



Tanner & Guin, LLC
COUNSELORS AT LAW

Capitol Park Center
2711 University Boulevard
Tuscaloosa, Alabama 35401
(205) 633-0200

418 Lorna Square Office Complex
Birmingham, Alabama 35216
(205) 832-1990

632 Gulf Shores Parkway, Suite 208
Gulf Shores, Alabama 36542
(251) 968-0200

Health Law Practice Group

Blake A. Madison
(205) 633-0246
Email: bmadison@tannerguin.com

J. Marland Hayes
(205) 633-0209
Email: mhayes@tannerguin.com

Brooke M. Nixon
(205) 633-0236
Email: bnixon@tannerguin.com

Hannah B. Lansdon
(205) 633-0279
Email: hlansdon@tannerguin.com

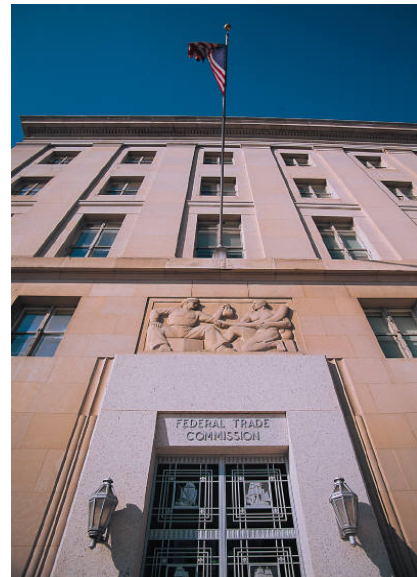
Red Flags Rule Delayed Once Again

On Friday, October 30, 2009, just two days before the most recent enforcement date deadline, the Federal Trade Commission (FTC) announced that it is further delaying enforcement of its Red Flags Rule until June 1, 2010. The FTC, in a news release, stated that it was doing so “[a]t the request of Members of Congress.” The Red Flags Rule was to have gone into effect on November 1, 2009. This is the fourth delay in enforcement of the Rule.

Readers will recall that the Red Flags Rule was promulgated under the Fair and Accurate Credit Transactions Act (FACTA), “in which Congress directed the Commission and other agencies to develop regulations requiring ‘creditors’ and ‘financial institutions’ to address the risk of identity theft.”¹

Not coincidentally, on October 20, the U.S. House of Representative passed a bill that would exempt attorneys in small firms and other professionals from the FTC’s Red Flags Rule. In addition, on October 29, 2009, a judge in the U.S. District Court for the District of Columbia ruled from the bench that the Red Flags Rule does not apply to lawyers, a position the American Bar Association (ABA) fought hard for over recent months once it became clear that the FTC intended to interpret the requirements of FACTA broadly and apply the Red Flags Rule to attorneys, as well as other professionals and businesses not normally considered “creditors.” The judge issued a written order to that effect on October 30, 2009.

According to the ABA’s website, the legislation currently pending before Congress “excludes from the meaning of ‘creditor’ any health care practice, accounting practice, or legal practice with 20 or fewer employees.” The bill also allows other businesses to apply for an exemption, provided they meet certain criteria, including that the business: “(1) knows all its customers or clients individually; (2) only performs services in or around the residences of its customers; or (3) has not experienced incidents of identity theft, and identity theft is rare for businesses of that type.” The bill is currently before the U.S. Senate Committee on Banking, Housing and Urban Affairs, where it appears to have stalled at this time. If you have any questions concerning the Red Flags Rule, please contact Blake A. Madison.



¹ FTC Press Release October 30, 2009.

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