

NEWS BULLETIN

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"RED FLAGS" RULE COMPLIANCE

The Federal Trade Commission promulgated its "Red Flags" rule effective November 1, 2008. While enforcement of the rule has been delayed several times (currently until January 1, 2011), compliance has been necessary since the Rule's effective date.

In addition to developing and implementing a written dealership policy which addresses reasonable procedures to identify, detect and respond to indications of possible ID theft, there are annual obligations for the dealer principal(s) and/or the dealership's Board of Directors:

- appoint a coordinator with authority to make the program work
- formally approve the written dealership policy
- ensure that dealership personnel receive training on the policy
- receive & approve periodic reports from the dealership coordinator
- review and consider updates to the dealership policy.

MADA Bulletin 2009-5, with accompanying pages, provides additional information - this bulletin can be found on the MADA website. In addition, NADA has a management guide (L50) which provides significant information on the "Red Flags" Rule. This guide was previously mailed to dealerships and is available on NADA's website in the NADA University section.

REVISED PRIVACY NOTICE EFFECTIVE JANUARY 1

New federal rules have created a revised model "privacy notice" which informs your dealership customers of the kinds of "personal information" the dealership gathers in the course of serving them, how you use and share that information with other entities, that your customers have a right to "opt out" of certain sharing of their personal information, and how they can exercise that right. The use of this new "model" privacy form, as established by federal rule, will provide safe harbor for all dealerships which choose to use it beginning January 1, 2011. Other forms of privacy disclosure, based on the federal rules previously in place, will **no longer** offer safe harbor protection, and are not guaranteed to protect you against the types of violations you would most likely face in a regulatory compliance audit. Needless to say, MADA **strongly recommends** that dealerships implement the use of a privacy notice form which complies in all respects with the new model form prescribed by federal rule.

A Dealer Guide to the FTC Privacy Rule and the Model Privacy Notice is now available online through NADA University's "Resources Toolbox". This guide comprehensively reviews the Privacy Rule and the new Model Privacy Notice, and includes detailed instructions on completing the new Model Privacy Notice as well as several appendices that will be helpful to dealerships. To download the guide, sign in or sign up for NADA University, select "Resource Toolbox", then "DRIVEN". The guide can be found under "Legal/Regulatory". Alternatively, information can be obtained on the Federal Trade Commission website - www.ftc.gov/privacy/privacyinitiatives/financial_rule_inrep.html.

RISK-BASED PRICING NOTICE STARTS JANUARY 1

The Federal Reserve Board and the Federal Trade Commission have jointly issued a Risk-Based Pricing (RBP) Rule which imposes a notice requirement effective January 1, 2011. The Exception Disclosure Form is a notice which will, if provided to all consumers for whom a credit report is obtained, allow the dealership to take advantage of an exception to the complicated new RBP disclosure requirements. The notice is intended to improve the accuracy of credit reports by alerting consumers whose credit applications have been approved (but generally on less favorable terms) to negative information in their credit reports that they can check for accuracy and, if warranted, correct. In addition, this new RBP requirement complements the already existing Adverse Action notice requirement that has been in place for some time (and which is required whenever a creditor, dealerships included, denies credit based on information in a credit report).

Thanks to a strong lobbying effort by NADA, this difficult-to-administer requirement will allow an Exception notice which must be issued to all consumers who request credit through your dealership. The Exception notice eliminates the dealership's need to decide when and how to apply the confusingly-stated disclosure in the basic RBP requirement. The first, and probably by far the most commonly used, "RBP Exception" form is likely to be one which discloses the consumer's credit score, from which credit reporting agency that score was obtained, and how that score ranks in relation to all United States consumer credit scores generally. A second form of the Exception notice is one which must be used for any consumer for whom a credit score/report is unavailable, for whatever reason.

A Dealer Guide to the Risk-Based Pricing Rule is also available online through NADA University's "Resource Toolbox". This legal guide explains the general application of the Rule to franchised car and truck dealerships engaged in three-party vehicle financing transactions. The guide primarily focuses on the "Exception Notice" that covered dealerships may provide to their consumer credit applicants to satisfy the Rule's requirements. To download the guide, sign in or sign up for NADA University, select "Resource Toolbox", then "DRIVEN". The guide can be found under "Legal/Regulatory".

ACCESS TO "NADA UNIVERSITY"

NADA now posts many dealer management guides, Webinars and other valuable resources online at www.NADAUniversity.com. You must login to access this information. All NADA members were automatically enrolled. If you misplaced or forgot the dealership passwords previously sent to you by NADA, go to www.nadauniversity.com/forgot.cfm or call NADA at 1-800-557-6232.