INDEPENDENT COMMUNITY
BANKERS of AMERICA

August 18, 2008

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

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex M)
600 Pennsylvania Avenue, NW
Washington, DC 20580
Attention: FACT Act Risk-Based Pricing Rule, Project No. R411009

Fair Credit Reporting Risk-Based Pricing Regulations

Dear Sir or Madam:

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to comment on the proposed special disclosures for certain consumers. The Federal Reserve and the Federal Trade Commission (FTC) ("the agencies") are jointly proposing rules to implement section 311 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). If adopted as proposed, creditors will have to provide consumers with a risk-based pricing notice when the creditor uses a consumer report and, as a result of information in the report, offers the consumer material credit terms that are materially less favorable than the most favorable terms available.

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[1] The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.

With nearly 5,000 members, representing more than 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold more than $1 trillion in assets, $800 billion in deposits, and $700 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

Background

In December 2003, Congress amended the Fair Credit Reporting Act (FCRA) with the FACT Act. Since credit report information can affect virtually all aspects of a consumer's finances, one goal of the FACT Act amendments is to encourage consumers to be more aware of and take greater responsibility for information in their credit reports. For example, the statute gave all consumers the right to a free annual credit report. The risk-based pricing notice the agencies now propose is intended as one more step to alert consumers to the importance of credit report information and how it can affect their access to and terms of credit since the notice would be given to consumers who receive less favorable credit terms as a result of information in their credit reports.

While it may seem simple in concept, identifying which consumers should receive a risk-based pricing notice has been complicated. Finding a mechanism that accomplishes the statutory goal without being unduly burdensome or prohibitively costly has been extremely challenging. ICBA has been actively involved in the process and we greatly appreciate the extensive efforts of the agencies to develop a workable solution. Since the goal is to sensitize consumers to the importance of credit reports, providing all consumers with a notice at application was seriously considered. However, the agencies concluded that was inconsistent with Congressional intent and this proposal reflects their best judgment to balance costs and burdens against consumer benefits.

Generally, the proposed rules will apply to any person that uses a consumer report in making credit decisions and based on that information grants credit to a consumer on terms that are materially less favorable than terms for other, similarly-situated consumers. The proposal clarifies that the rules only apply to consumer credit (primarily for personal, household or family purposes) and not business credit. The agencies also stress that these provisions do not provide a private cause of action by individual consumers.

Summary of ICBA Comments

- ICBA supports limiting the rule to consumer credit.
- ICBA concurs with the agencies definition of "material terms" that uses the APR as the benchmark and urges the agencies to maintain that mechanism in the final rule.
- ICBA supports the use of the two proxies to identify who must receive the risk-based pricing notices but has reservations about their complexity.
- ICBA generally agrees with the notice requirements and appreciates the development of model forms that community banks can use to comply.
- ICBA supports the exceptions outlined in the proposal and encourages the agencies to retain them in the final rule with some adjustments. ICBA also appreciates the agencies' proposed steps to allow creditors to rely on credit score disclosures as a more meaningful educational tool for consumers.
- ICBA questions the need for an additional free credit report as the result of a risk-based pricing notice.

- ICBA believes additional guidance may be needed as the agencies and creditors gain experience with the final rule and therefore urges the agencies to be sensitive to the need for possible adjustments or further guidance.
- ICBA strongly recommends creditors be given at least two years from the publication of the final rule to develop and update systems and procedures to comply.

General ICBA Comments

Given the complexity and challenges inherent in the statutory requirements, ICBA generally supports the agencies' proposal. ICBA greatly appreciates the agencies willingness to meet and discuss the risk-based pricing notice requirements as the proposal was being developed. By working with all interested parties, the agencies have developed a proposed rule that is practical, minimizes potential burdens yet still achieves the goals of the statute.

