DO THE NEW RED FLAG REGULATIONS IMPACT YOUR FUNERAL HOME?

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Another new federal regulation will impact financial institutions and creditors starting on November 1, 2008. The Red Flag Regulations, which were issued as part of the Fair and Accurate Credit Transactions Act of 2003 (“FACTA”), are designed to deter, prevent and mitigate identity theft in connections with credit provided to consumers. If a funeral home is covered by the Red Flag Regulations, it will have to develop and implement a written Identity Theft Prevention Program on or before November 1, 2008.

**Coverage of Funeral Homes.** To what extent will the Red Flag Regulations impact funeral homes? Each funeral home owner will have to determine if the funeral home is covered by the Red Flag Regulations after reviewing the activities of the funeral home. Fortunately, it is thought that most funeral homes will fall outside of the Red Flag Regulations.

The Red Flag Regulations apply to any financial institution or creditor that offers accounts to consumers that involve multiple payments or transactions. Therefore, if a funeral home regularly allows consumers to pay at-need or preneed funeral bills through installments, it will be covered. In addition, if the funeral home regularly arranges for consumers to obtain credit from a financial institution like a consumer financing company, it is subject to the Regulations. The following examples may help funeral homes determine if they are covered by the Red Flag Regulations:

1) *If a family cannot afford to pay at the arrangement conference, the funeral home will work with them and allow the family to pay over time. The funeral home does not charge interest on the outstanding funeral bill, but does require the family to sign a promissory note or a repayment agreement by which they agree to pay in regular installments.*

In the above example, the funeral home would be covered by the Red Flag Regulations. It would be a “creditor” under the regulations because it regularly allows consumers to pay obligations using multiple payment installments. Simply because it does not charge interest does not relieve it from the Red Flag Regulations. Please note that to be covered, the extension of credit must be done on a regular basis. Therefore, if the funeral home only extends credit in isolated cases, it would not be covered by the Red Flag Regulations. But if it is regularly offering consumers the option to pay in installments, it is subject to the Red Flag Regulations.

2) *The funeral home has a payment policy which requires 50% of the funeral bill to be paid prior to service and the remainder to be paid within 30 days after*
the funeral. If the bill is not paid within 30 days, the funeral home imposes a 1% per month late fee.

This funeral home would not be covered by the Red Flag Regulations. It is not allowing payment through multiple installments. Although it does charge a late fee, that would not be regarded as an installment, but simply as a penalty for missing the 30 day due date.

3) A funeral home sells a preneed insurance policy which provides for 24 monthly payments to the insurance company by the consumer. The funeral home assists the consumer in filling out the insurance policy application and submits it to the insurance company.

In this case, the funeral home would be covered by the Red Flag Regulations. Although the installment payments are not being made to the funeral home, it did assist the consumer in entering into an installment obligation on behalf of the insurance company.

4) A funeral home regularly allows families to pay for funerals using major credit cards such as Visa, Master Card and American Express. Some of these families will be paying the credit card companies in installments.

Although there are installment payments being made as a result of this transaction, the funeral home, in this case, would not be covered by the Red Flag Regulations. Retailers who accept credit card payments are not considered to be creditors. Rather, in this case, the credit card company would be a creditor, but the retailer, such as the funeral home, would not.

5) A funeral home does not accept installment payments. However, when a family indicates that it does not have sufficient funds to pay for the funeral upfront, the funeral home will refer the family to a financing company which will extend consumer financing to the family. The funeral home sits down with the family and fills out the credit application which is then submitted to the finance company.

In this case, the funeral home would be covered by the Red Flag Regulations. Any business which regularly arranges for consumers to obtain credit from a financial institution or a financing company is covered by the Red Flag Regulations.

If after reviewing the above explanations, you believe your funeral home is covered by the Red Flag Regulations, you will need to establish an Identity Theft Prevention Program. A sample Identity Theft Prevention Program is available on NFDA’s Faxback system that can be accessed on the NFDA website or by calling (800) 731-0661. While the sample program provides guidance to a funeral home in constructing a program, it is important that each funeral home that is covered by the Red
Flag Regulations adopt a program that addresses the particular risk that the funeral home encounters in providing credit to consumers.

