



Comptroller of the Currency
Administrator of National Banks

The FACT Act: An Overview of the Final Rulemaking on Identity Theft Red Flags and Address Discrepancies

A Web and Telephone Seminar

Tuesday, June 17, 2008

2:00 pm – 3:30 pm Eastern

1:00 pm – 2:30 pm Central

12:00 pm – 1:30 pm Mountain

11:00 am – 12:30 pm Pacific

Presented by:

Ann F. Jaedicke

Deborah Katz

Andra Shuster

Paul Utterback



Comptroller of the Currency
Administrator of National Banks

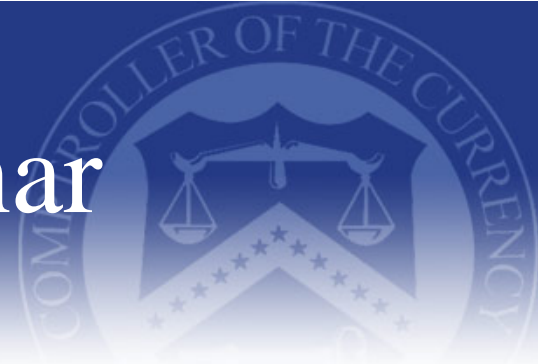
The FACT Act

An Overview of the Final Rulemaking on Identity Theft Red Flags & Address Discrepancies

Tuesday, June 17, 2008
2:00 p.m. — 3:30 p.m. EDT

Wednesday, June 18, 2008
10:00 a.m. — 11:30 a.m. EDT

A Web & Telephone Seminar



Presented by:

John C. Dugan

Ann F. Jaedicke

Deborah Katz

Andra Shuster

Paul E. Utterback





Speaker Biographies

Welcome by John C. Dugan

Outline of Presentation

Power Point Presentation



John C. Dugan



John C. Dugan

Comptroller of the Currency



John C. Dugan was sworn in as the 29th Comptroller of the Currency on August 4, 2005.

The Comptroller of the Currency is the administrator of national banks and chief officer of the Office of the Comptroller of the Currency (OCC). The OCC supervises 1,900 federally chartered commercial banks and about 50 federal branches and agencies of foreign banks in the United States, comprising more than half the assets of the commercial banking system. The Comptroller also serves as a director of the Federal Deposit Insurance Corporation, the Federal Financial Institutions Examination Council, and the Neighborhood Reinvestment Corporation.

Prior to his appointment as Comptroller, Mr. Dugan was a partner at the law firm of Covington & Burling, where he chaired the firm's Financial Institutions Group. He specialized in banking and financial institution regulation. He also served as outside counsel to the ABA Securities Association.



John C. Dugan



He served at the Department of Treasury from 1989 to 1993 and was appointed assistant secretary for domestic finance in 1992. While at Treasury, Mr. Dugan had extensive responsibility for policy initiatives involving banks and financial institutions, including the savings and loan cleanup, Glass-Steagall and banking reform, and regulation of government-sponsored enterprises. In 1991, he oversaw a comprehensive study of the banking industry that formed the basis for the financial modernization legislation proposed by the administration of the first President Bush.

From 1985 to 1989, Mr. Dugan was minority counsel and minority general counsel for the U.S. Senate Committee on Banking, Housing, and Urban Affairs. There he advised the committee as it debated the Competitive Equality Banking Act of 1987, the Proxmire Financial Modernization Act of 1988, and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

Among his professional and volunteer activities before becoming Comptroller, he served as a director of Minbanc, a charitable organization whose mission is to enhance professional and educational opportunities for minorities in the banking industry. He was also a member of the American Bar Association's committee on banking law, the Federal Bar Association's section of financial institutions and the economy, and the District of Columbia Bar Association's section of corporations, finance, and securities laws.

A graduate of the University of Michigan in 1977 with an A.B. in English literature, Mr. Dugan also earned his J.D. from Harvard Law School in 1981. Born in Washington, DC in 1955, Mr. Dugan lives in Chevy Chase, MD, with his wife, Beth, and his two children, Claire and Jack.



