American Bankers Association
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Ms. Jennifer J, Johnson
Secretary,
Board of Governors
of the Federal Reserve System
20th Street and Constitutions Avenue, NW
Washington DC 20551

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

April 13, 2011

Docket No R-1407/RIN 7100-AD66 (Federal Reserve Board)
RIN/Project Number R411009 (Federal Trade Commission)
Risk-based Pricing Rule Amendments
Fair Credit Reporting Act
76 *Federal Register* 13902

Dear Ms. Johnson and Mr. Clark

The American Bankers Association[1] (ABA) is pleased to submit our comments on the Federal Reserve Board's and Federal Trade Commission's (Agencies) proposed changes to regulations implementing the Fair Credit Reporting Act (FCRA), to incorporate new requirements pursuant to section 1100F of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Section 1100F of that act requires disclosure of credit scores and information related to credit scores in risk-based pricing notices if a credit score is used in setting the material terms of credit. The Dodd Frank Act also requires that users of credit scores include in the FCRA adverse action notice the same credit score information. However, while FCRA provides specific rulemaking authority with regard to the risk-based pricing provisions, it does not do so for the adverse action provision. Accordingly, the Agencies have not proposed regulatory language to incorporate the requirements related to adverse action. Separately, the Federal Reserve Board has proposed model adverse action notices in the appendix of Regulation B (Equal Credit Opportunity Act). The changes are effective July 21, 2011.[2]

Generally, ABA agrees with the Agencies' proposed rule as it presents a sensible and practical approach within the constraints of the statute so that revisions to disclosures and policies that only went into effect on January 1, 2010, will be minimized. Our primary concerns relate to the short

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1 [1] The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's $13 trillion banking industry and its two million employees. The majority of ABA's members are banks with less than $165 million in assets.

2 Section 1100H of the Dodd-Frank Act provides that amendments in Subtitle H of Title X, which includes Section 1100F, become effective on the "designated transfer date." The Secretary of the Treasury set the designated transfer date as July 21, 2011

effective date and the fact that creditors must provide credit scores twice to mortgage applicants. The duplication and potential resulting confusion to consumers seems at odds with trends toward shortening disclosures and avoiding clutter.

Proposed Rule

On January 15, 2010, the Agencies published final rules to implement the risk-based pricing provisions in section 311 of the Fair and Accurate Credit Transaction Act of 2003, which amends FCRA. The final rules generally require a creditor to provide a risk-based pricing notice to a consumer when the creditor uses a consumer report to grant or extend credit to the consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that creditor. In adopting the risk-based pricing notice requirements, the Agencies provided several exceptions. For example, creditors are not required to provide a risk-based pricing notice if they provide a credit score exception notice to all borrowers.

Section 1100F of the Dodd-Frank Act amends FCRA to require creditors to disclose in risk-based pricing notices a credit score used in making a credit decision and information relating to such credit score. Specifically, the notice must contain:

1. A statement that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time to reflect changes to the consumer's credit history;
2. The credit score used by the person making the credit decision;
3. The range of possible credit scores under the model used to generate the credit score;
4. All of the key factors that adversely affected the credit score, which shall not exceed four factors, except that if one of the key factors is the number of inquiries made with respect to the consumer report, the number of key factors shall not exceed five;
5. The date on which the credit score was created; and
6. The name of the consumer reporting agency or other person that provided the credit score.

ABA Suggestions

Definition of credit score. The regulation already defines "credit score" in Section __71.(l) by reference to 15 U.S.C.(1682g(f)(2)(A), and the Agencies propose no changes. We agree.

No notice if credit score is not used in the decision. Under the proposal, in cases where a lender does not use a credit score in making the credit decision that requires a risk-based pricing notice or account review notice, the lender would not be required to disclose a credit score. We agree with the Agencies. Providing a credit score when none was used will confuse consumers.

Limiting credit score disclosure to the credit score of the person receiving credit. We agree with the proposal that provides that lenders need only disclose a credit score and related information when using the credit score of the consumer to whom it grants, extends, or otherwise provides credit or whose extension of credit is under review. As the Board notes, while lenders may use the credit score of a guarantor or co-signer in making a decision, they should not provide the credit score of one person (e.g., the guarantor) to another (e.g., the applicant).

