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SECURIAN™

August 18, 2008

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

Re: Risk-Based Pricing Notice – FACT Act Section 311; Reg V
Docket No. R-1316

Dear Ms. Johnson:

This letter is submitted in response to the proposal regarding risk-based pricing notice requirements under FACT Act section 311 (Section 615(h) of the Fair Credit Reporting Act) and Regulation V. Securian Financial Group is a provider of credit insurance programs to the bank and credit union industry, and administers debt cancellation contracts and debt suspension agreements to our clients. We are also a lending and deposit forms provider to our credit union clients, and as such, provide closed-end and open-end consumer and home equity loan forms and deposit forms to credit unions nationwide. It is with this background and knowledge that this letter is submitted. We appreciate the opportunity to provide this information.

SUMMARY OF THE PROPOSAL

The new rules would require that notice be sent to any consumer who receives "material terms" that are "materially less favorable" than a "substantial proportion" of the creditor's borrowers. For simplicity, the Agencies have limited "material terms" to mean the Annual Percentage Rate.

The rules would apply only in connection with credit that is primarily for personal, household, or family purposes, but not in connection with business credit.

The rules would apply to any "person" who both: (i) Uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to a consumer; and (ii) based in whole or in part on the consumer report, grants, extends, or otherwise provides credit to that 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." Note that the rules apply to anyone who bases their decisioning on a credit report, not just to those who use a credit score.

In order to provide this notice, the Agencies are proposing 2 alternatives: the creditor can either provide a "risk-based pricing notice" to any consumer who receives terms that are materially less favorable, or the creditor can provide a "credit score disclosure" to *all* consumers. The content of both notices would be mandated by the regs. The risk-based pricing notice is not customized per consumer; the credit score disclosure is customized.

For creditors who choose to provide the risk-based pricing notice, the Agencies are proposing two methods for determining which consumers receive terms "materially less favorable" and thus are to receive the notice: the Credit Score Proxy Method and the Tiered Pricing Method.
We provide the following comments regarding these proposed rules.

SUMMARY OF OUR COMMENTS

We agree that the better consumers understand their credit standing, the better off they are in terms of being able to shop for credit and to rehabilitate their standing if need be. We also agree with the Agencies' attempt at simplifying the process for institutions. We would suggest, however, that the Agencies may be overthinking the whole scenario, and as such the rules and forms as currently proposed are unnecessarily confusing and complicated. We would simplify it even further. We believe that all creditors should be able to provide one form to all consumers, even those creditors who do not use credit scores.

The simplification starts with a "one size fits all" form that provides all borrowers with *either* their credit scores *or* the credit tier in which they fell. For creditors who wish to provide the notice only to consumers receiving terms "materially less favorable", the form would plainly state whether the consumer's APR was "higher" or "lower" than "most" of the creditor's consumers. "Most" would be 60%. The form would also provide notice of the consumer's right regarding obtaining credit reports. For a sample of our proposed form(s), please see Exhibit A and our more detailed discussion of the forms later in this letter.

SCOPE OF THE PROPOSED RULE

We agree that the scope of these rules should be limited to credit extended primarily for personal, family, or household purposes for all of the reasons that the Agencies state. Business loans are excluded from the vast majority of lending regs, as businesses tend to be more sophisticated and knowledgeable regarding their transactions with financial institutions. And they will not be scored or categorized in the same way as consumer loans are.

DEFINITIONS – Section --.71

"Material Terms". We agree that the term, "material terms" should be limited to the APR, excluding initial discounted rates or penalty rates, and that for credit cards, the APR is limited to the APR for Purchases. We applaud the Agencies' simplification of this definition. APR is the most important, and most understood, term involved with consumer credit, and as such, it is appropriate to limit the definition of "material terms" to the APR.

Creditors do not vary rates such as temporary initial rates, penalty rates, balance transfer rates, or cash advance rates on closed-end loans. On open-end loans and credit cards, these rate are usually tied to the APR for Purchases (or "standard" APR), rather than the consumer applying for a particular initial rate. For example, a consumer may be approved for a Visa Gold Card with an APR for Purchases of 10.99% and an introductory rate of 5.99%, rather than a Visa Platinum Card with an APR for Purchases of 8.99% and an introductory rate of 3.99%. The key term is still the APR for Purchases; in other words, all consumers approved for the Gold Card will receive the same introductory rates regardless of the particular credit score. So, in that sense, the intro rates are not varied based on credit score. Limiting the definition of "material terms" to the APR exclusive of intro rates will still serve the purpose of providing the Notice, while keeping the simplicity that the Agencies are striving for.

"Materially Less Favorable". We generally agree with the Agencies' definition of "materially less favorable". But see discussion below regarding percentage cut-offs and other concerns.

"Consumer": As a simple point of clarification, we ask that the Reg Z definition of "consumer" be included in the definition section, so that there is no confusion that the notice need only be given to those who were actually offered or extended credit, rather than mere applicants for credit.

GENERAL RULE and METHODS FOR DETERMINING WHO RECEIVES NOTICE– SECTION --.72

The Agencies have proposed two methods for determining whether a particular consumer has received terms "materially less favorable" than the rest of the consumers: the "Credit Score Proxy Method" and the "Tiered Pricing Method". Borrowers identified by either of these methods will be deemed to have received terms materially less favorable, even though there may be some borrowers identified as such, but who did not actually receive terms materially less favorable.

We agree with the Agencies' approach to avoid direct comparisons between actual consumers, which is impracticable.

We also note again that we believe a "one-size fits all" form can be used. With that said, however, we will independently provide comment regarding each method proposed by the Agencies, as follows.

CREDIT SCORE PROXY METHOD

We generally agree with the Credit Score Proxy Method, except for the 40% cut-off score. We believe that this is an inappropriate percentage and does not satisfy the intent of the rules nor the definition of "materially less favorable". Forty percent is not a "substantial proportion". Under the rule as currently proposed, creditors would be providing notices to 60% of their consumers. This is too large of a percentage to allow the Notice to have any meaning. It also will look as if 60% of the creditor's consumers have "bad" credit. A "substantial proportion" should at least be a majority. The other key part of the definition is that the cost of credit is "significantly greater" than the substantial portion of the consumers. We are not convinced that a 40/60% ratio will result in the cost of credit being "significantly greater".

