

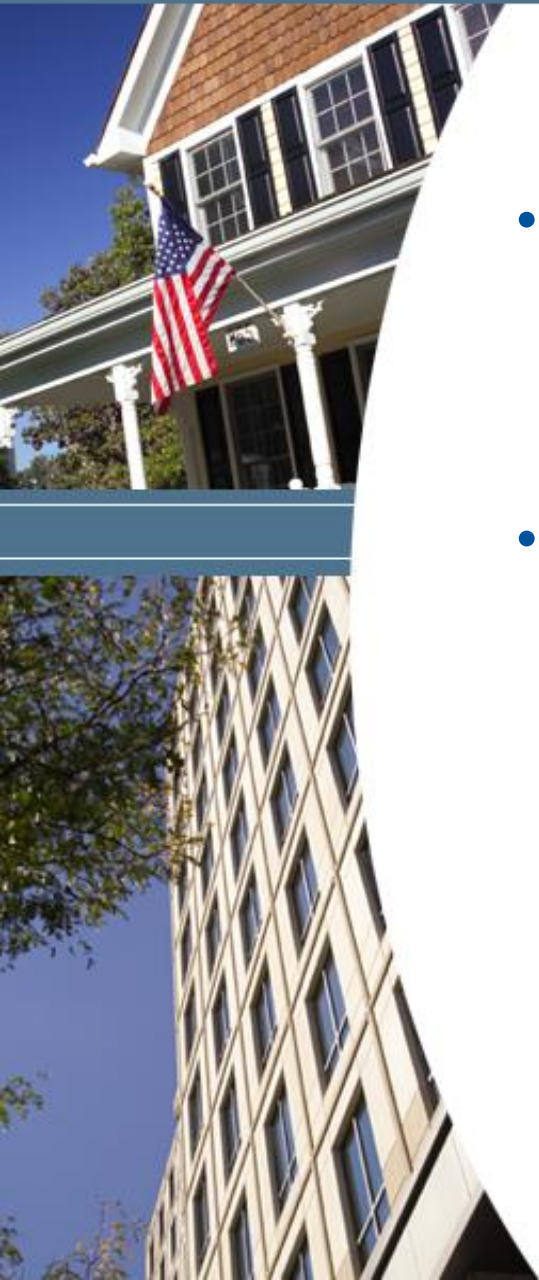


Understanding the “Red Flags Rules”

