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Legal & Regulatory Group

TO: NADA Directors
State and Metro ATAEs

FROM: Paul D. Metrey

DATE: December 16, 2009

RE: FTC Issues New "Optional" Model Privacy Notice

The FTC and the federal banking agencies have amended the Privacy Rule to include a new model privacy notice that dealers and other financial institutions may use to describe their privacy policies to their finance and lease customers. Dealers who adopt the model notice consistent with its instructions will receive safe harbor protection for the language used in the notice beginning December 31, 2009. Dealers who continue to provide their finance and lease customers with a privacy notice that uses language from the sample clauses contained in Appendix A to the text of the original Privacy Rule (which required compliance by July 1, 2001) will lose safe harbor protection for the language used in those notices after December 31, 2010. Accordingly, dealers should consider transitioning to the new model notice before the end of 2010.

The new model notice stems from section 728 of the Financial Services Regulatory Relief Act of 2006, which directs the FTC and the federal banking agencies to jointly develop an optional model form for financial institutions to make the required Privacy Rule disclosures and to have the form serve as a safe harbor for financial institutions that elect to use it. The purpose of the law is to promote the use of a more understandable privacy notice that enables consumers to more easily compare the privacy practices of different financial institutions. The form accomplishes this in part by setting forth various types of information sharing with adjacent columns for the financial institution to indicate whether it engages in such sharing and whether the consumer has the right to limit such sharing. The development of the final model notice follows extensive consumer testing and the agencies' review of numerous public comments. The agencies' adopted several recommendations contained in NADA's comments, such as allowing financial institutions to include an Acknowledgment of Receipt on the form for consumers to sign without losing the model notice's safe harbor protection (see Footnote 14 in the Supplementary Information to the Final Rule).

There are a number of detailed rules that users of the new model privacy notice must follow. NADA will explain these rules in greater detail and provide a recap of the Privacy Rule (which involves many compliance considerations beyond the language used in the privacy notice) in an educational guide that will be sent to NADA members in advance of the December 31, 2010 safe harbor expiration date that applies to privacy notices using language from the sample clauses contained in the original Privacy Rule.

The final rule containing the new model privacy notice is available at <http://edocket.access.gpo.gov/2009/pdf/E9-27882.pdf> (the amendments to the FTC Privacy Rule begin on page 62,965). For a refresher on the Privacy Rule's application to franchised dealers, see www.ftc.gov/bcp/edu/pubs/business/autos/bus64.pdf.