

FTC Delays 'Red Flag' Rule

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The Federal Trade Commission has delayed enforcement of the "Red Flags" rule until Nov. 1, 2009. The rule requires many businesses, including health care organizations, to take specific steps to minimize identity theft. Following is the FTC's announcement on July 29, with a specific reference to health care in the last paragraph:

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 financial 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 all entities that regularly permit deferred payments for goods or services. Accepting credit cards as a form of payment does not, by itself, make an entity a creditor. "Financial institutions" include entities that offer accounts that enable consumers to write checks or make payments to third parties through other means, such as other negotiable instruments or telephone transfers.

The FTC's Red Flags Web site, www.ftc.gov/redflagsrule, offers resources to help entities determine if they are covered and, if they are, how to comply with the Rule. It includes an online compliance template that enables companies to design their own Identity Theft Prevention Program through an easy-to-do form, as well as articles directed to specific businesses and industries, guidance manuals, and Frequently Asked Questions to help companies navigate the Rule.

Although many covered entities have already developed and implemented appropriate, risk-based programs, some - particularly small businesses and entities with a low risk of identity theft - remain uncertain about their obligations. The additional compliance guidance that the Commission will make available shortly is designed to help them. Among other things, Commission staff will create a special link for small and low-risk entities on the Red Flags Rule Web site with materials that provide guidance and direction regarding the Rule. The Commission has already posted FAQs that address how the FTC intends to enforce the Rule and other topics - www.ftc.gov/bcp/edu/microsites/redflagsrule/faqs.shtm. The enforcement FAQ states that Commission staff would be unlikely to recommend bringing a law enforcement action if entities know their customers or clients individually, or if they perform services in or around their customers' homes, or if they operate in sectors where identity theft is rare and they have not

themselves been the target of identity theft.

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. These steps are consistent with the House Appropriations Committee's recent request that the Commission defer enforcement in conjunction with additional efforts to minimize the burdens of the Rule on health care providers and small businesses with a low risk of identity theft problems. Today's announcement that the Commission will delay enforcement of the Rule until November 1, 2009, does not affect other federal agencies' enforcement of the original November 1, 2008, compliance deadline for institutions subject to their oversight.