



Housing Alert

FTC Delays Implementation of Red Flags Rule Until June 1, 2010

At the request of Members of Congress, the Federal Trade Commission is delaying enforcement of the “Red Flags” Rule until June 1, 2010, for financial institutions and creditors subject to enforcement by the FTC.

The Rule was promulgated under the Fair and Accurate Credit Transactions Act, in which Congress directed the Commission and other agencies to develop regulations requiring “creditors” and “financial institutions” to address the risk of identity theft. The resulting Red Flags Rule requires all such entities that have “covered accounts” to develop and implement written identity theft prevention programs to help identify, detect, and respond to patterns, practices, or specific activities – known as “red flags” – that could indicate identity theft. MHI believes the rule applies to retail sales centers and land-lease communities with home sales operations.

The Commission previously delayed the enforcement of the Rule for entities under its jurisdiction until November 1, 2009. The Commission staff has continued to provide guidance to entities within its jurisdiction, both through materials posted on the dedicated Red Flags Rule Web site (www.ftc.gov/redflagsrule), and in speeches and participation in seminars, conferences and other training events to numerous groups. The Commission also published a compliance guide for business, and created a template that enables low risk entities to create an identity theft program with an easy-to-use online form. FTC staff has published numerous general and industry-specific articles, released a video explaining the Rule, and continues to respond to inquiries from the public. To assist further with compliance, FTC staff has worked with a number of trade associations that have chosen to develop model policies or specialized guidance for their members.

On October 30, 2009, the U.S. District Court for the District of Columbia ruled that the FTC may not apply the Red Flags Rule to attorneys. Today’s announcement that the Commission will delay enforcement of the Rule until June 1, 2010, does not affect the separate timeline of that proceeding and any possible appeals. Nor does it affect other federal agencies’ ongoing enforcement for financial institutions and creditors subject to their oversight.