April 14, 2011

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

Re: ***Fair Credit Reporting Risk-Based Pricing Regulations***
Federal Reserve Board [Docket No. R-1407, RIN 7100-AD66]
Federal Trade Commission [16 CFR Parts 640 and 698, RIN R411009]

Dear Ms. Johnson:

The American Financial Services Association ("AFSA") appreciates the opportunity to comment on the proposed fair credit reporting risk-based pricing rule ("Proposed Rule") by the Board of Governors of the Federal Reserve System and the Federal Trade Commission ("Agencies"). AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. Its 350 members include consumer and commercial finance companies, auto finance/leasing companies, mortgage lenders, mortgage servicers, credit card issuers, industrial banks and industry suppliers.

The Proposed Rule implements a portion of section 1100F ("Section 1100F") of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")that amends section 615(h) of the Fair Credit Reporting Act ("FCRA"). AFSA generally supports the Agencies' proposed implementation of Section 1100F as it relates to risk-based pricing notices. AFSA also supports the Agencies' position that Section 1100F applies only to credit scores obtained from a consumer reporting agency ("CRA"). However, AFSA asks that the Agencies clarify the application of the rule when a creditor obtains a consumer report containing a credit score, but does not use that score in making its decision. AFSA also requests that the Agencies extend the mandatory compliance date, as it will take lenders much more than 16 hours to implement the proposed changes. Finally, AFSA suggests that the Agencies devise a single model form that includes all of the information that must be disclosed in a credit score exception notice and in an adverse action that complies with Section 1100F's amendments to 615(a) of the FCRA.

The Agencies Correctly Interpret Section 1100F to Apply Only to Credit Scores Obtained from a Consumer Reporting Agency

When evaluating a credit application, creditor may rely on a credit score, such as a FICO score, obtained from a CRA; a score the creditor calculates using its own proprietary model; or both a third party score and a proprietary score. AFSA understands the Agencies' position to be that a credit score obtained from a CRA is within Section 1100F's scope. However, if creditor calculates a credit score using its own proprietary scoring model, then that score is not within Section 1100F's scope. If the proprietary score model uses information obtained from a CRA,

including score information, the proprietary score still need not be disclosed to the customer. Instead the score obtained from the CRA should be disclosed.

This interpretation of Section 1100F is both the best interpretation of the statutory text and the best policy for consumers and creditors. Section 1100F applies to a "numerical credit score as defined in section 609(f)(2)(A) [of the FCRA]." By referencing this definition, Congress indicated its intent that Section 1100F applies to scores obtained from a CRA, but not to proprietary scores. Section 609(f) allows a consumer to request his or her credit score from a CRA. Congress intended this provision to allow consumers to request widely distributed credit scores that would assist them in understanding credit scoring.[1] Furthermore, by incorporating the requirement to disclose the name of the person providing the score, Section 1100F assumes that a third party will provide the score.[2]

Moreover, construing Section 1100F as requiring the disclosure of proprietary scores would not benefit consumers. A proprietary score typically is calculated in the context of a particular transaction, and thus may not necessarily be representative of the consumer's overall creditworthiness.[3] Additionally, because the calculation methods and ranges of propriety scores are not consistent from creditor to creditor, a consumer could not use disclosures made under Section 1100F to compare his or her scores across creditors and across time. Regulation B already requires creditors to provide adverse action reasons regarding why a consumer had a lower proprietary score. Therefore, expanding Section 1100F to cover such scores is more likely to confuse consumers by providing extraneous information than to be helpful. Consequently, AFSA believes that the Agencies have correctly interpreted Section 1100F to apply only to scores obtained from a CRA.

Section 1100F Should Not Apply if a Creditor Uses a Consumer Report, But Not a Credit Score

Creditors may obtain a consumer report that includes a credit score, but not use the score when making a credit decision. For example, a creditor automatically may obtain a credit report and score when an application is submitted, but deny the application for reasons unrelated to the score, such as the applicant appearing on the SDN list.

The Board acknowledges that creditors need not provide disclosures under Section 1100F unless they use a credit score. Specifically, the Board's proposed rule amending Regulation B states,

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[1] *See* 149 Cong. Rec. 175, at E2514 (Dec. 8, 2003) ("Credit scores are to be derived from models that are widely distributed in connection with mortgage loans or more general models that assist consumers in understanding credit scoring, and must include a disclosure to the consumer stating that the information and credit scoring model may be different than that used by a particular lender.") (remarks of Rep. Oxley providing a section-by-section explanation of the Fair and Accurate Credit Transactions Act of 2003).

