Identity Theft: What Local Governments Must Do To Comply With The FTC’s Red Flag Rules

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The FACT Act of 2003

- To help consumers fight the growing crime of identity theft.
- Section 114 (15 U.S.C. section 1681m(e))
- Section 315 (15 U.S.C. section 1681c(h))
Red Flag Rules and Rule for Notices of Address Discrepancy

- Title 16 of the Code of Federal Regulations, Part 681

- Require certain entities to design and implement a written identity theft prevention program by May 1, 2009.

- Require users of consumer reports to adopt certain policies and procedures relating to the receipt of a notice of address discrepancy by November 1, 2008.
What is Identity Theft?

A fraud attempted or committed using the personal identifying information of another person or entity without permission
The Problem of Identity Theft

- Shoulder surfing
- Dumpster diving
- “Preapproved” credit card applications
- Spam
- Phishing
RED FLAG RULES: “Creditor”

- An entity that provides for the regular extension, renewal, or continuation of credit

- Local government entities that defer payment for goods or services
RED FLAG RULES: “Covered Accounts”

- An account used mostly for personal, family, or household purposes, and that involves multiple payments or transactions.
- An account used for personal, family, household, or business purposes for which there is a foreseeable risk of identity theft.
- Includes both NEW and EXISTING covered accounts.
- Applies to both individual and business customers.
RED FLAG RULES: This means \textit{YOU}!

\textbf{UTILITY ACCOUNT = COVERED ACCOUNT}

The Red Flag Rules apply to all utility accounts and other public agency operations that provide services to customers \textit{before} billing them for the services.
RED FLAG RULES: And *YOU* too!

**LOANS / FEES = COVERED ACCOUNTS**

The Red Flag Rules apply to loans issued and service fees charged by cities and public entities, where the loan or fee account is designed to provide for multiple payments or transactions.
RED FLAG RULES: Flexible Program Design

- Size of customer base
- Nature and complexity of operations
- Number of staff members available for administering and monitoring program
- Technology available
- Reasonable risk of identity theft in your community
- Existing policies and procedures

*IT’S A RISK ASSESSMENT*
RED FLAG RULES: Elements of Identity Theft Prevention Program

- **IDENTIFY** red flags
- **DETECT** red flags
- **RESPOND** to red flags
- **UPDATE** program periodically to reflect changes in risks of identity theft
RED FLAG RULES:
1. IDENTIFY RED FLAGS

What Red Flags do I choose? Consider:
- the types of accounts maintained by your agency
- the methods you provide to your customers to open an account
- the methods you provide for your customers to access their accounts
- your previous experiences with identity theft
RED FLAG RULES:
1. IDENTIFY Red Flags

- Alerts, Notifications, Warnings from a Consumer Reporting Agency
- Suspicious Documents
- Suspicious Personal Identifying Information
- Unusual or Suspicious Activity on a Covered Account
- Notices from Customers / Victims of Identity Theft / Law Enforcement
RED FLAG RULES:
2. DETECT Red Flags

- Opening New Accounts
- Maintaining Existing Accounts
RED FLAG RULES:
3. RESPOND to Red Flags

- Prevent and mitigate identity theft through appropriate responses
- Commensurate with the degree of risk posed
- Aggravating factors
RED FLAG RULES:
4. UPDATE the Program

- Periodic update to reflect changes in risks
- Factors – experiences, changes in methods of identity theft, detection and prevention, types of accounts, service provider arrangements
RED FLAG RULES:
Administration of the Program: Oversight and Approval of Program

- Initial program
- Assign specific responsibility
- Review reports
- Approve material changes
RED FLAG RULES: Administration of the Program: Oversight and Approval of Program

- Annual reports
- Address material matters related to the program and evaluate relevant issues
RED FLAG RULES: Administration of the Program: Training Staff

- Effectively implement the program
RED FLAG RULES:
Administration of the Program: Oversight of Service Providers

- A person or entity that provides a service directly to your public agency
- Ensure service conducted in accordance with reasonable policies and procedures designed to detect, prevent and mitigate the risk of identity theft
RED FLAG RULES: Administration of the Program: Oversight of Service Providers

- A person or entity that provides a service directly to your public agency
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RULE FOR NOTICES OF ADDRESS DISCREPANCY: Who and What?

- Users of consumer reports
- Substantial difference between address submitted and address(es) on file
- Red Flag
RULE FOR NOTICES OF ADDRESS

DISCREPANCY: Reasonable Belief

- Policies and procedures designed to enable the public agency to form a reasonable belief that a consumer report relates to the customer about whom the agency requested the report

- New and existing accounts
RULE FOR NOTICES OF ADDRESS
DISCREPANCY: Furnish Customer Address

- Only required if all 3 conditions satisfied:
  - Reasonable Belief
  - Establish a Continuing Relationship
  - Regularly and in the Ordinary Course of Business Furnishes Information
RULE FOR NOTICES OF ADDRESS
DISCREPANCY: Furnish Customer Address

- Reasonably confirmed
- Timing
What Happens If The Public Agency Doesn’t Comply?

- FTC authorized to investigate willful violations and bring a civil action against the violating entity to recover civil penalties for non-compliance of up to $2,500 for each violation.
- State authorized to bring a civil action to enjoin any violation and/or to recover damages of up to $1,000 for each willful or negligent violation.
Need Help?

- Contact your city attorney or your agency’s general counsel
- Call Meyers Nave
- Contact FTC representatives at 1-877-FTC-HELP