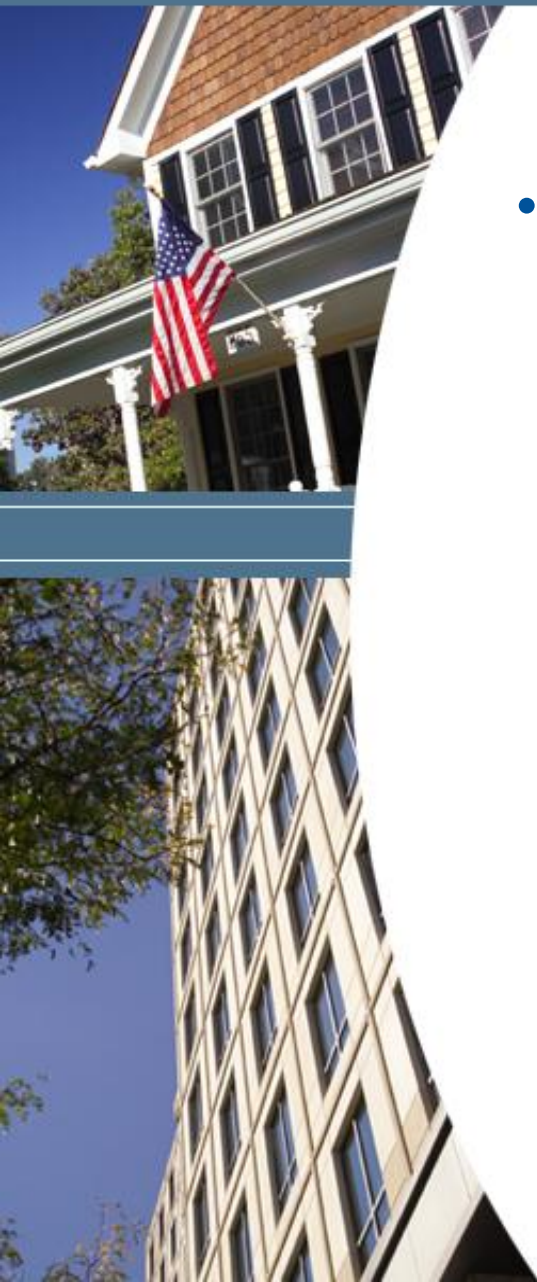


Speakers

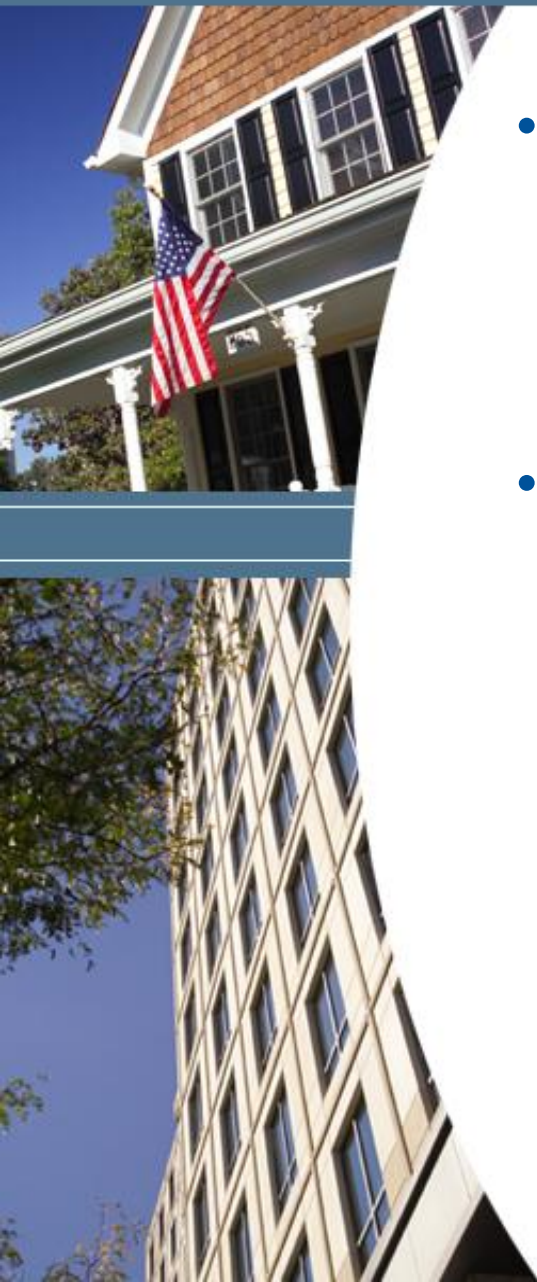
- ◆ ***Christopher M. Witeck***, Esq.
- ◆ ***Daniel J. Duplantis***, CMB, CRU

