RED FLAG RULES- IDENTITY THEFT PREVENTION PROGRAM

The Federal Trade Commission (FTC) has enacted the Red Flags Rule (rule), which requires many businesses and organizations to implement a written Identity Theft Prevention Program ("ID Theft Program"). The rule was enacted to deter identity theft and is mandated by the Fair and Accurate Credit Transactions Act of 2003. It requires financial institutions and creditors to implement programs to detect, prevent, and mitigate identity theft.

Objective

The ID Theft Program is designed to detect the warning signs or “red flags” of identity theft in their day-to-day operations, take steps to prevent the crime, and mitigate the damage it inflicts. By identifying red flags in advance, a business will be better equipped to spot suspicious patterns when they arise and take steps to prevent a red flag from escalating into a costly episode of identity theft.

Applicability

Under the rule, the definition of *creditor* includes businesses or organizations that regularly provide goods or services first and allow customers to pay later. According to the FTC, examples of groups that may fall within this definition are utilities, health care providers, lawyers, accountants, and other professionals.

Compliance

Compliance with this rule requires businesses or organizations to protect the identities of their clients or customers. You must have a written policy with procedures that are designed to prevent, detect, and mitigate identity theft—the Identity Theft Prevention Program (program). This program must be properly designed, documented, regularly updated, and must be approved and reviewed by the management of the firm. Training must be provided to your employees to comply with the program. If any business operations have been outsourced that might be susceptible to identity theft, you are required to ensure that the service provider has an adequate Red Flags program in place.

Penalties for Noncompliance

The FTC can seek both monetary civil penalties and injunctive relief for violations of the Red Flags Rule. If a complaint seeks civil penalties, the U.S. Department of Justice typically files the lawsuit in federal court on behalf of the FTC. Currently, the law sets $3,500 as the maximum civil penalty per violation. Each instance in which the company has violated the rule is a separate violation. Injunctive relief in cases like this often requires the parties being sued to comply with the law in the future, as well as provide reports, retain documents, and take other steps to ensure compliance with both the rule and the court order. Failure to comply with the court order could subject the parties to further penalties and injunctive relief.

At the request of "Members of Congress", the Federal Trade Commission has delayed enforcement of the "Red Flags" Rule until June 1, 2010.