

Employment Law Compliance, Inc.
Suite 635

115 Perimeter Center Place
Atlanta, Georgia 30346

Telephone: 866-801-6302 Toll Free

Facsimile: 770-206-3381

bankers@employlawcompliance.com

www.employlawcompliance.com

“RED FLAG” RULE ON ADDRESS DISCREPANCIES APPLIES TO EMPLOYEE BACKGROUND CHECKS

The “Red Flag” Rule refers to new federal regulations that go into effect on November 1, 2008 requiring financial institutions and other organizations that extend credit to create and implement written programs designed to prevent consumer identity theft. The Rule, enacted under the Fair Credit Reporting Act (“FCRA”), as amended by the Fair and Accurate Credit Transactions Act of 2003 (“FACTA”), applies to **all** users of consumer reports, and therefore effects not only banking operations, but also the bank as an employer when it conducts applicant or employee background checks. The regulations detail specific requirements a user of consumer reports must follow when receiving notice of an address discrepancy from a national consumer reporting agency (CRA) such Experian, Equifax or TransUnion.

The bank should monitor reports for any discrepancy between the address provided to the agency when the report was requested, and the address the agency has for that individual. If a report puts you on notice of an address discrepancy, then you should (1) verify the applicant or employee’s accurate address and (2) furnish the accurate address to the CRA. Minor typographical differences between the two addresses will likely not constitute “notice of address discrepancy”, but any larger inconsistencies will trigger action.

The Red Flag Rule does not apply to reports from local or non-nationwide consumer reporting agencies. Because nationwide CRAs often resell consumer credit information to non-nationwide agencies that then make it available to employers, it is unclear how, if at all, non-nationwide CRAs will be involved in this process.

Practice Pointers:

Implement a policy that includes the following steps:

- Review applicant and employee credit reports carefully to see if the address provided to the agency is the same as the one listed in the report
- If there is a discrepancy, check the address in your records, e.g. application or employee personnel file
- Check the address with the applicant or employee
- If you confirm that the address you provided to the CRA is accurate, and you reasonably believe that the report does in fact refer to the applicant or employee, and that he or she is the person for whom you requested a report in the first place, notify the CRA.

For additional information on this or other employment compliance topics, please contact us.