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Federal Agencies Propose Additional FACTA Regulations for Identity Theft
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The federal financial institution regulatory agencies -- the Federal Reserve, FDIC, OCC, OTS and NCUA -- and the Federal Trade Commission (Agencies) are requesting comments on a Notice of Proposed Rulemaking (NPRM) that would implement sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003 concerning identity theft and address discrepancies.

The Agencies are jointly proposing regulations that would require each financial institution and creditor to develop and implement an identity theft prevention program that includes policies and procedures for detecting, preventing and mitigating identity theft in connection with account openings and existing accounts. As part of its program, a financial institution or creditor may use its existing customer identification program (CIP) to verify the identity of a person opening an account. Under the proposed regulations, the program must include policies and procedures for detecting any possible risk of identity theft relevant to its operations and implement a mitigation strategy appropriate for the level of risk.

The proposed regulations include guidelines listing patterns, practices and specific forms of activity that constitute "red flags" - which signal a possible risk of identity theft. To identify relevant red flags, the financial institution or creditor must consider (a) which of its accounts are subject to a risk of identity theft, (b) the methods it provides to open and access these accounts, and (c) its size, location and customer base. For example, the financial institution or creditor must assess whether it will identify red flags in connection with extensions of credit only, or include other types of relationships within the scope of its program, such as deposit relationships and whether to include small business customers as well as individuals.

The proposed regulations incorporate a flexible, risk-based approach similar to that used in the Information Security Standards issues under section 501(b) of the Gramm-Leach-Bliley Act. Accordingly, the program should be appropriate to the size and complexity of the financial institution or creditor, and the nature and scope of its activities. In light of this feature, the Agencies recommend that financial institutions consider combining the program with existing information security programs, even though the program applies to a broader range of people. Critical elements of the program also include staff training, oversight of service provider arrangements, and involvement of the board of directors and senior management.

The proposed regulations would require credit and debit card issuers to develop policies and procedures to assess the validity of a change of address request that is followed closely by a request for an additional or replacement card. Under these circumstances, the card issuer may not issue an additional or replacement card unless it first assesses the request's validity by notifying the cardholder or using other reasonable means of verification.

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Additional proposed regulations would require users of consumer reports to develop reasonable policies and procedures that must be applied when a notice of address discrepancy is received from a consumer reporting agency. These policies and procedures should enable users to verify the person's identity, and reconcile the address discrepancy, if the user establishes a continuing relationship with the consumer. Under this proposal, a user may employ its existing CIP procedures to verify the identity of the consumer.

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