



INDEPENDENT AUTOMOBILE DEALERS ASSOCIATION OF CALIFORNIA

SINCE 1958

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THE BENEFIT TO DEALERS WHEN PRIVACY, SAFEGUARDS AND RED FLAGS RULES POLICIES ARE WORKING TOGETHER

As you know, personal identify theft has become a very serious problem in recent years and businesses that are unfortunate enough to have that information stolen from them, or that unwittingly use stolen identify information, can be in very serious trouble with their customers and with the law.

In the process of doing business, you, as a dealer, **collect and verify** such personal identity information from your customers. Information such as name, Social Security number, date of birth, drivers license ID number, alien registration number passport number, employer or taxpayer ID number, credit information, address, and other personal information that is not generally available to the public must be protected from unauthorized disclosure. *The purpose of your Privacy Policy is to let your customers know what kind of information you collect, what you do with that information, and give the customer an opportunity to opt out of some of your uses of that information.*

Since your dealership uses, collects and is in possession of such information, you, personally, and your business, are at significant risk unless theft of such information is recognized and properly dealt with (*Red Flags Rules Policy*) and such information in your possession is properly protected (*Safeguards Policy*).

In 2003, a law—the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) – was passed requiring federal agencies to develop rules providing businesses with guidance on ways to detect (recognize an identity theft), prevent (don't let someone use a stolen identity at your business), and mitigate¹ (*report the theft t the rightful owner, to law enforcement authorities and/or credit reporting agencies*) identity theft.

Red Flags Rules

The Federal Trade commission (FTC) is the federal agency that developed those rules for car dealers to follow. These rules are known as “**Red Flags Rules.**” “Red Flags” are indicators of possible identity theft, such as a Social Security number that is out of range with the birth date or shows up on the Death Master File, etc. Dealers who adopt and implement these rules will have some protection in the event they encounter a consumer who exhibits a “red flag” during the information gathering process. Another portion of these rules deals with customer reporting discrepancies. If your dealership should happen to get a credit report form a credit reporting agency that shows a different address than what



the customer gave you, these rules describe how you are to deal with those types of issues to protect you and your dealership.

There are several reputable companies that will gladly sell you a compliance package for several hundred dollars, but your state association, the National Independent Automobile Dealers Association, and NIADA legal counsel, Keith Whann, Esq., have developed a package that is free of charge to members, with step-by-step instructions to help you easily prepare the written policies you need to adopt and put into practice to protect you, your customers and your dealership. This information is contained in the CD for IADAC members in Microsoft Word®, Word Perfect® and Adobe Acrobat® .pdf formats.

This CD is provided to you as part of your membership benefits. The material it contains is intended to give you the necessary tools for your dealership to comply with the Red Flags Rules before the January 1, 2011 deadline. Accordingly, **do not ignore this message and fail to implement a written Red Flags policy for your dealership.**

Basically, there are four important steps you must take to protect yourself, your business and your customers:

1. **Policy.** Develop a written identity theft and address discrepancy policy and have it ratified by the owner, partner, board of directors or general manager of the dealership. *(The NIADA free package on the enclosed CD contains a sample written policy that you may adopt in its entirety or modify to fit your particular needs. It also contains instructions on how to develop a written policy following the guidelines supplied by the FTC.)*
2. **Train.** Inform your staff about the new policy and train them on how to comply with its provisions. *(As information is gathered from a customer, train your staff to detect efforts [red flags] to use a stolen identity.)*
3. **Implement.** Put in place your program to detect *(recognize red flags or efforts to use a stolen identity)*, prevent *(stop the person from using a stolen identity to gain a benefit at your dealership)* and mitigate *(report to the person whose identity has been stolen, and to law enforcement and/or credit reporting agencies).*
4. **Audit and Review.** Have an ongoing process to monitor and evaluate compliance with your new program and update the policy as the circumstances warrant. *(Add any new types of, or different means [red flags] of, stealing identities to your personal red flags list.).*

As a member of NIADA, you have previously been provided with Privacy Policy information that allowed you to adopt a written policy to protect you and your dealership under the Gramm-Leach-Bliley Privacy Act when you collect private non-public information from your customers. Following that, you were provided with materials to guide you through the development of a written Safeguards Policy describing how you protect your customers' private information.

Protecting You and Your Business!



All three of these policies – Privacy, Safeguards and Red Flags Rules—are directed toward the objective of protecting you, your dealership and your customers against the loss of private, non-public information from persons seeking to steal and use another’s identity. If you will place this latest written policy (from the enclosed CD), and its accompanying documents, in a three-ring binder that already contains your Privacy and Safeguards Policies, and fulfill those policies, you will have followed the guidelines designed to protect you and your dealership in the unfortunate event of a loss that results from identity theft or in the use of identity information that has been stolen elsewhere.

You may wish to consult with your legal counsel or other professional consultants to ensure that your dealership policies are appropriate and in compliance with applicable federal and state laws, rules and regulations. The information contained in this letter and the CD, and the recommended documents, are for general information purposes only and should not be considered as legal advice.

Finally, we recommend that you implement your written Red Flags policy as soon as possible to resolve any complications and to ensure you’re fully in compliance by the January 1, 2011 deadline.

If you have any questions, please do not hesitate to call the IADAC office at (916) 893-3306.

¹mitigate means: to cause to become less harsh or harmful.