

***FTC EXTENDS DEADLINE FOR IMPLEMENTATION OF IDENTITY THEFT PREVENTION PROGRAMS TO AUGUST 1, 2009***



- *Do you provide advertising or production services first and bill later?*
- *Do you regularly extend, renew or continue credit to clients?*
- *Do you have an employee stock investment program that allows for the transfer of dividends or proceeds from sale of stock to a third party?*

***If you answered YES to any of these questions (and all radio and television stations likely must do so), you are classified as a creditor or a financial institution, are subject to the Federal Trade Commission's ("FTC") Red Flag rules, and need to take certain steps to comply with those rules.***

Fortunately, you still have time to comply with the Red Flag rules, which took effect on November 1, 2008. The FTC has extended its enforcement deadline from May 1, 2009 to **August 1, 2009**. Furthermore, the FTC has released a written identity theft prevention program template to assist those entities that have a low risk of identity theft in complying with the Red Flag rules. The FTC's template is available at [www.ftc.gov/redflagrule](http://www.ftc.gov/redflagrule). We also have prepared a template that is specifically designed for broadcast and media companies.

As discussed in our client memoranda dated October 15, 2008 and October 27, 2008, the FTC's Red Flag rules apply to a very broad range of businesses that are deemed to be creditors or financial institutions. The requirement to adopt and implement a written identity theft prevention program applies to any business that regularly extends, renews or continues credit, or any business that provides goods and services and bills later, including a broadcast station or newspaper/publication that sells advertising to businesses or consumers. A business that offers financially-oriented accounts that enable consumers or employees to write checks or make payments to third parties through other means, such as telephone transfers, is classified as a financial institution and also is subject to the rules. An employee stock purchase plan that allows the account holder to transfer proceeds from a stock sale or dividends to a third party also requires a written Red Flag program.

In addition to other sanctions, the FTC may impose civil penalties of up to \$3,500 (increased from \$2,500 as of February 2, 2009 to reflect adjustments to the Consumer Price Index) for each knowing violation of the Red Flag rules or the related "address discrepancy" rule that constitutes a pattern or practice. The address discrepancy rule requires a business that utilizes consumer reports in connection with extending credit to a person to implement policies and procedures that provide notice to such person in the event there is a substantial difference between the address provided to the business and the address a credit reporting agency has for the person. Depending on the nature of the violation, the FTC also may find a violation of the FTC Act itself, which carries a maximum penalty of \$16,000 per violation.

If you are uncertain whether the Red Flag rules apply to you, if you would like assistance in developing your Red Flag program or if you have any other questions about these regulations, please contact S. Jenell Trigg ([strigg@lermansenter.com](mailto:strigg@lermansenter.com)), David Keir ([dkeir@lermansenter.com](mailto:dkeir@lermansenter.com)) or Joshua Rickel ([jrickel@lermansenter.com](mailto:jrickel@lermansenter.com)) in our office.

This memorandum is intended only as a general discussion of these issues and should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

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