



August 15, 2008

VIA EMAIL

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal
Reserve System
20th Street and Constitution Ave. NW.,
Washington, DC 20551
Docket No. R-1316

Federal Trade Commission/Office
of the Secretary, Room H-135
600 Pennsylvania Ave. NW.,
Washington, DC 20580
Project No. R411009

**Re: Proposed Fair Credit Reporting Risk-Based Pricing Regulations:
Docket No. R-1316 and Project No. R411009**

Dear Sirs and Madams:

The Wisconsin Bankers Association (WBA) is the largest financial trade association in Wisconsin, representing approximately 300 state and nationally chartered banks, savings and loan associations, and savings banks located in communities throughout the state. WBA appreciates the opportunity to comment on the proposed disclosures regarding fair credit reporting risk-based pricing regulations.

The Board of Governors of the Federal Reserve System (FRB) and the Federal Trade Commission (FTC) (collectively, the Agencies) have proposed rules to implement the risk-based pricing provisions in section 311 of the Fair and Accurate Credit Transaction Act (FACT Act), which amends the Fair Credit Reporting Act (FCRA). The proposal generally requires 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.

The proposal provides for two alternative means by which creditors can determine when they are offering credit on material terms that are materially less favorable. Additionally, the proposal contains several exceptions for creditors that provide a consumer with a disclosure of the consumer's credit score in conjunction with additional information that provides context for the credit score disclosures. WBA recognizes the efforts the Agencies have made in writing the proposal to limit the additional regulatory burden and costs to implement the requirements under FACT Act. Therefore, WBA generally supports the Agencies' proposal. As WBA believes the majority of its members will utilize the proposed exceptions, WBA wishes to comment more specifically on the proposed exceptions after a summary of the proposal.

Summary

The FACT Act amended the FCRA to enhance the ability of consumers to combat identity theft, increase the accuracy of consumer reports, and allow consumers to exercise greater control regarding the type and amount of solicitations they receive.

Section 311 of the FACT Act added a new section 615(h) to the FCRA to address risk-based pricing. Risk-based pricing refers to the practice of setting or adjusting the price and other terms of credit offered or extended to a particular consumer to reflect the risk of nonpayment

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by that consumer. Creditors that engage in risk-based pricing generally offer more favorable terms to consumers with good credit histories and less favorable terms to consumers with poor credit histories.

Under section 615(h) and the proposal, a risk-based pricing notice must be provided to consumers in certain circumstances. In general, the notice must be given by any person that: (1) uses a consumer report in connection with an application for, or a grant, extension, or other provision of credit to a consumer that is primarily for personal, family or household purposes; and (2) based in whole or in part on the consumer report, grants, extends, or provides 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 person. The proposal applies to a person to whom the obligation is initially payable (also referred to as “the original creditor”).

Definitions

The proposal defines “material terms” to mean the annual percentage rate (APR) which must be disclosed under Regulation Z for credit, whether open-end or closed-end, that has an APR. For credit cards, which may have multiple APRs applicable to different features, the term is defined as the APR applicable to purchases. Finally, in the case of credit that does not have an APR, “material terms” is defined as any monetary terms, such as the down payment amount or deposit, that the person varies based on the consumer report.

In addition, the proposal defines the term “materially less favorable” as it applies to material terms, to mean that the terms granted or extended to a consumer differ from the terms granted or extended to another consumer from or through the same person such that the cost of credit to the first consumer would be significantly greater than the cost of credit to the other consumer.

Methods for Identifying Consumer Who Must Receive Notice

Under the proposal, a person subject to the rule may determine, on a case-by-case basis, whether a consumer has received material terms that are materially less favorable terms than other consumers have received from or through that person, by comparing the material terms offered to the consumer to the material terms offered to other consumers in similar transactions. For those persons who prefer not to directly compare the material terms offered to their consumers, the Agencies have proposed two alternative methods for determining which consumers must receive risk-based pricing notices – a credit score method and a tiered pricing method.

The credit score method is a numerical representation of a consumer’s credit risk based on information in the consumer’s credit file. The proposal permits a creditor that uses credit scores to set the material terms of credit to determine a cutoff score, representing the point at which approximately 60 percent of its consumers have lower credit scores, and provide a risk-based pricing notice to each consumer who has a credit score lower than the cutoff score. Periodic updating of the cutoff score would be required. Under the tiered pricing method, a creditor that sets the material terms of credit by assigning each consumer to one of a discrete number of pricing tiers, based in whole or in part on a consumer report, is permitted to provide a risk-based pricing notice to each consumer who is not assigned to the top pricing tier or tiers.

