

## **Red Flag Rule Disclosures**

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I was recently cruising on the Autobahn at the posted speed limit, about 100 MPH, when I saw headlights on the horizon in my rear-view mirror. "Watch this," I said to my son in anticipation of another blow-your-doors-off sports car, just like the other Ferraris and Mercedes and BMWs we'd marveled at earlier. This time, imagine our surprise when the Ford Focus went from one horizon to the next just as quickly as a Ferrari. Must make them different in Europe.

Although federal regulations take a little longer than a Ford Focus to go from the comment horizon to the implementation horizon, the process usually sneaks up on the industry and is implemented before we know it.

For example, look at how long we knew about the pending privacy and safeguards rules, yet many were ill prepared to implement the requirements.

The regulators are at it again. They recently issued proposed guidelines to implement the Red Flag Rule and are asking for public comment prior to implementation. The Red Flag Rule aims to help stem the tide of identity theft and is a result of the FACT Act passed in 2005.

The regulators are serious about implementing this rule. Some estimates peg the percentage of Americans affected by identity theft at close to 25 percent.

I believe the only people who would disagree with eradicating identity theft are the thieves themselves. These people are a bold group and they get bolder when they realize that many victims are hesitant to press charges.

That being said, the proposed rules for dealers to follow to assist in the identity theft vaccine appear to be onerous.

### **Onerous proposed Red Flag definitions**

How onerous? Contemplate running every single customer against a list of 31 potential red flags before being able to deliver a car to be compliant with the proposed rule.

### **Here are a few of the proposed Red Flags:**

The address, social security number or home or cell phone is the same as that submitted by other applicants. Presumably, this would require the F&I or sales manager to ping every customer's information against the dealer's database to make sure any other applicant did not provide this information to the dealer.

Personal information provided is not consistent with information that is on file. Sounds like the manager would have to compare the credit application and identifying information with the same information submitted by the customer in past transactions.

Personal information is associated with known fraudulent activity or is a type commonly associated with

fraudulent activity. Good luck in keeping up with knowing fraudulent activity or types commonly associated with fraudulent activity. Better luck in catching an identity thief with this red flag.

The photo or physical identification is inconsistent with the appearance of the applicant or customer. Based on the poor quality of some of the photocopies of driver's licenses in files, this red flag could easily trip up some dealers for non-compliance unless the dealer invests in a new copier or one of those new scanning systems.

A consumer report indicates a pattern of activity that is inconsistent with the history and usual pattern of activity of an applicant or customer. Some dealers have a hard time getting sales and F&I managers to look past the bureau score on a credit report. Now the manager will have to analyze the report for recent, significant increases in inquiries, an unusual number of recently established credit relationships, or an account that was closed for cause or identified for abuse of account privileges by a creditor.

As long as dealers continue to spot deliver cars, it will be difficult for a dealer to lean on the banks and finance companies for help with the proposed Red Flag Rule as the customer and the car will be gone before the application is submitted to the bank.

I believe that we should all exercise a reasonable standard of care to help slow down identity theft. Some dealers have reported positive results by obtaining thumbprints of all customers or by implementing a video recording system. Both ideas have reportedly scared off some potential identity thieves.

But implementing a rule requiring a dealer to test a customer's information against 31 potential red flags seems to be asking a dealer to be the watchdog, not a retailer trying to make a living.

Now is the time to call your dealer associations and get them to prepare comments to this proposed regulation. The headlights are rapidly approaching and will be blowing your doors off before you know it.

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