

JIM FLYNN: FACT Act helps stem identity theft

[JIM FLYNN, COLUMNIST](#)

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If you're worried about identity theft - and you should be - it may give you modest comfort to know that, in 2003, Congress passed a law called the Fair and Accurate Credit Transactions Act, commonly known (because it's easier to remember) as the FACT Act.

A primary goal of the FACT Act was to combat identity theft by requiring banks and certain nonbank extenders of credit to develop "red flag" policies, with a red flag being any "pattern, practice or specific activity that indicates the possible risk of identity theft."

Under rules established by the federal regulatory agencies charged with implementing the FACT Act, each covered entity must put in place a program that identifies those red flags applicable to the entity's own products and services. The entity then must have systems in place to recognize red flags when they appear and to respond to them once detected.

The rules themselves list more than two dozen red flags the regulatory agencies have identified. Some are subtle. Others shouldn't have required an act of Congress to point out - such as a credit application containing a Social Security number of someone the Social Security Administration says is dead.

The red flag rules set up specific requirements for dealing with one well-known red flag - a notice of change of address on a credit or debit card account followed shortly thereafter by a request for an additional card for the account. Under the red flag rules, card issuers are prohibited from providing the requested card until there is confirmation - through contact with the true account owner - that the request is legitimate. Also, if a bank or other covered entity receives information from a credit-reporting agency indicating an address discrepancy, an investigation of the discrepancy must be made.

The red flag rules require covered entities to regularly update their red flag programs.

And, the rules require that approval and monitoring of a covered entity's program must take place at the highest levels of governance within the organization.

For financial institutions, the red flag rules overlap to some extent with rules already in effect requiring verification of the identity of anyone wanting to open a new account. Those rules came from the USA Patriot Act.

Under the red flag rules, banks were required to have their programs in place last year.

However, the Federal Trade Commission has given nonbank entities it regulates until May 1 to implement a red flag program.

The FTC has also managed to poke a hornets' nest with a stick by taking the position that health care providers are covered entities, required to have a red flag program. The FTC says health care providers offer services on a deferred-payment basis, making them creditors.

Additionally, the FTC appears to be of the belief that medical identity theft is a serious and growing problem, which requires its attention.

Not surprisingly, the health care industry disagrees, and the American Medical Association is leading the charge to convince the FTC to change its mind.

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Jim Flynn is a private attorney at Flynn Wright & Fredman LLC in Colorado Springs. The firm primarily represents clients in the real estate, financial services and small-business sectors. Reach him at jtflynn@fwflegal.com.

http://www.gazette.com/articles/red_49045___article.html/flag_rules.html