American Bankers Association

Building Success. Together.

Nessa Feddis
Vice President and Senior Counsel
Center for Regulatory Compliance
Phone: 202-663-5433
nfeddis@aba.com

***By electronic delivery to:***
regs.comments@federalreserve.gov

***By Weblink to:***
*https://ftcpublic.commentworks.com/ftc/riskbasedpricingamendnprm*

Ms. Jennifer J, Johnson
Secretary,
Board of Governors
of the Federal Reserve System
20th 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[1] (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.[2]

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

1 [1] 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.

2 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

1120 Connecticut Avenue, NW | Washington, DC 20036 | 1-800-BANKERS | aba.com

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.[3] Specifically, the Board should provide at least nine months after adoption of the final rule.

[3] 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,

Nessa Feddis

Nessa Eileen Feddis

**Board of Governors of the Federal Reserve System**
**Federal Deposit Insurance Corporation**
**Federal Trade Commission**
**National Credit Union Administration**
**Office of the Comptroller of the Currency**
**Office of Thrift Supervision**

November 24, 2004

Nessa Feddis
American Bankers Association
1120 Connecticut Avenue, NW
Washington, DC 20036

Subject: Fair and Accurate Credit Transactions Act of 2003 - Compliance Dates

Dear Ms. Feddis:

This letter, signed by the chief and general counsels of the Federal Deposit Insurance Corporation, Federal Reserve Board (Board), National Credit Union Administration, Office of the Comptroller of the Currency, and the Office of Thrift Supervision, and the Acting Director of the Bureau of Consumer Protection of the Federal Trade Commission (FTC) (collectively, the Agencies), responds to your inquiry of the Agencies dated November 2, 2004. In addition to the American Bankers Association, the inquiry was submitted on behalf of the America's Community Bankers, Consumer Bankers Association, Credit Union National Association, Financial Services Roundtable, Independent Community Bankers of America, Mortgage Bankers Association, and the National Association of Federal Credit Unions (the Associations). Your inquiry seeks guidance on how the Agencies expect to apply ten provisions of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act).

Six of the provisions discussed in your letter must be implemented by regulations or guidance adopted by the Agencies. The provisions requiring rulemaking are:

- Red Flag Guidelines and Regulations (FACT Act § 114, FCRA § 615(e));
- Disposal of Consumer Report Information (FACT Act § 216, FCRA § 628);
- Risk-Based Pricing Notice (FACT Act § 311, FCRA § 615(h));
- Accuracy and Integrity Guidelines and Regulations (FACT Act § 312(a), FCRA § 623(e)(1));
- Ability of Consumer to Dispute Information with Furnisher (FACT Act § 312(c), FCRA § 623(a)(8)); and
- Reconciling Addresses (FACT Act § 315, FCRA § 605(h)(2)).

By their terms, sections 114, 216, 312(a) and 312(c), and the provisions of section 315 applicable to persons who have requested a consumer report require some or all of the Agencies to adopt implementing guidance or regulations. As these statutory provisions are written, the obligations of various persons flow from the guidelines and rules that are to be adopted by the designated agencies. Thus, compliance with any applicable guidance or rules cannot be determined until they are finally adopted by the Agencies. The effective date will be set forth in the guidance or rule.

Section 311 of the FACT Act, which governs risk-based pricing notices, becomes effective on December 1, 2004. The provisions of section 311 are, by their terms, enforceable only by the Federal agencies designated in section 621 of the Fair Credit Reporting Act. Joint rulemaking by the FTC and the Board will establish the parameters for compliance, including the requirements for consumer notice, and will state the date for compliance.

The designated Agencies have in several cases begun work on guidance or rules (as appropriate) to implement the provisions discussed above and hope to seek comment on various proposals in the short term. With respect to the provisions of section 216 regarding disposal of consumer information, the Agencies expect to issue a final rule by year-end that will include an effective date for compliance.

There are a number of other provisions of the FACT Act listed in your letter that do not involve the publication of implementing rules. You have asked the Agencies to indicate their willingness to take into account the implementation difficulties associated with these provisions when considering possible agency enforcement actions. In particular, you have indicated that developing and implementing systems to comply with the following provisions of the FACT Act may be complex and difficult for many institutions:

- Fraud and Active Duty Alerts (FACT Act § 112, FCRA § 605A);
- Blocking of Information Resulting from Identity Theft (FACT Act § 152, FCRA § 605B);
- Prevention of Repollution of Consumer Reports (FACT Act § 154(a)–(b), FCRA §§ 615(f), 623(a)(6)); and
- Disclosure of Credit Scores (FACT Act § 212(c), FCRA § 609(g)).

The requirements of these provisions are effective on December 1, 2004, and do not depend on agency rulemaking. As a result, the Agencies expect that covered persons will begin to comply with these provisions on that date.

The Agencies appreciate the difficulties associated with developing compliance procedures, modifying systems, and training staff to implement new requirements. Consequently, the Agencies will take into account these difficulties together with all other relevant circumstances, including the good faith efforts made by each institution to comply with these provisions when considering whether to bring enforcement actions under the FACT Act.

The Agencies note that this letter only addresses liability of regulated persons under the FACT Act and the FCRA listed above. Any obligations under other provisions of law would be beyond the scope of this letter.

Sincerely,

Scott Alvarez,
General Counsel
Board of Governors of the Federal Reserve System

John E. Bowman
Chief Counsel
Office of Thrift Supervision

William F. Kroener, III
General Counsel
Federal Deposit Insurance Corporation

Daniel P. Stipano
Acting Chief Counsel
Office of the Comptroller of the Currency

Lydia B. Parnes
Acting Director
Bureau of Consumer Protection
Federal Trade Commission

Robert M. Fenner
General Counsel
National Credit Union Administration

American Financial Services Association

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
Executive Vice President
American Financial Services Association

barclaycard
A member of the BARCLAYS Group

Scot S. Stetka
Director
Compliance Department
Tel 302-255-8227
sstetka@barclaycardus.com

April 14, 2011

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

Dear Ms. Johnson:

On behalf of Barclays Bank Delaware (BBD), I thank you for the opportunity to comment on the proposed amendments to Federal Regulation B and V. BBD is a state chartered non-member bank , headquartered in Wilmington, DE. Our primary product is consumer credit cards, mostly co-branded with various marketing partners.

