



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of July 11, 2009**

DATE: June 5, 2009

SUBJECT: “Red Flag” Identity Theft Prevention Program

C. M. RECOMMENDATION:

Adopt the attached resolution approving the “Red Flag” Identity Theft Prevention Program in compliance with Part 681 of Title 16 of the Code of Federal Regulations, implementing Title 15, Chapter 41, Subchapter III, §§ 1681 through 1681x of the United States Code, as promulgated by the Fair and Accurate Credit Transactions Act of 2003 (“FACTA”).

ISSUES: Pursuant to FACTA, codified at 15 U.S.C. §§ 1681 *et seq.*, and in an effort to extend consumer protections against identity theft, the Federal Trade Commission (“FTC”) adopted regulations (16 C.F.R. Pt. 681) requiring all entities that act as creditors and provide certain types of customer accounts to enact a “Red Flag program” aimed at protecting personally identifying consumer information. The FTC regulations state that the Red Flag program is to be adopted by August 1, 2009. The County may be subject to financial penalties if it fails to adopt and implement a Red Flag program.

SUMMARY: The new regulations – nicknamed the Red Flag Rules – require creditors to develop a written Red Flag program to detect, prevent, and minimize the damage that could result from identity theft. The Red Flag Rules apply to a variety of “creditor” organizations such as utilities, healthcare entities, and municipalities. A creditor is a business or organization that regularly provides goods or services to customers and receives payment for the goods or services at a later date. This definition of “creditor” implicates a number of Arlington County departments and functions, including utilities, many programs within the Department of Human Services, and billing for ambulance services. As a creditor, the County is required to develop a program to mitigate identity theft that, according to the Rule, is “appropriate for the size and complexity of the municipality” and the written policy must spell out how the program will be administered. The Rule requires the Board of Directors or equivalent administrative body to approve the first written program. The County Manager or his designee will be responsible for the adoption and approval of material changes to the Identity Theft Prevention Program to address changing risks of Identity Theft.

County Manager: _____

County Attorney: _____

Staff: Barbara Wiley, Department of Management and Finance

Under the law, the program must contain reasonable policies and procedures to:

1. Identify relevant red flags for new and existing covered accounts and incorporate those red flags into a monitoring program;
2. Detect red flags that have been incorporated into the program;
3. Respond appropriately to any red flags that are detected; and
4. Ensure the program is updated periodically to reflect changes in risks to customers or to the safety and soundness of the County from identity theft.

BACKGROUND: The Red Flag Rules require many businesses and organizations to implement a written Identity Theft Prevention Program to prevent, detect and minimize the risks posed by identity theft. Enforcement is set to begin on August 1, 2009.

Although the Red Flag Rules were developed primarily for financial institutions, they apply to “creditors” with “covered accounts.” According to FTC guidelines, a creditor is an entity which regularly –

- Extends, renews or continues credit,
- Arranges for someone else to extend, renew or continue credit, or
- Is the assignee of a creditor who is involved in the decision to extend, renew or continue credit

Using this definition, a creditor is essentially any organization that regularly provides goods or services and is paid for them after they are provided. Based on this definition the County has determined the Rule applies to utility billings, many programs within Department of Human Services, and ambulance / EMS services. Localities throughout the Commonwealth are doing similarly.

“Red Flag” is defined as a pattern, practice or specific activity that indicates the possible existence of identity theft. Examples of Red Flags that the County may encounter include documents that appear to be altered or forged; suspicious account activity that is inconsistent with prior use of the account, or a Social Security or health insurance number presented by one customer that is the same as one provided by another customer. The Red Flag Rules require the County to consider the way each type of account is handled and insure that internal operating procedures provide safeguards against identity theft that meet the federal guidelines. Staff must be trained to understand the rules for consumer protection, and policies must be periodically reviewed to reflect changes in risks to customers and determine if any program changes are needed.

DISCUSSION: Staff from Department of Environmental Services, Department of Human Services, Department of Management and Finance, Parks Recreation and Cultural Resources, Police, Fire, Libraries, Treasurer’s Office and County Attorney’s Office have worked together to identify County programs that are considered “covered accounts” and to develop the attached Red Flag Identity Theft Prevention Program. Because Red Flags will vary by program, specific policies and responses will be developed within each organization. For example, the utilities response to a suspicious document will be very different than a Public Health program’s response. Constituency needs and program mission will drive the response.

FISCAL IMPACT: None

RESOLUTION CONCERNING “RED FLAG RULES” IDENTITY THEFT PREVENTION PROGRAM

Be it resolved by the County Board of Arlington County, Virginia, that:

Pursuant to Part 681 of Title 16 of the Code of Federal Regulations, implementing Title 15, Chapter 41, Subchapter III, §§ 1681 through 1681x of the United States Code, as promulgated by the Fair and Accurate Credit Transactions Act of 2003 (“FACTA”) the County Board adopts the attached “Red Flag Rules” Identity Theft Prevention Program.

BE IT RESOLVED that this resolution and the “Red Flag Rules” Identity Theft Prevention Program shall take effect upon enactment.