We propose that a standard of 60%, rather than 40%, be used. In such a case, the Agencies could specifically define "substantial proportion" as "60% or more". Sixty percent is more than a majority and a better approximation of those consumers who receive relatively negative rates.

TIERED PRICING METHOD

We generally agree with the Tiered Pricing Method, except for the standard set for creditors using 4 or less tiers. The Agencies would have creditors provide the Notice to anyone not qualifying for the top tier. In a 4-tier pricing scenario, the tiers are typically A, B, C & D. "B" credit individuals are not receiving "terms materially less favorable" than the A tier because the cost of credit is not "significantly greater". While we understand the Agencies' need for a relatively scientific approach, it is commonly understood in the industry (and by consumers), that "B" credit is still very good. It is not until C and D credit that you begin to identify those consumers with a more challenging credit history. Providing the Notice to B consumers will be providing notice to an entire class of consumers that do not meet the definitions. It will also confuse the B consumers and cause them panic when they believe they have been identified as having "bad credit". This is not the intent of the statute and we trust it is not the intent of the Agencies. We believe that only C & D tiers should be identified as "less favorable".

Credit Card Pricing Method. For these same reasons, we object to the creation of a separate rule for credit cards. This rule would similarly have creditors sending the Notice to anyone not receiving the very best rate. The Agencies state that they assume that consumers apply for the very best rate. We respectfully disagree – most consumers who know that their credit is not very good do not expect to receive the best rate. Moreover, whether consumers are or are not applying for the very best rate is irrelevant to the statute and these rules. The statute was not created to inform consumers that they did not receive the very best rate available. As noted above, consumers receiving B credit card rates instead of A rates do not meet the definitions. Additionally, we find a separate rule for credit card tiers wholly unnecessary. Credit cards will fit in the proposed categories of 4 or less tiers and 5 or more tiers. There is no reason to carve out a separate standard.

GENERALLY

We are concerned that the rules, as currently proposed, capture too large of the consumer population and as such, will create confusion and panic among consumers who know their credit scores or credit history to be "good". As noted above, we would like to see the number of consumers who are determined to have received "materially less favorable terms" under both methods to be narrowed in scope. The statutory standard is "materially" less favorable, not just "less favorable", and it is "significantly" greater cost of credit, not just "greater" cost of credit. Narrowing the scope would be a more accurate snapshot of how consumers and creditors view what is considered to be relatively "good" credit versus "bad" credit (or "not so great" credit). We believe that those who know their credit standing to be "good" should not be receiving this Notice. For those consumers, the Notice will provide no benefit, as they have no need to improve their credit scores, and can even be a detriment to those consumers, as they become panicked or confused. Narrowing the scope will also make the rule more effective and meaningful for consumers, and will also lower the hard-dollar costs and operational burden to creditors. We ask the Agencies to rein in the number of consumers who would be receiving the Notice under these rules.

ACCOUNT REVIEWS– SECTION --.72

We are wholeheartedly opposed to requiring Notice when APRs are increased due to account reviews, for several reasons. First, new FCRA section 615(h)(3)(B) specifically provides that the risk-based pricing notice does *not* have to be given when an Adverse Action notice is provided. Increasing an

APR based on an account review will *always* be an Adverse Action (under FCRA and/or Reg B) and the adverse action notice will be given. As such, the Agencies are proposing a rule that directly contradicts both the language of the FACT Act and its intent.

Also, the statute applies to "an application for, or grant, extension, or other provision of credit". Increasing an APR due to an account review does not fall into this category. As such, the statute was not intended to cover such an APR increase.

Finally, simply increasing an APR due to a change in credit status does not necessarily mean that the consumer is receiving "terms materially less favorable" and an APR that is "significantly higher" than a "substantial proportion" of the other consumers.

The Adverse Action notice will provide more than enough information to the consumer that will accomplish the same objectives of the risk-based pricing notice. It will inform the consumer that the APR has changed; the reasons why; that he is entitled to a free copy of his credit report; the name of the credit reporting agency; and how to obtain the report. With this information, the consumer will be informed that credit history is important, and will be encouraged to obtain a copy of the report and otherwise investigate. As such, it is wholly unnecessary and redundant to send the risk-based pricing notice, and will only serve to confuse the consumer when similar, but not identical, information is provided on the same transaction. We urge the Agencies to withdraw this portion of the rule.

CONTENT, FORM, AND TIMING OF RISK-BASED PRICING NOTICES – SECTION --.73

GENERALLY

Content and Form. We find the content and form of the disclosures to be confusing, misleading, and not much help to the consumer. We will first address our concerns generally, and then provide comments specific to each Model Form below.

We generally agree that more information than that set out in the statute needs to be given in order to make the disclosure meaningful.

We also agree that the disclosures should be clear, concise, and conspicuous. However, we dislike the 2-column format and would like the Agencies to clarify that creditors have flexibility in the format. For example, the headings could be simply in bold above the text of each paragraph. The left-hand column simply adds "noise" to the form that is unnecessary. It also adds unnecessary pages to the forms which leads to "disclosure overload" and increases expense for creditors. Finally, we note that this is the same 2-column format that the Agencies proposed with the Privacy Notices, and the industry has done very little, if anything, to adopt such a format. Column formats are more effective for short statements and numerical disclosures, such as with the Reg Z credit card Tabular Disclosures, rather than for reading relatively large amounts of text.

We also oppose the term, "less favorable", even though that is statutory terminology. The term is derogatory and could be construed as implying that creditors are being discriminatory, or that consumers are "bad" or irresponsible in allowing their credit scores to slip. This could lead to consumer confusion and complaints, and unnecessary strife for the consumer. From the creditor's standpoint, it is a philosophical issue as well as a customer relations issue; financial institutions prefer to simply state credit scores, credit tiers, and APRs factually, without judgment. Financial institutions are there to try and help consumers rehabilitate their credit rating, not to condescend to them. We would ask the Agencies to limit the terminology to more fact-based verbiage, such as, "your scores are higher/lower than most of our other consumers".

