriate, a section describing how a consumer may opt-out
5. Questions section

1. Title

Rev. [insert date]

FACTS

WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?

Page one begins with the title, which must read “*What Does [Name of Dealer] Do with Your Personal Information?*” In the title and in other places in the Model Privacy Form where the phrase “[Name of Financial Institution]” appears, the name of the dealership providing the notice or a common identity of affiliated institutions jointly providing the notice must be provided.

Also, in the upper right-hand corner, above and to the right of the title, dealers must insert the date on which the notice was last revised. The information must appear in minimum 8-point font as “rev. [month/year]” using either the name or number of the month, such as “rev. November 2010” or “rev. 11/10.”

2. Introductory Section – “Key Frame”

Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	<p>The types of personal information we collect and share depend on the product or service you have with us. This information can include:</p> <ul style="list-style-type: none"> ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores] <p>When you are <i>no longer</i> our customer, we continue to share your information as described in this notice.</p>
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

The second part of page one of the Model Privacy Form is an introductory section, called the “Key Frame,” with individual boxes labeled “Why?,” “What?,” and “How?”

Why?

The “Why?” box describes why the consumer is to receive the notice, including a statement that the financial institution is required to notify the consumer about how it collects, shares, and protects personal information relating to the consumer, and that the consumer has the right to limit some, but not all, information-sharing by the institution. The language in this section is standardized and no choices are required or allowed.

What?

The “What?” box identifies the types of personal information that the financial institution collects and shares. Here dealers must review their practices carefully and determine what types of personal information they collect and share. Specifically, you must include a total of six types of personal information that you collect and share from a preset list. All dealers are required to list “Social Security number” as the first bullet on the list of information it collects. Dealers must choose five others from the following list to include in this section:

- income;
- account balances;
- payment history;
- transaction history;
- transaction or loss history;
- credit history;
- credit scores;
- assets;
- investment experience;
- credit-based insurance scores;
- insurance claim history;
- medical information;
- overdraft history;
- purchase history;
- account transactions;
- risk tolerance;
- medical-related debts;
- credit card or other debt;
- mortgage rates and payments;
- retirement assets;
- checking account information;
- employment information; and
- wire transfer instructions.

Because the rule was drafted to cover a variety of financial institutions other than dealers, many of the options will likely not be relevant for dealers. **(NOTE: the entries listed in brackets above were included by the FTC in the Appendix to the Final Rule, but they are merely examples; dealers should choose independently from the list above.)** What is important is that you should review your practices and choose five entries (in addition to SSN) from the list above that most closely describe what types of information you gather and share. The examples in Appendix A below each state that “Typical Motors” gathers:

- Social Security number and income

- account balances and payment history
- credit history and credit scores

As with all of the information in Appendix A, this is simply an example of the way that a typical dealer may complete this section of the form. You should tailor your form to accurately reflect your practices. Note that this prescribed format—three bullet points with sets of two entries, each connected by “and”—must be followed. However, there is no required order, and no requirement that the paired entries are related in any way.

How?

The “How?” box informs the consumer that the next section of the Model Privacy Notice Form will describe the reasons institutions are generally permitted to share personal information, the reasons the dealer providing the notice shares personal information, and whether the consumer can limit the types of sharing identified. The language in this section is standardized, and no choices by the dealer are required or allowed, although you must fill in your name. Note also that the online form builder requires you to fill in the word “customers” because some financial institutions (not likely relevant to dealers) can insert “members” if appropriate.

3. Sharing Disclosure Table

Reasons we can share your personal information	Does [name of financial institution] share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates’ everyday business purposes— information about your transactions and experiences		
For our affiliates’ everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

This third part of page one of the Model Privacy Form will likely require the most analysis of a dealer’s policies and practices. It provides the consumer with information regarding the parties with whom you share NPI and why. It must be completed based on your dealership’s specific practices.

Specifically, the table is broken down into three columns that identify:

1. The reasons for sharing
2. Whether your dealership shares this type of information
3. If you do share, may the consumer opt-out?

The far left column lists the seven reasons for which a dealer may share NPI in accordance with GLB and FCRA.

In the middle column of the table, you must indicate whether you share NPI for any of the purposes identified. Specifically, you must state “Yes” or “No” next to each of the above categories of information-sharing in order to accurately reflect your information-sharing practices.

In the right column, you must indicate whether the consumer may opt-out of that type of information-sharing. Specifically, for each of the categories described, you must provide one of the following three responses, as applicable:

- “Yes,” if you are required to or voluntarily provide an opt-out (which you may only use if you answer “Yes” in the middle column);
- “No,” if you do not provide an opt-out; or
- “*We don’t share*” (which you may use only if you answer “No” in the middle column).

The seven rows included in the Model Privacy Form for each of these three columns are:

1. **“For our everyday business purposes”**

- This “reason” covers sharing pursuant to the Section 13 Exception relating to service providers, other than for marketing purposes; the Section 14 Exception for processing and servicing transactions; and the Section 15 Exception, including, for example, for fraud prevention purposes.
- Most dealers will likely answer “Yes” to this question in the second column since at the least, most dealers share Customers’ NPI with a finance source, bank, or manufacturer pursuant to an exception.
- The answer in the third column for this “reason” is likely to be “No,” because the customer is not entitled to an opt-out opportunity under these exceptions.

2. **“For our marketing purposes”**

- This “reason” includes sharing information with service providers for your own marketing purposes pursuant to the Section 13 Exception.
- Your answer to this will of course depend on whether you share Customers’ NPI with service providers to market your own products and services.
- The answer in the third column for this “reason” will likely be “No,” because again, the Customer is not entitled to an opt-out opportunity under the Section 13 (service provider) Exception. Dealers may offer an opt-out opportunity if they wish, but it is not required. Alternately, dealers may answer “We don’t share” if they answered “No” in column two and do not share NPI pursuant to this exception.

3. **“For joint marketing with other financial companies”**

- This “reason” covers sharing information under joint marketing agreements pursuant to the Section 13 Exception.
- Again, your answer to this will of course depend on whether you share Customers’ NPI with other financial institutions for joint marketing purposes.
- The answer in the third column for this “reason” will likely be “No,” because again, the Customer is not entitled to an opt-out opportunity under the Section 13 (joint marketing) Exception. Dealers may offer an opt-out opportunity if they wish, but it is not required. Alternately, dealers may answer “We don’t share” if they answered “No” in column two and do not share NPI pursuant to this exception.

