



## Federal Government Cracks Down on Identity Theft With New “Red Flags”

**Rules** By Joseph W. Borchelt of Reminger Co., LPA. Reprinted with permission.

### I. IDENTITY THEFT – A GROWING CONCERN

There can be no dispute that identity theft is a growing concern across the United States and abroad. In fact, the Federal Trade Commission (FTC) estimates that as many as 9 million Americans have their identities stolen each year. Identity thieves continue to develop new levels of sophistication associated with the misuse of personally identifying information such as names and Social Security numbers, credit card numbers, or other financial account information. The crime of identity theft has affected millions of individuals' credit scores, financial security, and pocketbooks.

In light of this growing concern over identity theft, it should be no surprise that the federal government is constantly upgrading and revising its legislative efforts to combat identity theft. Given these recent legislative efforts, businesses whose customers' run the risk of identity theft must ask: How will these new federal regulations impact the way we do business? What can we do to protect our customers or clients from the risk of identity theft? Do

new federal identity theft regulations apply to our business? And What will the federal government require of us in order to comply with new regulations directed toward identity theft?

### II. DEVELOPMENT OF THE “RED FLAGS” RULE

In an attempt to crack down on identity theft, the FTC, the federal bank regulatory agencies, and the National Credit Union Administration (NCUA), are requiring that certain businesses, banks, and other covered entities implement “Identity Theft Protection Programs.” In reality, the “Red Flags Rule” has been effect since January 1, 2008, with an original implementation deadline of November 1, 2008. However, revisions to the regulations and debate over entities covered by the Red Flags Rule had delayed the implementation deadline to December 31, 2010.

The Rule requires that all organizations subject to the Fair and Accurate Credit Transactions Act of 2003, that provide and/or maintain “covered ac-

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### Hamilton County Law Library

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Courthouse  
1000 Main Street  
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Open Monday-Friday 8 - 4

[www.http://www.hamilton-co.org/cinlawlib/](http://www.hamilton-co.org/cinlawlib/)

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# Tech Tip: Looking for a book and someone else has it? Place a hold on the item so you will get a call when it comes back!

Follow these steps: Once at our catalog ( <http://www.hamilton-co.org/cinlawlib/catalog/> )

**Step 1:** Find the title you are looking for on the catalog by entering your search criteria in the fields provided. In order to place a hold you will need to view

**Step 2:** To get to the individual item, click on the blue link indicating the number of item(s) available.

**Step 3:** Scroll to the item you wish to borrow and is currently checked out, then click on the "Hold Item" icon.

**Step 4:** You will be prompted for a User ID and Password. Use your member number for both then click "Sign In".

**Step 5:** You can accept the default information and click the "Hold" button.

## Lexis for Solo Attorneys

The Hamilton County Law Library offers affordable remote access to Lexis Ohio, Kentucky, Indiana, and federal materials for solo practitioners who are current subscribers. All of our subscribers are welcome to use Fastcase on- or off-site as well as “full” Lexis and “partial” Westlaw here at the Law Library, but if you’re a solo attorney and you’d like Lexis at your home or office, you might want to look into the Law Library’s Lexis for Solo Attorneys service. For more information, see [http://www.hamilton-co.org/cinlawlib/lexis\\_solos.html](http://www.hamilton-co.org/cinlawlib/lexis_solos.html).

*“Having the library arrange for exceptional legal research through Lexis at such a low rate is a benefit that allows me the ability to service my clients without spending a fortune on legal research. Brains at a fraction of the cost -- who could argue with that in any economy?”*

*Bertha Garcia Helmick, Esq.*

## What We’re Blogging About

If you haven’t looked at the Law Library’s blog recently, please visit. You may want to subscribe to the feed to help you stay up to date on legal issues, especially those facing Ohio. We also post news about upcoming events, including CLEs, at the Law Library.

<http://www.hamilton-co.org/cinlawlib/blog/default.asp>

Here are some of the recent topics about which Chuck Kallendorf has been blogging:

- ◆ Security of mobile devices
- ◆ Legal research on Google Scholar
- ◆ Priorities of the 129<sup>th</sup> General Assembly
- ◆ Public comment on Ohio traffic rules

## Subscriber Benefits

All subscribers have access to the following valuable resources and services:

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**Wireless network** throughout the Law Library

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**5 meeting rooms** with speaker Phones

Professional **reference service** by our law librarians, available via e-mail, telephone, and in person;

Free **document delivery** by fax or e-mail of print and electronic materials

Inexpensive **CLE seminars** throughout the year, on legal research and substantive topics

In addition, solos and attorneys whose firm has a subscription have **24 hour remote access** to Fastcase.com case law and Aspen/LOISLaw treatises.

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counts”, must develop and implement Identity Theft Protection Programs designed to help detect and prevent identity theft. The two main categories of covered entities required to have such programs are creditors and financial institutions. However, the Rule has rather expansive definitions of what constitutes a creditor and financial institution, and therefore the regulations may encompass entities not commonly viewed as a creditor or financial institution. As such, it is critically important for any business to first determine whether it fits within the parameters of coverage under the Red Flags Rule.

