

**H. Thomas Wells, Jr.**  
President

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The Honorable Jonathan D. Leibowitz  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Subject: FTC "Red Flag" Rule

Dear Chairman Leibowitz:

On behalf of the American Bar Association, I am writing to request that the Federal Trade Commission postpone for a period of months implementation and enforcement of the Final Rule relating to Identity Theft Red Flags and Address Discrepancies Under the Fair and Accurate Credit Transactions Act of 2003. I understand that the FTC has already postponed the effective date of these rules for 6 months, which will expire May 1, 2009.

Unfortunately, we have only this week learned that the Commission intends and expects that this rule will apply to lawyers and law firms. We appreciate your meeting briefly with our Governmental Affairs Office Director Tom Susman on this matter this morning, and we are grateful for your staff's willingness to meet on short notice with Tom and our legislative counsels as well. Now we need time to assess the impact and implications of this rule and confer with ABA members and state and major local bar associations concerning the rule.

Some believe that the conclusion that the rule must be applied to lawyers providing legal services cannot be justified by either the law (based on at least one federal Circuit Court's conclusion that lawyers are not "creditors" under the relevant underlying statute) or the facts (the absence of a single example of identity theft related to or arising out of provision of legal services). Additionally, FTC staff have indicated that the compliance requirements on low-risk creditors (which likely would include lawyers and law firms) would be minimal, although a model template illustrating those minimum requirements has not yet been completed. These points reinforce the utility – to both the Commission and the legal community – of postponing the rule's effective date for an additional three to six months.

Thank you for your consideration of this request.

Sincerely,



H. Thomas Wells, Jr.

cc: Commissioners and selected staff