Red Flags Compliance

Car and light truck dealers were to create a written identity theft prevention program by November 1, 2008. (FTC enforcement delayed until January 1, 2011) The requirement stems from Federal legislation passed in 2003 (FACTA) and resulting regulations of the Federal Trade Commission. FACTA's reach is very long. All kinds of creditors must create identity theft programs including "banks, finance companies, automobile dealers, mortgage brokers, utility companies, and telecommunications companies." Even though not specifically covered, commercial truck dealers are required to assess their operations and decide if an identity theft program is needed.

Each creditor's identity theft program must include reasonable policies and procedures to:

- Decide which covered transactions are likely targets of identity thieves. For most automobile dealers, these are consumer installment sales and consumer leases.
- Create a list of "Red Flags" which could indicate that an identity thief is targeting the creditor. For example, a dealer's list might include, "Photo on driver's license or other ID doesn't look like the customer."
- There's no point in having a list of Red Flags if nobody is watching for them. So the FTC regulations require creditors to create procedures to "detect" the flags on their lists. Carrying forward our example, one detection method might be, "Ask for a photo ID and compare photo with customer."
- If a Red Flag is detected, the program must tell how to respond. Perhaps the response is to involve a supervisor and don't proceed with the sale unless the Red Flag can be resolved. In our example, maybe it was just a bad photo and upon closer inspection the transaction may proceed.
- Train employees about the list of Red Flags, how to detect them and how to respond.
- Update the program as necessary.
- Involve the Board of Directors and senior management to approve and administer the program.

The Federal Trade Commission recognizes the disparity of identity theft risk and available administrative resources between the country's largest and smallest creditors. Even though both Wells Fargo Bank and Lakeside Ford are covered by identical regulations, they are not expected to create similar written identity theft programs. FTC regulations provide that the written identity theft program may be "appropriate to the size and complexity of the financial institution or creditor and the nature and scope of its activities."

There are lots of folks trying to help dealers comply. Aside from the vendors, the National Automobile Dealers Association (NADA) published a 90-page comprehensive compliance guide called a "*Dealer Guide to the FTC Red Flags and Address Discrepancy Rules*." If you're a NADA member, it should be in your store now. In addition MADA conducted Red Flags training sessions in September and will do more in October. MADA also created a "bare bones" minimum model program that could work for many Minnesota dealers. It's available for download at www.mada.org.