The instance of identity theft among funeral home consumers is rare. Although funeral homes have experienced attempts by foreign-based scam artists to order cremation jewelry using stolen credit cards, accepting credit cards does not subject a funeral home to the Red Flag Regulations. The identity theft issue that the Regulations principally address are customers who enter into credit transactions after stealing someone else’s identity. Since the threat of this type of identity theft is very low in the funeral profession, funeral homes that are subject to the Red Flag Regulations may be able to satisfy the Regulations with a fairly straightforward and simple Identity Theft Protection Program.

NFDA members with questions regarding this article may contact Scott Gilligan at 513-871-6332.
SAMPLE IDENTITY THEFT
PREVENTION PROGRAM
FOR FUNERAL HOMES

Introduction: If your funeral home undertakes any of the following actions, it needs to institute and approve an Identity Theft Prevention Program:

Regularly enters into arrangements with at-need or preneed consumers which allow the consumers to pay for funerals in multiple payment installments; or
Regularly sells preneed insurance policies as an agent for an insurance company which allows the consumer to purchase the policy through multiple installment payments; or
Regularly refers consumers to consumer financing companies that extend the consumers credit to purchase funerals.

Instructions: In drawing up an Identity Theft Prevention Program (the “Program”), a funeral home is to identify those red flags which pose a risk of identity theft. After identifying those red flags, the Program should address how the funeral home will detect and prevent the red flags. Finally, the Program must explain how the funeral home will periodically update the Program.

The sample Program should give the funeral home a suitable model to construct a Program. Once the Program is completed and a management employee is named as Compliance Officer (see page 2 of the model Program), have the Program approved by the Board of Directors or funeral home management. Training of funeral home staff in the details of the Program must be held and documented. The Compliance Officer should periodically assess the effectiveness of the Program and make a report to funeral home management if changes in the Program are needed to make it more effective.

Purpose

The ________________Funeral Home (the “Funeral Home”) establishes this Identity Theft Prevention Program (“Program”) to detect, prevent and mitigate identity theft in connection with the opening of a Funeral Account or the maintenance of an existing Funeral Account and to provide for continued administration of the Program in compliance with Part 681 of Title 16 of the Code of Federal Regulations implementing Sections 114 and 315 of the Fair and Accurate Credit Transactions Act (FACTA) of 2003.

Definitions

Identify theft means fraud committed or attempted using the identifying information of another person without authority.

A Funeral Account for the purpose of this Program means:

An account that the Funeral Home offers or maintains for at-need or preneed consumers that involves or is designed to permit multiple payments;

A credit account that the Funeral Home opens up for a consumer financing company or similar financial institution which will extend credit directly to a at-need or preneed consumer; or

An account that the Funeral Home opens for an insurance company issuing an insurance policy to a preneed consumer of the Funeral Home which will allow the consumer to purchase the policy by making multiple payment installments.
A red flag means a pattern, practice or specific activity that indicates the possible existence of identity theft.

The Program

The Program established by the Funeral Home shall include reasonable policies and procedures to:

Identify relevant red flags for the Funeral Accounts it offers or maintains and incorporate those red flags into the Program;
Detect red flags that have been incorporated into the Program;
Respond appropriately to any red flags that are detected to prevent and mitigate identity theft; and
Ensure the Program is updated periodically to reflect changes in risks to consumers and to the safety and soundness of the Funeral Home from identity theft.

The Program shall, as appropriate, incorporate existing policies and procedures that control reasonably foreseeable risks.

Administration of Program

(as the designated Compliance Officer) shall be responsible for the development, implementation, oversight and continued administration of the Program.
The Program shall train Funeral Home staff, as necessary, to effectively implement the Program; and
The Program shall exercise appropriate and effective oversight of service provider arrangements.

