

## **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,<sup>1</sup> 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.”<sup>2</sup> 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

entirely comply with the rule, the Commission is hereby amending the rule to provide a grace period for compliance with the rule until November 1, 2009.

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<sup>1</sup> The Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Office of Consumer Financial Protection.

<sup>2</sup> See, e.g., comments of the American Bankers Association, 72 FR 63718-18 (2007).

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.