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Dodd Frank Issues Rule on Adverse Action Notices

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The Federal Reserve Board (FRB) and Federal Trade Commission (FTC) issued a final rule on July 6, 2011 requiring creditors to provide additional information in adverse action notices if a credit score is used in making the credit decision. The new rule is effective 30 days from its publication in the Federal Register, which is expected shortly.

The Fair Credit Reporting Act (FCRA) requires creditors taking adverse action based on a consumer report to provide an adverse action notice containing the name of the credit reporting agency, notice of the consumer's right to request a free credit report, and notice of the consumer's right to dispute the accuracy of the report's content. The Equal Credit Opportunity Act (ECOA) requires creditors to provide consumers with the specific reasons for a denial, or a notice informing a consumer of the adverse action taken and his or her right to request a statement of specific reasons from the creditor.

In accordance with the Dodd Frank Wall Street Reform and Consumer Protection Act (Dodd Frank), the FRB and FTC rule revises model forms contained in Regulation B which satisfy adverse action notice requirements under both FCRA and ECOA. Specifically, Dodd Frank requires adverse action notices issued under FCRA to disclose the credit score used in taking the adverse action and additional information relating to the score.

Below are the key points regarding the new requirements for the Notice of Adverse Action:

If a credit score is used in taking any adverse action, in addition to the previously required disclosures, the creditor must also provide:

- 1- The numerical credit score used;
- 2 - The range of possible scores under the model used;
- 3 - Key factors that adversely affected the credit score;
- 4 - The date on which the score was created; and
- 5 - The name of the person or entity that provided the score.

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Recognizing that creditors may use a consumer report but not an actual credit score in taking adverse action, the rule provides that if no credit score is used in making the decision, then no credit score or related information needs to be included in the Notice of Adverse Action.

The FCRA requirement to provide the credit score and additional information is independent from the ECOA requirement to provide specific reasons for the adverse action. Thus, where creditors opt to provide Borrower's with a Notice of Adverse Action taken and a notice of the Borrower's right to request specific reasons for the denial, the credit score and related information must also be included. It is not permissible to wait until a Borrower exercises his or her right to request specific reasons for the credit denial to provide the credit score used, if any, and additional information.

The rule specifies that providing the credit score and additional information, specifically the key factors adversely affecting the credit score, does not satisfy the requirement to provide specific reasons for the adverse action under ECOA. Although the key factors adversely affecting a credit score and the specific reasons for the adverse action may certainly be related, the FRB believes that disclosure of both the key factors and specific reasons are necessary. Despite the existence of a particular credit score adversely affected by the key factors disclosed, an adverse action may be based on reasons unrelated to the score, such as the consumer's income, employment or residency.

For the purposes of this rule, a "credit score" includes a propriety score developed by creditors if the score is used to predict the likelihood of certain credit behaviors, including default. Some propriety scores, such as insurance scores or scores used to predict the likelihood of false identity are excluded from the definition of "credit score."

The provision of a Credit Score Disclosure Exception notice in lieu of a Risk Based Pricing Notice does not satisfy the FCRA requirement to provide the additional information related to the credit score in an Adverse Action Notice.

The final rule, which includes the complete model forms, is available at:
<http://www.federalreserve.gov/newsevents/press/bcreg/20110706a.htm>