RED FLAG PROGRAM CLARIFICATION ACT OF 2010

Mr. ADLER of New Jersey. Mr. Speaker, I move to suspend the rules and pass the bill (S. 3987) to amend the Fair Credit Reporting Act with respect to the applicability of identity theft guidelines to creditors.

The Clerk read the title of the bill.

The text of the bill is as follows:

S. 3987

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Red Flag Program Clarification Act of 2010''.

SEC. 2. SCOPE OF CERTAIN CREDITOR REQUIREMENTS.

(a) AMENDMENT TO FCRA.—Section 615(e) of the Fair Credit Reporting Act (15 U.S.C. 1681m(e)) is amended by adding at the end the following:

''(4) DEFINITIONS.—As used in this subsection, the term 'creditor'—

''(A) means a creditor, as defined in section 702 of the Equal Credit Opportunity Act (15 U.S.C. 1691a), that regularly and in the ordinary course of business—

''(i) obtains or uses consumer reports, directly or indirectly, in connection with a credit transaction;

''(ii) furnishes information to consumer reporting agencies, as described in section 623, in connection with a credit transaction; or

''(iii) advances funds to or on behalf of a person, based on an obligation of the person to repay the funds or repayable from specific property pledged by or on behalf of the person;

''(B) does not include a creditor described in subparagraph (A)(iii) that advances funds on behalf of a person for expenses incidental to a service provided by the creditor to that person; and

''(C) includes any other type of creditor, as defined in that section 702, as the agency described in paragraph (1) having authority over that creditor may determine appropriate by rule promulgated by that agency, based on a determination that such creditor offers or maintains accounts that are subject to a reasonably foreseeable risk of identity theft.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall become effective on the date of enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from New Jersey (Mr. ADLER) and the gentleman from Idaho (Mr. SIMPSON) each will control 20 minutes.

The Chair recognizes the gentleman from New Jersey.

GENERAL LEAVE

Mr. ADLER of New Jersey. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to insert extraneous material thereon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

Mr. ADLER of New Jersey. Mr. Speaker, I yield myself such time as I may consume.

I rise today in support of the Red Flag Program Clarification Act of 2010. This legislation, which I introduced in the House, will narrow the scope of the Fair and Accurate Credit Transaction Act of 2003.

The FACT Act directed the Federal Trade Commission to promulgate rules requiring creditors to implement programs to detect and respond to so-called red flags that could indicate identity theft. Clearly, we all agree that identity theft is a serious problem and we must respond with strong regulations to protect consumers. That was the intent of the Congress in 2003. This Congress shares that intent.

However, we need to be careful that the laws we pass address the problem and do so in a way that doesn't adversely and unfairly impact small businesses. America's small businesses are struggling in today's tough economy. Congress needs to work in a bipartisan manner to find commonsense solutions to help America's small businesses remain as competitive as possible so they can create good-paying jobs.

I am pleased the House is taking up my legislation that will reduce burdensome regulations on small businesses. The purpose of the Red Flag Program Clarification Act is to limit the type of creditor that must be covered by the FTC's Red Flags Rule.

When I think of the word ''creditor,'' dentists, accounting firms, and law firms do not come to mind. However, the FACT Act, as read by the FTC, states that these professions and others will be required to comply with Red Flag's regulations. It is clear when Congress wrote the law, they never contemplated including these types of businesses within the broad scope of that law. The FTC, to its great credit, has already delayed implementation of the Red Flags Rule numerous times because of this issue. And I want to thank FTC Chairman Jon Leibowitz for his understanding that Congress in no way intended back in 2003 to include these sorts of businesses in the broad scope of the FACT Act.

We must act by the end of this year to head off the potentially damaging impact of this rule, and I am pleased this bill, this bipartisan bill, will provide a permanent solution to this problem. The Senate passed this bill unanimously. The House passed similar legislation, which I co-wrote with Mr. BROUN and Mr. SIMPSON, last year by a narrow vote of 400–0.

I want to thank my colleagues, particularly Congressman BROUN and Congressman SIMPSON, along with Mr. MAFFEI and Mr. LEE, for their leadership on this issue. I also wish to thank, once again, Chairman FRANK and Ranking Member BACHUS for allowing this bill to come to the floor. We worked together on a bipartisan basis to solve a problem. Today we achieve a worthy balance the right way, a bipartisan solution to a nonpartisan problem.

Mr. Speaker, I urge passage of this legislation that is so important to our small businesses.

I reserve the balance of my time.

