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FTC Suspends Enforcement of FACTA Red Flags Rule

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November 5, 2008

FTC SUSPENDS ENFORCEMENT OF FACTA RED FLAGS RULE

by Josh Jones, Legal Consultant

Delay is preferable to error.

— Thomas Jefferson

Seemingly, the Federal Trade Commission (FTC) was recalling this wisdom when earlier this week it announced that enforcement of the FACTA Identity Theft Red Flags Rule has been suspended until May 1, 2009.

As covered in MTAS's recent publication *Model Identity Theft Policy and FACTA Compliance*, the Red Flags Rule requires municipalities, as financial institutions or creditors, to develop and implement written identity theft prevention programs. When this rule was initially promulgated in November 2007, the compliance date was scheduled for Nov. 1, 2008. According to its Oct. 22, 2008, press release, the FTC has pushed that date back six months due to questions regarding coverage and applicability, primarily in the banking and financial sectors. There seems to be no question that this rule applies to public utilities and municipal departments that defer payments for goods or services.

No other changes were made to the federal rules, hence municipalities are still required to adopt and implement a written identity

theft policy. Likewise, the training, reporting and administration requirements are still binding.

Defer no time, delays have dangerous ends.

— William Shakespeare

While municipalities and public utilities now have an additional six months to achieve compliance, it seems wise to heed Shakespeare's words. Equipped with a policy, training and a publication provided by MTAS, municipalities now have the means to comply with these federal requirements. Many cities have already adopted an identity theft policy. Many more have placed adoption on an upcoming board agenda. This office commends those efforts and urges other cities to follow suit.

If your city has yet to take any action regarding compliance, begin with the aforementioned publication. It will provide you with an overview of the guidelines and walk you through the process of developing, adopting and implementing an identity theft policy that meets the needs of your city. If you have any questions, please contact your MTAS management consultant.

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USEFUL LINKS

MTAS Model Identity Theft Policy and FACTA Compliance: <http://www.mtas.tennessee.edu/public/MTAS PUBS.NSF/All/FB1AAC414A610554852574C7004709BF?OpenDocument>

FTC enforcement policy statement: <http://www.ftc.gov/os/2008/10/081022idtheftredflagsrule.pdf>

FTC press release: <http://www.ftc.gov/opa/2008/10/redflags.shtm>

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