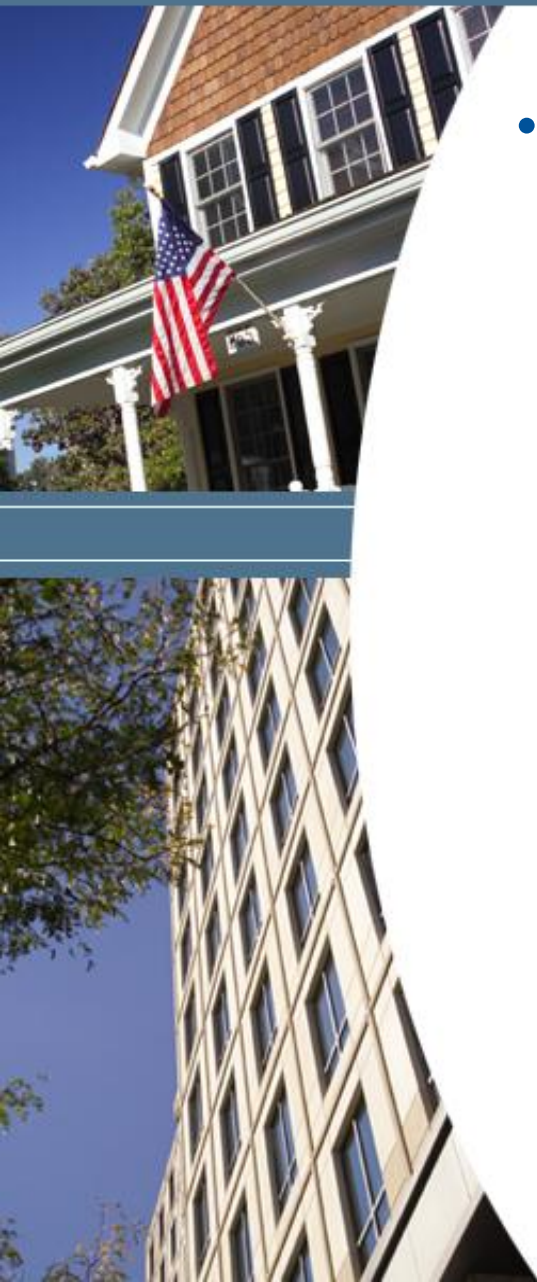


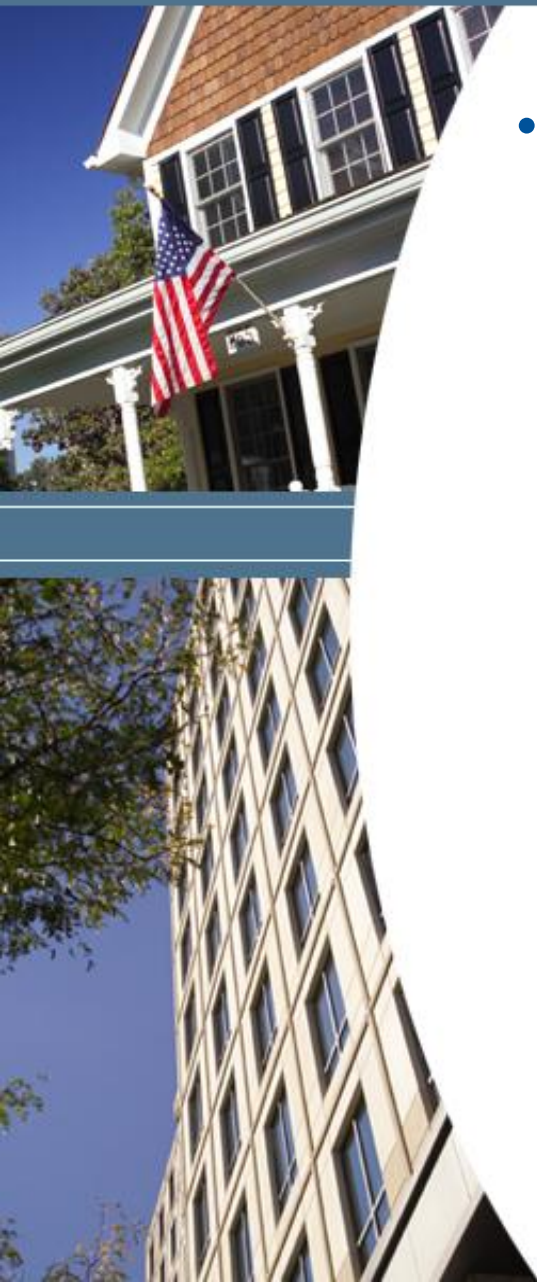
- During FACTA legislative process, identity theft was a central concern of Congress
- FACTA imposes new obligations for lenders and others to prevent, detect, and mitigate identity theft

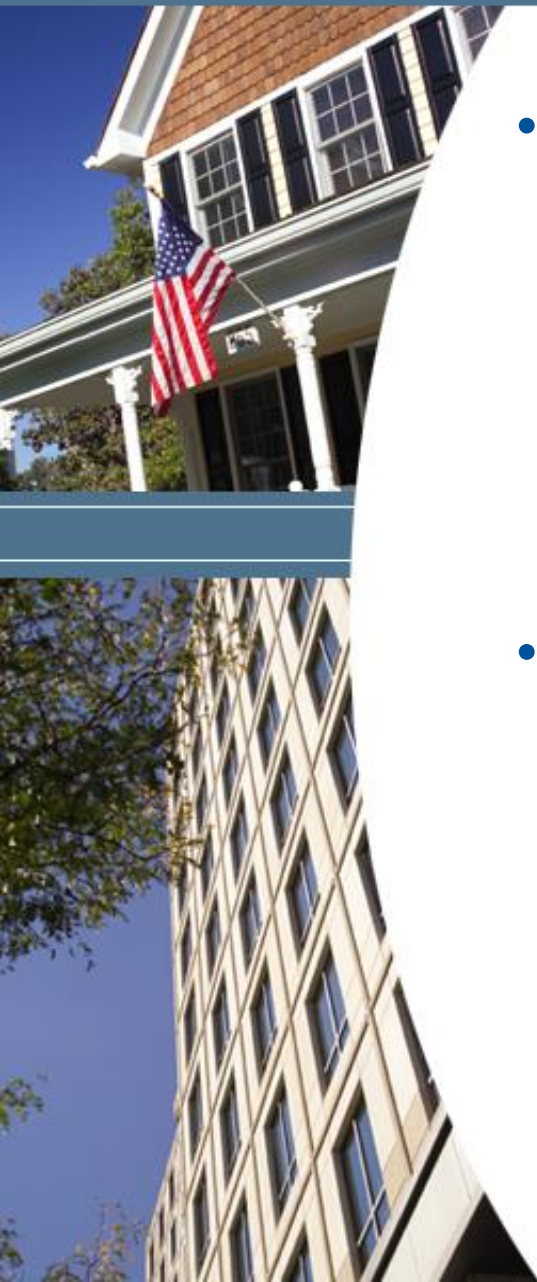
- 
- Compliance mandatory as of:
 - » November 1, 2008 for banks and their service providers
 - » May 1, 2009 for creditors and financial institutions subject to FTC oversight