Separately, the proposal would require a credit card issuer to provide a risk-based pricing notice to a consumer if the consumer applies for a credit card in connection with a multiple-rate offer and, based in whole or in part on a consumer report, is granted credit at a purchase APR that is higher than the lowest purchase APR available under the offer. The proposal would also require a notice be provided upon periodic account reviews in connection with

credit that has already been extended to a consumer. The proposal would require a creditor to provide a risk-based pricing notice to the consumer if the creditor in an account review increases the consumer's APR based in whole or in part on a consumer report.

Notice Content and Timing

Under the proposal, the risk-based notice must contain a statement informing the consumer of: (1) the fact that the terms offered, such as the APR, have been set based on information from a consumer report; (2) the identity of each consumer reporting agency (CRA) that furnished a consumer report used in the credit decision; (3) the right to obtain a copy of a consumer report without charge from the CRA identified in the notice; (4) CRA contact information; (5) additional background information regarding consumer reports; (6) the fact that terms offered to the consumer may be less favorable than the terms offered to consumers with better credit histories; and (7) the importance to verify the accuracy of the information contained in the consumer report, the right to dispute any inaccurate information in the consumer report, and how more information regarding consumer reports may be found on the Agencies' websites.

The risk-based pricing notice may be provided in writing, orally or electronically, and must be in a clear and conspicuous format. The Agencies have also proposed model notices which, if used, provide a safe harbor for compliance. Creditors may change the forms by rearranging the format without modifying the substance of the disclosures and, so long as the changes aren't so extensive as to materially affect the forms, may still rely upon the safe harbor.

The Agencies have proposed timing requirements for providing the risk-based pricing notice to consumers. For closed-end transactions, creditors would be required to provide the notice to the consumer before the consummation of the transaction. Creditors offering an open-end transaction would be required to provide the notice to the consumer before the first transaction is made under the plan. In either closed- or open-end transactions, the creditor would not be permitted to provide the notice any earlier than the time the decision to approve an application for, or a grant, extension, or other provision of credit is communicated to the consumer by the person required to give the notice. For account reviews, notice would be provided to the consumer at the time the decision to increase the APR based on a consumer report is communicated to the consumer by the person required to give the notice; or, if no notice of the increase in APR is provided to the consumer prior to the effective date of the change in the APR, no later than five days after the effective date of the change in the APR.

Exceptions

The Agencies have proposed a number of exceptions to the general requirements regarding risk-based pricing notices. A notice is not required if the consumer applies for specific material terms and was granted those terms, unless those terms were initially specified by the person after the transaction was initiated by the consumer and after that person obtained a consumer report. An example in the proposal provides that this exception would apply when a consumer receives a firm offer of credit with a single rate from a credit card issuer, based in whole or in part on a consumer report, and the consumer applies for and receives a credit card with that advertised rate.

In addition, a risk-based pricing notice is not required if a creditor has provided or will provide an adverse action notice to the consumer under FCRA section 615(a) in connection with the transaction. Under another exception, a notice is not required when consumer reports are used to set the terms in a prescreened solicitation when making a firm offer of credit. This exception applies regardless of the terms the creditor may offer to other consumers in other firm offers of credit and applies only when a consumer report is used to set the terms offered in a prescreened solicitation to a consumer at the pre-application stage. However, the

prescreened solicitation exception does not eliminate the requirement to provide a risk-based pricing notice later in connection with the credit extension.

Furthermore, the Agencies have also proposed three exceptions to the risk-based pricing notice requirement which the Agencies refer to as “credit score disclosure exceptions.” The three exceptions are: (1) Credit Score Disclosure Exception for Credit Secured by Residential Real Property; (2) Credit Score Disclosure Exception for Non-Mortgage Credit; and (3) Credit Score Disclosure Exception—No Credit Score Available.

Under the credit score disclosure exceptions, creditors would be required to provide a proposed credit score disclosure notice which generally would include the consumer’s credit score, along with explanatory information regarding the score and information regarding the use of consumer reports and scores in the underwriting process. The credit score disclosures would also include statements that the consumer should investigate his or her credit history information, dispute any inaccuracies, and review the Agencies’ websites for more information regarding consumer reports. A proposed credit score disclosure must be provided to the consumer as soon as reasonably practical after the credit score has been requested, but in any event, at or before consummation of the transaction in the case of close-end credit, or before the first transaction is made under an open-end credit plan. Under this set of exceptions, a creditor would provide a credit score disclosure to all consumers and would not need to determine which consumers likely were offered or received materially less favorable material terms, as is otherwise required by the general risk-based pricing rule. In addition, the proposal includes model credit score disclosures and provides safe harbor provisions similar to those for the risk-based pricing notice.

