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Red Flags Rule Clarification Passed Certain Entities Exempted From Compliance

In December 2010, Congress passed a bill clarifying the Identity Theft Red Flags Rule developed by the FTC under the 2003 Fair and Accurate Credit Transactions Act. The Red Flag Rule requires certain types of businesses and organizations to have a written Identity Theft Prevention Program for the purpose of detecting warning signs of potential identity theft in their day-to-day operations.

The bill modifies the definition of a “creditor” under the Fair Credit Reporting Act, by limiting it to only those entities that regularly and in the ordinary course of business (i) obtain or use consumer reports in connection with a credit transaction; (ii) furnish information to consumer reporting agencies in connection with a credit transaction; or (iii) advance funds to or on behalf of a person, based on an obligation of the person to repay the funds. The effect of this clarification is to make it almost certain that law firms, health care practices, retailers, and other small businesses will be excluded from complying with the Red Flags Rule. FTC Chairman Jon Leibowitz said in a [December 8th public statement](#) that he was pleased with the new clarification because it would make it easier for the FTC to focus on protecting consumers from real identity theft threats.

Creditors and Financial Institutions that are still covered under the Rule face the compliance date of January 1, 2011.

For further discussion of the Red Flags Rule and what to do if the Rule still applies to your business, please see [Michael Weiner's](#) previous article on it.

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