I would like to commend the Board for creating proposed forms, both risk based pricing notices, and adverse action notices, that are for the most part, easy for consumers to understand, and helpful for consumers to improve their credit scores. However, there are several areas where we believe the Board could improve these disclosures:

BBD firmly agrees with the Board that the number of factors influencing the score that are disclosed in such notices should be limited to four factors. However, we disagree with the increase to five factors if one of them is “number of inquiries”. The credit reporting agencies provide a full list of factors for every individual’s score. The major, influential factors are listed at the top of the list, and diminish in importance as one goes down the list. Factors at the bottom of the list are very unlikely to influence the score more than a few points, may not be readily apparent to a novice reading a credit report. At the same time, disclosure of minor factors will be confusing and a distraction, when consumers should be focused on the major, influential factors at the top of the list. We disagree with extending the list to five factors when “number of credit inquiries” is a factor, and prefer to limit the number of factors to 4 in all cases. If “number of inquiries” is a top 4 factor, it will be listed. If it is factor number 5, it is not very likely to be an important factor. Importantly, many bank systems are designed to pass 4 reasons, in line with current Regulation B and Regulation V adverse action provisions, and a fifth reason will be burdensome and expensive to add, without much benefit to the consumer. We believe the Board should continue with the current reasoning for adverse action letters and limit the factors to 4 on both the adverse action notice and risk based pricing notice.

The proposed adverse action notices contain both a section for the reasons for adverse action and "factors" that led to a lower credit score. In many cases adverse action reasons and "factors" will be the same list requiring creditors to list them twice. This will create lengthy, redundant disclosures for consumers. BBD proposes that creditors simply disclose a maximum of 4 reasons for our adverse action, as required today. Creditors can separate the list into internal, bank derived reasons, and score influencing credit reporting agency reasons, but giving the consumer a lengthy list full of duplicate disclosures is not helpful and will require extensive reprogramming of systems.

We believe a change to the model risk based pricing notice would help consumers: the credit score is disclosed in the first row of the proposed form; while an explanation of what credit scores are is disclosed in the second row. We believe consumers would be better served if "What you should know about credit scores", or basically an explanation of "what you're looking at" is disclosed in the first row.

Finally, we would like to comment that the estimated hours of time required to implement these new requirements in the proposed rules grossly underestimate the compliance burden. In BBD's automated shop we must reprogram our decisioning engine to extract the credit score, and pass it to our fulfillment area and print vendors for delivery of the various letters. All of our letters, which exist in several variations, need to be revised to pull in the different variables required to meet these requirements. Our technology group estimates at least 8,000 hours to comply with these new requirements. We anticipate compliance by July 21, 2011 will be a major challenge. While we recognize the Board's desire to provide this important information to consumers as soon as possible, a mandatory compliance date of January 1, 2012 would provide more reasonable time for implementation. As stated before limiting the number of factors to 4 will go a long way to reducing our burden, and we feel, producing better, more helpful disclosures for consumers.

Sincerely,

Scot S. Stetka
Director of Compliance
Barclays Bank Delaware

BLACK HILLS
FEDERAL CREDIT UNION
A Member-Owned, Not-For-Profit Cooperative
PO Box 1420, Rapid City, SD 57709-1420

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

RE: Docket No. R-1407

Dear Ms. Johnson:

We are writing to express our concerns with the proposed changes, effective July 21, to the Fair Credit Reporting Act and Regulation B regarding Risked Based Pricing and Adverse Action notices.

Our primary concern is consumer focused. We agree that it is important to educate consumers about their credit, their credit score, and how both may affect their ability to obtain credit and the terms and conditions they may be offered. The current requirement for Risk Based Pricing and Adverse Action accomplishes this. The proposed changes to the Risk Based Pricing Notice, however, require that the key factors contributing to the consumer's credit score be disclosed on the Notice. These factors are described as "the key factors ***adversely*** affecting your credit score."
In our opinion, the "key factors" should not be disclosed on all Notices because:

- It creates a negative tone.
- It's confusing to consumers, especially those who are approved for a loan or have a very high credit score.
- The confusion will result in many more questions for employees of financial institutions who do not have the necessary information or training to adequately explain the credit reporting agencies scoring model.

While financial institutions use credit scores and review credit history to make loan decisions and set material terms, they do not calculate the score for the consumer. It makes sense for financial institutions to disclose what information they used, where they received the information, and how they used the information. To disclose more than that to the consumer is beyond the realm of that financial institution's knowledge and expertise and places an undue burden on the employees without an added benefit to the consumer.

Rapid City 605.343.0891 • Custer 605.673.2773 • Hot Springs 605.745.4212 • Spearfish 605.642.8161 • Wall 605.279.2350
www.blackhillsfcu.org • 800.482.2428 • 605.718.5961 (FAX)

In addition to our concerns above, the newly proposed rule creates more challenges:

- Changes made so quickly to a new regulation increase the risk of misunderstanding and errors when implementing the change.
- Financial Institutions will have to dedicate more staff time to amending forms and procedures.
- Additional training will be required for front line staff that will be charged with completing the forms.

Overall, the effect of these proposed changes will not be consumer friendly because the changes will result in confusion for the consumer and will place an undue burden on front line employees.

Sincerely,

Lona Snell
Lona Snell
Downtown Member Service Center Manager
Black Hills Federal Credit Union
PO Box 1420
Rapid City SD, 57709-1420

Stacey Moulton
Stacey Moulton
Elk Vale Member Service Center Manager
Black Hills Federal Credit Union
PO Box 1420
Rapid City SD, 57709-1420

Jana Plooster
Jana Plooster
Regional Member Service Manager
Black Hills Federal Credit Union
PO Box 1420
Rapid City SD, 57709-1420

Amy Beaumont
Amy Beaumont
Regional Member Service Manager
Black Hills Federal Credit Union
PO Box 1420
Rapid City SD, 57709-1420

DeeAnn Dietrich
DeeAnn Dietrich
Vice President of Consumer Loans & Member Services
Black Hills Federal Credit Union
PO Box 1420
Rapid City, SD 57709-1420

Cathy Vallette-Kilroy
Compliance Officer
Black Hills Federal Credit Union
PO Box 1420
Rapid City, SD 57709-1420

BOK FINANCIAL
P. O. Box 2300
Tulsa, Oklahoma 74102-2300

April 14, 2011

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

Re: Notice of Proposed Rule Making
Docket No. R-1407
12 CFR Part 222
Fair Credit Reporting Risk-Based Pricing Regulations

Dear Ms. Johnson:

Thank you for the opportunity to comment on the Federal Reserve System and the Federal Trade Commission's proposed rule regarding risk-based pricing regulations. BOK Financial Corporation (BOKF) is a $24 billion regional financial services company based in Tulsa, Oklahoma. Through our bank, BOKF NA, our assets are centered in Oklahoma, Texas, New Mexico, Arkansas, Arizona, Colorado, Kansas and Missouri. BOKF is the largest bank holding company that did not take TARP funds.

We support regulations that provide consumers with clear, easy to read information regarding their credit history obtained from a credit reporting agency. The proposed rule to incorporate the requirements of section 615(h) of the Fair Credit Reporting Act pursuant to section 1100F of the Dodd-Frank Wall Street Reform and Consumer Protection Act will accomplish this goal.

However, as we noted in our comment dated March 30, 2011 regarding the notice of proposed rulemaking to 12 CFR 202 (Docket R-1408) incorporating this regulation on adverse action notices, financial institutions need sufficient time to develop, test and train staff on the changes. The estimated time of 16 hours to update computer systems and model notices is severely underestimated.

