



Memorandum To: National Retailers Council

Date: September 10, 2008

Subject: FTC Red Flags Rule

The Federal Trade Commission (FTC) has issued regulations (the Red Flags Rule) requiring financial institutions and creditors to develop and implement written identity theft prevention programs as part of the Fair and Accurate Credit Transactions (FACT) Act of 2003. MHI believes that retailers who assist customers with applications for home loans are covered under the Red Flags Rule. In addition, retailers that are mortgage brokers are covered under the rule.

The programs must be in place by November 1, 2008 and must provide for the identification, detection, prevention, and response to activities known as “red flags” that could be indicators of identity theft. The Red Flags Identity Theft Prevention Program must 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 to prevent and mitigate identity theft; and
4. Ensure the Program is updated periodically to reflect changes in risks from identity theft.

The rule states that the program developed must be appropriate to the size and complexity of the financial institution or creditor and the nature and scope of its activities. With this in mind, MHI has developed the attached document to assist retail sales centers in complying with the Red Flags Rule. The document includes the four areas listed above, plus a fifth area to document employee training on the program. In order to demonstrate compliance with the rule it is recommended that page one of the program document be placed in each consumer file noting any red flags that were identified.

Lastly, the rule requires oversight of the program by an employee at the level of senior management who will have the following responsibilities:

1. Assigning specific responsibility for the program’s implementation

2. Reviewing reports prepared by staff regarding compliance at least annually
  - a. Reports from staff should address material matters related to the program and evaluate issues such as: the effectiveness of the policies and procedures in addressing the risk of identity theft in connection with taking loan applications; significant incidents involving identity theft and management's response; and recommendations for material changes to the program
3. Approving material changes to the program as necessary to address changing identity theft risks.