Finally, we again note that the disclosures can be placed in one form to be used by all creditors in all circumstances. Please see the more detailed discussion below under, "An Alternative Risk-Based Pricing Notice Given to All Consumers".

Timing. We agree that the disclosures, to be effective and meaningful, must be given after loan application. We are concerned, however, with the standard set for closed-end loans: "before consummation but not earlier than the time the decision to approve an application is communicated". In today's lending world, many transactions are "instantly approved", literally within seconds of the application being submitted. This is especially true when the loan is closed at a retailer. We would like the disclosure to be able to be given *at* the time the decision is granted. For example, the language could read:

> (1) In the case of a grant, extension, or other provision of closed-end credit, at or before consummation of the transaction, but not earlier than at 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 provide the notice. Providing the notice at the time the credit decision is communicated satisfies the timing requirements of this section.

H.1 - MODEL FORM FOR RISK-BASED PRICING NOTICE

Our concerns with this form are numerable. First, the fact that the consumer is receiving this form because he has received an APR that is "less favorable" is not explained. We believe some introductory language would be helpful. Next, we do not believe it necessary to explain what a credit report is. The vast majority of consumers know what a credit report is, and there is more useful information that can be given instead of this very elementary disclosure. Additionally, once the consumer reads the form, they will have a good idea of what a credit report is, without the need to spend time and space explaining it.

Third, the statement that the terms offered "may be less favorable" is buried in the form; it does not stand out in any way. This defeats the purpose of the form.

We are also troubled by the term, "may be", in the statement, "the terms offered to you may be less favorable than the terms offered to consumers who have better credit histories". While we understand that there may be some consumers receiving this notice who did not in fact receive terms less favorable (due to the necessarily imprecise way of defining "less favorable"), we do not believe that the term "may be" tells the consumer anything. On one hand, it does not alert the consumer to do anything because the language is vague. On the other hand, creditors will get flooded with questions as to why the consumer is receiving this form and what it all means, because, again, the language is very vague.

Additionally, the statement as a whole is a bit misleading. This is because, by definition, the interest rate *will* in fact be less favorable than "consumers who have better credit histories". That is the definition of risk-based pricing. The Agencies seem to be attempting to use a defined term in a generic way, and the sentence becomes simply a generic, general factual statement that loses all meaning for the particular consumer. So, perhaps a statement such as this would be more meaningful to the consumer:

> "You have been identified as a consumer who has received an APR that is higher than most of our other borrowers because of your credit standing."

This statement does more to alert the consumer as to why he is receiving the form, and provides him enough information to decide whether to act or not, either by questioning the creditor or by obtaining his credit report.

We also again note our objection to the term, "less favorable". This is a derogatory term, and not very precise. Consumers will be offended and, at the same time, confused as to what the term means. We suggest that stating this in terms of having a higher or lower APR, as set forth above, would be less demeaning and more informational for the consumer.

We would also like to see the reference to "the terms offered" be changed to "the APR offered" to be more precise and better coincide with the definition of "material terms". This will tell the consumer exactly what was affected by her credit standing, and there will be no question as to which "terms" are being referenced.

H.2 – MODEL FORM FOR ACCOUNT REVIEW

We re-emphasize our objection to the requirement that any notice be given for account reviews. We ask that this Model Form be deleted.

H.3 & H.4 – MODEL FORM FOR CREDIT SCORE DISCLOSURE EXCEPTION

As with the H.1 form, there is no introductory language explaining to the consumer why he is receiving this form. Such language should be added.

We also object to the use of the bar graph. Bar graphs are not something that will be readily available to creditors, nor easy to construct. Graphs available from the consumer reporting agencies will be proprietary and therefore must be purchased, increasing expenses and operational burden. They will also be out of the control of the creditor and will require coordination and updating to keep the form current. This is overly burdensome. Additionally, bar graphs tend to be hard for consumers to read and understand. The bar graph is too burdensome for the limited, if any, help it provides the consumers. The bar graph requirement should be withdrawn.

We are also not convinced that creditors will be able to disclose the statement, "Your credit score ranks higher than [x] percent of U.S. consumers". Most creditors will not have this information. This is also not a current requirement of the Notice to Home Loan Applicants and we see no reason to impose it here. We believe that it is sufficient to provide the consumer with her score, along with the range of scores for the model used, as it is done with the Notice to Home Loan Applicants under FACTA Section 212.

Finally, on Form H.4 (for use with non-real estate loans), we note that the form contains a section to disclose Key Factors, even though the Agencies state in the rulemaking that they will not be requiring this disclosure on non-mortgage loans. We ask that this section be removed.

H.5 – MODEL FORM FOR LOANS WERE CREDIT SCORE IS NOT AVAILABLE

We have no specific comments unique to this form, but many of the above comments apply here as well.

CREDIT SCORE DISCLOSURE FORM – ISSUES & ALTERNATIVES

The Agencies are proposing an exception where creditors may provide a "credit score disclosure form" to all consumers, instead of providing one of the risk-based pricing notices to only those consumers who receive materially less favorable terms. We generally agree with the approach to provide one form to all borrowers but see several issues with the Agencies' proposal. We explain as follows.

Creditors who do not use credit scores should be able to use this approach. We believe that all creditors who use risk-based pricing should be able to utilize this exception, not just those creditors who use a credit score. Remember that all creditors who use risk-based pricing can "rank" their consumers (e.g., by using credit tiers). A creditor should not be required to go out and purchase a credit score (that they never used in the decisioning) just to utilize this exception. Doing so will mistakenly lead the consumer to believe that the creditor used the score in its decisioning, which is inaccurate, misleading and confusing. We also question whether purchasing the credit score solely to comply with this statute satisfies the "permissible purpose" requirements of the FCRA. Even if it does, this rule is encouraging creditors who are not otherwise using the credit score to obtain and store non-public information on its consumers for virtually no reason. That is not a standard that should be encouraged. Instead, creditors who do not use credit scores should be allowed to provide a form to all their consumers explaining how the consumer fell within their credit tiers, just as creditors who use credit scores will be allowed to provide a form to all their consumers stating the credit score. We discuss our proposed alternative form below.

