Final Rules Issued to Implement Dodd-Frank Requirements for Adverse Action Notices

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On March 15, 2011, the Board of Governors of the Federal Reserve System (the "Board") issued proposed amendments to its Regulation B (Equal Credit Opportunity) to incorporate new content requirements for adverse action notices, as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Act"). Comments were to have been received by May 16, 2011.

Generally, the purpose of the Equal Credit Opportunity Act ("ECOA") is to promote the availability of credit to all creditworthy applicants without regard to race, color, religion, and other similar considerations. ECOA applies to all credit, commercial as well as consumer, regardless of the type of credit or the type of creditor. The adverse action provisions of ECOA, as implemented by Section 202.9 of Regulation B, require notices to be sent when adverse action (e.g., denial of credit, or a counteroffer on less desirable terms) is taken by the creditor. Regulation B provides model forms of these notices in Appendix C to the regulation. Proper use of these model forms will satisfy the requirements of Section 202.9 of Regulation B, as well as the adverse action notice requirements of the Fair Credit Reporting Act ("FCRA").

Section 1100F of the Act added new content requirements to the adverse action provisions of ECOA that require creditors to disclose the applicant's credit score, along with certain information regarding credit scores, if a credit score is used in taking adverse action on an application for credit. These revisions are effective July 21, 2011.

Final rules have not been published in the *Federal Register* as of July 11, 2011. As reported in this publication last month, the final rule will not be effective until after the effective date of Section 1100F of the Act. Under the federal Administrative Procedures Act, certain final regulations are to become effective no fewer than 30 days after their publication in the *Federal Register*. Accordingly, there will be a period of time wherein creditors will have to comply with Section 1100F of the Act (which does not include model forms) without the benefit of the final regulations and model forms.

On July 6, 2011, the Board issued a press release that contained a copy of the final rule. It was important to wait for the release of the final rule, because it contains provisions not set forth in the proposed rule, and also contains clarifications not discussed in the proposed rule. Some of these are:

1. If all of the factors used in a creditor's proprietary credit scoring system are also used in the creditor's consumer reporting agency's system (even if the latter system uses some factors that the creditor's system does not, or they are given different weight), then the score produced by the creditor's proprietary system will be considered a "credit score" under the Act and the FCRA, and the new Dodd-Frank disclosures will have to be given in any adverse action notice where adverse action is taken as a result of an unfavorable score from the creditor's proprietary system. In such case, the information disclosed will be with respect to the creditor's system.

2. Certain changes were made to the text of the Dodd-Frank disclosures. One of them was the inclusion of optional language disclosing the name, address and telephone number of the consumer reporting agency supplying the credit score to the creditor. The Board received comments from creditors who were concerned about getting calls from consumers regarding the consumer reporting agency's system. Although the language is optional, creditors may want to include it in the Dodd-Frank disclosures in order to prevent getting calls that are more properly directed to the consumer reporting agency.

3. There are discussions in the final rule regarding combining the Dodd-Frank disclosures with other disclosures, substituting other disclosures for the Dodd-Frank disclosures, and making the Dodd-Frank disclosures to guarantors and co-applicants. These discussions were the result of comments received by the Board, and were not considered in the proposed rule.

If you have any questions about the information in this alert, please contact Ed Harllee at .

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