Ford Motor Credit Company LLC

David L. Korman
Executive Vice President & General Counsel

The American Road
Dearborn, Michigan 48126 USA
(313) 594-7743 – phone
(313) 248-8380 – fax

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Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex M)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: FACT Act Risk-Based Pricing Rule [Regulation V; Docket No. R-1316 / RIN 3084-AA94; Project No. R411009]

Ladies and Gentlemen:

On behalf of Ford Motor Credit Company LLC ("Ford Credit"), I would like to thank you for the opportunity to comment on the proposed FACT Act Risk-Based Pricing Rule published in the *Federal Register* on May 19, 2008 ("Proposed Rule") regarding risk-based pricing notices under §615(h) of the Fair Credit Reporting Act ("FCRA"). Ford Credit is one of the world's largest automotive finance companies and has supported the sale of Ford products since 1959. Ford Credit is an indirect, wholly-owned subsidiary of Ford Motor Company. It provides automotive financing for Ford, Lincoln, Mercury, Jaguar, Land Rover, Mazda and Volvo dealers and customers. More information can be found at www.fordcredit.com and at Ford Credit's Investor Center, www.fordcredit.com/investorcenter. Ford Credit is a member of the American Financial Services Association ("AFSA"), which has also submitted a separate comment letter to the Federal Trade Commission and the Federal Reserve Board (the "Agencies") regarding the Proposed Rule. Ford Credit concurs with the comments made by AFSA and would like to take the opportunity to provide the following additional comments to the Agencies.

Summary

It is Ford Credit's view that the Proposed Rule provides helpful guidance on a difficult law. Although the Proposed Rule does not directly impact assignees of credit obligations such as Ford Credit, its potential negative impact on the automotive finance industry compels our comment on key issues.

Ford Credit's comments are designed to enhance the Proposed Rule to provide meaningful disclosure while imposing realistic compliance burdens. As will be discussed, much of the compliance uncertainties inherent in the Proposed Rule could be reduced or eliminated if the Agencies would: *(1) allow a notice at application, and (2) periodically publish a credit score cutoff set by the Agencies in consultation with the major credit score providers to be used to determine who should receive the credit score proxy notices*. In addition:

- The Proposed Rule should apply only to loans and financing transactions with consumers. The Proposed Rule should not cover leases.

- The APR is appropriate as the operative "material term."

- The credit score proxy method would be more effective if the notice was given to a minority of customers – not the majority as proposed by the Agencies.

- The Agencies' position that one notice per transaction be *given by the creditor to whom the obligation is initially payable* is absolutely appropriate.

- The proposed exceptions are appropriate. The credit score disclosure exception should allow for a statement of the percentage of US consumers with a credit score above the cutoff as an additional alternative to the comparator chart.

Ford Credit makes several suggestions to the model forms to improve their functionality as further discussed below.

Scope and Coverage

Ford Credit supports the Proposed Rule's application only to credit that is primarily for personal, family or household purposes. This position is supported by the language in §615(h)(2) of FCRA referring to "consumer." Furthermore, the Agencies' position is an acknowledgement of the sophisticated nature of business use customers. Credit reports and credit analyses on businesses are generally different than those involved with the typical consumer transaction. Creditors often use significantly different credit reporting sources than those used for consumers. Risk-based pricing notices would not be meaningful in the business use context.

Ford Credit supports clarifying that the Proposed Rule applies only to credit transactions and not to motor vehicle lease transactions.

Risk Based Pricing Notice - General Rule and Methods

Use of APR as the "material term." Ford Credit agrees with the Agencies' view that the Annual Percentage Rate ("APR") is the most useful and meaningful factor. In the automotive finance industry, consumers are particularly sensitive to the APR. As a result, APRs are frequently highlighted in advertising. APRs are the primary credit terms impacted by risk-based pricing in the automotive finance industry. Typical automotive finance transactions do not contain other terms dependent on risk-based pricing. Prepayment penalties are virtually non-existent in the consumer automotive transactions with which Ford Credit is familiar, and therefore, not dependent on risk based pricing.

Credit score proxy method. Ford Credit supports the "credit score proxy method" as a way in which creditors may comply with the general rule while avoiding the operational difficulties associated with that rule. Ford Credit notes, however, that the Proposed Rule requires that a creditor determine the score that represents the point at which 40 percent of the consumers have a higher credit score. The remaining 60 percent are to receive the risk-based pricing notice. In our experience, the lowest finance rates obtained by customers through dealers are generally obtained by a large majority of the applicants. A rule in which the bottom 40 percent received the risk-based notice would be more in line with our experience.

The operational complexities inherent in the credit score proxy method could be greatly simplified if creditors had the alternative of using a credit score cut off published by a third party provider. Instead of developing its own distribution of credit scores, the creditor could comply by providing notice to the customers whose credit score was under a score published by a major credit score provider. This idea is similar to the Agencies proposal for new creditors and products in which a secondary source for the cutoff score is used. It is acknowledged the credit characteristics of a particular creditor's market could impact the number of customers receiving such notice; such notice would still work to notify those consumers in the lower credit score range that their credit history impacts their credit terms.