[2] Note that a person calculating and providing a credit score to another person qualifies as a consumer reporting agency under the FCRA.

[3] For example, if a creditor's proprietary model considers down payment, then an unusually high or low down payment may cause the applicant's score from the proprietary model to be materially higher or lower than a generic score obtained from a CRA.

"In some cases, a person who is required to provide an adverse action notice under the FCRA may use a consumer report, but not a credit score, in taking the adverse action. Under section 1100F of the Dodd-Frank Act, a person is not required to disclose a credit score and related information if a credit score is not used in taking the adverse action. "[4] AFSA requests clarification that making Section 1100F disclosures is not required when a creditor obtains, but does not use a credit score, in addition to when a creditor obtains a report without a score.

Effective Date

AFSA understands that section 1100H of the Dodd-Frank Act provides that the amendments in Subtitle H of Title X, which includes Section 1100F, become effective on a "designated transfer date," and that the Secretary of the Treasury has set the designated transfer date as July 21, 2011. However, since comments need to be submitted by April 14, and comments on the Paperwork Reduction Act analysis need to be submitted by May 16, it seems as though a final rule could not be published soon enough to give AFSA members adequate time to implement the rule.

Instead, we ask that the Agencies follow a similar procedure to the one the Board used when implementing the Mortgage Disclosure Improvement Act. The Board kept the effective date that was mandated by the statute, but moved the mandatory compliance date later. AFSA asks that the Agencies institute a mandatory compliance date of at least one year after the final rule is published in the Federal Register.

This additional time is necessary because it will take financial services companies much more than the 16 hours the Agencies estimate to update their systems to comply with the disclosure requirements in the Proposed Rule. In fact, 16 hours is a gross underestimate. AFSA members provided different estimates on how long it would take them to comply with the Proposed Rule. Because AFSA members vary in size, the length of time it would take to implement the Proposed Rule varies. One company estimated that it would take at least two weeks, another estimated that it would take 45 to 60 days, a third company said that it would take at least 390 hours, and a fourth company said it would take approximately 3500 hours, not including time for training employees. These estimates include reading and understanding the changes, programming and coding, and testing. None of these estimates is even close to the 16 hours that the Agencies estimated.

A Single Disclosure Form Should Be Provided for Creditors Who Rely on the Credit Score Exception to Comply with the Risk-Based Pricing Rule

Many creditors comply with the Risk-Based Pricing ("RBP") Rule by providing a credit score exception notice (hereinafter "RBP Credit Score Notice"). Many of the creditors who use the RBP Credit Score Notice rely on the CRA not only for the relevant data, but also to prepare and present that data so that it can be readily inserted into a notice to be mailed to the consumer. Section 1100F creates a timing challenge because it will require similar information. However, when the creditor accesses the CRA data to evaluate a credit application, it will not yet know whether credit will be extended (thus triggering an RBP Credit Score Notice) or turned down

[4] 76 Fed. Reg. 13896, 13897 (Mar. 15, 2011).

(thus triggering an adverse action ("AA") notice). The attached decision tree is provided to assist the reader in understanding the decision making process followed by a creditor and the points in that process that will trigger either an RBP credit score disclosure or an AA credit score disclosure.

It is critical that creditors, particularly smaller creditors, be able to obtain from the CRA in usable form all of the information that would be required in either the RBP Credit Score Notice or the AA notice. Otherwise, creditors may be required to obtain consumer report information multiple times from the CRA. Therefore, the Agencies should devise a model form including all of the information that must be disclosed in either an RBP Credit Score Notice or an AA notice. This would allow a creditor to simply attach or merge the information sheet received from the CRA to either the creditor's AA notice or the creditor's RBP Credit Score Notice as applicable. Because there already is substantial overlap between the RBP Credit Score Notice and the information required by Section 1100F in AA notices, this approach should be readily understandable by applicants. Creditors would need to indicate whether adverse action was taken, but otherwise the same information would be provided to applicants.

Creating a model form that integrates the information in a RBP Credit Score Notice and an AA notice compliant with Section 1100F would provide a relatively simply implementation solution for creditors who provide RBP Credit Score Notices today. Whatever is done, the regulations SHOULD NOT require the creditor to go back to the CRA to obtain the requisite credit score disclosure information after the credit decision has been made. That would provide no benefit to consumers and place a significant burden on creditors.

Conclusion

AFSA thanks the Agencies for the opportunity to comment on the Proposed Rule and commends the Board for its work in protecting consumers. Please feel free to contact me with any questions at 202-296-5544, ext. 616 or bhimpler@afsamail.org.

Respectfully submitted,

Bill Himpler
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