



THE CHAIRMAN

FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

December 11, 2006

The Honorable Richard J. Durbin  
332 Dirksen Senate Office Building  
Washington, DC 20510-1304

Dear Senator Durbin:

Thank you for your November 6, 2006 letter regarding your concern that certain credit grantors have issued credit based on applications that have been torn and then taped together. You suggest that this practice be identified as an identity theft "red flag" in the rulemaking that implements sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). These provisions of the FACT Act directed the FTC and the federal regulatory agencies to promulgate regulations requiring financial institutions and creditors to establish reasonable policies and procedures to identify possible risks of identity theft.

The Federal Trade Commission ("FTC") is aware of reports of torn and reassembled applications being accepted by creditors and shares your concern that creditors may be granting credit without reasonable policies and procedures in place to help prevent the opening of new accounts in consumer's names, one of the most harmful forms of identity theft. You point out that our consumer education material encourages consumers to shred or otherwise destroy sensitive documents, including credit applications, before disposing of them. As you suggest, while consumer vigilance is important, financial institutions must exercise appropriate prudence in reviewing credit applications. The FTC fully expects the rulemaking to further that objective.

As you know, the Red Flags initiative is a joint rulemaking that the FTC and the financial regulatory agencies are undertaking. The FTC and its sister agencies are currently reviewing comments submitted in response to a Notice of Proposed Rulemaking, 71 Fed. Reg. 40786 (July 18, 2006), and are carefully considering which activities should be identified as "red flags" in the final rule. Your comments and our response will be made part of the record of that rulemaking proceeding, and we will give your suggestion to include as a red flag applications that have been torn and reassembled, or otherwise tampered with, careful consideration.

The Commission appreciates your concern about identity theft, and we will maintain our efforts to combat identity theft and coordinate government efforts in this area. If you or your staff have any additional questions or comments or wish to provide additional information,

The Honorable Richard J. Durbin -- Page 2

please contact me or have your staff call Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2946.

Sincerely,

Deborah Platt Majoras  
Chairman

RICHARD J. DURBIN  
ILLINOIS

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United States Senate

Washington, DC 20510-1304

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MINUTE SECTION

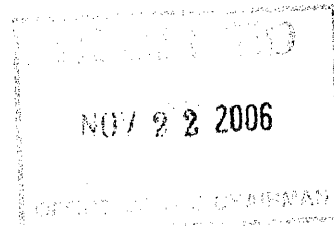
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November 6, 2006

The Honorable Deborah Platt Majoras  
Chairman  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, D.C. 20580

ADVANCE COPY



12/8/06

Dear Chairman Majoras:

I understand that the Federal Trade Commission is presently developing final rules to implement section 114 of the Fair and Accurate Credit Transactions (FACT) Act of 2003 (P.L. 108-159), in collaboration with the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration. I am writing to suggest that you add to your list of "red flag" activities that suggest potential identity theft a troubling failure of some credit card issuers that has recently come to light.

As you know, section 114 of the FACT Act [codified at 15 U.S.C. 1681m(e)] requires the agencies to publish guidelines and regulations specifying reasonable policies and procedures that financial institutions and creditors must establish to identify patterns, practices, and specific forms of activity that indicate the possible existence of identity theft with respect to their customers and account holders. I understand that 31 proposed "red flags" are enumerated in Appendix J to Part 41 in the joint notice of proposed rulemaking (NPRM) published on July 18, 2006 (71 FR 40785-40826).

A recently broadcast news story described instances in which a financial institution, apparently without raising any questions, issued credit cards in response to applications that were extensively torn and reconstituted. The failure to ask questions or investigate before issuing a card in this situation may expose consumers to identity theft. The attached transcript describing the circumstances of this finding may provide guidance to you and the other regulatory agencies as you deliberate the scope of the final "red flags" rule.

It is disturbing that a financial institution or other credit grantor would extend credit based upon an application that has been obviously destroyed and reassembled with tape. Receipt of materials in such a form should immediately signal a need to conduct additional authentication checks and obtain confirmation from the applicant to verify that the credit card request was made in good faith and is not fraudulent.

