

The New Rules

COMPLIANCE PROGRAMS GET RED FLAGGED



Identity theft is a major concern in the United States today. A recent report prepared for the Federal Trade Commission (“FTC”) estimated that 8.3 million Americans were the victims of identity theft in 2006, with a total loss of \$15.6 billion. For this reason the FTC, in conjunction with the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision and the National Credit Union Administration, have jointly issued the Red Flag Rules and Guidelines (“Rules”) under the Fair and Accurate Credit Transactions Act. The Rules became effective on January 1, 2008, but compliance does not become mandatory until November 1, 2008.

The Rules require various financial institutions to develop and implement an Identity Theft Prevention Program (“Program”) to combat identity theft. Dealerships are subject to the Rules when they offer credit, for example when entering into retail installment contracts with customers or offering customers credit to pay for repairs through the service drive. The Program has four parts, which can be labeled as Identify, Detect, Respond and Ensure.

IDENTIFY

Dealerships will need to analyze their business and identify so called “red flags” that indicate possible

identity theft. The Rules require dealerships to develop a list of red flags from past identity theft incidents and relevant industry guidelines. The Rules also provide 26 general red flag indicators applicable to many businesses, including:

- Fraud alerts, credit freezes, address discrepancies or other notifications or warnings included in a credit report
- Suspicious documents that appear to have been forged or altered
- Suspicious identification that appears altered or shows a picture that does not look like the applicant
- Identifying information provided by applicant (address, social security number, date of birth, etc.) does not match that contained in the credit report

DETECT

Once a dealership has compiled a list of potential red flags, it needs to implement policies and procedures to detect these red flags during a transaction. The procedures should include verifying the identity of the individual applying for credit and analyzing all of the applicable documents to determine if any red flags exist.

RESPOND

Once a red flag has been identified, the dealership needs to take appropriate action to respond. It is important to keep in mind that

the detection of a red flag only means that there is a possibility of identity theft, and the dealership will need to do some more work on the deal to ensure the legitimacy of the transaction. This extra work may include requiring additional identification or verifying documents. A proper response could be to refuse to complete the transaction. It could also ultimately require a dealership to involve law enforcement.

ENSURE

The final aspect of the Program is to ensure that the Program is periodically analyzed and revised to keep it current. Identity thieves are very resourceful and develop new methods as older methods become less effective. Under the Rules, dealerships are required to keep current on identity theft issues and revise their Programs accordingly.

Though the Rules are currently in effect, compliance does not become mandatory until November 1, 2008. Therefore, you still have plenty of time to develop and implement a compliant Program. Look for regulators and industry groups to promulgate specific compliance guidance on the red flag requirements as the November deadline gets closer. Compliance vendors have also been busy developing Red Flag Programs. Finally, as with any compliance program, be sure to have your Red Flag Program reviewed and approved by a qualified attorney prior to implementation. ★