

## Deadlines for Compliance With “Red Flag Rules” Fast Approaching

Amanda A. Meader | 19 February 2009

### What are the Red Flag Rules?

The Red Flag Rules (the "Rules") are a new set of federal regulations that require certain entities to adopt identity theft prevention programs. These programs must outline a procedure to identify, detect and respond to suspicious activity - or "red flags" - that could indicate identity theft. The deadline for adopting identity theft prevention programs was November 1, 2008. The Federal Trade Commission, which is the governmental entity that issued the regulations, will enforce compliance beginning May 1, 2009.

### Who must comply with the Rules?

The Rules apply to "creditors" with "covered accounts." Creditors include governmental entities that defer payments for goods and services or that allow consumers to make payments in arrears. Municipal utilities (i.e., sewer, water, electric) and municipal emergency medical services (i.e., ambulance services) are likely to fall under the definition of creditor.

A "covered account" is a consumer account designed to permit multiple payments or transactions and is used mostly for personal family or household purposes (i.e., water and sewer bills). Accepting credit cards as a form of payment is not enough on its own to make an entity a creditor.

### How do creditors comply with the Rules?

Under the Rules, creditors must develop a written program that identifies and detects warning signs of identity theft. The program must include procedures designed to prevent, or at least reduce, the frequency of identity theft. Further, the program must contain a mechanism for periodic updating and a plan for appropriate staff training. The program must be managed by the Board of Directors or senior employees of the creditor.

### What happens for failure to comply with the Rules?

Creditors that fail to adopt a program face possible prosecution for violating federal laws on deceptive or unfair acts or practices in commerce. The penalties for violations are severe, as each violation could result in a fine as high as \$2,500.

### What does this mean for municipalities?

Municipal utilities that have not yet prepared identity theft prevention programs should begin to do so in the near future. Also, any municipal entity that is uncertain as to whether it must comply with the Rules should clarify that matter quickly, to allow time to adopt a program if necessary.

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