



Compliance Corner

FEDERAL RESERVE BANK OF PHILADELPHIA

Prepared for institutions supervised by the Consumer Compliance & CRA Unit

Is Your Financial Institution Ready for Compliance with the FACT Act? Get the “FACTS” on the Interim Examination Procedures

by Eddie L. Valentine, Supervising Examiner

The *Fair and Accurate Credit Transactions Act* of 2003 (the FACT Act) amended the *Fair Credit Reporting Act* (FCRA) and created many provisions that impact the compliance examination process. To date, only one regulation related to the consumer compliance examination provisions in the FACT Act has been finalized. The FACT Act provision involving the notice of furnishing negative information had an effective date for compliance of December 1, 2004, and model notices have been issued under Regulation V, *Fair Credit Reporting*, to facilitate compliance. In addition, several other provisions of the FACT Act that do not require implementing regulations had effective dates of December 1, 2004 or earlier.

During 2005, the interagency FFIEC FCRA Examination Procedures will be substantively updated to reflect the new FACT Act requirements, including the self-executing provisions of the FACT Act. Until the FFIEC procedures are finalized, examiners will use the following interim guidance for reviewing compliance with the provisions that became effective on December 1, 2004. This guidance will

be replaced with the formal FFIEC FCRA Examination Procedures upon their completion.

Interim Examination Procedures

Provisions that became effective on December 1, 2004 or earlier appear below in order of the FCRA section. Examination guidance for each provision appears in italics.

Protection of Medical Information (FCRA §604(g)(4); FACT Act §411). A financial institution that has received medical information shall not redisclose it to any other person, except as necessary to carry out the purpose for which the information was initially disclosed.

Ensure that the financial institution does not redisclose medical information except as allowed by the statute. This should be coordinated with the evaluation of the institution’s compliance with Regulation P, Privacy of Consumer Financial Information.

Fraud and Active Duty Alerts (FCRA §605A(h)(2)(B); FACT Act §112). Consumers who suspect that they may be the victims of identity

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theft may place initial or extended fraud alerts on their consumer reports. Members of the armed services that are called to active duty may also place active duty alerts on their accounts. These alerts are designed to prevent identity theft. No prospective user of a consumer report that includes an alert may establish a new credit plan or extension of credit in the name of the consumer, issue an additional card on an existing account, or increase a credit limit, unless the user follows effective policies and procedures to verify the consumer's identity.

Review the financial institution's procedures to ensure that when a consumer report containing such an alert is obtained, appropriate steps are taken to verify the consumer's identity.

Rights for Identity Theft Victims (FCRA §609(e); FACT Act §151).

Within 30 days after receiving a request from an identity theft victim, a business entity that has entered into a transaction with a person who has allegedly made an unauthorized use of the victim's identity must provide copies of the application and the transaction records to the victim; federal, state, and/or local authorities specified by the victim; or any law enforcement agency investigating the identity theft and authorized by the victim to obtain such records. Prior to disclosing this information, the business entity generally must ensure that the person making the request provides appropriate identification to ensure that the business entity is disclosing this information to the actual victim.

Review the financial institution's practices and procedures to ensure that information about fraudulent accounts

or transactions is appropriately disclosed upon request and after submission of appropriate documentation by the requestor.

Disclosure of Credit Scores (FCRA §609(g); FACT Act §212). Any person who makes or arranges loans

Victims of identity theft may block a consumer reporting agency from including information about allegedly fraudulent accounts on their consumer reports.

using consumer credit scores in connection with an application for a loan that is secured by 1-to-4 units of residential real property shall provide the following as soon as reasonably practicable:

- The exact text of the required notice found in FCRA §609(g)(1)(D) and FACT Act §212(c).
- The credit score and certain information about the score.
- The name, address, and telephone number of each consumer reporting agency that provided a credit score used by the person in the transaction. This requirement applies only to loans that are for consumer purposes.

Ensure that the financial institution provides the appropriate credit score notice to consumers.

Notice by Debt Collectors Regarding Fraudulent Information (FCRA §615(g); FACT Act §155). This section applies to financial institutions

that collect debts for third parties. If the collecting financial institution is notified that any information relating to the subject debt may be fraudulent or the result of identity theft, it must notify the third party of this fact and, upon request of the consumer, provide the consumer with all of the informa-

tion to which the consumer would be entitled to dispute the debt.

Determine if the financial institution collects debts for third parties. If applicable, ensure policies and procedures are in place to notify third parties when the financial institution learns that the debt in question may be the result of identity theft.