4. **For our affiliates' everyday business purposes—"information about your transactions and experiences"**
- a. This "reason" covers the sharing of transaction and experience information among affiliates as permitted by the related exception under the Affiliate Sharing Rule in FCRA.
 - b. If you (1) have affiliates, and (2) share transaction and experience information with those affiliates, then your answer in column two should be "Yes." Otherwise, your answer will be "No."
 - c. The answer in the third column for this "reason" will likely be "No," because the Customer is not entitled to an opt-out opportunity before you can share "transaction or experience" information with your affiliates, under the FCRA Affiliate Sharing Rule. A dealer may offer an opt-out opportunity, but it is not required. Alternately, dealers may answer "We don't share" if they answered "No" in column two and either have no affiliates, or they do not share transaction or experience information with their affiliates.
5. **For our affiliates' everyday business purposes—"information about your creditworthiness"**
- a. This "reason" covers the sharing of consumer report and some application information under the FCRA after notice and opt-out.
 - b. A dealer's answer to this question will depend whether that dealership (1) has affiliates, and (2) shares credit-related information (beyond transaction and experience information) with its affiliates. If the answer to both these questions is "yes," the dealer must answer "Yes" to this question on the form.
 - c. Dealers must answer "Yes" or "We don't share" in the third column, because if they do share this information, an opt-out opportunity is required under the Affiliate Sharing Rule.
6. **"For our affiliates to market to you"**
- a. This "reason" covers sharing information with your affiliates for marketing purposes pursuant to the Affiliate Marketing Rule of FCRA.
 - b. This "reason" is **optional**. That is, this entire row may be omitted from the form if you do not have to comply with the Affiliate Marketing Rule. That is if:
 - 1. You do not have affiliates;
 - 2. You do not disclose personal information to your affiliates;
 - 3. Your affiliates do not use the personal information you share for marketing purposes, or;
 - 4. You provide the Affiliate Marketing notice separately.
 - c. If you do include this "reason" you must provide an opt-out of indefinite duration. That is, if a dealer wishes to limit a consumer's opt-out to five years as is permitted under the Affiliate Marketing Rule, it must use a separate form to do so.
 - d. The answer in the third column to this "reason" must either be "Yes," or "We don't share" because an opt-out opportunity is required under the Affiliate Marketing Rule.
7. **"For nonaffiliates to market to you"**
- a. This "reason" covers the information-sharing and opt-out requirements of the Privacy Rule.
 - b. Your answer to this question will depend on whether you share NPI with nonaffiliated entities outside of the exceptions to the opt-out requirement.
 - c. The answer in the third column to this "reason" must either be "Yes" or "We don't share" because an opt-out opportunity is required under the Privacy Rule.

4. Limiting information-sharing—How a Consumer May Opt-Out

To limit our sharing	<ul style="list-style-type: none">■ Call [phone number]—our menu will prompt you through your choice(s) or■ Visit us online: [website] <p>Please note:</p> <p>If you are a <i>new</i> customer, we can begin sharing your information [30] days from the date we sent this notice. When you are <i>no longer</i> our customer, we continue to share your information as described in this notice.</p> <p>However, you can contact us at any time to limit our sharing.</p>
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The fourth part of page one of the Model Privacy Form provides information on how a consumer may opt-out of sharing. **This must only be included if the dealer's sharing practices require that it provide an opt-out pursuant to the Privacy Rule. (Indeed, this section does not appear in the first of the three model forms.)** If you do include this part, you must include the information reflected following these instructions:


- You must select one or more of the following opt-out methods: (1) telephone; (2) website; or (3) mail-in opt-out form. The final rule includes a model form for each type of opt-out.
- If you allow consumers to opt-out online, you must provide either a specific web address that takes consumers directly to the opt-out page, or a general web address that provides a clear and conspicuous direct link to the opt-out page.
- The word “choice” may be written in either the singular or plural, as appropriate.
- You may include the words “toll-free” before telephone, as appropriate.
- The opt-out choices made available to the consumer who contacts the institution through these methods must correspond accurately to the “Yes” responses in the third column of the disclosure table.
- In the part titled “Please note” you must insert a number that is 30 or greater in the space marked “[30].”

5. Questions

Questions?	Call [phone number] or go to [website]
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The final part of page one of the Model Privacy Form is a “Questions” box that provides contact information through which a consumer can obtain additional information from your dealership. Contact information must be entered—this is not optional. However, a dealer may elect to provide either a phone number or a web address, or both.

6. Mail-In Opt-Out Form

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Mail-in Form	
Leave Blank OR <i>[If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below.]</i> <input type="checkbox"/> Apply my choices only to me]	Mark any/all you want to limit: <input type="checkbox"/> Do not share information about my creditworthiness with your affiliates for their everyday business purposes. <input type="checkbox"/> Do not allow your affiliates to use my personal information to market to me. <input type="checkbox"/> Do not share my personal information with nonaffiliates to market their products and services to me.
	Name
	Address
	City, State, Zip
	[Account #]

Mail To: *[Name of Financial Institution], [Address1]
[Address2], [City], [ST] [ZIP]*

Dealers must include this mail-in form only if they state in the “To limit our sharing” box that consumers can opt-out by mail. The mail-in form must provide opt-out options that correspond accurately to the “Yes” responses in the third column in the disclosure table. If a dealer chooses to provide a mail-in opt-out option, the mail-in form must appear at the bottom of page one. The mail-in opt-out form must include, as applicable, a check box allowing the consumer to opt-out of the various categories of sharing described in the privacy notice. If you use this option, you must ensure that your physical form is designed in a way that the reverse side of the mail-in portion of the opt-out does not include any content of the Model Privacy Form, so that the language of the privacy notice itself can be retained by the consumer.

In addition, the following instructions apply to this section:

- Note that some institutions require an account number in order to process the opt-out request. Dealers that require Customers to provide only name and address may omit the section identified as “[account #].”
- Note also that due to privacy and other concerns, the FTC allows the use of additional or different information, such as a random opt-out number or a truncated account number, to implement an opt-out election. If dealers choose to use that additional or different information, they should modify the “[account #]” reference accordingly. This includes dealers that require Customers with multiple accounts to identify each account to which the opt-out should apply.
- A dealer must enter the dealership’s opt-out mailing address either in the far right of this form, or below the form (see sample above). The reverse side of the mail-in opt-out form must not include any content of the Model Privacy Form.
- Joint accountholder. Only institutions that provide joint accountholders the choice to opt-out for only one accountholder must include in the far left column of the mail-in form the following statement:
“If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below. ☐ Apply my choice(s) only to me.”
- The word “choice” may be written in either the singular or plural, as appropriate. Dealers that provide insurance products or services, provide this option, and elect to use the Model Privacy Form may substitute the word “policy” for “account” in this statement. Dealers that do not provide this option may eliminate this left column from the mail-in form.

