

Informational Memorandum



August 26, 2009

To: Chief Executive Officer
All Farm Credit System Institutions

From: Thomas G. McKenzie, Director and Chief Examiner
Office of Examination

A handwritten signature in black ink that reads 'Thomas G. McKenzie'.

Subject: FACT Act Regulations and Resources

The purpose of this Informational Memorandum (IM) is to provide information regarding recently issued regulations and resources relating to the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). The Federal Trade Commission (FTC) regulates and enforces the FACT Act with respect to System institutions. The FTC has recently issued final rules and guidelines implementing certain provisions of the FACT Act that apply to System institutions. Separately, the FTC has also issued frequently asked questions (FAQs) and other resources to help financial institutions, including System institutions, comply with previously issued regulations.

Regulations

On July 1, 2009, the FTC published final rules and guidelines implementing certain provisions of the FACT Act. The FTC says the rules will promote the accuracy and integrity of information furnished to credit reporting agencies (commonly called "credit bureaus") and allows consumers to dispute inaccurate information about them directly with furnishers, including System institutions that furnish information to the credit reporting agencies.

Under the rules, entities that furnish information about consumers to consumer reporting agencies generally must include a consumer's credit limit in the information provided. In addition, if a consumer believes his or her credit report includes inaccurate information, the consumer may submit a dispute directly to the furnisher, which must investigate the dispute. (The rules do not change a consumer's ability to submit a dispute directly to a consumer reporting agency or a furnisher's duty to investigate a dispute referred by a consumer reporting agency.) These regulations apply to System institutions that furnish information about consumers to consumer reporting agencies. They were published in the Federal Register at 74 FR 31484, on July 1, 2009.

Resources

The FTC has also recently issued a set of FAQs to provide guidance on the FACT Act's identity theft "red flags" rules, which were issued on November 9, 2007. (FCA issued an IM discussing these rules dated December 3, 2007.) Among other things, the red flags rules require financial institutions to develop and implement written Identity Theft Prevention Programs. The FTC developed the FAQs to provide guidance on numerous aspects of the red flags rules, including which types of entities and accounts are covered, establishment and administration of an Identity Theft Prevention Program, and other matters. The FTC has also developed a red flags web site with additional resources and guidance on complying with the rule.

The FTC's press release announcing the FAQs and red flags web site can be found at the following link¹:

<http://www.ftc.gov/opa/2009/06/redflags.shtm>

The press release contains links to both the FAQs and the red flags web site.

The FAQs can also be found directly at the following link:

<http://www.ftc.gov/os/2009/06/090611redflagsfaq.pdf>

And the red flags website can be found directly at the following link:

<http://www.ftc.gov/redflagsrule>

Conclusion

The FTC regulates and enforces the FACT Act with respect to FCS institutions. Some provisions of the FACT Act are also enforceable through private litigation, through which institutions may face civil liability. Although FCA has no authority under the FACT Act, FCA may examine institutions for FACT Act compliance under its general authority to protect the safety and soundness of FCS institutions. Because the FACT Act and regulations are complex and compliance obligations are fact-specific, you may wish to consult legal counsel to determine the responsibilities of your institution. You may also contact the FTC personnel listed in the rules with any questions.

If you have any questions about this memorandum, please contact Jennifer A. Cohn, Senior Attorney, Office of General Counsel, at (703) 883-4028, or by e-mail at cohnj@fca.gov; and/or David Stephens, Office of Examination, at (703) 883-4412, or by e-mail at stephensd@fca.gov.

¹ FCA is not responsible for the FTC's website; if these links do not work, it may be necessary to search the site in order to find these resources.