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Are You Waiving a Red Flag?

by David R. Missimer

Dealers who ignore the so called "Red Flag Rules" under the fair and accurate transactions act (FACTA) might just as well waive a red flag in front of the nearest angry bull" (Compliance: No Need to See Red, Nov. 1, by Peter A. Salians, Dealer Business Journal).

For those who have been hibernating, or selectively procrastinating, November 1, 2008 quickly approaches. On November 1, 2008, the Federal Government expects your dealership to be compliant with the red flag rules; NOT GETTING AROUND TO DOING SOMETHING ABOUT IT. Fines for violating the rules range from \$2,500.00 per violation, to as high as \$11,000 per incident. The Federal Government instituted the Red Flag Rules, January 1, 2008, and gave all financial institutions plenty of time to be in full compliance by November 1, 2008. We do not anticipate much leniency will be given to those institutions who have not implemented their red flag program on or before November 1, 2008.

As is always the case, there are numerous software programs, books, and publications which claim to show you the way to comply with the Red Flag rules and other government regulations. The problem with these approaches is that those who work in your dealership need to do more than just know what the regulations are. Your dealership is required to have a written program which includes reasonable policies and procedures to detect, prevent and mitigate identity theft. This is the responsibility of each and every employee in your dealership, and not just a select few. This requires an understanding of all facets of your dealership, training of your employees, and institution of the written polices. As we have stated before, here in the Coffee Break, if your dealership has been complying with the FTC safeguards rules in their entirety, then you are well on your way to compliance with the Red Flag Rules.

Failure to comply with the Red Flag Rules will not only subject your dealership to government fines, but lenders are not sitting back idle when they determine they are the victim of identity theft. Even before January 1, 2008, lenders were no longer sitting back as dealers sold vehicles to people with questionable credentials. In cases I have been personally involved with the lenders demanded reimbursement for vehicles sold in cases of obvious identity theft. This left the dealer in the position of having to locate the car, obtain the car and hopefully be able to resell the car to minimize its losses.

Automotive Compliance Consultants works with over 600 dealership across the United States. As such, our consultants are in a unique position to see what happens on a daily basis in dealerships of all sizes. During this time period, we have consulted with dealerships that felt they had everything under control but did not. Recently one of our consultants was discussing the Red Flag Rules with a dealer and was told that they were waiting until November 1. Forty-five minutes after our consultant left the store he received a phone call regarding a letter the dealer received from a company stating that identify theft had occurred on one of the transactions. Needless to say, neither the lender, nor the dealer was very happy with the situation. Quite honestly, the situation could have been avoided had the dealership had a Red Flag program in place. The red flags on the deal were glaring.

The number one complaint to the Federal Trade Commission over the last three years has been identity theft. It is the priority of both Federal and State government officials to stop identity theft. The only way the government can assist in thwarting identity theft is try to stop it at its source. Thus, the institution of the Gramm, Leech, Bliley Act, Safe Guards Rule, other regulations under the Fair Credit Reporting Act, Fair Credit Transaction Act, and now the Red Flag Rules. Each of these regulations is designed to put an end to identity theft before a questionable transaction occurs. All of these regulations are designed to work hand and hand to stop identity theft.

What the Red Flag Rules mean to your automobile dealership is that you are on the front line of identity theft protection. You can run all the computer programs you wish, but not be compliant with the above regulations at all. Each of them requires employee training, some common sense, a written plan of action, and continued vigilance to monitor the plan, changes in your business, changes in the market, and of course the changes instituted by identity thieves themselves to acquire your merchandise and customer information.

As with all regulations, beyond the government fines and penalties, there is the civil liability that is waiting in the wings. The Plaintiffs' lawyers are out there waiting, in fact advertising, for clients who are victims of identity theft. You really don't want that future client to come from your dealership. You have approximately thirty days to be compliant. Not thirty days to think about being compliant. The Federal Government has granted all financial institutions ten full months to become compliant. They expect that you will be compliant on November 1, 2008. How is your plan coming?

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