

BOARD OF REGENTS
EASTERN MICHIGAN UNIVERSITY

RECOMMENDATION

Identity Theft Prevention Program – Red Flags Rules

SECTION: 15

DATE:
April 21, 2009

ACTION REQUESTED

It is recommended that the Board of Regents adopt a policy that establishes an Identity Theft Prevention Program as required by Public Law 108-159, sec 114 and sec. 315; 15 U.S.C. 1818c(h); 16 C.F.R. Part 681. It is further recommended that the Board of Regents, through the President, authorize the Chief Financial Officer and the Vice President of Student Affairs and Enrollment Services to oversee, develop, implement and administer the Identity Theft Prevention Program and, once presented, the initial Identity Theft Prevention Program be reviewed and approved by the Finance and Audit Committee of the Board of Regents.

STAFF SUMMARY

Eastern Michigan University is subject to administrative enforcement by the Federal Trade Commission and is therefore required to adopt policies and procedures to mitigate identity theft. Activities that cause EMU to be considered a “creditor” under the Red Flags rules include:

1. Participating in the Federal Perkins Loan program
2. Offering institutional loans to students.
3. Offering a plan for payment of tuition throughout the semester rather than requiring full payment at the beginning of the semester.

Under the rule, EMU is considered to be a creditor, and has determined that the listings above are considered to be “covered accounts.” A covered account is a consumer account that involves multiple payments or transactions, such as a loan that is billed or payable monthly. Creditors that hold covered accounts must develop an identity theft prevention program that includes reasonable policies and procedures to detect or mitigate identity theft. Student Business Services, Records and Registration and Admissions, the primary areas affected by the Red Flags Rule, are in the process of developing and implementing the accompanying management procedure.

FISCAL IMPLICATIONS

Fiscal Implications of the development and administration of this program are considered to be minimal. Under the FCRA, the FTC may impose civil money penalties (up to \$2,500 per violation) for knowing violations of the rule that constitute a pattern of practice. If the FTC finds violations of the rule to be unfair and deceptive, the FTC may also use its adjudicatory authority to issue cease and desist orders and other enforcement actions. Although there is no private right of action for noncompliance with the Red Flags rules under the FCRA, victims of identity theft may be able to bring claims under other theories of liability such as private torts.

ADMINISTRATIVE RECOMMENDATION

The proposed action has been reviewed and is recommended for Board approval.

University Executive Officer

Date

BOARD OF REGENTS

EASTERN MICHIGAN UNIVERSITY

Effective Date: May 1, 2009
Policy: Red Flags Rules

UNIVERSITY STATEMENT

Eastern Michigan University is committed to preventing identity thieves from using someone else's identifying information to commit fraud. It is the policy of Eastern Michigan University to comply with the Fair and Accurate Credit Transactions Act of 2003 (FACTA), Public Law 108-159. This amendment to the Fair Credit Reporting Act charged the Federal Trade Commission (FTC) with promulgating rules regarding identity theft. On November 7, 2007, the FTC promulgated the final rules, known as "Red Flags" rules, which have an effective date of May 1, 2009.

To ensure compliance with the Red Flags rules, the Board of Regents authorizes the administration to develop and implement a written Identity Theft Prevention Program designed to detect, prevent, and mitigate identity theft.

Upon completion and presentation, the initial Identity Theft Prevention Program will be reviewed and approved by the Finance and Audit Committee of the Board of Regents.

The Red Flags rules are three different but related rules, two of which apply to Eastern Michigan University:

1. Users of consumer reports must develop reasonable policies and procedures to apply when they receive notice of an address discrepancy from a consumer reporting agency.
2. Financial institutions and creditors holding "covered accounts" must develop and implement a written identify theft prevention program for both new and existing accounts.

Although the FTC, in many contexts, does not have jurisdiction over not-for-profit entities, it has taken the position that not-for-profits are subject to FTC jurisdiction when they engage in activities in which a for-profit entity would also engage. In its July 2008 guidance, the FTC stated, "where non-profit and government entities defer payment for goods or services, they, too, are to be considered creditors."

UNIVERSITY PRACTICE

University practices for implementing this policy include:

1. The development and enforcement of guidelines and procedures for an identity theft prevention program after consideration of the size and complexity of the University's operations and account system, as well as the nature and scope of the University's activities.
2. Train staff, as necessary to implement the program effectively.
3. Exercise appropriate and effective oversight of service provider arrangements.

RESPONSIBILITY FOR IMPLEMENTATION

The President shall delegate to the Chief Financial Officer and the Vice President of Student Affairs and Enrollment Services the responsibility to oversee, develop, implement and administer the Identity Theft Prevention Program.

SCOPE OF POLICY COVERAGE

This policy applies to all relevant University personnel and only insofar as necessary to supplement other training programs.