Comptroller of the Currency, Treasury

Section 41.90 of this part requires each financial institution and creditor that offers or maintains one or more covered accounts, as defined in §41.90(b)(3) of this part, to develop and provide for the continued administration of a written Program to detect, prevent, and mitigate identity theft in connection with the opening of a covered account or any existing covered account. These guidelines are intended to assist financial institutions and creditors in the formulation and maintenance of a Program that satisfies the requirements of §41.90 of this part.

I. The Program

In designing its Program, a financial institution or creditor may incorporate, as appropriate, its existing policies, procedures, and other arrangements that control reasonably foreseeable risks to customers or to the safety and soundness of the financial institution or creditor from identity theft.

II. Identifying Relevant Red Flags

(a) Risk Factors. A financial institution or creditor should consider the following factors in identifying relevant Red Flags for covered accounts, as appropriate:

1. The types of covered accounts it offers or maintains;
2. The methods it provides to open its covered accounts;
3. The methods it provides to access its covered accounts; and
4. Its previous experiences with identity theft.

(b) Sources of Red Flags. Financial institutions and creditors should incorporate relevant Red Flags from sources such as:

1. Incidents of identity theft that the financial institution or creditor has experienced;
2. Methods of identity theft that the financial institution or creditor has identified that reflect changes in identity theft risks; and
3. Applicable supervisory guidance.

(c) Categories of Red Flags. The Program should include relevant Red Flags from the following categories, as appropriate. Examples of Red Flags from each of these categories are appended as Supplement A to this appendix J.

1. Alerts, notifications, or other warnings received from consumer reporting agencies or service providers, such as fraud detection services;
2. The presentation of suspicious documents;
3. The presentation of suspicious personal identifying information, such as a suspicious address change;
4. The unusual use of, or other suspicious activity related to, a covered account; and
5. 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.

III. Detecting Red Flags

The Program’s policies and procedures should address the detection of Red Flags in connection with the opening of covered accounts and existing covered accounts, such as by:

(a) Obtaining identifying information about, and verifying the identity of, a person opening a covered account, for example, using the policies and procedures regarding identification and verification set forth in the Customer Identification Program rules implementing 31 U.S.C. §5318(f) (31 CFR 1020.220); and

(b) Authenticating customers, monitoring transactions, and verifying the validity of change of address requests, in the case of existing covered accounts.

IV. Preventing and Mitigating Identity Theft

The Program’s policies and procedures should provide for appropriate responses to the Red Flags the financial institution or creditor has detected that are commensurate with the degree of risk posed. In determining an appropriate response, a financial institution or creditor should consider aggravating factors that may heighten the risk of identity theft, such as a data security incident that results in unauthorized access to a customer’s account records held by the financial institution, creditor, or third party, or notice that a customer has provided information related to a covered account held by the financial institution or creditor to someone.
fraudulently claiming to represent the financial institution or creditor or to a fraudulent website. Appropriate responses may include the following:

(a) Monitoring a covered account for evidence of identity theft;
(b) Contacting the customer;
(c) Changing any passwords, security codes, or other security devices that permit access to a covered account;
(d) Reopening a covered account with a new account number;
(e) Not opening a new covered account;
(f) Closing an existing covered account;
(g) Not attempting to collect on a covered account or not selling a covered account to a debt collector;
(h) Notifying law enforcement; or
(i) Determining that no response is warranted under the particular circumstances.

V. Updating the Program

Financial institutions and creditors should update the Program (including the Red Flags determined to be relevant) periodically, to reflect changes in risks to customers or to the safety and soundness of the financial institution or creditor from identity theft, based on factors such as:

(a) The experiences of the financial institution or creditor with identity theft;
(b) Changes in methods of identity theft;
(c) Changes in methods to detect, prevent, and mitigate identity theft;
(d) Changes in the types of accounts that the financial institution or creditor offers or maintains; and
(e) Changes in the business arrangements of the financial institution or creditor, including mergers, acquisitions, alliances, joint ventures, and service provider arrangements.

VI. Methods for Administering the Program

(a) Oversight of Program. Oversight by the board of directors, an appropriate committee of the board, or a designated employee at the level of senior management should include:

(1) Assigning specific responsibility for the Program’s implementation;
(2) Reviewing reports prepared by staff regarding compliance by the financial institution or creditor with §41.90 of this part; and
(3) Approving material changes to the Program as necessary to address changing identity theft risks.
(b) Reports. (1) In general. Staff of the financial institution or creditor responsible for development, implementation, and administration of its Program should report to the board of directors, an appropriate committee of the board, or a designated employee at the level of senior management, at least annually, on compliance by the financial institution or creditor with §41.90 of this part.