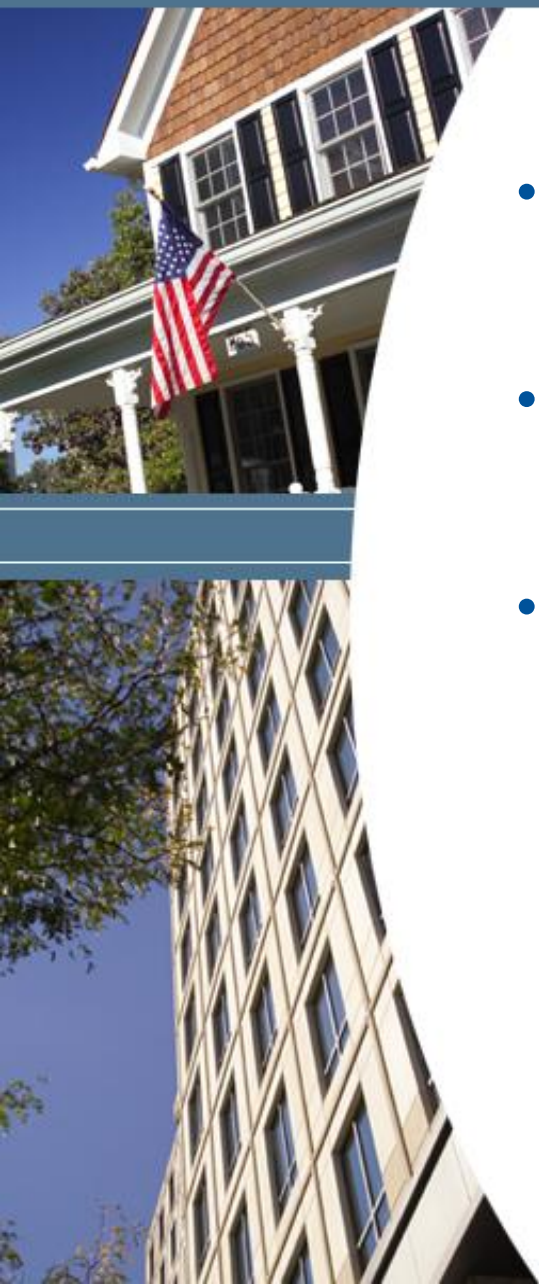
- 
- No private right of action
 - » Enforced by federal regulators
 - Preempts state laws with respect to conduct regulated
 - “Bank-like” regulation
 - » Focuses on internal processes and controls

- 
- Financial Institutions—
 - » Banks, thrifts, credit unions, other holders of accounts accessible for third-party payments
 - “Creditors” as defined in Equal Credit Opportunity Act
 - » Expansive definition includes any person that participates in a credit decision
 - » Can include brokers, assignees

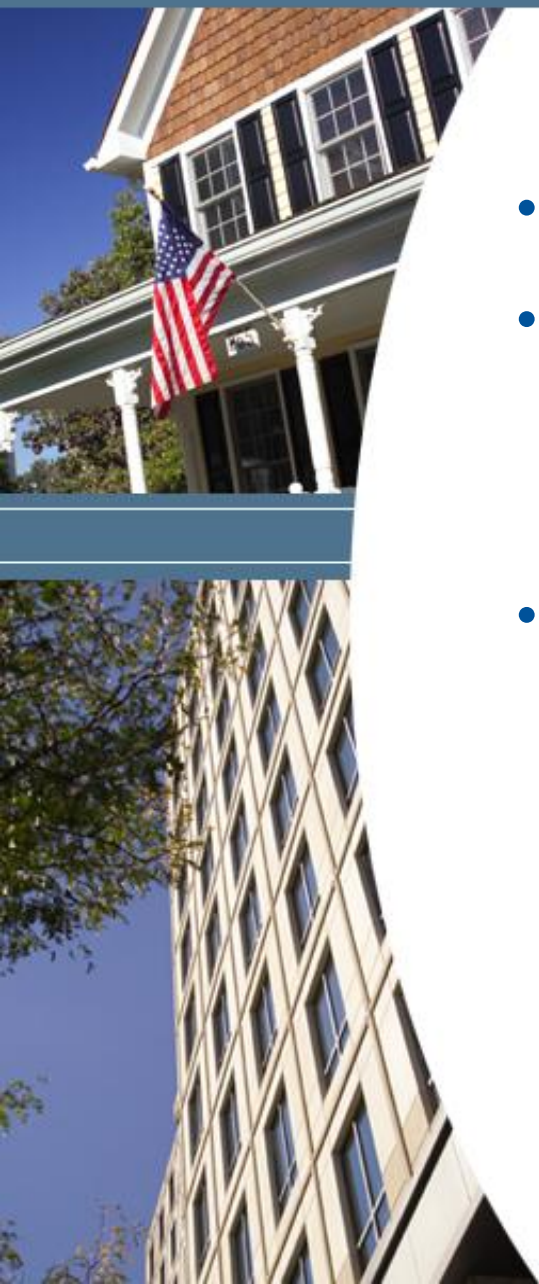
- 
- “Creditors” as defined in ECOA (cont’d)
 - » “Credit” also defined expansively to include any right granted to defer payment
 - » Is a servicer that offers workouts extending credit?
 - May be easier to comply in close cases than to run risk of later enforcement

