

NEW “RED FLAG” REQUIREMENTS FOR MUNICIPAL UTILITIES

COMPLIANCE REQUIRED BY NOVEMBER 1, 2008

Identity Theft “Red Flag” Rules Adopted by Federal Trade Commission

The Federal Trade Commission issued regulations known as “Red Flag” Rules” on November 9, 2007 requiring financial institutions and creditors that hold consumer accounts to develop and implement a written Identity Theft Prevention Program. The program must provide for the identification, detection and response to patterns, practices or specific activities – known as “red flags” – that could indicate identity theft.

The regulations additionally require financial institutions and creditors to develop reasonable policies to verify the identity of a consumer when a notice of address discrepancy is received from a consumer reporting agency.

The “Red Flag” Rules and Address Discrepancy Rules implement Sections 114 and 315 of the Fair and Accurate Credit Transactions Act (FACTA) of 2003. Compliance with the rules is required by November 1, 2008.

Compliance with the Red Flag Rules and Address Discrepancy

The “Red Flag” Rules and Address Discrepancy Rules apply to “financial institutions” and “creditors” with “covered accounts.”

A **creditor** is defined as any entity that regularly extends, renews, or continues credit. Creditors include finance companies, automobile dealers, mortgage brokers, *utility companies* and telecommunications companies. Where nonprofit and government entities defer payment for goods or services, they are considered creditors.

A **covered account** means:

1. An account that a financial institution or creditor offers or maintains, primarily for personal, family, or household purposes that involves or is designed to permit multiple payments or transactions. Covered accounts include credit card accounts, mortgage loans, automobile loans, margin accounts, cell phone accounts, *utility accounts*, checking accounts and savings accounts; and
2. Any other account that the financial institution or creditor offers or maintains for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the financial institution or creditor from identity theft, including

financial, operational, compliance, reputation or litigation risks.

Identify theft means fraud committed or attempted using the identifying information of another person without authority.

Notice of address discrepancy means a notice sent to a user by a consumer reporting agency that informs the user of a substantial difference between the address for the consumer that the user provided to request the consumer report and the address in the agency's file for the consumer.

A **red flag** is a pattern, practice or specific activity that indicates the possible existence of identity theft.

Duties regarding the detection, prevention and mitigation of identity theft under the “red flag” rules

“Financial institutions” and “creditors” with “covered accounts” must implement a written Identity Theft Prevention Program to detect, prevent and mitigate identify theft in connection with the opening of new accounts and the maintenance of existing accounts.

The program must include reasonable policies and procedures to:

1. Identify relevant red flags for covered accounts signaling possible identity theft and incorporate those red flags into the program;
2. Detect red flags that have been incorporated into the program;
3. Respond appropriately to any red flags that are detected to prevent and mitigate identity theft; and
4. Ensure the program is updated periodically to reflect changes in risks.

Administration and Oversight of an Identity Theft Prevention

Each financial institution or creditor that is required to implement an identity theft prevention program must provide for the continued administration and oversight of the program, including the following:

1. Obtain approval of the initial written program by its governing body or an appropriate committee of its governing body;
2. Involve the governing body, a committee of the governing body, or a designated employee at the level of senior management in the development, implementation, administration and oversight of the program;
3. Train staff as necessary to effectively implement the program; and
4. Exercise appropriate and effective oversight of service provider arrangements.

Elements of an Identity Theft Prevention Program

- Procedure for identification of relevant red flags;
- Procedure to detect red flags;
- Appropriate responses to red flags;
- Periodic updating of the program to reflect changes in risks to customers; and
- Annual report to the governing body or senior management regarding the effectiveness of the program and compliance with regulatory requirements

Duties of Users Regarding Address Discrepancies Under Address Discrepancy Rules

The Address Discrepancy Rules require all users of consumer reports to develop policies and procedures designed to enable the user to form a reasonable belief that a credit report relates to the consumer for whom it was requested, if the user receives a notice of address discrepancy from a nationwide consumer reporting agency indicating the address given by the consumer differs from the address contained in the consumer report.

If an accurate address is confirmed, the user must have a policy requiring the address of the consumer to be furnished to the nationwide consumer reporting agency from which it received the notice of address discrepancy if:

- The user establishes a continuing relationship with the consumer; and
- The user, regularly and in the ordinary course of business, furnishes information to the consumer reporting agency.

Compliance and Penalties

Compliance with the “Red Flag” Rules and Address Discrepancy Rules is required by November 1, 2008. The rules were effective January 1, 2008.

The Federal Trade Commission is authorized to commence action in a federal district court in the event of a knowing violation of the Fair and Accurate Credit Transaction Act. Civil penalties may be imposed up to \$2,500 per violation.

Users of consumer reports who fail to comply with the address discrepancy regulations are subject to civil liability under Sections 616 and 617 of the Fair Credit Reporting Act up to \$1,000 per violation.