



Client Alert

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Healthcare Professionals Seek Ruling for Exemption from FTC Red Flags Rule

The American Osteopathic Association, American Medical Association, American Dental Association and American Veterinary Medical Association petitioned the Federal Trade Commission (FTC) for a ruling that the FTC's Red Flags Rule (the Rule) cannot be applied to healthcare professionals. The request is based on the United States District Court decision in *American Bar Association v. FTC*, in which the court held that the Rule did not apply to lawyers. The healthcare organizations argued that the reasoning behind the Court's ruling regarding lawyers is equally applicable to healthcare professionals.

The Rule, which has a compliance date of June 1, 2010, requires businesses to take specific steps to minimize identity theft, including the implementation of new policies and procedures and data security measures. The healthcare organizations argued that Congress did not intend for healthcare professionals to be subjected to such requirements.

As a procedural matter, the healthcare organizations requested that the Rule not be applied to healthcare professionals until the final resolution of the *American Bar Association V. FTC* litigation. Thus, if the FTC appeals the decision and it is eventually reversed, the healthcare professionals accept that they may be made subject to the Rule along with attorneys. However, if the Court's decision stands, the healthcare organizations asked for a commitment that the FTC would not apply the Rule to healthcare professionals. Regardless of the outcome of the litigation, however, the healthcare organizations requested that the Rule not be applied to healthcare professionals until at least 90 days after the final resolution of that litigation.

The full text of the letter, which was submitted to the FTC on January 29, 2010, is available [here](#)¹ on the American Medical Association's web site. We will continue to monitor this development so that healthcare professionals may plan their Red Flags Rule compliance efforts accordingly.

¹ <http://www.ama-assn.org/ama1/pub/upload/mm/399/ftc-letter-red-flags.pdf>

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