

RED FLAGS RULE UPDATE

## The Exemption of Service Providers

by Rebecca Brommel



On December 18, 2010, President Obama signed legislation intended to exempt lawyers, health care providers, accountants and other service providers from having to comply with the Red Flags Rule. For those still covered by the Rule, the Federal Trade Commission began enforcement of the Rule on January 1, 2011.

The Red Flags Rule, which is aimed at detecting and combating identity theft, originally contained a broad definition of the term “creditors.” This broad definition swept service professionals under the requirements of the Rule, even though these professionals generally do not offer or maintain accounts that pose a reasonable risk of identity theft.

The “Red Flag Program Clarification Act of 2010” or Public Law 111-319 contains a more narrow definition of the term “creditor.” Upon the signing of the Red Flag Program Clarification Act, creditors are defined as organizations that, in their regular course of business, do one or more of the following: (1) utilize consumer reports in connection with a credit transaction; (2) furnish information to consumer reporting agencies in connection with a credit transaction; or (3) advance funds to or on behalf of a person, where the person has an obligation to repay, or the funds are repayable from specific property pledged. If you do not fit into one of these categories, you no longer need to develop a Red Flags Rule compliance program.

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