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Jennifer J. Johnson
Secretary,
Board of Governors of the Federal Reserve System
29th and Constitution Avenue, NW
Washington, D.C. 20551

Re: Docket No. R-1187
Model Form to Regulation V
Fair Credit Reporting Act

Dear Ms. Johnson,

The American Bankers Association (“ABA”) is pleased to submit its comments to the Federal Reserve Board’s (“Board”) proposed new model form to Regulation V that financial institutions may use to comply with the notice requirement relating to furnishing negative information that is contained in section 217 of the Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”). The proposal was published in the 12 April 2004 *Federal Register*.

Section 217 provides that if any financial institution 1) extends credit and regularly and in the ordinary course of business furnishes information to a nationwide consumer reporting agency, and 2) furnishes negative information to such an agency regarding credit extended to a customer, the institution must provide a clear and conspicuous notice about furnishing negative information, in writing, to the customer. The notice may be included on or with any notice of default, any billing statement or other materials provided to the customer. However, it may not be included in the initial disclosures required under the Truth in Lending Act.

The ABA brings together all elements of the banking community to represent the interests of this rapidly changing industry. Its membership – which includes community, regional, and money center banks and holding companies, as well as savings associations, trust companies, and savings banks – makes ABA the largest banking trade association in the country

The Board proposes the following language for the model form:

We [may provide]/[have provided] information to credit bureaus about an insolvency, delinquency, late payment, or default on your account to include in your credit report.

The proposed language referring to insolvency, delinquency, late payment or default parallels the FACT Act's definition of "negative information." However, we believe that the notice could be shortened and made more understandable by deleting a redundancy and an unnecessary reference. For example, "late payment" and "delinquency" are in essence the same and the phrase "late payment" is probably most understandable to consumers. Accordingly, we suggest the Board omit "delinquency." In addition, we suggest "insolvency" be deleted. We are not aware that creditors report insolvencies. In most cases, they do not even know that a consumer is insolvent.

We also suggest that the Board offer two model forms; one which is appropriate as a general notice provided prior to reporting negative information and a second one which is provided when the customer is, in fact, late or in default. The proposed language is appropriate for the latter, but may sound threatening and offensive to someone who has not, in fact, been late paying. It is difficult to develop a single sentence that would convey the tone appropriate for someone who has not paid late or defaulted and the tone appropriate for someone who has. Therefore, we recommend two models: one containing the proposed language (as modified based on above comments); and one stating, "If you pay late or default on your account, we may report the late payment or default to the credit bureaus."

Finally, we suggest that the Board clarify in the regulation or in the Supplementary Information that the account holder need only receive one notice and that additional notices are not required in the event the loan or servicing responsibilities are sold or transferred. Multiple notices will not benefit consumers or creditors and were not contemplated by the FACT Act : Section 217(a)(7)(A)(ii) provides that creditors may submit additional negative information "with respect to the same. . . account, or customer. . .without providing additional notice to the customer. " If Congress determined that additional notices were unnecessary in the event of multiple but separate event late payments, it could not have thought additional notices should be triggered by a change in account ownership. Accordingly, to avoid confusion and the unnecessary complication and expense of sending multiple notices based on the sale or transfer of the account or servicing responsibilities, the Board should clarify that consumers need only receive one notice per account.

The FACT Act did not specifically direct the Board to adopt regulations in this matter, only that it provide model language. However, the Board could use its general rulemaking authority under Section 621

(e). In the alternative, the Board could make the clarification in the Supplementary Information to the final model language.

ABA appreciates the opportunity to comment on this proposed model language to implement the provision of the FACT Act related to the notice about reporting negative information to credit bureaus.

Sincerely

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

Nessa Eileen Feddis