

# Understanding the FACTA Red Flags Rules



The “Red Flag Guidelines and Regulations” are mandated by the Fair and Accurate Credit Transactions Act (FACTA) and amend the FCRA adding to its consumer protections. The law requires Federal banking agencies, the National Credit Union Administration, and the Federal Trade Commission to:

1. Establish and maintain guidelines for use by financial institutions and creditors regarding identity theft with respect to their customers, and
2. Prescribe regulations requiring each financial institution and creditor to establish reasonable policies and procedures for implementing the guidelines to identify possible risks to customers or to the safety and soundness of the institution, and
3. Establish reasonable policies and procedures for credit reports that contain address discrepancies between the input (by the user) and the address(es) found on file with the credit bureau.

***The law intends for creditors to actively protect consumers from identity theft.***

The final rule on identity theft red flags and address discrepancies under FACTA was published on November 9, 2007 with a compliance deadline of 11/1/08.

## WHO NEEDS TO COMPLY?

The law specifies that all “financial institutions” and “creditors” must comply:

***“Creditor” means 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.***

This definition means mortgage brokers are also required to comply.

	<b>Banks &amp; Thrifts</b>	<b>Credit Unions</b>	<b>Other “Creditors”</b>
<b>Regulator(s)</b>	Department of the Treasury: Office of the Comptroller of the Currency (OCC, Banks) or Office of Thrift Supervision (OTS) Federal Deposit Insurance Corporation FDIC	National Credit Union Administration	Federal Trade Commission
<b>Enforcement by...</b>	Routine exams	Routine exams	Ad hoc Investigations
<b>Enforcement Date</b>	<b>November 1, 2008</b>	<b>November 1, 2008</b>	<b>Extended: Aug 1, 2009</b>

***Regulators indicate that Red Flag enforcement will be a high priority in 2009.***

## **REQUIREMENTS TO COMPLY?**

### **I. Have Procedures to Follow-Up on “Address Discrepancies”**

1. Develop and implement reasonable procedures to validate a customer’s identity and ensure the applicant/customer is really the person whose credit report has been obtained and that the address can be validated if the credit report contains a Notice of Address Discrepancy.

### **II. Establish an Identity Theft Prevention Program**

1. Develop and implement a written Identity Theft Prevention Program designed to *detect, prevent, and mitigate* identity theft in connection with covered accounts. The program must consider guidelines published with the Rule:
  - a. **Identify relevant Red Flags for covered accounts and incorporate those into its program,**
  - b. **Detect those Red Flags, and**
  - c. **Respond appropriately to any Red Flags that are detected.**
2. The program must be **updated periodically to adapt to changes in risk.**
3. The program must be **approved in writing by the Board of Directors.**
4. **Employees must be trained** to implement the program.
5. Oversight must be exercised to ensure **vendor practices are integrated as well.**

The Guidelines of the Rule offer 26 specific factors for creditors to consider in developing their plans, including detailed suggestions on the categories of Red Flags that should be addressed. Some of these have sources in internally owned information; **others have sources in credit reports or other third party data.**

## **CATEGORIES OF RED FLAGS TO BE CONSIDERED**

- **Alerts, notifications, or other warnings received from credit reporting agencies or other service providers, such as fraud detection services.**
- The presentation of suspicious documents by the consumer.
- The presentation of suspicious identifying information e.g. address changes.
- Unusual use of or other suspicious activity relating to a covered account.
- **Notice from customers, victims of identity theft, law enforcement authorities, or other persons regarding possible identity theft in connection with accounts.**

## **FIVE KEY POINTS:**

- The Rule applies to any loan originators including mortgage brokers.
- Banks and credit unions will be examined by regulators for compliance with the Rule effective November 1, 2008.
- Those without routine examinations such as mortgage brokers still have compliance obligations that the FTC will begin enforcing Aug 1, 2009.
- Penalties for violations can be steep, and regulators have indicated they intend to enforce the Rule aggressively.
- While not a “total solution unto itself,” IR’s Red Flags Risk Platform can be used as a core part of a creditor’s Identity Theft Prevention Program.