- 
- “Account”
 - » Continuing relationship established by a person
 - » With a financial institution or creditor
 - » To obtain a product or service for personal, family, household or *business* purposes
 - » Includes extensions of credit and deposit accounts

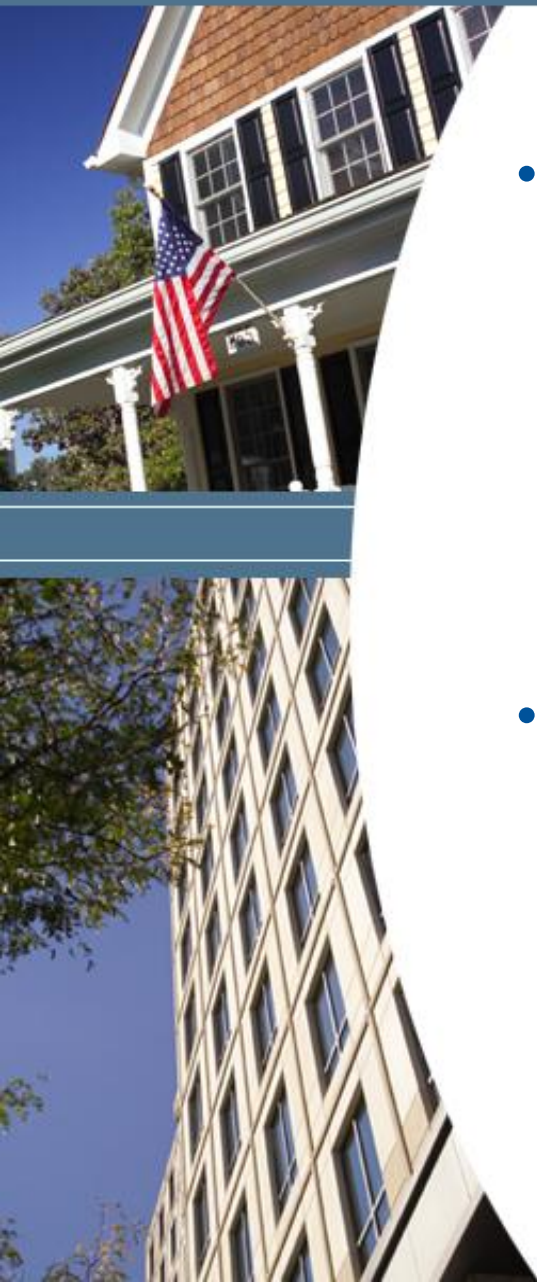
- 
- Identity theft
 - » “A fraud committed or attempted using the identifying information of another person without authority”
 - This is the existing definition that applies to alerts and blocks
 - Red Flag
 - » “A pattern, practice, or specific activity that indicates the possible existence of identity theft”

