

# Massachusetts Bankers Association

September 18, 2006

Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
**Attention: Docket No. R-1255**  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551

**RE: RIN 3084-AA94, "Red Flags Rule"**

Dear Ms. Johnson:

On behalf of our 210 commercial, savings, cooperative, and savings and loan members throughout Massachusetts and New England, the Massachusetts Bankers Association (MBA) appreciates the opportunity to comment on the proposed regulations related to implementation of Sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). The Agencies are jointly proposing guidelines for financial institutions and creditors identifying patterns, practices, and specific forms of activity that indicate the possible existence of identity theft (Red Flags).

MBA and our member banks strongly support efforts to protect confidential customer information. Banks have strong incentives to combat financial fraud and identity theft, since they often suffer reputation and economic risk if they fail to protect customer information. Banks have made significant strides in upgrading information security systems and implementing policies and procedures to better protect customer information in recent years.

We are seriously concerned that the proposed rule is overly complex, duplicative of many current regulatory and statutory requirements, and does not give banks the needed flexibility to implement effective anti-fraud programs that are risk-based. In fact, we believe that the rule as proposed creates an inflexible checklist that may inhibit institutions from effectively addressing evolving threats.

For example, the proposed Red Flag regulations require banks to develop a program based on the institution's risk assessment to address risks of identity theft. The proposal indicates that the program should be appropriate to the size and complexity of the institution, reflect the nature and scope of its activities, and enable the institution to respond to changing identity theft risks as they arise. However, many of the required elements in a Red Flag program are already incorporated into other policies and procedures related to the Customer Identification Program (CIP), anti-money laundering (AML) programs, the Gramm-Leach-Bliley Act (GLBA) information security rules, and other fraud prevention programs.

Instead of mandating the creation of a duplicative Identity Theft Prevention program, we encourage the agencies to focus on existing fraud prevention efforts at each institution. In particular, the regulatory burden of developing a written ID Theft Prevention program could be significant; however the institution may already have many, if not all, of the required policies and procedures incorporated into existing programs.

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The proposal also assumes that all the Red Flags listed are relevant to every financial institution. It puts the burden on the bank to analyze each Red Flag and persuade examiners that a particular one does not apply to a product. This puts a considerable burden on smaller institutions, which, instead of tailoring Red Flags to each product, might apply every Red Flag to every product simply to avoid the extensive analysis and documentation the proposed rule requires.

In addition, financial institutions will incur costs to re-design identity theft and fraud programs into packages that fit into the regulatory regime examiners expect. As we've noted, many identity theft and fraud prevention efforts are integrated throughout the institution. An institution may be extremely adept at preventing ID theft, however if a program is not in place that has all of the required regulatory paperwork justifying each and every element contained in the regulation, the bank could come under regulatory scrutiny and criticism. Consequently, ID theft prevention will actually become less risk-based at some institutions.

MBA believes that the agencies should revise and simplify the proposed regulation concerning the Red Flag guidelines to reflect the current information security environment. In addition, any proposed regulation should include reasonably designed procedures that assist banks, particularly small community banks, in fighting identity theft rather than on burdensome new regulatory compliance requirements.

Thank you for the opportunity to comment on the proposed regulation. If you need additional information or have any questions regarding our comments, please contact me at (617) 523-7595 or via email at [jskar@massbankers.org](mailto:jskar@massbankers.org).

Sincerely,



Jon K. Skarin  
Director,  
Regulatory & Legislative Policy

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