

Memorandum

From: Wanda Borges
Date: 1/6/2011
Re: Federal Trade Commission – Red Flags Rule

On December 18, 2010, President Obama signed into law the “Red Flag Program Clarification Act”. While that law intends to limit the entities which are required to comply with the Federal Trade Commission’s Red Flags Rule, it seems to have created many more questions regarding:

1. Who does the law apply to?
2. What businesses are or are not required to comply with the Red Flags Rule and create an appropriate Red Flags Program

An UPDATE on the FTC website says:

UPDATE: On December 18, 2010, President Obama signed into law the Red Flag Program Clarification Act. The [new law](#) limits the circumstances in which creditors are covered by the Red Flags Rule. The FTC is revising the materials on this site to reflect the change in the law.

The Red Flag Program Clarification Act of 2010 contains a catch-all phrase which states that the term “creditor”

“...Includes any other type of creditor, as defined in that section 702 (of the ECOA) ...based on a determination that such creditor offers or maintains accounts that are subject to a reasonably foreseeable risk of identity theft”.

Another statement contained on the FTC website says: *“These days, it is almost impossible to be in business and not collect or hold personally identifying information — names and addresses, Social Security numbers, credit card numbers, or other account numbers — about your customers, If this information falls into the wrong hands, it could put these individuals at risk for identity theft.”*

What I believe is going to happen is that the FTC will clarify its instructions so that any business that has ABSOLUTELY no personal information in its files will NOT have to comply with the Red Flags Rule. However, those businesses who deal with small “mom and pops” or similarly sized businesses, sole proprietorships or hold personal guaranties are definitely still required to create a Red Flags Program.

Accordingly, **YES**, trade creditors are still required to comply with the Red Flags Rule unless and until the FTC says otherwise.

The Four Key Steps to compliance are:

1. Perform a **Risk Assessment** and **Identify** Possible Red Flags. Determine if your company or your customer is at risk for identity theft
2. Now that you have identified possible Red Flags, determine how your company will **detect** these Red Flags
3. Put systems and/or procedures in place to **Respond** to these Red Flags
4. Create a **Red Flags Program** – train all necessary employees and update your Red Flags Program/Policy periodically (once a year)

Effective January 1, 2011, compliance became mandatory.