

## **THE RED FLAGS RULE AND GOVERNMENT AGENCIES, NON-PROFIT ORGANIZATIONS, AND SCHOOLS**

### **Is there a Red Flags certification or accreditation that will ensure our Program complies with the Rule?**

No. Some companies and organizations offer Red Flags compliance services, but the FTC doesn't certify or approve any particular program. It's up to you to decide if you need help like that. Before paying for Red Flags compliance services, visit [www.ftc.gov/redflagsrule](http://www.ftc.gov/redflagsrule) for free resources developed by the FTC to help you design your Program.

### **Does the FTC have a sample training policy for employees?**

No. That wouldn't be practical because each Program is unique. Your employee training policies should be based on the specific red flags you've identified in your business or organization and the procedures you've put in place for detecting and responding to those red flags.

### **Does the Red Flags Rule apply to government agencies and non-profit organizations?**

Yes. If the activities of the government agency or non-profit organization fall within the statutory definitions of "financial institution" or "creditor," they're covered by the Rule.<sup>7</sup> For example, cities that operate utilities that regularly bill customers after they've received services or colleges that regularly provide student loans or process student loan applications are creditors under the Rule. For more on whether the Red Flags Rule applies to your agency or organization, see Question B.1. and B.15.

### **What about municipalities, cities, or counties that send tax bills, issue parking tickets, or impose fines? Are they "creditors" under the Rule?**

No. Financial obligations like that are not considered "credit" for purposes of the Red Flags Rule. In this context, "credit" assumes an underlying transaction that a customer enters into voluntarily. Taxes, fines, and the like don't fit that definition.

### **What if I work for a municipality, city, or county, and we've already determined our activities fall within the Rule's definition of "creditor" or "financial institution"? Do our taxes, fines, etc., become "covered accounts" under the Red Flags Rule?**

No. These fees are not covered accounts under the Rule because a person is not establishing a relationship to get goods or services.

### **If we provide a mandatory municipal service that a customer can't decline – like sewage – are we considered a "creditor" under the Rule?**

It depends. Generally, there are two types of billing arrangements for mandatory services. As explained in Question C.2., if you bill customers a flat fee, it's like a tax and you wouldn't be a creditor under the Rule. If you charge customers based on how much they use and then send them a bill, it's more like a utility transaction and you would be a creditor.

### **Does the Rule require that I have specific practices or procedures in my Program – like identifying a particular red flag or reporting suspected identity theft?**

The Rule doesn't require any specific practice or procedures. It gives you the flexibility to tailor your Program to the nature of your business and the risks it faces. The FTC will assess compliance based on the reasonableness of a company's policies and procedures. Businesses with a high risk for identity theft may need more robust procedures

– like using other information sources to confirm the identity of new customers or incorporating fraud detection software. Groups with a low risk for identity theft may have a more streamlined Program – for example, simply having a plan for how they’ll respond if they find out there has been an incident of identity theft involving their business. The FTC has designed a form to help groups at low risk for identity theft put together a Program. It’s available at [www.ftc.gov/redflagsrule](http://www.ftc.gov/redflagsrule).

**Does the Red Flags Rule require me to check photo IDs of my customers? If I check photo IDs, should I keep copies?**

The Rule doesn’t specifically require you to check customers’ photo IDs. Of course, for some businesses, checking photo IDs is one way to verify that customers are who they claim to be. But if you decide to ask for a photo ID, keeping a copy often is unnecessary and can raise privacy and data security concerns, especially if you’re collecting other personal information like date of birth, address, or Social Security number.

**Does the Red Flags Rule require that I use Social Security numbers to verify my customers’ identity?**

No, the Red Flags Rule does not require that you use Social Security numbers or any other specific identifying information. Whether you collect Social Security numbers or other information to verify a customer’s identity depends on the nature of your business and the risks you face. Actually, collecting a Social Security number by itself is not a reliable way to verify someone’s identity because the numbers are widely available and do not prove a person is who he or she claims to be. However, Social Security numbers can be helpful as part of a more comprehensive identity verification process – for example, as a way to check against information from other sources or as a way to get other information, like a credit report, which can be used to verify a person’s identity.

It’s a good data security practice not to collect more information than you need. If you are asking for a Social Security number, but not actually using it as part of a more comprehensive authentication process, reconsider whether your business really needs to collect and maintain it.

**How do my obligations under other laws affect the implementation of my Identity Theft Prevention Program?**

Your Program under the Red Flags Rule should be consistent with other relevant legal, professional, and ethical obligations. This would include laws relating to the provision of medical treatment or the provision and termination of utility services. Indeed, the Rule anticipates the need to accommodate obligations like these by requiring that a Program include only “reasonable” policies and procedures, and by ensuring that each group has the flexibility to tailor a Program to the nature of its business.

**Under what circumstances should I contact law enforcement? Who handles identity theft?**

If your business or organization experiences a confirmed incident of identity theft, it’s a good idea to report it to law enforcement. Your local police department would be a good place to start. If you suspect your business is being targeted specifically – say, by a persistent attack on your website – consider contacting the FBI or U.S. Secret Service. The FTC does not have jurisdiction to prosecute identity thieves, but it has many resources to help victims recover. Consider directing victims to the FTC’s identity theft website, [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft).