- **Affiliate Sharing Rule opt-out.** If a dealer shares personal information pursuant to the Affiliate Sharing Rule, it must include in the mail-in opt-out form the following statement:
“ ☐ Do not share information about my creditworthiness with your affiliates for their everyday business purposes.”
- **Affiliate Marketing Rule opt-out.** If a dealer incorporates the Affiliate Marketing Rule opt-out, it must include in the mail-in opt-out form the following statement:
“ ☐ Do not allow your affiliates to use my personal information to market to me.”
- **Nonaffiliate opt-out.** If a dealer shares personal information with nonaffiliated parties (outside of the exceptions), it must include in the mail-in opt-out form the following statement:
“ ☐ Do not share my personal information with nonaffiliates to market their products and services to me.”
- **Additional opt-outs.** Financial institutions that indicate in the disclosure table that they provide opt-out options beyond those required by federal law must provide those opt-out elections in this section of the Model Privacy Form. A financial institution that chooses to offer an opt-out for its own marketing in the mail-in opt-out form must include one of the two following statements:
“ ☐ Do not share my personal information to market to me.” or
“ ☐ Do not use my personal information to market to me.”
- **A financial institution that chooses to offer an opt-out for joint marketing must include the following statement:**
“ ☐ Do not share my personal information with other financial institutions to jointly market to me.”

B. Page Two of the Model Privacy Form

The second page of the Model Privacy Notice Form includes four sections of additional information designed to ensure that all notice content requirements from the Privacy Rule are addressed in the Model Privacy Notice Form. Specifically, page two of the form includes: (1) a “who we are” section; (2) a “what we do” section; (3) a definitions section; and (4) an “other important information” section.

1. “Who we are”

Who we are	
Who is providing this notice?	[insert]

If a dealership is providing this notice as a single entity, it may omit this section. However, if two or more dealers or other financial entities jointly provide the notice, the institutions must use this section to identify themselves. If the list of institutions would exceed four lines, the form must identify the types of institutions jointly providing the notice and separately identify those institutions, in 8-point font, at the bottom of page two. If a list of institutions is provided at the bottom of page two, it may be provided in a multi-column format. If the list of institutions exceeds the space available on the page, the list may be completed on a third page.

2. “What we do”

What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you <ul style="list-style-type: none"> ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] OR [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only <ul style="list-style-type: none"> ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]
What happens when I limit sharing for an account I hold jointly with someone else?	[Your choices will apply to everyone on your account.] OR [Your choices will apply to everyone on your account—unless you tell us otherwise.]

This section, entitled “What we do,” provides supplemental information about what the dealership does with personal information. Specifically, this part is broken down into four subsections:

- (1) the protection of personal information;
- (2) the collection of personal information;
- (3) limitations on a consumer's ability to opt-out; and
- (4) opt-outs on joint accounts.

First, the “What we do” section must identify how the financial institution protects NPI. In this regard, the Model Privacy Form includes specific language that must be included to address the protection of NPI. A dealer may not edit or change this language. It may only provide additional information, at its option, pertaining to its safeguards practices following the designated response to this question. Such information may include information about the institution's use of cookies or other measures it uses to safeguard personal information, and is limited to a maximum of 30 additional words.

Second, the “What we do” section must identify how the financial institution collects NPI. Specifically, the dealership must include examples of at least five separate ways in which it collects NPI. These examples must be selected from the following list:

- open an account;
- deposit money;
- pay your bills;
- apply for a loan;

- use your credit or debit card;
- seek financial or tax advice;
- apply for insurance;
- pay insurance premiums;
- file an insurance claim;
- seek advice about your investments;
- buy securities from us;
- sell securities to us;
- direct us to buy securities;
- direct us to sell your securities;
- make deposits or withdrawals from your account;
- enter into an investment advisory contract;
- give us your income information;
- provide employment information;
- give us your employment history;
- tell us about your investment or retirement portfolio;
- tell us about your investment or retirement earnings;
- apply for financing;
- apply for a lease;
- provide account information;
- give us your contact information;
- pay us by check;
- give us your wage statements;
- provide your mortgage information;
- make a wire transfer;
- tell us who receives the money;
- tell us where to send the money;
- show your government-issued ID;
- show your driver's license;
- order a commodity futures or option trade.

Again, since the rule was drafted to cover a variety of financial institutions beyond just dealers, many of these options are not relevant for most dealers. **(NOTE: The entries listed in brackets in the “What we do” section of the form reflected above were included by the FTC in the Appendix to the Final Rule, but they are merely examples; dealers must choose independently from the list above.)** What is important is that you should review your practices and choose five entries from the list above that describe ways that information is gathered at your dealership in the course of offering your financial products and services. Both examples in Appendix A for “Typical Motors” use the following examples:

- “apply for a lease or apply for financing”
- “pay us by check or give us your contact information”
- “show us your drivers license”

Again, as with all of the information in Appendix A, this is simply an example of the way that a typical dealer may complete this section of the form. You should tailor your form to accurately reflect your practices.

In addition, if dealers collect NPI from affiliates and/or credit bureaus, they must include after the bulleted

list the following statement:

- *“We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.”*

If you are a dealer that does not collect NPI from your affiliates or credit bureaus but do collect information from other companies, you must include the following statement instead:

- *“We also collect your personal information from other companies.”*

Only dealers who do not collect any NPI from affiliates, credit bureaus, or other companies can omit both statements.

Third, the “What we do” section identifies when the consumer cannot limit the specified types of sharing. This part describes the extent of the consumer’s rights under federal law to limit sharing, and indicates that state law may provide additional rights. In addition to this required language, if a dealership describes state privacy laws in the “Other important information” section (discussed below), the dealership must indicate that the consumer can see that section of the form for more information on his or her rights under state law.

And, the “What we do” section identifies what happens when a consumer limits sharing for a joint account. Specifically, a dealer must choose one of two statements for this section as applicable:

- *“Your choices will apply to everyone on your account”* or
- *“Your choices will apply to everyone on your account unless you tell us otherwise.”*

Note, however, that this last disclosure regarding joint accounts must only be included if the dealer provides an opportunity to opt-out.

3. Definitions

Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ <i>[affiliate information]</i>
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ <i>[nonaffiliate information]</i>
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■ <i>[joint marketing information]</i>

The third part of page two of the Model Privacy Form is the definitions section. Specifically, this section defines the terms “affiliates,” “nonaffiliates,” and “joint marketing.” Dealers must customize each definition choosing from among the specific options provided by the FTC. The information provided by the dealer must be in italicized lettering to set off the information from the standardized definitions.

“Affiliates”

Under “Affiliates,” a dealer has the following choices:

- If it has no affiliates, state: “[name of dealer] has no affiliates”;

- If it has affiliates but does not share personal information, state: “[name of dealer] does not share with our affiliates”; or
- If it shares with its affiliates, state, as applicable: “Our affiliates include companies with a [common corporate identity of dealer] name; financial companies such as [insert illustrative list of companies]; nonfinancial companies, such as [insert illustrative list of companies]; and others, such as [insert illustrative list].”

