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MEMORANDUM

TO: Washington Association of Sewer and Water Districts
FROM: John W. Milne
DATE: October 7, 2008
RE: Compliance with FACTA Red Flags Rule; Preparation, Adoption and Implementation of Identity Theft Prevention Program by November 1, 2008

What is the Red Flags Rule?

The Red Flags Rule seeks to reduce identity theft by requiring public and private entities to implement policies and procedures to identify and prevent identity theft. As part of the Fair and Accurate Credit Transactions Act of 2003 (FACTA), the Federal Trade Commission (FTC), the federal bank regulatory agencies, and the National Credit Union Administration (NCUA) have issued regulations (the Red Flags Rule) which require financial institutions and creditors to develop and implement written identity theft prevention programs.

What are "Red Flags"?

A Red Flag, in this context, is a pattern, practice, or specific activity that indicates the possible existence of identity theft.

Who must comply with the Red Flags Rule?

The Red Flags Rule applies to (1) **"creditors"** with **"covered accounts"** and (2) **"financial institutions."**

A **"creditor"** is any entity which extends, renews, or continues credit, or any entity which regularly arranges for the extension, renewal, or continuation of credit; because of the nature of utility service accounts, a water-sewer district is considered a creditor.

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. A covered account is also an account for which there is a foreseeable risk of identity theft.

A **"financial institution"** is 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 entity that holds a "transaction account" belonging to a consumer.



When must water-sewer districts comply with the Red Flags Rule?

Written programs must be prepared, approved by the Board of Commissioners and implemented by **November 1, 2008**.

How do water-sewer districts comply with the Red Flags Rule?

First, districts which employ consumer reports must develop policies and procedures to respond to notices of address discrepancies from a consumer reporting agency. However, it is not likely that this requirement will apply to water-sewer districts. **Second**, each creditor or financial institution that holds a "covered account" must develop and implement a written identity theft prevention program ("program") that identifies warning signs ("Red Flags") of identity theft. The program must include reasonable policies and procedures to meet the FTC's four program requirements:

- (1) Identify relevant pattern, 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) Update the program periodically to reflect changes and risks from identity theft.

The program must be (a) approved by the Board of Directors, (b) managed by the Board of Directors or senior management designee, (c) include appropriate staff training, and (d) provide for oversight of any service providers.

What are the penalties for non-compliance with the Red Flags Rule?

The Red Flags Rule and the requirement that entities subject to those regulations adopt and implement an identity theft prevention program are enforced by the Federal Trade Commission (FTC). Failure to comply with the Red Flags Rule could result in Federal and State action, as well as individual claims and class action law suits. Further, a violation of any requirement or prohibition imposed by the regulations may be considered an unfair or deceptive act or practice. The FTC is authorized to commence a civil action to recover a civil penalty against any person violating the regulations, including a civil penalty of \$2,500 per violation.

Sample Identity Theft Prevention Program

A sample identity theft prevention program is provided with this explanatory memo for your consideration. However, this sample program is for informational purposes only. It may not be suitable for member districts depending on their size, complexity and the nature of their operations and accounts. Every district that maintains "covered accounts" as defined by the Fair and Accurate Credit Transactions Act of 2003 (FACTA) is required to prepare, adopt and implement an identity theft prevention program (ITPP) appropriate to the respective district and any covered accounts it maintains. Member districts are strongly encouraged to consult with their own legal counsel in the drafting, adoption and implementation of an ITPP. Neither the Washington Association of Sewer and Water Districts or the Law Firm of Inslee, Best, Doezie & Ryder, PS warrant or guarantee the proper application of the general guidelines and information contained in this sample ITPP to specific factual or procedural matters which member districts may experience or encounter.