



April 14, 2011

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Docket No. R-1408 – Adverse Action Notices

Dear Ms. Johnson:

This comment letter is submitted by the Consumer Bankers Association (“CBA”) in response to the proposed rule published in the *Federal Register* on March 15, 2011 by the Board of Governors of the Federal Reserve System (“Board”). This proposal would amend the adverse action notices required under the Equal Credit Opportunity Act (ECOA) and the Fair Credit Reporting Act (FCRA) to require disclosure of credit scores and related information. These rules would implement the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) that require this information on these notices.

As further outlined below, CBA urges the Board to delay the mandatory compliance date of this rule and to allow an exception to providing credit scores on adverse action notices for mortgage loans, since credit score information is already required to be provided under separate provisions of the FCRA. CBA also offers additional comments related to this proposal.

Financial Institutions Should Have at Least One Year to Comply with this Rule

CBA appreciates the efforts of the Board in issuing this proposal to assist financial institutions in complying with Section 1100F of the Dodd-Frank Act, which requires credit score information for the adverse action notices required under the ECOA and the FCRA. We also appreciate the attempt of the Board to issue the proposal at this time to help financial institutions comply with these statutory provisions prior to the July 21, 2011 effective date.

Compliance with both Section 1100F and with this proposal will require a significant amount of time in order to prepare for these changes, and it is not reasonable to expect banks will be able to comply by the July 21st statutory compliance date. As outlined in the regulatory analysis required under the Paperwork Reduction Act, the Board estimates it will require sixteen hours, or two business days, to update systems and

modify model notices in order to comply with these proposed requirements. In our view, this significantly underestimates the time needed to comply with these changes.

For this reason, although we would not oppose a July 21, 2011 effective date for those institutions that may be able to comply at that time, we believe that mandatory compliance with this credit score disclosure rule should not be required until at least twelve months after these changes are issued in final form. This will be necessary in order to allow financial institutions sufficient time to revise the adverse action notices, implement and test the necessary data processing changes, and provide appropriate staff training.

Over the years, the Board has issued numerous revisions to its consumer protection rules and has often delayed mandatory compliance for at least one year after the effective date in order to provide financial institutions sufficient time to implement the necessary changes. The rationale for providing a similar mandatory compliance date is no less applicable with regard to this proposal, and even more so in the current regulatory environment in which financial institutions are being required to comply with an increasing number of new regulations under the Dodd-Frank Act that are being issued within a relatively short period of time.

We recognize compliance with Section 1100F of the Dodd-Frank Act will be required as of July 21, 2011, regardless of when compliance with these rules is required. However, we believe the Board, to the extent it is within its authority, should provide greater time to comply with these provisions to allow sufficient time to revise these adverse action notices, implement and test the necessary data processing changes, and provide the appropriate staff training. Again, our view is the industry will need at least one year to implement these changes.

Due to the imminent July 21st statutory compliance date for Section 1100F, many banks may now be preparing to use the model notices that were provided in the proposal, as opposed to waiting for the issuance of the final rule, even though there is the possibility that the proposed model notices may be changed. If the Board does not extend the compliance date, as suggested above, then we urge that banks be allowed to continue to use the proposed notices as an alternative means to qualify for the safe harbor protections if the notices in the final rule are different.

Providing Credit Score Information for Mortgage Loans Would be Redundant and Confusing

Section 609(g) of the Fair Credit Reporting Act (FCRA) requires lenders to provide credit score information when the consumer applies for a mortgage loan. It would make little, if any, sense to then require lenders to provide this information again if the application for the loan is later declined. It would not only be redundant to provide this information again, but would also be confusing for consumers since credit scores often

change somewhat from the time of application until an adverse action notice is sent, and consumers will likely not understand how or why these changes occur.

We certainly understand the intent of both Section 609(g) of the FCRA and Section 1100F of the Dodd-Frank Act is to provide credit scores to consumers so they are educated as to how they have an effect on loan decisions and to provide them with information on how to improve these scores. However, we do not believe it was the intent that consumers receive their scores on multiple occasions during a single loan application process.

To require multiple scores in these situations would likely impose greater burdens on financial institutions, since they will receive additional inquiries from applicants receiving adverse action notices requesting information with regard to the differences in these scores. The confusion applicants will have as to the reasons for these discrepancies, and whether they had an effect on the loan decision, will far outweigh any benefits to consumers who receive these multiple scores. For these reasons, we request the Board allow lenders the option of continuing to provide the current adverse action notices for mortgage loans, instead of the notices that were included in this proposal or in the final rule that will be issued at a later date.

Disclosing Adverse Action Reasons Separately from Credit Score Factors

The proposed official staff commentary would clarify that disclosing the key factors adversely affecting the credit score does not satisfy the requirement to disclose the specific reasons for taking the adverse action if they are different. In these situations, both the key factors affecting the credit score and the specific reasons for taking the adverse action must be disclosed.

However, there are instances in which the reasons for taking the adverse action are the same as the factors affecting the credit score. In these situations, creditors should not be required to specifically list the same information twice in the proposed notice, and we request the Board acknowledge that instead of providing this information again, lenders only need to reference that the reasons affecting the credit score are the same as the adverse action factors.

Notices to Co-applicants

Under Regulation B, if a loan application is submitted by more than one individual, the adverse action notice is only required to be provided to one of the applicants, but must be given to the primary applicant where one is readily apparent. This may lead to an individual receiving an adverse action notice and his or her own credit score, which may be relatively high and he or she may not understand the reason for receiving the notice. Although we are not suggesting that the proposed model forms be changed, we do request that the Board allow banks to tailor their notices to alert co-borrowers to the possibility of these situations.

Clarification as to When Credit Score Disclosures Should Not be Required

We request clarification that if the adverse action is taken for a reason other than the use of the credit score, then the credit score disclosures should not be required, even if the bank has obtained a credit report. In our view, if the credit score was not a factor in denying the loan, then providing the score and related disclosures would only serve to confuse consumers as to the reasons for the adverse action.

Conclusion

Thank you for the opportunity to comment on the adverse action notice proposal. If you have any questions or wish to discuss these issues further, please feel free to contact me at (703) 276-3862 or at jbloch@cbanet.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey Bloch", followed by a small closing mark resembling a stylized "J" or "L".