While ICBA believes many elements of the proposal should be retained in the final rule, we also have concerns that should be addressed. For example, if the real goal is to encourage consumers to be more sensitive to credit report information and the credit reporting process, educational efforts are important, and we encourage the agencies to use the issuance of the final rule as an opportunity to provide educational materials to and for consumers. By the time a consumer applies for credit, the ability to take steps to change the information in a credit report to affect credit terms is minimal and so the agencies are in the best position to provide the kind of information that can assist consumers before they contact a particular creditor.

Similarly, while ICBA believes the agencies have done a good job, it will still be burdensome and costly for providers to develop programs and processes to comply. As a result, costs for credit are likely to increase. While the agencies do not believe a uniform notice at application is appropriate or one that will meet Congressional intent, ICBA believes that may actually be a simpler, less expensive, more effective means to achieve the underlying purpose. Since one goal is to reach consumers with marginal or blemished credit histories to help them understand the importance of credit report information, compliance costs of the rules are likely to have the perverse effect of making credit less available for those marginal consumers. And, as the costs of credit increase, those consumers may be encouraged to turn to less reputable creditors.

Another element that should be considered is the impact of the rule on the use of credit reports and credit scores. Credit report data and credit scores have increased access to credit for many consumers. Credit data has been the mainstay of today's vibrant consumer credit market. It has facilitated risk-based pricing that gives consumers who might not otherwise have it access to credit on reasonable terms. In fact, recognizing the value of this data, there are efforts to expand access to credit using information not currently available in credit data by turning to non-traditional sources of data such as utility or rental payments. However, in all the discussions for developing the proposal, one fact that was not considered is that lenders are not required to use credit

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report data. It would be unfortunate if the rule produced an unintended consequence by discouraging lenders, especially smaller lenders, from using credit reports or credit scores.

The Proposal

The proposal would clarify that the risk-based pricing notice is limited to consumers. ***ICBA agrees these requirements should be limited to consumer credit.*** Although the agencies have asked whether the coverage should extend to certain business loans, such as sole proprietorships, ICBA does not support such an expansion of the rule. Extending the requirements to business credit would be unnecessarily burdensome and would complicate compliance, especially since business loans are much less amenable to homogenized underwriting and comparison. Expanding the requirement to business loans would also be confusing for consumers and small business owners. And, if the requirements were extended to businesses, the agencies would have to develop extensive guidance to demarcate which businesses are covered and which are not.

Definitions

One of the key definitions to determining which consumers will be notified is determining the ***material terms*** of an individual consumer loan. To develop a workable and understandable approach, the agencies propose defining material terms as the annual percentage rate (APR). The agencies acknowledge that pricing consumer credit products is a complex process where the APR is only one element and that using the APR alone to define "material terms" is a proxy.[2] However, they believe it is the most appropriate tool and one that will promote consistency.

ICBA agrees that using the APR as a proxy to identify who must receive the notice is appropriate and supports this provision. From a compliance perspective, using the APR as the proxy for determining which consumers should be notified offers simplicity and the least burdensome approach. The APR, which was designed to reflect the cost of credit, has become a widely-accepted industry standard over the past 40 years. Trying to consider other terms – especially non-financial terms – will be extremely subjective, confusing for lenders and consumers and unnecessarily burdensome. Therefore, ICBA does not believe non-monetary terms should be considered. ICBA also does not believe that prepayment penalties should be considered since they are not part of the initial cost of credit and may not truly reflect the credit quality of the borrower and would unnecessarily complicate compliance.[3]

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[2] While they currently believe the APR is the best tool, the agencies also reserve the right to re-assess this definition in the future.

[3] Without addressing whether prepayment penalties are appropriate, since prepayment penalties are conditional and not definitive at loan origination, they should not be used to determine who receives a risk-based pricing notice. While some might contend a prepayment penalty is only used for less creditworthy borrowers and therefore should trigger the notice, then other elements in the loan process are equally likely to trigger the risk-based pricing notice. Adding consideration of the prepayment penalty as a factor only complicates compliance burdens and costs while not producing true added benefit for consumers.

