National Council of
Higher Education
Loan Programs, Inc.
NCHELP

1100 Connecticut Ave., NW, 12th Floor, Washington, DC 20036 • Tel: 202-822-2106 • Fax: 202-822-2142 • Web site: www.nchelp.org

April 14, 2011

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

RE: Regulation V; Docket No. R-1407; Dodd-Frank Modifications to FCRA Risk-Based Pricing Regulations; Proposed Rule

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

RE: FCRA Risk-Based Pricing Rule Amendments: Project No. R411009; Proposed Rule

Ladies and Gentlemen:

This is in response to the above described notice of proposed rulemaking published jointly by the Board of Governors of the Federal Reserve System (the "Board") and the Federal Trade Commission (FTC). The proposed rule implements amendments to the FCRA risk based pricing provisions contained in section 1100 F of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").

The National Council of Higher Education Loan Programs (NCHELP) appreciates the opportunity to comment on the notice of proposed rulemaking. NCHELP is a trade association that represents a nationwide network of lenders, secondary markets, loan servicers, guaranty agencies, collection agencies, postsecondary schools, and others that administer loan programs that make loan assistance available to students and parents to pay for the costs of postsecondary education, including private education loans that would be subject to the proposed rule.

Our comments on the proposed rule are as follows:

1. Credit score disclosure exception notices. In complying with the FCRA risk-based pricing regulation, many of our members use the credit score disclosure exception under 12 CFR 222.74(e) and 16 CFR 640.5(e). The proposed rule states that nothing in section 1100F of the Dodd-Frank Act or the proposed rule limits the ability of creditors to provide these exception notices in lieu of the general risk-based pricing notices. We assume that this means that creditors that use the credit score disclosure exception notices shall be deemed to be in

compliance with the requirements of section 1100F of the Dodd-Frank Act and this rule (when finalized) and request specific affirmation of this.

2. Credit score factors. The proposed rule points out that the Dodd-Frank Act requires that risk-based pricing notices include the numerical credit score used in making credit decisions and certain related information, including the key factors that adversely affected the credit score of the consumer in the model used. With respect to these factors, we suggest that the final rule state, either in the preamble, supplementary information or in the final regulation itself that the creditor may rely on the factors provided by the applicable credit reporting agency and has no obligation to question the factors provided. Additionally, the Board may consider providing guidance on what a creditor should do in the event, hopefully unlikely, that a consumer reporting agency fails to provide the factors or provides them in a manner that is not understandable.

3. Effective date. The notice of proposed rulemaking points out that the effective date of the applicable provisions of the Dodd-Frank Act is July 21, 2011. While we assume that the Board and the FTC will act swiftly to publish a final rule, it should be noted that the guidance provided in the proposed rule was not published until March and is only in proposed form. Many creditors (or their servicers) will not have had sufficient time to make the necessary system changes to implement the provisions of the rule by July 21. This is particularly with respect smaller lenders and servicers. Many of our members making or processing private education loans are smaller non-profit and state agency lenders. These organizations, which generally have small IT staffs, will need time to program and test the system changes that will be required to implement the requirements. For this reason, while the final rule can have an effective date of July 21, 2011, we recommend that the final rule have a different compliance date for the requirement. We suggest a date six months thereafter, or January 21, 2012. This distinction between an effective date and a compliance date has been used in other situations (e.g. the final rule implementing amendments to Truth in Lending for private education loans and final regulations implementing the privacy provisions of the Gramm-Leach-Bliley Act).

Finally, we would like to note that in separate comments on the proposed amendments to Regulation B published on the same day as the notice of proposed rulemaking, NCHELP has urged the Board to align the adverse action rule with the approach taken in the proposed risk-based pricing regulation with respect to the treatment of co-signers and co-borrowers. The risk-based pricing proposal makes clear that a creditor need not provide the co-signer's credit score to the primary applicant in cases where the creditor uses the co-signer's score in making its credit decision. Similarly, the proposed risk based pricing rule makes clear that co-borrowers should receive separate notices if the creditor is sending credit scores. In light of privacy considerations, we believe these approaches to be appropriate.

Thank you again for the opportunity to comment on the proposed rule. Should you have any questions, please contact me at 202-721-1195 or shelly_repp@nchelp.org.

Sincerely,

Sheldon Repp
General Counsel