Many of the forms and notices financial institutions utilize are provided by third-party vendors. Given that this proposed rule is still in the comment period, and it is unclear when this rule will be final, we have concerns about whether our vendors will be able to assist us in implementing these changes by the required date of July 21, 2011.

**We believe the Federal Reserve and the Federal Trade Commission must delay enforcement of this regulation to allow financial institutions sufficient time to meet the above design challenges.**

The Board seeks comment on the costs, compliance requirements or changes in operating procedures arising from the application of the proposed rule to small institutions. We contend the Board should also seek input from larger institutions. While small institutions may only have one approach to implement the proposed rules, larger institutions face the same difficulties, often time through various delivery channels.

Finally, the Board seeks comments on the design and content of model forms H-6, H-7, B-6 and B-7. We believe that the credit score is the most important information for the consumers and financial institutions, followed by the key factors affecting the score.

**We believe the credit score and key factors should be placed more prominently on the model forms.**

We appreciate the opportunity to comment on this proposed rule. We welcome the opportunity to work with the Federal Reserve and the Federal Trade Commission to improve consumer disclosures. Should you have any questions regarding our recommendations or need further detail, please contact me at 918-488-7378.

Sincerely,

Dean Miller, SVP
Senior Compliance Manager
BOKF Corporation
7060 S. Yale, Suite 300
Tulsa, OK 74136
damiller@bokf.com

cc:
Frank Keating, President and Chief Executive Officer, American Bankers Association
Frederic E. Dorwart, Dorwart Lawyers, General Counsel to BOKF

CBA | CONSUMER BANKERS ASSOCIATION

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

Federal Trade Commission
Office of the Secretary, Room H–113 (Annex M)
600 Pennsylvania Avenue, NW.
Washington, DC 20580.

Re: Docket No. R–1407 and RIN No. RIN 7100–AD66; FCRA Risk-Based Pricing Rule Amendments: Project No. R411009

Dear Sir or Madam:

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") and the Federal Trade Commission (FTC). This proposal would amend the risk-based pricing rules to require disclosure of credit scores and related information on these notices if the score is used in setting the material terms of credit. 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.

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

We recognize the current risk-based pricing rules provide an exception if the creditor provides a credit score disclosure exception notice. Neither the Dodd-Frank Act nor this proposal limits the ability of creditors to provide these exception notices in lieu of the general risk-based pricing notices. However, for banks that do not use this exception, complying 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 and the FTC estimate 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 be delayed 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 risk-based pricing disclosures, 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 at this point that 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 and the FTC should indicate to the banking industry that compliance with these statutory provisions will not be feasible, and therefore not required, until the industry has sufficient time to revise these risk-based pricing disclosures, implement and test the necessary data processing changes, and provide the appropriate staff training. Section 615(h) of the FCRA clearly indicates that the Board and the FTC have rulemaking authority to implement the risk-based pricing requirements, which we believe allows the agencies to delay implementation of Section 1100F until rules are issued. Again, our view is the industry will need at least one year to implement these changes, and we note the Board and the FTC allowed such a time period when the earlier risk-based pricing rules were published in the Federal Register on January 15, 2010, with an effective date of January 1, 2011.

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 and the FTC do not extend the compliance date, as suggested above, then we urge the agencies to allow these banks 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.

For co-borrowers, the proposal would require creditors to provide a separate notice to each consumer if the notice includes a credit score, even if they live at the same address. In these situations, each separate notice must only include the score of the consumer to whom the notice is provided. A consumer who receives only their own credit score that is relatively high may not understand the reason for receiving credit on less than the most favorable terms. Although we are not suggesting that the proposed model forms be changed, we do request that the Board and the FTC allow banks to tailor their notices to alert co-borrowers to the possibility of these situations.

**Conclusion**

Thank you for the opportunity to comment on the risk-based pricing 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,

**Miriam Frieden**
Associate General Counsel, Senior Vice President
Chase Card Services

April 14, 2011

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

**By Electronic Submission**
Federal Trade Commission/Office of the Secretary
Room H-113 (Annex M)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

**Re: Fair Credit Reporting Risk-Based Pricing Regulations**
**Board's Docket No. R-1407, RIN 7100-AD66**
**Commission's FCRA Risk-Based Pricing Rule Amendments: Project No. R411009**

**Equal Credit Opportunity**
**Board's Docket No. R-1408, RIN 7100-AD67**

Ladies and Gentlemen:

## I. Introduction and Overview

JPMorgan Chase & Co. and its subsidiaries ("Chase") appreciate the opportunity to comment on the proposal by the Board of Governors of the Federal Reserve System ("Board") to modify the model forms for adverse action notices under Regulation B, *see* 76 Fed. Reg. 13902 (Mar. 15, 2011) (the "Adverse Action Proposal"), and the joint proposal of the Board and the Federal Trade Commission ("FTC") to amend the risk-based pricing regulations under the Fair Credit Reporting Act ("FCRA"), *see* 76 Fed. Reg. 13896 (Mar. 15, 2011) (the "Risk-Based Pricing Proposal").

We strongly support the efforts of the Board and the FTC to provide regulatory guidance on compliance with Section 1100F of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Section 1100F"). Section 1100F amends both the adverse action rules in Section 615(a) of the FCRA, 15 U.S.C. § 1681m(a) (the "Adverse Action Rules"), and the risk-based pricing notice requirements in Section 615(h) of the FCRA, 15 U.S.C. § 1681m(h) (the "Risk-Based Pricing Rules"). The Board's Adverse Action Proposal and the Board's and the FTC's joint Risk-Based Pricing Proposal (together, the "Proposals") provide important guidance on complying with the terms of Section 1100F.

Set forth below are a number of comments Chase has on the Proposals. We have combined our comments on the two Proposals in this one letter, as a number of them are applicable to both Proposals.

**Chase Card Services** • 201 North Walnut Street, Wilmington, DE 19801
Telephone: 302 282 2616 • Facsimile: 302 282 8361
miriam.frieden@chase.com

## II. Comments Applicable to Both Proposals

***Obligation if No Credit Score is Obtained.*** When a creditor such as Chase requests a credit score for purposes of underwriting a credit transaction, one of the possible responses from the consumer reporting agency is a "no score." Rather than providing a numerical score, the agency reports to the creditor that the information in the consumer's credit file is insufficient to generate a score.

If the creditor, relying on this report of "no score," declines the transaction, we do not believe that this should trigger the obligation to provide the credit score disclosures. Section 1100F's amendments to the FCRA both require a disclosure "of a numerical credit score … used by such person in" either taking adverse action or making a credit decision. In the case of a no score response, the creditor has not used any numerical credit score in making a decision, because there was no score to use.