The definition of a “creditor” includes businesses or organizations that regularly defer payments for goods or services or provide goods or services and bill customers later. Examples of such creditors include utility companies, cell phone companies and health care providers. The definition also includes entities which regularly grant loans, arrange for loans or the extension of credit, or make credit decisions. Mortgage brokers, automobile dealers, and retailers may all fall within this definition. The Rule defines a “financial institution” as a state or national bank, a state or federal savings and loan association, a mutual savings bank, a state or federal credit union, or any other person that, directly or indirectly, holds a transaction account belonging to a consumer.

Once a business determines whether it falls into one of the above covered categories, the business will need to determine whether it provides or maintains “covered accounts” subject to the Rule. A covered account is an account used primarily for personal, family, or household purposes, and that involves multiple payments or transactions. Covered accounts include credit card accounts, mortgage loans, automobile loans, margin accounts, utility accounts, checking accounts, and savings accounts. Also, a “covered account” includes an account for which there is a foreseeable risk of identity theft such as small business or sole proprietorship ac-

counts.

### III. IMPLEMENTING THE IDENTITY THEFT PREVENTION PROGRAM

If a business offers “covered accounts” and is therefore subject to compliance with the Red Flags Rule, it must then determine how to comply with the Rule. There is no cookie-cutter or one-size-fits all program required by the Red Flags Rule. The Rule allows each company to tailor its program to the possible risks and exposures its clients and customers might encounter. A business might have a high risk of identity theft which would require it to have a more complex set of policies and procedures on how to detect, mitigate, prevent, and remedy identity theft occurrences. However, the programs should be based on the type of covered accounts a business provides, the complexity of these accounts, and the amount of potential exposure these accounts have to identity theft.

The federal regulations have developed a framework to provide guidance for covered entities required to implement these identity theft prevention programs. There are four basic elements of the framework: (1) develop written policies and procedures to identify the “red flags” or warning signs of identify theft your business may encounter, (2) the program must be able to detect the red flags identified in your policies and procedures, (3) the program must spell out the appropriate response your business will take when a red flag is detected, and (4) the program must be reviewed and updated periodically to reflect the ever-changing threats of identity theft.

An Identity Theft Prevention Program should be more than just a list of possible red flags your business might encounter, because identification alone will not help prevent or mitigate identity theft. Appropriate staff training is required to ensure that employees are aware of the red flags, how to detect and prevent them, and how to adequately respond when they encounter a possible theft. Moreover, employee training is critical be-

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cause the individuals on the front line are likely to have the most interaction with customers and their “covered accounts”. The written ITPP is also required to provide a description of the appropriate response when encountering a potential identity theft occurrence, a detailed plan on how the program will be periodically updated, and the manner in which the program will be managed by the businesses’ board of directors or senior employees.

#### IV. RISK FACTORS AND WARNING SIGNS FOR IDENTITY THEFT

In developing the ITPP, it is important not to get lost in the minutia required under the federal regulation; but to keep in mind the general purposes and goals of the Red Flag Rule. To this end, the federal regulations offer some helpful risk factors and warning signs to assist in ferreting out illegal identity theft. Although there are some common risk factors to take in account when detecting red flags, these risk factors will vary depending on the type of covered account a particular business provides. Some common risk factors to consider are: the types of covered accounts you offer or maintain, the methods used to open accounts, how you provide access to those accounts and previous experiences the business has had with identity theft.

Additionally, there are five main categories of warning signs for suspicious activity potentially related to identity theft: alerts and notifications from a credit reporting company about current methods of identity theft; suspicious documents; suspicious personal identifying information; suspicious account activity; and notices from other sources like a customer or law enforcement agency. This list is not exhaustive, but a good place to start when trying to detect red flags and develop an effective Identity Theft Protection Program.

#### V. WHAT SHOULD YOUR BUSINESS DO?

Many creditors and financial institutions may

separate Identity Theft Protection Program where current programs are not compliant with the Red Flag Rule. The program may, however, reference other policies already in existence to avoid unnecessary duplication.

Compliance with the Red Flags Rule need not be a costly and burdensome endeavor. However, the content of this brief Alert only covers the tip of the iceberg in terms of the requirements of the new federal regulations and what is required of a businesses’ written ITPP. Any specific inquiries, as well as evaluation of the ITPP for compliance with the federal regulations, should be directed to competent legal counsel.

*For more information, please contact Joseph W. Borchelt or any member of Reminger’s Finance and Creditor’s Rights Practice Group.*

### Annual Subscriber Fees Now Due

Don't forget to renew your subscription to the Law Library. Your timely payment will ensure your continued access to legal information resources and services including newsletters and news updates, borrowing privileges, CLE attendance, document delivery, and more. We'll send out final notices in mid-February. Privileges will be revoked on March 1 for subscribers who have not paid by that date.

Interested in a quote for an annual subscription? Contact Mary Ann Sweeney at 513.946.5300 or [masweeney@cms.hamilton-co.org](mailto:masweeney@cms.hamilton-co.org).

