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Retail Red Flag - Not Quite Yet

On July 29, 2009, the Federal Trade Commission announced it will delay enforcement of the new "Red Flags Rule" from August 1, 2009 to October 1, 2009, to give creditors and financial institutions more time to develop and implement written identity theft prevention programs.

As part of the Commission's implementation of the Fair and Accurate Credit Transactions (FACT) Act of 2003, many fashion and apparel retailers with private label credit cards will need to comply with the Red Flags Rule. The Rule requires "creditors" -- which FTC guidance has defined broadly to include "retailers that offer financing or help consumers get financing from others, say, by processing credit applications" -- to establish a program to prevent identity theft in their practices. The program must highlight "Red Flags" -- that is, indicators of a possible risk of identity theft.

The Red Flags Rule was scheduled to go into effect on August 1, 2009. Retailers, and other industries surprised to learn they may fall within the definition of "creditor," have expressed concern about enforcement of the Rule. In the press release announcing the extension, FTC Chairman Jon Leibowitz is quoted as saying "Given the ongoing debate about whether Congress wrote this provision too broadly, delaying enforcement of the Red Flags Rule will allow industries and associations to share guidance with their members, provide low-risk entities an opportunity to use the template in developing their programs, and give Congress time to consider the issue further."