Tiered pricing method. Ford Credit also agrees with this method as an alternative to the general rule. Ford Credit does not share the Agencies' concerns, however, that creditors would manipulate tiers and pricing to reduce the amount of notices delivered. Pricing is extremely complicated. Tier/pricing manipulation simply to avoid providing a notice is impractical and illogical for large creditors. The number of tiers and the distribution of customers across the tiers are likely integrated into marketing, credit risk analysis, management, and investor reporting systems. Such functions are core to the management and stability of the creditor. Changes involve significant effort. However, in addition to the cutoffs in the Proposed Rule, Ford Credit supports allowing notice only to tiers which contain the lowest 40 percent of customers.

One Notice per Credit Extension Provided by Original Creditor

Ford Credit supports the Agencies' position that FCRA requires only one notice per transaction to be provided by the original creditor to whom the obligation is initially payable. This is how information can be most effectively delivered to provide education to customers. Ford Credit purchases retail installment contracts from motor vehicle dealers. These contracts are structured so the original creditor is the motor vehicle dealer. Virtually all dealers from which Ford Credit purchases contracts have relationships with other finance sources which also purchase contracts from those dealers. Although each finance source has certain minimum requirements, dealers negotiate with customers and set the terms of the contracts. As the original creditors, they are the appropriate source of the notices.

The Agencies' position is further supported by two practices prevalent in the automotive finance industry. First, multiple potential assignees may have seen the proposed transaction and any rule involving these potential assignees would result in multiple and confusing notices. Ford Credit is only one of a number of potential assignees of the contract a dealer may contact during the financing process. There are various services that provide computer based systems to motor vehicle dealers to manage multiple finance sources simultaneously for a single deal. One leading service, RouteOne, makes it possible for a dealer to electronically communicate with any number of over 260 finance sources. Several finance sources may see the original set of terms that are eventually significantly modified and then purchased by another finance source. In light of the potential for numerous sources to have examined a proposed transaction that the dealer negotiated, the Agencies' concerns about multiple notices and the resulting focus on the original creditor as the appropriate source for a single notice are shared by Ford Credit.

The second factor supporting the Agencies focus on the original creditor is the practice of "spot delivering." Although motor vehicle dealers usually have the opportunity to present a proposed transaction to one or more finance sources prior to the signing of the contract, it is common for dealers to enter into the retail installment sale contract with the customer before the ultimate purchaser of the contract is aware the dealer and the customer are contemplating a transaction. The fact that purchasers of retail installment contracts are often unaware of a completed transaction until requested to purchase the executed contract, illustrates the impracticality of any change to the Proposed Rule which would include secondary purchasers of completed credit transactions under its coverage.

Ford Credit also supports the Agencies' position that consumers should receive only one notice per application for, or extension of, credit. A single notice rule avoids the confusion and potentially conflicting information multiple notices would create. With respect to a single credit transaction, multiple notices would result in repeated requests to credit agencies for credit reports. A single notice not only reduces costs, but more importantly, it fulfills every purpose of FCRA by providing all necessary information to customers to alert them that their credit score can impact their cost of credit.

The Agencies should clarify that in a situation with more than one applicant, the only notice required is to be given to the primary applicant if that person can be determined. Such a position is consistent with notices required under ECOA Regulation B.

Timing of Notice –Notices at Time of Application

Ford Credit recommends that the Agencies allow creditors the option to give a notice at the time of application. Ford Credit respectfully requests the Agencies reconsider their opinion on this issue. FCRA, at §615(h)(2), provides the notice may be given *"at the time of application for...credit."* This provision is stated in the alternative and is distinct from the language immediately following which allows the notice to be provided at the "time of communication of an approval of an application for...credit." Any such notice would have to be "generic." The Agencies expressed concern that a generic notice may not be as effective as a notice given after a decision on the application: it should be pointed out, however, such a notice delivered at the time of application for credit would be delivered at the precise time it could be useful.

The consumer financial services landscape is populated with meaningful and effective notices that highlight important aspects of transactions to customers contemplating applying for and entering into consumer credit transactions. A notice provided in conjunction with the application can highlight key information to consumers and alert them to the fact that the terms they may be offered will be based on their credit scores and information in their credit reports. Such a notice delivered at this point in the process will provide the information that would allow customers to investigate the information in their credit reports prior to continuing the application process or otherwise shopping for credit. Furthermore, a notice provided at or before the completion of the credit application would still be effective if it referred to the availability of a free annual report from nationwide consumer reporting agencies.

Exceptions to Notice

Ford Credit supports the Agencies' choice of exceptions. These exceptions effectively address the relevant situations in which the notice should not be required; however, Ford Credit respectfully submits the following suggestions:

Pre-Screened Exception. Ford Credit agrees with the Agencies' exclusion of pre-screened credit offerings from the notice requirement.