Continued application of the credit score exception. Under the exceptions to the existing rule, creditors may provide a credit score notice in lieu of the risk-based pricing notice. The Agencies note in

the supplementary information that nothing in Section 1100F of the Dodd Frank Act or the proposal limits the ability of creditors to provide these exception notices in lieu of the general risk-based pricing notice. We agree and suggest that the Agencies clarify this point in the Commentary. While the contents of the credit score exception notice are not identical to the credit score information that will be added to the risk-based pricing notice, the differences do not justify revising notices that have only just been adopted and in circulation since January 1, 2011.

Credit score disclosure requirements for FCRA adverse action notices. The Dodd-Frank Act requires that FCRA adverse action notices also contain information about the consumer's credit score. However, as noted, while the Agencies have specific rulemaking authority under the provisions related to the risk-based pricing notice, there is no specific rulemaking authority for the FCRA adverse action notices. Our concern is that mortgage applicants who receive adverse action notices will now receive two credit score notices: one, pursuant to 609 (g) of FCRA, which requires lenders to provide credit scores to mortgage applicants "as soon as reasonably practicable"; and a second one after the adverse decision is made. Providing the credit score twice is wasteful and provides consumers no benefit. Once the FCRA rulemaking authority transfers to the Bureau of Consumer Financial Protection (Bureau), the Bureau should use its authority under Section 1022(b)(e) of the Dodd-Frank Act to provide that lenders are not required to provide credit scores with adverse action notices if the lender has previously provided a score pursuant to Section 609(g).

Effective date. We are also concerned that there is insufficient time to comply with the new requirements by the mandatory compliance date of July 21, 2011, the designated transfer date of the Bureau. Banks providing risk-based pricing notices will need much more time to comply than the Agencies' estimated burden of 16 hours. Lenders must read, analyze, and understand the final rule, determine which programs and platforms need adjustments and make those adjustments, test the systems to ensure the correct information is being retrieved and inserted, and make further adjustments based on the tests. In addition staff, including customer service representatives, has to be trained. We do not believe that any bank having to comply will be able to do so within the estimated 16 hours. If this regulation were a single regulation, the short implementation time would not be as problematic, but the multitude of new regulations that banks have had to implement in the past few months and those they must implement by July 21, 2011, (e.g. Secure and Fair Enforcement for Mortgage Licensing Act, amendments to the Expedited Funds Availability Act, changes to Regulation Z, changes to privacy notices) strain compliance and information technology resources and increase the risk of errors, especially if banks lack time to test compliance. For these reasons, we urge the Agencies to use their authority, as they have in the past, to delay the effective dates of provisions requiring rulemaking.[3] Specifically, the Board should provide at least nine months after adoption of the final rule.

[3] In a November 24, 2004, letter, the Agencies, along with four other banking agencies, wrote that the "effective date will be set forth in the guidance or rule," on the basis that "[C]ompliance with any applicable guidance or rules cannot be determined until they are finally adopted by the Agencies." See attached.

Conclusion

ABA appreciates the opportunity to comment on the proposed provisions that implement the Dodd-Frank Act requirement that risk-based pricing and adverse action notices contain credit scores. We appreciate the Board's efforts to minimize the need to alter the some of the notices that were only required as of January 2011. We urge the Board to extend the deadline by nine months to provide sufficient time for banks to comply.