The “Credit Score Disclosure Exception for Credit Secured by Residential Real Property” permits creditors offering loans to consumers that are secured by residential real property (purchase money mortgages, mortgage refinancing, home-equity lines of credit, and home-equity plans) to comply with the risk-based pricing regulations by integrating the proposed credit score disclosures regarding the use of consumer reports with the credit score disclosures financial institutions already are required to provide to consumers pursuant to section 609(g) of the FCRA (Notice to the Home Loan Applicant). In order to qualify for this exception, the credit requested by the consumer must involve an extension of credit secured by one-to-four units of residential real property and would require the disclosure to include all of the information required to be disclosed to the consumer pursuant to section 609(g) of the FCRA, and the proposed credit score disclosure relating to certain background information regarding consumer reports and credit scores.

Under the “Credit Score Disclosure Exception for Non-Mortgage Credit”, the Agencies have proposed a separate, but similar credit score disclosure and process for loans that are not secured by one-to-four units of residential real property, for which creditors are not required to provide the section 609(g) notice. In order to qualify for this exception, credit requested by the consumer must involve credit other than an extension of credit secured by one-to-four units of residential real property. The proposed disclosure is nearly identical to that required under the proposed exception for credit secured by residential real property. However, one distinction between the two notices is that the non-residential real property exception notice is not required to disclose up to four key factors that adversely affect the credit score.

Finally, the Agencies have proposed the “Credit Score Disclosure Exception—No Credit Score Available” for situations when a credit score is not available. In order to qualify for this exception, a person must regularly obtain credit scores from a CRA and provide credit score disclosures to consumers in accordance with the exceptions previously outlined; and must be unable to obtain a credit score for the particular consumer from the CRA from which the person regularly uses one of the credit score disclosure exceptions. The Agencies have proposed that this disclosure must include statements that convey: (1) the person was not able to obtain a credit score from a specifically named CRA, due to insufficient credit history;

(2) consumer reports include information about a consumer's credit history; (3) credit scores are important because the higher the score generally the more favorable credit terms are offered; and (4) not having a credit score may affect whether the consumer can obtain credit.

Comment

WBA recognizes the requirement imposed upon the Agencies under the FACT Act to promulgate implementing regulations, and acknowledges the Agencies' efforts to propose such regulations in a manner which creates as little regulatory burden and cost as possible for financial institutions. WBA also acknowledges the Agencies' willingness to be flexible in permitting institutions to modify the proposed model notices and disclosures while still providing for a safe harbor.

WBA agrees with the Agencies that financial institutions may have difficulty in comparing material terms between various loan products and generally agrees with the Agencies' proposal to permit creditors to proceed under the risk-based pricing notice requirements, or alternatively, to comply by providing all consumers with an appropriate disclosure under the proposed credit score disclosure exceptions.

WBA generally agrees with the Agencies' proposed methods for identifying which consumers must receive the risk-based pricing notices. More importantly, WBA generally agrees with the Agencies' proposed credit score disclosure exceptions which would permit financial institutions to combine required FCRA notices, when applicable, and provide credit score disclosures to all consumers rather than invest valuable staff time and cost in creating a case-by-case analysis, credit score or tiered rate analysis otherwise proposed to determine which consumer must receive a risk-based pricing notice under the general risk-based pricing rule. WBA believes the Agencies' proposal affords financial institutions flexibility to comply with the requirements imposed by the FACT Act regarding risk-based pricing.

Conclusion

While WBA generally does not support additional burdensome disclosure requirements imposed upon financial institutions, WBA believes the proposal, particularly the credit score disclosure exceptions, to be reasonable solutions to the requirements imposed upon the Agencies under section 311 of the FACT Act. Where possible the Agencies have proposed consistency between the credit score disclosures and have provided financial institutions flexibility in format and timing requirements, along with certain safe harbors. As such, WBA believes the Agencies proposal, particularly the proposed credit score disclosure exceptions, to be the most practical and least costly and burdensome solution to the requirements imposed by section 311 of the FACT Act.

Once again, WBA appreciates the opportunity to comment on the Agencies' proposal regarding risk-based pricing notice requirements.

Sincerely,



Rose Oswald Poels
Senior Vice President