



**PROFESSIONAL
INSURANCE
AGENTS**

25 CHAMBERLAIN ST.
P. O. BOX 997
GLENMONT, NY 12077-0997
(800) 424-4244
FAX: (888) 225-6935
WEB: www.pia.org
E-MAIL: pia@pia.org

Red Flag Rules postponed, PIA offers guidance

The Federal Trade Commission agreed to postpone enforcement of its Red Flag Rules that requires specific entities to develop written identity-theft prevention programs. While these rules do not affect insurance professionals specifically, it is important to note that an organization doing business as a “creditor” or a business that has “covered accounts,” would be required to comply with the rules.

PIA answers commonly asked questions below.

What are Red Flag Rules?

They are a group of federal regulations flowing from the Fair and Accurate Credit Transactions Act of 2003. The Red Flag Rules are not a sweeping, all-inclusive “privacy” initiative, as they have been mischaracterized occasionally.

Do I have to comply?

Businesses that are deemed “covered entities” must comply with these requirements; covered entities are those that maintain “covered accounts” or are considered “creditors.” PIA’s analysis indicates that most insurance agents and brokers will not need to comply with these regulations. However, there are a few instances where an insurance agent or broker’s business practices may require them to comply. In particular, involvement with premium financing; advancing premium dollars on behalf of an insured; and regularly arranging for the extension of credit may require the agent or broker to comply with Red Flag Rules. It is important to note, acceptance of credit cards for premium payment does not require an agent or broker to comply with the Red Flag Rules.

Do I have to comply right now?

No. June 1, 2010, marked the most recent date that the rules were set to take effect. However, action by Congress has delayed enforcement yet again, until Dec. 31, 2010. The rules were initially set to take effect on Nov. 1, 2008, but have been delayed multiple times since then. Prior to and since November 2008, multiple stakeholder groups have challenged the FTC regarding the scope and application of the rules. The American Bar Association, the American Medical Association and the American Institute of CPAs, among others, have filed suit against the FTC seeking relief from the application of the rules to the business practices of these professions. In December 2009, the Washington, D.C. District Court held for the ABA and **stated** that, in essence, the Red Flag Rules do not extend to attorneys. The remaining pending lawsuits are yet to be decided.

How do I determine if I have to comply?

Only businesses that engage in specific types of activity or business practices need to comply with the requirements of the Red Flag Rules. Businesses that maintain covered accounts or act as creditors are those that will need to create a written identity-theft prevention program to detect, prevent and mitigate identity theft. These business activities are analyzed below.

Covered Accounts:

Covered accounts can be understood as accounts 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. Covered accounts also are defined as “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.” Although this second definition is very broad, through legal analysis of the regulation and conversations with the FTC, PIA determined that premium trust accounts and other accounts typically utilized by insurance agents and brokers are not among those contemplated.

Creditors:

A creditor, for purposes of these regulations is one who regularly extends, renews or continues credit or any entity that regularly arranges for the extension, renewal or continuation of credit. The ABA court case cited language describing creditors subject to the regulations as including “lenders such as banks, finance companies, automobile dealers, mortgage brokers, utility companies and telecommunications companies.” FTC guidance also identified a creditor accordingly: “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” Legal research by PIA counsel staff, as well as conversations with FTC indicated that insurance agents and brokers, merely by collecting and remitting premium, (in any fashion, including by credit card) or maintaining premium trust accounts that may or may not be “swept” by an insurer are *not* engaging in the business activities that make one a creditor for purposes of this act.

Are you regularly extending or arranging for the extension of credit?

An agency or brokerage that owns or has an in-house premium-financing program or enterprise would be seen as engaging in the regular extension of credit and would have to comply with the written identity theft prevention program requirements of the regulation. An agency that regularly extends premium dollars on behalf of a client also would be seen as a creditor. One also can be considered a creditor by regularly *arranging* for the extension of credit. To clarify this grey area, PIA counsel staff engaged the FTC in conversation seeking to understand how this language would be applied in the context of insurance agents and brokers. Discussing premium finance in general, directing a client to seek out a premium-finance lender or recommending that a client seek premium financing, by itself, would not be considered for the extension of credit. Actively assisting a client such as submitting completed credit applications on their behalf, or acting in such a manner that you could be seen as acting as an agent of a premium-finance lender would place an agent or broker within the FTC’s understanding of arranging for the extension of credit. It must be noted that this explanation was for clarification purposes and is not binding on the FTC or law by itself.

What if I need to develop a written identity-theft prevention program?

The FTC has stated that the program to be developed and implemented should be appropriate to the size and complexity of the business, as well as the nature of their operations. As different, individual businesses agencies operate in different and individual ways, it is impossible to offer a one-size-fits-all model. However, the FTC as well as federal banking agencies, and the NCUA have developed guidance such as that located [here](#). If you believe that your business practices require you to comply with the Red Flag Rules, the FTC has made available a number of interactive [tools](#) to assist businesses in understanding these requirements in greater depth and has an interactive site which will allow low-risk business to [develop](#) a Do-It-Yourself template.

PIA also created a QuickSource document [QS90558](#) on these rules.