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April 14, 2011

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Federal Trade Commission
Office of the Secretary,
Room H-113 (Annex M)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Docket No. R-1408, FCRA Adverse Action Notice;
Docket No. R-1407 and RIN No. RIN 7100-AD66
FCRA Risk-Based Pricing Rule Amendments: Project No. R411009

Dear Sir and Madam:

The Independent Community Bankers of America[1] (ICBA) welcomes the opportunity to comment on the proposed rules that would require the disclosure of credit scores and information relating to credit scores in the Fair Credit Reporting Act (FCRA) adverse action and risk based pricing notices.

Section 1100F of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amends FCRA to require that its adverse action and risk based pricing notices include:

1. A numerical credit score used in making the credit decision;
2. The range of possible scores under the model used;

[1] The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an everchanging marketplace.

With nearly 5,000 members, representing more than 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold $1 trillion in assets, $800 billion in deposits, and $700 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

3. Up to four key factors that adversely affected the credit score of the consumer in the model used;
4. The date on which the credit score was created; and
5. The name of the person or entity that provided the credit score.

The Equal Credit Opportunity Act (ECOA), which is implemented by the Federal Reserve Board's (Board's) Regulation B, requires a creditor to notify an applicant when it has taken adverse action against the applicant. The FCRA also requires a bank to provide an adverse action notice when the adverse action is based in whole or in part on information in a consumer report. Certain model notices in Regulation B include the content required by both statutes so that creditors can use the model notices to comply with the adverse action requirements of both ECOA and FCRA. The Board's proposal amends these adverse action model notices to include the disclosure of credit scores and information relating to credit scores.

The Fair and Accurate Credit Transactions Act (FACT Act) amended the FCRA to address risk-based pricing, which refers to adjusting the price and other terms of credit offered to a consumer based on the risk of nonpayment by that consumer. A risk-based pricing notice must be provided to a consumer when an extension of credit is based in whole or in part on a consumer report, and the terms are materially less favorable than the most favorable terms available to a substantial proportion of the consumers. An account review notice must be provided if, as a result of the use of a consumer report in an account review, the bank increases the annual percentage rate. The Board and the Federal Trade Commission (agencies) are proposing to amend their respective risk-based pricing rules to require disclosure of credit scores and related information in their risk-based pricing notices if a credit score is used in setting the material terms of credit.

Credit Reporting Agencies

The agencies are proposing to amend the content requirements of the general risk-based pricing notice and the account review notice as well as proposing to revise the Board's adverse action model notices C-1 through C-5 to incorporate the statutorily mandated information. The model notices would also provide space for a bank to include customer-specific information, such as the customer's credit score and key factors that affected the credit score.

ICBA requests that the final rule require consumer reporting agencies (CRAs) to include the key factors that affect a credit score when providing credit scores to banks, and to make clear that this information is generated by the CRAs and not the bank providing the notices. Community banks that provide these notices do not determine the credit score nor the key factors that affect the credit score. Credit scores are calculated by CRAs using complex formulas and algorithms

that are not publicly available. Because banks are not privy to this information, they would not be able to identify the key factors used in determining a specific consumer's credit score and would not be able to comply with this provision without receiving the information from the CRA. A bank's role in implementing this provision should only be to pass along to the consumer the credit score and supporting information it received from the CRA. We believe the final rule should clearly reflect that role. We also believe the model notices should clearly explain that the bank providing the notice neither determines the credit score nor the key factors affecting it and the consumer may contact the CRA directly to dispute any inaccurate information.

The final rule should also clarify that by simply disclosing a credit score and the key factors that adversely affected the credit score, banks do not become consumer reporting agencies under the FCRA. As defined by FCRA, the term consumer reporting agency means "any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties..." [2] A bank must provide either an adverse action notice, risk-based notice or account review notice when it takes certain adverse action that was based in whole or in part on information in a consumer report. Currently, these notices do not disclose specific information on the consumer report to the applicant, but simply refer the applicant to the appropriate CRA that provided the consumer report to the bank.

Section 1100F of the Dodd-Frank Act requires these notices to begin including a credit score and key factors that affect the credit score. If a bank is responsible for assembling the key factors that affect its consumer's credit score and providing that information to its customers, it may inadvertently be defined as a CRA under the FCRA. We request that the final rule clearly state that providing this information would not define a bank as a CRA under this definition.

Scope of Proposal

Under the proposal, if a bank uses a consumer report, but not a credit score, in taking the adverse action, it would not be required to disclose a credit score and related information and the proposed amendments to the model notices would not be applicable. We agree. We believe it would be confusing for an applicant to receive information about his or her credit score when it was not used in the credit decision.

Multiple Applicants

The ICBA requests that the Board clarify that banks continue with current Regulation B practices when there are multiple applicants and only be required to

[2] 15 USC 1681a(f)

disclose the credit score and information relating to the credit score of the primary applicant when providing an adverse action notice. The Dodd-Frank Act amends the FCRA to require credit scores and related information on adverse action notices. Neither the Dodd-Frank Act nor section 615 of FCRA, which is amended by the Dodd-Frank Act, addresses the treatment of multiple applicants. Regulation B states that when an application involves more than one applicant, adverse action notification need only be given to the primary applicant.[3] We believe that the credit score of one consumer, such as a co-signer, should not be disclosed to a different consumer, such as the primary applicant. Therefore we request that the Board clarify that when there are multiple applicants, banks may continue to provide one notification to the primary applicant and include only the primary applicant's credit score and related information.

Similarly, the agencies are proposing to amend the regulations that address circumstances where multiple consumers, such as co-borrowers, must be provided with a risk-based pricing notice. The proposed rules would retain the requirement that in a transaction involving two or more consumers, a risk-based pricing notice must be provided to each consumer. The proposed rules, however, would amend the rules for when multiple consumers have the same address and would require a bank to provide a separate notice to each consumer if a notice includes a credit score. Each separate notice that includes a credit score must contain only the credit score of the consumer to whom the notice is provided and not the credit scores of the other consumers. If the notices do not contain a credit score, banks may continue to satisfy the requirements by providing a single notice addressed to both consumers.

We believe that the credit score of one consumer, such as a co-borrower, should not be disclosed to a different consumer, such as the primary applicant. However, the requirement to provide a credit score to each co-borrower in the same household will be operationally burdensome. When there are co- borrowers on a credit application that share the same address, sensitive and detailed information is often shared between them, such as income and debt. It may be confusing for joint applicants to receive two risk-based pricing notices informing them of the same application. Applicants may misunderstand and believe they inadvertently applied for two loans and contact the bank for clarification. It may be clearer and less burdensome to provide the credit score and related information of the primary applicant and refer the joint applicant to the appropriate CRA for his or her credit score information.

Compliance Date

We request that the agencies provide ample time for banks to comply with any new requirements in the final rule, and suggest setting a mandatory compliance date of at least six months after the final rule is effective. As we previously stated, community banks will have to rely on CRAs to provide them with the

[3] 12 CFR 202.9(f)

appropriate information and will have to significantly modify their adverse action notices to accommodate the additional information. This may require technology system and software changes that are complex and time-consuming. Therefore, banks will need additional time to make these changes.

Thank you for the opportunity to comment. If you have any questions or need additional information, please feel free to contact me by telephone at 202-659-8111 or by e-mail at lilly.thomas@icba.org.

Sincerely,

/s/

Lilly Thomas
Vice President and Regulatory Counsel