



Automobile Dealers Association of Indiana, Inc.

REGULATORY BULLETIN

April 18, 2001

BULLETIN #3

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FTC'S GLB REGULATION COMPLIANCE REQUIRED BY JULY 1, 2001

Congress passed the Gramm-Leach-Bliley Act ("GLB Act") in late 1999. This act contained a set of rules designed to protect the privacy interests of individuals in the information financial institutions obtain about them in connection with providing financial products or services. It mandates that numerous federal agencies issue implementing regulations one of which was the Federal Trade Commission. The FTC's privacy regulation (GLB Regulation) defines "financial institutions" as entities "significantly engaged in financial activities." Consumer financing and leasing of personal property are both considered financial activities under the GLB Act. The FTC would probably consider the typical dealership's leasing and credit sale activities to be significant financial activities as well.

The GLB Regulation requires "*financial institutions*" to provide to *consumers* and *customers* an *initial privacy notice* describing, among other things, the personal information the institution obtains and to whom it discloses the information. Additionally, financial institutions are required to give their continuing *customers* an updated privacy notice annually. Further, before disclosing a *consumer's nonpublic personal information* to *non-affiliated third parties*, the financial institution must provide the individual with notice and opportunity to "opt out" of the disclosure. Thus, if the *consumer* says he does not want the institution to give his information to third parties, the institution must honor that preference. Luckily, there are exceptions to the notice and opt-out requirements that will cover many of the disclosures dealerships routinely make.

This Bulletin contains language used in a 2001 publication by the National Automobile Dealers Association (NADA) entitled "A Dealer Guide to the Federal Consumer Financial Privacy Regulation." It is a condensed version and is in no way intended to be the only source of your compliance. It is meant to remind you of the compliance deadline, provide a brief summary of basic & opt-out requirements, preparation suggestions, and provide copies of the NADA sample notices. **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.**

NOTE: Although there are no federal penalties for noncompliance with the GLB Act, noncompliance could be an "unfair trade practice" under the FTC Act and possibly a state law.

REMEMBER: *You must be in full compliance with the GLB Regulation by July 1, 2001.*

FTC's Consumer Privacy Regulation Highlights on Gramm-Leach-Bliley Act

Basic Requirements:

- *General*

The GLB Regulation applies to information obtained from "*consumers*" and "*customers*." These terms are limited to persons inquiring about or obtaining financial products or services primarily for personal, family or household purposes. Therefore, it does not cover information you obtain in your dealings with a person who inquires about leasing or financing a vehicle for commercial or business use.

- *Consumer*

The GLB Regulation has a special definition of "consumer" – If someone applies for credit to buy or lease a family car, he/she is a "consumer" under the GLB Regulation, regardless of whether credit is extended. If someone gives his name and social security number and authorizes you to run a credit check, he is a "consumer", even if you never extend credit.

- You must provide him with an initial privacy notice before you disclose any *nonpublic personal information* about the *consumer* to any *non-affiliated third party*.
- 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 notice before sending a *consumer's* credit application to a bank or finance company when the *consumer* has authorized you to do so.
- You are required to provide *consumers* the opportunity to "opt out" of disclosure of their nonpublic personal information to nonaffiliated third parties. This requires notifying the *consumer* that he has the opportunity to tell you not to disclose his nonpublic personal information to a third party, before you disclose it. For example, if you wanted to sell a list of names and addresses of people who applied for credit through your dealership and sell (or transfer) this list to another company, in addition to providing the initial privacy notice, you would have to provide each *consumer* on the list with an opt-out opportunity. Opt-out options require a system for keeping track of the consumers who opt out so you do not inadvertently disclose their nonpublic personal information to a third party.

- *Customer*

A person becomes a *customer* of your dealership when you execute a lease or credit transaction.

- You must provide **each *customer*** with an initial privacy notice "not later than when you establish a customer relationship."
- You will owe *customers* the opportunity to opt out of disclosure of their nonpublic personal information to nonaffiliated third parties, before any such disclosure takes place.
- When you assign a *customer's* retail installment contract or lease contract to a bank or finance company, you generally will not need to provide an opt out opportunity, as this disclosure is covered by an exception.