Note that the third choice requires the dealer to edit the language to accurately reflect its affiliates. Do not simply copy the language above verbatim if it is not accurate. For example, if you do not have financial company affiliates, edit out that phrase from the language above. Note also that you must provide only an illustrative list of affiliates with which you share NPI, and not a complete list of all of your affiliates.

“Nonaffiliates”

Under “Nonaffiliates,” a dealer has the following choices:

- If it does not share with nonaffiliated third parties, state: “[name of dealer] does not share with nonaffiliates so they can market to you”; or
- If it shares with nonaffiliated third parties for marketing purposes: “Nonaffiliates we share with can include [list categories of companies such as mortgage companies, insurance companies, direct marketing companies, and nonprofit organizations].”
- If you do not share with nonaffiliated third parties outside of the Section 14 and 15 Exceptions, you must state: “[name of financial institution] does not share with nonaffiliates so they can market to you.”

“Joint Marketing”

Under “Joint Marketing,” a dealer has the following choices:

- If it does not engage in joint marketing, state: “[name of dealer] doesn’t jointly market”; or
- If it shares personal information for joint marketing, state, as applicable: “Our joint marketing partners include [list categories of companies such as credit card companies].”

Note that the second choice, if applicable, requires dealers to provide illustrative examples of categories, consistent with their practices. The reference to “credit card companies” is merely an example.

4. Other important information

Other important information

[insert other important information]

The final part of page two of the Model Privacy Notice Form is an “other important information” section. This section is optional, and a dealer may include only two types of information in this section, specifically:

- a statement relating to state and/or international privacy law requirements; and/or
- an acknowledgement of receipt form.

If needed, dealers can use this box to disclose certain state-specific affiliate-sharing information, or other required state disclosures.

The FTC allowed the insertion of an “acknowledgement of receipt” in response to a specific request by NADA. Dealers routinely ask customers to sign an acknowledgment that they received a copy of the dealer’s Privacy Notice at the time of the transaction and retain this record verifying delivery of the notice. The FTC agreed to allow use of the “Other important information” field for this use. In Appendix A, “Typical Motors” has included an acknowledgement of receipt form in the following format:

Again, this is merely an example, and dealers may tailor this acknowledgement to meet their needs.

Acknowledgement of Receipt: I hereby acknowledge that I have received a copy of this form from Typical Motors.

Customer Signature

Printed Name

IV. ONLINE FORM BUILDER

In an effort to aid financial institutions in properly formatting and completing the Model Privacy Notice Form, the FTC and the other agencies released an online form builder that dealers and other financial institutions can download and use to develop and print customized versions of a model consumer privacy notice. The online form builder is available with several options, and is in an interactive .pdf format that includes instructions for selecting the appropriate version and completing the Model Privacy Form, as well as a link to the instructions in the final rule. A link to the online form builder can be found here:

http://www.federalreserve.gov/bankinfo/privacy_notice_instructions.pdf

Once you click on the link above, you will need to choose which version of the Model Privacy Notice you will use. You will select your form based on (1) whether you provide an opt-out, (2) whether you include affiliate marketing, and (3) whether you use a mail-back form. There are six choices:

1. If you provide an opt-out and you want to include affiliate marketing;
2. If you provide an opt-out and you do not want to include affiliate marketing;
3. If you do not provide an opt-out and you want to include affiliate marketing;
4. If you do not provide an opt-out and you do not want to include affiliate marketing;
5. If you provide an opt-out, you want to include affiliate marketing, and you have a mail-back form; or
6. If you provide an opt-out, you do not want to include affiliate marketing, and you have a mail-back form.

Each of the six choices is a .pdf form with fillable areas, indicated by the shaded boxes outlined in red. Place your cursor in the box and fill in the appropriate text. The mail-back forms also include shaded boxes

V. DEALERS WHO CHOOSE NOT TO USE THE MODEL PRIVACY FORM

Lastly, as indicated above, financial institutions are not required to use the Model Privacy Form to provide consumers with their privacy policies and opt-out notices. Instead, a dealer may use a privacy notice that varies from the Model Privacy Form, including a notice consisting of the sample clauses found in the existing privacy rules, so long as the notice complies with GLB. Note, however, that use of an alternate form means loss of the “safe harbor.”

The final rule also amends the Privacy Rule to provide a unique disclosure for institutions that choose not to use the Model Privacy Notice Form. Under the current rules, if a dealer shares NPI with nonaffiliated third parties in a manner that does not require it to provide an opportunity to opt-out, the institution is only required

to state in its privacy notice that it engages in such sharing “as permitted by law.” The FTC is revising its rule to require the inclusion of a more specific statement that the institution shares this information for its *“everyday business purposes, such as to process transactions, maintain account(s), respond to court orders and legal investigations, or report to credit bureaus.”*

Appendices

1. Appendix A includes two example Model Privacy Notices for a “typical” dealership. Read the guidance below carefully.
2. Appendix B includes three Model Privacy Notice Templates provided by the FTC, as well as a sample of the opt-out mail-in form.
3. Appendix C is a copy of a document promulgated by the FTC entitled: “The FTC’s Privacy Rule and Auto Dealers: FAQs.” There, the FTC addresses a number of questions relevant for dealers. **NOTE:** This document was issued prior to the new Model Privacy Notice Form.

Appendix A

Sample Templates for “Typical” Dealership

This Appendix A contains two examples (Version 1 and Version 2) of Privacy Notices for two different hypothetical situations. These examples are constructed using two versions of the Model Privacy Notice Form provided by the FTC in the Privacy Rule. These are merely examples, and you will need to choose the one that best fits your situation. Whichever you choose, you must complete the prescribed template in accordance with the detailed instructions. In addition, the choices reflected in Version 1 and Version 2 are meant to reflect possible choices that may be made by a hypothetical dealership, and they are for guidance purposes only. You should not adopt the same choices unless they are appropriate for your dealership.

(A) Version 1 provides an example of a Model Privacy Notice with no opt-out, and does not include the optional affiliate marketing “reason” in the form. You may use this version only if:

- (1) you are not required to provide an opt-out opportunity because either:
 - (a) you do not disclose NPI to any third party; or
 - (b) all of your disclosures to third parties fall under an exception to the opt-out requirement; **and**
- (2) you do need to include the Affiliate Marketing Notice because:
 - (a) you do not have affiliates;
 - (b) you do not disclose personal information to your affiliates;
 - (c) your affiliates do not use the personal information you share for marketing purposes; or
 - (d) you provide the Affiliate Marketing notice separately.

(B) Version 2 provides an example of a Privacy Notice for a dealer that is required to provide an opt-out opportunity, wishes to include the affiliate marketing “reason,” and does not use a mail-in opt-out form. Version 2 may be used if you are required, or wish to (a) provide an opt-out, and (b) include the Affiliate Marketing notice.

