



Issue Brief: RED FLAG RULES

Updated November 2009

New “Red Flag” Requirements for Municipalities –Effective June 1, 2010

At the request of members of Congress, the FTC is delaying enforcement of the “Red Flags” Rule until June 1, 2010. In order to combat the growing problem of identity theft, the Federal Trade Commission (FTC) issued “Red Flag” rules which apply to all municipalities that have utility accounts, such as water, sewer or electricity, and other operations that defer payment for services on a recurring basis. **The rules now require that by June 1, 2010 covered municipalities have in place written programs to identify, detect and respond to patterns, practices or specific activities - known as “Red Flags” - that could indicate identity theft.** Legal counsel should be consulted immediately regarding compliance with the FTC rules, including what types of operations and transactions are covered, as there may be significant consequences for noncompliance. The rules can be found at <http://www.ftc.gov/os/fedreg/2007/november/071109redflags.pdf>.

In particular, the new rules apply to all municipal utility and other operations that **provide a service for which payment is deferred until a future date.** For example, when water, sewer or electricity is provided by a city and then paid for by the consumer at the end of a billing cycle, the city has extended credit for the purpose of the FTC rules. The definition of a “creditor” in the rules includes “utility companies” and a “covered account” (those accounts to which the rules apply) is defined to include an account that a creditor “offers or maintains, primarily for personal, family or household purposes, that involves or is designed to permit multiple payments or transactions, such as a ... utility account.”

The FTC rules mandate that creditors (like municipal utilities) that offer or maintain “covered accounts” develop and implement a written Identity Theft Prevention Program that helps protect consumer identity by responding to possible signals of identity theft known as “Red Flags.” Red Flags are warnings of identity theft and are defined in the rules as a “pattern, practice or specific activity that indicates the possible existence of identity theft.” Examples Red Flags include alerts, notifications or warnings from a consumer reporting agency, forged or inconsistent customer identifying information, as well as many other examples set forth in the FTC rules.

According to the FTC, each Identity Theft Prevention Program should be tailored to the needs of the municipality creating the program, taking into account such issues as its size and complexity, as well as the nature of its operations.

For questions about compliance with the rules, you may contact either Tiffany George (tgeorge@ftc.gov) or Betsy Broder (bbroder@ftc.gov) at the FTC, or visit the agency’s Web site at www.ftc.gov. Additional information regarding the guidance, compliance and frequently asked questions can be found at: <http://www.ftc.gov/opa/2009/07/redflag.shtm>. Many state municipal leagues also have extremely helpful information on their Web sites, including the Kentucky League of Cities (<http://www.klc.org/>) and the North Carolina League of Municipalities (<http://www.nclm.org>).