Mr. SIMPSON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of S. 3987, the Red Flag Program Clarification Act of 2010. This bill, as was mentioned, is a bipartisan, commonsense approach to protecting our Nation's small businesses from needless, burdensome government regulations. This legislation clarifies the definition of ''creditor'' for the purposes of complying with the Red Flags Rule. Under this law, a creditor would include only those entities that regularly use consumer reports or furnish information to consumer reporting agencies.

Mr. Speaker, our doctors and dentists across the country are not financial institutions, do not present an identity theft risk, and should not be treated as such. Under the old rule, many of these medical and dental offices were considered creditors because they worked with patients to develop payment plans that they could afford. This rule actually discourages efforts to improve access to care for people who can't afford to pay. This goes against all of our efforts to improve our health care system. Congress never meant for small businesses such as doctors, dentists, accountants, and others to be included in this definition.

This legislation is a good compromise in addressing the concerns of impacted businesses and health care providers while still protecting individuals from the risk of identity theft.

I would like to thank my good friends, Congressman ADLER and Congressman BROUN. I have enjoyed working with you on this legislation. I would like to recognize the work of Chairman FRANK and Ranking Member BACHUS to craft a balanced bill that addresses everyone's concerns, as well as Senator BEGICH and Senator THUNE for their work on this issue. Finally, I would like to thank the FTC chairman, Chairman Leibowitz, for working with us so diligently on this issue throughout this rather long and arduous process.

I yield back the balance of my time.

Mr. ADLER of New Jersey. Mr. Speaker, the gentleman from Idaho (Mr. SIMPSON) and I agree. We agree on lots of things. And we also agree, I think, that this Chamber should see more bills like this, more processes like this.

□ 1630

The House and Senate actually cooperated and got something good done that helps our small businesses, that helps Americans all across this country and that brings a little bit of common sense.

A few years ago, Congress tried to do a good thing and overreached just a little bit with good intent over each little bit. As Mr. SIMPSON acknowledged, we saw the problem. Chairman Leibowitz of the FTC also saw the problem, and we worked together. The bureaucracy was not inflexible. It showed some restraint and didn't impose an additional burden on small businesses—on the doctors and dentists and lawyers

around the country, who are clearly not creditors. So, for once, the process kind of worked.

This gives hope to the people who will be serving in the next Congress. They can work together on a bipartisan basis. This gives hope to people like me, who are leaving at the end of this term, that Congress will continue to function, in some way, in a bipartisan, commonsense manner.

I am satisfied we've done a good job here.

Mr. BROUN of Georgia. Mr. Speaker, I strongly support S. 3987, the Red Flag Program Clarification Act of 2010, which will remove a regulatory burden that our nation's small businesses are facing. I would like to thank Chairman FRANK and Ranking Member BACHUS for bringing this bill to the floor, and I thank the Committee staff for their hard work.

In November of 2007, the Federal Trade Commission issued a regulation, known as the "Red Flags" rule, as required by section 114 of the Fair and Accurate Credit Transaction Act of 2003. Red Flags required financial regulatory agencies, including the FTC, to craft rules requiring financial institutions and creditors to implement programs to detect and respond to patterns, practices, or specific activities—in other words, "Red Flags"—that could lead to potential identity theft.

The FTC broadly interpreted "creditors" to include any business that allows clients to establish a payment plan in exchange for their services rendered, sweeping in many businesses that do not operate as a creditor in the general understanding of the term, such as dentists, doctors, veterinarians, lawyers, accountants, and many other health care providers that offer their clients payment plans.

Congress did not intend to have the Red Flags rule cover these types of small businesses when it passed the Fair and Accurate Credit Transaction Act of 2003. Because of the uncertainty as to the definition of a creditor and subsequent law suits filed against the FTC, the FTC delayed enforcement of the Red Flags Rule multiple times since its original implementation date of January 1, 2008. The Rule is now scheduled to go into effect on January 1, 2011, and if it does, it could require small businesses to undertake costly and burdensome measures to prevent identity theft in industries that pose little threat. This legislation will eliminate the need to request another enforcement delay.

It also clarifies who must comply with the Red Flags Rule as those creditors that use consumer reports, furnish information to consumer reporting agencies, and other creditors that loan money. Should it become apparent that there are industries that present a reasonably foreseeable risk of identity theft, the FTC will have the authority to issue a rule open for public comment that shows the industry should comply with the Reds Flag rule.

This legislation has broad bipartisan support. It passed the Senate by unanimous consent last week, and similar legislation I cosponsored passed the House last fall on the Suspension calendar with a 400–0 vote. It is supported by over 30 medical associations and the U.S. Chamber of Commerce.

In its initial regulatory analysis, the FTC estimated that the proposed Red Flags regulation would cover approximately 11.1 million entities "across almost every industry," ninety percent of which were expected to qualify as small businesses. At a time when we are experiencing record high unemployment, Congress needs to provide our nation's job creators relief from unnecessary regulations. This legislation will do just that.

