

FTC Delays Enforcement of Red Flags Rule

The Federal Trade Commission (“FTC”) has announced that it will delay enforcement of the Red Flags Rule from August 1, 2009 until November 1, 2009 in order to allow more time for creditors and financial institutions to develop and implement required written identity theft prevention programs. The announcement marks the third time the FTC has delayed enforcement of the Red Flags Rule, which imposes new obligations on “creditors” to detect, prevent, and mitigate identity theft. The deadline to comply with the identify theft prevention program requirement was initially set for November 1, 2008, but later extended to May 1, 2009 and then August 1, 2009 following concerns that many industries that extend credit did not initially realize the rules may apply to them.

The Red Flags Rule, which was mandated by the Fair and Accurate Credit Transactions Act of 2003 (“FACTA”) is an anti-fraud regulation requiring creditors and financial institutions with covered accounts to implement programs to identify, detect, and respond to the warning signs, or red flags, that could indicate identity theft. FACTA’s definition of creditor includes any entity that regularly extends, renews credit – or arranges for others to do so – and includes all entities that regularly permit deferred payments for goods or services, such as finance companies, automobile dealers, mortgage brokers, utility companies, telecommunications companies, physician offices, clinics, hospitals, and many other types of businesses. Financial institutions include entities that offer accounts that enable consumers to write checks or make payments to third parties through other means, such as other negotiable instruments or telephone transfers.

If they have not already done so, covered entities must develop a written identity theft prevention program (“written program”) that identifies and detects the relevant warning signs, or red flags, of identity theft. These warning signs include unusual account activity, fraud alerts on a consumer report, or attempted use of suspicious account application documents. The written program must describe appropriate responses that would prevent and mitigate the crime and detail a plan to update the program. The Red Flags Rule requires that the written program be managed by the Board of Directors or senior employees of the covered entity, include appropriate staff training and provide for oversight of any service providers. A covered entity which fails to comply with the Red Flags Rule is subject to a civil penalty of not more than \$2,500 per knowing violation, which could amount to a \$2,500 fine for each covered account that a business maintains.

The FTC’s announcement delaying enforcement of the Red Flags Rule comes at a time when Massachusetts businesses are working to comply with Massachusetts’ New Data Security Regulations, which go into effect on January 1, 2010. To help covered entities comply with the provisions of the Red Flags Rule and Massachusetts’ New Data Security Law and

Regulations, The Rogers Law Firm (“TRLF”) has partnered with aNetworks, a full-service IT firm, to develop a Data Security Compliance Program, which offers a comprehensive assessment of an organization’s data security infrastructure and provides specific recommendations to ensure compliance with all applicable law and regulations, including the Red Flags Rule. The Data Security Compliance Program consists of three components:

- i) development of a written identity theft prevention program;
- ii) assessment and implementation of technical security requirements; and
- iii) on-site education for members of an organization’s workforce.

Additionally, TRLF offers Fixed Fee Assurance for the Data Security Compliance Program. Fixed Fee Assurance means TRLF can provide a fixed fee cost in advance as opposed to open-ended billable hours. This allows clients to project their legal costs more accurately. If you are interested in learning more about TRLF’s Data Security Compliance Program, please contact Attorney Robert Driscoll at The Rogers Law Firm at 781.794.1600 or rdriscoll@therogerslawfirm.com.



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The Corporate Practice Group at The Rogers Law Firm provides legal services to both large and small for-profit and not-for-profit corporate entities. In addition to having a specialty group dedicated to corporate law, we recognize that our clients, now more than ever, need to be able to project and control costs, which is why we have introduced **Fixed Fee Assurance**. This means we can provide a fixed fee cost for most legal projects in advance as opposed to open-ended billable hours, allowing you to better budget and plan for your legal bill from the outset.