



FTC AND AGENCIES PROPOSE MODEL PRIVACY NOTICE

By Robert C. Byerts

As of July 1, 2001, dealers are required by the Gramm-Leach Bliley Act (GLB) to provide Privacy Notices to customers at specified times. The Privacy Notice is intended to communicate the dealer's information and collection sharing practices to their customers, initially prior to any transaction and annually when there is an ongoing relationship. The privacy notice must identify the information the dealer (defined as a "financial institution") collects and what, if any, sharing of that information occurs. If a dealer shares consumer information outside of the limited exceptions allowed under GLB, the dealer must provide the consumer with an opportunity to "opt out" of the sharing. This "opt out" opportunity must appear in the Privacy Notice provided by the dealer. Following the enactment of GLB, the FTC and other federal agencies adopted a Privacy Rule containing model language (sample clauses) that institutions may use in privacy notices.

These notices generated complaints from consumers who had trouble reading and understanding them. You may have received some of these complaints at your dealership. Many privacy notices in the initial effort were long and complex. In addition, because the privacy rule allows institutions flexibility in designing their privacy notices, notices have been formatted in various ways and as a result have been difficult to compare, even among financial institutions with identical privacy policies.

The Regulatory Relief Act, enacted October 13, 2006, now directs the FTC and Agencies to "jointly develop a model form" which may be used, at the option of the dealer to provide the Privacy Notice. If a dealer uses the model form, then the Privacy Notice meets the GLB notice requirements. The model form shall:

- (A) be comprehensible to consumers, with a clear format and design;
- (B) provide for clear and conspicuous disclosures;
- (C) enable consumers easily to identify the sharing practices of a financial institution and to compare privacy practices among financial institutions; and
- (D) be succinct, and use an easily readable type font.

On March 21, 2007, the FTC announced the new proposed "Model Privacy Notice." This two page (three pages if you include the opt out option) document cannot be included with any other document, must be printed on one side of the page and contains language which, at least in part, cannot be changed. The Model Privacy Notice must include the dealer name, contact information, and information about affiliates, non-affiliates and joint marketing partners.

While the Model Privacy Notice provides a "safe harbor" for dealers who utilize it, it is not the only way to provide the Privacy Notice to your customers. However, once the notice becomes final, hopefully sometime later this year, depending upon the Final Rulemaking notice from the FTC, it represents the easiest way to ensure compliance with the Privacy Notice requirements. Dealers should use the opportunity presented by the publication of the proposed Model Privacy Notice to evaluate their current Privacy Notice against the GLB requirements, inventory your information sharing practices and determine whether your current notice is accurate. Better to evaluate now rather than later after some plaintiff's attorney alerts you to any deficiencies. ■

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