Identification of Relevant Red Flags

1. The Program shall include relevant red flags from the following categories as appropriate:

Alerts, notifications, or other warnings received from consumer reporting agencies, insurance companies, or consumer financing companies to whom the Funeral Home refers consumers, such as fraud detection services;
The presentation of suspicious documents by the consumer;
The presentation of suspicious personal identifying information;
The unusual use of, or other suspicious activity related to, a Funeral Account; and
Notice from consumers, victims of identity theft, law enforcement authorities, or other persons regarding possible identity theft in connection with Funeral Accounts.

2. The Program shall consider the following risk factors in identifying relevant red flags for Funeral Accounts as appropriate:

The types of Funeral Account offered or maintained;
The methods that the Funeral Home uses to open a preneed or at-need Funeral Account;
The methods that the Funeral Home uses to allow access to Funeral Accounts; and
The Funeral Home’s previous experience with identity theft.

3. The Program shall incorporate relevant red flags from sources such as:

Incidents of identity theft previously experienced;
Methods of identity theft that reflect changes in risk; and
Applicable supervisory guidance.

Detection of Red Flags
The Program shall address the detection of red flags in connection with the opening of Funeral Accounts and the maintenance of existing Funeral Accounts, such as by:
Obtaining identifying information about, and verifying the identity of, a consumer opening a Funeral Account; and
Authenticating consumer identities, monitoring transactions, and verifying the validity of change of address requests in the case of existing Funeral Accounts.

Response
The Program shall provide for appropriate responses to detected red flags to prevent and mitigate identity theft. The response shall be commensurate with the degree of risk posed. Appropriate responses may include:

Monitor a Funeral Account for evidence of identity theft;
Contact the consumer;
Change any passwords, security codes or other security devices that permit access to a Funeral Account;
Reopen a Funeral Account with a new account number;
Not open a new Funeral Account;
Close an existing Funeral Account;
Notify law enforcement; or
Determine no response is warranted under the particular circumstances.

Updating the Program
The Program shall be updated periodically to reflect changes in risks to consumer or to the safety and soundness of the Funeral Home from identity theft based on factors such as:

The experiences of the Funeral Home with identity theft;
Changes in methods of identity theft;
Changes in methods to detect, prevent and mitigate identity theft;
Changes in the types of accounts that the Funeral Home offers or maintains;
Changes in the business arrangements of the Funeral Home, including mergers, acquisitions, alliances, joint ventures and service provider arrangements.

Oversight of the Program

1. Oversight of the Program shall include:

Assignment of specific responsibility for implementation of the Program;
Review of reports prepared by Funeral Home staff regarding compliance; and
Approval of material changes to the Program as necessary to address changing risks of identity theft.

2. Reports shall be prepared as follows:

a.. The Funeral Home Compliance Officer shall report to Funeral Home Ownership at least annually on compliance by the Funeral Home with the Program.
b. The report shall 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 the opening of Funeral Accounts and with respect to maintaining existing Funeral Accounts;
Agreements or arrangements with customer referrals to consumer financing companies or insurance companies;

Significant incidents involving identity theft and management's response; and
Recommendations for material changes to the Program.

Oversight of Service Provider Arrangements

The Funeral Home shall take steps to ensure that the activity of a referred consumer financing company or an insurance company offering preneed insurance policies is conducted in accordance with reasonable policies and procedures designed to detect, prevent and mitigate the risk of identity theft whenever the Funeral Home refers a customer to the consumer financing company or sells a preneed insurance policy on an installment basis.

Duties Regarding Address Discrepancies

The Funeral Home shall develop policies and procedures designed to enable the Funeral Home to form a reasonable belief that a credit report relates to the consumer for whom it was requested if the Funeral Home receives a notice of address discrepancy from a nationwide consumer reporting agency indicating the address given by the consumer differs from the address contained in the consumer report.

The Funeral Home may reasonably confirm that an address is accurate by any of the following means:

Verification of the address with the consumer;
Review of the Funeral Home’s records;
Verification of the address through third-party sources; or
Other reasonable means.

If an accurate address is confirmed, the Funeral Home shall furnish the consumer’s address to the nationwide consumer reporting agency from which it received the notice of address discrepancy if:
The Funeral Home establishes a continuing relationship with the consumer; and
2. The Funeral Home, regularly and in the ordinary course of business, furnishes information to the consumer reporting agency.