Automobile Dealers Association of Indiana, Inc.

BULLETIN

Bulletin #08- 6 - October 23, 2008

FTC Grants Six-Month Delay of Enforcement of 'Red Flags' Rule

For Release: **October 22, 2008**

The Federal Trade Commission will suspend enforcement of the new "Red Flags Rule" until May 1, 2009, to give creditors and financial institutions additional time in which to develop and implement written identity theft prevention programs. Today's announcement and the release of an **Enforcement Policy Statement** *(http://www.ftc.gov/os/208/10/081022idtehftredflagsrule.pdf)* do not affect other federal agencies' enforcement of the original November 1, 2008 deadline for institutions subject to their oversight to be in compliance.

The Red Flags Rule was developed pursuant to the Fair and Accurate Credit Transactions (FACT) Act of 2003. Under the Rule, financial institutions and creditors with covered accounts must have identity theft prevention programs to identify, detect, and respond to patterns, practices, or specific activities that could indicate identity theft.

The Rule applies to creditors and financial institutions. Federal law defines a creditor to be: any entity that regularly extends, renews, or continues credit; any entity that regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who is involved in the decision to extend, renew, or continue credit. Accepting credit cards as a form of payment does not, in and of itself, make an entity a creditor. Some examples of creditors are finance companies, automobile dealers, mortgage brokers, utility companies, telecommunications companies, and non-profit and government entities that defer payment for goods or services. Financial institutions include entities that offer accounts that enable consumers to write checks or to make payments to third parties through other means, such as other negotiable instruments or telephone transfers.

The Commission staff launched outreach efforts last year to explain the Rule to the many different types of entities that are covered by the Rule. The agency published a general alert on what the Rule requires, and, in particular, an explanation of what types of entities are covered by **the Rule** – (http://www.ftc.gov/bcp/edu/pubs/business/alerts/alt050.shtm). During the course of these efforts, Commission staff learned that some industries and entities within the FTC's jurisdiction were uncertain about their coverage under the Rule. These entities indicated that they were not aware that they were engaged in activities that would cause them to fall under the FACT Act's definition of creditor or financial institution. Many entities also noted that, because they generally are not required to comply with FTC rules in other contexts, they had not followed or even been aware of the rulemaking, and therefore learned of the Rule's requirements too late to be able to come into compliance by November 1, 2008. The Commission's delay of enforcement will enable these entities sufficient time to establish and implement appropriate identity theft prevention programs, in compliance with the Rule.

The Federal Trade Commission works for consumers to prevent fraudulent, deceptive, and unfair business practices and to provide information to help spot, stop, and avoid them. To file a complaint in English or Spanish, visit the FTC's online **Complaint Assistant** *(https://www.ftccomplaintassistant.gov/)* or call 1-877-FTC-HELP (1-877-382-4357). The FTC enters complaints into Consumer Sentinel, a secure, online database available to more than 1,500 civil and criminal law enforcement agencies in the U.S. and abroad. The FTC's Web site provides free information on a variety of **consumer topics** *(http://www.ftc.gov/consumer)*.

MEDIA CONTACT:

Federal Trade Commission - Office of Public Affairs
202-326-2180 (Red Flags)

NOTE: A copy of the FTC's "*Enforcement Policy Statement*" is printed on the back of this bulletin.

150 W. Market Street, Suite 812, Indianapolis, IN 46204
(317) 635-1441 (800) 872-0363 FAX (317) 685-1028 www.adai-inc.org e-mail: info@adai-inc.org

FTC Enforcement Policy: Identity Theft Red Flags Rule, 16 CFR 681.2

On November 9, 2007, the Federal Trade Commission ("FTC"), the federal bank regulatory agencies,[1] and the National Credit Union Administration, published a joint notice of final rulemaking in the Federal Register (72 FR 63718) finalizing the Identity Theft Red Flags regulations and guidelines. This rule, promulgated pursuant to the Fair and Accurate Credit Transactions Act of 2003 ("FACTA"), requires financial institutions and creditors to develop and implement written "identity theft prevention programs." The programs must provide for the identification, detection, and response to patterns, practices, or specific activities – known as "red flags" – that could indicate identity theft. Although the final rule became effective on January 1, 2008, full compliance with the rule is not required until November 1, 2008.

During the course of the Commission's education and outreach efforts following publication of the rule, the Commission has learned that some industries and entities within the FTC's jurisdiction have expressed confusion and uncertainty about their coverage under the rule. These entities indicated that they were not aware that they were undertaking activities that would cause them to fall within FACTA's definitions of "creditor" or "financial institution."[2] Many entities also noted that because they generally are not required to comply with FTC rules in other contexts, they had not followed or even been aware of the rulemaking, and therefore learned of the requirements of the rule too late to be able to come into compliance by November 1, 2008.

Given the confusion and uncertainty within major industries under the FTC's jurisdiction about the applicability of the rule, and the fact that there is no longer sufficient time for members of those industries to develop their programs and meet the November 1 compliance date, the Commission believes that immediate enforcement of the rule on November 1 would be neither equitable for the covered entities nor beneficial to the public. Delaying Commission enforcement of the rule as to the entities under its jurisdiction by six months, until May 1, 2009, will allow these entities to take the appropriate care and consideration in developing and implementing their programs. It also will give the Commission time to conduct additional education and outreach regarding the rule. Therefore, the Commission has determined that it will forbear from bringing any enforcement action for violation of the Identity Theft Red Flags Rule, 16 CFR 681.2, against a financial institution or creditor that is subject to administrative enforcement of the Fair Credit Reporting Act by the FTC, for a period of six months following the mandatory compliance date of November 1, 2008.

This delay in enforcement is limited to the Identity Theft Red Flags Rule (16 CFR 681.2), and does not extend to the rule regarding address discrepancies applicable to users of consumer reports (16 CFR 681.1), or to the rule regarding changes of address applicable to card issuers (16 CFR 681.3).

For questions regarding this enforcement policy, please contact Naomi Lefkovitz or Pavneet Singh, Bureau of Consumer Protection, 202-326-2252.

---

[1] The Federal Deposit Insurance Corporation, the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision.

[2] Under FACTA, "creditor" is defined the same way as in the Equal Credit Opportunity Act ("ECOA"), as any entity that regularly extends, renews, or continues credit; any entity that regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who is involved in the decision to extend, renew, or continue credit. The ECOA definition of "credit" includes a right granted to defer payment for any purchase. Thus, any person that provides a product or service for which the consumer pays after delivery is a creditor. A "financial institution" is defined by FACTA to include all banks, savings and loan associations, credit unions, and any other person that holds a consumer transaction account as defined by section 19(b) of the Federal Reserve Act.