Ann F. Jaedicke



Ann F. Jaedicke

Deputy Comptroller for Compliance

Office of the Comptroller of the Currency



Ann F. Jaedicke has served as deputy comptroller of Compliance since December 2003. She is responsible for policy and examination procedures relating to consumer issues, money laundering, and bank secrecy. She also sits on FFIEC's (Federal Financial Institution Examination Council) task force on consumer compliance and FFIEC's Bank Secrecy Act task force. These task forces of U.S. regulators promote policy coordination and the uniform enforcement of laws and regulations.

Ms. Jaedicke has been employed by the Office of the Comptroller of the Currency (OCC) as a bank examiner for 28 years. She began her career in 1977 as a bank examiner in Texas. From 1984-1986, Ms. Jaedicke worked in OCC's London office where she examined branches of U.S. banks. Later she served as the director for OCC's Large Bank Division. At the time, OCC's Large Bank Division supervised 12 of the largest national banks in the U.S. In 1997, Ms. Jaedicke was promoted to deputy comptroller for Supervision Operations where she managed, among other things, OCC's Problem Bank Division and sat on OCC's Enforcement Committee. In 2001 and 2002, Ms. Jaedicke led projects to restructure OCC's six districts and OCC's Washington D.C. headquarters.

Ms. Jaedicke is a native Texan and a graduate of Texas A&M University.



Deborah Katz



Deborah Katz

Senior Counsel

Legislative and Regulatory Activities

Office of the Comptroller of the Currency



Deborah Katz is a Senior Counsel in the Legislative and Regulatory Activities Division of the Office of the Comptroller of the Currency (OCC). She has drafted interagency regulations relating to identity theft and information security. She also drafted the interagency Customer Identification Program rule implementing section 326 of the USA PATRIOT Act. Ms. Katz joined the OCC in 1986. She has been Special Assistant to the Deputy Chief Counsel, and has worked in the Enforcement and Compliance, Bank Organization and Structure, and Legal Advisory Services divisions of the OCC's law department.

Ms. Katz received a B.S. from the Edmund E. Walsh School of Foreign Service, Georgetown University, in 1979, and a J.D. from the Benjamin N. Cardozo School of Law, Yeshiva University, in 1986. She is a member of the New York Bar.



Andra Shuster



Andra Shuster

Special Counsel

Legislative and Regulatory Activities Division

Office of the Comptroller of the Currency



Andra Shuster is a Special Counsel in the Legislative and Regulatory Activities Division of the Office of the Comptroller of the Currency (OCC). Ms. Shuster joined the OCC in 1999 as a Senior Attorney in the Community and Consumer Law Division, where she worked through 2000. Her areas of expertise are preemption and visitorial powers, information security and international banking. Ms. Shuster participated in drafting the interagency Identity Theft Red Flags and Address Discrepancies rule-making. Prior to joining the OCC, Ms. Shuster was in private practice, representing clients in bank regulatory and transactional matters.

Ms. Shuster received a B.A. in economics and business in 1987 from Lafayette College and a J.D. and M.B.A. in 1991 from Georgetown University. She is a member of the New York and District of Columbia bars.



Paul E. Utterback



Paul E. Utterback

National Bank Examiner and Senior Compliance Specialist

Compliance Policy Division

Comptroller of the Currency



Paul Utterback joined the Office of the Comptroller of the Currency (OCC) in 1974. Mr. Utterback was commissioned as a National Bank Examiner in 1980 and served as an examiner-in-charge of safety and soundness and compliance examinations in the OCC's Central District. In 1984, Mr. Utterback transferred to the OCC's Western District where he continued his examination work and served as a field office and district office analyst. In 1991, he transferred to the OCC's headquarters in Washington, D.C., where he has been responsible for developing consumer compliance policies and procedures. Mr. Utterback has served on many interagency working groups to develop compliance guidance and examination procedures.

Mr. Utterback received a B.S. degree in accounting from Miami University, Oxford, Ohio, where he was a member of Beta Alpha Psi, a national honorary accounting fraternity. He also is a graduate of the University of Colorado, Graduate School of Banking.