Comparing consumers' scores to the U.S. general population. We are also concerned with the Agencies' proposal that the consumers' credit scores be compared to the general U.S. population rather than the creditors' own borrowers. Creditors do not necessarily have this information and it is not their job, or function, to compare their particular consumers' scores or credit standing to a nationwide segment. On the contrary, rates vary by geographical location, and comparing a credit score nationally will not help a consumer shop for credit locally. There is also no single nationwide credit score, and therefore a creditor could be comparing apples to oranges when trying to explain how a consumer's score ranks nationally. Moreover, the statute, and proposed rules, contemplate that the creditor make the comparisons among its own consumers. We therefore ask that any disclosures provided to all consumers be allowed to be based on comparisons amongst the creditors' own consumers, rather than the general U.S. population. This information will be readily available and relatively easy to determine and disclose. At the very least we ask the Agencies to allow the creditors to choose which comparison to make.

AN ALTERNATIVE RISK-BASED PRICING NOTICE GIVEN TO ALL CONSUMERS

We believe that one, all-purpose disclosure form can be created for creditors who do, and do not, use credit scores, which can be given to all consumers, and still fulfill the objectives of the statute and the Agencies.

The stated objectives of the statute and rules is to make consumers more aware of their credit reports and how credit standing affects the price and terms of credit. The key is that *risk-based pricing* is being utilized, not just credit scoring. So the important thing for consumers to understand is that their credit *standing* affects their APR. Whether a creditor uses credit scores or only credit tiers based on factors in a credit report, the importance of credit standing can be disclosed to all consumers relatively simply. We will explain our approach.

Explaining risk-based pricing. First, we would use the term that the industry, and Congress, uses: "risk-based pricing". The easiest way to get consumers to understand the concept is to use the term so that eventually it becomes a "household name". We would then explain the concept, much like the Notice to Home Loan Applicants explains why a consumer is receiving that notice and why it matters to them.

Disclosing the Consumer's Credit Tier or Credit Score. We would then provide alternate model language to disclose either:

1. the credit tiers used by the consumer and the tier in which the consumer was placed; or
2. the consumer's credit score that was used, and the range of credit scores of the model used (or if no score was available, that fact would be stated).

Disclosing the Right to Obtain Free Credit Reports. The next section would be an explanation of the consumers' right to obtain the annual credit report**.

**We note an issue regarding the alleged 60-day right to receive a free credit report for consumers who received APRs "less favorable". The Agencies, by allowing creditors to provide the Credit Score Disclosure to all consumers, essentially "wipes out" that right for those consumers who did in fact receive "less favorable" APRs. As explained elsewhere in this Letter, we do not believe Congress carved out a separate right for less favorable borrowers. If, however, the Agencies insist that this right exists, we propose 2 alternative model forms and procedures: 1 without the 60-day right; the other with the 60-day right. In the 60-day right form, we would create a section entitled, "How your credit standing compares to others", in which the creditor would check a box indicating whether the APR received by that consumer was higher or lower than "most" (e.g., 60%) of the creditor's borrowers who obtained the same type of loan. If the interest rate was higher than most other borrowers, then the 60-day right to receive a free credit report would be explained; for all other creditors and consumers, the annual right would be explained.

Disclosing the Right to Dispute Inaccurate Credit Information. Next, there would be a statement that consumers have the right to dispute inaccurate information contained in a credit report, with an area to insert the name and contact information of the consumer reporting agency.

More Information. Finally, we would provide the statement directing the consumer to go to the Board's and/or FTC's websites for more information regarding credit reports. We also note that the "Big 3" credit bureaus' websites provide much useful and impartial information regarding credit scores, credit reports, and credit standing in general. We would like to see these websites referenced on the form as well.

So, the forms would look like this:

RISK-BASED PRICING DISCLOSURE
[No 60-day right]

We use "risk-based pricing" to determine the Annual Percentage Rate (APR) that you received on this loan. This means that we determined your credit standing based on information obtained from a consumer report (such as whether you make your payments on time and how much you owe to creditors), and then we assigned you an APR according to that credit standing. Your credit standing is important because it can affect whether you can obtain loans and how much you will have to pay for those loans. Generally, the better your credit standing, the more likely you are to be offered better loan terms such as lower APRs.

[*For use by creditors not using a credit score:*
YOUR CREDIT TIER: On this loan, there were __*(number)*_ tiers in which you could have been placed: [A, B, C, D]. The "__" tier has the lowest or best rate available, while the "__" tier has the highest or worst rate available. Based on your credit standing, you were placed in the ___ tier, which determined your APR that was disclosed to you.**]**

[*For use by creditors using a credit score:*
YOUR CREDIT SCORE: The APR that you received was based on your credit score. Your credit score is a number that reflects the information in your credit report which determines your credit standing. Your credit score can change over time, depending on how your credit standing changes, and can vary depending on the consumer reporting agency or model that was used to determine your score.

(Your most recent credit score that we used in determining your APR was: ____ out of a range of _____ (lowest) to ____ (highest).) *or* (You did not have a credit score available due to a lack of credit.) Generally, the higher the credit score, the more likely you are to be offered better loan terms. Having a low credit score or no credit score can lower your ability to obtain credit and/or increase the cost of credit. Credit scores can change over time so the score disclosed may be different than what you might obtain from a consumer reporting agency.**]**

YOU HAVE THE RIGHT TO OBTAIN YOUR CREDIT REPORT and to DISPUTE INACCURATE INFORMATION.
We obtained your credit report and/or credit score from: __________*insert name, address, website, and toll-free telephone number of CRA used by creditor* ___________________. The consumer reporting agency played no part in determining the rate you received and is unable to supply you with specific reasons why you received that rate.

Free Annual Report. Under federal law, all consumers have the right to obtain a free copy of their credit report from each of the nationwide consumer reporting agencies once a year. To order your free credit report –

By telephone: Toll-Free: 1-877-322-8228

On the web: www.annualcreditreport.com

By mail: Mail your completed Annual Credit Report Request Form (which you can obtain from the Federal Trade Commission's website at www.ftc.gov/bcp/conline/include/requestformfinal.pdf) to: Annual Credit Report Request Service, P.O. Box 105281, Atlanta, GA 30348-5281

Right to Dispute Inaccurate Information. You have the right to dispute any inaccurate information in your credit report. To do so, contact the consumer reporting agency listed above.