You will notice we have included a customer acknowledgement at the bottom of page two of each version. As discussed above, the regulation does not require this, but we recommend it so you can prove you provided the notice. (Be sure to keep a copy.)

FACTS

WHAT DOES Typical Motors DO WITH YOUR PERSONAL INFORMATION?

Why?

Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.

What?

The types of personal information we collect and share depend on the product or service you have with us. This information can include:

- Social Security number and Income
- Credit History and Credit Scores
- Account Balances and Employment Information

When you are *no longer* our customer, we continue to share your information as described in this notice.

How?

All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons Typical Motors chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does Typical Motors share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus	Yes	No
For our marketing purposes— to offer our products and services to you	Yes	No
For joint marketing with other financial companies	No	We Don't Share
For our affiliates' everyday business purposes— information about your transactions and experiences	No	No
For our affiliates' everyday business purposes— information about your creditworthiness	No	We Don't Share
For nonaffiliates to market to you	No	We Don't Share

Questions?

Call 800-555-1212 or go to www.typicalmotors.com/privacy

Who we are

Who is providing this notice?

Typical Motors, Inc.

What we do

How does Typical Motors protect my personal information?

To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.

How does Typical Motors collect my personal information?

We collect your personal information, for example, when you

- Apply for a lease or Apply for financing
- Pay us by check or Give us your contact information
- Show us your driver's license

We also collect your information from others, such as credit bureaus, affiliates, or other companies.

Why can't I limit all sharing?

Federal law gives you the right to limit only

- sharing for affiliates' everyday business purposes—information about your creditworthiness
- affiliates from using your information to market to you
- sharing for nonaffiliates to market to you

State laws and individual companies may give you additional rights to limit sharing.

Definitions

Affiliates

Companies related by common ownership or control. They can be financial and nonfinancial companies.

- *Typical Motors has no affiliates.*

Nonaffiliates

Companies not related by common ownership or control. They can be financial and nonfinancial companies.

- *Typical Motors does not share with nonaffiliates so they can market to you.*

Joint marketing

A formal agreement between nonaffiliated financial companies that together market financial products or services to you.

- *Typical Motors does not jointly market.*

Other important information

Acknowledgement of Receipt:

I hereby acknowledge that I have received a copy of this form from Typical Motors.

Customer Signature

Printed Name

FACTS

WHAT DOES Typical Motors DO WITH YOUR PERSONAL INFORMATION?

Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	<p>The types of personal information we collect and share depend on the product or service you have with us. This information can include:</p> <ul style="list-style-type: none"> ■ Social Security number and Income ■ Credit History and Credit Scores ■ Account Balances and Payment History
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons Typical Motors chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does Typical Motors share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus	Yes	No
For our marketing purposes— to offer our products and services to you	Yes	No
For joint marketing with other financial companies	No	We Don't Share
For our affiliates' everyday business purposes— information about your transactions and experiences	Yes	No
For our affiliates' everyday business purposes— information about your creditworthiness	Yes	Yes
For our affiliates to market to you	Yes	Yes
For nonaffiliates to market to you	Yes	Yes

To limit our sharing	<ul style="list-style-type: none"> ■ Call 800-555-1212 — our menu will prompt you through your choice(s) or ■ Visit us online: www.typicalmotors.com/privacy <p>Please note:</p> <p>If you are a <i>new</i> customer, we can begin sharing your information 30 days from the date we sent this notice. When you are <i>no longer</i> our customer, we continue to share your information as described in this notice.</p> <p>However, you can contact us at any time to limit our sharing.</p>
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Questions?	Call 800-555-5555 or go to www.typicalmotors.com
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Who we are

Who is providing this notice?

Typical Motors, Inc., which consists of Typical Domestic Motors, LLC, and Typical Import Motors, LLC.

What we do

How does Typical Motors protect my personal information?

To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.

How does Typical Motors collect my personal information?

We collect your personal information, for example, when you

- Apply for a lease or Apply for financing
- Pay us by check or Give us your contact information
- Show us your driver's license

We also collect your information from others, such as credit bureaus, affiliates, or other companies.

Why can't I limit all sharing?

Federal law gives you the right to limit only

- sharing for affiliates' everyday business purposes—information about your creditworthiness
- affiliates from using your information to market to you
- sharing for nonaffiliates to market to you

State laws and individual companies may give you additional rights to limit sharing.

What happens when I limit sharing for an account I hold jointly with someone else?

Your choices will apply to everyone on your account unless you tell us otherwise.

Definitions

Affiliates

Companies related by common ownership or control. They can be financial and nonfinancial companies.

- *Our affiliates include companies with the "Typical Motors" name.*

Nonaffiliates

Companies not related by common ownership or control. They can be financial and nonfinancial companies.

- *Nonaffiliates we share with include banks, finance companies, insurance companies, and direct marketing companies.*

Joint marketing

A formal agreement between nonaffiliated financial companies that together market financial products or services to you.

- *Typical Motors does not jointly market.*

Other important information

Acknowledgement of Receipt: I hereby acknowledge that I have received a copy of this form from Typical Motors.

Customer Signature _____

Printed Name _____

Appendix B

Three Versions Of The Model Privacy Form

Version 1: Model Privacy Form with No Opt-Out

Rev. [insert date]

FACTS	WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?	
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.	
What?	<p>The types of personal information we collect and share depend on the product or service you have with us. This information can include:</p> <ul style="list-style-type: none">■ Social Security number and [income]■ [account balances] and [payment history]■ [credit history] and [credit scores] <p>When you are <i>no longer</i> our customer, we continue to share your information as described in this notice.</p>	
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.	
Reasons we can share your personal information		
Does [name of financial institution] share?		
Can you limit this sharing?		
For our everyday business purposes—such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes—to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes—information about your transactions and experiences		
For our affiliates' everyday business purposes—information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		
Questions?	Call [phone number] or go to [website]	

Who we are

Who is providing this notice?

[insert]

What we do

How does [name of financial institution] protect my personal information?

To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.

[insert]

How does [name of financial institution] collect my personal information?

We collect your personal information, for example, when you

- [open an account] or [deposit money]
- [pay your bills] or [apply for a loan]
- [use your credit or debit card]

[We also collect your personal information from other companies.] OR
[We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]

Why can't I limit all sharing?

Federal law gives you the right to limit only

- sharing for affiliates' everyday business purposes—information about your creditworthiness
- affiliates from using your information to market to you
- sharing for nonaffiliates to market to you

State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]

Definitions

Affiliates

Companies related by common ownership or control. They can be financial and nonfinancial companies.

- [affiliate information]

Nonaffiliates

Companies not related by common ownership or control. They can be financial and nonfinancial companies.

- [nonaffiliate information]

Joint marketing

A formal agreement between nonaffiliated financial companies that together market financial products or services to you.