We respectfully request that the Board and the FTC clarify that no credit score disclosure is required under the Adverse Action Rules or the Risk-Based Pricing Rules under these circumstances. Creditors would, of course, remain subject to any other applicable disclosure requirements under the Adverse Action Rules or Risk-Based Pricing Rules independent of Section 1100F's requirements.[1]

Although we do not believe that any credit score disclosure is required in these circumstances, we also suggest that the Board and FTC permit creditors, at their option and without losing the benefit of any safe harbor, to notify applicants, in the adverse action letter, that no credit score was available from the credit reporting agency. This will alert applicants that they may want to contact the credit reporting agency for further information regarding the lack of a credit score. The most efficient way for a creditor to provide this notice would be to permit the creditor to print "Not Available from Credit Reporting Agency" in the space available for the credit score and in the space available for the reasons adversely affecting the credit score. This would allow a creditor to (1) use the same form for all adverse action letters in which a credit report has been obtained from a credit reporting agency; (2) alert the consumer; and (3) benefit from the safe harbor of the model form.

***Allow the Use of Graphs and Similar Tools to Convey the Range of Credit Scores.*** One of the items of information that is required to be disclosed in connection with the credit score is "the range of possible credit scores under the model used." FCRA § 609(f)(1)(B). The model forms in the Proposals all provide for a disclosure of this range in a sentence, *e.g.*, "Scores range from a low of ___ to a high of ___." Risk-Based Pricing Proposal, Model Forms H/B-6, H/B-7; Adverse Action Proposal, Model Forms C-1 through -5.

Chase believes that such a disclosure is appropriate, and an effective way for creditors to provide this information. However, creditors should also have the flexibility to provide this information in the form of a chart, graph or similar device, without losing the benefit of the safe harbor of the rule. As long as the chart or graph conveys the required information about the range of scores, it should satisfy the safe harbor. We request that the Board and the FTC clarify that use of such devices instead of, or in conjunction with, a sentence will still fall within the safe harbor for use of the model forms.

***Proprietary Credit Scores.*** The Proposals indicate that Section 1100F does not require disclosure of proprietary credit scores, and we believe that this is the correct result. In that regard, the Adverse Action Proposal states that "section 1100F of the Dodd-Frank Act requires information regarding a credit score *that is obtained from a consumer reporting agency* to be included on an adverse action notice." 76 Fed.

[1] This is a different situation from the exception in the Risk-Based Pricing Rules that allows a creditor to provide a credit score disclosure to all applicants in lieu of providing risk-based pricing notices. Under that provision, a special disclosure for "no score" applicants is appropriate because the exception is designed to provide all applicants with information about their credit scores. However, under the plain language of Section 1100F, the requirement is applicable only where a credit score is actually used.

Reg. at 13897 (emphasis added). Each of the model adverse action forms, moreover, states that "We also obtained your credit score *from this consumer reporting agency* …." 76 Fed. Reg. at 13900-02 (emphasis added). These phrases speak only to scores obtained from a consumer reporting agency's models, not scores produced by the creditor's own proprietary models.

We believe that this interpretation is consistent with the language of Section 1100F and the FCRA generally. Although Section 1100F amends Sections 615(a) and (h) of the FCRA to add to those sections a requirement to disclose credit score information, Section 1100F does not create a new credit disclosure requirement out of whole cloth. Rather, Section 1100F cross-references an existing section of the FCRA, Section 609(f), for the credit score requirements. Section 609(f) was added by the Fair and Accurate Credit Transactions Act of 2003 ("FACT Act"), Pub. L. 108-159, 117 Stat. 1961, and imposed an obligation on consumer reporting agencies to disclose a credit score to consumers upon request, for a "fair and reasonable fee." Thus, Section 609(f) clearly relates to generic credit scores calculated by an agency using the agency's credit scoring models. It could not relate to creditor proprietary scores, because the consumer reporting agency does not have the rights to such models, and would not be able to disclose such a score to a consumer. That same result should carry over into Section 1100F, given that Section 1100F adopts and incorporates the Section 609(f) provisions.

This is also the correct policy result because disclosing any type of proprietary credit score will lead to consumer confusion and dissatisfaction. Proprietary scoring models can result in very different scores from generic FICO-type credit scores. Many consumers are familiar with the three-digit format used by FICO scores and many other commonly accessed consumer reporting agency scores. There are also readily available, public materials providing helpful background information on these types of scores, to help consumers understand how the models work and what their particular score may mean. But a proprietary score might result in a range from 0 to 100, or a letter from A to G. Or, perhaps even more confusingly, the score might look like a three-digit FICO score but be calculated and scaled in a very different way. Scores within these models are likely to have very little meaning to consumers, and consumers are unlikely to have access to other information to explain a particular score. Although Section 1100F requires creditors to also disclose the range of potential scores, that range is likely to provide minimal aid to consumers in understanding the meaning of a specific score.

We request that the Board and the FTC confirm this interpretation that the Section 1100F requirements apply only to scores from agency-developed generic credit scoring models and not to proprietary credit scores developed by creditors. We believe that such confirmation is important, given that creditors are relying on these statements in the Proposals in developing practices and procedures to comply with the new requirements.

An independent limiting factor on the scope of Section 1100F's requirements is the definition of "credit score" in FCRA § 609(f)(2)(A). Based on the language of § 609(f)(2)(A)(ii), we understand that a "credit score," by definition, is a score calculated solely by reference to data about the consumer derived from a consumer report from a consumer reporting agency. A "credit score," for purposes of the FCRA, does not encompass any score based on non-agency attributes (*e.g.*, a consumer's assets or income), or a score that combines attributes derived from a consumer report with non-consumer report attributes. We respectfully request that the final rules reflect this limitation as well.

Another limitation of the scope of the term "credit score" is the section of the definition addressing whether a particular score is "used … to predict the likelihood of certain credit behaviors, including default…." FCRA § 609(f)(2)(A)(i). We request that the Board and the FTC clarify that this definition does not include scores that are used as part of evaluating an application for reasons other than predicting creditworthiness. In that regard, creditors often use scores to predict the likelihood of fraud or likelihood of false identity.[2] Based on the results of such a score, the application may either be denied or referred for special underwriting, such as the manual intervention of a judgmental underwriter. In either case, these scores are not used to predict "credit behaviors," and therefore should not be included within the definition of "credit score."

We request that the Board and the FTC further address the scope of the term "credit score" as described above. Prior to the release of the Proposals, the definition of "credit score" under § 609(f)(2)(A) had very little interpretive authority, as until now it has had relatively limited application. Previously, the term was relevant only for consumer reporting agencies. Because the term now is relevant to the obligations of creditors generally, we believe that additional guidance is important to ensure clarity, and to promote uniform practices among creditors. Formal guidance in the final regulation about these limitations on the definition of "credit score" would promote uniformity in creditors' approaches to these new requirements.

***Flexibility is Required on Scope of "Key Factors."*** In the FCRA, the term "key factors" is defined as "all relevant elements or reasons adversely affecting the credit score for the particular individual…." FCRA § 609(f)(2)(B). In construing this definition, we believe that it is important not to ignore the word "key" in the defined term "key factors." The purpose of the obligation to list key factors is to provide the consumer with information about the most significant items affecting his or her credit score, so that he or she can (1) correct these matters on his or her consumer report, if there are any errors, and (2) understand the relative importance of certain behaviors in establishing the credit score. These purposes are not well served where the list of key factors includes items that may have "adversely" affected the credit score, but did so to such a trivial degree that their disclosure may serve only to confuse.