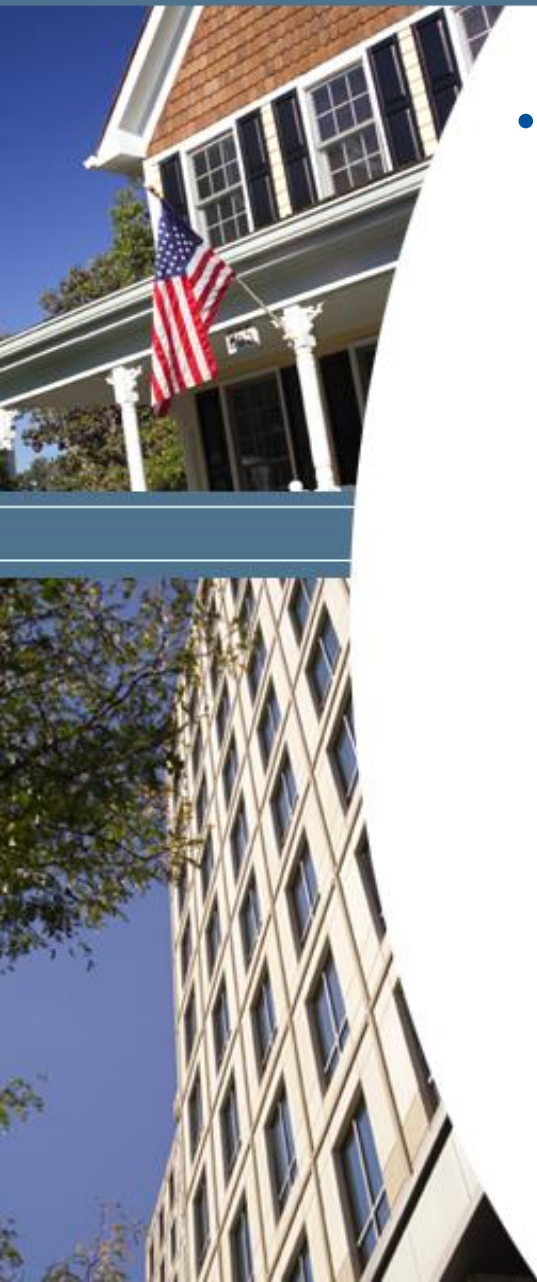


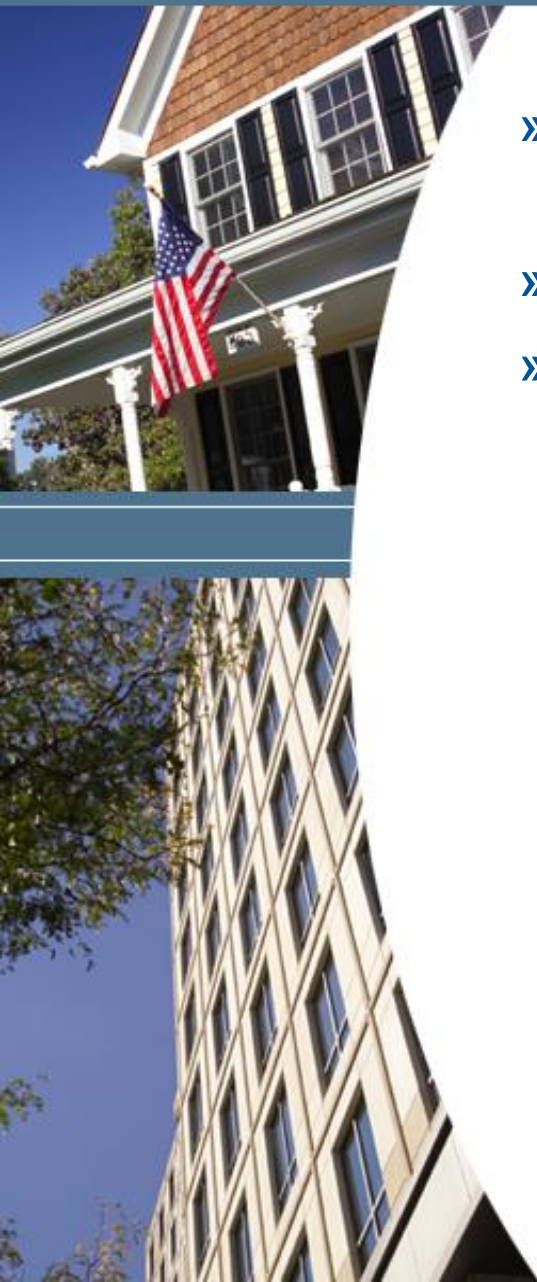
- Rule requires covered entities to develop **written** ID theft prevention program
- Must consider accompanying guidelines in developing rule
- “Optional” list of possible Red Flags in appendix
 - » But should have good reasons not to include a Red Flag

