

# Whatever happened to the Red Flags Rule?



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# Surprise! You've been regulated



# Nov 2007- Nov 2010

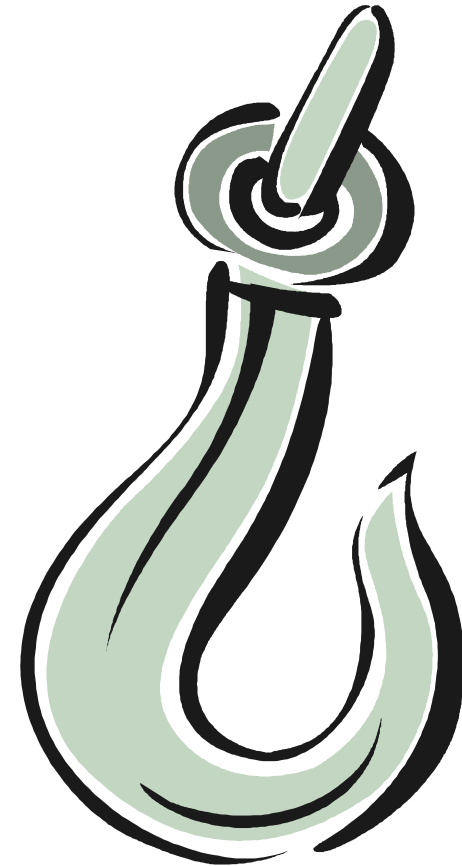
- Looked like the red flags rule would apply to most (maybe all) health departments
- Identity theft prevention program template developed by local health directors in conjunction with DPH, distributed at 2009 legal conference
- Enforcement delayed ... and delayed again ... and again ...

# December 2010

- Red Flag Program Clarification Act – no longer a creditor *unless*:
  - Obtain or use credit reports in connection with credit transactions
  - Furnish information to consumer reporting agencies
  - Advance funds to a person that the person is obliged to repay – *unless* the funds are for expenses incidental to service provision

# Off the hook?

- New definition of creditor not entirely clear
- Provision allowed FTC to make new rules that could extend to HCPs & others
- Thought FTC might issue guidance (but it hasn't yet)



# ABA v. FTC

- Federal district court enjoined FTC from enforcing rules against attorneys
- FTC appealed
- Appeals court said, Clarification Act has made this a moot issue, case dismissed



# What I think now (April 2011)

- FTC not going to enforce rules as presently written against lawyers.
- Not likely to enforce against health care providers either.
  - AMA believes this so firmly it's dropped its lawsuit against the FTC.
- FTC still could reach lawyers, HCPs, etc. in future rule-making ... cross that bridge if and when you come to it.



Questions or  
comments?