2) Contents of report. The report should address material matters related to the Program and evaluate issues such as: the effectiveness of the policies and procedures of the financial institution or creditor in addressing the risk of identity theft in connection with the opening of covered accounts and with respect to existing covered accounts; service provider arrangements; significant incidents involving identity theft and management’s response; and recommendations for material changes to the Program.

(c) Oversight of service provider arrangements. Whenever a financial institution or creditor engages a service provider to perform an activity in connection with one or more covered accounts the financial institution or creditor should take steps to ensure that the activity of the service provider is conducted in accordance with reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft. For example, a financial institution or creditor could require the service provider by contract to have policies and procedures to detect relevant Red Flags that may arise in the performance of the service provider’s activities, and either report the Red Flags to the financial institution or creditor, or to take appropriate steps to prevent or mitigate identity theft.

VII. Other Applicable Legal Requirements

Financial institutions and creditors should be mindful of other related legal requirements that may be applicable, such as:

(a) For financial institutions and creditors that are subject to 31 U.S.C. 5318(g), filing a Suspicious Activity Report in accordance with applicable law and regulation;
(b) Implementing any requirements under 15 U.S.C. 1681c–1(h) regarding the circumstances under which credit may be extended when the financial institution or creditor detects a fraud or active duty alert; and
(c) Complying with the prohibitions in 15 U.S.C. 1681m on the sale, transfer, and placement for collection of certain debts resulting from identity theft.

Supplement A to Appendix J

In addition to incorporating Red Flags from the sources recommended in section II.b. of the Guidelines in appendix J of this part, each financial institution or creditor may consider incorporating into its Program, whether singly or in combination, Red Flags from the following illustrative examples in connection with covered accounts:

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Suspicious Personal Identifying Information

10. 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.

11. 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.

12. 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.

13. 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.

14. The SSN provided is the same as that submitted by other persons opening an account or other customers.

15. The address or telephone number provided is the same as or similar to the address or telephone number submitted by an unusually large number of other persons opening accounts or by other customers.

16. 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.

17. Personal identifying information provided is not consistent with personal identifying information that is on file with the financial institution or creditor.

18. 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

19. 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.

20. A new revolving credit account is used in a manner commonly associated with known patterns of fraud. 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.

21. 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.

22. 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).

23. Mail sent to the customer is returned repeatedly as undeliverable although transactions continue to be conducted in connection with the customer’s covered account.

24. The financial institution or creditor is notified that the customer is not receiving paper account statements.

25. 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

26. 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.


PARTS 42–47 [RESERVED]

PART 48—RETAIL FOREIGN EXCHANGE TRANSACTIONS

Sec.

48.1 Authority, purpose, and scope.
48.2 Definitions.
48.3 Prohibited transactions.
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48.12 Authorization to trade.
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48.16 Customer dispute resolution.
48.17 Reservation of authority.

AUTHORITY: 7 U.S.C. 27 et seq.; 12 U.S.C. 1 et seq., 24, 93a, 161, 1461 et seq., 1462a, 1463, 1464, 1813(q), 1818, 1831o, 301 et seq., 302, 3106a, 3108, and 5412.

SOURCE: 76 FR 41384, July 14, 2011, unless otherwise noted.

§ 48.1 Authority, purpose, and scope.

(a) Authority. (1) National banks. A national bank may offer or enter into retail foreign exchange transactions. A national bank offering or entering into retail foreign exchange transactions must comply with the requirements of this part.

(2) Federal savings associations. A Federal savings association may offer or enter into retail foreign exchange transactions. A Federal savings association offering or entering into retail foreign exchange transactions must comply with the requirements of this part as if each reference to a national bank were a reference to a Federal savings association.

(b) Purpose. This part establishes rules applicable to retail foreign exchange transactions engaged in by national banks and applies on or after the effective date.

(c) Scope. Except as provided in paragraph (d) of this section, this part applies to national banks.

(d) International applicability. Sections 48.3 and 48.5 to 48.16 do not apply to retail foreign exchange transactions between a foreign branch of a national bank and a non-U.S. customer. With respect to those transactions, the foreign branch remains subject to any disclosure, recordkeeping, capital, margin, reporting, business conduct, documentation, and other requirements of foreign law applicable to the branch.

[76 FR 41384, July 14, 2011, as amended at 76 FR 56096, Sept. 12, 2011]

§ 48.2 Definitions.

In addition to the definitions in this section, for purposes of this part, the following terms have the same meaning as in the Commodity Exchange Act: “Affiliated person of a futures commission merchant”; “associated person”; “contract of sale”; “commodity”; “eligible contract participant”; “futures commission merchant”; “future delivery”; “option”; “security”; and “security futures product”.

1813(q), 1818, 1831o, 3101 et seq., 3102, 3106a, 3108, and 5412.

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