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Consumer Law

Federal Court Rules That Red Flags Rule Does Not Cover Lawyers and FTC Extends Red Flags Deadline Until June 1, 2010

On October 29, 2009, the U.S. District Court for the District of Columbia ruled in favor of the American Bar Association on its lawsuit challenging the applicability of the Red Flags Rule to the legal profession. The court granted the ABA's request for an injunction and issued a declaratory judgment finding that lawyers were not covered by the Rule.

In its complaint, the ABA stated that applying the Rule to lawyers is "arbitrary, capricious and contrary to law," and that the FTC had failed to "articulate, among other things: a rational connection between the practice of law and identity theft; an explanation of how the manner in which lawyers bill their clients can be considered an extension of credit under the [Fair and Accurate Credit Transaction Act]; or any legally supportable basis for application of the Red Flag Rule to lawyers engaged in the practice of law." It is unclear whether the FTC will appeal this ruling.

The FTC's original enforcement policy issued in October 2008 and subsequent updates did not state explicitly that lawyers fell within the Rule's definition of "creditor." After delaying the Rule's implementation in April 2009, the FTC publicly announced its position that lawyers were subject to the Rule. The FTC included lawyers, doctors and many other professionals in its definition of "creditors" because they bill customers only after providing services.

In addition, on October 30, 2009, the FTC has, at the request of Congress, extended enforcement of the Red Flags Rule until June 1, 2010, for financial institutions and creditors subject to enforcement by the FTC.

This is one in a [series of advisories](#) regarding the "Red Flags Rule." If you have questions related to this topic, please contact David N. Anthony or Paige S. Fitzgerald. Troutman Sanders LLP offers a full array of services to help bring companies into compliance with the Red Flags Rule.

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