April 14, 2011

Board of Governors of the Federal Reserve System
Division of Consumer and Community Affairs
20th and C Street, NW
Washington, DC 20551

RE: Regulation B; Docket No. R-1408; Dodd-Frank Act Modifications to FCRA Adverse Action Provisions; Proposed Rule

Ladies and Gentlemen:

The Student Loan Servicing Alliance's Private Loan Committee (SLSA PLC) represents organizations involved in the making, servicing, administration and collection of private education loans. Private education loan programs are offered by state and nationally-chartered banks, federal savings banks, credit unions, student loan secondary markets, state-authorized direct lenders and state-licensed lenders. Student loan service providers are responsible for a range of services to lenders, including the processing of loan applications, communications with consumers, the provision of disclosures and billings, the processing of payments and the collection of past-due payments.

The SLSA PLC wishes to thank the Board of Governors of the Federal Reserve System (the Board) for the opportunity to comment and respectfully submits the following comments on the proposed rules with respect to the changes to the FCRA adverse action provisions made by section 1100F of the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L.111-203 (Dodd-Frank Act).

What is meant by "using" a credit score. Throughout the proposal, the Board discusses using a credit score without further explication. We urge the Board to clarify what it means to "use" a credit score. In the context of adverse action, we believe that it should mean the credit score was at least part of the reason that adverse action was taken. In other words, the requirement to disclose the score applies only if the adverse decision was based in whole or in part on the score and not simply because the creditor received the score – a creditor can receive a score without using it as part of an adverse action decision.

The distinction may be a fine one but it is real: creditors may look at (i.e., "use") credit scores when they make credit determinations but the credit score may not be one of the reasons for taking the adverse action. Although the Board does not have rulemaking authority with respect to the adverse action notice required by FCRA, it would be helpful

if the Board commented on this issue in the Supplementary Information when the final regulation is issued.

The Supplementary Information should clarify that the adverse action must be based in whole or in part on the credit score in order to trigger disclosure of the credit score under the new Dodd-Frank Act requirements. Thus, if a borrower's credit score passes the lender's minimum cut-off in order to receive credit, but the borrower is denied credit for another reason, then the adverse action notice would not have to include the new Dodd-Frank Act requirements (credit score plus information disclosures).

Providing examples of fact situations that do or don't trigger the new requirements would be helpful as well. Attached are three summary examples that would apply to education or other loan scenarios. In Examples A (adverse action based on information from the application) and B (adverse action based on information from the credit report), the adverse action is not based in whole or part on the consumer's credit score, and therefore we believe that the Dodd-Frank Act requirements would not be triggered. In Example C, the adverse action is based in part on the consumer's credit score, a fact pattern which we believe would require the creditor to provide the consumer with the credit score used and the information disclosures required by the Dodd-Frank Act.

Co-signer issues. Given the relative youth of many student borrowers, co-signers are frequently required for education loan transactions, and some education lenders rely exclusively on the credit report and credit score of the co-signer. We urge the Board to clarify that when a loan is denied based on the credit score of a cosigner, the FCRA adverse action notice given to the cosigner must include the cosigner's credit score and the FCRA adverse action notice given to the borrower does not need to include a credit score. The combined FCRA/Regulation B adverse action notice to the borrower would give the borrower the specific reasons for denied required by Regulation B and the FCRA adverse action disclosures, but not a credit score because the borrower's credit score was not used in making the decision.

The proposed regulations for risk-based pricing make it clear that instances where a lender is relying on a co-signer's score (as opposed to the borrower/primary applicant) then the borrower should not receive the co-signer's score, and even where there are co-borrowers living at the same address, then the co-borrowers should receive separate notices if the lender is sending credit scores. The adverse action proposed regulations, however, are strangely silent on the issue. Perhaps this is because in 2003 the FRB issued rules amending Regulation B, and the Section-by-Section Analysis for Section 202.9(b)(2) in those rules would seem to require that the creditor must provide the borrower with a detailed explanation of the reasons that co-signer was not creditworthy:

> Section 202.9(b)(2), adopted as proposed, clarifies that whether a creditor's denial of credit is based on the creditworthiness of the applicant, a joint applicant, or guarantor, the reasons for adverse action must be specific. For example, a general statement that "the guarantor

> did not meet the creditor's standards of creditworthiness" is insufficient.
> [. . . . .]
> Many commenters were concerned about the co-applicant's or guarantor's privacy when the reasons for adverse action pertaining to creditworthiness are given to the primary applicant. When a person agrees to be a co-applicant, guarantor, or similar party, however, there is (or should be) a general understanding that information will be shared. Accordingly, the rule has been adopted as proposed.