MORE INFORMATION: For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's website at www.federalreserve.gov, or the Federal Trade Commission's website at www.ftc.gov, or visit the credit bureaus' websites at www.myfico.com; www.experian.com; www.equifax.com, and www.transunion.com.

RISK-BASED PRICING DISCLOSURE
[60-Day Right]

We use “risk-based pricing” to determine the Annual Percentage Rate (APR) that you received on this loan. This means that we determined your credit standing based on information obtained from a consumer report (such as whether you make your payments on time and how much you owe to creditors), and then assigned you an APR according to that credit standing. Your credit standing is important because it can affect whether you can obtain loans and how much you will have to pay for those loans. Generally, the better your credit standing, the more likely you are to be offered better loan terms such as lower APRs.

[*For use by creditors not using a credit score:*
YOUR CREDIT TIER: On this loan, there were ___ tiers in which you could have been placed: [A, B, C, D]. The “__” tier has the lowest or best rate available, while the “__” tier has the highest or worst rate available. Based on your credit standing, you were placed in the ___ tier, which determined your APR that was disclosed to you.**]**

[*For use by creditors using a credit score:*
YOUR CREDIT SCORE: The APR that you received was based on your credit score. Your credit score is a number that reflects the information in your credit report which determines your credit standing. Your credit score can change over time, depending on how your credit standing changes, and can vary depending on the consumer reporting agency or model that was used to determine your score.

[Your most recent credit score that we used in determining your APR was: ____ out of a range of _____ to ____.**]** *or* **[**You did not have a credit score available due to a lack of credit**]** Generally, the higher the credit score, the more likely you are to be offered better loan terms. Having a low credit score or no credit score can lower your ability to obtain credit and/or increase the cost of credit. Credit scores can change over time so the score disclosed may be different than what you might obtain from a consumer reporting agency.**]**

[*For use by creditors who are only providing this form to consumers identified as having less favorable rates:*
HOW YOUR CREDIT STANDING COMPARES TO OTHERS: The APR that you received
☐ is higher ☐ is lower than most of our borrowers who obtained the same type of loan.]

YOU HAVE THE RIGHT TO OBTAIN YOUR CREDIT REPORT and to DISPUTE INACCURATE INFORMATION.
We obtained your credit report and/or credit score from: __________*insert name, address, website, and toll-free telephone number of CRA used by creditor* ___________________.

[*For use by creditors who are only providing this form to consumers identified as having less favorable rates:*
Higher APRs. If the APR that you received is higher than most of our borrowers, you have the right to obtain a copy of your credit report(s) from the consumer reporting agency that we used, without charge, for 60 days after you receive this notice. To obtain your credit report, contact the consumer reporting agency listed above.]

Free Annual Report. Under federal law, all consumers have the right to obtain a free copy of their credit report from each of the nationwide consumer reporting agencies once a year. To order your free credit report –

By telephone: Toll-Free: 1-877-322-8228

On the web: www.annualcreditreport.com

By mail: Mail your completed Annual Credit Report Request Form (which you can obtain from the Federal Trade Commission’s website at www.ftc.gov/bcp/conline/include/requestformfinal.pdf) to: Annual Credit Report Request Service, P.O. Box 105281, Atlanta, GA 30348-5281

Right to Dispute Inaccurate Information. You have the right to dispute any inaccurate information in your credit report. To do so, contact the consumer reporting agency listed above.

MORE INFORMATION: For more information about credit reports and your rights under federal law, visit the Federal Reserve Board’s website at www.federalreserve.gov, or the Federal Trade Commission’s website at www.ftc.gov, or visit the credit bureaus websites at www.myfico.com; www.experian.com; www.equifax.com, and www.transunion.com.

We believe this form(s) has several advantages over those in the proposal:

- It is a "one size fits all" form that can be used by all creditors in all circumstances, which will contribute to uniformity and simplicity across the industry.
- It can be used for consumers with no credit score.
- It still allows creditors the choice of providing it to all consumers, or only to consumers with less favorable rates.
- It is closer in format and content to the Notice to Home Loan Applicants, which most creditors are already familiar with using.
- It explains to the consumer why she is receiving the notice while providing all the information that the Agencies suggest.
- It utilizes information readily available to the creditors, without having to rely on outside sources for any of the disclosures.
- It does not utilize complicated graphs or national statistics.
- It uses a simple "majority" standard for informing the consumer that his rate is either "higher" or "lower" than most of the other consumers. This is a simple way of getting the Agencies' point across without complicating or confusing the matter with percentages or derogatory terms such as "less favorable".
- It is one page, which helps alleviate disclosure overload and keeps operational costs down.

We respectfully request the Agencies to consider this alternative form, or to otherwise simplify the forms.

Notice for Home Equity Loans under FACTA Section 212. For home equity loans subject to the Notice to Home Loan Applicant requirements, we would suggest that the Agencies consider ruling that a creditor complying with FACTA Section 212 is deemed to be compliant with Section 311.

EXCEPTIONS TO THE RULES – SECTION --.74

We have no particular comments to Section --.74.

RULES OF CONSTRUCTION – SECTION --.75

We have no objections to Section --.75 except for the last sentence in Section –.75(a) regarding Account Reviews. As noted earlier, Account Reviews will receive an Adverse Action notice. As such, this sentence is confusing and contradicts the statute. We ask that it be removed.

OTHER SPECIFIC REQUESTS FOR COMMENT

The following will address various other specific requests for comments:

- *The Agencies solicit comment on whether intermediaries who are not original creditors, such as brokers, should be required to provide risk-based pricing notices to consumers based upon* *the intermediaries' decisions regarding the shopping of consumer credit applications to certain creditors and, if so, how such a requirement could be structured.*

No, intermediaries should not be required to provide any notice. They are not creditors, and this would only complicate the rules. The rules very carefully state that only one notice need be given to the consumer, and that can be done by the creditor. There is no need to require intermediaries to provide notice.

