

E. Red Flags Rule Compliance and Enforcement

1. 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,⁹ but consumers can file a complaint with the FTC about a company's Program. The FTC uses complaints filed at www.ftc.gov to target its law enforcement efforts.

2. 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.

3. 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.

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4. 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.

5. 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.