

MEMORANDUM TO: The Board of Directors

FROM: Sandra L. Thompson
Director
Division of Supervision and
Consumer Protection

Sara A. Kehey
General Counsel

SUBJECT: Interagency Final Rule Regarding Identity Theft Red Flags and Address
Discrepancies under Sections 114 and 315 of the Fair and Accurate Credit
Transactions Act of 2003

RECOMMENDATION:

We recommend that the Board of Directors (Board) of the Federal Deposit Insurance Corporation (FDIC or Corporation) authorize the Executive Secretary to publish in the *Federal Register* a final rule jointly with the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Trade Commission (collectively, the Agencies) to implement Sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act).

The rule would establish: (1) interagency regulations requiring financial institutions and creditors to develop and implement a written identity theft prevention program; (2) interagency guidelines describing factors that financial institutions and creditors should address in their programs' policies and procedures; (3) interagency regulations requiring credit and debit card issuers to assess the validity of a request for a change of address under certain circumstances; and (4) interagency regulations addressing reasonable policies and procedures that a user of consumer reports should employ upon receiving a notice of address discrepancy from a consumer reporting agency.

We also recommend that the Board authorize the Executive Secretary and the General Counsel to make technical, nonsubstantive, or conforming changes to the text of the rule where necessary to ensure that the Agencies can jointly publish the rule, and to take such other actions and issue such other documents as they deem necessary or appropriate to fulfill the Board's objectives.

DISCUSSION:

1. Background. The guidelines and regulations are required by sections 114 and 315 of the FACT Act, which amend the Fair Credit Reporting Act (FCRA). Section 114 of the FACT Act requires the Agencies to jointly issue guidelines for use by financial institutions and creditors regarding identity theft. In developing the guidelines, the Agencies must identify patterns, practices, and specific forms of activity that indicate the possible existence of identity theft, and they must consider requiring financial institutions and creditors to follow reasonable policies and procedures that provide for notice to a consumer when a transaction occurs with an inactive account. In addition to the guidelines themselves, the Agencies must issue regulations requiring financial institutions and creditors to establish reasonable policies and procedures for implementing the guidelines. The Agencies also must issue regulations requiring credit and debit card issuers to assess the validity of change of address requests.

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