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CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES

April 28, 2009

The Honorable Jon Leibowitz
Chairman
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chairman Leibowitz:

As Members of the Congressional Doctors Caucus, we are writing to express our concern with the inclusion of physicians and dentists in the Federal Trade Commission's Red Flags Rule as part of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act).

On November 9, 2007, the FTC issued a final rule implementing those sections of the FACT Act which require financial institutions and creditors to develop and implement a written identity theft program (Red Flags Program). Neither the FACT Act nor the final rule issued by the FTC specifically mention health care professionals as creditors. However, in letters to the American Dental Association (ADA) and the American Medical Association (AMA), the Commission stated that health professionals are considered creditors for the purpose of the final rule and are thus required to implement a Red Flags program.

We believe this interpretation of Red Flags rule goes beyond the intent of Congress and has failed to consider the financial burden this decision will have on dental and medical practices and those of other health care providers across the country. The ADA's conservative estimate, for example, is that it will cost at least \$600 per dental office to implement the program.

We also believe this decision is contrary to the Regulatory Flexibility Act which responds to concerns that Federal regulations may have a disproportionate impact on small business, which includes the vast majority of health care practices. The final rule makes no mention of any attempt to determine the impact on health care practices nor was there any solicitation of impact by the FTC prior to their determination that health care professionals must comply with the Red Flags rule. In fact, the FTC did not notify health professionals that the rule applied to them until September, 2008, nearly one year after the Final Rule was issued and only a month or two prior to the originally planned enforcement date. Because of the concerns expressed by the ADA, AMA and others, the FTC did delay the enforcement date to May 1, 2009; however, concerns expressed by those organizations on the impact of this decision have largely been ignored.

Finally, in your letter to the ADA, you state that "if, in fact, a dentist does not bill clients...or does not defer payment for services, then credit is not being extended and therefore the Red Flags Rule will not apply." Accordingly, many medical and dental offices are considered "creditors" simply because of the fact that they are willing to work with patients on developing flexible payment plans for those patients that can't afford to pay at the time of service. Thus, this rule seems to actually

discourage such efforts to improve access to care for people who can't afford to pay, which is exactly contrary to all of Congress's current efforts to reform our health care system.

We urge the FTC to delay enforcement of the act for health care professionals until November 1, 2009 and to issue a new final rule with the required RegFlex analysis to determine the financial and other administrative impact of this decision on these health care professionals.

We appreciate your consideration of this request and look forward to your response.

Sincerely,

Lik Supt

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Ron Paul

John Linden

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