The FACT Act – An Overview



Identity Theft Red Flags and Address Discrepancies

Final Rulemaking



WELCOME



John C. Dugan

Comptroller of the Currency



Outline of Presentation



- Identity Theft Red Flag Rules
- Identity Theft Red Flag Guidelines
- Special Rule for Card Issuers
- Rule on Address Discrepancies
- Red Flags Implementation Issues



Statutory Provisions Implemented



- FACT Act amended the Fair Credit Reporting Act (FCRA)
- Sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act)

Rules: 72 Fed. Reg. 63718 (November 9, 2007)

<http://www.occ.treas.gov/fr/fedregister/72fr63718.pdf>



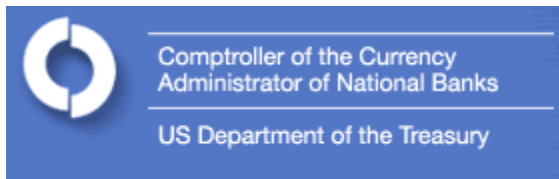
Background



- Joint rulemaking
- Final rules published November 9, 2007
- Full compliance required by November 1, 2008



Participating Agencies





Identity Theft Red Flag Rules



Identity Theft Red Flags



FACT Act Section 114

FCRA Section 615(e)

12 CFR 41.90 and 41.91



Identity Theft Red Flags



- Risk-based final rule
- Guidelines
- Supplement (26 examples of red flags)
- Rule for debit and credit card issuers



Program Requirement



“Financial institutions” and “creditors” with covered accounts” must implement a written Identity Theft Prevention Program to detect, prevent, and mitigate identity theft in connection with:

- the opening of a covered account, or
- any existing covered account



Definitions



A “financial institution” is:

- A state or national bank
- A state or federal savings and loan association
- A mutual savings bank
- A state or federal credit union, or
- Any other person that directly or indirectly holds a transaction account belonging to a consumer



Definitions (cont'd)



A “creditor” is:

- Any person who regularly extends, renews, or continues credit
- Any person who regularly arranges for the extension, renewal, or continuation of credit, or
- Any assignee of an original creditor who participates in the decision to extend, renew, or continue credit



Definitions (cont'd)



A “covered account” is:

- A consumer account designed to permit multiple payments or transactions, or
- Any other account for which there is a reasonably foreseeable risk from identity theft



Definitions (cont'd)



“Identity theft” is:

- A fraud committed or attempted using the “identifying information” of another person without authority



Elements of the Program



Must include policies and procedures to:

- Identify relevant red flags and incorporate them into the Program
- Detect red flags that are part of the Program
- Respond appropriately to any red flags that are detected
- Ensure the Program is updated periodically to address changing risks



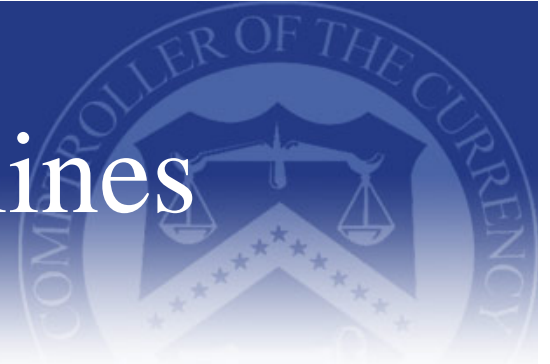
Administration of the Program



- Obtain approval of the initial Program by the board or a committee thereof
- Ensure oversight of the Program
- Train appropriate staff
- Oversee service provider arrangements



Consideration of the Guidelines



Rules require:

- Consideration of the Guidelines
- Incorporation of appropriate Guidelines into the Program





Identity Theft Red Flag Guidelines



Overview of the Guidelines



- I. Incorporate existing policies and procedures
- II. Identify relevant red flags
- III. Procedures to detect red flags
- IV. Appropriate responses to red flags
- V. Periodic updating of the Program
- VI. Administering the Program
- VII. Other legal requirements