Consider the disclosure of the number of inquiries as a key factor. Under a given model, for example, applicants may receive 29 points if their consumer report shows zero inquiries, 28 points if their consumer report shows one inquiry, and 12 points if the report shows two or more inquiries. In this case, the existence of any inquiry would adversely affect the credit score. However, we believe that the reduction of one point, based on one inquiry in the context of the entire scoring model, is trivial. Informing the consumer of this factor as a "key factor" is only likely to cause confusion. If the consumer obtains a copy of his or her consumer report and sees only one inquiry listed, he or she is likely to be very confused as to why that was disclosed as a "key factor."

Providing flexibility on the definition of "key factors" would be consistent with the approach that the Board has historically taken in connection with Regulation B regarding the reasons for adverse action. Regulation B does not set a specific number of reasons that must be disclosed. Instead, the Official Staff Commentary requires creditors to disclose the "principal" reasons, noting that providing more than four reasons is generally not helpful to consumers. 12 C.F.R. pt. 202, Supp. I, comment 9(b)(2)-1. Creditors therefore have flexibility to determine the "principal" reasons, rather than being bound to a specific number that must be listed. We submit that this approach should be followed under Section 1100F.

We note, moreover, that the Board and the FTC have long recognized that over-disclosure can be harmful to consumers, and that providing unimportant information can overwhelm the information that is of real value. These considerations counsel against giving too broad an interpretation to the definition of "key factors," in a way that would lead to consumer confusion instead of increased consumer understanding of credit scores.

The strict numerical limitation under FCRA Section 609(f)(1)(C) to disclose only four key factors (or five, in some cases) does not adequately address this concern for all creditors. In many cases, only one or two factors have any material impact on a credit score (*e.g.*, a major account delinquency, or the total

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[2] In fact, disclosure about these anti-fraud scores would be particularly harmful, as disclosures about such scores could allow fraudsters to gain information to help them defeat such critical mechanisms.

number of delinquencies). Beyond those one or two items, any additional factors may have had a trivial (yet still adverse) impact. This is particularly true of the number of inquiries, which must be disclosed in any case where it meets the definition of "key factor." FCRA § 609(f)(9). If, however, the impact of the number of inquiries is trivial, any benefit of disclosing that factor is exceeded by the potential for confusion.

Given this potential for confusion, we ask that the Board and the FTC provide guidance that creditors have discretion to omit factors with a trivial effect and to disclose only those "key" elements or "key" reasons that materially and adversely affected the score, and will still be deemed to meet their obligation to provide the "key factors" required by Section 1100F. Creditors would also have the option, of course, of providing the key factors in the form and number provided by the consumer reporting agency when it provides scores to them. This will give creditors the flexibility to provide to their consumers the disclosure they believe will be most appropriate.

***Applicability of Guidance.*** We understand that the Board and the FTC have broad regulatory authority to implement the FCRA requirement for risk-based pricing notices, including the new requirements added by Section 1100F. FCRA § 615(h)(6). We request that the Board address the issue outlined above in the Risk-Based Pricing Rules.

With respect to the Adverse Action Rules, we request that the Board provide the requested guidance in the Regulation B Official Staff Commentary, in the comments addressing the use of the model forms. Other guidance that the Board provided in the Risk-Based Pricing Proposal in connection with the Section 1100F requirements, such as the notice requirements for consumers for whom the creditor obtains multiple credit scores, should also be added to the Regulation B Commentary. One approach would be to add an express cross-reference, in the Commentary, providing that creditors using the Regulation B model forms could rely on relevant interpretive guidance issued under 615(h) for the Section 1100F requirements. Such guidance would promote uniformity, given the very similar amendments made by Section 1100F to FCRA Sections 615(a) and 615(h).

***Date for Compliance.*** The Proposals were published in the Federal Register on March 15, 2011, which is barely more than four months prior to the effective date of July 21, 2011 for Section 1100F. By the time that final rules are issued, creditors are likely to have very little time to come into compliance with the new requirements. As a result, Chase urges the Board and the FTC to grant additional time to comply with the final rules.

In this regard, compliance with the Proposals is not as simple as modifying the text of a form notice. Rather, entirely new variables need to be added to adverse action notices and risk-based pricing notices that were not previously included, including the credit score and the range of credit scores. It takes time to integrate those data elements into the systems that produce the notices. Any time a creditor is required to alter software code to employ new logic, it must test and revalidate the scoring model. Chase, like most credit card issuers, employs a variety of scoring models and utilizes multiple consumer reporting agencies, each with its own set of challenges. The work to capture, display and store the additional data elements will require significant time and expense.

Most significant among the changes is the requirement to include the key factors that adversely affected the credit score on the adverse action notices. Creditors have not previously had to provide key factors relating to the credit scores that they use, and adding the capability of capturing, storing, and printing those factors is a substantial undertaking. It is true that there is an existing requirement under Regulation B to provide the reasons for the adverse action, and creditors who rely on credit scores to make credit decisions often use "reason codes" produced by scoring systems to satisfy this Regulation B obligation. However, there are a number of differences between the existing Regulation B requirements and the new FCRA requirements:

- The required number of reasons is different. Under Regulation B, as discussed above, creditors are required to disclose the "principal" reasons for the adverse action. 12 C.F.R. pt. 202, Supp. I, comment 9(b)(2)-1. While there is guidance indicating that disclosure of more than four reasons is not generally useful, *id.*, there is no strict requirement for a number of reasons. Many creditors, including Chase, have determined that a smaller number of reasons – for example, three – encompasses the "principal" reasons for the action, and avoids disclosing trivial reasons. On the other hand, Section 1100F provides a more specific requirement of disclosing four, and in some cases five, key factors. This obligation, and particularly building support to provide the fifth key factor relating to number of inquiries (when applicable) imposes a substantial burden upon creditors.

- In addition, the new requirements impose an obligation to disclose a different set of information. As a result, creditors will need to support disclosure of both the reasons for the adverse action and the reasons the score was adversely affected, which may be different.[3]

- Under Regulation B, creditors may choose not to include the reasons in the adverse action letter, and may instead disclose the right to request the reasons. 12 C.F.R. § 202.9(a)(2)(ii). As a result, the "reason codes" need not be integrated into the adverse action letter system, but rather need to be integrated only into the system that produces the smaller number of letters for those applicants who request the reasons.

Of particular concern to Chase is compliance with these obligations to the extent they apply to some (or all) proprietary scoring models. Consumer reporting agencies, which have long been subject to their own disclosure requirements under Section 609(f), presumably have built into their scoring models the ability to generate the "key factors," and can supply them to creditors to allow creditors to meet their new Section 1100F obligations. (Even this still requires that creditors build the capability to receive and store those codes, and ultimately print them on the letters.) Creditors with proprietary models, however, were only required to produce adverse actions reasons consistent with Regulation B, and not "key factors" in accordance with Section 609(f). As a result, in order to comply with Section 1100F, creditors will need to revisit their models to build the ability to generate the list of key factors. This is no small feat.