For purposes of this rule, the applicable APR will be the standard APR that applies to an account and not any introductory or teaser rate or any penalty rate that might come into play. For credit cards, which may have a number of different APRs, the APR would be the APR for purchases. And, where an APR does not exist, such as cell phone contracts or similar transactions, materiality would be based on other financial elements of the credit such as down payment or the amount of the deposit required. ***ICBA supports the proposed identification of which APR will be considered for purposes of the risk-based pricing notice and recommends this provision be retained in the final rule.***

The next critical element for compliance is identifying which consumers receive ***materially less favorable terms*** since that determines who receives the risk-based pricing notice. For purposes of this comparison, creditors must select the most favorable terms and compare the individual consumer in question to the group that received the most favorable terms. According to the agencies, it would *not* be acceptable to use an arbitrary benchmark or a comparison to terms available only to a tiny percentage of consumers. The proposal incorporates flexibility by letting individual creditors identify the comparison group for determining which group is granted the most favorable terms. To assist creditors identify the comparison group, the proposal also outlines factors creditors should consider such as the type of credit and the term of the credit. ***ICBA agrees.***

Who Must be Notified

While the proposed rules do not impose a quantitative standard or a specific method for identifying which consumers receive materially less favorable terms, the key to identifying who gets a risk-based pricing notice will be identifying the appropriate subset of consumers that serve as the comparison group. One approach is to compare consumers who receive the same product on a case-by-case basis. However, the agencies recognize this may not be operationally feasible. ***ICBA agrees that attempting to conduct a case-by-case analysis is likely to be impractical for most lenders but should be retained as an option in the final rule.***

To develop a workable system, the proposal outlines two proxies: the ***credit score proxy method*** and the ***tiered pricing method***. While the proxies might lead to notices being given to some consumers who actually receive the most favorable terms, the agencies believe that is acceptable as long as the creditor uses the proxies in accordance with the regulations. And, while creditors must be consistent, the rules clarify that creditors do not have to adopt only one proxy for all products. Rather, a creditor could use one method for one product line and a different method for a different product. For example, a creditor could use the credit score proxy for mortgages but the tiered pricing method for car loans.

While ICBA generally supports the concept of using proxies as well as the two outlined in the proposal, we also have reservations about them. Although ICBA believes that the proxies outlined by the proposal are worthwhile options, ICBA is concerned that the approach may be sufficiently burdensome to discourage community banks from relying on the proxies, causing them to turn to alternative approaches,

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especially the exceptions. From a compliance perspective, and in keeping with the goal of the statute to sensitize and educate consumers to the importance of the information in their credit reports, ICBA continues to believe that a standard notice at application that would encourage consumers to review their credit reports for accuracy would be preferable. ***ICBA strongly encourages the agencies to monitor the use of proxies over the first two to three years to assess how the proxies are working.*** For example, it is possible that creditors will determine that the credit score exceptions are much easier and less costly, making the proxies much less meaningful.

Credit Score Proxy Method

A creditor that uses credit scores to set terms of credit for consumers could use the credit score proxy method to identify which consumers receive the risk-based pricing notice. Using this method, the creditor would identify a cut-off score that splits the loan portfolio into two parts where approximately 40% of borrowers have higher scores and 60% have lower scores. While to some extent the cut-off the agencies have chosen is arbitrary, they believe it is the most appropriate dividing line and one that provides a simple compliance tool. The premise is that consumers with lower credit scores are more likely to receive less favorable terms and so risk-based pricing notices would be sent to any consumer that falls below the cut-off point. To make certain the divider is current the cut-off score would have to be updated at least once every two years.

Many community banks use credit scores to underwrite consumer loans and so ***ICBA believes the credit score proxy is a viable option.*** For banks that choose this option, it should simplify the process of determining who receives the notice. The agencies also need to recognize, though, that some community banks may determine that this option is not workable due to the difficulty of identifying consumers and clearly drawing the dividing line.