Prevention of Re-Pollution of Consumer Reports (FCRA §§623(a)(6) and 615(f); FACT Act §154). Victims of identity theft may block a consumer reporting agency from including information about allegedly fraudulent accounts on their consumer reports. In turn, the consumer reporting agency will inform the furnisher of this information about the block. Furnishers must establish and follow reasonable procedures to ensure that this information is not refurnished to the consumer reporting agency, thus "re-polluting" the victim's consumer report. This section of the FACT Act also prohibits a financial institution from selling, transferring, or placing for debt collection a debt caused by an identity theft.

Review the financial institution's policies and procedures regarding (1) the furnishing of information to consumer reporting agencies to ensure that items disputed based on identity theft are not reported to the consumer reporting agency again and (2) the selling, transferring, or placing for debt collection debts that are caused by identity theft.

Notice of Furnishing Negative Information (FCRA §623(a)(7); FACT Act §217; 12 CFR 222).

Financial institutions must provide consumers with a disclosure either before negative information is reported to a nationwide consumer reporting agency (Model Notice B-1) or within 30 days after reporting the negative information (Model Notice B-2). The disclosure need not be given each time negative information is provided, so long as it has been provided to the consumer at least once. The notice

payments, missed payments, or other defaults on your account may be reflected in your credit report.

Model Notice B-2

We have told a credit bureau about a late payment, missed payment, or other default on your account. This information may be reflected in your credit report.

Ensure that the required negative information notice is provided to consumers. Financial institutions have flexibility in complying with this provision by either providing an advance notice to consumers or notifying the consumer within 30 days after providing negative information to a nationwide consumer reporting agency. Some institutions may choose to provide the advance notice to all customers as an abundance of caution; however, the statute only requires that the notice be given to consumers about

financial institution cannot verify the accuracy of the information, then it must delete, modify, or block the information from reporting.

Ensure that the financial institution's policies and procedures for furnishing data to consumer reporting agencies include provisions for prompt investigation of disputes and reporting of the outcome of investigations.

Final Remarks

Provisions of the FACT Act that do not require implementing regulations and the provision requiring the furnishing of negative information became effective December 1, 2004. Going forward, examinations will include reviews for compliance with those provisions.

Other FACT Act provisions require additional guidance that has not been

Financial institutions must investigate errors that are reported by consumers regarding information that the financial institution has provided to a consumer reporting agency.

may not be included in the initial disclosures provided under Section 127(a) of the *Truth in Lending Act*.

Although use of model notices is not required, a financial institution is deemed to be in compliance with this section of the Act if the institution properly uses the notices set forth below.

Model Notice B-1

We may report information about your account to credit bureaus. Late

whom negative information is reported. Violations will only be cited if the institution reported negative information about a consumer after December 1, 2004, without providing the appropriate notice to the consumer.

Disclosure of Reinvestigation Results (FCRA §623(b); FACT Act §314(b)). Financial institutions must investigate errors that are reported by consumers regarding information that the financial institution has provided to a consumer reporting agency. If the

finalized. Compliance examinations will not include reviews of these provisions until after the mandatory compliance dates, which will be set forth when the guidance is issued.

If you have any questions about the FACT Act, please contact either Supervising Examiner Eddie L. Valentine (eddie.valentine@phil.frb.org) or Supervising Examiner John D. Fields (john.d.fields@phil.frb.org) through the Regulations Assistance Line at (215) 574-6568. ■

Compliance Alert:

HMDA Compliance Resource Tools

Due to the numerous changes to the *Home Mortgage Disclosure Act* (HMDA), financial institutions should have developed new policies, procedures, and training to ensure compliance with the new provisions of the law. The federal banking regulators have created several tools to assist financial institutions in complying with the law.

Federal Reserve Bank of Philadelphia Guidance

HMDA Reporting: Understanding The Changes To Regulation C

As announced in the second quarter 2004 issue of *Compliance Corner*, the Federal Reserve Bank of Philadelphia produced a CD-ROM to assist Third District financial institutions in understanding the changes to Regulation C, which implements the *Home Mortgage Disclosure Act* (HMDA).¹ The training module highlights key concepts that management should be familiar with before preparing

the 2004 HMDA Loan Application Register.

The CD-ROM program is based on a 2003 presentation by the Federal Financial Institutions Examination Council (FFIEC) and contains appropriate links to reference and resource materials, including links to the Internet.

If you are interested in obtaining the CD-ROM, please contact either Elizabeth Rozsa (elizabeth.rozsa@phil.frb.org) or John Fields (john.d.fields@phil.frb.org) through the Regulations Assistance Line at (215) 574-6568.

