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Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551
(via regs.comments@federalreserve.gov)

RE: Docket No. R-1255

BB&T Corporation ("BB&T") appreciates the opportunity to comment on the Interagency proposed rulemaking: Identity Theft Red Flags and Address Discrepancies Under the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). BB&T is a regional financial holding company with three state-chartered banks that have branches in twelve states as well as multiple non-bank subsidiaries.

Our comments in response to the OCC, Board, FDIC, OTS, NCUA, and FTC (the Agencies) request are as follows:

1. Regarding section xx.82(c) and xx.90(d)(2) for verifying the identity of the consumer and use of verification set forth in the Customer Identification Program (CIP) rules, the proposal presents a concern to us on the relationship between the proposal and CIP. The proposal merely references the existing rules and states that a financial institution that is in compliance with the rules under CIP would be in compliance with the proposed identity verification rules. However, the differences in CIP and the proposed identity verification requirements could present significant issues. For example, existing clients are exempt from CIP as long as certain conditions are met, but the proposed rules apply to any customer opening a new account. While recognizing the similarities in the objectives of both CIP and the proposed rule identity verification rules, the fact that different customers and different accounts are covered by each will increase the difficulty in ensuring compliance. The Agencies should clarify that if there is a discrepancy in the two rules, CIP would govern.

2. Regarding section xx.82(d)(3), the Agencies should modify the definition of timing to be "reasonable" timing. It will be burdensome for financial institutions to report each address change on the day it occurs; rather, financial institutions should report the address changes to the Credit Reporting Agencies (CRAs) in the next monthly CRA reporting cycle.

3. Regarding section xx.90, the Agencies should be aware that financial institutions will face additional costs involved in formalizing and enhancing procedures to meet these new requirements which the Agencies may have underestimated. While some of these may be existing practices, there will be costs involved in the inefficiencies created when such practices must be formally documented and monitored.

The proposal unnecessarily insists on requirements for establishing reasonable ID theft practices and, procedures not mandated by statute. Among the non-mandated regulatory requirements are the following; a definition of "account" that overreaches in scope, a written Identity Theft Prevention Program, and a specified obligation for boards of directors that is inequitable.

We also have concerns about expanding the statutory requirement to apply to instances where institutions are simply maintaining or monitoring existing accounts. Financial institutions pull consumer reports on existing customers for a variety of reasons, among them to review the customer's continued eligibility for the product terms.

4. Regarding section xx.90 (d), the Program "must include policies and procedures to identify Red Flags, singly or in combination, that are relevant to detecting a possible risk of identity theft. . . using the risk evaluation set forth in this section." The proposal continues, "At a minimum, the Program must incorporate any relevant Red Flags from; Appendix J, Applicable supervisory guidance, Incidents of identity theft that the financial institution or creditor has experienced, and Methods of identity theft that the financial institution or creditor has identified that reflect changes in identity theft risks." Regarding section Appendix J, the Agencies should clearly state in the final rule that the thirty-one red flags are examples only, and that financial institutions are encouraged to review these and consider them as well as identity other red flags that become apparent as fraudsters adapt and develop new techniques. Further, the Agencies should clearly state that financial institutions may achieve compliance without implementing all thirty-one flags.

Further, the Agencies should include in the regulation an official list of the specific supervisory guidance considered to be applicable and not have this open to interpretation. Otherwise, the result could be an expanding scope of the Program beyond the intent of the Act based on what an individual institution or examiner may perceive as supervisory guidance applicable to identity theft. Likewise, all supervisory guidance should follow the same rulemaking process used for any regulatory change.

Additionally, the proposal provides that in identifying relevant Red Flags, the financial institution must consider which of its accounts are subject to a risk of identity theft, the methods it provides to open these accounts, the methods it provides to access these accounts, and its size, location, and customer base. BB&T supports the "risk-based" approach in the proposed rule but believes that the regulation needs to clarify that if the financial institution determines business purpose products or services are low risk, the institution should have the option of excluding these products and services from their program.

While suggestions about how to identify relevant Red Flags are useful, we recommend that the Agencies make clear that these are only suggestions that financial institutions should consider. For example an institution may, in fact, consider these factors indirectly into an overall design or categorized differently. As a list in an official regulation, however, they become an artificial checklist for the financial institutions and examiners may require financial institutions to reconstitute their approach to the identity Theft Program, when doing so does not advance the goals of the Program. Financial institutions should have wide latitude to determine what factors they consider and how they categorize them.

We also suggest that the final regulation add to the list of suggestions that banks may consider accounts subject to risk of identity theft "based on their identity theft experience." As noted earlier, virtually all types of bank accounts and products are subject to a risk of identity theft, so without modification, this proposed phrase becomes meaningless. For example, if a bank is not experiencing any identity theft related to home equity lines of credit or business accounts, for example, it should not be required to analyze and document why home equity lines of credit or business accounts generally are not at risk for identity theft. For similar reasons, we suggest that the phrase be modified to read "likely risk of identity theft."

This section requires financial institutions to "address the risk of identity theft, commensurate with the degree of risk posed. . ."it then lists actions to be taken. We strongly agree that the risk be addressed "commensurate with the degree of risk posed," which supports the critical risk-based approach. We suggest that to emphasize this point, the Agencies incorporate into the final Regulation the words contained in the Supplementary Information that the list is a list of measures that a financial institution "may take depending on the degree of risk that is present."

Typically, a consumer report, which is the means for learning of an alert, is not pulled when a financial institution issues an additional credit card for an existing account, so the proposal has little application to existing accounts. In addition, if the financial institution learns of an alert at account opening, it will choose, based on further investigation, either to open the account or not. If it chooses to open the account because it has validated the applicant's identity, it is not clear why it cannot issue "additional cards" if the applicant has so requested.

Any final regulation also should clarify that institutions should, in third party transactions or indirect lending where they do not directly interact with the consumer, be permitted to rely on the originating creditor's compliance with this rule. We believe that failure to so clarify the rule will adversely impact the secondary market for assigned contracts.

5. Regarding section xx.91, BB&T suggests that the Agencies provide that financial institutions comply with this provision if they verify the address at the time of the address change request, whether or not the request is linked to a card request. Such a procedure is more protective than the proposal because address change requests are not limited to occasions when a card is requested. Further, most institutions do not link an address change request with a card request and it is not clear whether this remains a significant indicator of fraud. While it might have been so at one time, it appears that fraudsters have shifted from using this technique, thwarted by fraud prevention procedures.

It is also important that the regulation allow broad leeway in allowing financial institutions to verify address changes. Currently, financial institutions use a variety of means to verify address changes. The methods change and will continue to change. The regulation or supplementary information should also clearly allow financial institutions to verify the address change through verification of the customer's identity. In some cases, this may be the most effective verification of the address change and one recognized under CIP.

Finally, we urge that adequate time be given for financial institutions to prepare and implement their programs. We propose that financial institutions be given one year from the date of the issuance of the final rule to comply.

Thank you for the opportunity to provide these comments. We understand the difficulty of promulgating a regulation that is mandated by law, yet appropriate to protect legitimate business needs. We commend you for considering the needs of all.

Sincerely,

Mark D. Vaughn, CRCM
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Senior Vice President and
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