B. Who's Covered By the Red Flags Rule

1. **What types of businesses and organizations are covered by the Red Flags Rule?** The Rule applies to "financial institutions" and "creditors." It's important to look closely at how the Rule defines those terms because they apply to groups that might not typically use those words to describe themselves. Whether your business or organization is a financial institution or creditor isn't based on the line of work you're in, but rather on whether your activities fall within the definitions in the law. The Red Flags Rule gives examples of businesses and organizations that probably are covered, but the list isn't exhaustive.

   The Rule defines a "financial institution" as: 1) a state or national bank, 2) a state or federal savings and loan association, 3) a mutual savings bank, 4) a state or federal credit union, or 5) any other entity that directly or indirectly holds a "transaction account" belonging to a consumer. "Transaction accounts" are deposits or accounts from which a consumer can make payments or transfers to third parties. Banks, federally chartered credit unions, and savings and loans come under the jurisdiction of the federal bank regulatory agencies or the National Credit Union Administration and should check with them for guidance. The FTC's jurisdiction extends to state chartered credit unions and other institutions that hold transaction accounts — for example, mutual funds that offer accounts with check writing or debit card privileges or other businesses that offer accounts where consumers can make payments or transfers to third parties.

   Under the Rule, the definition of "creditor" is broad, and includes businesses or organizations that regularly provide goods or services first and allow customers to pay later. Examples of groups that may fall within this definition are utilities, health care providers, lawyers, accountants, and other professionals, and telecommunications companies. The definition also covers businesses or organizations that regularly grant loans, arrange for loans or the extension of credit, or make credit decisions. Examples include finance companies, mortgage brokers, and automobile dealers or retailers that offer financing or collect or process credit applications for third party lenders. In addition, the definition includes anyone who regularly participates in the decision to extend, renew, or continue credit, including setting the terms of credit. For example, a third-party debt collector who regularly renegotiates the terms of a debt would be a creditor under the Rule.

   For more on the definitions of "financial institution" and "creditor," read *Fighting Fraud with the Red Flags Rule: A How-To Guide for Business*, at www.ftc.gov/redflagsrule.

B. Who's Covered By the Red Flags Rule (Continued)

2. **Do all creditors and financial institutions need to have a written Identity Theft Prevention Program?**
   Only creditors and financial institutions that have "covered accounts" need a Program. Once you've determined you're a creditor or financial institution under the Red Flags Rule, the next step is to figure out if you have any covered accounts. The Rule defines that term as either: 1) consumer accounts designed to permit multiple payments or transactions, or 2) any other account that presents a reasonably foreseeable risk from identity theft.

   If you have covered accounts, you must develop and implement a written Program to detect and respond to the red flags of identity theft — taking into consideration the nature of your business and the risks you face — and update your Program periodically. If you don't have any covered accounts, you don't need a written Program, but you still need to conduct periodic risk assessments to determine if you've acquired any covered accounts through changes to your business.

   For more about covered accounts, read *Fighting Fraud with the Red Flags Rule: A How-To Guide for Business*, atwww.ftc.gov/redflagsrule.

3. **Is my coverage under the Red Flags Rule based on whether I pull credit reports or collect personal information like Social Security Numbers?**
   No. Coverage under the Rule is based on whether your activities fall within the definitions of "financial institution" or "creditor." Even if you don't pull credit reports or collect personal information, you're covered by the Rule if your activities meet the definitions of "financial institution" or "creditor" — for example, deferring payment for goods or services. See Question B.1. for more on who's covered by the Rule.

4. **Am I a creditor because I accept certain forms of payment — say, checks, credit or debit cards, or automatic account debits — even if I don't extend or arrange for credit myself?**
   Merely accepting credit cards or other forms of payment doesn't make you a creditor under the Red Flags Rule. Coverage as a creditor is based on whether your activities meet the definitions in the law.

5. **Our clients pay a retainer before we provide services. Although we may send an invoice for our charges, we satisfy it by drawing on the retainer. Does this make us a creditor under the Red Flags Rule?**
   No, an arrangement like that wouldn't make your business a creditor. Many businesses require a payment before work begins. For example, a law firm may require clients to pay a retainer. Some medical practices charge patients monthly fixed fees for unlimited services. They may send their clients or patients invoices each month, but draw payment from the money they've already received. The Red Flags Rule applies to businesses that regularly defer payment until after services have been performed. Because the law firm or medical practice in this example is paid before they provide services, these arrangements aren't "credit," as the law defines that word.

