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Update on info privacy & security & marketing

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### Two new federal regulations – each is huge

- 1. (A) Reg Flag Identity Theft Prevention Programs, & (B) address (i) discrepancies and (ii) change/replacement card requests**  


- 2. Affiliate Marketing Rule for “eligibility information”**  


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## New identity theft rules

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## ID Theft Red Flags & Address Regs



**16 CFR § 681.1 - Notice of address discrepancy**



- *User* of consumer report
- Notice of address discrepancy
  - “substantial difference”
  - code?
- New duties
  - Policies to form reasonable belief re discrepancy
  - Notice back to CRA > reasonable reconciliation procedures

**16 CFR § 681.3 - Address CHANGES & replacement or additional debit or credit cards**

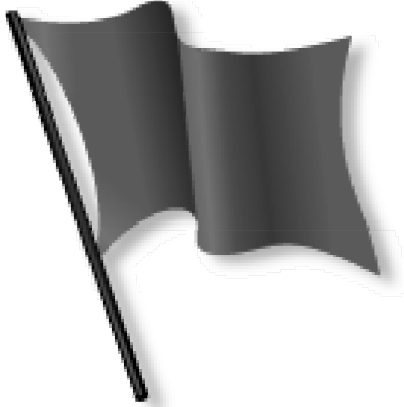


- “Financial Institution” or “creditor” **that also =**
- Debit or credit card issuer: complex definitions (FCRA = issuer + account holder)
- Payroll cards? Yes.
- Home equity cards? Could be.
- Gift cards? Not yet.
- Can’t issue more cards until:
  - Assess validity
  - “Separate” Notice to cardholder

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## Red Flag Identity Theft Prevention Programs




- **Who must comply?**
  - “Financial Institutions” as defined in FACT (**not** GLBA, **not** BSA, **not** Reg E)
  - Creditors (Reg B definition)
  
- **Examples of “creditors”**
  - automobile dealers
  - mortgage brokers
  - telecommunication companies
  - utility companies

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## Financial institution or creditor must offer a “covered account”

- (i) An *account* that a financial institution or creditor offers or maintains, *primarily for personal, family, or household purposes*, that involves or is designed to permit *multiple* payments or transactions, such as a credit card account, mortgage loan, automobile loan, margin account, **cell phone account, utility account**, checking account, or savings account; and
- (ii) Any *other account* that the financial institution or creditor offers or maintains for which there is a reasonably foreseeable risk to *customers* or to the safety and soundness of the *financial institution or creditor* from identity theft, including financial, operational, compliance, reputation, or litigation risks.



## Definition of “account”

- [A] *continuing relationship* established by a person with a *financial institution or creditor* to obtain a product or service for *personal, family, household or business* purposes. Account includes: (i) An extension of credit, such as the purchase of property *or services involving a deferred payment*; and (ii) A deposit account.



## Identity Theft Prevention Program

- Must be designed to detect, prevent, and mitigate identity theft in connection with the **opening** of a covered account or any **existing** covered account, and must be appropriate to the size and complexity of the financial institution or creditor and the nature and scope of its activities
- Plus
  - Board of Director approval
  - Oversight, implementation & training
  - Service provider contracts



## Required elements

- Identify relevant Red Flags for covered accounts offered or maintained, and incorporate them into the program;
- Detect incorporated Red Flags;
- Respond appropriately to Red Flags detected to prevent and mitigate identity theft; and
- Ensure the program (including Red Flags) is updated periodically



## What are red flags: pattern, practice, or specific activity that indicates the possible existence of identity theft

### Required 5 Categories:

1. Alerts, notifications, or other **warnings received from consumer reporting agencies or service providers**, such as fraud detection services;
2. The presentation of **suspicious documents**;
3. The presentation of **suspicious personal identifying information**, such as a suspicious address change;
4. The unusual use of, or other **suspicious activity** related to, a covered account; and
5. **Notice** from customers, victims of identity theft, law enforcement authorities, or other persons regarding possible identity theft in connection with covered accounts held by the financial institution or creditor.



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## Examples of flags -- see Appendix A

*Suspicious Documents*

- 5. Documents provided for identification appear to have been altered or forged.
- 6. The photograph or physical description on the identification is not consistent with the appearance of the applicant or customer presenting the identification.
- 7. Other information on the identification is not consistent with information provided by the person opening a new covered account or customer presenting the identification.
- 8. Other information on the identification is not consistent with readily accessible information that is on file with the financial institution or creditor, such as a signature card or a recent check.
- 9. An application appears to have been altered or forged, or gives the appearance of having been destroyed and reassembled.