Generally, ICBA agrees that the proposed 60/40 demarcation line seems logical. However, ICBA is also concerned that this may cause too many consumers to receive a risk-based notice. Instead of 60/40, 70/30 might be more appropriate. This is something the agencies should monitor for possible re-evaluation.[4] Since developing the dividing line may be difficult or extremely burdensome for small institutions that do not have sufficiently extensive loan portfolios to make this determination, the agencies may need to develop alternatives in the future to address the needs of smaller creditors with smaller loan portfolios.[5] If a creditor does use the credit score proxy, ***ICBA agrees it should be periodically re-assessed and finds two years appropriate, although three to five years would be preferable.***

Secondary Source. Generally, creditors would analyze their own loan portfolio to identify the dividing line. However, analyzing all or a representative sample of consumers may not always be feasible, such as when a new product is introduced. In that case, creditors could use information from market research or another third-party source.

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[4] If the agencies determine an adjustment to the rule is necessary, ideally any changes should take effect before the first time creditors must re-evaluate the cut-off point.

[5] It is not entirely clear at this stage whether third-party software vendors will be able to produce cost-effective means to automate this assessment.

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Similarly, when a portfolio is acquired through purchase or otherwise, the creditor could use information from the source that provided the loans to identify the dividing line. Where a creditor uses an alternative to identify the cut-off point, it would be required to re-calculate the cut-off based on its own experiences after one year. If the credit still does not have sufficient experience after one year, it could defer the reassessment.

ICBA supports allowing the use of outside sources to identify the demarcation line. Letting banks rely on external sources for this information will help ease compliance burdens. ICBA also encourages the agencies to monitor the use of outside sources and potentially consider letting banks use this as a standard option for all loans. Especially for smaller banks with limited loan portfolios, outside sources could become a viable compliance tool. For example, allowing all lenders below a certain asset size, say $250 million, to rely entirely on outside sources to apply the credit score proxy method to their loan portfolios may not only be appropriate but possibly one of the most effective and efficient means to achieve the statutory goals. If so, ***ICBA also strongly encourages the agencies to identify and maintain an easily accessible list of trusted third party sources.***[6]

Under the proposal, if a lender uses a third-party source, it would have to re-evaluate the situation after one year. ***ICBA disagrees with the one-year requirement.*** One year may not be sufficient for a representative sample to accumulate, especially for smaller lenders with limited loan activity. Moreover, since two years is proposed as the standard time period for re-evaluating the dividing line under other circumstances, using the same timeframe here would be logical, simplify compliance and reduce potential confusion.

The proposal would also provide that a bank might not have enough data to make the re-assessment after one year. ***ICBA supports allowing lenders to defer this re-assessment if there is insufficient data.*** However, if a lender must defer the re-assessment, ICBA urges the agencies to provide additional guidance and clearly outline the steps necessary for lenders to use this deferral.

Finally, ***ICBA generally agrees that consumers without credit scores are likely to receive less favorable terms and should receive a risk-based pricing notice.*** However, we note that community banks approve credit based on a variety of factors. For community banks that rely on a variety of factors when underwriting consumer credit, the notice may actually be misleading. Therefore, ***the final rule should permit an exception. If a community bank regularly underwrites consumer credit without relying on credit scores, lack of a credit score should not automatically require a risk-based pricing notice.***

<u>Tiered Pricing Method</u>

The tiered pricing method could be used as a proxy for determining which consumers receive a risk-based pricing notice if the creditor assigns consumers to

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[6] This can be easily posted on the agencies website or available through agency regional offices. The list should not be exclusive but its existence would facilitate compliance.

different tiers to set loan terms. Risk-based pricing notices would be sent to consumers in the lower tiers. If a creditor uses a *four-tiered system*, notices would be furnished to all consumers except those in the top tier. If a creditor uses *five or more tiers*, notices would go to all but those in the top two tiers.[7]

