



NATIONAL INDEPENDENT AUTOMOBILE DEALERS ASSOCIATION

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Submitted Electronically

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Ave.
Suite CC-5610 (Annex E)
Washington, D.C. 20580
Electronic address (<https://ftcpublic.commentworks.com/ftc/GLBPrivacyamendment>)

Re: Amendment to the Privacy of Consumer Financial Information Rule, 16 CFR part 313,
Project No. R411016

Dear Mr. Secretary,

The National Independent Automobile Dealers Association (“NIADA”) submits the following comments to the Federal Trade Commission (“FTC” or “Commission”) regarding its proposed Amendment to the Privacy of Consumer Financial Rule and request for public comment (“Rule”).

NIADA is among the nation's largest trade associations representing the used motor vehicle industry comprised of more than 38,000 licensed used car dealers. Since 1946, NIADA has represented the voice and interests of used car dealers at the federal level in Washington, D.C. Coupled with its state association network across the country, NIADA’s grass-roots framework provides a dual layer of advocacy unmatched in the used motor vehicle industry.

For 68 years, NIADA has engineered programs and leveraged technology to fulfill its mission to advance, educate, and promote the independent, used car dealer. NIADA stands tall for its members who subscribe to a strict Code of Ethics of duty, honor and integrity and who believe in the advancement of small business in support of the free-market system.

NIADA’s members include dealers that sell used vehicles wholesale, retail, and buy here pay here (BHPH). Many of NIADA’s dealer members own and operate small businesses as defined by the Small Business Administration with almost 50 percent of those members employing five or fewer employees. Significantly, more than 40 percent of these dealers have been in business longer than 20 years.

The Commission published this proposed rule change in the Federal Register on June 24, 2015. Under the proposal, a covered motor vehicle dealer would be permitted to post its annual privacy notice online as opposed to mailing the notice to its customers if the dealer meets five conditions. First, the dealer cannot share customers' nonpublic personal information with unaffiliated third parties in a manner that would trigger the opt-out requirement under the Gramm-Leach-Bliley Act ("GLBA"). Second, the dealer must not include in its annual privacy notice an opt out under section 603(d)(2)(A)(iii) of the Fair Credit Report Act ("FCRA"). Third, if the dealer is required to provide a notice and opt-out under the Affiliate Marketing Rule, the dealer must have previously satisfied the Affiliate Marketing Rule requirements or cannot utilize the annual privacy notice as the only notice provided to consumer to notify them of that opt-out right. Fourth, the dealer has not changed the content of its privacy notice since it last provided the immediately previous privacy notice be it an initial, annual or revised notice. And finally, the dealer must use the model privacy notice.

Once those five prerequisites are met, the dealer can elect the alternative delivery method to deliver the annual notice. To comply with the alternative delivery method, as proposed by the Commission, the dealer would have to inform customers at least annually on another notice or disclosure, coupon book, or account statement, that the privacy notice has not changed, that the privacy notice is posted on the dealer's website, and that the dealer will mail the policy to the customer upon request. The policy would have to be posted on a page of the website that contains only the privacy policy without requiring any conditions to access the page (i.e. log-ins). If a customer requests the current privacy policy, the dealer would have to mail it within 10 days.

The Commission also proposed other technical changes to the statute to reflect the change in rulemaking authority vested in the Commission since the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Commission stated its belief that the proposed rule change is consistent with the Consumer Financial Protection Bureau's recent promulgation of Regulation P.

After having reviewed the proposed amendments to the rule, NIADA offers the following comments.

I. NIADA supports amendments to the annual privacy notice requirements that result in true savings.

NIADA agrees with the Commission's stated goal of streamlining regulation that will result in a cost savings for businesses and consumers alike. We agree with many in the financial services industry that the cost to comply with the current GLBA requirements to mail annual privacy policies is overly burdensome and extremely costly. This is particularly concerning when the annual privacy policy notice often causes confusion and information overload for the consumer.

We welcome the Commission's review of the GLBA annual privacy notice requirement as applied to motor vehicle dealers. We also welcome the concept of allowing dealers to post the annual notices on their websites if certain conditions are met.

