

**By electronic delivery to:**  
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**By Weblink to:**  
<https://ftcpublic.commentworks.com/ftc/riskbasedpricingamendnprm>

Ms. Jennifer J. Johnson  
Secretary,  
Board of Governors  
of the Federal Reserve System  
20<sup>th</sup> 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<sup>1</sup> (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.<sup>2</sup>

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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<sup>1</sup> 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.

<sup>2</sup> 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.<sup>3</sup> Specifically, the Board should provide at least nine months after adoption of the final rule.

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<sup>3</sup> 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,

A handwritten signature in black ink, reading "Nessa Feddis". The signature is written in a cursive style with a large initial 'N'.

Nessa Eileen Feddis