I urge my colleagues to support this bill, so that we can ease the regulatory burden on those industries that were not supposed to be covered by the Red Flags rule.

Mr. ADLER of New Jersey. I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey (Mr. ADLER) that the House suspend the rules and pass the bill, S. 3987.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

SUPPORTING THE REMOVAL OF ILLICIT MARIJUANA ON FEDERAL LANDS

Mr. SCOTT of Virginia. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 1540) supporting the goal of eradicating illicit marijuana cultivation on Federal lands and calling on the Director of the Office of National Drug Control Policy to develop a coordinated strategy to permanently dismantle Mexican drug trafficking organizations operating on Federal lands, as amended.

The Clerk read the title of the resolution.

The text of the resolution is as follows:

H. RES. 1540

Whereas Mexican drug trafficking organizations and other criminal groups have established robust and dangerous marijuana plantations on Federal lands managed by the United States Forest Service and the Bureau of Land Management;

Whereas the Office of National Drug Control Policy reported that 1,800,000 marijuana plants were eradicated from Federal lands in 2006, 2,890,000 marijuana plants were eradicated in 2007, and 4,000,000 marijuana plants were eradicated in 2008;

Whereas former Director of National Drug Control Policy John P. Walters declared in 2007: "America's public lands are under attack. Instead of being appreciated as national treasures, they are being exploited and destroyed by foreign drug trafficking organizations and heavily armed Mexican marijuana cartels who have turned them into ground zero for drug cultivation. These violent drug traffickers are endangering America's outdoor enthusiasts and sportsmen, and the sensitive ecosystems of our wilderness.";

Whereas the illicit drug trade undermines the rule of law and has a detrimental impact in communities across our Nation;

Whereas Mexican drug traffickers use the revenue generated from marijuana production on Federal lands to support criminal activities, including human trafficking and illicit weapons smuggling, and to foster political unrest in Mexico;

Whereas drug traffickers have committed acts of violence against United States citizens and have fired upon law enforcement officers to protect their marijuana crops;

Whereas on October 8, 2000, an 8-year-old boy and his father were shot by drug traffickers while hunting in El Dorado National Forest;

Whereas on June 16, 2009, law enforcement officers with the Lassen County Sheriff's Department were wounded by gunfire from drug traffickers during the investigation of a marijuana plantation on Bureau of Land Management property;

Whereas drug traffickers place booby traps that contain live shotgun shells on marijuana plantations;

Whereas the American people should not be subjected to violence while enjoying our Nation's recreation areas;

Whereas marijuana plantations pose a significant threat to the environmental health of Federal lands;

Whereas drug traffickers spray considerable quantities of unregulated chemicals, pesticides, and fertilizers;

Whereas drug traffickers divert streams and other waterways to construct complex irrigation systems;

Whereas it costs the Federal Government $11,000 to restore one acre of forest on which marijuana is being cultivated;

Whereas the Federal Government is fundamentally responsible for protecting our Nation's Federal lands and the citizens who recreate on them;

Whereas local law enforcement agencies currently play a vital role in eradicating marijuana cultivation and enforcing Federal drug laws on Federal lands;

Whereas coordination among Federal agencies and among Federal, State, and local law enforcement agencies is essential to curtailing marijuana growth on Federal lands;

Whereas targeted joint law enforcement interdiction raids have brought forth significant but short-lived successes in combating marijuana production on Federal lands;

Whereas Federal law enforcement should develop and pursue a strategy that seeks to eradicate the illicit production of marijuana on Federal lands, and to investigate, detain, and bring drug traffickers to justice; and

Whereas the creation of a long-term, Federal-led strategy is essential to eliminating illicit marijuana cultivation on Federal lands: Now, therefore, be it

Resolved, That the House of Representatives—

(1) declares that drug trafficking organizations cultivating illicit marijuana on Federal lands in the United States pose an unacceptable threat to the safety of law enforcement and the public;

(2) affirms that it is the responsibility of the Federal Government to confront the threat of illicit marijuana cultivation on Federal lands; and

(3) calls upon the Director of the Office of National Drug Control Policy to work in conjunction with Federal and State agencies to develop a comprehensive and coordinated strategy to permanently dismantle Mexican drug trafficking organizations and other criminal groups operating on Federal lands.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Virginia (Mr. SCOTT) and the gentleman from California (Mr. DANIEL E. LUNGREN) each will control 20 minutes.

The Chair recognizes the gentleman from Virginia.

GENERAL LEAVE

Mr. SCOTT of Virginia. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and to include extraneous material on the resolution under consideration.