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Consumer Law

House Unanimously Passes Red Flags Rule Exclusion for Small Firms

The U.S. House of Representatives passed a bill on October 20, 2009, that offers exclusions for certain small businesses from the requirements of the Red Flags Rule. House Bill 3763 provides exclusions for small health care practices, accounting practices, and legal practices, as long as the practices have 20 or fewer employees. The bill also includes an exclusion for “any other business” if the business files an application with the FTC for an exclusion, and the FTC approves the application. The application must assert 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 identity theft is rare for businesses of that type.” The House approved the bill by a vote of 400-0, and the bill is now being sent to the Senate for consideration.

House Bill 3763 appears to be, in part, a reaction to a lawsuit filed by the American Bar Association and informal protests submitted by the American Medical Association challenging the application of the Rule to the legal and medical professions. The ABA has stated that the bill is an “incomplete” solution, so the version in the Senate may expand the exclusions in the House bill.

This is one in a series of advisories regarding the “Red Flags Rule.” If you have questions or would like copies of previous advisories 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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