FFIEC Guidance

FFIEC Additional Guidance

Data for many of the new HMDA fields approved in 2002 was collected for the first time in 2004. Based upon analysis of preliminary 2004 HMDA data, there appears to be some confusion about how to properly collect and report these new data fields. The FFIEC issued a guidance letter on November 29, 2004 informing HMDA reporters of the correct method for collecting and reporting these data fields so that any required corrective action could be taken

prior to submission. The guidance letter is available on the FFIEC web site at <www.ffiec.gov/hmda/pdf/FFIECguidance2004.pdf>.

Specific areas of concern noted in the letter include the following:

- The correct application of the transition rules
- Ethnicity, race, and sex data
- Preapprovals
- Property location
- Lien status
- The *Home Ownership and Equity Protection Act* (HOEPA) status
- The reporting of loans sold and purchased

HMDA Transition Rules

Information about the HMDA transition rules is available on the FFIEC web site at <www.ffiec.gov/hmda/pdf/transitionrules.pdf>.

A Guide To HMDA Reporting: Getting It Right

The latest version of this publication, which provides detailed information on the correct methods of collecting and reporting data, is available on the FFIEC web site at <www.ffiec.gov/hmda/pdf/2004guide.pdf>. ■

¹ *Compliance Corner*, "News You Can Use: Resource Tool Available to Review Key Changes to Regulation C (HMDA)", <www.philadelphiafed.org/src/srcinsights/srcinsights/q2_04_cc3.html>.

Proposed Revisions to CRA Regulations

On February 25, 2005, the Federal Reserve invited public comment on proposed revisions to Regulation BB, the regulation that implements the *Community Reinvestment Act* (CRA). This proposal is identical to the proposals released by the OCC and the FDIC on February 22, 2005. The Federal Reserve expects that these revisions would reduce regulatory burden on community banks while making CRA evaluations more effective in encouraging banks to meet community development needs.

The proposal is available in the *Federal Register* at <a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/pdf/05-4797.pdf>. Comments are due May 10, 2005.

Regulation Z: Points to Ponder

Federal Reserve Issues Advance Notice of Proposed Rulemaking

The Federal Reserve Board (Board) is conducting a comprehensive review of Regulation Z, *Truth in Lending*, which implements the *Truth in Lending Act* (TILA). This multi-stage review is expected to span several years. The Board will focus its first stage of review on open-end (i.e., revolving) credit, chiefly general-purpose credit cards and merchant-specific credit plans.

As part of the first stage of its review, on December 3, 2004 the Board issued an advance notice of proposed rulemaking (ANPR) announcing a review of the regulation's rules on open-end credit, excluding home-secured revolving credit. The complete ANPR is available on the Board's web site at www.federalreserve.gov/boarddocs/press/bcreg/2004/20041203/attachments.pdf. The ANPR states, in part, that "in reviewing Regulation Z, the Board's primary goal is to improve, if possible, the effectiveness and usefulness of open-end disclosures and substantive protections."

The ANPR seeks public comment on a variety of specific issues in the following three broad areas.

- How can the content of disclosures be improved or simplified to enhance consumers' understanding of the cost of credit?
- Is there a need to modify the rules that implement TILA's substantive protections for open-end accounts?

In addition to seeking comments on the foregoing, the Board has also re-

quested comments regarding other issues that it should consider addressing in its review of open-end credit provisions. Readers of *Compliance Corner* are encouraged to comment on the Board's ANPR. All comments should be submitted in accordance with the instructions provided in the ANPR, and the deadline for submitting comments is March 28, 2005.

Federal Reserve Adjusts HOEPA Dollar Trigger

Section 32 of Regulation Z implements the *Home Ownership and Equity Protection Act of 1994* (HOEPA), a federal statute that provides consumer protections regarding comparatively high cost home-secured loans. In par-

In reviewing Regulation Z, the Board's primary goal is to improve, if possible, the effectiveness and usefulness of open-end disclosures and substantive protections.

All public comments received by the Board are made available on the Board's web site at www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, except as necessary for technical

particular, section 32(a)(ii) of Regulation Z contains a triggering threshold that invokes certain consumer protections for such loans. The threshold is the greater of a certain dollar amount, which was initially set at \$400 at the time the statute became effective, or 8 percent of the total loan amount.

As required under HOEPA, the Board has annually adjusted the initial \$400 dollar threshold, based on the annual percentage change in the Consumer Price Index that is in effect on June 1. For 2005, the Board has adjusted HOEPA's dollar trigger to \$510, effective January 1, 2005. ■



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