



State of North Carolina Department of State Treasurer

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Memorandum #1110

October 10, 2008

TO: Local Government Officials and Certified Public Accountants

FROM: Sharon Edmundson, Director, Fiscal Management Section

SUBJECT: Final "Red Flag" Rules Issued

In 2003, Congress passed the Fair and Accurate Credit Transactions Act of 2003 ("FACT Act") to address the increasing problems with identity theft and misuse of personal information of consumers. Final rules and guidelines were issued to implement the FACT Act in late 2007 and became effective on January 1, 2008 with full compliance required by November 1, 2008. These rules require a creditor to develop and implement a written Identity Theft Prevention Program with procedures to identify, detect, and respond to possible signals ("Red Flags") of identity theft. The purpose of this alert is to make local governments aware of these rules and how they may apply to local governments.

These rules apply to local governments when they provide a service for which payment is deferred until a future date. Specifically, municipalities with water, sewer, and/or electric utility operations are subject to these rules. The same applies to counties and water/sewer districts with water/sewer utility operations. The rules define a "covered account" as an account which a creditor "offers or maintains, primarily for personal, family, or household purposes, that involves or is designed to permit multiple payments or transactions, such as a ...utility account." The rules also state that a "creditor" includes "utility companies." If you are a local government to which these rules apply, you must develop a program to identify, detect and respond to the "Red Flags" of identity theft. Red Flags refer in the rules to a pattern, practice, or specific activity that indicates the possible existence of identity theft.

On September 4, 2008 the North Carolina League of Municipalities issued a memo on this topic which can be accessed at http://www.nclm.org/documents/ftmemofinal_000.pdf. Additional resources can be found at the following websites:

- <http://www.ftc.gov/os/fedreg/2007/november/071109redflags.pdf>
- http://www.redflagrules.net/General_Requirements.html

Local governments should determine if they are subject to these rules. If they determine that they are subject to these rules, then they should review their processes for opening new accounts and for maintaining existing accounts. This review should identify weaknesses in existing controls and procedures and/or the need for additional controls and procedures to minimize

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identity theft risk. As part of this assessment, the local government should identify patterns, practices or specific activities ("Red Flags") that indicate the possible existence of identity theft. The local government then should produce a written document outlining the assessment made and the program adopted to meet these requirements. If a unit already has an existing privacy and information security policies in place, then this program may be integrated into those policies. The resulting policies should be approved by the governing board of the local government.

Should you have any questions or comments on this memo, please contact Ken Wease at 919-807-2391 or email him at ken.wease@nctreasurer.com.