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Are You Covered by the Red Flags Rule?

In 2007, the Federal Trade Commission (FTC) issued a set of regulations, known as the "Red Flags Rule," which require covered organizations to implement a written identity theft prevention program. The FTC has postponed enforcement since issuing the rules in November 2007. However, the compliance deadline was extended to Nov. 1, 2009.

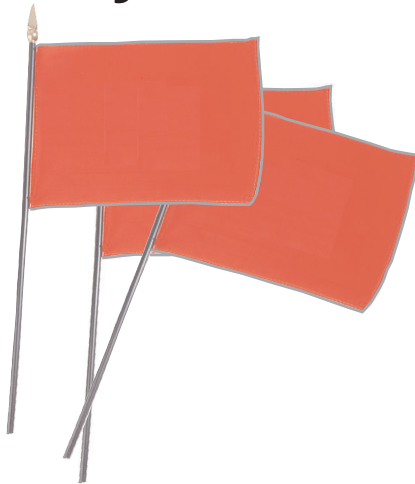
Contrary to what many believe, the Red Flags Rule doesn't apply only to financial institutions. It also applies to "creditors" — a broadly defined category that encompasses any business or organization that regularly extends, renews or continues credit.

Two-Step Process

The Red Flags Rule requires creditors, regardless of industry, to review their activities, determine whether they're required to comply with the regulations, and, if so, implement a written program to protect against identity theft by the enforcement date. Determining whether your company must comply is a two-step process:

ONE: Determine whether your company meets the definition of "financial institution" or "creditor." Financial institutions include banks, savings and loan associations, credit unions, mutual funds that offer check-writing privileges, and other institutions that permit consumers to make payments or transfers to third parties.

"Creditor" includes any organization that regularly defers payment for goods or services or provides goods or services and bills customers later. According to the FTC, examples of organizations that may be considered creditors (depending on how they collect payment) are utility companies, health care providers, and telecommunications companies.



Creditors also include those that regularly grant loans, arrange for loans or extensions of credit, or make credit decisions. This group typically includes finance companies, mortgage brokers, real estate agents, automobile dealers, retailers that offer or assist with financing, and third-party debt collectors.

TWO: If you've concluded that your company is a financial institution or creditor, determine whether you have any "covered accounts." There are two types of consumer accounts. The first type is a consumer account that is primarily for personal, family or household purposes and permits multiple payments or transactions — such as credit card accounts, mortgages, auto loans, bank accounts, utility accounts, cell phone accounts, and margin accounts.

The second type of covered account is *"any other account ... for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the financial institution or creditor from identity theft..."* Examples include small business accounts, sole proprietorship accounts, and single transaction consumer accounts.

Name Specifics

If you determine your company is subject to the Red Flags Rule, develop,

implement, and administer a written identity theft prevention program that:

- Includes reasonable policies and procedures to identify the red flags of identity theft in your business operations,
- Is designed to detect those red flags,
- Spells out appropriate actions to take when red flags are detected, and
- Establishes procedures for re-evaluating your program periodically to address new risks.

The details of your program depend on your company's size and risk profile. Companies with a relatively low risk of identity theft, for example, don't need as comprehensive a program as high-risk companies.

The specific red flags your program must identify depend on the nature of your business and its activities. Common categories of red flags include alerts from credit reporting companies, suspicious documents (such as fake IDs), suspicious personal information (such as an address that doesn't match a credit report), and unusual account activity (such as an account that's been inactive for a long time and is suddenly used again).

Capturing the Flags

If the Red Flags Rule applies to your company and you've put off complying with it, wait no longer. Develop a plan and ask your board of directors to approve it.

The employee running your company's program also needs to report at least annually to your board or senior management, who, under the rule, are responsible for its management and compliance. Failure to comply with Red Flags Rule requirements could result in a penalty of up to \$2,500 for a "knowing violation." **h**

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