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What compliance looks like: FTC Privacy Rule

by Gil Van Over

Thus far in our quest to understand what compliance looks like, we've reviewed the Acts and have started on the Rules. The past two columns have discussed the FTC Used Car Rule and the IRS Cash Reporting Rule. On tap this week: The Privacy Rule.

Basic Dealer Responsibilities Under the Privacy Rule

The Federal Consumer Financial Privacy Regulation was mandated by the Gramm-Leach-Bliley Act (GLBA) passed by Congress in 1999. The FTC Privacy Rule is one of the rules promulgated as a result.

The FTC Privacy Rule deals with how you share information about consumers who obtain, or apply for credit or lease products from you. Ultimately, your obligation is to provide individuals with a copy of your dealership's Privacy Policy via a Privacy Notice whenever you receive personal, non-public information from an individual.

The Rule does differentiate between a consumer and a customer and provides different requirements for each, but don't get caught up going down that path. Many dealers lament that they can't get sales people to correctly calculate a customer's monthly income, why try to make them understand differences between customers and consumers.

Bottom line – play it safe. As soon as you receive personal, non-public information on an individual, hand them a copy of your Privacy Notice. This normally happens with either a guest worksheet, up card or copying the driver's license for a test drive.

Simple Rule, Complex Execution

The Rule is so simple, yet many people try to make it complex.

Simple because the NADA created the language for a Privacy Notice and the FTC blessed the language. Use the NADA's Privacy Notice and you have safe harbor protection.

Simple because the Rule does not require a signature. You are only obligated to give the customer a copy of your privacy policy (see above simplicity regarding the Privacy Notice). Think of it this way. Once a year, in one of your credit card statement envelopes, you receive a copy of that bank's privacy policy. You don't have to sign anything acknowledging that you received the notice.

Do those two things and you have fulfilled your obligation under the Privacy Rule.

Common Compliance Concerns

Wrong Notice – Some dealers are using a notice that permits the customer an opportunity to opt-out. If you do not sell your customer's names in a mailing list to non-affiliated third parties, you do not have to give the customer the option to opt-out. Likewise, do not permit the customer to cross out any of the safe-harbor language on the Privacy Notice because I guarantee you that you do not have a process in place to prevent that one customer from getting onto any marketing lists you create.

I Got A Copy in the File! – Some dealers start with a two ply form, run out of the forms and start making photocopies of the original form. The second iteration of the form starts moving to the right on the copier and pretty soon, the right hand side of the form is truncated. On the twentieth version, the English has morphed into hieroglyphics.

To compound the problem, the customer's signature is in original ink. Now, try to convince a skeptical regulator or AG or jury that your sales person got up from the desk, walked to a copier, made a copy and gave the copy to the customer. Try with a straight face. Having a signed copy in the file is not required by the Rule. Giving the customer a copy of your privacy policy is required by the Rule.

The Customer Didn't Sign – I repeat; the Rule does not require that you have the customer sign a Privacy Notice. However, if your form calls for a signature, you have somewhat obligated yourself to obtain the signature. To really make the process easier for everyone, take the signature line and the statement asserting that the customer acknowledges a copy of the Privacy Notice off of the next printing. Modify your policy and procedure manual to reflect the new process of giving the customer the top page of your two-ply Privacy Notice and to retain the second page in your deal jacket. Train your staff on the new process and document the training.

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