



Federal Trade Commission Red Flags Rule: Enforcement Delayed Until June 1, 2010

The Federal Trade Commission (FTC) announced on October 30, 2009 that, at the request of Members of Congress, it would further delay enforcement of the Red Flags Rule from November 1, 2009 to June 1, 2010. The purpose of the Red Flags Rule is to assist in preventing identity theft by requiring creditors and financial institutions with covered accounts to implement programs to identify, detect and respond to "red flags" that might indicate the occurrence of identity theft. "Creditors" include entities that regularly extend or renew credit, or regularly arrange for others to extend or renew credit, including all entities that regularly permit deferred payments for goods and services. The FTC has determined that health care providers, including, but not limited to, hospitals and physicians, are considered "creditors" for purposes of the Red Flags Rule.

Several industry groups have expressed concern regarding the broad application of the Red Flags Rule, asserting that it was not Congress' intent that the Red Flags Rule apply to several of the entities currently covered by the Rule as "creditors." On October 20, 2009, the United State House of Representatives approved legislation that would exclude certain small businesses, including health care providers with 20 or fewer employees, from the Red Flags Rule's application. Additionally, the House legislation allows any business to apply for an exemption from the Red Flags Rule if the FTC determines that the business knows all of its customers or clients individually, only performs services in or around the residences of its customers, or has not experienced incidents of identity theft and is part of an industry that rarely experiences the problem.

The United States Senate is currently considering this legislation.

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Phelps Dunbar's Health Care Industry Team represents hospitals, physicians, managed care organizations and other health care providers throughout the Southeast. Our attorneys serve health care clientele in a wide range of practice areas, including health care regulatory law, tax, business/transactions, labor and employment, employee benefits, antitrust, intellectual property, financing, securities and commercial litigation.

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