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Health Law Alert



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FTC Extends Enforcement Deadline for Red Flags Rule...Again

On May 28, 2010, the Federal Trade Commission (FTC) announced that, at the request of several members of Congress, it is further delaying enforcement of the so-called "Red Flags" Rule through December 31, 2010. The FTC expects Congress to consider legislation that would affect the scope of entities covered by the rule. Enforcement of the rule was to have begun on June 1, 2010.

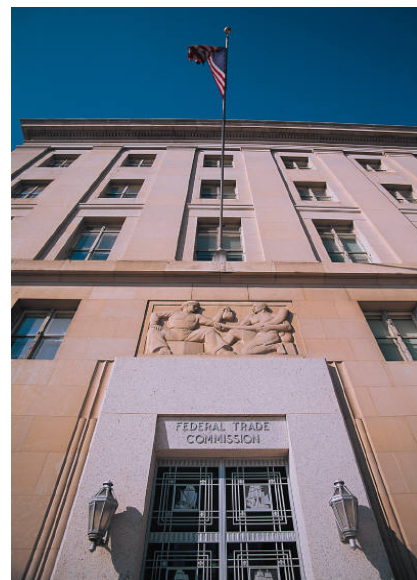
Readers will recall that the Red Flags Rule was developed under the Fair and Accurate Credit Transactions Act (FACTA), in which Congress directed the FTC and other agencies to develop regulations requiring "creditors" and "financial institutions" to address the risk of identity theft. The resulting Red 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 rule became effective on January 1, 2008, with full compliance for all covered entities originally required by November 1, 2008. The FTC has now delayed enforcement of the Rule five separate times. Most recently, the FTC announced in October 2009 that at the request of certain members of Congress it was delaying enforcement of the rule until June 1, 2010, to allow Congress time to finalize legislation that would limit the scope of the businesses covered by the rule.

The FTC, in its announcement, notes that if Congress passes legislation limiting the scope of the Red Flags Rule with an effective date earlier than December 31, 2010, the FTC will begin enforcement as of that earlier effective date.

The delay in enforcement comes on the heels of the filing of lawsuits in federal court in Washington, D.C. last week by the American Medical Association, the American Osteopathic Association, and the Medical Society of the District of Columbia. Those lawsuits seek to prevent the FTC from defining physicians as creditors when they do not require full payment at the time they provide medical care and thus exempt them from complying with the Red Flags Rule.

The American Bar Association has already been successful in exempting attorneys from complying with the rule.



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