

CADA MODEL PRIVACY FORM ORDERS – SUMMARY / GUIDANCE

UNDERSTANDING THE NEW MODEL PRIVACY NOTICE

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Model privacy forms are now available for dealerships to use to meet the content requirements and in some cases, opt-out notice required under federal law. The model forms are standardized documents developed by the Federal Trade Commission (FTC) and the Federal Reserve Board (FRB) that contain very specific required page layout, content, format, style, pagination and shading. These forms are intended to replace the privacy notices currently used by dealerships, and offer a “safe harbor” protection for those who use the proper form.

Dealerships who wish to obtain the safe harbor through use of the model form may only modify it as allowed by the rules. [*It is strongly recommended that any customization outside of the fill-in fields be reviewed by legal counsel*]. It is highly advisable for all dealerships to choose the appropriate model privacy form from the six available and begin using the new form no later than January 1, 2011.

Overview of the Model Privacy Forms

There are six models provided by the FTC as follows:

Form#	Provide opt out?	Affiliate Marketing?	
#1	YES – on form	Yes	
#2	“	No	
#3	NO	Yes	
#4	“	No	Sample included
#5*	YES – via mail-in form	Yes	Sample included
#6*	“	No	

*Forms 5 and 6 are required to be printed on 8 ½ x 14 paper (legal size). If opt-outs are required, it is up to the dealer whether to offer the opt-out on the initial form (Form #1 or #2), or via a mail-in version (Forms #5 and #6).

Which form is appropriate for your dealership will depend upon how you collect and share “nonpublic personal information” you obtain from consumers as well as your business structure. If you are required to provide an opt-out there is a choice of doing so on the original form, or via a mail-back/cut-off portion of the form. *Most dealerships will not provide an opt-out unless they are required to do so; but the options above provide for both mandatory and optional opt-outs.*

The model forms are comprised of two pages, which may be printed on both sides of a single sheet of paper or may appear on two separate pages. Dealerships must use an easily readable type font, which may not be less than ten-point. Sufficient spacing between the lines of type is also required. The formatting and shading of the forms may not be altered.

Dealerships may include a logo on the notice, so long as it does not interfere with the readability of the form or the space constraints of each page. The form should be printed on light colored

paper with black or other contrasting ink color. The model form may be translated into languages other than English.

Signatures/Copies: The law merely requires that a consumer be provided a privacy notice in a form he or she may keep at the time the dealership first obtains non-public personal information in conjunction with an inquiry about receiving credit. Retaining a signed copy of a privacy notice is optional but is a means of retaining proof of compliance with federal law. For that reason, it is strongly advised that an "acknowledgment of receipt" is obtained and one copy of the signed notice is provided to the consumer while the other retained in the deal jacket.

How to Complete the Model Privacy Notice

For ease of reference, this summary will illustrate with the two forms that are most likely to be used by the majority of dealers: Form #4, "No Opt Out and No Affiliate Marketing" and Form #5, "Mail-in Opt Out and With Affiliate Marketing" A form builder for all of the available FTC/FRB forms can be found at:

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

The version of the model form to be used by a dealership is determined by how the dealership shares the non-public personal information it collects from consumers. Depending on what information is shared and with whom it is shared determines whether an opt-out is required.

- Contact Tammi McCoy at CADA, tammi.mccoy@coloradodealers.org for information on more in-depth resources on this topic if you are unsure which form is appropriate.

Section by Section Content of the Model Privacy Notice Forms

Samples of both a privacy notice without an opt-out (Form #4) and a notice with a mail-in opt-out (Form #5) may be found at the end of this summary. Certain dealership information must be customized on the form. The following fields on the sample notices identify what information must be customized on the appropriate form:

Field A – Dealership Name;
Field B – Dealership Telephone Number;
Field C – Dealership Web Address; and
Field D – Dealership Mailing Address.

For additional reference see the Sample Model Forms, Form#4 for the no opt-out form and at Form #5 for the opt-out form.

REVISION DATE: Include the month and year of the revision (e.g., 01/2011)

FACTS / WHY? SECTIONS: Dealers are required to identify the name of the dealership at the top of the notice, as well as provide a revised date in the top right-hand corner of the forms. The purpose of the notice is to explain why a dealership may choose to share a consumer's personal information. The form explains that federal law allows consumers to limit some, but not all

sharing. Federal law requires dealers to tell consumers how it collects, shares and protects the personal information collected from consumers.

WHAT? SECTION: All notices must include social security number, so that is already included in the FTC's model form. The Dealer is then required to list five (5) additional types of personal information it collects and shares depending on the product or service the consumer has with the dealership. The most commonly used types that will be applicable for most dealerships have been included on the sample forms included: Income, Account Balances, Payment History, Credit History, and Credit Scores. A complete list of types of personal information that a dealership may also include on the notice may be found at Appendix A.

HOW? AND REASONS SECTION: The purpose of this section is to disclose the reasons dealerships may share their customers' personal information; the reasons the dealership chooses to share; whether your dealership shares this information with others; and a statement of whether the consumer can limit this sharing.

The stated reasons for sharing personal information in the form tables are as follows:

For our everyday business purposes — such as to process your transactions, maintain customer account(s), respond to court orders and legal investigations, or report to credit bureaus.

