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Via E-mail: regs.comments@federalreserve.gov

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

Re: Regulation V; Docket No. R-1316

Dear Ms. Johnson:

This letter is submitted to the Board of Governors of the Federal Reserve System (the "Board") on behalf of Compass Bank, an Alabama banking corporation ("Compass"), in response to the Board's request for comment on the proposed regulations which implement Section 311 of the Fair and Accurate Credit Transactions Act ("FACT Act"). The proposed regulations are referred to herein as the "Proposal."

Compass is a Sunbelt-based, regional commercial financial institution owned by Compass Bancshares, Inc., a bank holding company that is wholly owned by BBVA (NYSE: BBV) (MAD: BBVA). Compass has approximately $60 billion in assets and, through its operating companies, maintains more than 580 branches in Alabama, Arizona, Colorado, Florida, New Mexico, and Texas. Compass is among the top 25 largest banks in the U.S. based on deposit market share.

Compass appreciates the Board's time and effort in preparing the Proposal and hopes that these comments will be helpful to the Board in its effort to promulgate regulations to implement and further clarify Section 311 of the FACT Act.

Methods for Identifying Consumers Who Must Receive a Risk-Based Pricing Notice

The Proposal generally requires a person subject to the Proposal (referred to herein as 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 from or through that creditor to a substantial proportion of consumers. The Proposal also provides for two alternative means by which creditors can determine when to provide the risk-based pricing notice.

A creditor may determine, on a case-by-case basis, whether a consumer has received material terms that are materially less favorable than other consumers have received from or through the creditor by comparing the material terms offered to the consumer to the material terms offered to other consumers in similar transactions. The Proposal provides that, under the general rule, the creditor would first need to identify the appropriate subset of its current or past consumers to compare to any given consumer and that each consumer would need to be compared to an adequate sample of consumers who have engaged in similar transactions. The comparison also would need to be tailored to disregard underwriting criteria that do not depend upon consumer report information. The comparison would have to account for changes in the creditor's customer base, product offerings, or underwriting criteria over time.

The Board recognizes that it may not be feasible or practical for many creditors to make the direct comparisons required by the general rule. The Board noted that many creditors are likely to encounter operational difficulties in determining whether a consumer report played a role in a particular pricing decision that was based on multiple variables and in identifying an appropriate benchmark with which to compare a given consumer's material terms. As an alternative to making a direct, case-by-case comparison, the Board sets forth two other methods, the "credit score proxy method" and the "tiered pricing method," that creditors can use to identify which consumers must receive notices for a given class of products.

We appreciate the Board's recognition that it may not be operationally feasible or practical to make direct comparisons. The Board noted that it provided flexibility in the interpretation and implementation of the direct comparison method by failing to impose a quantitative standard or methodology for determining whether a consumer is receiving materially less favorable terms. However, this flexibility makes it virtually impossible for a creditor to use the direct comparison method and have any certainty as to whether the method being used would pass regulatory review. Because of the lack of an objective standard, the majority of creditors will most likely use one of the alternative methodologies for determining which consumers must receive the risk-based pricing notice.

Credit-Proxy Method

The credit-proxy method provides that a creditor may comply with the risk-based pricing notice by determining the credit score that represents the point at which approximately 40 percent of its consumers have higher credit scores and approximately 60 percent have lower credit scores and then providing a risk-based pricing notice to each consumer with a credit score below the cutoff score. This method would result in 60 percent of consumers in a loan portfolio receiving a risk-based pricing notice. While we acknowledge that providing a numerical standard for calculating a cutoff score will provide creditors with some certainty in its application, providing risk-based pricing notices to 60 percent of a creditor's portfolio is too high and too burdensome and is not meaningful to the consumer.

As recognized by the Board, in applying this method, there may be instances where a consumer receives a risk-based pricing notice but does not receive material terms that are materially less favorable than the most favorable terms generally available to a substantial proportion of consumers. In fact, setting the cutoff score at 60 percent will guarantee that in many cases, a significant number of consumers will receive a risk-based pricing notice but do not receive material terms that are materially less favorable than the most favorable terms generally available to a substantial proportion of consumers. Providing notices to as much as 60 percent of a customer base will result in customer confusion. Additionally, for creditors that maintain strict underwriting standards, the proposed cutoff score could result in a significant number of customers with "prime" or "low credit risk" credit scores receiving the risk-based notice. Again, while we agree that the credit-proxy method is a viable alternative methodology, we encourage the Board to set the threshold at no more than 40 percent – and preferable at 20 percent – rather than 60 percent. In the alternative, the Board could propose objective criteria and guidelines that would allow creditors to determine a cutoff score based on its particular customer base and the product.