- [joint marketing information]

Other important information

[insert other important information]

FACTS	WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?	
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.	
What?	<p>The types of personal information we collect and share depend on the product or service you have with us. This information can include:</p> <ul style="list-style-type: none"> ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores] 	
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.	
Reasons we can share your personal information	Does [name of financial institution] share?	Can you limit this sharing?
For our everyday business purposes—such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes—to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes—information about your transactions and experiences		
For our affiliates' everyday business purposes—information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		
To limit our sharing	<ul style="list-style-type: none"> ■ Call [phone number]—our menu will prompt you through your choice(s) or ■ Visit us online: [website] <p>Please note:</p> <p>If you are a <i>new</i> customer, we can begin sharing your information [30] days from the date we sent this notice. When you are <i>no longer</i> our customer, we continue to share your information as described in this notice.</p> <p>However, you can contact us at any time to limit our sharing.</p>	
Questions?	Call [phone number] or go to [website]	

Who we are

Who is providing this notice?

[insert]

What we do

How does [name of financial institution] protect my personal information?

To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.

[insert]

How does [name of financial institution] collect my personal information?

We collect your personal information, for example, when you

- [open an account] or [deposit money]
- [pay your bills] or [apply for a loan]
- [use your credit or debit card]

[We also collect your personal information from other companies.]

OR

[We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]

Why can't I limit all sharing?

Federal law gives you the right to limit only

- sharing for affiliates' everyday business purposes—information about your creditworthiness
- affiliates from using your information to market to you
- sharing for nonaffiliates to market to you

State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]

What happens when I limit sharing for an account I hold jointly with someone else?

[Your choices will apply to everyone on your account.]

OR

[Your choices will apply to everyone on your account—unless you tell us otherwise.]

Definitions

Affiliates

Companies related by common ownership or control. They can be financial and nonfinancial companies.

- [affiliate information]

Nonaffiliates

Companies not related by common ownership or control. They can be financial and nonfinancial companies.

- [nonaffiliate information]

Joint marketing

A formal agreement between nonaffiliated financial companies that together market financial products or services to you.

- [joint marketing information]

Other important information

[insert other important information]

FACTS		WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.	
What?	<p>The types of personal information we collect and share depend on the product or service you have with us. This information can include:</p> <ul style="list-style-type: none"> ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores] 	
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.	
Reasons we can share your personal information		Does [name of financial institution] share?
For our everyday business purposes—such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes—to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes—information about your transactions and experiences		
For our affiliates' everyday business purposes—information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		
To limit our sharing	<ul style="list-style-type: none"> ■ Call [phone number]—our menu will prompt you through your choice(s) ■ Visit us online: [website] or ■ Mail the form below <p>Please note:</p> <p>If you are a <i>new</i> customer, we can begin sharing your information [30] days from the date we sent this notice. When you are <i>no longer</i> our customer, we continue to share your information as described in this notice.</p> <p>However, you can contact us at any time to limit our sharing.</p>	
Questions?	Call [phone number] or go to [website]	

Mail-in Form		
<p>Leave Blank OR</p> <p>[If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below.]</p> <p><input type="checkbox"/> Apply my choices only to me]</p>	<p>Mark any/all you want to limit:</p> <p><input type="checkbox"/> Do not share information about my creditworthiness with your affiliates for their everyday business purposes.</p> <p><input type="checkbox"/> Do not allow your affiliates to use my personal information to market to me.</p> <p><input type="checkbox"/> Do not share my personal information with nonaffiliates to market their products and services to me.</p>	
	Name	Mail to:
	Address	[Name of Financial Institution]
	City, State, Zip	[Address1]
	[Account #]	[Address2]
		[City], [ST] [ZIP]

Who we are	
Who is providing this notice?	[insert]
What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you <ul style="list-style-type: none"> ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] OR [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only <ul style="list-style-type: none"> ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]
What happens when I limit sharing for an account I hold jointly with someone else?	[Your choices will apply to everyone on your account.] OR [Your choices will apply to everyone on your account—unless you tell us otherwise.]
Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. <ul style="list-style-type: none"> ■ [affiliate information]
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. <ul style="list-style-type: none"> ■ [nonaffiliate information]
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. <ul style="list-style-type: none"> ■ [joint marketing information]
Other important information	
[insert other important information]	



Version 4: Optional Mail-in Form



Mail-in Form	
Leave Blank OR [If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below. <input type="checkbox"/> Apply my choices only to me]	Mark any/all you want to limit: <input type="checkbox"/> Do not share information about my creditworthiness with your affiliates for their everyday business purposes. <input type="checkbox"/> Do not allow your affiliates to use my personal information to market to me. <input type="checkbox"/> Do not share my personal information with nonaffiliates to market their products and services to me.
	Name
	Address
	City, State, Zip
	[Account #]

Mail To: [Name of Financial Institution], [Address1]
 [Address2], [City], [ST] [ZIP]

Appendix C

The FTC's Privacy Rule And Auto Dealers: Frequently Asked Questions

The Federal Trade Commission (FTC) has developed these additional FAQs to help auto dealers comply with the Gramm-Leach-Bliley Act and the FTC's Privacy Rule. The following questions and answers show how the Privacy Rule applies to specific situations that auto dealers may face. Before reading this, you may want to familiarize yourself with the FTC's small business guide, *How To Comply with the Privacy of Consumer Financial Information Rule of the Gramm-Leach-Bliley Act*, and the Frequently Asked Questions for the Privacy Regulation. Other business guidance is available on the FTC's website at:

www.ftc.gov/privacy/privacyinitiatives/financial_rule_bus.html.

Please note that this information does not address possible legal obligations you may have under the FTC Safeguards Rule, the Fair Credit Reporting Act, or other federal and state laws.

Activities and Entities Covered by the Privacy Rule

1. Does the Privacy Rule apply to me?

The Privacy Rule applies to car dealers who:

- Extend credit to someone (for example, through a retail installment contract) in connection with the purchase of a car for personal, family, or household use;
- Arrange for someone to finance or lease a car for personal, family, or household use; or
- Provide financial advice or counseling to individuals.

If you engage in these activities, any personal information that you collect to provide these services is covered by the Privacy Rule. Examples of personal information include someone's name, address, phone number, or other information that could be used to identify them individually. The Privacy Rule applies if you collect personal information about someone in connection with the potential financing or leasing of a car, even if that person does not fill out a formal application. The Privacy Rule does not apply to you if a person buys a car with cash or arranges financing on their own through another lender.

2. Do I need to give a privacy notice to everyone who walks into my showroom?

You don't need to give a privacy notice to someone who simply expresses an interest in buying a car from you or asks general questions about financing or leasing. However, if a person gives you personal information in connection with a potential transaction, even without completing a formal application—for example, if they give you personal information to get a quote on a financial package—you may have other obligations. For more information, see Question 3.