Is your firm looking for ways to save on legal research fees? Firm subscriptions provide all lawyers and professional staff with access to our resources for a discounted fee. For more information about becoming a subscriber, visit our website

## Free CLE: Social Networking Sites as Investigative Tools

Law Librarian & Director Mary Jenkins will discuss the effective use of social networks effectively for litigation-related purposes. She will provide an overview of websites and research techniques to help the attendee research experts, clients, opposing counsel, jurors, and witnesses. Topics to be addressed include: the courts and social media as evidence, the mainstream social networks, maintaining privacy, real-time social searching, and public records sites.

Friday, February 25, 2011

12:30 p.m.

1.0 hour approved Ohio general CLE

Free to law library subscribers; \$50 for nonsubscribers

To register: Call 513.946.5300 or email [masweeney@cms.hamilton-co.org](mailto:masweeney@cms.hamilton-co.org)

## Opportunities for Statewide Library Deals

Our Law Library is a member of the statewide consortium of County Law Library Resources Boards, chaired by the Hon. Charles A. Schneider, Franklin County Court of Common Pleas. Topping that organization's list of statutory requirements (R.C. 3375.481) is to negotiate contracts that each county law library resources board may use for purchasing or obtaining access to legal research and reference materials available in any medium. The consortium has identified those materials for which statewide pricing is most desirable. It will begin to negotiate with vendors this year. Like many libraries in Ohio, our revenues have declined in recent years, so any savings or enhancements to contracts will be helpful. Hamilton County Law Librarian Mary Jenkins serves vice-chair of the consortium.

## You and the Legal System: Social Security Disability

Cincinnati attorney and law library subscriber Ryan D. Kirzner of Cornet Meyer Rush & Kirzner Co LPA will offer the February program in our *You and the Legal System* series.

When: Fri. Feb. 18, 2011 at 12 noon

Where: Hamilton County Law Library

To register: Call 513.946.5300

Cost: Free

Mr. Kirzner will address the audience's questions about Social Security Disability. We anticipate that may include:

- ◆ Is it time for me to apply?
- ◆ What's the difference between SSI & SSDI?
- ◆ How does the process work?
- ◆ How does Social Security go about re-viewing a person for disability?
- ◆ What should expect in a hearing?
- ◆ I've applied for disability but I keep getting denied. Why?
- ◆ How can I help or hurt my case?
- ◆ What is the judge or decision maker looking for?
- ◆ I'm on SSI. Can I move (and if so how) to disability or SSDI?
- ◆ I'm on SSI (or SSDI). What are the rules if I want to work part-time?
- ◆ Can Social Security review my case and take away my check?
- ◆ My child had SSI but was cut off at age 18. What can I do?

The Social Security Disability program is free and open to the public. Attorneys are most welcome to attend but please note that the session is intended primarily for the nonlawyer citizen. It will last one hour. Please pass the information along to clients and colleagues as desired.

*You and the Legal System* is offered as a public service by the Hamilton County Law Library and the Cincinnati Bar Association's Lawyer Referral Service.

## Cincinnati Law Library Association: Proposed Changes Approved

In the January 2011 newsletter, proposed changes to the CLLA Articles of Incorporation and Regulations were described. Those proposals were approved at the special membership meeting in January. Briefly, this vote brought about the following changes:

- ◆ The purpose of the Association now includes, in part, “support of legal information resources and services”, rather than explicitly stated support for this law library.
- ◆ The members of the Association are now its directors.
- ◆ These documents no longer reference the Association’s role in governance of the law library, since that role was statutorily eliminated for all private law library associations in Ohio last year.

If you have any questions about the Association’s purpose or code of regulations, please contact a director of the Association: Cathy R. Cook, President, Stephen L. Black, Vice-President, or Mary Ann Jacobs, Treasurer, or ask law librarian [Mary Jenkins](#).

The Law Library is governed by the Hamilton County Law Library Resources Board, chaired by James T. O’Reilly. Other members of the Law Library’s board are William D. Bell, Sr., John Cobey, Michael Florez, and Timothy P. Reilly.

## County Offices: Law Affecting Purchase & Licensing of Legal Information Resources

[RC307.51\(A\) and \(G\)](#) encourages cooperation between the county law library and the county’s offices with respect to the purchase of legal resources. The law, which went into effect in January 2010, stipulates that all county offices shall first consult with and seek the approval of the Hamilton County Law Library Resources Board before purchasing or licensing any legal resource material.

The Law Library views this approval process as an opportunity to open avenues of discussion, thereby allowing the law library and the particular county office to work together to identify the best and most cost-effective options, whether information resources are purchased ultimately by the law library for county-wide use or by the county office.

Please contact law librarian [Mary Jenkins](#) to discuss the law and potential opportunities for savings if your agency or office routinely purchases or licenses legal information.

## Want the Latest Library News?

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and Twitter

<http://twitter.com/HCLawLib>



## Upcoming Events

February 18: You and the Legal System: Social Security Disability

February 25: Social Networking in Litigation CLE

## February Holidays

The Law Library will be closed:

Monday, February 21 in observance of Presidents' Day.



## February 2011 Law Library Newsletter

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ADDRESS CORRECTION REQUESTED

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