

## Last Minute Reprieve: FTC Gives Businesses Until August 1, 2009 to Adopt Identity Theft Prevention Programs To Comply With Federal Red Flags Rules

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On Thursday, April 30, 2009, just 24 hours before the Federal Trade Commission (FTC) was set to begin enforcement of federal Red Flags Rules, the FTC [announced](#) that it was giving businesses three additional months, until August 1, 2009, to comply with the new identity theft regulations. The FTC also promises to provide a “template” for compliance directed to “entities that have a low risk of identity theft.” This announcement is welcome news for businesses that have been struggling to develop a compliant program by the end of the day today.

The FTC, FDIC and other federal regulatory authorities adopted the Red Flags Rules in January 2008 in response to the enactment of the Fair and Accurate Credit Transactions Act, 15 U.S.C. § 1681. The Rules have been in effect for banks, credit card companies and traditional financial institutions since November 1, 2008. However, there have been delays in enforcement of the broadest of the Red Flags Rules, as set forth in 16 C.F.R. Part 681, which apply to “creditors.” In 2008, the FTC caused considerable controversy when it announced that it was construing the term “creditor” to apply to any business that sells goods or services now and bills its customers later, including doctors, lawyers and many other businesses. As a result of this broad interpretation, confusion about who should be complying with the Red Flags Rules has been pervasive across many industries, especially the healthcare industry. Acknowledging this confusion, the FTC repeatedly postponed the original November 1, 2008 deadline for businesses swept into the FTC definition of “creditor.”

In general, the Rules require that a “creditor” perform a routine self-assessment to determine whether it maintains any kind of account that creates a reasonably foreseeable risk of identity theft. This would include a consumer account maintained by a utility company or cell phone provider, any other account that permits multiple customer transactions or a wide range of other “covered accounts.”

If your business offers or maintains “covered accounts,” it must develop a written identity theft prevention program to detect the warning signs or “Red Flags” of identity theft and mitigate the potential harm caused to consumers. The basic elements of a compliant identity theft prevention program include:

- The appointment of a identity theft / information security coordinator;
- Procedures to identify Red Flags, warning signs and security risks;
- Procedures for responding to Red Flags that have been detected;

- An effective training program to educate staff on how to recognize and respond to Red Flags; and
- Ongoing oversight and monitoring of the identity theft prevention program.

The FTC announcement indicates that it will release a “template” for businesses that have a low risk of identity theft, “such as businesses that know their customers personally.” According to the FTC, the August 1, 2009 deadline should give “low-risk” businesses an opportunity to use the FTC template to develop a compliant program. At this stage, it is unclear how helpful the upcoming template will be for most businesses. Anyone affected by the Red Flags Rules should be taking reasonable steps now to ensure that they are in a position to comply with the FTC regulations by August.

For more news and analysis of the FTC Red Flags Regulations, please visit the forum developed by Foley Hoag’s Security & Privacy Practice Group at [www.SecurityPrivacyandtheLaw.com](http://www.SecurityPrivacyandtheLaw.com) and the [FTC’s Red Flags Rules website](#). Foley Hoag is advising clients developing information security programs in compliance with the Red Flags Rules, Massachusetts identity theft regulations, as well as other federal, state and international laws regarding information security and identity theft.