- *The proposal provides that the person using the credit score proxy method must assume that a consumer for whom a credit score is not available receives credit on material terms that are materially less favorable than the most favorable credit terms offered to a substantial proportion of consumers, and provide a risk-based pricing notice to that consumer. The Agencies believe this assumption is appropriate because consumers for whom a credit score is not available are likely to receive less favorable terms than those offered to other consumers. The Agencies solicit comment on whether this assumption is appropriate. The Agencies also solicit comment on whether, if no credit score is available, there are other reasonable means by which a person may determine whether the consumer received materially less favorable credit terms.*

Whether a consumer who has no credit score receives terms less favorable will vary depending on financial institution. The rules should require the creditor to treat such consumers according to how the creditor normally places them. In other words, if the creditor treats the consumer as less favorable, then the consumer should receive the notice, and vice versa. We also note that our proposed form allows the creditor to simply state that no score was available, along with a statement that having no credit score can lower the ability to obtain credit and may increase the cost of credit. We also note that, if the consumer is turned down for credit because no score is available, then the Adverse Action notice will be sent, thus falling under the exception wherein no risk-based pricing notice need be given.

- *The Agencies solicit comment on whether the tiered pricing method should take into account the percentage of consumers placed in each tier and how that could be accomplished without creating undue burdens or introducing excessive complexity to the tiered pricing method.*

No, the tiered pricing method should not take into account the percentage of consumers placed in each tier. This cannot be accomplished without creating undue burdens or introducing excessive complexity. The Agencies are correct in their attempts to simplify these rules, and they should stay with this strategy. We also note that our proposed alternative notice simplifies this even further, by simply making a factual statement as to which tier the consumer was placed. This requires no calculations, no percentages, and no recalculations, yet provides the consumer very useful information.

- *The Agencies solicit comment on whether and how the tiered pricing method could be subject to such circumvention by creditors and whether the proposed rules should be modified to prevent circumvention.*

We do not believe that creditors will try to circumvent the tiered pricing method, because it is not in their best interests to do so. Pricing systems are complex and crucial to a financial institution's profit margins and safety & soundness. We suppose, however, that an unscrupulous creditor could choose to not send notices to a certain tier. That, however, does nothing particularly beneficial for the financial institution. There's really no gain in it and therefore no incentive to do it. It is more likely that a creditor would inadvertently calculate which tiers are to receive notices inaccurately, due to the fairly complex formula for creditors using more than 5 tiers, as well as the different rules for the different number of tiers and for credit cards. We would suggest simplifying the rules. For example, our alternative notice form takes the guess work, and calculations, out of the equation, because it would be given to all consumers, not just less favorable consumers. We also limit it to a simple statement of fact as to which tier the consumer was assigned to. There is simply no need to circumvent a simple statement of fact.

- *The Agencies solicit comment on whether it is appropriate to require disclosure of the 60-day period in the notice.*

We are not convinced that Congress meant to create a new, separate right to obtain a free credit report for the "less favorable" consumers. The statute does not create a separate, substantive provision providing this right. It is only included in the list of items that must be disclosed to the consumer. Congress could have easily carved out a separate provision specifically stating that consumers who receive terms materially less favorable have an independent right to obtain a free credit report. Otherwise, the free right referenced in the statute could easily be referring to the annual credit report. Moreover, allowing a separate right would allow a consumer to receive many free credit reports at virtually the same time, and throughout the year. This is because anytime the "less favorable" consumer receives credit, he will be entitled to another report, even if he just received credit, and a report, a week earlier. This can be the case for the same consumer for years, or even decades, if his circumstances or repayment habits continually keep him in the "less favorable" categories. We find it hard to believe that Congress intended this result. Credit bureaus would be giving away credit reports right and left. This will increase costs to credit bureaus, who will in turn pass those costs along to the creditors, who will in turn pass those costs along to the consumer. We believe that the annual credit report, and the free credit report if credit is denied, is sufficient to provide the consumer with enough information to confirm the accuracy of the report's information, and to help a consumer rehabilitate her credit standing. If the consumer would like to obtain reports more often than that, she can pay the very nominal fee charged by the consumer reporting agencies to obtain the report.

However, if the Agencies insist that it was Congress' intent to create a new right, then yes, it would be appropriate to provide the 60-day right in the Notice.

- *The Agencies request comment on whether requiring disclosure of either the distribution of credit scores or how a consumer's credit score compares to the scores of other consumers will be helpful to consumers, and whether such a requirement will be unduly burdensome to industry or costly to implement. The Agencies also solicit comment as to whether the bar graph form of the disclosure contained in this proposal is the simplest and most useful form of the disclosure for consumers, or whether there are different graphical or other means that would provide greater consumer benefit. The Agencies also solicit comment on whether the rule should set forth other examples of specific methods of presenting the score distribution or score comparison, such as a narrative, a statement of the midpoint of scores, or different forms of graphical presentation.*

We do not believe that requiring disclosure of either the distribution of credit scores or how a consumer's credit score compares to the scores of others will be helpful to the consumer. While it seems reasonable to provide a reference point for the consumer to compare their scores, the benefit is very marginal. This is especially so in light of the burden to creditors. There are several factors involved here. First, as the Agencies know, there is no single credit score or scoring method that is universal to all creditors, or credit bureaus, nationwide, and there are different ways and methods of summarizing credit scores. For example, according to Fair Isaacs, there are actually 3 FICO scores. And according to its website, the "median FICO score is 723". However, if one visits Experian's website, it states that "The U.S. average credit score is 692." So, how is a creditor to categorize or generalize these numbers for a consumer? Should they be using the median? The average? Something else? Should they be getting this information from Fair Isaacs? Or Experian? Someone else? And how is a consumer to reconcile different numbers they receive from different creditors who use different models? This issue is also illustrated by use of the Agencies' Model Form H.3. That form's bar graph has 6 bars representing scores ranging from 0-600. We do not know if this is merely an example using fictitious numbers or is based on real numbers. However, on Fair Isaacs' website, in an article entitled, "Understanding your FICO Score", there appears a bar graph called, "National Distribution of FICO Scores". It shows 8 bars representing scores ranging from 300 to 850, which is very different than the Agencies' example. Fair Isaacs does not, however, provide a date of reference for those statistics or any other explanation of how the statistics in the graph were determined. We have no way of knowing whether the graph is current, and how often it might be updated. It is also limited to FICO scores only, which will be of no help to creditors and consumers whose decisioning was based on a score other than a FICO score.