As a result, Chase respectfully requests that creditors be given twelve months after the publication of a final rule to come into compliance with the new requirements. One year will give creditors time to undertake the significant work required to implement the new rules. Chase further submits that the Board and the FTC have clear authority to provide this transition period under the Risk-Based Pricing Rules, in § 615(h). Indeed, the requirement under that section is subject to the implementing rules issued by the agencies. FCRA § 615(h)(1). With respect to the adverse action requirements, we request that the Board use its authority under the Equal Credit Opportunity Act to provide that creditors may continue to rely on the existing model forms to satisfy their obligations for the one-year period.

## III. Comments Applicable to the Adverse Action Proposal

***Combined List of Reasons/Key Factors.*** In the Adverse Action Proposal, each of Model Forms C-1, C-2, C-3 and C-4 provides for separate listings of the reasons for the adverse action and the "key factors" adversely affecting the credit score. (Form C-5 provides for a disclosure of the right to request the reasons for the adverse action, and then a list of the key factors.) In many cases, however, a creditor's decision to take adverse action is based entirely on the credit score. As a result, the reasons for the adverse action and the key factors adversely affecting the credit score would be the same. In these

[3] As discussed below, we believe that there are some circumstances where creditors should be permitted to combine the two lists. However, this would not apply in all circumstances.

circumstances, creditors should be able to provide a single list of the factors that adversely affected the credit score, as long as they also indicate that the adverse action was taken because of the credit score. Specifically, one approach would be to allow creditors to use the proposed Model Form C-3, but delete the second sentence of the second paragraph under "Reasons for Denial of Credit" ("The reasons you did not score well compared with other applicants were: …"). The form notice, as revised, would inform the applicant that the adverse action was taken because of the credit score, and then would provide a single list of reasons that would satisfy both requirements.

Therefore, Chase respectfully requests that the Board either (1) issue a model form that provides guidance for how to provide a single list in these circumstances, or (2) provide in the Official Staff Commentary authority to use a combined list in these circumstances without losing the benefit of the safe harbor for use of the model form. A creditor should not lose the benefit of a model form based on this variation. Indeed, we believe that consumers are likely to be highly confused by the use of two different lists of reasons for adverse action and key factors affecting the credit score in adverse action letters. Regardless of how clearly the model forms attempt to distinguish the lists, we believe that many consumers will not understand the distinction, and we anticipate increased call volume. For that reason, we believe it is particularly appropriate to allow the use of a single, and less confusing, list in those circumstances where the lists would otherwise be the same.

***Use of Alternate Formats.*** Under the existing Risk-Based Pricing Rules, creditors who prepare a credit score disclosure for all applicants fall within an exception from the requirement to provide risk-based pricing notices. 12 C.F.R. § 222.74(d), (e); 16 C.F.R. § 640.5(d), (e). Often, consumer reporting agencies prepare the credit score disclosure on behalf of creditors, and creditors do not obtain or store all of the information that is required in that notice. This arrangement prevents creditors from having to assume the costs that would be required to directly generate such notices.

Much of the information required to comply with the Section 1100F requirements is the same as the information included in a credit score disclosure. *See* Board's Model Form H-3; FTC's Model Form B-3. As a result, creditors would like to have the flexibility to enter into arrangements to have consumer reporting agencies prepare the disclosure on their behalf. However, agencies often do not have access to the other elements of an adverse action notice under Section 615(a) of the FCRA (such as all of the reasons for the adverse action), and therefore may not be able to complete an adverse action notice following the model forms.

We seek guidance that would allow a creditor to have the credit score disclosure component of the adverse action notice prepared by a third party, such as a consumer reporting agency, and then deliver that notice together with a notice that contains all of the other elements of an adverse action notice. In this way, the applicant would receive all of the information required by Section 1100F and 615(a), even though it may be contained on two separate pieces of paper that are delivered together. For this minimal impact to the applicant-recipient of the notice (receiving two pieces of paper instead of one), the creditor may enjoy a substantial cost savings.

## IV. Conclusion

Chase appreciates the opportunity to comment on the Proposals. We hope that our comments will further shape the Proposals in ways that help improve the clarity and consistency of these new disclosures, helping consumers to better understand credit scores and their use. Please contact me using the contact information at the bottom of the first page or Arthur Hall at (302) 282-3734 with any questions about our comments.

Very truly yours,

Miriam Fried

Miriam Frieden
Senior Vice President and
Associate General Counsel

CUNA
Credit Union National Association
cuna.org
601 Pennsylvania Ave., NW | South Building, Suite 600 | Washington, DC 20004-2601 | PHONE: 202-638-5777 | FAX: 202-638-7734

April 14, 2011

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

Office of the Secretary
Federal Trade Commission
Room H–113 (Annex M)
600 Pennsylvania Avenue NW
Washington, DC 20580

Submitted via regs.comments@federalreserve.gov and https://ftcpublic.commentworks.com/ftc/riskbasedpricingamendnprm

Re: Fair Credit Reporting Risk-Based Pricing Regulations
Regulation V; Docket R–1407, RIN 7100–AD66 (Federal Reserve)
FCRA Risk-Based Pricing Rule, Amendments: Project No. R411009 (FTC); Model Forms

Dear Ms. Johnson and Office of the Secretary:

This comment letter represents the views of the Credit Union National Association (CUNA) regarding the Federal Reserve Board's (Board's) and Federal Trade Commission's (FTC's) proposed regulation to implement the revisions to Section 615 of the Fair Credit Reporting Act (FCRA) to require that creditors using a credit score in risk-based pricing must disclose that credit score and other related information. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) provisions concerning these new disclosures take effect July 21, 2011. By way of background, CUNA is the largest credit union advocacy organization in this country, representing approximately 90% of our nation's 7,600 state and federal credit unions, which serve 93 million members.

CUNA generally believes that the proposal is consistent with the new statutory requirements and will ultimately facilitate compliance with Section 615 of the FCRA.

However, we urge the Board and FTC to delay the mandatory compliance of the credit score disclosures by at least 6 months or more to minimize compliance burdens and costs. Under Section 615 of the FCRA, the Board and FTC currently have authority to establish the mandatory compliance date, parameters of compliance, and the required disclosures.

A delayed mandatory compliance date is especially important for smaller institutions that are attempting to comply with numerous other Dodd-Frank and regulatory changes. Credit unions will need additional time to develop and adopt new risk-based pricing notices, provide appropriate staff training, and implement the necessary processing changes. Previously, the Board and FTC provided 12 months to implement risk-based pricing regulations, which were effective January 1, 2011. We believe credit unions will need more resources than the Board's estimate of 32 hours to implement the credit score proposals under both the FCRA and ECOA.

