

# ADVERTISING, MARKETING & PROMOTIONS

>> ALERT

## THE FTC RED FLAGS RULE ON IDENTITY THEFT: IT MAY APPLY TO YOUR BUSINESS

Identity theft is an issue that concerns every consumer. However, most businesses consider identity theft an issue for others to worry about in a commercial context, such as credit reporting agencies, banks, credit card companies and other traditional financial institutions.

As a result of rules finalized in 2007 under The Fair and Accurate Credit Transactions Act (FACTA), the prevention of identity theft is now a legal concern for a far wider class of businesses than previously believed. Under FACTA, the Federal Trade Commission (FTC) is required to set forth rules requiring “creditors” and “financial institutions” with “covered accounts” to implement programs to identify, detect and mitigate identity theft. Businesses covered by the Red Flags Rule must have written identity theft prevention programs in place by the effective date set forth by the FTC. The belief is that by requiring businesses to establish and follow written plans to spot red flags that might lead to identity theft, the number of incidents will be greatly reduced.

While most businesses would not consider themselves to be “creditors” in the traditional sense, FACTA defines a creditor very broadly as “any entity that regularly extends, renews, or continues credit; any entity that regularly arranges for the extension, renewal, or continuation of credit; or

any assignee of an original creditor who is involved in the decision to extend, renew, or continue credit.” “Covered accounts” are accounts that are (1) primarily for personal, family or household purposes and permit multiple payments or (2) for which there is a reasonably foreseeable risk for identity theft. By way of example, utility companies and telecomm providers that regularly provide services and defer payment until the consumer is billed, would be considered creditors. Real estate agents, mortgage brokers and others who help arrange credit for consumers may also be considered creditors. However, merely accepting credit cards as a form of payment will not, in and of itself, make a business a creditor under the rules.

Due to the uncertainty over who must comply with the rules and how compliance can be achieved, the FTC has delayed the effective date for compliance for a second time since the rules were first announced, this time until August 1, 2009.

### THE BOTTOM LINE

Depending upon the complexity of the organization and the information it possesses, compliance may not be a daunting task. The initial hurdle, however, may be recognizing that one is now legally required to have a written identity theft prevention program established in the first place.

### FOR MORE INFORMATION

Gary A. Kibel, Partner  
212.468.4918  
gkibel@dglaw.com

or the D&G attorney with whom you have regular contact.

DAVIS & GILBERT LLP

T: 212.468.4800  
1740 Broadway, New York, NY 10019  
[www.dglaw.com](http://www.dglaw.com)

© 2009 Davis & Gilbert LLP