B. Who's Covered By the Red Flags Rule (Continued)

6. **My law firm brings cases on a contingency basis. Does this type of fee arrangement make me a creditor under the Red Flags Rule?**
   No. Generally, under a contingency fee arrangement, a law firm will not earn its fee unless and until it wins a recovery for its client. Therefore, this arrangement is not a credit relationship, and the law firm would not be a creditor under the Red Flags Rule. If, however, the client is responsible for certain litigation expenses regardless of the outcome of the case, the firm would have to consider whether there is a deferral of payment that would meet the definition of "credit."

7. **What does it mean to "regularly" extend credit?**
   There's no bright line definition for "regularly." But if the activities that meet the definition of "creditor" are more than just an isolated occurrence for your business, the Red Flags Rule applies to you.

8. **Am I a creditor under the Rule if I extend credit to other businesses?**
   Yes, you're a creditor whether you have consumer or business customers.

9. **Do I have covered accounts if I'm a business creditor?**
   It depends. If you're a creditor with only business-to-business accounts, you have to assess whether those accounts pose a reasonably foreseeable risk from identity theft. If they do, they're "covered accounts" under the Rule.

10. **Am I a creditor if I regularly refer customers to third parties for credit?**
    It depends. A "creditor" includes any person who "regularly arranges for the extension, renewal, or continuation of credit."5For example, mortgage brokers, auto dealers, or retailers that regularly collect or process credit applications for third-party lenders are creditors under the Rule. You're not a creditor if you merely provide advertising brochures for third-party financing or tell your customers about third-party financing without referring them to lenders.

11. **I regularly arrange for the extension, renewal, or continuation of credit for my customers, so I've determined I'm a "creditor" under the Red Flags Rule. Do I need to have a written Identity Theft Prevention Program?**
    You do, if you have "covered accounts." Under the Red Flags Rule, "covered accounts" are: 1) consumer accounts that permit multiple payments or transactions, or 2) any other accounts for which there is a reasonably foreseeable risk from identity theft. For example, a retailer that can process a credit or payment transaction in the store on the customer's store-branded account without using the actual card or account number will likely have consumer accounts that permit multiple payments or transactions. Other businesses — say, a car dealer that has only a single transaction with a customer they refer for third-party financing — need to consider if they fall within the second part of the definition: an account for which there is a reasonably foreseeable risk from identity theft. Likewise, a company that refers other businesses for credit would need to consider whether there is a reasonably foreseeable risk from identity theft arising from the transaction. For more on "covered accounts," read Fighting *Fraud with the Red Flags Rule: A How-To Guide for Business,* at www.ftc.gov/redflagsrule. For more on what your Program might look like, see Question D.9.

B. Who's Covered By the Red Flags Rule (Continued)

12. **Our company offers individual retirement plans that allow participants to get loans from their own plan account. Does that make us or the plan a creditor under the Rule?**
    When participants in an individual retirement plan — say, a 401(k) plan — get loans, they're generally borrowing from their own funds. Just allowing participants to borrow from their funds would not — by itself — make the plan sponsor or the plan a "creditor" under the Rule.

13. **If our company meets the definition of a "financial institution" or "creditor," are the individual retirement accounts we make available to our employees considered "covered accounts" that must be included in our written Identity Theft Prevention Program?**
    Individual retirement accounts generally qualify as "covered accounts."6However, in certain cases — for example, 401(k) plans — the account that a participant establishes isn't with the employer or plan sponsor. Instead, the participant establishes an account with the plan itself, which is a separate legal entity. Under those circumstances, the employer would not need to include the retirement plan accounts in a written Identity Theft Prevention Program.

14. **Am I a creditor if I offer my employees health care flexible spending accounts that reimburse them for elected amounts that are more than they've contributed to date? Am I a creditor if I serve as a third-party administrator that maintains those accounts for employees of other companies?**
    No. Health care flexible spending accounts operate like insurance plans in that employers must make the entire amount elected by participants available to them from the beginning of the plan year. If they leave your company before the end of the plan year, they aren't required to make up any difference between the amount they contributed and the benefits they received. As a result, neither offering your employees health care flexible spending accounts nor maintaining those accounts for other companies makes your business a "creditor" under the Rule.

15. **Are we a "financial institution" under the Red Flags Rule if we have accounts for our clients and offer a way for them to make payments or transfers to third parties with a debit card, check, or wire transfer?**
    Yes. The definition of "financial institution" includes businesses that have accounts a customer can use to make payments or transfers to third parties. For example, a university may hold student funds in an account and give students a card they can use to make purchases at local stores. This type of arrangement would make the university a financial institution under the Rule. If you provide government benefits or administer flexible spending accounts and give your customers a debit card to access benefits, you would be considered a financial institution.