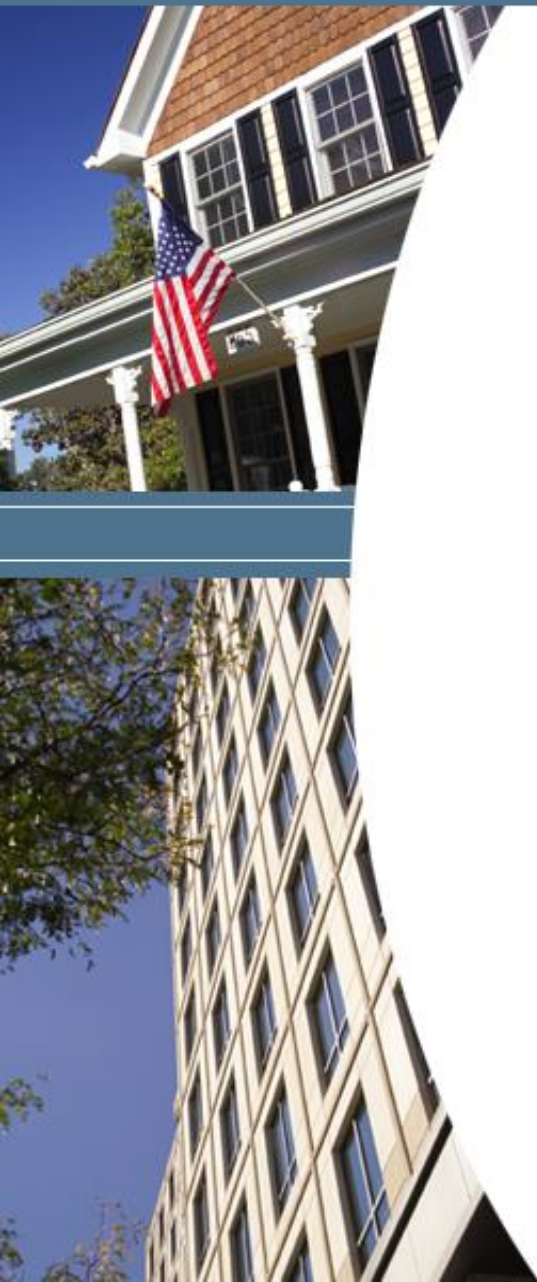


- Applies to both new and existing accounts
- Includes policies and procedures to
 - » Identify relevant red flags
 - » Detect them and respond to them
- Must be reviewed and updated periodically to reflect new risks

- 
- Program must –
 - » Be approved by the Board or Board committee
 - » Be overseen by senior management
 - » Include staff training and oversight of service providers
 - Consider agency guidelines

- 
- Consider—
 - » Types of covered accounts it offers or maintains
 - » Methods of opening and accessing such accounts
 - Most risk in closed-end loan at opening?
 - » Previous experiences with ID theft
 - » “May” consider list of possible Red Flags prepared by agencies
 - But examiners will want to understand why some were excluded

- 
- » Can build on GLBA data security, section 326 USA PATRIOT Act, AML/BSA programs
 - » But must combine into a single written program
 - » Must consider 4 major categories—
 - Alerts and notifications received from credit bureaus and third-party service providers
 - Presentation of suspicious documents or identifying information
 - Unusual or suspicious account usage patterns
 - › Won't apply to mortgages but may apply to HELOCs
 - Notice from customer, victim, or law enforcement

- 
- » Verifying the identity of a person opening account
 - » Monitor open-end transactions
 - » Verify change-of-address requests
 - » Action taken should be commensurate with the risk
 - Risk may be lower for mortgages than HELOCs

- 
- » Responses to identity theft can include:
 - Monitoring account
 - Contacting customers
 - Changing passwords or PINs
 - Closing account or creating new account number
 - Suspending collection
 - Notifying law enforcement
 - Determining no response is necessary
 - » Board of directors or senior management must monitor
 - » At least annual staff reports
 - » Monitor service providers

Alerts, Notifications or Warnings from a Consumer Reporting Agency

1. A fraud or active duty alert is included with a consumer report.
2. A consumer reporting agency provides a notice of credit freeze in response to a request for a consumer report.
3. A consumer reporting agency provides a notice of address discrepancy
4. A consumer report indicates a pattern of activity that is inconsistent with the history and usual pattern of activity of an applicant or customer, such as:
 - a. recent and significant increase in the volume of inquiries;
 - b. An unusual number of recently established credit relationships;
 - c. A material change in the use of credit, especially with respect to recently established credit relationships; or
 - d. An account that was closed for cause or identified for abuse of account privileges by a financial institution or creditor.

Suspicious Documents

1. Documents provided for identification appear to have been altered or forged.
2. The photograph or physical description on the identification is not consistent with the appearance of the applicant or customer presenting the identification.
3. Other information on the identification is not consistent with information provided by the person opening a new covered account or customer presenting the identification.
4. Other information on the identification is not consistent with readily accessible information that is on file with the financial institution or creditor, such as a signature card or a recent check.
5. An application appears to have been altered or forged, or gives the appearance of having been destroyed and reassembled.