Explanation: "Yes", all dealerships must share consumer personal information in order to process transactions and maintain accounts; and "No" consumers may not limit this sharing.

For our marketing purposes — offer dealership products and services to the consumer

Explanation: "Yes", all dealers market products and services to their customers, either directly or with the assistance of a third party who is marketing solely for the benefit of the dealer (e.g. service reminders, etc.) and "No", consumers may not limit this sharing.

For joint marketing with other financial companies

Explanation: "Yes", dealers may jointly market with other financial companies (like another dealership) and "No", the consumer may not limit this sharing.

For our affiliates' everyday business purposes— information about the consumer's transactions and experiences

Explanation: "Yes", dealers may share information about a consumer's transactions and experiences with an affiliate (a company with common ownership or control) and "No", consumers may not limit this sharing. *Note however, a dealer **may** offer an optional opt-out.*

For our affiliates' everyday business purposes— information about the consumer's creditworthiness

Explanation: **If a dealer shares information about a consumer's creditworthiness, it must offer an opt-out.** Most dealerships do not share and will use a privacy notice with no opt-out.

For our affiliates to market to the consumer

Explanation: **If a dealership shares personal information about a customer with another company with which it shares common ownership or control, an opt-out is required** (i.e., an opt-out version of the model forms must be used).

For non-affiliates to market to the consumer.

Explanation: If a dealer shares personal information about a customer with an *unaffiliated financial company* for the other company's marketing purposes, an opt-out is required (i.e., an opt-out version of the model forms must be used).

For each of the above-stated reasons, the dealership must disclose whether it shares this information and whether the consumer can limit the sharing.

TO LIMIT OUR SHARING SECTION: If an opt-out is required (see Sample Form #5), the dealership must provide contact information for the dealership so that the consumer can share their information-sharing preferences with the dealership. A dealership must provide not less than 30 days before it shares information that is subject to a opt-out. If a consumer does opt-out of sharing, the dealership must ensure this information is tracked; this information may not be shared except as allowed by law.

Dealers who wish to provide a mail-in opt out must include the cut-off form as included on Sample Form # 5.

WHAT WE DO? SECTION: All privacy notices contain information outlining how the dealership protects personal information from unauthorized access and use and also includes a statement of the means by which the dealership collects personal information. Examples are included on the Sample Forms. A complete listing of ways dealerships collect personal information (as prepared by the Federal Reserve Board and the Federal Trade Commission) can be found in Appendix B.

The privacy notices also provide a statement of the legal restrictions placed upon the ability of a consumer to limit sharing. For the opt-out notice, a dealer must state what happens when a consumer limits sharing for an account he or she holds jointly with someone else. The typical response will be that the consumer's choices will apply to everyone on the account.

Joint Accounts: Most dealers will choose to have sharing preferences apply across the account. The Sample Forms provided here state "Your choices apply to everyone on your account". A dealer could also state sharing preference will apply to all, unless the consumer directs otherwise.

DEFINITIONS: The dealer must also provide definitions of “affiliates,” “non-affiliates” and “joint marketing.” Included with the definitions are statements of categories of businesses that fall within these definitions.

Notes/Recommendations:

- *Affiliates:* The dealership should list types or categories of affiliates it may have. If inapplicable, the dealer may state that "dealership has no affiliates."
- *Non-Affiliates:* The dealership should list types or categories of non-affiliates it may have. If inapplicable, the dealer may state, "We do not share with non-affiliates so they can market to you."
- *Joint Marketing:* The dealership should list types or categories of financial companies with whom it may jointly market. The companies may be other dealers, banks and the manufacturer. If inapplicable, the dealer may state "We do not jointly market."

OTHER IMPORTANT INFORMATION / SIGNATURE:

Finally, retaining a signed copy of a privacy notice is optional but is a means of retaining proof of compliance with federal law. For that reason, it is strongly advised that an "acknowledgment of receipt" is obtained and one copy of the signed notice is provided to the consumer while the other copy is retained in the deal jacket.

Conclusion

Once the dealership has prepared its privacy notice form, the only continuing obligations of the dealer are to provide the notice to every consumer from whom it receives non-public personal information in conjunction with an inquiry about obtaining financing and also to update the privacy notice as the dealership’s information collection or sharing practices may change in the future. Questions regarding your legal obligations with regard to privacy notices should be directed to your legal advisor.

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Customized model privacy notice forms can be ordered through CADA at 1-800-831-1722 or contact: Lauren Stadler, lauren.stadler@coloradodealers.org

DISCLAIMER: CADA is not authorized to dispense legal advice. The information contained in this summary is intended to provide general information only. CADA always advises that dealers consult legal counsel on the specifics of any laws or regulations to ensure proper compliance.

APPENDIX A

Dealerships Must Use Five (5) Of The Following Terms To Complete The Bulleted List Under The “What?” Section Of The Privacy Notice:

*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.

**Typically used by dealerships; included on Sample Forms # 4 and #5.*

APPENDIX B

Dealerships Must Use Five (5) Of The Following Terms to Disclose How The Dealership Collects Consumer Information:

Open an Account;
Deposit Money;
Pay Your Bills;
Apply For a Loan;
Use Your Tax Credit or Debit Card;
Seek Financial 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 Bank 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 Contract 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

****Typically used by dealerships; included on Sample Forms # 4 and #5.***