

**The Federal Identity Theft “Red Flags” Rule:  
Basic Steps to Compliance and  
Resources for Local Health Directors and their Attorneys**

Jill Moore  
UNC School of Government  
April 2009

---

Note: Terms in italics have regulatory definitions  
that are reprinted at the end of this document.

**Basic Steps to Compliance**<sup>\*</sup>

1. Determine whether the local health department (LHD) is a *creditor* that must comply with the Red Flags Rule.
  - a. If the LHD is not a creditor, stop. The department is not required to comply with the rule.
  - b. If the LHD is a creditor, proceed with the following steps.
2. Identify which LHD accounts are *covered accounts* to which the identity theft prevention program (next step) will apply.
3. Develop a written identity theft prevention (ITP) program. Include policies and procedures that:
  - a. Identify *red flags*. In carrying out this step, the LHD must consider Appendix A to the Red Flags Rule, which provides guidelines for determining the patterns, practices or specific activities that should be considered red flags. The resource list on page 2 of this document explains how to find the rule and Appendix A on the Internet.
  - b. Detect red flags when they occur.
  - c. Respond appropriately to any red flags that are detected, so that identity theft may be prevented or mitigated. The rule’s Appendix A includes examples of responses that may be appropriate, depending on the circumstances. In determining which responses are appropriate for a LHD, it is important to take into account the department’s duty to comply with other laws, such as medical confidentiality laws, as well as the department’s overall role in protecting public health and providing essential public health services.
  - d. Ensure that the ITP program is updated periodically to reflect changes in risks to clients and to the safety and soundness of the department.
4. Obtain approval of the initial written ITP program. The rule requires approval by the *board of directors*, or if there is no board of directors, an employee at the level of senior management. The term “board of directors” is not well-defined, so it is unclear from the language of the rule itself whether health departments must obtain approval from the board of health or whether the local health director’s approval is sufficient.
5. Train staff to implement the ITP program.
6. Provide for ongoing oversight, implementation, and administration of the ITP program.

---

<sup>\*</sup> This is a short summary of the steps to be taken by a LHD that is covered by this rule. It is not a comprehensive treatment of the obligations the rule imposes. For more detailed information about the rule, consult the resources listed on page 2 of this document.

## Resources

- The Red Flags Rule
  - The rule was published in the Federal Register on November 9, 2007 (*Identity Theft Red Flags and Address Discrepancies Under the Fair and Accurate Credit Transactions Act of 2003*, 72 Fed. Reg. 63718). The Federal Register document includes agency commentary and Appendix A, and is available on the Internet at <http://www.ftc.gov/os/fedreg/2007/november/071109redflags.pdf>.
  - The rule has also been published in the Code of Federal Regulations (16 C.F.R. Part 681). The CFR includes the complete rule and Appendix A, but does not have the agency commentary. It is available on the Internet at [http://www.access.gpo.gov/nara/cfr/waisidx\\_09/16cfr681\\_09.html](http://www.access.gpo.gov/nara/cfr/waisidx_09/16cfr681_09.html).
- FTC website: [www.ftc.gov/redflagsrule](http://www.ftc.gov/redflagsrule). Information on this site that is of particular interest to health care providers includes:
  - *The “Red Flags” Rule: What Health Care Providers Need to Know About Complying with New Requirements for Fighting Identity Theft*, by Tiffany George and Pavneet Singh.
  - Letter from Bureau of Consumer Protection Concerning Applicability of the Red Flags Rule to Health Care Providers (Feb. 4, 2009).
- SOG Health Law Bulletin No. 89, *The Federal Identity Theft “Red Flag” Rules and North Carolina Local Health Departments*, available at <http://www.sog.unc.edu/pubs/electronicversions/pdfs/hlb89.pdf>.

## Definitions of Terms (16 C.F.R. 681.2(b))

The term **board of directors** includes: (i) in the case of a branch or agency of a foreign bank, the managing official in charge of the branch or agency; and (ii) in the case of any other creditor that does not have a board of directors, a designated employee at the level of senior management.

**Covered account** means: (i) an account that a financial institution or creditor offers or maintains, primarily for personal, family, or household purposes, that involves or is designed to permit multiple payments or transactions, such as a credit card account, mortgage loan, automobile loan, margin account, cell phone account, utility account, checking account, or savings account; and (ii) any other account that the financial institution or creditor offers or maintains 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, including financial, operational, compliance, reputation, or litigation risks.

**Account** means a continuing relationship established by a person with a financial institution or creditor to obtain a product or service for personal, family, household or business purposes. Account includes: (i) An extension of credit, such as the purchase of property or services involving a deferred payment; and (ii) A deposit account.

**Creditor** means any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit. [Note: This definition appears in 15 U.S.C. 1691a(e). The Red Flags Rule incorporates by reference the definition of “creditor” in 15 U.S.C. 1681a(r)(5), which in turn incorporates this definition.]

**Credit** means the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor. *[Note: This definition appears in 15 U.S.C. 1691a(d). The Red Flags Rule incorporates by reference the definition of “credit” in 15 U.S.C. 1681a(r)(5), which incorporates this definition.]*

**Red Flag** means a pattern, practice, or specific activity that indicates the possible existence of identity theft.

**Identity theft** means a fraud committed or attempted using the identifying information of another person without authority. The term “identifying information” means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any –

(1) Name, social security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number;

(2) Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;

(3) Unique electronic identification number, address, or routing code; or

(4) Telecommunication identifying information or access device (as defined in 18 U.S.C. 1029(e)). *[Note: This definition appears in 16 C.F.R. 603.2(a), which is incorporated by reference into the Red Flags Rule.]*