

# TIME'S UP!

## THE RED FLAGS RULE IS HERE



### *What Do You Do Now?*

By Patrick Colbert

The Red Flags Rule is now here – in full effect – and U.S. automotive dealers are mandated to comply with the new requirements as of November 1, 2008. The good news is that many of the key solution providers are up to speed on the new regulations, such as compliance software companies, consumer data providers and other industry vendors. But the real question is, are you?

#### **The legalese**

In 2007, the federal banking agencies – OCC, FRB, FDIC, OTS, NCUA – and the FTC jointly issued final rules and guidelines implementing sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). More commonly known as the Red Flags Rule, the regulation became effective January 1, 2008 and is mandatory as of November 1, 2008.



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#### **The bottom line**

In a nutshell – as defined by the new regulations – the Red Flags Rule requires financial institutions or creditors (yes, that includes automotive dealers) to develop and implement a written Identity Theft Prevention Program.

I know what you're thinking. There's yet another compliance regulation on your radar. But when you consider that 8.1 million Americans were victims of identity fraud in 2007\* alone, the Red Flags Rule is a good thing – for your customers and your dealership. So aside from our personal feelings about the new requirements, it's time to embrace the facts and implement a compliance program – if you haven't already done so.

#### **Where to begin**

Depending on the relative sophistication of your current fraud and identity theft prevention processes, complying with the Red Flags Rule may or may not be a big undertaking. The Rule is somewhat flexible and allows you to build on existing requirements, including the PATRIOT Act, so it may be just a matter of coordinating and combining policies and procedures that are already in place. Regardless of where you're starting from, the compliance approach is the same for everyone. Here's what you need to do:

1. Organize a Red Flags team
2. Learn and fully understand the Red Flags Rule
3. Conduct a risk assessment of current accounts



### **Key Elements of an Identity Theft Prevention Program**

It's important to understand that there is no specific list of Red Flags – defined as the pattern, practice or specific activity that indicates possible existence of identity theft – which every dealer must address. This means that you are expected to design and implement an individually tailored Identity Theft Prevention Program based on your dealership's unique profile of risk.

**Your written Program must contain reasonable policies and procedures to:**

#### **PART 1 – Identify Red Flags**

Your Program must consider company-specific risk factors, those used to identify Red Flags that are relevant to your dealership.

#### **PART 2 – Detect Red Flags**

Your Program must detect relevant Red Flags in the ordinary course of operations.

#### **PART 3 – Respond to Red Flags**

Once identified, Red Flags must be evaluated and resolved.

#### **PART 4 – Update the Red Flag Program**

Your Program must contain a detailed process for periodic updating to reflect changes in risk.

### **Your Red Flag Committee**

Once you have your Identity Theft Prevention Program outlined, you're required to obtain approval of the initial written Program from either your board of directors, an appropriate committee thereof, or a designated employee at the level of senior management. The committee oversees the Program's implementation, reviews compliance reports, and approves material changes to the Program as necessary to address changing identity theft risks.

A report should be submitted to the committee at least annually, which should address Program material matters and evaluate the following:

- The effectiveness of the policies and procedures in addressing the risk of identity theft in connection with new and existing covered accounts
- Service provider arrangements
- Significant incidents involving identity theft and management's response
- Recommendations for material changes to the Program

Lastly, an Identity Theft Prevention Program is only as good as the people who implement it. The Rule requires that you train your staff to effectively implement the Program and exercise appropriate and effective oversight of service provider arrangements.



### **Setting Up Your Program – You’re Not Alone**

It seems like a lot, I know. But fortunately there are many reputable vendors out there who have been working hard to develop turn-key product solutions to help you satisfy your obligations under the Red Flags Rule – quickly and easily. As always, it’s sound advice to align yourself with vendors and service providers you trust for the solutions you need to maintain compliance.

Companies like First Advantage CREDCO have combined several powerful consumer information solutions and reporting tools to help automotive dealers get on board with Red Flags compliance. They include:

**Identity Verification:** Helps dealers quickly confirm their customer’s identity with a simple three-digit numeric score along with easy-to-read explanations for any ID inconsistencies.

**OFAC Screening:** Dealers can automatically screen buyers against the OFAC list of terrorists, drug traffickers and money launderers prior to any sale.

**Credit Reporting Services:** Offers dealers a convenient prequalification credit tool that provides FACT Act fraud alerts.

**Reporting Tools:** Dealers access a monthly report that summarizes potential fraud activity and related trends over a period of time for their dealership.

### **Resources**

For dealers not already taking steps to comply with the Red Flags Rule, be sure to take advantage of all the available resources to help you protect your dealership and maintain compliance. If you’d like some help getting your Identity Theft Prevention Program underway, call (866) 406-7206 or visit [www.CREDCOservices.com/RedFlag](http://www.CREDCOservices.com/RedFlag) for a free copy of A Dealer’s Guide to the Red Flags Rule by Hudson Cook, LLP.

For detailed information on the final Red Flags Rule, visit the Federal Register Table of Contents online [www.access.gpo.gov/su\\_docs/fedreg/a071109c.html](http://www.access.gpo.gov/su_docs/fedreg/a071109c.html) (see FTC section and the Federal Banking Agencies), or visit the Federal Trade Commission online at [www.ftc.gov/os/2007/10/index.shtm#31](http://www.ftc.gov/os/2007/10/index.shtm#31).

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*\*2008 Identity Fraud Survey Report, Javelin Strategy & Research*