

This Week: Jim Lawrence



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1. When will the FTC release the new reporting rules under the FACT Act?

The comment period has closed for sections 114 and 315 of the Fair and Accurate Credit Transactions (FACT) Act of 2003 has closed, and most dealership attorneys are waiting with bated breath anxiously to ascertain what the new rules will mean for their clients. Chatter suggests that the rules may be finalized sometime around September

2. What are some of the key requirements of the new rules?

The new rules from the FTC will require auto dealerships to "develop and implement an identity theft prevention program that includes policies and procedures for detecting, preventing, and mitigating identity theft in connection with account openings and existing accounts." It appears there's little time to prepare for compliance with the new rules. Section 114 of the FACT Act requires auto dealers to identify the so-called red flags defined by these agencies for use in a dealership-specific program of identity theft discovery, avoidance, and alleviation. In the comment period during development of the rules, several industry players shared their concerns with the Federal Trade Commission (FTC);, for example, the National Independent Automobile Dealers Association (NIADA) General Counsel said that the "burdens that would be imposed on motor vehicle dealers in complying with the proposed red flag rules were being vastly underestimated."

For buy-here, pay-here (BHPH) dealerships, the comments from Nissan Motor Acceptance Corporation (NMAC) should be of particular interest: "NMAC also believes, as does the Commission (FTC), that identity theft reports could provide a powerful tool for misuse, allowing persons to engage in illegal activities in an effort to remove or block accurate, but negative, information from their consumer reports . . ." How's that for putting a crimp in a dealership's due diligence efforts?

Under the rules, dealerships must perform an audit of their existing methods of monitoring identity theft. Since each red flags program is site-specific, the audit becomes each dealership's roadmap to compliance. Therefore, a dealership's personnel must be trained to know how to review credit reports in detail and to identify red flags—anytime a credit history is run—for every deal.

3. Is that all?

Unfortunately,, no. To avoid legal and regulatory problems, a dealership needs to establish a reasonable belief that a customer is who she says she is before it sells her a car. Section 315 of the FACT Act requires credit-reporting agencies to notify dealers of a discrepancy in a customer's address. These discrepancies are noted in special

codes. Section 315 requires dealers to have policies, training, and procedures implemented for handling a Notice of Address Discrepancy report.

To be sure, the FACT Act was designed to address a serious problem in the U.S. It is meant to assist in the "detection, prevention, and mitigation" of identity theft. But, as they are currently written, the new regulations will force dealerships to take on new and unprecedented roles and responsibilities. They will force dealerships to provide services heretofore provided by law enforcement agencies.

4. What are the consequences for dealers who fail to comply?

Failure to comply with these new rules will mean big trouble for dealers. Dealers need to get right this new element of their compliance program or they may find themselves under a black flag from the enforcement folks tagged by the FTC to monitor "financial institutions" like dealerships. If you remember, a black flag is used in auto racing to "punish a driver or team for disobeying the rules," according to Wikipedia.

5. Sounds like dealers are the losers with these new rules.

It ain't easy being a dealer—the race to the finish line before the new rules are implemented will be challenging, but with the right technology and training, there are ways to win. The top requirement for dealers is writing and implementing a red flags program that effectively addresses the identity theft risks defined by the FTC plus new identity theft methods that may emerge. Managing this effort well can mean the difference between getting the black flag for problems and getting the winner's "checkered flag."



SIGNIFICANT NEWS

News digested: 08/06/2007 --
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- 1) **Whither Bernanke?**
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- 3) **Confronted with Dismal Forecasts, Detroit-3 Consider Their Options**
- 4) **AmeriCredit CEO Reassures Analysts**
- 5) **Economists Expect Credit Crunch to Darken Growth Outlook**
- 6) **Ford's Jaguar, Land Rover Negotiations in High Gear**
- 7) **Alex Taylor III: Nardelli Wrong Man for the Job**