3. When do I have to give someone a privacy notice?

The answer depends on whether the person is a “consumer” or a “customer”—words that have their own meanings under the Privacy Rule. A person becomes a “consumer” when (s)he gives you personal information in the context of possibly financing or leasing a car from you. You only need to give them a privacy notice (and an opt-out notice) if you intend to disclose their personal information to nonaffiliated third parties. However, there are exceptions to this requirement which are set forth in sections 313.14 and 313.15 of the Privacy Rule. These exceptions include disclosures to process a transaction requested by the consumer, disclosures

made with the consumer's consent, and disclosures for law enforcement purposes. If someone enters into a contract with you to buy a car and you extend them credit or arrange for someone else to extend them credit, they become your "customer." In the leasing context, once someone enters into a lease agreement with you, they become your "customer" as well. Whether leasing or arranging credit, you must give them a privacy notice no later than at the time of signing of the retail installment contract or lease agreement — even if you do not disclose their personal information to others. For more information about your general responsibilities to "consumers" and "customers," see Section II of *How To Comply with the Privacy of Consumer Financial Information Rule of the Gramm-Leach-Bliley Act*; Section B of the Frequently Asked Questions for the Privacy Regulation; and 16 C.F.R. §§ 313.4(a) and 313.10(a).

4. I lease cars to individuals. How does the Privacy Rule apply to me?

If you lease cars on a non-operating basis where the initial term of the lease is at least 90 days, the Privacy Rule applies to you. "Non-operating" means that the lease agreement does not include maintenance or repair services, unlike, for example, car rental services. As for when you have to give a person a privacy notice, the same rules outlined in Question 3 apply to you.

5. Is all the information that I obtain in connection with financing or leasing a car covered by the Privacy Rule?

In general, the Privacy Rule covers personal information you obtain in the course of financing or leasing a car for personal, family, or household use. However, it doesn't cover:

- personal information obtained in the course of a sale that you don't help to finance (e.g., where the individual secured his own financing or paid in cash);
- sales figures that don't contain personal information; and
- general retail sales data that isn't derived from information about how individuals financed or leased their cars.

To illustrate how this works: A list of all the retail customers who bought cars from you falls outside the Rule—assuming that the list doesn't reveal how they paid for the car and isn't derived from any information about how their purchases were financed. However, if the list specifies which customers financed or leased their cars, it would be covered by the Rule. A list of people who applied to you to finance or lease a car would also be covered.

Disclosures to Service Providers

6. As a courtesy to my customers, I sometimes hire an outside marketing company to send holiday greeting cards or advertisements about "specials" in my service department. To do this, I have to give the marketing company my customers' names and addresses. I've provided my customers with a privacy notice, but because I don't usually disclose their information except as required by law, I haven't given them an opt-out notice. Do I now need to give an opt-out notice to my customers before disclosing this information to the marketing company?

If you want to send flyers to all of your customers, you don't need to give them an opt-out notice as long as you don't distinguish between those who financed or leased and those who didn't. A list of all your customers—without reference to whether they financed their car or paid for it outright—falls outside the Privacy Rule, as long as the list wasn't derived from information about how they obtained their car. For more information on

privacy notices and opt-out notices, see Section II of *How To Comply with the Privacy of Consumer Financial Information Rule of the Gramm-Leach-Bliley Act*.

7. A follow up to Question 6, but instead of sending the mailing out to all my customers, I want to send it out only to those customers for whom I arranged financing. Do I need to give an opt-out notice before I give the outside marketing company my customer list?

In this situation, the Privacy Rule applies because you derived the list from the provision of a financial service. However, the “service provider” exception to the Privacy Rule lets you give the marketing company your finance customer list without providing an opt-out notice if you meet both the following requirements:

- You gave your customers a privacy notice during your initial transaction that includes a statement that you share nonpublic personal information in order to market your own products or services; and
- You enter into a contract with the marketing company that prohibits it from disclosing or using the information except to carry out the marketing you have requested.

If you don’t meet both these requirements, you must give people an opt-out notice and a reasonable opportunity to opt-out before disclosing their personal information to the marketing company. If you send the mailing out yourself, without disclosing any information to third parties, you don’t have to meet the requirements stated above. For more information on opt-out notices, see Section F of the Frequently Asked Questions for the Privacy Regulation and 16 C.F.R. § 313.10. For more information on the “service provider” exception, see Section G of the Frequently Asked Questions for the Privacy Regulation and 16 C.F.R. § 313.13. Remember that even if you do not have to give an opt-out notice, you may still be required to give annual privacy notices that describe your privacy policies and practices.

Financing

8. When someone agrees to finance the purchase of a car with my dealership, they sign a retail installment contract. I immediately assign the contract to a third party lender. Do I have to give a privacy notice to the purchaser?

Yes. When a dealer enters into a retail installment contract with a person to finance the purchase of a car, the dealer is the creditor on the contract and is contractually bound by its terms. Because the dealer has extended credit, it has established its own customer relationship with the person when they sign the contract. Therefore, under the Privacy Rule, you must give a privacy notice no later than when the borrower signs the contract, even if you intend to assign the contract to a third party lender. See 16 C.F.R. § 313.4(a)(1) for more information. Once the contract is assigned to a third party lender, you no longer have a customer relationship with the individual borrower and you are no longer responsible for providing annual privacy notices to this person. However, you are still bound by the terms of the initial privacy policy you gave the person, and you must continue to honor any opt-out requests you have received.

9. When the retail installment contract is assigned, does the third party lender have to give a privacy notice? If so, when?

When you assign the retail installment contract, including the servicing rights, to a third party lender, that lender now has a customer relationship with the individual borrower. Since the customer relationship was not established at the customer’s election, the third party lender must deliver its privacy notice to the customer

within a reasonable time after it buys the contract. Alternatively, if the third party lender is known when the customer signs the retail installment contract, that lender may arrange to have the dealer give the lender's privacy notice to the customer when the dealer gives its own notice. In addition, the third party lender must give the customer an annual notice for as long as the customer relationship continues. See 16 C.F.R. § 313.5(a) for more information.

10. I extend credit to people who buy cars from me through retail installment contracts. I keep the contracts and do not assign them to others. What are my obligations?

Where you do not assign the contract, the people remain your customers and you need to give them an initial privacy notice, an opt-out notice (if applicable), and an annual notice for as long as the customer relationship lasts. See 16 C.F.R. §§ 313.4(a), 313.5(a)(1), and 313.10(a)(1) for more information.

11. I receive personal information from someone who applies for financing for the purchase of a car. After processing the application, I decide not to accept the application for credit. I have no plans to share this person's information, other than as required by law. Do I have to give this individual a privacy notice?

