



FTC Extends Final Compliance Deadline for Red Flag Legislation

BRENTWOOD, Tenn. – October 23, 2008 – The Federal Trade Commission (FTC) announced yesterday that it will hold off on sanctions and penalties against any organization that is not in compliance with the Red Flag Rules of FACTA until May 1, 2009. This provides a welcomed relief for those organizations in the category defined as “Creditors” who have been scrambling to achieve compliance by the November 1, 2008 deadline. These organizations include health care companies, mortgage brokers, vehicle dealers, utility companies, debt collectors and others. The reason cited for the extension was the lack of communication of the requirements and the fact that so many organizations subject to the regulation are unaware of its existence, or have just recently learned that they must comply. Go to www.redflagrules.net to see the press release and the FTC’s Enforcement Policy issued October 22, 2008.

Section 114 of the Fair and Accurate Credit Transactions Act (FACTA) requires financial institutions and creditors to implement a written identity theft prevention program to detect identity theft, and if it is detected before damage occurs, to step in to prevent it. If it is not detected in time, the regulation calls for the financial institution or creditor to mitigate the risk of identity theft to both the consumer and the organization. Most banks and credit unions have known about the regulation since early in 2008, but many are still not in a position of full compliance. However, the group called “creditors”, which is defined as “any person or business who arranges for the extension or renewal of credit” had no way of knowing that they were in the direct line of the compliance bullet. Many of these organizations are not normally under the jurisdiction of the Federal Trade Commission, and therefore had no reason to seek information about their requirements under the regulation.

Along with the press release, the FTC published its Enforcement Policy. The main points are this:

1. This extension ONLY applies to organizations that are NOT under the jurisdiction of any of the other regulatory agencies other than the FTC. Therefore, financial institutions that are regulated by the OCC, FDIC, OTS or the NCUA are not excused from enforcement of the deadline of November 1st based on this notice.

2. This is not an extension of the deadline. It is a forbearance, or delay of enforcement action for violation of the Identity Theft Red Flag Rules until May 1st, 2009. The result for many may be the same – extra time to achieve compliance – but the message is clear. You need to get your plan in place as quickly as possible.
3. Prior to yesterday's communication it was unclear whether the FTC would take an active role in the enforcement of the Red Flag Rules for organizations such as car dealers, utility companies, health care companies, mortgage brokers, and debt collectors. Some of these creditors have suggested that they would just “wait and see”, meaning that since there was no clear indication of how they are to be audited for compliance, and ensuing penalties, they would just ignore the regulation. That has all changed. The issuance of the FTC's Enforcement Policy clearly indicates that they intend to fully enforce the Red Flag regulations upon these organizations.

Since the announcement of FACTA Section 114 in October 2007, NXG Strategies, LLC, a leading authority on the Red Flag Rules and FACTA compliance, has been at the forefront of Red Flag legislation. NXG has developed an industry-specific Red Flag Webinar series which provides clearly communicated requirements, templates for completing a written plan with sample policies and procedures, as well as an end-to-end solution for detecting, preventing and mitigating identity theft.

A variety of associations have partnered with NXG to provide their membership with Red Flag education and NXG's best-in-class Red Flag tools and solutions. For details about NXG's Red Flag webinar series, complete solution for Red Flag, or to learn more about association sponsorship, visit www.redflagrules.net and www.redflagsolutions.com.

About NXG Strategies, LLC

NXG Strategies is a pioneer in identity theft resolution services, and a national authority on identity theft and corporate information breach. NXG evaluates security strategies and designs solutions resulting in consumer acquisition and retention, consumer protection, and Red Flag compliance.

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