

HEALTH LAW ALERT

TO: Clients and Friends
FROM: Burr & Forman Health Care Practice Group
DATE: November 2009
RE: Delay of FTC Enforcement of the Red Flags Rule

On October 30, 2009, the Federal Trade Commission ("FTC") announced a delay of the enforcement of the Red Flags Rule until June 1, 2010. This enforcement delay comes at the request of members of Congress and following a ruling by the U.S. District Court for the District of Columbia that the Red Flags Rule does not apply to attorneys.

The Red Flags Rule applies to "creditors" (*i.e.*, any entity that provides a good or service for which it receives payment at a later time) who offer or maintain "covered accounts" (*i.e.*, accounts maintained primarily for personal, family or household purposes that include or are designed to permit multiple payments or transactions or for which there is a reasonably foreseeable risk of identity theft). Creditors may include health care providers who provide medical services to patients and who defer payment for such services. Entities covered by the Red Flags Rule must adopt a written identity theft prevention program to respond to patterns, practices or specific activities of identity theft.

The FTC has established a website offering resources to entities attempting to determine if they are covered by the rule, and, if so, how they can comply with the Red Flags Rule. The FTC website is available at www.ftc.gov/redflagsrule.

Attached you will find a press release from the FTC announcing the enforcement delay.

In the event that you have any questions about the Red Flags Rule and/or your health care practice in general, please feel free to contact any of the following attorneys in our Health Care Practice Group.

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No representation is made about the quality of the legal services to be performed or the expertise of the lawyer performing such services.

THIS IS AN ADVERTISEMENT. FREE BACKGROUND INFORMATION AVAILABLE UPON REQUEST.

Attachment



Federal Trade Commission Protecting America's Consumers

For Release: 10/30/2009

FTC Extends Enforcement Deadline for Identity Theft Red Flags Rule

At the request of Members of Congress, the Federal Trade Commission is delaying enforcement of the "Red Flags" Rule until June 1, 2010, for financial institutions and creditors subject to enforcement by the FTC.

The Rule was promulgated under the Fair and Accurate Credit Transactions Act, in which Congress directed the Commission and other agencies to develop regulations requiring "creditors" and "financial institutions" to address the risk of identity theft. The resulting Red Flags Rule requires all such entities that have "covered accounts" to develop and implement written identity theft prevention programs to help identify, detect, and respond to patterns, practices, or specific activities – known as "red flags" – that could indicate identity theft.

The Commission previously delayed the enforcement of the Rule for entities under its jurisdiction until November 1, 2009. The Commission staff has continued to provide guidance to entities within its jurisdiction, both through materials posted on the dedicated Red Flags Rule Web site (www.ftc.gov/redflagsrule), and in speeches and participation in seminars, conferences and other training events to numerous groups. The Commission also published a compliance guide for business, and created a template that enables low risk entities to create an identity theft program with an easy-to-use online form. FTC staff has published numerous general and industry-specific articles, released a video explaining the Rule, and continues to respond to inquiries from the public. To assist further with compliance, FTC staff has worked with a number of trade associations that have chosen to develop model policies or specialized guidance for their members.

On October 30, 2009, the U.S. District Court for the District of Columbia ruled that the FTC may not apply the Red Flags Rule to attorneys. Today's announcement that the Commission will delay enforcement of the Rule until June 1, 2010, does not affect the separate timeline of that proceeding and any possible appeals. Nor does it affect other federal agencies' ongoing enforcement for financial institutions and creditors subject to their oversight.

The Federal Trade Commission works for consumers to prevent fraudulent, deceptive, and unfair business practices and to provide information to help spot, stop, and avoid them. To file a complaint in English or Spanish, visit the FTC's online Complaint Assistant or call 1-877-FTC-HELP (1-877-382-4357). The FTC enters complaints into Consumer Sentinel, a secure, online database available to more than 1,700 civil and criminal law enforcement agencies in the U.S. and abroad. The FTC's Web site provides free information on a variety of consumer topics.

MEDIA CONTACT:

Office of Public Affairs
202-326-2180

(Red Flags October 09)

E-mail this News Release

If you send this link to someone else, the FTC will not collect any personal information about you or the recipient.

Related Items:

Federal Trade Commission Extended Enforcement Policy: Identity Theft Red Flags Rule, 16 C.F.R. Part 681.1: Extension of Deferral of Enforcement Until June 1, 2010

- [Frequently Asked Questions](#)

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