

CLIENT ADVISORY

**Federal Trade Commission Announces
Delay in Enforcement of Red Flag Rules**

On November 9, 2007, the Federal Trade Commission¹ (“FTC”) promulgated the Identity Theft Red Flag regulations² (“Red Flag Rules”) pursuant to its authority under the Fair and Accurate Credit Transactions Act of 2003 (“FACTA”). Under the Red Flag Rules, creditors that are subject to FTC enforcement under FACTA with “covered accounts” must implement programs that identify, detect and respond to practices that could indicate identity theft. The final Red Flag Rules became effective on January 1, 2008, requiring full compliance by November 1, 2008. However, due to confusion reported by entities which were unclear of whether they fell within the coverage of the rule, the FTC has extended the compliance deadline to May 1, 2009. This six (6) month extension for enforcement does not apply to the regulations pertaining to users of consumer reports³ or regulations regarding changes of address applicable to card issuers⁴ which became effective November 1, 2008.

The Red Flag Rules define a “creditor” as any entity that regularly extends, renews, or continues credit; any entity that regularly arranges for the extension, renewal, or continuation of credit; and an assignee of an original creditor who is involved in the decision to extend, renew, or continue credit. The Rules go on to define a “covered account” as (a) an account...primarily for personal, family, or household purposes, that involves or is designed to permit multiple payments or transactions; or any other account...for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the...creditor from identity theft. Health care providers likely fall within this category because they meet the definition of a creditor; are subject to enforcement by the FTC under FACTA; and have covered accounts. Therefore, within the next six (6) months, providers will need to review their existing identity theft prevention programs and make any necessary changes or additions to ensure compliance with the Red Flag Rules.

For more information on the requirements of the Red Flag Rules, please see The Rogers Law Firm’s October 2008 Client Newsletter at <http://therogerslawfirm.com/pages/newsletters.html>. If you should have any questions or concerns about these regulations, please do not hesitate to contact any of the attorneys at The Rogers Law Firm at 617-723-1100.

This Client Advisory is published by The Rogers Law Firm to keep its clients informed of developments in health law. The Client Advisory should not be construed or relied upon as legal advice or legal opinion on any specific facts or circumstances. If you have any questions or concerns regarding the Client Advisory or would like legal advice or legal opinion concerning a specific matter, please do not hesitate to contact any of the attorneys at The Rogers Law Firm at 617-723-1100.

¹ A joint notice was published by the Federal Trade Commission, the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration.

² 16 C.F.R. § 681.2.

³ 16 C.F.R. § 681.1.

⁴ 16 C.F.R. § 681.3.