Given the above discussion in the 2003 regulations, it would appear that for purposes of adverse action notices, the creditor might be expected to share the co-signer's credit score with the borrower. Given the increased and still increasing emphasis on consumer privacy in recent years, we find it hard to believe that this is the desired outcome. Moreover, having two radically different rules for adverse action and risk-based pricing makes no sense. We would urge the Board to provide explicit guidance on co-signers in the adverse action rule and to align that guidance with the risk-based pricing rule. We do not believe that a creditor should send a co-signer's score (or even a co-borrower's) to the borrower. But we need to know if this is in fact the expectation.

On a related issue, the regulations are also absolutely silent about the converse issue (i.e., an adverse action triggered by the primary applicant's credit where the application involves a consumer/primary applicant and a co-applicant, or co-signer/guarantor). We assume that it would never be appropriate for the creditor to provide the co-signer with the consumer's credit score. But the commentary is so murky on these co-signer issues that clarification would be most welcome. Again, we urge you to align the guidance on co-signers in these regulations with the proposed risk-based pricing guidance, which provides helpful bright lines that ensure compliance.

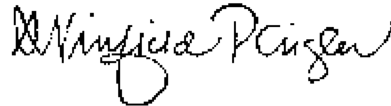
Paperwork Reduction Act. The Board has estimated that implementation of the proposed rule will impose a one-time increase of 16 hours (2 business days) on average in order to comply with the new Dodd-Frank Act disclosures. In polling SLSA PLC members, however, many have reported that it will require substantially more time to implement these new requirements – members have provided estimates that range from 15 up to 45 business days. It is not just a question of switching over to the new model forms; implementation encompasses interpretation, scoping the project for various systems, writing business and systems requirements, updating existing model forms, programming and testing in order to ensure compliance.

Given the lead time that will be required we ask that if the Board is going to issue the final regulations without any major changes from what was proposed, that it issue them no later than May 15, 2011, in order to ensure that we have sufficient time to implement prior to the July 21st statutory deadline. If the Board issues final regulations that include substantive changes to what was proposed, then we ask that the Board delay the implementation date or make allowance for "best efforts" compliance for the first six (6) months.

Finally, we assume that the Board is extending the current record-keeping and disclosure requirements (12 and 25 months) for three more years at which time the retention requirements will be revisited. We believe that the proposed regulation could also be interpreted to read that the Board is lengthening the retention period from 12 and 25 months to 61 and 48 months, respectively (i.e., by requiring an additional 36 months of record-keeping). Please clarify the record-keeping requirements in the final regulation to ensure clarity.

The SLSA PLC thanks the Board for the opportunity to comment on these proposed regulations. If you have any questions regarding our comments, please do not hesitate to contact me at the address listed below.

Sincerely,



Winfield P. Crigler
Executive Director
Student Loan Servicing Alliance

Docket No. R-1408
Attachment to the Comments of the SLSA PLC
Examples

Sample program requirement has a FICO minimum of 650. If credit report is returned < 650 it prompts an automatic loan denial.

Example A:

1. Borrower applies for loan and has been employed for < 2 years at current employer.
2. FICO = 720 (passes program requirement), no derogs. However, program requires => 2 years at current employer.
3. Adverse Action letter is created w/out Dodd-Frank requirements. Letter contains denial reason = "Employment minimum not met".

Example B:

1. Borrower applies for loan and has been employed for > 2 years at current employer.
2. FICO = 660 (passes program requirement), but also has derogatory "Delinquency/Charge-off".
3. Adverse Action letter is created w/out Dodd-Frank requirements. Letter contains denial reason = "Delinquency/Charge-off".

Example C:

1. Borrower applies for loan and has been employed for > 2 years at current employer.
2. FICO = 630 (does not pass program requirement), but also has derogatory "Delinquency/Charge-off".
3. Adverse Action letter is created with Dodd-Frank requirements. Letter contains denial reasons = "FICO minimum not met" & "Delinquency/Charge-off" and includes FICO score, FICO factors, range and date.