*Suspicious Personal Identifying Information*

- 10. Personal identifying information


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## New affiliate marketing rule



## Affiliate Marketing Regs



- FACTA 2003
- Regs: 1/1/08
- Compliance:  
**10/1/08**

## Rip Van Winkle

This fairy tale was written by Washington Irving ~ Illustration by Arthur Rackham

## The end of the fairy tale goes like this

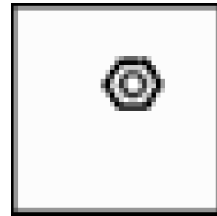
“Having nothing to do at home, and being arrived at that happy age when a man can be idle with impunity, he took his place once more on the bench at the inn door....”

- Life won't be that under the rule
- Need to wake up & plan compliance



**The rule (in a *simplistic* nutshell)**

- Prohibits a person from using “eligibility information” received from an affiliate to make a solicitation for marketing purposes to a “consumer,” unless the consumer is given notice and a reasonable opportunity and a reasonable and simple method to opt out of the making of such solicitations, and fails to opt out.

**This is not an ordinary rule and common practices won't work**

- I'd like to receive marketing materials.
- I don't want to receive marketing materials.

If the consumer fails to de-select the pre-marked box, will that be consent under this rule?

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## C-1 Model Form for Initial Opt-out Notice (single affiliate notice)

[Your Choice to Limit Marketing]/ [Marketing Opt-out]

- [Name of Affiliate] is providing this notice.
  - [Optional: Federal law gives you the right to limit some but not all marketing from our affiliates. Federal law also requires us to give you this notice to tell you about your choice to limit marketing from our affiliates.]
  - You may limit our affiliates in the [ABC] group of companies, such as our [credit card, insurance, and securities] affiliates, from marketing their products or services to you based on your personal information that we collect and share with them. This information includes your [income], your [account history with us], and your [credit score].
  - Your choice to limit marketing offers from our affiliates will apply [until you tell us to change your choice]/[for x years from when you tell us your choice]/[for at least 5 years from when you tell us your choice]. [Include if the opt-out period expires.] Once that period expires, you will receive a renewal notice that will allow you to continue to limit marketing offers from our affiliates for [another x years]/[at least another 5 years].
  - [Include, if applicable, in a subsequent notice, including an annual notice, for consumers who may have previously opted out.] If you have already made a choice to limit marketing offers from our affiliates, you do not need to act again until you receive the renewal notice.
- To limit marketing offers, contact us** [include all that apply]:
- **By telephone:** 1-877-###-####
  - **On the Web:** [www.—.com](http://www.—.com)
  - **By mail:** check the box and complete the form below, and send the form to:  
[Company name] [Company address]
  - Do not allow your affiliates to use my personal information to market to me.

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## C-5 Model Form for Voluntary “No Marketing” Notice

### Your Choice to Stop Marketing

- [Name of Affiliate] is providing this notice.
  - You may choose to stop all marketing from us and our affiliates.
- To stop all marketing offers, contact us** [include all that apply]:
- **By telephone:** 1-877-###-####
  - **On the Web:** [www.—.com](http://www.—.com)
  - **By mail:** check the box and complete the form below, and send the form to:  
[Company name]  
[Company address]
  - Do not market to me.

**“eligibility information”**

any information the communication of which would be a consumer report if the exclusions from the definition of “consumer report” in section 603(d)(2)(A) of the Act did not apply. Eligibility information does not include aggregate or blind data that does not contain personal identifiers such as account numbers, names, or addresses

**“solicitation”**

“the marketing of a product or service initiated by a person to a particular consumer that is— (i) Based on eligibility information communicated to that person by its affiliate...; and (ii) Intended to encourage the consumer to purchase”

- **Examples:** telemarketing call, direct mail, e-mail, or other form of marketing communication directed to a particular consumer that is based on eligibility information received from an affiliate

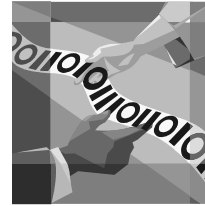


**“making” a solicitation =**

1. **Receiving** eligibility information from an affiliate
2. **Using** it to do one or more stated things, &
3. **As a result of that use**, the consumer is provided a solicitation.

- The stated things:
  - (a) identifying the consumer or type of consumer to receive a solicitation;
  - (b) establishing criteria used to select the consumer; or
  - (c) deciding which of the person’s products or services to market or tailoring their solicitation to that consumer.

**Note:** placement by affiliate into common database = receipt

**Exclusions -- all heavily defined or confined**

- Pre-existing business relationship
- Employee benefits communications
- Service provider agents
- Responding to a consumer-initiated communication (ABOUT your product and services)
- Solicitations authorized by the consumer (read the rules for authorization)
- State insurance laws

**Summary: two new complex rules – start compliance now**

- Reg Flag Identity Theft Prevention Programs and address (1) discrepancies and (2) change requests/more cards



- Affiliate Marketing Rule for “eligibility information”



Questions?

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