

MEMORANDUM

TO: MICHAEL LINN, NIADA EXECUTIVE VICE PRESIDENT/CEO

FROM: KEITH WHANN, NIADA General Counsel

DATE: July 16, 2008

RE: Compliance with the Rules on Identity Theft Red Flags

The Federal Trade Commission and the federal financial institution regulatory agencies have published final rules on identity theft “red flags” and address discrepancies. The Final Rules implement sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003.

The Final Rules require each financial institution and creditor that holds any consumer account, or other account for which there is a reasonably foreseeable risk of identity theft, to develop and implement an Identity Theft Prevention Program (Program) for combating identity theft in connection with new and existing accounts. The Program must include reasonable policies and procedures for detecting, preventing, and mitigating identity theft and enable a financial institution or creditor to:

1. Identify relevant patterns, practices, and specific forms of activity that are “red flags” signaling possible identity theft and incorporate those red flags into the Program;
2. Detect red flags that have been incorporated into the Program;
3. Respond appropriately to any red flags that are detected in order to prevent and mitigate identity theft; and
4. Ensure the Program is updated periodically to reflect changes in identity theft risks.

The agencies also issued guidelines to assist financial institutions and creditors in developing and implementing a Program, including a supplement that provides examples of red flags. The Final Rules require users of consumer reports to develop reasonable policies and procedures to apply when they receive a notice of address discrepancy from a consumer reporting agency.

The final rulemaking was issued by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision. The Final Rules became effective on January 1, 2008, with mandatory compliance with the Rules for all covered financial institutions and creditors by November 1, 2008.

We have developed the enclosed materials to assist NIADA Members in complying with the Rules. These materials are being provided to you for distribution to NIADA Members free of charge. We are also providing them to you in electronic format to make it easy for dealers to customize them for their own use. Enclosed you will find:

An Overview Memorandum to Mike Linn of the Red Flags Rules,

A copy of the Rules

Guidelines to assist your dealership in analyzing identity theft red flags and developing a written program,

A model written dealership policy for the detection, prevention and mitigation of identity theft

An employee acknowledgment regarding the Dealership's identity theft program

A service provider agreement addendum regarding the Dealership's identity theft program.

A service provider letter regarding the Dealership's identity theft program.

Please keep in mind that these materials are designed to assist dealers in the development of a written dealership policy for the detection, prevention and mitigation of identity theft and are intended to serve as a guide. While not intended as a universal solution that every dealership can adopt, since they are drafted from a used motor vehicle dealer's perspective, NIADA members should find that they are easy to use and customize for their dealerships. They may wish to consult with their legal counsel or other professional consultants to ensure that their dealership policies are appropriate and in compliance with applicable federal and state laws, rules and regulations. The information contained in this document and the additional materials provided are for general information purposes only and should not be considered as legal advice.