I. Incorporate Existing Policies and Procedures

- Existing anti-fraud program
- Customer identification program (CIP)
- Information security program



II. Identify Relevant Red Flags



Risk factors for identifying relevant red flags are:

- Types of covered accounts offered or maintained
- Methods provided to open or access covered accounts
- Previous experiences with identity theft





II. Identify Relevant Red Flags (cont'd)

Sources of red flags are:

- Incidents of identity theft that have been experienced
- Methods of identity theft reflecting changes in identity theft risks
- Applicable supervisory guidance



II. Identify Relevant Red Flags (cont'd)



Five categories of red flags are:

- Alerts, notifications, or other warnings received from consumer reporting agencies or service providers
- Presentation of suspicious documents
- Presentation of suspicious personal identifying information
- Unusual use of, or other suspicious activity related to, a covered account
- Notice from customers, victims of identity theft, or law enforcement authorities



III. Procedures to Detect Red Flags



- Verify identity
- Authenticate customers
- Monitor transactions
- Verify validity of address changes





IV. Appropriate Responses to Red Flags

- Monitor accounts
- Contact customer
- Change passwords
- Close and reopen account
- Refuse to open account
- Don't collect on or sell account
- Notify law enforcement
- No response



IV. Appropriate Responses to Red Flags (cont'd)

An appropriate response will consider aggravating factors that may heighten the risk of identity theft such as:

- A data security breach
- Notice from a customer that they have been a victim of phishing



V. Periodic Updating of the Program



- Experience with identity theft
- Changes in methods of identity theft
- Changes in methods to detect-prevent-mitigate identity theft
- Changes in types of accounts offered
- Changes in business arrangements



VI. Administering the Program



Oversight of the Program involves:

- Assigning specific responsibility
- Reviewing reports
- Approving material changes in the Program





VI. Administering the Program (cont'd)

Report Requirements:

- Conducted annually
- Address material matters





VI. Administering the Program (cont'd)

Evaluate issues such as:

- Service provider arrangements
- Effectiveness of the policies and procedures in addressing the risk of identity theft in connection with covered accounts
- Significant incidents involving identity theft and management's response
- Recommendations for material changes to the Program





VI. Administering the Program (cont'd)

Oversight of service providers:

- Ensure the service provider's activities are conducted in accordance with reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft





VII. Other Legal Requirements

- Suspicious Activity Reports (SARs)
- Other FCRA provisions



Examples of Red Flags



- Warning from consumer reporting agencies
 - ⇒ Fraud or active duty alert included in consumer report
- Suspicious documents
 - ⇒ Documents provided for identification appear to be altered
- Suspicious personal information
 - ⇒ Inconsistent with external information sources



Examples of Red Flags (cont'd)

- Unusual use of account

⇒ Account used in a manner that is not consistent with historical patterns of activity

- Notice from customers

⇒ Customer notifies bank of unauthorized charges



Questions





Special Rule For Card Issuers



Card Issuers' Rule



A card issuer must have reasonable policies and procedures to assess the validity of:

- A notice of a change of address for a consumer's debit or credit card, followed closely (within the first 30 days after receiving notice) by a request for an additional or replacement card for the same account



Card Issuers' Rule (cont'd)



Card issuer may not issue an additional or replacement card without:

- Notifying the cardholder of the request, and allowing the cardholder to report an incorrect address change, or
- Assessing the validity of the change of address through other means



Card Issuers' Rule (cont'd)



Notification procedures:

- Notify the cardholder at the cardholder's former address, or
- By any other means of communication that the card issuer and the cardholder have previously agreed to use



Card Issuers' Rule (cont'd)



Form of notice to cardholder may be any written or electronic notice, provided it is:

- Clear and conspicuous
- Sent separately from regular correspondence with the cardholder



Card Issuers' Rule (cont'd)



Alternative timing of address validation:

A card issuer may validate an address when it receives an address change notice, even before it receives a request for an additional or replacement card



