



NATIONAL AUTOMOBILE DEALERS ASSOCIATION
8400 Westpark Drive • McLean, Virginia 22102
703/821-7040 • 703/821-7041

Legal & Regulatory Group

March 19, 2004

VIA E-MAIL

Office of the Secretary
Federal Trade Commission
Room 159-H
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Re: Alternative Forms of Privacy Notices
Project No. P034815

Dear Sir/Madam:

The National Automobile Dealers Association (“NADA”) submits the following comments in response to the interagency proposal of the Office of the Comptroller of the Currency, Office of Thrift Supervision, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, Federal Trade Commission, Commodity Futures Trading Commission and Securities and Exchange Commission (collectively referred to as “the federal agencies”) to consider alternative forms of privacy notices under the Gramm-Leach-Bliley (“GLB”) Act.

NADA represents approximately 20,000 franchised automobile and truck dealers who sell new and used motor vehicles and engage in service, repair and parts sales. Together our members employ in excess of 1.1 million people nationwide. A significant portion of our members are small businesses as defined by the Small Business Administration. Except for dealers that sell medium and heavy duty vehicles to other business entities, our members routinely issue privacy notices as required by the GLB Act.

Threshold Issue

The Advance Notice of Proposed Rulemaking (“ANPR”) states that “[t]he primary matter the Agencies are now considering is whether to develop a model privacy notice that would be short and simple.” 68 Fed. Reg. 75,166. NADA supports this effort provided the use of any forthcoming notice is understandable, voluntary and serves as a safe harbor from administrative

enforcement. We believe an optional standardized notice that is structured in this fashion may mitigate the compliance burden and exposure that the privacy notice requirement currently creates for financial institutions.

This may be particularly beneficial to small and midsize financial institutions. Unlike many larger businesses, franchised new car and truck dealers are relatively small entities with limited staff and resources to devote to regulatory compliance issues. In 2002, the average dealership employed 52 persons. Most of these employees consist of salespersons, service technicians and others that perform dealership functions that are unrelated to regulatory compliance issues. Dealers typically do not have in-house counsel, regulatory compliance departments or other professionals that can carefully analyze new regulatory requirements and create a compliance solution that is carefully tailored to their business. Consequently, this function often is assumed by the dealership owner, general manager, controller or other employee that already performs multiple key functions for the dealership. Because of the technical nature and increasing frequency of these requirements (*see, e.g.*, the new requirements in the last 14 months under the FTC Safeguards Rule, the FTC Telemarketing Sales Rule, the CAN-SPAM Act of 2003 and the new requirements that will take effect later this year under the FACT Act of 2003), many dealers seek assistance, often at considerable expense, from vendors and outside counsel. Other dealers with more limited means necessarily attempt this function themselves. This challenging environment creates the need for regulations that are simple, clear and capable of being understood by laypersons.

We believe that the federal agencies' development of a model privacy notice, if appropriately structured, may assist many of our members with this regulatory requirement. However, the federal agencies should not *mandate* that financial institutions adopt the new notice. To do so would only add to the regulatory burden on financial institutions that already have developed, printed and adopted into their form distribution process a privacy notice that conforms to the FTC Privacy Rule. For example, many of our members have adopted a simple, one-page privacy notice that incorporates the applicable sample clauses contained in Appendix A of the FTC Privacy Rule. To the extent these clauses accurately describe their privacy policy, these financial institutions should not be required to adopt an entirely new form.

This does not mean there would be no value to a new model privacy notice. Many financial institutions may find it beneficial to adopt a new *optional* privacy notice that serves as a safe harbor from administrative enforcement. Such a notice could remove compliance concerns about the necessary phraseology, placement and prominence of language that is required under the statute and its implementing regulation. We therefore support this process to the extent it does not impose new obligations on our members.

Other Issues

The following are responses to specific questions contained in the ANPR.

Should a short notice substitute for or supplement a longer, more detailed notice?

The federal agencies should not require financial institutions to develop and retain two separate notices. If a simple, short notice fulfills the notice requirements contained in the statute, it would be duplicative and burdensome to require financial institutions to develop a separate notice that describes their privacy policy in greater detail. If consumers continue to demonstrate a lack of interest in the simple notices that many financial institutions presently make available to their consumers, it is unlikely they will exhibit more interest in a longer, more detailed notice. Consequently, this requirement would result in every financial institution having to develop a longer notice even though only a small number of consumers would request it. This creates a burden that far outweighs any expected benefit. Because a dual notice requirement is not mandated by the statute, it should not be further considered.

Should a financial institution be required to use standardized clauses in a short notice?

No, but the federal agencies should provide an optional form that contains standardized language. This assists small businesses by removing the issue of what constitutes a legally sufficient explanation of their information disclosure practices. Similarly, to the extent the federal agencies decide that certain language requires additional emphasis, the federal agencies should indicate this on the model form.

Is there a suggested length for a short privacy notice?

A model notice should be limited to a single page. This benefits financial institutions by reducing their reproduction costs and benefits consumers by providing a document they are more likely to review. This is particularly important during the paper-intensive vehicle delivery process.

Among the sample forms set forth in the ANPR, Appendix B serves as a useful format as it contains standardized clauses on a single form. However, to avoid confusion to the consumer, the federal agencies should only require financial institutions to include the blocks of language that describe their disclosure practices. This eliminates the need for “yes” or “no” language in the right column since all of the listed disclosures would apply to that company. For example, financial institutions that do not share information with “unrelated persons or companies” for marketing purposes would simply omit the third block from their privacy notices.

Federal Trade Commission
March 19, 2004
Page Four

If a financial institution does not disclose information to third parties that would be subject to a consumer's right to opt out (under either the FCRA or the GLB Act), what form should the privacy notice take?

The federal agencies should develop an optional model privacy notice for financial institutions that make disclosures that are subject to their consumers' right to opt out and a separate optional notice for financial institutions that do not make such disclosures. The former form should include language that covers the consumer's right to opt out under both the GLB Act and the Fair Credit Reporting Act.

If a short notice is mandated, should the agencies make an exception to allow these institutions to use the simple, abbreviated notices they currently use?

Absolutely. Otherwise, financial institutions will be required to change their forms and notification system even after having developed a notice that complies with the GLB Act and the FTC Privacy Rule. Many of these financial institutions already use a one-page form that clearly sets forth their privacy policy. It would be imprudent to require them to disregard their current form in favor of a new one. This would impose an unnecessary burden at a time when financial institutions are struggling to keep pace with the myriad of new regulatory requirements that have arisen in recent years.

Conclusion

NADA appreciates the opportunity to comment on this matter.

Paul D. Metrey
Director, Regulatory Affairs