



### ARE YOU READY FOR THE FTC'S RED FLAG RULE??

By Robert C. Byerts

By now your dealership should already have in place policies and procedures to comply with laws and regulations requiring the safeguarding of customer information, regulating disposal of personal information and protecting the privacy of consumers. Are you really surprised that more rules intended to better prevent fraud and identity theft, are on the way again courtesy of the Federal Trade Commission? The "Red Flag" regulations are expected out sometime later this year.

The new regulations are based on Sections 114 and 315 of the Fair and Accurate Credit Transactions Act (FACTA), which was signed into law in 2003. These two sections of the FACTA amend Sections 615 and 605 respectively, of the Fair Credit reporting Act (FCRA). These new, and quite complex, regulations will apply to "financial institutions and creditors," which includes automobile dealerships.

Among other things, the currently proposed regulations will require that:

- A dealership evaluate its current identity theft prevention practices and, all of the "red flags" of identity theft that could apply during a credit transaction with a car buyer. Although the proposed rules provide some examples of these "red flags," each dealership must perform their own internal audit to identify which red flags may be unique to its business. What do you know or should you know about activities or information involved in credit transactions at your store that tells you something about the buyer is not right, and what do you do to confirm a buyer's identity? You must review, and periodically re-review, your practices to ensure your procedures incorporate what you have learned about preventing identity theft.
- Once a dealership completes this evaluation, it must create new policies and procedures, and then conduct training for all relevant staff so they can recognize the pertinent red flags, and take appropriate action when red flags show up.
- A dealership's designated program manager must continuously monitor new identity theft trends and activities and periodically adjust the dealership's compliance program.
- Once each year, a dealership's designated program manager must prepare detailed reports on the compliance program's effectiveness. These annual written reports will be time consuming and burdensome, especially for small businesses like your dealership.

Some examples of "red flags" suggested by the Federal Trade Commission may already be part of your program -- verification that the date of birth and Social Security number provided by a customer match the accepted ranges, and verification that the address provided by a consumer during a credit transaction matches the consumer's address provided to the dealer by consumer credit reporting agencies.

Other "red flags" may be new to your dealership staff. The FTC's proposal states that a dealership should determine whether an address, social security number or home or cell phone supplied by a customer is the same as that submitted by other credit applicants. This would require the dealership to run every customer's information against the dealer's customer database to see if any other applicant previously provided the same information to the dealer. Another proposed "red flag" arises when personal information provided by a customer is not consistent with information that is already on file. Can your dealership compare the credit application and identifying information with information submitted by the customer in past transactions?

These amended regulations will affect virtually all vehicle sales transactions and will require increased vigilance by dealerships to manage and monitor regulatory compliance. If the proposed rules become final, plan to check every single customer against a list of 31 potential red flags before being able to deliver a car to be compliant with the currently proposed rule. At a minimum, be sure to pay attention later this year when the FTC issues its Final Rule in this matter to see what changes, if any, the FTC makes to their proposed rule. If no significant changes are made, take steps as soon as possible to measure your policies and procedures against the new requirements of the Red Flag rule. If you do not, some Plaintiff's attorney will be glad to do it for you.

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