Suspicious Personal Identifying Information

1. Personal identifying information provided is inconsistent when compared against external information sources used by the financial institution or creditor. For example: a. The address does not match any address in the consumer report; or b. The Social Security Number (SSN) has not been issued, or is listed on the Social Security Administration's Death Master File.
2. Personal identifying information provided by the customer is not consistent with other personal identifying information provided by the customer. For example, there is a lack of correlation between the SSN range and date of birth.
3. Personal identifying information provided is associated with known fraudulent activity as indicated by internal or third-party sources used by the financial institution or creditor. For example: a. The address on an application is the same as the address provided on a fraudulent application; or b. The phone number on an application is the same as the number provided on a fraudulent application.

Suspicious Personal Identifying Information, cont'd

4. Personal identifying information provided is of a type commonly associated with fraudulent activity as indicated by internal or third-party sources used by the financial institution or creditor. For example: a. The address on an application is fictitious, a mail drop, or a prison; or b. The phone number is invalid, or is associated with a pager or answering service.
5. The SSN provided is the same as that submitted by other persons opening an account or other customers.
6. The address or telephone number provided is the same as or similar to the account number or telephone number submitted by an unusually large number of other persons opening accounts or other customers.

Suspicious Personal Identifying Information, cont'd

7. The person opening the covered account or the customer fails to provide all required personal identifying information on an application or in response to notification that the application is incomplete.
8. Personal identifying information provided is not consistent with personal identifying information that is on file with the financial institution or creditor.
9. For financial institutions and creditors that use challenge questions, the person opening the covered account or the customer cannot provide authenticating information beyond that which generally would be available from a wallet or consumer report.

Unusual Use of, or Suspicious Activity Related to, the Covered Account

1. Shortly following the notice of a change of address for a covered account, the institution or creditor receives a request for a new, additional, or replacement card or a cell phone, or for the addition of authorized users on the account.
2. A new revolving credit account is used in a manner commonly associated with known patterns of fraud patterns. For example: a. The majority of available credit is used for cash advances or merchandise that is easily convertible to cash (e.g., electronics equipment or jewelry); or b. The customer fails to make the first payment or makes an initial payment but no subsequent payments.
3. A covered account is used in a manner that is not consistent with established patterns of activity on the account. There is, for example: a. Nonpayment when there is no history of late or missed payments; b. A material increase in the use of available credit; c. A material change in purchasing or spending patterns; d. A material change in electronic fund transfer patterns in connection with a deposit account; or e. A material change in telephone call patterns in connection with a cellular phone account.

Unusual Use of, or Suspicious Activity Related to, the Covered Account , cont'd

4. A covered account that has been inactive for a reasonably lengthy period of time is used (taking into consideration the type of account, the expected pattern of usage and other relevant factors).
5. Mail sent to the customer is returned repeatedly as undeliverable although transactions continue to be conducted in connection with the customer's covered account.
6. The financial institution or creditor is notified that the customer is not receiving paper account statements.
7. The financial institution or creditor is notified of unauthorized charges or transactions in connection with a customer's covered account.

Notice From Customers, Victims of Identity Theft, Law Enforcement Authorities, or Other Persons Regarding Possible Identity Theft in Connection With Covered Accounts Held by the Financial Institution or Creditor

1. The financial institution or creditor is notified by a customer, a victim of identity theft, a law enforcement authority, or any other person that it has opened a fraudulent account for a person engaged in identity theft.

Automated Risk Assessment Tools

Numerous companies provide automated independent risk assessment tools that will help facilitate the financial institutions' Program and are generally provided at a nominal fee. An example would be to use the exported data from their loan origination system (LOS) in FNMA 3.2 format and uploaded into the provider's internet platform.

Questions or Comments?

Daniel J. Duplantis, CMB, CRU
Executive Vice President
Chief Credit Officer
Past President MBA Tampa Bay
Trustee MBA Florida 2008-2009
America's Underwriter
...a division of American Reverse Mortgage Corporation
605 SW First Avenue
Ocala, FL 34471-0982
Direct (352) 482-1097
Facsimile (866) 768-8921
Cell (813) 220-1700
D.J.Duplantis@AmericasUnderwriter.com
www.AmericasUnderwriter.com

Christopher M. Witeck
Partner
Buckley Kolar LLP
1250 24th Street NW, Suite 700
Washington, DC 20037
Tel: (202) 349-8051
Fax: (202) 349-8080
cwiteck@buckleykolar.com
www.buckleykolar.com