**Are there samples or templates to help me set up my Program?**

Yes. The FTC has created a form to help businesses at low risk for identity theft design a Program. It’s at [www.ftc.gov/redflagsrule](http://www.ftc.gov/redflagsrule). Many trade associations have developed guidance to help industry members comply with the Rule, too. The FTC cannot recommend any particular vendor’s compliance products or services.

**What if we hire service providers? If our business has to have a Program under the Rule, do our service providers need a Program, too?**

It depends on what they're doing for your business. There are generally two types of service providers you'll need to supervise under the Rule. First, there are service providers in the business of fraud detection who help identify, detect, and respond to red flags. If you hire a company like that, you must make sure it's meeting the same standards that would apply if you were doing those things yourself.

Second, other companies you hire may not be in the business of fraud detection, but will be the only ones who can detect the red flags you've identified in your Program. For example, a debt collector you use to contact customers about outstanding debts may hear from consumers who have been the victims of identity theft. Certainly, if you were performing that task yourself, you'd spot that as a red flag. Since you've hired a debt collector, you must ensure that they either comply with your Program or have their own policies and procedures to detect and respond to red flags. Under the Red Flags Rule, you do not need to supervise service providers who merely have access to data about your customers, but aren't in a position to detect the red flags in your Program – like janitorial contractors or certain types of software support providers. For more about service providers, read *Fighting Fraud with the Red Flags Rule: A How-To Guide for Business*, at [www.ftc.gov/redflagsrule](http://www.ftc.gov/redflagsrule).

## **RED FLAGS RULE COMPLIANCE AND ENFORCEMENT**

### **Can a consumer sue us under the Red Flags Rule?**

No, there is no private right of action. Only certain federal and state government agencies can enforce the Rule,<sup>9</sup> but consumers can file a complaint with the FTC about a company's Program. The FTC uses complaints filed at [www.ftc.gov](http://www.ftc.gov) to target its law enforcement efforts.

### **If my business is covered by the Red Flags Rule, what will we need to show the FTC to prove we're complying? Is there a specific audit document we have to file or have available if asked?**

The FTC does not conduct routine compliance audits. But the FTC can conduct investigations to determine if a business within its jurisdiction has taken appropriate steps to develop and implement a written Program, as required by the Rule. The FTC may ask the target of the investigation to produce copies of its Program and other materials related to compliance. The FTC also may interview officers, employees, or others who are familiar with the company's practices. If the FTC has reason to believe the Rule has been violated, it can bring an enforcement action.

### **I'm a creditor with consumer or household accounts, but I think it's very unlikely that an identity thief will try to defraud me. Do I still have to prepare an Identity Theft Prevention Program?**

The Red Flags Rule requires all creditors with covered accounts to prepare an Identity Theft Prevention Program ("Program"). At the same time, the Commission staff recognizes that your risk of identity theft may be so low that, as a matter of prosecutorial discretion, Commission staff would be unlikely to recommend bringing a law enforcement action under the following circumstances:

- You know your clients individually. For example, some medical practices and law firms are familiar with everyone who walks into the office. In such circumstances, the likelihood that an identity thief can defraud a business by impersonating someone else is extremely low.
- You provide services to customers in or around their home, such as by operating a lawn care or a home cleaning business. For these types of businesses, the risk of identity theft is extremely low because identity thieves generally do not want people to know where they live.

- You are involved in a type of business where identity theft is rare. For example, if there are no reports in the news, trade press, or among people in your line of business about identity theft and your business itself has not experienced incidents of identity theft, it is unlikely that identity thieves are targeting your sector.

Of course, from time to time you need to consider whether your identity theft risk has changed, warranting a different approach with respect to the Rule.

### **What are the penalties for noncompliance?**

The FTC can seek both monetary civil penalties and injunctive relief for violations of the Red Flags Rule. Where the complaint seeks civil penalties, the U.S. Department of Justice typically files the lawsuit in federal court, on behalf of the FTC. Currently, the law sets \$3,500 as the maximum civil penalty per violation. Each instance in which the company has violated the Rule is a separate violation. Injunctive relief in cases like this often requires the parties being sued to comply with the law in the future, as well as provide reports, retain documents, and take other steps to ensure compliance with both the Rule and the court order. Failure to comply with the court order could subject the parties to further penalties and injunctive relief.

### **What if I have a question not answered in these FAQs??**

Your question may be answered in our booklet, *Fighting Fraud with the Red Flags Rule: A How-To Guide for Business*, our short articles on Red Flags compliance, or our *form* with step-by-step instructions on designing a Program for businesses and organizations at low risk for identity theft, all available at [www.ftc.gov/redflagsrule](http://www.ftc.gov/redflagsrule). Still have questions? Send them to [redflags@ftc.gov](mailto:redflags@ftc.gov).