

Enforcement of Red Flags Rule Extended to August 1

The Federal Trade Commission (FTC) extended until August 1, 2009, its enforcement date for the Red Flags Rule for “creditors,” companies (including retailers) outside the financial and banking industry that offer credit to customers. This rule, which implements the Fair & Accurate Credit Transactions (FACT) Act of 2003, requires financial institutions and other “creditors” to develop written identity theft prevention programs for most types of credit accounts. These programs must identify relevant patterns, practices and specific activities that are “red flags” for possible identity theft.

The FTC has released a new guide, *Fighting Fraud with the Red Flags Rule: A How-to Guide for Businesses*, which defines creditors and covered credit accounts and details what is required in the written program. It is available at www.ftc.gov/redflagsrule. The agency also plans to release a “template” to help companies that have a low risk of identity theft, such as businesses that know their customers personally, with compliance.

The following information summarizes key points in the Red Flags Rule, but is not intended as legal or compliance advice. Retailers would be well advised to refer to the FTC guide and check with legal or other professionals as to whether they are covered and what they must do to comply.

Are You a Creditor?

In its guidelines, *Fighting Fraud with the Red Flags Rule: A How-to Guide for Businesses*, the FTC defines a creditor as a company that defers payments for goods or services ... or provides goods and services and bills customers later ... or grants loans or extends credit ... or participates in decisions to extend, renew or continue credit. Most of the references are to credit made available to consumers, but the FTC also says, “If you regularly extend credit to other businesses, you also are covered under this definition.”

Are You a Creditor if All You Do Is Accept Credit Cards?

Again from *Fighting Fraud with the Red Flags Rule: A How-to Guide for Businesses*: “Simply accepting credit cards ... does not make you a creditor under the Red Flags Rule. But if a company offers its own credit card, arranges for credit for its customers, or extends credit by selling customers goods or services now and billing them later, it is a ‘creditor’ under the law.”

If You Are a Creditor, What Types of Credit Accounts Are Covered?

According to the guidelines, two types of accounts are covered:

1. Consumer accounts for personal, family or household use that permit multiple payments or transactions.
2. “Any other account ... for which there is a reasonably foreseeable risk ... from identity theft.” Examples: small business accounts, sole proprietorship accounts or

single transaction consumer accounts. “Reasonably foreseeable risk” means the possibility of remote access through the Internet or a telephone.

What Is Required If You Are a Creditor with Covered Accounts?

The FACT Act specifies what written identity theft prevention programs must contain. Among the requirements are definitions of identity theft, covered accounts and red flags; contents and administration of the program; description of red flags and how the company will respond when red flags are detected; and how customer account address discrepancies will be resolved.

In the case of retailers who offer their own credit cards, the FTC has told the National Retail Federation that it would “deem retailers in compliance if they follow the card-issuing banks’ procedure for taking and processing credit card applications” and document that use in writing.

Full information on creditors, covered accounts and requirements for an identity theft prevention program is contained in the FTC’s *Fighting Fraud with the Red Flags Rule: A How-to Guide for Businesses*, at www.ftc.gov/redflagsrule.