

September 18, 2006

***VIA Electronic Delivery***

***regs.comments@occ.treas.gov***

Office of the Comptroller of the Currency  
250 E Street, SW.  
Public Reference Room  
Mail Stop 1-5  
Washington, DC 20219.

Re: OCC Docket No. 06-07; FR Doc. 06-06187  
Fair and Accurate Credit Transactions Act of 2003: Identity  
theft red flags and address discrepancies

Dear Sirs and Madams:

This letter is submitted on behalf of KeyCorp (“Key”) in response to the proposed rulemaking (“Proposed Rule”) and request for public comment by the Federal Trade Commission, the Office of the Comptroller of the Currency (“OCC”) and other regulatory agencies (collectively, the “Regulators”) published in the Federal Register on July 18, 2006. Pursuant to the Fair Credit Reporting Act (“FCRA”) as amended by the Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”), the Proposed Rule would regulate identity theft red flags and address discrepancies under Sections 115 and 315 of the FACT Act.

**About KeyCorp**

Cleveland-based KeyCorp is one of the nation's largest bank-based financial-services companies, with assets of approximately \$95 billion. Key companies provide investment management, retail and commercial banking, consumer finance, and investment banking products and services to individuals and companies throughout the United States and, for certain businesses, internationally. The company's businesses deliver their products and services through branches and offices and a network of approximately 2,200 ATMs.

Key shares the Regulators’ concerns about the growing problem of identity theft and agrees that financial institutions have a role in preventing the harm that can result when an individual’s identity is stolen. However, we have several concerns about the Proposed Regulations

## **Definitions of “Customer” and “Account”**

The Proposed Regulations set forth extremely broad definitions of “customer” and “account.” The definition of “customer,” by including all types of businesses and entities, is at odds with the manner in which the term is used in other parts of the FACT Act. The term “account” does not even appear in the FACT Act, but the proposed definition expands on the use of the term in other parts of the Fair Credit Reporting Act.

The Proposed Regulations largely rely on the fact that the financial institutions have been required to adopt similar policies and procedures in response to other regulations, such as those under the USA Patriot Act and the Interagency Guidelines Establishing Information Security Standards (“Information Security Standards”). However, the definitions of “customer” and “account” in the Proposed Regulations are much more encompassing than those contained in these other regulations. As a result, financial institutions will need to adopt and oversee policies and procedures for areas that were previously outside the scope of regulatory oversight under the FACT Act. Some of these areas, such as commercial banking, investment banking, and commercial leasing businesses may be considered low risk for identity theft. Yet, these areas will have to participate in the enterprise-wide Program mandated by the Proposed Regulations.

Key urges the Regulators to reconsider the definitions of “customer” and “account” and to craft definitions that are better aligned with the definitions of those terms contained in the FACT Act.

## **Definition of “Identity Theft”**

Key is also concerned that the proposed definition of “Identity Theft” is too broad and confusing. As a result of the broad definition, many of the specific examples set forth in Exhibit J of the Proposed Regulations, are examples of types of fraud that would not typically be associated with identity theft, such as credit card fraud. The definition of Identity Theft contained in the FACT Act starts with the premise that identity theft involves the misuse of a natural person’s “identifying information.” We ask that the Regulators adopt a narrower definition of identity theft, such as that proposed in the BITS comment letter, so that the regulation remains focused on crimes that result from misuse of identifying information.

## **Need to Show a “Reasonable Basis” for Excluding a Red Flag**

The Proposed Regulations repeatedly state that each financial institution must conduct its own risk review to determine which of the Red Flags are relevant to its business. However, that “[a]n institution or creditor must have a reasonable basis for concluding that a Red Flag does not evidence a risk of identity theft” effectively shifts the burden of proof to the financial institution to demonstrate that its Program decisions are correct. The basic presumption therefore becomes that all of the Red Flags identified in the Proposed Regulation apply to each financial institution, and the financial institution

excludes one or more at its own risk. Such a presumption could even apply to account level decisions, such as a determination to exclude a particular type of account from monitoring for one of the Red Flags.

Shifting the burden of demonstrating a “reasonable basis” for excluding a Red Flag is inconsistent with the risk-based approach promulgated in the Proposed Regulation. We ask that the Regulators clarify the language in the Proposed Regulation to make it clear that a financial institution has the ability to exercise its discretion in analyzing the Red Flags’ applicability to its business and that its determinations made pursuant to a risk review will be presumed to be reasonable.

### **Cost of Compliance**

Key believes that if the Proposed Regulations remain as they are, particularly with regard to the definitions of customer and account, and the presumption that each financial institution’s Program must address all 31 Red Flags listed in Appendix J, the cost of compliance will be much higher than the Regulators have projected. For example, the expansion of customer identification programs beyond what is currently required by Section 326 of the USA Patriot Act, will, by itself, require substantial planning, implementation time and training, as well as additional staffing.

Key appreciates the opportunity to comment on this important topic. If you have any questions concerning these comments, or if we may otherwise be of assistance in connection with this matter, please do not hesitate to contact the undersigned.

Sincerely,

/Forrest Stanley/

Forrest Stanley  
Senior Vice President and  
Deputy General Counsel