- *Exceptions to Opt-out Requirements*

The GLB Regulation provides exceptions that cover many of the disclosures dealers routinely make to third parties.

- 16 C.F.R. Section 313.13 : Exception for service providers;
- 16 C.F.R. Section 313.14 : Exceptions for transactions requested or authorized by a *consumer*; and
- 16 C.F.R. Section 313.15 : Miscellaneous exceptions.

- *Preparation Suggestions*

To prepare for the compliance date, the NADA offers the following suggestions. (Again, we recommend you consult your own legal advisor to evaluate your particular circumstances. The information provided is very general and may not fit your situation.)

- Conduct a privacy audit. Use this audit to discover all instances in which you disclose *consumer's* or *customer's nonpublic personal information* to *nonaffiliated third parties* in the course of your business.
- Study the opt-out and notice exceptions, and determine whether, beginning July 1, 2001, you will have any disclosures that are not covered by an exception.
- If you will make disclosures of *consumer's* information that are not covered by any exception, you will need to provide each affected *consumer* with an initial privacy notice and opt-out opportunity for the non-exempt disclosure. You will need to develop a procedure for tracking opt outs.
- If you will make disclosures of *customer's* information for which no exception applies, you will need to provide an opt out opportunity to the affected *customers*. (You should already have provided the initial notices when they became *customers*.) Again, you would need to keep track of those who have opted out.
- Section 313.13 exception disclosures of *consumer's* or *customer's* information to service providers requires the initial privacy notice to reference the said disclosure.
- Section 313.14 and 313.15 disclosures will trigger neither the initial notice nor the opt-out opportunity requirements. There are significant advantages to structuring your business practices so that, beginning on July 1, 2001, each and every disclosure of *consumers'* or *customers'* nonpublic personal information is covered by an exception described in either of these sections. If you limit disclosures to these exceptions:
 1. You will not be required to provide an initial privacy notice to *consumers*.
 2. Although required to provide an initial privacy notice to *customers* when you establish the *customer* relationship (and annual privacy notices to buy-here-pay-here and in-house lease *customers*), you will be allowed to use a simplified version.
 3. You will not need to provide an opt-opportunity to anyone, nor will you need to worry about tracking opt-outs.
- If you are running a buy-here-pay-here operation or an in-house leasing company, you will have continuing *customer* relationships with the credit or lease *customers* involved. You will be obligated to provide each existing credit or lease *customer* with an initial privacy notice by July 1, 2001, and you will be obligated to give each continuing *customer* a fresh privacy notice annually. There are no exceptions to these requirements.

Sample Privacy Notices:

- Appendix A: Sample Simplified Initial Privacy Notice
- Appendix B: Sample Initial Privacy Notice
- Appendix C: Sample Privacy Notice

Appendix A: Sample Simplified Initial Privacy Notice

Use this sample only if all disclosures of consumer or customer information fall under the section 313.14 (transaction requested by a consumer), or 313.15 (legal requirements, etc.) exceptions. (The italicized information in brackets is instructional information to help you customize the notice to your dealership. Do not include in your actual notice.)

Privacy Notice

In connection with your transaction, [*name of dealership*] may acquire information about you as described in this notice, which we handle as stated in this notice.

1. We collect nonpublic personal information about you from the following sources:
 - Information we receive from you on applications or other forms;
 - Information about your transactions with us; and,
 - Information we receive from a consumer reporting agency.
2. We do not disclose, nor do we reserve the right to disclose, any nonpublic personal information about our consumers, customers or former customers to anyone, except as permitted by law. We may disclose non-public personal information about you, as a consumer, customer or former customer, to non-affiliated third parties as permitted by law.
3. We restrict access to nonpublic personal information about you to [*provide an appropriate description, such as "those employees who need to know that information to provide products or services to you"*]. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

CUSTOMER ACKNOWLEDGEMENT: I (we) acknowledge that I (we) received a copy of this notice on the date indicated below.

