Adverse Action Notices (#46)

[redacted]

The Fair Credit Reporting Act ("FCRA") and the Equal Credit Opportunity Act ("ECOA"), as implemented by Regulation B, require a person to provide notice to a consumer when the person takes adverse action based on information contained in a consumer report (the FCRA) or with regard to a credit application (ECOA and Regulation B). These requirements often overlap, and a person can use a single notice to comply with both laws at once. The Taskforce recommends that the Bureau amend or clarify these requirements in two respects.

First, commenters to the Taskforce RFI raised concerns about whether and how a retail seller complies with the adverse action notice requirements when the seller's sole reason for denial was that all indirect lenders refused to purchase the consumer's contract. For example, automobile dealers may deny a consumer's credit application because all prospective indirect lenders declined to purchase the proposed contract from the dealer; dealers question whether they must send an adverse action notice if the indirect lender already provides one and, if so, what they should identify as the reason for denial. A dealer or other retail seller is likely to base the reason for denial in its adverse action notice on information that the indirect lender provides to it. As such, the dealer's notice may be of little benefit to consumers if it merely repeats information already on the indirect lenders' notices, and it may be misleading if it omits or conflicts with information on those notices. The Bureau should amend its regulations to clarify that, if an indirect lender provides an adverse action notice to the consumer in this situation, the retail seller does not also need to provide one.

Second, in some cases, the overlap between the FCRA and ECOA requirements can create uncertainty or redundancy. For example, ECOA's Regulation B requires an adverse action notice to include a statement of the specific reason for the action, and it identifies as insufficiently specific a statement that the consumer failed to achieve the qualifying score on the creditor's credit scoring system.[1] When the Board promulgated this rule in 1976, it helped ensure that consumers learned the reasons underlying their non-qualifying score.[2] But Congress has since amended the FCRA to require that, when a person takes adverse action based on information in a consumer report, the person disclose to the consumer the key factors that adversely affected the consumer's credit score.[3] Consequently, the FCRA ensures that consumers learn the underlying reasons for their non-qualifying credit scores, and there is no need for Regulation B to require disclosure of the same information. The Bureau should therefore amend Regulation B to permit a creditor to state, as a specific reason for denial, that the consumer failed to achieve a qualifying credit score. The Bureau also should consider whether there are any other adverse action notice requirements that should be aligned.

Recommendations:

46. ***The Bureau should amend its regulations so that a retail seller need not provide an adverse action notice when the seller denied a consumer's credit application based solely on a refusal by all prospective third-***

[1] 12 C.F.R. § 1002.9(a)(2)(i), (b)(2).

[2] Bd. of Governors of the Fed. Res. Sys., *Amendments to Regulation B to Implement the 1976 Amendments to the Equal Credit Opportunity Act*, 42 Fed. Reg. 1242, 1248-49 (Jan. 6, 1977).

[3] FCRA sections 615(a), 609(f)(1) (15 U.S.C. §§ 1681(i)(a), 1681g).

David Hixson	*Oct. 27, 2020*

party lenders to purchase the proposed credit contract and the lenders are required to provide the consumer with an adverse action notice. In addition, the Bureau should align the ECOA's and the FCRA's adverse action notice provisions, including to permit a creditor to state, as a specific reason for denial, that the consumer failed to achieve a qualifying credit score.

TF Member acknowledgement	Todd:	Jean:	Howard:	Bill:	Tom:
Please type "Approve," "Conditionally approve" (subject to specific edits), "Reject," or specific commentary (you may also use the Comment feature)			approve		

David Hixson	*Oct. 27, 2020*