

**SUPPORTING STATEMENT**  
**Identity Theft Red Flags and Address Discrepancies**  
**Under the FACT Act of 2003**  
**12 C.F.R. Part 41**  
**(OMB Control No. 1557-0237)**

A. JUSTIFICATION

1. Circumstances that make the collection necessary:

Section 114 of the FACT Act amended section 615 of the Fair Credit Reporting Act (FCRA) to require the Agencies<sup>1</sup> to issue jointly:

- Guidelines for financial institutions and creditors regarding identity theft with respect to their account holders and customers. In developing the guidelines, the Agencies were required to identify patterns, practices, and specific forms of activity that indicate the possible existence of identity theft. The guidelines must be updated as often as necessary, and cannot be inconsistent with the policies and procedures required under section 326 of the USA PATRIOT Act, 31 U.S.C. 5318(l).
- Regulations requiring each financial institution and each creditor to establish reasonable policies and procedures for implementing the guidelines to identify possible risks to account holders or customers or to the safety and soundness of the institution or creditor.
- Regulations generally requiring credit and debit card issuers to assess the validity of change of address requests under certain circumstances.

Section 315 of the FACT Act amended section 605 of the FCRA to require the Agencies to issue regulations providing guidance regarding reasonable policies and procedures that a user of consumer reports must employ when a user receives a notice of address discrepancy from a consumer reporting agency (CRA).<sup>2</sup> These regulations were required to describe reasonable policies and procedures for users of consumer reports to:

- Enable a user to form a reasonable belief that it knows the identity of the person for whom it has obtained a consumer report, and
- Reconcile the address of the consumer with the CRA, if the user establishes a continuing relationship with the consumer and regularly and in the ordinary course of business furnishes information to the CRA.

2. Use of the Information Collected:

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<sup>1</sup> Section 114 required regulations to be issued jointly by the Federal banking agencies, the National Credit Union Administration and the Federal Trade Commission. Therefore, for purposes of this filing, “Agencies” refers to these entities. It is important to note that Section 1088(a)(8) of the Dodd-Frank Act further amended section 615 of FCRA to also require the Securities and Exchange Commission and the Commodity Futures Trading Commission to issue Red Flags Rules.

<sup>2</sup> These regulations have been transferred to the CFPB.

As required by section 114 of the FACT Act, appendix J to 12 CFR part 41 contains guidelines for financial institutions and creditors to use in identifying patterns, practices, and specific forms of activity that indicate the possible existence of identity theft. In addition, 12 CFR 41.90 requires each financial institution or creditor that is a national bank, Federal branch or agency of a foreign bank, and any of their operating subsidiaries that are not functionally regulated (bank), to establish reasonable policies and procedures to address the risk of identity theft that incorporate the guidelines. Pursuant to § 41.91, credit card and debit card issuers must implement reasonable policies and procedures to assess the validity of a request for a change of address under certain circumstances.

Section 41.90 requires each OCC regulated financial institution or creditor that offers or maintains one or more covered accounts to develop and implement a written Identity Theft Prevention Program (Program). In developing the Program, financial institutions and creditors are required to consider the guidelines in appendix J and include those that are appropriate. The initial Program must be approved by the board of directors or an appropriate committee thereof. The board, an appropriate committee thereof, or a designated employee at the level of senior management must be involved in the oversight of the Program. In addition, staff members must be trained to carry out the Program. Pursuant to § 41.91, each credit and debit card issuer is required to establish and implement policies and procedures to assess the validity of a change of address request under certain circumstances. Before issuing an additional or replacement card, the card issuer must notify the cardholder or use another means to assess the validity of the change of address.

As required by section 315 of the FACT Act, § 1022.82 requires users of consumer reports to have reasonable policies and procedures that must be followed when a user receives a notice of address discrepancy from a credit reporting agency (CRA).