Under this proposal, a credit union or another creditor using risk-based pricing must provide the following information, if a credit score is used in setting the material terms of credit or to increase the annual percentage rate (APR):

1) A statement that a credit score takes into account information in a consumer report and a credit score can change over time;
2) The specific numerical credit score used in making the credit decision;
3) The range of possible scores (e.g., FICO scores from 300 to 850);
4) The key factors that adversely affected the credit score such as late payments and high credit utilization (up to 4 factors, or 5 factors if the number of inquiries made to the consumer report is a factor);
5) The date on which the credit score was created; and
6) The name of the entity that provided the credit score (e.g., Equifax, Experian, or Transunion).

Under this proposal, a creditor may choose to use the proposed new model forms or may instead incorporate the credit score information with the current model forms, which remain unchanged. We ask the Board to clarify that a creditor may staple or append the credit score information using a supplemental document to a current model form on general risk-based pricing (H-1 and B-1) or an account review notice (H-2 and B-2).

Also, the ordering of the content on a model notice should not change; the credit score information should not be presented prior to the credit report information. Changing the order of content would impose additional compliance burdens on credit unions without providing significant additional benefits for consumers.

The proposal also clarifies that a creditor may continue to provide a credit score exception notice instead of a risk-based pricing notice. In addition, a creditor would not have to provide a credit score if it uses information from a credit report that does not include a credit score. Further, a creditor would not have to provide the borrower with the credit score of a guarantor or endorser. We believe that these are useful clarifications.

We agree a creditor should have to provide only one credit score when it uses multiple credit scores, as this is consistent with the statutory requirement for disclosing a credit score under 1100F of the Dodd-Frank Act.

Thank you for the opportunity to comment on this proposal. If you have any questions concerning our letter, please feel free to contact Senior Vice President and Deputy General Counsel Mary Dunn or me at (202) 508-6733.

Sincerely,

Dennis Tsang

Dennis Tsang
Regulatory Counsel

Davis Wright Tremaine LLP

1633 Broadway
27th Floor
New York, NY 10019-6708

**James Mann**
212.603.6482 tel
212.489.8340 fax

jamesmann@dwt.com

***Via E-Mail***
April 14, 2011

Jennifer J. Johnson
Secretary, Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attention: Docket Nos. R-1407 and R-
1408 and RIN No. RIN 7100-AD66
regs.comments@federalreserve.gov

Re: Federal Reserve Board Docket Nos. R-1407 and R-1408 and RIN No. RIN 7100-AD66
Regulation B (Equal Credit Opportunity) and Regulation V (Fair Credit Reporting Risk-Based Pricing Regulations)

Dear Ms. Johnson:

This letter is submitted by Davis Wright Tremaine LLP ("DWT") on behalf of a client and its affiliates (collectively, "Client") in response to the proposed revisions to 12 C.F.R. Part 222 ("Regulation V") and 12 C.F.R. Part 202 ("Regulation B") that were published in the Federal Register on March 15, 2011 (collectively, the "Proposal") by the Board of Governors of the Federal Reserve System (the "Board").

The Proposal is intended to implement the amendments to the Fair Credit Reporting Act ("FCRA"), relating to the disclosures of credit scores, made by Section 1100F of Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").

DWT and our Client commend the Proposal and appreciate the opportunity to comment on it. However, we recommend that the Board confirm that use of a credit score derived from algorithms employed exclusively by the user of such score ("Proprietary Credit Score") does not trigger the disclosure requirements in the Proposal. Additionally, we recommend that the Board clarify that, in the event a person uses a commercially available consumer credit score, such as a FICO score ("Commercially

Available Credit Score"), as one of several inputs to a Proprietary Credit Score, disclosure of the Commercially Available Credit Score and related information are not required. Finally, we request that the Board postpone the effective date of the final rule in view of the complex systems changes that will be needed for compliance.

## I. <u>Disclosure of Proprietary Credit Scores</u>

The Proposal would amend §§222.73(a)(1) and (2) of Regulation V, and make conforming changes to Appendix C and Comment 9(b)(2)-9 of Regulation B, to require a person providing a risk-based pricing notice to disclose a credit score used in setting the material terms of credit or increasing an annual percentage rate, as well as information relating to such credit score, including all the key factors that adversely affected the score (the "Disclosures"). Section 1100F cross-references a definition of the term "credit score" as "a numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors, including default."

Because this definition, read literally, could be construed to apply to a Proprietary Credit Score as well as a Commercially Available Credit Score, the Proposal could be interpreted as requiring the Disclosures regarding a Proprietary Credit Score. However, the Proposal is not clear as to whether such disclosures are required. For example, the Proposal would expressly permit a person using both a Proprietary Credit Score and a Commercially Available Credit Score to provide the Disclosures only with respect to the Commercially Available Credit Score, suggesting that disclosure of the Proprietary Credit Score is not required. We recommend that the Board confirm that persons using a Proprietary Credit Score are not required to provide the Disclosures for purposes of Regulation V and Regulation B with respect to that score.

While consumers are generally familiar with Commercially Available Credit Scores, they are generally not familiar with Proprietary Credit Scores and, as a result, may become confused by a score that is in a format or on a scale that is unfamiliar. The Proposal appears to acknowledge this, stating that "discussing two different types of credit scoring systems . . . could be confusing for consumers." Also, providing a consumer with a Proprietary Credit Score will not afford insight into how that consumer's creditworthiness is generally perceived in the marketplace or what the consumer can do to cause the perception to be more favorable. A consumer may arguably benefit from disclosure of the four most significant factors adversely affecting the Proprietary Credit Score, but substantially equivalent disclosures are already required by Regulation B. See, e.g., Form C-3.

In addition, requiring disclosure of the Proprietary Credit Score itself and the range alongside the factors adversely affecting that score may allow competitors to reverse engineer proprietary decision management algorithms relating to the derivation of Proprietary Credit Scores.[1]

Moreover, while the Proposal does not expressly exempt Proprietary Credit Scores, several aspects of the Dodd-Frank Act and of the Proposal appear to reflect the view that Proprietary Credit Scores are not "credit scores." For example, the Proposal acknowledges that "Section 1100F of the Dodd-Frank Act requires information regarding a credit score *that is obtained from a consumer reporting agency* to be included on an adverse action notice." 76 Fed. Reg. (March 15, 2011) (emphasis added). Similarly, §§222.73(a)(1)(ix)(F) and (2)(ix)(F) would require disclosure of "*the name of the consumer reporting agency or other person* that provided the credit score" (emphasis added), suggesting that, unless a credit score is obtained from a third party and not generated by the person using the score, such score is not required to be disclosed. (While a Proprietary Credit Score can be obtained from a third party contractor that has been given a person's proprietary algorithms, the quoted language appears to contemplate that a credit score "obtained from a consumer reporting agency" is one generated using a scoring system resident at the agency for use by multiple persons rather than the proprietary scoring system of the person using the score.)

