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Contact: William Roberts
202-434-9266
wroberts@aicpa.org

The AICPA Files Lawsuit Challenging Application of Federal Trade Commission's "Red Flags Rule" to CPAs

WASHINGTON (Nov. 11, 2009) – The American Institute of Certified Public Accountants filed a lawsuit in the U.S. District Court for the District of Columbia seeking an injunction barring the Federal Trade Commission from applying its so called Red Flags Rule, which would impose onerous and unnecessary requirements on AICPA members.

The FTC's Red Flags Rule was designed to help prevent identity theft and was promulgated under the Fair and Accurate Credit Transactions Act of 2003.

"We do not believe that there is any reasonably foreseeable risk of identity theft when CPA clients are billed for services rendered," said AICPA President and CEO Barry Melancon. "As trusted advisors, CPAs are personally acquainted with their clients and already adhere to strict privacy requirements governing identifying information."

The Red Flags Rule has been repeatedly delayed and most recently was blocked by court order on Oct. 30 insofar as it would apply to lawyers and law firms. It requires financial institutions and credit card companies to develop and implement programs to detect and respond to activity that may signal identity theft. In the FTC's interpretation, the rule would apply to public accountants only because CPA firms typically bill clients for services rendered, thus technically qualifying as a "creditor." Public accountants do not provide financial services that would typically create identity theft risks for clients.

The AICPA's complaint, filed by law firm Fried, Frank, Harris, Shriver & Jacobson LLP, alleges that the FTC is exceeding its congressionally granted powers under the 2003 law by interpreting its Red Flags Rule to apply to accountants. The AICPA's complaint alleges that the FTC has acted arbitrarily, capriciously, and contrary to law by failing to articulate a rational connection between the profession of public accounting and identity theft. The FTC failed to explain how the manner in which public accountants bill their clients in the normal course of business constitutes an extension of credit. The FTC further failed to identify any legally supportable basis for applying the rule to accountants.

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The AICPA's lawsuit follows an Oct. 30 order by U.S. District Court Judge Reggie B. Walton in an earlier, similar lawsuit by the American Bar Association seeking to enjoin the FTC from applying its Red Flags Rule to practicing attorneys. Judge Walton granted the ABA's motion in a partial summary judgment, holding that the FTC had exceeded its authority by interpreting the term "creditor" to include attorneys engaged in the practice of law. That same day, the FTC issued a press release announcing that it was delaying enforcement of the rule until June 1, 2010, a decision welcomed by the AICPA.

"The FTC made the right move in delaying implementation of the Red Flags Rule and we certainly still appreciate the commission's continuing consideration of our request for a CPA exemption," Melancon said.

A copy of the complaint filed by Fried Frank is available at
http://www.aicpa.org/download/news/2009/AICPA-Complaint.pdf

About the AICPA
The American Institute of Certified Public Accountants (www.aicpa.org) is the national, professional association of CPAs, with more than 360,000 CPA members in business and industry, public practice, government, education, student affiliates, and international associates. It sets ethical standards for the profession and U.S. auditing standards for audits of private companies, non-profit organizations, federal, state and local governments. It develops and grades the Uniform CPA Examination.

The AICPA maintains offices in New York, Washington, D.C., Durham, N.C., Ewing, N.J., and Lewisville, Tex.

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