Section 1022.82 requires each user of consumer reports to develop and implement reasonable policies and procedures designed to enable the user to form a reasonable belief that a consumer report relates to the consumer about whom it requested the report when it receives a notice of address discrepancy from a CRA. A user of consumer reports also must develop and implement reasonable policies and procedures for furnishing an address for the consumer that the user has reasonably confirmed to be accurate to the CRA from which it receives a notice of address discrepancy when the user can: (1) form a reasonable belief that the consumer report relates to the consumer about whom the user has requested the report; (2) establish a continuing relationship with the consumer and; (3) establish that it regularly and in the ordinary course of business furnishes information to the CRA from which it received the notice of address discrepancy.

### 3. Consideration of the use of improved information technology:

A respondent may use any effective information technology it chooses to reduce any burden associated with 12 C.F.R. §§ 1022.82, 41.90 and 41.91.

4. Efforts to identify duplication:

There is no duplication.

5. Methods used to minimize burden if the collection has a significant impact on a substantial number of small entities:

This information collection does not have a significant impact on a substantial number of small entities.

6. Consequences to the Federal program if the collection were conducted less frequently:

The burden associated with these regulations is attributable to the policies and procedures that a respondent must develop to create a Program (and update as necessary), training, pursuant to 12 C.F.R. § 41.90; preparing an annual report pursuant to section VI. (b) of Appendix J to 12 C.F.R. Part 41, to assess the validity of change of address requests pursuant to 12 C.F.R. § 41.91, and to developing policies and procedures to respond to notices of address discrepancy pursuant to 12 C.F.R. § 1022.82. Once they are developed, these policies and procedures may need to be modified or adjusted to prevent them from becoming ineffective.

7. Special circumstances necessitating collection inconsistent with 5 CFR Part 1320:

The collection is consistent with the requirements of 5 CFR Part 1320.

8. Consultation with persons outside the agency:

The collection was published for 60 days of comment on May 25, 2012. 77 FR 31439. No comments were received.

9. Payment to respondents:

Not applicable.

10. Confidentiality:

Not applicable.

11. Information of a Sensitive Nature:

Not applicable.

12. Burden estimate:

Number of existing respondents: 2,007 (1,298 banks; 596 thrifts; 66 trust companies; 47 Federal branches & agencies of foreign banks).

Estimated burden per existing respondent: 111 hours.

Updating program: 8 hours.

Preparing annual report –

Effectiveness: 4 hours.

Significant incidents of identity theft and management’s response:  
4 hours.

Service provider arrangements: 1 hour.

Recommendations for material changes to the program:<sup>3</sup> 6 hours.

Oversight of services providers: 8 hours.

Annual training: 80 hours.

Number of new respondents: 3.

Estimated burden per new respondent: 361 hours (111 hours + 250 hours).

Developing new program:<sup>4</sup> 250 hours.

Total burden for existing respondents: 222,777 hours.

Total burden for new respondents: 1,083 hours.

Total estimated annual burden: 223,860 hours.

13. Estimate of annualized costs to respondents:

Not applicable.

14. Estimate of annualized costs to the government:

Not applicable.

15. Changes to burden:

Prior Burden: 2,414 respondents; 195,809 burden hours.

Current Burden: 2,010 respondents; 223,860 burden hours.

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<sup>3</sup> Includes board approval of material changes and, if required, modifying procedures.

<sup>4</sup> In addition to the requirements of 12 C.F.R. 41.90 this includes developing policies and procedures to assess validity of changes of address and developing policies and procedures to respond to notices of address discrepancy.

Difference: - 404 respondents; + 28,051 burden hours.

The changes in burden are due to the transfer of a portion of the regulations and respondents to the CFPB and the availability of more accurate estimates.

16. Information regarding collections whose results are planned to be published for statistical use:

The results of these collections will not be published for statistical use.

17. Display of expiration date:

Not applicable.

18. Exceptions to certification statement:

None.

B. STATISTICAL METHODS

Not applicable.