

This afternoon, the U.S. House of Representatives passed S. 3987, the Red Flag Program Clarification Act of 2010. This legislation, which passed the Senate on November 30, was originally introduced by Senators John Thune (R-SD) and Mark Begich (D-AK) to limit the type of “creditor” that must comply with the Red Flags Rule.

The Red Flags Rule requires creditors to develop identity theft prevention and detection programs, and was originally scheduled to take effect on November 1, 2008. According to the Federal Trade Commission (FTC), physicians who do not accept payment from their patients at the time of service are creditors and so must comply with the Rule by developing and implementing written identity theft prevention and detection programs in their practices. As a result of continued discussions with FTC’s Chairman Jon Leibowitz and an aggressive congressional advocacy campaign, AMA efforts prompted the agency to delay the November 1, 2008 compliance deadline on several occasions, up through the end of 2010.

S. 3987 defines creditors as those who regularly and in the ordinary course of business: (1) obtain or use consumer reports, directly or indirectly, in connection with a credit transaction; (2) furnish information to certain consumer reporting agencies in connection with a credit transaction; or (3) advance funds to or on behalf of a person, based on the person's obligation to repay the funds or on repayment from specific property pledged by them or on their behalf. The legislation explicitly excludes those who advance funds on behalf of a person for expenses incidental to a service that is provided. Under this definition, the bill’s sponsors have stated that physicians, dentists, and other professionals would not generally meet the definition of a “creditor,” and so they are exempt them from the rule’s requirements. However, the bill does leave open the possibility that the FTC may revisit the issue in the future through the rulemaking process.

The legislation will now be sent to the White House where President Obama is expected to sign it into law before the January 1, 2011, compliance deadline.

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