

By electronic delivery to:
regs.comments@federalreserve.gov.

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

April 13, 2011

Docket No R-1408
RIN NO. 7100-AD67
Regulation B
Equal Credit Opportunity Act
76 Federal Register 13896

Dear Ms. Johnson,

The American Bankers Association¹ (ABA) is pleased to submit our comments on the Federal Reserve Board's (Board) changes to the model adverse action notices of Regulation B, which implements the Equal Credit Opportunity Act (ECOA) to reflect statutory changes of the adverse action notices required by the Fair Credit Reporting Act (FCRA). Section 1100F of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) requires FCRA adverse action notices to include applicants' credit scores and information related to credit scores. The amendments are effective on July 21, 2011.²

ABA appreciates the Board's efforts to incorporate the adverse action notice information required in FCRA into the model adverse action notices of Regulation B. Combining the required information from both statutes eases compliance burdens. We offer a few suggestions which will facilitate consumer understanding of the reasons for adverse action and the nature and purpose of credit scores and also provide more compliance guidance to lenders.

Proposal

ECOA generally requires lenders to notify a credit applicant of adverse action with regard to a loan application. FCRA also requires that adverse action notices be provided when an adverse action is based in whole or in part on information in a consumer report. While ECOA adverse action notice requirements are implemented in Regulation B, there are no specific implementing regulations for the

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.

adverse action requirements of FCRA. However, so that Regulation B model notices allow lenders to comply with the adverse action requirements of both statutes, Regulation B model notices contain information required by both ECOA and FCRA. Accordingly, the Board is proposing to modify the model notice of Regulation B to incorporate the statutory changes to the FCRA adverse action notices.

Section 1100F of the Dodd-Frank Act amends FCRA to require creditors to disclose in FCRA adverse action notices a credit score used in making a credit decision along with information related to such credit score. 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.

The Board proposes to add language to the Regulation B model adverse action notices that incorporates this required credit score information. Most of the additions to the model notices explain that the creditor obtained a credit score from a consumer reporting agency and used it in making the credit decision.

ABA Suggestions

Explain reason credit score information is included in notice and reference definition of credit score. We suggest that the Commentary to Appendix C explain that the language related to credit scores is required under 15 U.S.C. 81m(a)(2) when lenders use a credit score in taking adverse action and that "credit score" has the same meaning as in 15 U.S.C. 1681(f)(2)(a).

Insert notice that recipient should contact the consumer reporting agency about consumer reporting agency scores. We recommend that the notice about credit scores from consumer reporting agencies notices include a statement after the list of the key factors, " We are not responsible for your credit score. You should contact the consumer reporting agency for more information about your credit score." This will direct recipients to the appropriate party so they avoid the time lost and frustration from contacting a lender who is not in the position to answer questions about the consumer reporting agency's score.

Allow cross-reference of reasons for adverse action and key credit score factors. In addition, we recommend that the Board provide in the Commentary that if the key factors related to the credit score are identical to the reasons for adverse action, lenders may list them once in the adverse action notice and cross reference them in the credit score disclosure. A single list with a cross-reference shortens the notice and makes the information clearer to the consumer. In place of "Key factors that adversely affected your credit score," a model form should state, "The key factors that adversely affected your credit score are described above in the explanation for credit denial."

Explain role of co-applicant's score. We also suggest that the model forms include in the explanation of the reasons for adverse action, "If you have applied with a co-applicant, this decision may be based on your credit score, your co-applicant's credit score, or both." This is to help co-applicants with high credit scores who have received an adverse action notice based on a co-applicant's low score understand better the potential reasons for the adverse action. Because applicants only receive their own scores and not any co-applicant's credit score, they might not realize that the reason for the adverse action relates to the co-applicant's credit score.

Clarify use of Form C-3. Model Form C-3 contains information related not only to credit scores obtained from consumer reporting agencies, but also general information that a proprietary credit score was used. The supplementary information explains that "form C-3 is a model notice that can be used by creditors in circumstances where the creditor uses a proprietary credit scoring system to make a credit decision and where the creditor uses information from a consumer reporting agency in this scoring evaluation."

We believe that Form C-3 is useful and appropriate for lenders who incorporate credit scores into their proprietary credit score or use both a proprietary credit score and consumer reporting agency credit score, as the form suggests. The form provides consumers useful information about proprietary scores and avoids unnecessary confusion by disclosing a single credit score from the consumer reporting agency rather than a proprietary score or both proprietary and consumer reporting agency scores. The consumer reporting credit score is more useful and meaningful to consumers because they are familiar with such scores.

The supplementary information explanation, however, seems inconsistent, as it notes that it is to be used where the lender uses a proprietary score and *information* from a consumer agency in the scoring evaluation rather than a *credit score* from a consumer reporting agency. To be accurate, the Commentary and supplementary information should make clear that this is for use when the lender uses both a proprietary credit score and a *credit score* from consumer reporting agency, as the form suggests.

The Board should also develop a model form for instances where the creditor uses a proprietary credit score (as credit score is defined in FCRA) based *solely* on credit history information, but does not use a consumer reporting agency credit score. The form would be similar to Form C-3, but it would omit the statement that the consumer reporting agency credit score was used since, in fact, it was not used.

Conclusion

ABA supports the Board's efforts to facilitate compliance by revising the model adverse action notices of Regulation B to incorporate new requirements for FCRA adverse action notices. We recommend that the Board assist compliance by referencing the "credit score" definition of FCRA and add language to the model forms to assist adverse action notice recipients in understanding the reasons for the adverse action and the role of credit scores.

Regards,



Nessa Eileen Feddis