We also once again note that creditors' decisioning is not based on national statistics. Rates and terms are determined locally. Even if we could somehow break down a credit score to a single, nationwide denominator, that bare component would probably have no influence or impact whatsoever on a creditor's decisions. Therefore, at best it would be of no help to the consumer, and at worse could mislead or confuse the consumer.

We are also not convinced that consumers particularly want to be compared to others or care how they do compare to others. Most consumers are more concerned about which rate *they* will qualify for, not which rate their neighbor will qualify for. They want to know what rate they received and why. Creditors can explain this – they can tell the consumer that their score was 690, which qualified them for a "B" tier APR. They might explain that, while the consumer's score is good, perhaps they had some missed payments or some relatively high credit balances that kept their score from being in the "A" tier. But a creditor is in no position to explain to a consumer what a "median" credit score is and how or why Fair Isaacs advertises that the median FICO score is 723, or why or how Experian has determined that the U.S. average credit score is 692, and why they do it differently.

We also note that providing a distribution or comparison of scores is not required under the Notice to Home Loan Applicants under FACTA section 212. We see no reason to require it under Section 311.

It is our position that consumers, and creditors, are better served to keep the disclosures factual and simple. This is why we have proposed to simply state the credit score and the range of scores of the model used, and/or the credit tier in which the consumer was placed and the number of tiers available. This information, together with the name of the credit bureau from which the consumer's credit report was obtained, arms the consumer with enough ammunition to investigate their credit standing and to learn more about how credit standing affects their loan terms.

We also highly recommend that the Model Forms include not only the government websites, but the websites of all three "Big 3" credit bureaus (or at least we ask the Agencies to allow this as an option to creditors without losing the safe harbor of the Model Forms). The credit bureaus' websites have a wealth of information available to consumers. They explain what credit scores are and how they are calculated; they provide some reference points for consumers if they so choose to compare themselves with others; they provide tips on improving their credit standing; they provide ways of monitoring their credit and guarding against Identity Theft; they explain how to obtain credit reports; and they explain how to dispute inaccurate information. Yet most consumers do not know these websites exist or that credit bureaus can work *for* them. We believe that if the Model Forms accomplish nothing other than making a consumer curious enough to visit one of the credit bureaus' websites, it will have gone a very long way to educating consumers on all matters relating to credit standing and credit reports. Credit bureaus are in a much better position to educate consumers on how credit standing affects loan terms than individual creditors and the federal government.

- *The Agencies solicit comment on whether the disclosures of the score creation date and the source of the score will be beneficial to consumers or will impose undue burdens on industry.*

Adding a score creation date will impose undue burdens on the industry. From a technology and operational standpoint, programming and populating such a date would be very expensive as it would be a consumer-specific field that would need to be filled in every time, rather than simply hard-coded text that will never change.

It is also not clear which date would be used – is this the date that the credit bureau created the score, or the date the creditor obtained the score from the bureau? Credit scores change frequently and therefore the dates are fluid. Creditors may or may not know when the credit bureaus created the score; they pay for the most recent, current score at the time they request the score – they are not concerned with the exact date on which it was created.

Such a creation date is also not required for the Notice to Home Loan Applicants, and we see no reason to require it here. A consumer will know when he applied for credit, and will know when he receives the notice, and he will know when he requests his own score from the credit bureau. These approximate timeframes are sufficient for the purposes here – for consumers to be alerted to their current credit standing, and to encourage them to confirm and/or investigate that standing. We suggest that a good compromise is to use the language currently used for the Notice to Home Loan Applicants: "the most recent score that we obtained from the consumer reporting agency . . . ". This assures the consumer that the score is recent or current, but does not put the burden on creditors to state, and program, an exact date.

We have no objection to providing the source of the credit score, assuming the Agencies are referring to the credit bureau from which it was obtained. In fact, we suggest providing the contact information in our alternative form in all cases. This is an easy disclosure to make, because for most creditors it can be hard-coded without fields to map and program; it will be static text that does not change.

- *The Agencies solicit comment on whether requiring disclosure of the key factors in this notice will be helpful to consumers or will impose undue burdens on industry. The Agencies also solicit comment on whether including the four key factors in this notice will simplify compliance with the rules by making the content of this notice more similar to the content of the notice for credit secured by residential real property.*

We agree with the Agencies that the key factors should not be part of the Section 311 requirements, for all of the reasons that the Agencies set out in the proposal. We also note that the key factors requirement was one of the most complicated aspects of the Notice to Home Loan Applicant rules, both in terms of understanding the requirement, and implementing it. It required much coordination with the credit bureaus and is very burdensome and expensive from a programming and populating standpoint. It also tends to be misleading in that the Section 212 requirement is to state, "the key factors that adversely affected your credit score". This implies that the score given is somehow "bad". But key factors are not inherently good or bad, and they can benefit the credit score just as easily as they can harm the credit score. There was also much confusion regarding the requirements of limiting the number of key factors listed to four, and how to handle "inquiries" (e.g., how to choose which 4 to report, whether or not to list inquiries, and checking a box that states the number of inquiries was also a key factor). We also do not believe that adding key factors will simplify compliance by making the risk-based pricing notice more similar to the Home Loan Applicant disclosure. There is not enough similarity between the two disclosures to make a difference. We ask the Agencies to exclude the key factors as a requirement under Section 311.

EFFECTIVE DATE

We did not see a proposed effective date in the rulemaking. We would ask that at least 12 months be allowed to implement this rule. Significant programming changes will need to be made to determine the "less favorable" cut-offs and to load, map, and populate the forms. Creditors will be at the mercy of their data processors, who can often take six months to a year to make such changes. The creditors will also need to have a legal review of the requirements and training of staff to implement these new requirements.

CONCLUSION

We believe that the best way to implement the statute's objectives is to use one universal form that can be given to all consumers, whether the creditor uses credit scores or just credit tiers. The form should simply and factually state the credit score and the range of the model used, or the number of credit tiers that were available and the tier in which the consumer was placed. That, together with the explanation of the right to obtain the consumer's credit report and to dispute inaccurate information, provides consumers with all the information they need in order to understand how or why they received the APR that they did, and how to obtain credit reports and to investigate their credit standing.