Enforcement of Red Flags Rules



- Administrative enforcement under 12 USC 1818
- No private right of action
- State Attorneys General
- No criminal penalties



Questions





Rule on Notices of Address Discrepancy



Notices of Address Discrepancy



FACT Act Section 315

FCRA Section 605(h)

12 CFR 41.82



Notices of Address Discrepancy



Duties of users of consumer reports that receive a “notice of address discrepancy” from a nationwide consumer reporting agency (NCRA as defined in FCRA)



Notices of Address Discrepancy



An NCRA is a consumer reporting agency that regularly engages in assembling or evaluating, and maintaining, for the purpose of furnishing consumer reports to third parties bearing on a consumer's credit worthiness, credit standing, or credit capacity, each of the following regarding consumers residing nationwide:

- Public record information
- Credit account information



Notices of Address Discrepancy



“Notice of address discrepancy” notifies the user of a substantial difference between:

- Address the user provided, and
- Address in the NCRA’s files



Notices of Address Discrepancy



Regulatory Requirement:

The user must have reasonable policies and procedures to establish a reasonable belief that the consumer report relates to the consumer about whom the report was requested



Notices of Address Discrepancy



Establishing a reasonable belief — Examples

- Compare information in the consumer report to information the user:
 - Maintains in its records
 - Obtains from third-party sources
 - Obtained to comply with CIP rules

- Verify information in the consumer report with the consumer



Notices of Address Discrepancy



Regulatory Requirement:

The user must have reasonable policies and procedures to furnish a confirmed address for the consumer to the NCRA, when the user:

- Can form a reasonable belief that the report relates to the consumer
- Establishes a continuing relationship with the consumer
- Regularly furnishes information to the NCRA



Notices of Address Discrepancy



Confirmation methods — Examples

- Verifying the address with the consumer
- Reviewing user's records
- Verifying with third-party sources
- Using other reasonable means



Notices of Address Discrepancy



Timing:

Confirmed address must be furnished as a part of the information the user regularly furnishes for the reporting period during which it established a relationship with the consumer



Questions



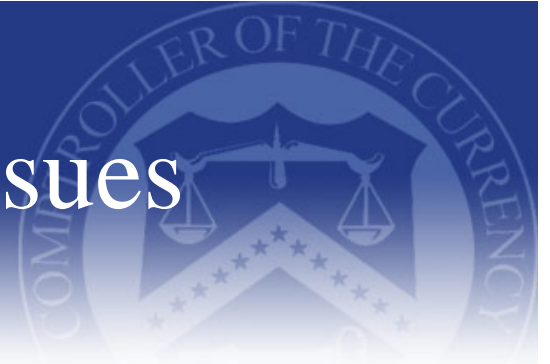


Red Flags

Implementation Issues



Red Flags - Implementation Issues



- Involve the board and senior management
- Ensure all business lines are considered
- Perform comprehensive risk assessment for covered accounts and red flags
- Document policies, procedures and controls in the written Program
- Ensure response is commensurate with the risk



Red Flags - Implementation Issues

- Explore technology applications
- Review service provider arrangements
- Ensure adequate training of personnel
- Validate the written Program and obtain board approval prior to November 1, 2008
- Complete reporting requirements annually
- Update the Program periodically



Questions and Answers



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Low-Income Housing Tax Credit Funds: Investment Opportunities for Community Banks

Wednesday, September 10, 2008

2:00 p.m. — 3:30 EDT

Registration will open mid July 2008



Evaluation Form



- Please complete the evaluation form online,
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Office of the Comptroller of the Currency

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June 17, 2008

If you prefer to submit your evaluation online, please go to: <http://eval.krm.com/eval.asp?id=14106>

SCALE: 1 - Excellent 2 - Good 3 - Fair 4 - Poor

1 2 3 4

- 1. Overall rating 1 2 3 4
- 2. Similarity of actual program content to advertised content 1 2 3 4
- 3. Audio quality of seminar 1 2 3 4

Presenter: Overall Effectiveness

- 4. Ann Jaedicke 1 2 3 4
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