No. A person whose application for credit has been denied is considered a “consumer”—not a “customer”—and therefore you do not have to give them a privacy notice as long as you do not share their personal information. See Question 3 and 16 C.F.R. §§ 313.3(e)(2) for more information about privacy notices and “consumers.”

Disclosures Under Exceptions to the Notice and Opt-Out Requirements

12. When I sell a car, I am required by law to report certain information about the sale to the manufacturer for recall purposes, whether I arrange financing for the purchase or not. Can I continue to report this information about the sales I finance to the manufacturer under the Privacy Rule? Do I have to give an opt-out notice to the buyer?

In general, you must give an opt-out notice before you share information with nonaffiliated third parties. A manufacturer is not considered your “affiliate” unless it controls your management or your policies, or you are under common control with the manufacturer. However, there are situations when you may share personal information with nonaffiliated third parties without providing consumers an opportunity to opt-out of the disclosure. These limited circumstances are listed in sections 313.14 and 313.15 of the Privacy Rule. In this situation, you are reporting on behalf of your dealership to the nonaffiliated manufacturer under an exception that permits disclosure to comply with federal, state, or local laws. You would not need to give an opt-out notice to the buyer. However, because the manufacturer received the information from you under one of the exceptions to the opt-out requirement, it may not use the information for unrelated purposes like marketing. See 16 C.F.R. § 313.11(a). You may also disclose general retail sales data to the manufacturer about all your customers—even if you are not required to do so by law—as long as the data does not reveal information about how the customers financed their purchases. See Question 5 above.

13. Occasionally, a third party lender whom I contact denies a consumer's application for financing. Can that lender give me the reasons for the denial so I can let the consumer know?

Yes. When you send an individual's application for financing to a third party lender, the lender can give you information about why the loan was denied so you can give the information to the applicant. The Equal Credit

Opportunity Act (ECOA) permits a creditor (here, the third party lender) to disclose the reasons for taking an adverse action through a third party (here, the car dealer) when the third party submits an application to a creditor on behalf of the consumer. The car dealer must comply with the notice requirements of section 202.9 of Regulation B under ECOA, including providing the consumer a statement of the action taken and the reasons for the denial. In this situation, the third party lender is disclosing information to you to comply with federal law, as permitted by the Privacy Rule. Because you receive personal information from the third party lender under an exception to the Privacy Rule, your ability to use and disclose the information is limited. The limits are discussed in Section G of the Frequently Asked Questions for the Privacy Regulation.

14. When I assign or sell a lease or retail installment contract to a third party lender, do I have to give an opt-out notice to my customers?

No. The disclosure of personal information to a third party lender is allowed under the exception to the Privacy Rule concerning secondary market sales, including sales of servicing rights or similar transactions related to a consumer's transaction.

15. Car manufacturers generally require dealers to complete a retail delivery report (RDR) about every purchase or lease transaction. Under the Privacy Rule, am I allowed to disclose this information to the manufacturer?

General retail sales information about everyone who buys cars from a car dealer can be provided on the RDR because this information falls outside the scope of the Privacy Rule. Information like name, address, vehicle make and model, and vehicle identification number may be disclosed because these categories are not related to whether or how the car was financed. However, any personal information you obtain in the course of financing or leasing is covered by the Privacy Rule. This includes the fact that a car has been financed or leased or any other information derived from the financing or leasing. For example, if the RDR not only has customers' names, addresses, and vehicle information, but also notes which customers financed or leased their cars, the Privacy Rule would apply. Therefore, unless the disclosure of this information falls within one of the exceptions under sections 313.14 or 313.15, you cannot give the information to the nonaffiliated manufacturer unless you first give the customer an opt-out notice and a reasonable opportunity to opt-out. Where the personal information is disclosed under an exception, the manufacturer may use the information only for that purpose and can't use the information to market to those customers.

16. When I lease cars to individuals, there is often a manufacturer's rebate offered in connection with the lease. For my customers to qualify for the rebate, I need to disclose personal information from the lease transaction to the manufacturer. If the customer wants the manufacturer's rebate, do I have to give an opt-out notice to her before sending the information to the manufacturer?

No. In this case, you are processing a transaction at the individual's request, and can disclose personal information to nonaffiliated third parties like the manufacturer to process the rebate. However, you may disclose to the manufacturer only information necessary to process the rebate. Further, the manufacturer may use this information only to process the rebate and may not use it for other purposes, such as marketing.

ENDNOTES

¹ See, e.g., December 24, 2008 letter from the Federal Reserve to Richard K. Kim, Esq., Wachtell, Lipton, Rosen & Katz, granting an exemption from Section 23A of the Federal Reserve Act (12 U.S.C. 371c) and the Board's Regulation W (12 CFR Part 223) to allow GMAC Bank, Midvale, Utah, to lend to consumers to enable them to purchase automobiles from unaffiliated dealers in the United States that obtain floorplan financing from affiliates of GMAC Bank.

<http://www.federalreserve.gov/BoardDocs/LegalInt/FederalReserveAct/2008/20081224/20081224.pdf>

(stating in part that while “*GM and GMAC Bank are affiliates for purposes of section 23A. [of the Federal Reserve Act and the Board's Regulation W, and] GMAC and GMAC Bank are affiliates. The automobile dealers, though franchisees of GM, are not affiliates of GMAC Bank for purposes of section 23A because the dealers are independently owned and operated, and the ultimate purchasers of the automobiles are not affiliates of GMAC Bank.*”)

² The final part of page 2 of the Model Privacy Notice Form is a section entitled: “Other important information.” It is optional, but it specifically allows for inclusion of a space for recipients to sign their acknowledgement of receipt of the notice. This section was included in the Model Notice by the FTC specifically in response to comments submitted by NADA, which noted the importance to dealers of having a signed acknowledgement.

³ §313.3(b)(2)(iii).

⁴ The recently-enacted Dodd-Frank Financial Reform legislation alters the enforcement scheme for Buy Here Pay Here dealers. Beginning on the date on which the newly-created Bureau of Consumer Financial Protection assumes its consumer financial protection functions, the Bureau (in conjunction with the FTC) will enforce the Privacy Rule for dealers engaged in Buy Here Pay Here or other financing that does not involve an unrelated third-party finance source. See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 (2010). The date on which the Bureau of Consumer Financial Protection assumes its consumer financial protection functions, which the Dodd-Frank law refers to as the “Designated Transfer Date,” is currently scheduled for July 21, 2011. See 75 Fed. Reg. 57,252 – 57,253 (Sep. 20, 2010).

⁵ See endnote 4.

⁶ 74 Fed Reg. 62903.

⁷ It is found within an exemption to the definition of “consumer report” in Section 603(d)(2)(A) in FCRA.

⁹ The interactive online tool can be found at http://www.federalreserve.gov/bankinfo/reg/privacy_notice_instructions.pdf.

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