Although NIADA welcomes the general concept of the alternative delivery, NIADA does not believe the Commission's proposal provides substantive relief to the small business. For example, the Commission's amendment requires dealers to send a notice to the consumer (perhaps on a periodic statement, coupon book, or other notice or disclosure) that the annual privacy policy is available for view on the institution's website. Most automobile dealers do not send periodic statements, coupon books, or the like to customers as does a depository institution, mortgage company, etc. Therefore, in order to take advantage of the Commission's alternative delivery proposal, these entities would be required to create and mail a notice informing the customer of the availability of the privacy policy on-line. In essence, this would be trading one form of notice for another, which is at best, a net zero savings.

The Commission should avoid any requirement pertaining to the delivery of the annual notice that does not result in savings to both the consumer and the business. For example, the Commission requests comments on whether dealers should be required to maintain a dedicated phone number for consumers to request a written annual privacy notice, and if so, whether that dedicated number should be a toll free numbers.

NIADA believes that such requirements would be counterproductive to the intent behind the rule change (i.e. cost savings). These requirements would be unduly burdensome on small businesses. While large financial institutions may have a plethora of toll-free numbers, one of which could be dedicated to this purpose, small businesses, such as the vast majority of NIADA member dealers, generally do not have that luxury. Most automobile dealers do not have any toll-free lines and would have to incur the expense of securing a toll-free line as well as its subscription costs.

The concern about the unnecessary costs imposed on the dealer to secure is only magnified when one considers how infrequent consumer requests for privacy policies would be made. Many consumers do not read their annual privacy policies, a fact acknowledged by federal regulators. This would seem to suggest that consumers either do not understand them, or more likely, do not care about them. Simply stated, most automobile dealers are never asked for privacy policies.

Moreover, it is important to note that by and large, consumers are purchasing cars from dealers in and around their hometowns and in the same area code. Asking dealers to bear unnecessary costs is illogical when the consumer is right down the street.

Furthermore, we live in the age of VoIP, anytime/anywhere calling plans, and even free international calling. Technology has removed many of the barriers that existed in the last century when the long distance phone call was a significant cost. Those days are in the past, and any regulation promulgated by the Commission should accept the realities of modern technology.

As a result, NIADA believes that the costs of requiring a dedicated number, especially a toll-free number, to receive annual privacy notice requests far outweigh the benefit to consumers. Likewise, the cost to comply with the notice provided to consumers of the availability of the annual privacy policy is a significant burden on small business. The reality is that these costs will inhibit small businesses,

particularly automobile dealers, from ever being able to use the alternative delivery method. It would be business as usual for the small business that needs to be freed from the costs of this regulatory burden.

II. The Commission should model the amendment after pending legislation.

The United States House of Representatives passed H.R. 301 with bi-partisan support. That bill would exempt any financial institution from providing an annual privacy policy when that institution provides nonpublic personal information about consumers to unaffiliated third parties only in accordance with exceptions under the GLBA (e.g. service providers, law enforcement, or as necessary to fulfill a transaction requested by the customer), and (2) has not changed its disclosure policies and practices since the most recent disclosure was sent to consumers.

Given the significant support this bill has received from both sides of the aisle, the Commission should support the bill and model any amendment to the rule after this legislation. The bill does not impose extra burdens on small businesses by trading one requirement for another as the notice requirement would do. This legislation would truly provide the regulatory relief to motor vehicle dealers without adversely impacting consumers' knowledge of their privacy rights.

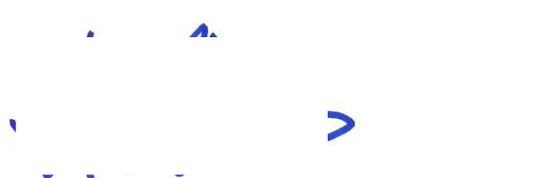
III. Conclusion

NIADA appreciates the FTC's willingness to seek comment on this issue. We encourage the Commission to continue efforts to streamline regulation and lift the burden imposed on automobile dealers. We welcome the opportunity to engage in further discussions with the Commission on this and other issues.

At Your Service,



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