In 2010, Congress enacted a short, single-purpose amendment to the FCRA, the Red Flag Program Clarification Act of 2010 (the Clarification Act).\footnote{341} Legislators had expressed concern that the Red Flag Guidelines mandated by FACTA\footnote{347} could apply to small businesses that only incidentally extended credit, imposing a significant and expensive burden on them.\footnote{348} Accordingly, the Clarification Act narrowed the scope of the term “creditor,” but only for purposes of the Red Flag provisions, as being limited to those entities that in the ordinary course of business:\footnote{349}

- Use credit reports in connection with a credit transaction;
- Furnish information in connection with such a transaction; or
- Advance funds based on an obligation of the borrower to repay them.

However, the Act specifically excludes from the term a creditor “that advances funds on behalf of a person for expenses incidental to a service provided by the creditor to that person.”\footnote{350} In case further regulation of excluded creditors becomes appropriate, the amendment allows the term to expand to include those creditors that an authorized agency determines “based on a determination that such creditor offers or maintains accounts that are subject to a reasonably foreseeable risk of identity theft.”\footnote{351}

The Clarification Act mooted litigation brought by the American Bar Association, which had sued the Federal Trade Commission, alleging that the Commission’s application of the Red Flag Guidelines to attorneys exceeded its authority.\footnote{352}

**Footnotes**


348 [343] For instance, Senator Thune was concerned that as originally written, the Red Flag Guidelines “could require small businesses to undertake costly, burdensome measures to prevent identity theft in industries where it poses little threat.” 156 Cong. Rec. S8288–89 (daily ed. Dec. 7, 2010).


350 [345] Id.

351 [346] Id.