Model Form

As stated above, under the credit proxy methodology, there will be consumers that receive a risk-based pricing notice but receive favorable pricing. This also will be the case for the tiered-pricing method. For these consumers in particular, the risk-based pricing notice could cause confusion. A change in the model form could help eliminate some of the potential confusion. The model form contains the following statement: "The terms offered to you may be less favorable than the terms offered to consumers who have better credit histories." This language is not required by Section 311 of the FACT Act but was added by the Board under the Proposal. The Board indicates that such a statement could encourage consumers to check their consumer reports for inaccuracies. The model form also contains a statement informing consumers that it is a good idea to check your credit report to make sure the information it contains is accurate. This language is sufficient to encourage consumers to check their credit reports without creating customer confusion. We suggest removing the statement quoted above altogether or having a more generic statement, such as: "Consumers having better credit histories generally are offered more favorable credit terms."

Timing of the Notice

The Proposal implements Section 311 of the FACT Act, which provides that if any person uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit 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, based in whole or in part on a consumer report, the person shall provide an oral, written, or electronic notice to the consumer in the form and manner required by regulations prescribed in accordance with this subsection. Section 311 goes on to provide that the risk-based pricing notice required under Section 311 may be provided at the time of an application for, or a grant, extension, or other provision of, credit or the time of communication of an approval of an application for, or grant, extension, or other provision of, credit, except as provided in the regulations prescribed by the Board. Pursuant to Section 311, the Board is to prescribe rules that specifically address the timing of the risk-based pricing notice, including the circumstances under which the notice must be provided after the terms offered to the consumer were set based on information from a consumer report. It is clear from the plain language of the statute that there are instances where it would be appropriate to provide the risk-based pricing notice at the time of an application for credit. The Board, however, concluded that the notice generally should be provided no earlier than the time when approval is communicated to the consumer and did not allow for any instances where the risk-based pricing notice may be provided at the time of application. One of the reasons the Board gave for failing to provide for instances where the risk-based pricing notice could be given at the time of application was the belief that the notice is likely to have the most utility if it is provided early enough in a transaction that it encourages a consumer to check his or her consumer report for inaccuracies.

We respectfully disagree with the Board's conclusion that there would not be an instance where a risk-based pricing notice would be appropriate at the time of application. For instance, under the Proposal, a credit card issuer is required 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 annual percentage rate that is higher than the lowest purchase annual percentage rate available under that offer. The Proposal assumes that a consumer who applies for credit in response to a multiple-rate offer is applying for the best rate available. If a consumer applies for a credit card in connection with a multiple-rate offer, the consumer generally understands that he/she will receive the best rate for which he/she qualifies among the disclosed range of rates. This situation would be an ideal circumstance where the risk-based pricing information could be included with the application or provided at the time of application. The application could alert consumers to the fact that the terms offered to the consumer are based, in whole or in part, on information received from a consumer report. If the consumer fails to receive the lowest disclosed rate, the consumer will be on notice that there could be inaccuracies in his/her credit report if he/she expected a better rate. We encourage the Board to consider this and other circumstances where it would be appropriate to provide the risk-based pricing notice at the time of application. As stated above, the FACT Act clearly contemplates that there are circumstances where providing the risk-based pricing notice at the time of application is appropriate.

Effective Date/Implementation Date

In order to comply with the Proposal, creditors need sufficient time to identify and analyze each product in their loan and credit card portfolios to determine which method is most appropriate to use for identifying the consumers who must receive a risk-based pricing notice and/or whether to follow an exception to the Proposal. Once a determination is made, additional programming of current systems will be needed in order to comply, and employees will need to be properly trained on the Proposal, the contents of the risk-based pricing notice and how to answer customer questions regarding the notice. Therefore, we respectfully request that the mandatory implementation date for the final regulations be no less than 12 months after the regulations are issued in final form.

We appreciate this opportunity to comment on the Proposal. If you have any questions concerning this letter or if you would like us to provide any additional information, please do not hesitate to contact me.

Sincerely yours,

Wendi M. Brown
Corporate Counsel
Compass Bank