



NEWS RELEASE

Effective January 1st: Final FACT Act Regulations regarding Identity Theft Red Flags, Affiliate Marketing and Notice of Address Discrepancy

On October 31, 2007, the Federal Trade Commission (FTC) and the federal financial institution regulatory agencies sent to the Federal Register for publication its final rules on Identity Theft “Red Flags” and Address Discrepancies. The final rules relate to sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003 (FACTA).

With identity theft resulting in billions of dollars in losses each year to businesses and individuals, the FTC is targeting common areas of concern by creating actionable regulations for financial institutions and creditors. The final rules specifically address the issues pertaining to identity theft red flags, affiliate marketing and address discrepancy.

Identity Theft Red Flags

Each financial institution and creditor that holds any consumer account, or other account for which there is a reasonably foreseeable risk of identity theft, will be required to develop and implement an Identity Theft Prevention Program for combating identity theft in connection with new and existing accounts. Each organization’s program must include reasonable policies and procedures for detecting, preventing, and mitigating identity theft and enable a financial institution or creditor to:

1. Identify relevant patterns, practices, and specific forms of activity that are deemed to be “red flags” that signal possible identity theft, and further incorporate those red flags into their program;
2. Detect any of over thirty (30) predetermined “red flags” that are incorporated into their program;
3. Respond appropriately to any “red flags” that are detected in an effort to prevent and mitigate identity theft; and
4. Ensure their program is updated periodically to reflect changes in risks from identity theft.

To assist the financial institutions and creditors with the required development and implementation of their internal programs, the agencies have issued specific guidelines, as well as a supplement that provides examples of red flags, which can be found by visiting www.ftc.gov.

Affiliate Marketing

The FTC has issued final regulations to enforce the affiliate marketing provisions of FACTA. Financial institutions regulated by the Banking Agencies, as well as any persons subject to the jurisdiction of the FTC, will be required to provide consumers with notice and an opportunity to opt out before using certain information received from an affiliate to make a solicitation. Primarily addressed are the limitations on usage of “eligibility information” by an entity affiliated with a financial institution. As defined, this term includes any information pertaining specifically to a person’s own transaction or experience information, such as an account history.

The regulations do provide an exception to the Marketing Opt-Out Notice requirement that would allow solicitation. Financial institutions establishing a pre-existing relationship with the consumer under specific guidelines are deemed to be acceptable. The pre-existing relationship with a consumer is defined to include a relationship based on a financial contract that: (a) is in force at the time of solicitation; (b) within the eighteen (18) month period immediately preceding the date of the solicitation; or (c) an inquiry or application by the consumer regarding the institution's products or services during a three (3) month period immediately preceding the date of solicitation. These exceptions apply specifically to the institutions themselves and not their affiliates.

Affiliates may market to a consumer providing the consumer has received a notice that includes:

1. A disclosure of the name(s) of the affiliate(s) providing the notice, which can be done without separately identifying each company if a common name is shared;
2. A list of the affiliate(s) or type(s) of affiliate(s) whose use of eligibility information is covered by the notice, which can include subsequently added affiliates;
3. A general description of the types of eligibility information that may be used to make solicitation;
4. Information about the consumers opt-out right; and
5. A reasonable and simple method for the consumer to opt-out.

At least 30 days after an opt-out notice is mailed or delivered electronically, an institution or affiliate may solicit the consumer. The Marketing Regulations provide examples of reasonable and simple opt-out methods and include model forms of the marketing opt-out notice.

This regulation will become effective January 1, 2008 however, the mandatory compliance date is October 1, 2008, to allow institutions a reasonable amount of time to included the affiliate marketing "opt out" notice with their initial and annual privacy notices.

Address Discrepancy

Another aspect of the final rules relating to identity theft regarding address changes and new card requests, is being termed as Address Discrepancy. Specifically, the rules require credit and debit card issuers to develop policies and procedures to assess the validity of a request for a change or address that is followed closely (minimum of 30 days) by a request for an additional or replacement card.

The rules also require users of consumer reports to develop reasonable policies and procedures to apply whenever such users receive a notice of address discrepancy from a consumer reporting agency. The final rule further provides examples of such policies and procedures for use by a creditor or user to assist in forming a reasonable belief that a consumer report relates to the correct person in these instances.

If you have any questions regarding these new regulations or any aspect of FACTA, please contact Will Dillard at (800) 340-2009 or info@settlementone.com.