American Bankers Association

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By electronic delivery to:
http://www.federalreserve.gov

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Suite CC-5610 (Annex B)
Washington D.C. 20580

Re: Identify Theft Rules
16 CFR part 681
Project No. 188402
Request for public comment
83 *Federal Register* 63604 (December 11, 2018)

Dear Sir or Madam,

The American Bankers Association[1] (ABA) is pleased to submit our comments to the Federal Trade Commission's (Commission) request for comment[2] on its Identity Theft Rules as part of its systemic review of all current Commission regulations and guides.

Section 615(e) of the Fair Credit Reporting Act[3] requires the Commission and certain other federal agencies[4] jointly to establish guidelines for financial institutions and creditors to identify patterns, practices, and activities that might indicate identity theft and to prescribe regulations requiring financial institutions and creditors to establish reasonable policies and procedures for implementing the guidelines. The federal agencies published final rules and guidelines in November 2007 (Red Flag Rule).[5] The core of the Red Flag Rule[6] is the requirement that financial institutions and creditors develop, implement, and update an "Identity Theft Program" to "detect, prevent, and mitigate identity theft in connection with the opening of covered accounts or any existing covered account." In addition, the federal agencies must prescribe regulations requiring debit and credit card issuers to validate address

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1 The American Bankers Association (ABA) is the voice of the nation's $17 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard $13 trillion in deposits, and extend nearly $10 trillion in loans.

2 Identity Theft Rules, 83 Fed. Reg. 63,604 (Dec. 11, 2018).

3 The Fair Credit Reporting Act, Pub. L. No. 91-508, § 615(e), 84 Stat. 1138 (1970).

4 The "federal agencies" are the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the National Credit Union Administration, the Commodity Futures Trading Commission, and the Securities and Exchange Commission.

5 Identity Theft Red Flags and Address Discrepancies the Fair and Accurate Credit Transactions Act of 2003, 72 Fed. Reg. 63718 (Nov. 9, 2007).

6 16 C.F.R. § 681.1 (2018).

change requests made shortly prior to requests for a replacement or additional card (Card Issuers Rule).[7] Under the Card Issuers Rule, card issuers must (1) notify the cardholder of the request and provide a reasonable means for the cardholder to report promptly an incorrect address change or (2) otherwise assess the validity of the address change. Collectively, the two rules are the "Identify Theft Rules" (Rules).

ABA and its members have a demonstrated long history of combatting identity theft and financial fraud. Indeed, banks have strong incentives to prevent such fraud: they generally suffer the financial losses and risk customer and public dissatisfaction. Their extensive experience and exposure demonstrate that financial institutions must have broad flexibility to develop, implement, and alter appropriate controls to respond effectively to evolving financial crime threats. Criminals' methods and targets change constantly, requiring banks' fraud detection and prevention techniques and strategies to adapt.

In general, the Red Flag Rule is sufficiently flexible to accommodate these changing identify theft patterns and strategies and innovations in technology. In addition, to minimize regulatory burden and duplication, the Red Flag Rule permits banks to rely on other existing rules and practices to demonstrate compliance with the rule, including those related to customer identification programs, privacy policies, and multi-factor authentication. Importantly, the Red Flag Rule specifically recognizes that an institution's identify theft program will vary based on the "size and complexity" of the institution and the "nature and scope of its activities."

Many of the examples of red flags listed in the Red Flag Rule remain useful and relevant. While some of them are now less relevant than they were when the rule was adopted, and new ones have emerged, it is unnecessary, at this time, to update the rule's red flag list, as banks continually supplement their lists based on trends, new technology, and their experience, as the Red Flag Rule requires.

Similarly, the Card Issuers Rule provides appropriate flexibility and efficiency by allowing financial institutions broad discretion in how they assess the validity of the address change request. The general rather than prescriptive directive allows financial institutions to take advantage of technology that is faster, more effective, less intrusive to customers, and less costly than verifying the address change with the customer.

Overall, we believe that both rules provide appropriate flexibility to accommodate changes in identify theft trends and the technology needed to combat identify theft. We do not believe it is necessary to amend them at this time.

We appreciate the opportunity to comment on the Identify Theft Rules and are happy to provide any additional information.

Sincerely

Nessa Feddis

7 *Id.*