Regards,

Nessa Eileen Feddis

Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
Federal Trade Commission
National Credit Union Administration
Office of the Comptroller of the Currency
Office of Thrift Supervision

November 24, 2004

Nessa Feddis
American Bankers Association
1120 Connecticut Avenue, NW
Washington, DC 20036

Subject: Fair and Accurate Credit Transactions Act of 2003 - Compliance Dates

Dear Ms. Feddis:

This letter, signed by the chief and general counsels of the Federal Deposit Insurance Corporation, Federal Reserve Board (Board), National Credit Union Administration, Office of the Comptroller of the Currency, and the Office of Thrift Supervision, and the Acting Director of the Bureau of Consumer Protection of the Federal Trade Commission (FTC) (collectively, the Agencies), responds to your inquiry of the Agencies dated November 2, 2004. In addition to the American Bankers Association, the inquiry was submitted on behalf of the America's Community Bankers, Consumer Bankers Association, Credit Union National Association, Financial Services Roundtable, Independent Community Bankers of America, Mortgage Bankers Association, and the National Association of Federal Credit Unions (the Associations). Your inquiry seeks guidance on how the Agencies expect to apply ten provisions of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act).

Six of the provisions discussed in your letter must be implemented by regulations or guidance adopted by the Agencies. The provisions requiring rulemaking are:

- Red Flag Guidelines and Regulations (FACT Act § 114, FCRA § 615(e));
- Disposal of Consumer Report Information (FACT Act § 216, FCRA § 628);
- Risk-Based Pricing Notice (FACT Act § 311, FCRA § 615(h));
- Accuracy and Integrity Guidelines and Regulations (FACT Act § 312(a), FCRA § 623(e)(1));
- Ability of Consumer to Dispute Information with Furnisher (FACT Act § 312(c), FCRA § 623(a)(8)); and
- Reconciling Addresses (FACT Act § 315, FCRA § 605(h)(2)).

By their terms, sections 114, 216, 312(a) and 312(c), and the provisions of section 315 applicable to persons who have requested a consumer report require some or all of the Agencies to adopt implementing guidance or regulations. As these statutory provisions are written, the obligations of various persons flow from the guidelines and rules that are to be adopted by the designated agencies. Thus, compliance with any applicable guidance or rules cannot be determined until they are finally adopted by the Agencies. The effective date will be set forth in the guidance or rule.

Section 311 of the FACT Act, which governs risk-based pricing notices, becomes effective on December 1, 2004. The provisions of section 311 are, by their terms, enforceable only by the Federal agencies designated in section 621 of the Fair Credit Reporting Act. Joint rulemaking by the FTC and the Board will establish the parameters for compliance, including the requirements for consumer notice, and will state the date for compliance.

The designated Agencies have in several cases begun work on guidance or rules (as appropriate) to implement the provisions discussed above and hope to seek comment on various proposals in the short term. With respect to the provisions of section 216 regarding disposal of consumer information, the Agencies expect to issue a final rule by year-end that will include an effective date for compliance.

There are a number of other provisions of the FACT Act listed in your letter that do not involve the publication of implementing rules. You have asked the Agencies to indicate their willingness to take into account the implementation difficulties associated with these provisions when considering possible agency enforcement actions. In particular, you have indicated that developing and implementing systems to comply with the following provisions of the FACT Act may be complex and difficult for many institutions:

- Fraud and Active Duty Alerts (FACT Act § 112, FCRA § 605A);
- Blocking of Information Resulting from Identity Theft (FACT Act § 152, FCRA § 605B);
- Prevention of Repollution of Consumer Reports (FACT Act § 154(a)–(b), FCRA §§ 615(f), 623(a)(6)); and
- Disclosure of Credit Scores (FACT Act § 212(c), FCRA § 609(g)).

The requirements of these provisions are effective on December 1, 2004, and do not depend on agency rulemaking. As a result, the Agencies expect that covered persons will begin to comply with these provisions on that date.

The Agencies appreciate the difficulties associated with developing compliance procedures, modifying systems, and training staff to implement new requirements. Consequently, the Agencies will take into account these difficulties together with all other relevant circumstances, including the good faith efforts made by each institution to comply with these provisions when considering whether to bring enforcement actions under the FACT Act.

The Agencies note that this letter only addresses liability of regulated persons under the FACT Act and the FCRA listed above. Any obligations under other provisions of law would be beyond the scope of this letter.

Sincerely,

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General Counsel
Board of Governors of the Federal Reserve System

John E. Bowman
Chief Counsel
Office of Thrift Supervision

William F. Kroener, III
General Counsel
Federal Deposit Insurance Corporation

Daniel P. Stipano
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