

From: David Eberhard [mailto:DEberhard@sbsu.com]
Sent: Monday, September 18, 2006 4:21 PM
To: Comments
Subject: RIN 3064-AD00 Identity Theft Red Flags and Address Discrepancies Under FACTA

Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington DC 20429

RE: RIN 3064-AD00

Mr. Feldman,

Thank you for the opportunity to comment on the proposed guidelines and regulations that would implement sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). I work for a medium size bank, the sole subsidiary of a bank holding company, with about \$530 million in assets and 13 offices located in southwestern Utah. As a community bank we are always striving to be aware of the needs of our customers and meet those needs. With the increasing barrage of regulatory scrutiny we as a bank are finding it harder to effectively service our customers. The proposal is a prime example of the overbearing nature of regulations.

The proposal specifically states that the agencies are requesting comments on whether the elements described in section 114 have been properly allocated between the proposed regulations and the proposed guidelines. I believe that the agencies missed the mark in establishing guidelines and regulations as required by the FACT Act by placing too much in the regulation rather than the guidelines.

Section 114 of the FACT Act requires the agencies to establish red flag guidelines and regulations. The Act first directs the agencies to establish guidelines. The proposal creates an Appendix J to Part 334 as the Guidelines on Identity Theft Detection, Prevention, and Mitigation. However, the Appendix information makes a list of Red Flags that do not read like guidelines. I fail to see how the list of Red Flags is a guideline. The Red Flags are examples, not guidelines.

I believe the agencies should remove many of the requirements of the regulation and establish them as guidelines. For example, the requirement to develop a separate "Identity Theft Program" should be included as a guideline. As a guideline, it may not be prudent for all banks, depending on their complexity and size, to adopt a separate "Identity Theft Program." In many cases, I believe policies and procedures, similar to what is being proposed as part of an Identity Theft Program, may be implemented into existing policies and procedures of the bank without establishing a separate program. By establishing this as a guideline, it gives banks more latitude in developing policies and procedures that will result in more effective compliance with the Act that is less invasive on the bank and its customers.

The FACT Act gave specific criteria to be followed in developing the guidelines. Section 615(e)(2) of the Fair Credit Reporting Act as amended,

provides specific criteria for the development of the guidelines, not the regulation. Further, Section 615(e)(3) states, "Guidelines established pursuant to paragraph (1) shall not be inconsistent with the policies and procedures required under section 5318(1) of title 31, United States Code." This specifically states that this should be in the guidelines. However in the proposal the only reference to this is in the Regulation, not the guidelines. Here the Agencies have directly violated the Act in the proposal. It is clear to me that the legislative intent is for the establishment of guidelines not in the creation of burdensome regulations.

Because financial institutions are so overly burdened with regulations, I recommend that the Agencies withdraw the proposal and substantially re-write the guidelines and regulation.

Thank you,

David Eberhard
State Bank of Southern Utah