Credit Score Disclosure Exception. Several improvements could be considered in connection with credit score disclosure exception provisions.

Under the credit score exception, the creditor is required to provide either a graph showing the distribution of the credit score or a narrative describing the percentage of U.S. consumers that the customer's score exceeds. Ford Credit respectfully submits there exists another possible option that does not use the customer's specific score which would be equally useful. For example, a statement such as *"60% of U.S. consumers have a credit score above 699"* is precise, informative, easy to maintain and update (two year cycle suggested), and provides meaningful perspective on the customer's relative credit score.

Likewise, *the source* of the score is not particularly useful and should not be required to be provided. The fact the score exists and a statement (as suggested above) indicating its general level in comparison to other scores should be sufficient to alert customers to investigate further if their score's level does not reflect their expectations. Given the proliferation of ads relating to credit monitoring and the importance of credit scores, most consumers are developing a general understanding of the importance of their credit history. A score that does not confirm their expectations could be investigated by checking their history with any of the major credit reporting agencies.

Whether the creditor uses a graph or a descriptive sentence, there still remain several issues relating to obtaining the data to populate this field. Ford Credit respectfully requests the Agencies provide guidance to the score providers and creditors concerning the following questions:

- How often should the distribution information be updated? It is our view that every two years would be adequate.
- Should the score providers be required to update in unison (e.g. every odd year January 1?)
- How much time would creditors have to update their forms with the new data?
- How precise must the data be? Can it be aggregated across score providers? Should a general reasonable standard be sufficient?
- It should be made clear that good faith reliance by the creditors on information provided by the credit score providers is compliant.

Alternatively, many of the above listed difficulties could be eliminated with the periodic publication by the Agencies of score distributions for use in compliance with the FCRA.

Showing the high/low possible range of the credit scores is not useful information, and in fact, it is redundant to the graphical and other means of comparison of the credit score. It should be deleted. Ford Credit supports the Agencies' exclusion of the key factors negatively impacting the credit score in the non residential real estate exception notices. There is no meaningful benefit that would justify the cost and difficulty in providing these factors in automotive finance transactions.

Additional Exceptions. Ford Credit supports an additional exception for non-residential mortgage transactions with amounts financed in excess of $50,000. Customers in these transactions are most probably already aware of the impact of their credit history and credit score on their cost of credit; providing these notices would be of little marginal value.

Content of Notices and Model Forms

Ford Credit applauds the Agencies for their efforts in proposing model forms that are clear and readable. Ford Credit respectfully requests, however, the Agencies consider certain clarifications that would add to the utility of the forms:

- Recipients of the notice may not understand why the notice is being presented to them. It could give the impression that there is a fundamental problem with the transaction or their credit. Ford Credit encourages the inclusion of a brief statement indicating *the reason* they are receiving the form. Such a statement, in the case of the risk-based notices, would indicate that the form is required to be provided and, in the case of the credit score exception notices, would state it is being provided voluntarily by the creditor.

- The language relating to "*How did we use your credit score*" contained in the credit score exception models mentions "whether you can get a loan." Given that this form will only be provided when the customer is already approved for a credit transaction, the language is meaningless.

- It should be made clear in the "How did we use your credit score" section that the credit score is likely just one of several factors that influence customers' cost of credit. For example, this issue could be clarified by a statement such as: "Other factors such as your income, the amount of credit, the repayment term and the value of any collateral may have also affected the cost and terms of credit."

- Consumers should be informed that the credit reporting agencies were not involved in the granting of credit and will not be able to provide any information relating to the transaction.

- The requirement to include the date the credit score was created could lead to overly technical arguments and disputes relating to compliance. Ford Credit respectfully suggests flexibility be given to use the date of the transaction *or* the date the form is presented to the customer.

- The preamble to the model forms should make clear that acceptable modifications to the forms include:

    - Eliminating empty lines and extra spaces between sentences within the same section.
    - Allowing for pre-printed lists of the sources of credit reports in a "check-the-box" format in the credit score exception notices. Likewise, there should be no restrictions in the risk-based notices for listing the contact information for multiple consumer reporting agencies so long as the customer is given the name of the one that provided the credit report.
    - When identifying the source of the credit score (if the Agencies retain this requirement), the use of trade names and commonly used brand names so that the customer can reasonably identify the source of the score should be allowed. This will reduce the likelihood of disputes over any failure to use the exact legal name.

- o Allowing for inclusion of the name of the customer, transaction identification numbers and other forms of information that will assist in keeping the form connected to the correct transaction.
- o Allowing for substitution of "credit" and "creditor" for "loan" and "lender."

Thank you for the opportunity to comment upon these important issues. Any questions you may have should be addressed to either Robert Aitken at (313) 845-3640 (raitken@ford.com), Jim Swartz at (313) 337-9732 (jswartz3@ford.com) or me.

Very truly yours,

David L. Korman
Executive Vice President & General Counsel