



Ford Motor Credit Company

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The Federal Trade Commission
Office of the Secretary
Room H-135 (Annex M)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: The Red Flags Rule, Project No. R611019

Dear Sirs and Madams:

On behalf of Ford Motor Credit Company (“Ford Credit”), we appreciate the opportunity to respond to the Joint Notice of Proposed Rulemaking pertaining to the red flags rule (the “Proposed Rule”) issued by 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, the National Credit Union Administration, and the Federal Trade Commission (collectively, the “Agencies”). Ford Credit is one of the world's largest automotive finance companies and has supported the sale of Ford products since 1959. With about 14,000 employees, Ford Credit operates in 36 countries and manages approximately \$151 billion in receivables. Ford Credit is an indirect, wholly owned subsidiary of Ford Motor Company. It provides automotive financing for Ford, Lincoln, Mercury, Aston Martin, Jaguar, Land Rover, Mazda and Volvo dealers and customers.

Ford Credit is a member of the Financial Services Roundtable, the American Financial Services Association, and the Coalition to Implement the FACT Act, each of which has submitted a separate comment letter to the Agencies regarding the Proposed Rule. We concur with the comments that have been made by each of these organizations, and would like to take the opportunity to provide the following additional comments.

Automotive Retail Installment Contracts and Leases

Automotive finance contracts, which make up a substantial portion of Ford Credit's primary business, are generally structured as retail installment contracts or leases (herein referred to collectively as "Contract(s)"), which are originated by a motor vehicle dealer, and often subsequently assigned to a finance company (such as Ford Credit), bank, or credit union (collectively referred to herein as "Assignees"). As a result, no Assignee directly interacts with the consumer when the transaction is originated, and the Assignee is not a party to the transaction. In fact, although not a common practice, motor vehicle dealers can choose to retain the Contracts they originate rather than assigning them to Assignees. When an Assignee purchases a completed Contract from a motor vehicle dealer, it relies on representations and warranties made by the motor vehicle dealer in connection with the sale of the Contract. One of those representations is that statements made by the customer, which include the identity of the customer, are true. Ford Credit does not extend credit *directly* to consumers to finance the purchase or lease of motor vehicles. We urge the Agencies to consider the nature of these transactions in drafting the final rules, and to clarify that in connection with such transactions, it is reasonable for Assignees to rely on the motor vehicle dealer's compliance with the Red Flag rules relating to the origination of the transaction as the originating creditor.

As a matter of clarification, the reference contained in §681.2(b)(i) that defines "account" as including a "retail installment sales contract, such as a car loan or lease," is not technically accurate since retail installment sales contracts are separate types of transactions than either loans or leases. Retail installment sales contracts provide for the purchase of goods with payment for the goods to be made by the buyer to the seller in installments over time. Retail installment sale contracts are not loans, which involve the creation of debt by a borrower to a lender, or leases, which involve a lessor granting a lessee the right to possess, use and enjoy property for a specified period of time, in exchange for periodic payments. In addition to these differences, loan and lease transactions are regulated differently than retail installment sales contracts. We are concerned that since neither a 'car loan' nor a 'lease' is technically a 'retail installment sales contract,' the current definition of "account" could lead to a failure within the Red Flag rules to properly differentiate among these transactions.

Duties of Users Regarding Address Discrepancies

The Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*) contemplates that the Agencies shall prescribe regulations providing guidance regarding reasonable policies and procedures that a user of a consumer report should employ when such user has received a notice of address discrepancy as contemplated by the statute. Specifically, these red flags regulations are to include reasonable policies and procedures for use to (i) form a reasonable belief that the user knows the identity of

the person to whom the consumer report pertains, and (ii) if the user **establishes** (*emphasis added*) a continuing relationship with the consumer, and regularly furnishes information to the consumer reporting agency from whom the notice of discrepancy was obtained, to reconcile the address of the consumer by furnishing such address in the next regular furnishing cycle.

The Proposed Rules however, extend this obligation to situations where the user **establishes or maintains** a continuing relationship with the consumer. Ford Credit believes that the benefits of confirming the identity of a consumer in connection with establishing an account are significant, and taking the actions described in the Proposed Rules in connection with receipt of a notice of address discrepancy obtained in connection with establishing an account is reasonable and prudent. However, we do not believe that imposing this obligation on users throughout the life of an account, particularly in the context of closed end financing account maintenance or collections functions, serves the purpose of detecting, preventing and mitigating identity theft.

We believe the cost and administrative burden of this requirement for closed end financing transactions far outweigh the potential benefits due to the fact that once the credit is extended, there is little opportunity for the closed end financing account to be adversely affected by identity theft. Unlike open end financing transactions where there is an opportunity for an identity thief to access a consumer's line of credit and affect that consumer's credit profile, closed end financing transactions involve a one-time extension of credit in a set amount. We therefore respectfully urge the Agencies to limit the application of the obligations relating to duties of users of consumer reports regarding address discrepancies to situations where the user **establishes** a continuing relationship with a consumer, and at a minimum, to limit obligations with respect to situations where a user **maintains** a continuing relationship with a consumer to those accounts involving open end financing transactions, where the risk to consumers and users of identity theft is significantly greater than in situations involving closed end financing transactions.

Further, address discrepancies which arise in the context of collections activities, while commonplace, are generally not an indication of fraud. Many creditors will request a credit report on a customer when the customer defaults on its payment obligations to the creditor, in an attempt to locate the customer. If a customer is avoiding repayment of a debt, the customer will not necessarily be cooperative in providing correct address information. Imposing an obligation to verify an address in connection with collections activity will likely only inhibit effective collections activity on the account.

Thank you for the opportunity to comment upon these important issues. Any questions you may have should be addressed to Johanna Kaipainen at (313) 390-6430 or jkaipain@ford.com, or to the undersigned.

Very truly yours,

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