Section 1078 similarly appears to equate "credit scores" with commercially available third-party scores, in requiring the Bureau to "conduct a study on the nature, range, and size of variations between the credit scores sold to creditors and those sold to consumers by consumer reporting agencies . . . and whether such variations disadvantage consumers." Each of the revised Regulation B model forms would require a person to state "we also obtained your credit score from this consumer reporting agency." See, e.g., Regulation B, Form C-1. Even Section 1100F cross-references a definition of the term "credit score" which in context applies exclusively to Commercially Available Credit Scores. For these reasons, we request that the Board confirm that, for purposes of the Disclosures, the term "credit score" applies only to Commercially Available Credit Scores.

## II. Use of a Commercially Available Credit Score as a Factor in Proprietary Scoring Model

Under proposed §§222.73(a)(1)(ix)(F) and (2)(ix)(F) of Regulation V, and the proposed conforming changes to Paragraph 2 of Appendix C and comment 9(b)(2)-9 of Regulation B, the Disclosures are required when a credit score is used in "setting the material terms of credit" or "in increasing the annual percentage rate," respectively. We recommend that the Board clarify that the Disclosures are not required with respect to a Commercially Available Credit Score if such score is used as an input to a Proprietary Credit Score.

[1] A person is not required (and cannot be compelled by the Bureau of Consumer Financial Protection ("Bureau")) to provide "any confidential commercial information, including an algorithm used to derive credit scores or other risk scores or predictors" to a consumer. Sections 1033(b)(1) and 1034(c)(2)(A).

Persons may use a Commercially Available Credit Score as one of a number of inputs to a model that in turn is used to establish a Proprietary Credit Score. However, in these instances, the Commercially Available Credit Score is often not determinative. For example, a Commercially Available Credit Score may affect a Proprietary Credit Score positively, but not enough to avoid the necessity of an adverse action notice. Alternatively, a Commercially Available Credit Score may be immaterial to the adverse action.

In these circumstances, if the user of the Commercially Available Credit Score were required to provide the Disclosures with respect to such score, the consumer could be misled into thinking that such score was material to the adverse action. The consumer could also be confused about the impact of the Commercially Available Credit Score, particularly if the Commercially Available Credit Score is at the high end of the disclosed range. Moreover, even if the Commercially Available Credit Score is material, focusing on the Commercially Available Credit Score alone could be misleading since the Commercially Available Credit Score may be only one of several factors negatively influencing the Proprietary Credit Score.

If the Board believes that providing the Disclosures with respect to a Commercially Available Credit Score used as an input to a Proprietary Credit Score is consistent with the Dodd-Frank Act and is useful to consumers, then we recommend that the Disclosures be provided solely with respect to the Commercially Available Credit Score and only if such score is one of the four most important factors adversely affecting the Proprietary Credit Score. Otherwise, consumers may be misled for the reasons described above.

If the Board requires the Disclosures with respect to use of a Proprietary Credit Score and also requires the Disclosures with respect to use of a Commercially Available Credit Score employed as an input to a model used in determining a Proprietary Credit Score, we recommend that the Board revise §222.73(d)(1) of Regulation V, and the conforming changes to Paragraph 2 of Appendix C and comment 9(b)(2)-9 of Regulation B, to clarify that a person, at its option, may provide the Disclosures with respect to *either* the Proprietary Credit Score *or* the Commercially Available Credit Score used to determine that Proprietary Credit Score, but not both. This clarification would be consistent with the Board's position that "discussing two different types of credit scoring systems . . . could be confusing for consumers," which would apply when one credit scoring system is based at least in part on the other. In that circumstance, a person would be required to disclose four factors that adversely affected the Proprietary Credit Score – together with four additional factors adversely affecting the Commercially Available Credit Score. This likely would confuse consumers, particularly if the factors are overlapping, duplicative or conflicting.

## III. <u>Delayed Effective Date</u>

We request that the Board delay the effective date of the final rule until January 1, 2012 to allow affected persons to timely implement the operational and systems changes that will be needed to comply. The proposed requirements are complex and, for persons employing automated procedures, will require extensive technological adjustments. For example, such persons will need to build new dynamic fields to capture credit scores and the other disclosable information, as well as to redesign system feeds so that the new fields will properly generate the compliant Disclosures on adverse action letters and risk-based pricing notices. Additionally, even if affected persons can begin to implement such systems adjustments based on the Proposal, the finalization of any such adjustments will necessarily be delayed until issuance of the final rule.

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We thank the Board for the opportunity to comment on the Proposal and invite the staff to contact us to discuss our comments further.

Sincerely,

James H. Mann
Davis Wright Tremaine LLP

MICHIGAN CREDIT UNION LEAGUE

Helping Credit Unions Serve Their Members

April 13, 2011

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

**Re: Docket No. R-1407**
**RIN 7100-AD66**

VIA ELECTRONIC MAIL: regs.comments@federalreserve.gov

Dear Ms. Johnson,

The Michigan Credit Union League (MCUL) appreciates the opportunity to comment on the Federal Reserve Board's (the Board) proposed amendments to the risk-based pricing and account review notices required under the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). MCUL is a statewide trade association representing 95% of the credit unions located in Michigan.

MCUL understands that the proposed changes to the content of the risk-based pricing model forms are required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), and the opportunity for change is unlikely. However, it is important to note that these changes, while seemingly small compared to major regulatory updates, represent additional time and expense to implement including among other things, time and expense for training and related software updates. These incremental changes have continued to build and aggregate into compliance mandates that are diverting important resources for all institutions, and strangling smaller institutions!

As for this particular proposal, in light of the "general risk-based pricing rules" that became effective January 1, 2011, MCUL is at a loss as to why the Board did not take appropriate action to delay the effective date of those rules to incorporate the changes in this proposal as mandated by Dodd-Frank Act, which was signed mid-year, July 21, 2010. What has resulted is that credit unions and other financial depositories have spent the time and financial resources to implement the earlier rules only to have to go through the same exercise mere months later.

As for the need for additional content, MCUL does not support including any additional content in the risk-based pricing and account review notices than what has been mandated by the Dodd-Frank Act. Weighing down existing disclosures with ever increasing information in order to better inform consumers does not ensure that the consumer will read the disclosures that financial institutions are continually required to provide.

MCUL strongly urges the Board to consider the real-world impact that all of these regulatory changes have on financial institutions. It is MCUL's sincere hope that the Board will ensure that,

Headquarters: 101 S. Washington Square, Suite 900, Lansing, Michigan 48933 • Livonia Office: 38695 W. Seven Mile Road, Suite 200, Livonia, Michigan 48152-7097
Mailing Address: P.O. Box 8054, Plymouth, Michigan 48170-8054
Toll-Free: 1.800.262.6285 • Web Site: www.mcul.org

in the future, related regulatory changes will be more in sync with legislative changes in order to provide less disruptive and less expensive transitions for the regulated institutions.

MCUL appreciates the opportunity to provide comment on this proposed rule.

Sincerely,

Michael J. DeFors
VP Regulatory Affairs
MCUL & Affiliates