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I request that you consider including this type of situation as another red flag indicating a possible risk of identity theft, and incorporate it in your guidelines and rules. The NPRM identifies the items listed in Appendix J as “not meant to be exhaustive.” The news story’s findings suggest that some financial institutions may not be sufficiently alert to the potential that an imposter may successfully apply for credit in another’s name using materials obtained from discarded mail. Consumers have a right to expect more careful treatment. Although “documents provided for identification appear to have been altered” is listed among the proposed “red flags,” a clearer description is needed of circumstances such as those exposed in the recent investigative report.

In the on-line identity theft video accessible on your agency’s Internet website, assistant FTC director Betsy Broder emphasizes the importance that consumers exercise care in discarding financial statements, credit solicitations, and other similar materials received through the mail, and how identity thieves can easily prey upon victims by raiding their trash. While consumer vigilance in guarding their personal information is critical, financial institutions should also be expected to be more prudent in scrutinizing credit applications that are in a condition that suggests they may have been retrieved from the trash.

I would appreciate your consideration of this identity theft risk as you work to finalize the red flag regulations and guidelines and as you develop other related policy directives and supervisory guidance. Thank you for your continued efforts on behalf of American consumers to detect, prevent, and mitigate identity theft.

Sincerely,

Richard J. Durbin  
United States Senator

Enclosure

## Target 5: Taking Credit

### One Card Sent To Nonexistent Address

POSTED: 9:31 pm CST November 2, 2006

UPDATED: 1:28 pm CST November 3, 2006

[<http://www.nbc5.com/target5/10229412/detail.html#>](http://www.nbc5.com/target5/10229412/detail.html#)

CHICAGO -- While many might tear up unwanted credit card applications, Target 5's Lisa Parker examined on Thursday what happened after she tore up and taped up credit card applications and sent them in.

What happened next caught the eye of law enforcement, privacy experts and legislators.

Privacy experts have warned consumers for years to destroy unwanted credit card applications, but Parker reported that ripping and tearing up the applications might not be enough.

Parker reported that she tore up five applications, some into as many as two dozen pieces, and then taped them back together. Parker reported she wrote around the tape, filling out the application the way an identity thief might if he had been digging in the garbage. The result was a messy, crooked patchwork.

"There's no expertise required in going through somebody's garbage, so we're dealing with a whole different strata of criminal," said Postal Inspector Dave Colen.

Cases from around the world note thieves are not above going through the garbage, Parker reported.

The results of sending in five taped-up applications were three new credit cards, from MBNA, Bank of America and Chase, with credit lines worth more than \$21,000. They were new accounts opened based on Parker's Social Security number and basic financial information. On the Bank of America application, Parker said she changed her address to one where she has never lived, and the card was sent there.

"I'm shocked," Colen said. "I'm surprised, and I'm disappointed in the banking industry. The easier they make it for people -- for the wrong people -- to get credit cards, the more difficult our job becomes."

Privacy advocate Bob Bulmash was a bit more blunt.

"What were they thinking?" he said. "It's like opening the door to a bank for a guy with a mask on -- it's evident there is something wrong here."

Bulmash is among the critics who said unsolicited applications, along with ubiquitous convenience checks, which are cash advances against lines of credit, just invite fraud.

In a statement, Chase Card Services said it has "rigorous policies" for handling applications and a "special handling process" for the rare torn applications. In this case, however, "It is clear to us our procedures were not entirely followed for this particular application, and we are investigating."

For the two cards it issued, Bank of America, which merged with MBNA, said the applications "both went through the proper verification processes," and that "the signature, Social Security number and birthdate matched" a current customer with excellent credit. The company could not explain why it sent a card to an address where Parker never lived, she reported.

Bank of America added an explanation, saying it sends cards to unrelated addresses as a convenience for which customers have asked. The banks that denied Parker's mangled applications were Capital One and a different Chase Card.

Illinois Sen. Dick Durbin said he has been the victim of identity theft, Parker reported.

"I got a call," Durbin said. "They said, 'We finally caught up with you, Dick Durbin. Didn't you think we'd ever find you?'"

Durbin said he found serious concerns with Parker's results. Durbin said he would send Parker's story to the Federal Trade Commission, which oversees consumer credit issues.

"The credit card companies have to assume some responsibility here -- for at least looking at this application," Durbin said. "If, on the face of it, there's something suspicious, they ought to at least pick up the phone and verify that this is a valid application."

Those who no longer wish to receive credit card applications can call:  
(888) 5-OPT-OUT  
(888) 567-8688