Customer's Signature

Date

Customer's Name (printed)

Co-customer's Signature

Date

Co-customer's Name (printed)

Appendix B. Sample Initial Privacy Notice

This notice is to be used only when all disclosures of consumer and customer information fall under the section 313.13 (marketing service providers), 313.14 (transaction requested by a consumer), or 313.15 (legal requirements, etc.) exceptions. (The italicized information in brackets is instructional information to help you customize the notice to your dealership. Do not include in your actual notice.)

Privacy Notice

In connection with your transaction, [*name of dealership*] may obtain information about you as described in this notice, which we handle as stated in this notice.

1. We collect nonpublic personal information about you from the following sources:
 - Information we receive from you on applications or other forms;
 - Information about your transactions with us, our affiliates or others; and,
 - Information we receive from a consumer reporting agency.
2. We may disclose all of the information we collect, as described above, to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements. We may make such disclosures about you as a consumer, customer, or former customer.
3. We may also disclose nonpublic personal information about you as a consumer, customer, or former customer, to non-affiliated third parties as permitted by law.
4. We restrict access to nonpublic personal information about you to [*provide an appropriate description, such as "those employees who need to know that information to provide products or services to you"*]. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

CUSTOMER ACKNOWLEDGEMENT: I (we) acknowledge that I (we) received a copy of this notice on the date indicated below.

Customer's Signature

Date

Customer's Name (printed)

Co-customer's Signature

Date

Co-customer's Name (printed)

Appendix C: Sample privacy notice

This sample is to be used if you make any disclosures that are **not** covered by exceptions in sections 313.13 (marketing service providers), 313.14 (transactions requested by a consumer), or 313.15 (legal requirements, etc.). You should also use this version if you wish to reserve the right to make any disclosures outside of these exceptions in the future. (The italicized information in brackets is instructional information to help you customize the notice to your dealership. Do not include in your actual notice.)

Privacy Notice

In connection with your transaction, [*name of dealership*] may obtain information about you as described in this notice, which we handle as stated in this notice.

1. We collect nonpublic personal information about you from the following sources:
 - Information we receive from you on applications or other forms;
 - Information about your transactions with us, our affiliates or others; and,
 - Information we receive from a consumer reporting agency.
2. We may disclose all of the information that we collect about you as described above, while you are a consumer, customer, or former customer, to our affiliates and to non-affiliated third parties.
3. We may disclose nonpublic personal information about you, while you are a consumer, customer, or former customer, to the following types of third parties:
 - Financial service providers, such as [*provide illustrative examples*];
 - Non-financial companies, such as [*provide illustrative examples, such as "market research firms", "automobile manufacturers"*] ,and;
 - Others, such as [*provide illustrative examples*].
4. We may also disclose nonpublic personal information about you to nonaffiliated third parties as permitted by law.
5. If you prefer that we not disclose nonpublic personal information about you to nonaffiliated third parties, you may opt out of those disclosures; that is, you may direct us not to make those disclosures (other than disclosures permitted by law). If you wish to opt out of disclosures to nonaffiliated third parties, you may [*describe a reasonable means of opting out (choose one of the acceptable options described in the accompanying bulletin)*].
6. We may also disclose, while you are a consumer, customer, or former customer, any information we collect about you to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements. This disclosure is permitted by law; there is no opt-out opportunity available.
7. We may disclose nonpublic personal information about you, while you are a consumer, customer, or former customer, to the following types of affiliates: [*Describe affiliates by categories. Provide illustrative examples.*]
8. We restrict access to nonpublic personal information about you to [*provide an appropriate description, such as "those employees who need to know that information to provide products or services to you"*]. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

CUSTOMER ACKNOWLEDGEMENT: I (we) acknowledge that I (we) received a copy of this notice on the date indicated below.

Customer's Signature

Date

Customer's Name (printed)

Co-customer's Signature

Date

Co-customer's Name (printed)