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New provisions for identity theft have been made law: **And you may be held accountable!**

December 4, 2003 the Fair and Accurate Credit Transactions Act was signed into law. Over the last five years the provisions specified in the law have slowly phased into effect. On November 1st of 2008 the final, and most far-reaching of these provisions, commonly referred to as the “Red Flag” Regulations, went into effect and their institution will impact just about every business operating today regardless of size.

The Fair and Accurate Credit Transactions Act (FACTA) was created as means to protect consumers from the fastest growing crime in America, Identity Theft. According to a March 2008 edition of USA Today, identity theft has now surpassed drug trafficking as the number one crime in the country. The appeal of this kind of theft to criminals is that it offers high rewards at minimal risk. According to law enforcement agencies it is difficult to catch and prosecute the perpetrators due to the virtual nature of the crime. This fact has led lawmakers to combat the problem by attacking it from another angle – targeting the businesses that allow it to occur.

A business alert issued by the Federal Trade Commission (FTC) in June of last year warned that the “Red Flag” regulations will apply to a broader list of businesses including “Financial Institutions” and “Creditors” with “Covered Accounts”. And unlike the previous Sarbanes-Oxley Act (SOX), these new rules will apply to many smaller businesses that are not always familiar with written policies, procedures, and mitigation planning.

Because of the wording, these new regulations apply to all businesses that have “covered accounts”. Under the law, “covered accounts” are defined as any account for which there is foreseeable risk of identity theft. This would include credit card information, any monthly billed accounts, social security numbers, driver’s license numbers, medical insurance accounts, and many others. The bottom line is if your business maintains or otherwise processes consumer information for business purposes, then your business is responsible for complying with the new regulations, regardless of your company’s size.

Failure to comply with the requirements of the new law can subject you and your business to steep fines from the FTC. Companies who are found to be responsible for an identity theft event must notify the affected consumers and can now be held responsible for resulting consumer loss. It’s easy to see how

a class-action lawsuit by affected consumers or employees could lead a company into bankruptcy. In addition, executives can now be held personally liable and even subject to criminal prosecution.

So, what can you do to protect yourself?

- Develop and implement a written program designed to identify internal and external identity risks to the security of personal data your business maintains.
- Establish detection methods and implement plans for notification and “repair” of identity theft events when they occur.
- Plan for ensuring outsourced service providers properly identify, detect, and mitigate identity theft events for the company.
- Establish training programs that will be held on an ongoing basis to ensure employees understand the procedures necessary to identify, detect and mitigate identity theft events.
- Establish a process for ensuring periodic reviews and updates of the plan to address any new risks as they arise.

If you would like more information on FACTA and steps you can take to safeguard your company from potential liability contact Scott Cote, Director of Practice Growth at (214) 461-1467.

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