



Spotlight On: Consumer Financial Services

FTC's Red Flags Template Offers No Short-Cut to Compliance for "Low-Risk" Businesses

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The Federal Trade Commission (FTC) recently released a Red Flags Rule (the Rule) compliance template to help businesses and organizations at a *low risk* for identity theft design an Identity Theft Prevention Program. Under the Rule, creditors and financial institutions that maintain covered accounts are now required to implement a program that detects, prevents, and mitigates identity theft *by August 1, 2009*.

The FTC has postponed compliance with the Rule twice because of uncertainty in the business community about possible obligations under the Rule. The most recent delay in enforcement is meant to provide businesses and organizations sufficient time to assess whether they need to comply with the Rule and to establish and implement an appropriate Identity Theft Prevention Program. The delay also gives the FTC an opportunity to further publicize requirements and perhaps ease some anxiety in the business community regarding compliance with the Rule. The "do-it-yourself" template released is accessible at <http://ftc.gov/bcp/edu/microsites/redflagsrule/get-started.shtm>.

To determine if a business or organization is considered "low risk," the FTC poses four questions:

- Does the business know its clients personally?
- Does the business usually provide services at its customers' homes?
- Has the business ever experienced an incident of identity theft?
- Is the business in an industry where identity theft is uncommon?

After internal assessment, if the business answers each of these questions affirmatively, then the FTC offers a four-step process to assist low-risk businesses in designing an Identity Theft Prevention Program.

While the template offers a good starting point for low-risk businesses and organizations that fall within the Rule's broad definition of "creditor" or "financial institution," drafting the program requires consideration of each entity's own unique business practices. The template has general headings and requires the user to fill in various fields with answers appropriate to the business's specific practices. Also, the template demonstrates how serious the FTC considers the Rule. Instead of supplying businesses with a model or form identity theft prevention program, it has merely provided a structured way for businesses to assess and develop a program appropriate to its own circumstances.

If you have any questions as to whether your business or organization meets the definition of creditor or financial institution under the Rule, or if you need assistance with creating an Identity Theft Prevention Program, please contact any member of Robinson & Cole's Consumer Financial Services Team.

For more information, please contact Jennifer Rossi at jrossi@rc.com or Bradford Babbitt at bbabbitt@rc.com or by calling 800-826-3579.



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