Thank you for your consideration.

Sincerely,

/s/
Catherine Klimek
Counsel
Securian Financial Group
400 Robert Street North
St. Paul, MN 55101

Exhibit A-1

RISK-BASED PRICING DISCLOSURE
[No 60-day right]

We use "risk-based pricing" to determine the Annual Percentage Rate (APR) that you received on this loan. This means that we determined your credit standing based on information obtained from a consumer report (such as whether you make your payments on time and how much you owe to creditors), and then we assigned you an APR according to that credit standing. Your credit standing is important because it can affect whether you can obtain loans and how much you will have to pay for those loans. Generally, the better your credit standing, the more likely you are to be offered better loan terms such as lower APRs.

[*For use by creditors not using a credit score:*
YOUR CREDIT TIER: On this loan, there were __*(number)*_ tiers in which you could have been placed: [A, B, C, D]. The "__" tier has the lowest or best rate available, while the "__" tier has the highest or worst rate available. Based on your credit standing, you were placed in the ___ tier, which determined your APR that was disclosed to you.**]**

[*For use by creditors using a credit score:*
YOUR CREDIT SCORE: The APR that you received was based on your credit score. Your credit score is a number that reflects the information in your credit report which determines your credit standing. Your credit score can change over time, depending on how your credit standing changes, and can vary depending on the consumer reporting agency or model that was used to determine your score.

(Your most recent credit score that we used in determining your APR was: ____ out of a range of _____ (lowest) to ____ (highest).) *or* (You did not have a credit score available due to a lack of credit.) Generally, the higher the credit score, the more likely you are to be offered better loan terms. Having a low credit score or no credit score can lower your ability to obtain credit and/or increase the cost of credit. Credit scores can change over time so the score disclosed may be different than what you might obtain from a consumer reporting agency.**]**

YOU HAVE THE RIGHT TO OBTAIN YOUR CREDIT REPORT and to DISPUTE INACCURATE INFORMATION.
We obtained your credit report and/or credit score from: __________*insert name, address, website, and toll-free telephone number of CRA used by creditor* ___________________. The consumer reporting agency played no part in determining the rate you received and is unable to supply you with specific reasons why you received that rate.

Free Annual Report. Under federal law, all consumers have the right to obtain a free copy of their credit report from each of the nationwide consumer reporting agencies once a year. To order your free credit report –

By telephone: Toll-Free: 1-877-322-8228

On the web: www.annualcreditreport.com

By mail: Mail your completed Annual Credit Report Request Form (which you can obtain from the Federal Trade Commission's website at www.ftc.gov/bcp/conline/include/requestformfinal.pdf) to: Annual Credit Report Request Service, P.O. Box 105281, Atlanta, GA 30348-5281

Right to Dispute Inaccurate Information. You have the right to dispute any inaccurate information in your credit report. To do so, contact the consumer reporting agency listed above.

MORE INFORMATION: For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's website at www.federalreserve.gov, or the Federal Trade Commission's website at www.ftc.gov, or visit the credit bureaus' websites at www.myfico.com; www.experian.com; www.equifax.com, and www.transunion.com.

Exhibit A-2

RISK-BASED PRICING DISCLOSURE
[60-Day Right]

We use "risk-based pricing" to determine the Annual Percentage Rate (APR) that you received on this loan. This means that we determined your credit standing based on information obtained from a consumer report (such as whether you make your payments on time and how much you owe to creditors), and then assigned you an APR according to that credit standing. Your credit standing is important because it can affect whether you can obtain loans and how much you will have to pay for those loans. Generally, the better your credit standing, the more likely you are to be offered better loan terms such as lower APRs.

[*For use by creditors not using a credit score:*
YOUR CREDIT TIER: On this loan, there were ___ tiers in which you could have been placed: [A, B, C, D]. The "__" tier has the lowest or best rate available, while the "__" tier has the highest or worst rate available. Based on your credit standing, you were placed in the ___ tier, which determined the APR that was disclosed to you.**]**

[*For use by creditors using a credit score:*
YOUR CREDIT SCORE: The APR that you received was based on your credit score. Your credit score is a number that reflects the information in your credit report which determines your credit standing. Your credit score can change over time, depending on how your credit standing changes, and can vary depending on the consumer reporting agency or model that was used to determine your score.

[Your most recent credit score that we used in determining your APR was: ____ out of a range of _____ to ____.**]** *or* **[**You did not have a credit score available due to a lack of credit**]** Generally, the higher the credit score, the more likely you are to be offered better loan terms. Having a low credit score or no credit score can lower your ability to obtain credit and/or increase the cost of credit. Credit scores can change over time so the score disclosed may be different than what you might obtain from a consumer reporting agency.**]**

[*For use by creditors who are only providing this form to consumers identified as having less favorable rates:*
HOW YOUR CREDIT STANDING COMPARES TO OTHERS: The APR that you received
☐ is higher ☐ is lower than most of our borrowers who obtained the same type of loan.]

YOU HAVE THE RIGHT TO OBTAIN YOUR CREDIT REPORT and to DISPUTE INACCURATE INFORMATION.
We obtained your credit report and/or credit score from: __________*insert name, address, website, and toll-free telephone number of CRA used by creditor* ___________________.

[*For use by creditors who are only providing this form to consumers identified as having less favorable rates:*
Higher APRs. If the APR that you received is higher than most of our borrowers, you have the right to obtain a copy of your credit report(s) from the consumer reporting agency that we used, without charge, for 60 days after you receive this notice. To obtain your credit report, contact the consumer reporting agency listed above.]

Free Annual Report. Under federal law, all consumers have the right to obtain a free copy of their credit report from each of the nationwide consumer reporting agencies once a year. To order your free credit report –

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On the web: www.annualcreditreport.com

By mail: Mail your completed Annual Credit Report Request Form (which you can obtain from the Federal Trade Commission's website at www.ftc.gov/bcp/conline/include/requestformfinal.pdf) to: Annual Credit Report Request Service, P.O. Box 105281, Atlanta, GA 30348-5281

Right to Dispute Inaccurate Information. You have the right to dispute any inaccurate information in your credit report. To do so, contact the consumer reporting agency listed above.

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