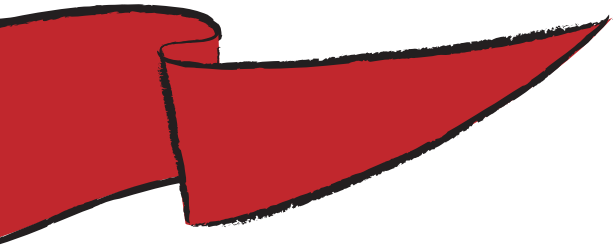


Red Flags Rule Effective Date Postponed Again

Courtesy of Robert C. Byerts, Myers & Fuller, P.A.



The FTC just announced that it is again delaying enforcement of the Red Flags Rule — this time until November 1, 2009. The Red Flags Rule requires dealers to develop comprehensive procedures to prevent identity theft, including the development, implementation, and administration of a written Identity Theft Prevention Program.

To assist small businesses and other entities, the Federal Trade Commission staff will redouble its efforts to educate them about compliance with the “Red Flags” Rule, and ease compliance by providing additional resources and guidance to clarify whether businesses are covered by the Rule and what they must do to comply. To give creditors and financial institutions more time to review this guidance, and develop and implement written Identity Theft Prevention Programs, the FTC will further delay enforcement of the Rule until November 1, 2009.

The Red Flags Rule is an anti-fraud regulation, requiring “creditors” and “financial institutions” with covered accounts to implement programs to identify, detect, and respond to the warning signs, or “red flags,” that could indicate identity theft. The finan-

cial regulatory agencies, including the FTC, developed the Rule, which was mandated by the Fair and Accurate Credit Transactions Act of 2003 (FACTA). FACTA’s definition of “creditor” includes any entity that regularly extends or renews credit - or arranges for others to do so - and includes motor vehicle dealers who finance sales.

The three-month extension, coupled with this new guidance, should enable businesses to gain a better understanding of the Rule and any obligations that they may have under it.

Beyond implementing the written program, dealerships will also need to designate an individual (typically someone at the senior management level) to oversee the program’s development, implementation and administration. Do this first. The designated indi-

vidual will serve as a reference for others whenever a situation related to the program arises. This person will make the final call. He or she will also collect reports from staff about all matters related to the dealership’s identity-theft program. He or she will also be responsible for maintaining and updating the program and plan. Make sure you pick wisely, because November 1st is almost here, and if you have not yet implemented your Red Flags comprehensive procedures to prevent identity theft, your program coordinator has lots to do before then.

PROCRASTINATORS ALERT: Do not further delay. Although the FTC does not yet conduct routine compliance audits, the FTC can conduct investigations to determine if a business

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within its jurisdiction has taken appropriate steps to develop and implement a written Program, as required by the Rule. A consumer complaint can trigger such an investigation. The FTC may ask the target of the investigation to produce copies of its Program and other materials related to compliance. The FTC also may interview officers, employees, or others who are familiar with the company's practices. If the FTC has reason to believe the Rule has been violated, it can bring an enforcement action.

The FTC can seek both monetary civil penalties and injunctive relief for violations of the Red Flags Rule.

The FTC can seek both monetary civil penalties and injunctive relief for violations of the Red Flags Rule. Where the complaint seeks civil penalties, the U.S. Department of Justice typically files the lawsuit in federal court, on behalf of the FTC. Currently, the law sets \$3,500 as the maximum civil penalty per violation. Each instance in which the company has violated the Rule is a separate violation. Injunctive relief in cases like this often requires the parties being sued to comply with the law in the future, as well as provide reports, retain documents, and take other steps to ensure compliance with both the Rule and the court order. Failure to comply with the court order could subject the parties to further penalties and injunctive relief.

If you have any questions or concerns regarding the creation or implementation of your Red Flags comprehensive procedures to prevent identity theft, contact an experienced motor vehicle dealer attorney. The FTC is unlikely to further extend the deadline for compliance.

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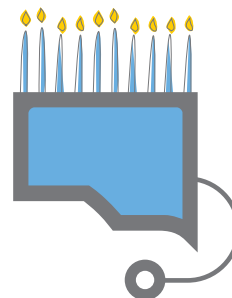


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