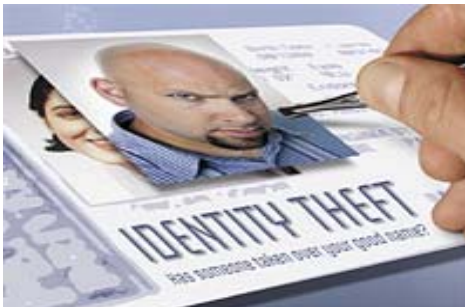


KNOW YOUR FACTS

Most provisions of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), which amends the Fair Credit Reporting Act (FCRA), took effect on Dec. 1, 2004. The FACT Act is notable because it impacts every business that uses consumer credit reports or furnishes information about consumers to credit bureaus, as well as many businesses that simply enter into transactions with consumers.

Purpose

The FACT Act was designed to reduce the risk of identity theft and other consumer harm arising from improper disposal of consumer credit reports or related records. This act requires businesses to “take reasonable measures to protect against unauthorized access to or use of the [consumer credit] information in connection with its disposal”. The



The FACT Act aims to protect consumers against identity theft

Fact Act and its regulation are the result of coordination between several federal agencies, including the Federal Trade Commission, Federal Deposit Insurance Corporation, SEC, and the Office of the Comptroller of the Currency.

General Effect

Several parts of the FACT Act will have far-reaching impact:

- Businesses are limited on their ability to share personal information of their customers with corporate affiliates for marketing purposes
- Businesses will be required to truncate credit card and debit card account numbers and eliminate the printing of card expiration dates on receipts (effective Dec. 4, 2006 for machines in use prior to Jan 1, 2005)
- Businesses that enter into transactions with individuals who commit identity theft are required to provide transaction-related information to the identity victim and to law enforcement free of charge

New Responsibilities

Businesses must take additional steps to properly dispose of consumer information, as well as extra steps to verify the identity of any applicant whose credit report contains

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a “fraud alert” or “active duty alert”.

Furnishing Information

Businesses that furnish information about consumers to credit bureaus are also now subject to higher standards for determining whether the information furnished to credit bureaus is accurate. Also, consumers are able for the first time to dispute the accuracy of information directly with the furnishers. Moreover, in case of such a dispute, the furnisher must investigate the accuracy of the disputed information free of charge.

The FACT Act affects any business that uses credit information or that accepts credit or debit cards. To learn more specific details about the FACT Act, see

<http://a257.g.akamaitech.net/7/257/2422/06jun20041800/edocket.access.gpo.gov/2004/pdf/04-25937.pdf>. ▣

ONGOING RISK ASSESSMENT NOW NECESSARY FOR BOLI

Federal banking regulators issued a joint statement last week reminding banks and savings associations to take a close look at risk before buying bank-owned life insurance, or BOLI.

BOLI Benefits and Limits

This is the type of insurance that companies use to help fund compensation plans for their senior executives or directors.

According to the statement, BOLI is generally income tax-free if held to full term and therefore “can provide

attractive tax-equivalent yields to help offset the rapidly rising cost of providing employee benefits.”

However, to prevent capital concentration in a single asset, regulators generally limit BOLI holdings by banks to a maximum cash surrender value (CSV) of 25% of the bank’s capital. (*OCC Bulletin 2004-56*)

BOLI Risks

Nonetheless, the regulators are concerned that banks might be purchasing a significant amount of

BOLI without a full appreciation of the types of risks involved. These include credit and interest rate risks, which are readily measurable, as well as the types of risks more difficult to measure and control, such as liquidity, transaction, reputation and

(CONTINUED ON PAGE 2)

BOLI GENERALLY CANNOT EXCEED 25% OF CAPITAL

BEWARE OF CARD SHARKS THIS HOLIDAY SEASON

Gift cards have become an increasingly popular gift item in the past few years. In fact, a retail expert at Purdue University expects gift cards to account for four to ten percent of all holiday sales, with three-quarters of all gift givers expected to give at least one gift card this year.

However, many gift cards carry hefty fees for issuance, inactivity, or even for their use, and most have expiration dates. Even so, a consumer advocacy group found that in 2003, forty-four percent of the cards that did carry fees or expiration dates failed to disclose that information in the store or on the issuer's web site.

In response to this growing consumer concern about "stored value" cards such as gift cards, the Office of the Comptroller of the Currency (OCC) issued directly to consumers a first-of-its-kind list of holiday tips for gift card usage. In the past, the OCC only notified banks of

their obligations to customers.

Among the OCC tips on gift cards were the following:

- **Make sure that both the recipient and the purchaser know which fees apply to the card.** These fees can include purchase fees, monthly fees, inactivity fees, and transaction fees, as well as other miscellaneous fees.
- **Make sure that the recipient is aware of any applicable expiration dates for the card.** In some cases, once that expiration

date is up, the remaining money on the card is simply forfeited to the card issuer.

- **Find out where you can use the card.** Many store cards can only be used at that particular store or others in its chain, but some cards, such as those issued by banks, can be used almost anywhere that accepts credit cards. A word of caution, though - bank cards tend to carry the highest and largest number of fees of all gift cards.

The OCC also reminded consumers that the value of a gift card ultimately depends upon the financial stability of the issuing company.

Gift cards can be a great alternative for consumers who value flexibility for their gift recipients. However, numerous additional fees, hidden fees, expiration dates, and limitations on use can decrease the value and flexibility of the gift. ■



SEC FILING FEE DECREASES

Companies that are planning to sell their stock to the public will get a



break in their SEC filing fee under the federal spending bill signed into law last week. Under this law, SEC filing fees were decreased from \$126.70 per \$1 million in value of shares registered to \$117.70 per \$1 million. This change became effective Monday, Dec. 13, and applies to public offerings, tender offers, mergers, and other transactions. ■

Kutak Rock LLP is a national law firm with 16 offices located throughout the United States. Our practice areas include:

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BOLI (CONTINUED)

compliance risks.

Duties of Banks

To address these ongoing issues, the regulators expect that banks will: (i) conduct a thorough risk analysis before purchasing BOLI, and (ii) impose a risk control framework that addresses exposure from existing BOLI holdings on an ongoing basis. Among OCC suggestions to control or eliminate risk are limiting death benefits to a reasonable multiple of the covered employee's salary and limiting the aggregate CSV of policies from any one insurance carrier as well

as from all carriers as a whole.

The required pre-purchase risk analysis applies to all BOLI contracts entered into after December 7, 2004, while an ongoing risk management program must include all existing BOLI contracts, regardless of when purchased. Also, management must show how an increase in BOLI that results in an increase in aggregate CSV above 25% of capital is not an "imprudent capital concentration." ■