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New ID Theft "Red Flags" May Force Some Dealers To Raise White Flag in Surrender

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"Ambiguous". "Exceedingly burdensome". "Undue controversy or difficulty". These are just a few of the negative references made by NADA and Nissan Motor Acceptance Corporation to describe updated federal regulations meant to help curb the rising tide of identity theft. Dealers need to be aware of the probable language and scope of these fast-approaching requirements to effectively mitigate the impact they will have on a dealership's core sales operations.

The Fair and Accurate Credit Transactions Act (FACT Act) was signed into law in 2003. Sections 114 and 315 of the FACT Act amended sections 615 and 605 of the Fair Credit Reporting Act of 1970, respectively. These complicated amendments directly affect "financial institutions and creditors", including auto dealerships.

In short, dealers will be required to create, follow, and regularly review new dealership procedures to address:

- 1) "red flags" - also known as the dozens of "usual suspects" that indicate possible identity theft during a credit transaction, and
- 2) discrepancies that can occur between the address information given by consumers during a credit transaction and what is provided by consumer reporting agencies.

These required updates will impact every auto dealer in the country and virtually all auto sales transactions - including retail installment sales contract, loan, and lease.

Industry representatives including NADA, NIADA, Nissan Motor Acceptance, and Ford Motor Credit have already weighed-in during the Public Comment period. Examples of the proposed requirements that are causing concern include:

- **Cleaning House**
 - Dealers will be tasked with evaluating their current identity theft practices and understanding all of the "red flags" that apply to their specific dealership. This means that, while the proposed rules provide sample red flags, each dealer will have to do their own internal audit to understand which red flags might be unique to their dealership.
- **Policies, Procedures, and Trainings, Oh My**
 - Once the evaluation is complete, new policies must be created and all appropriate staff trained to recognize "red flags", "address discrepancies", and what to do with them once caught.

- Happy Anniversary
 - Once a year, the designated program lead must provide detailed reporting on the program's success, continually monitor new identity theft trends, and decide on the need for applicable updates.

If you're a dealer and are not yet convinced that these new rules demand your attention, there's more. Below are just two examples of the dozens of red flags that the FTC "suggests" you monitor as part of their "flexible risk-based approach":

- It's a Numbers Game
 - On every credit review, the date of birth provided should be recognized as appropriate for the given Social Security Number. How many of your dealership staff currently know how to recognize this? How many of your dealership staff even knew they had to match?
- So Many Records, So Little Time.
 - Dealership employees should be monitored when suspected of downloading unusually large numbers of customer account records. Do you know what an "unusual number" is? Do you have the time to monitor these activities?

Until the proposed rules are final, there are no clear answers to these and many other related questions. Even when final, many questions will remain. NADA, NIADA and others have asked and are hoping for clarification soon, as well as a reasonable amount of time for dealers to implement all of these new requirements. However, only time will tell what the FTC and federal banking agencies decide and whether these new rules will create more problems than they solve.

While it is too late to publicly comment on these proposed rules - the public comment period ended September 18th - it's not too late to gain the necessary understanding of these rules and create a game plan to incorporate them into the hundreds of other laws and regulations for which you're already responsible.