ICBA supports the concept of the tiered pricing proxy. As an optional mechanism for identifying who must receive the risk-based pricing notice, it appears on its face to be effective. Community banks do use tiered pricing systems to determine interest rates and terms for consumer loans.[8]

As with the credit score proxy, while the outlined parameters for the tiered pricing method appear appropriate, ***ICBA recommends the agencies closely monitor its application for the first two or three years*** to be certain this proxy functions as anticipated and to make adjustments if necessary.[9] If banks, especially community banks, find the proxy so difficult to apply that they avoid using it, then it defeats the purpose. For example, under the proposal, lenders that use five or more tiers to assign loan terms would provide the risk-based pricing notice to all but those in the top two tiers. Similarly, the proposal would implement a further qualifier to ensure that at least 30% but not more than 40% of borrowers are in the top tiers who do not receive notice. These parameters may need to be further adjusted as time goes on and as lenders and regulators gain experience under the new system. It may be entirely appropriate to permit individual creditors to develop systems or alternative proxies that ensure that all but the top percentage of borrowers receive the notice. On the other hand, additional qualification may be needed to prevent some lenders from gaming the system. Initially, though, ***ICBA is concerned the tiered pricing method may be sufficiently complex to discourage banks from using it,*** especially if all calculations must be performed manually.

Credit Cards

Special rules would apply for credit cards. The proposal would establish a presumption that when an issuer offers multiple rates for a credit card program, consumers apply for the best rate. Therefore, if a consumer does not get the lowest rate offered as part of the program, based in whole or in part on information from a credit report, then the risk-based notice would have to be provided. However, where a consumer gets the lowest rate or applies for a program that only has one APR for purchases, no notice would be required. The rule also would clarify that even though an issuer might offer other credit card programs with possibly lower rates, it is the particular credit card program in question that determines whether the risk-based pricing notice is required. ***ICBA agrees that this approach for credit cards is appropriate.***

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[7] An additional qualification would be added for creditors using five or more tiers to prevent gaming the system. The top tiers would have to constitute at least 30% but not more than 40% of all borrowers.

[8] Community banks that do not use tiered pricing report that the costs of implementing such a system or the size of their portfolios make the approach unappealing.

[9] If the agencies find further refinements are needed, it would be advisable to seek public comment to get feedback on industry and consumer experience.

Account Reviews

Finally, since many creditors use periodic ***account reviews*** to reassess open-end accounts such as credit cards after a period of time, the proposal would require a risk-based pricing notice where the creditor uses a credit report to evaluate the account and, as a result of information in the credit report, increases the APR.[10] ***ICBA agrees with the requirement that when an account review based in whole or in part on a credit report leads to an increase in the interest rate on a line of credit, the risk-based notice should be provided.*** ICBA also encourages the agencies to coordinate this requirement with pending revisions to Regulation Z (Truth-in-Lending Act) that will require additional disclosures for consumers before the rate can be increased on a credit card.

The Risk-Based Pricing Notice

Content, Form and Timing

Content. The proposal would require the risk-based pricing notice to include a statement informing consumers that the terms offered, such as the APR, are based on information in a consumer report. The proposal would also require including the APR as an example of the terms offered. Much of the additional information required for the notice is similar to information required for an adverse action notice. For example, the notice would identify each consumer reporting agency that furnished a report used in the credit decision and include contact information for the consumer reporting agency.

Format. The risk-based notice would have to be clear and conspicuous but could be provided in writing, orally or electronically. The proposal includes a number of model forms to help creditors comply, and while minor adjustments such as adding graphics or logos would be permitted, appropriate use of the form would provide a safe harbor for compliance.

Timing. One goal of the risk-based notice is to let consumers identify and correct possible errors in their credit reports. Therefore, to help achieve this goal, the agencies have determined that the notice should be sent after the terms of credit have been set but before the consumer becomes obligated on the account. For closed-end credit, this would require the notice to be sent before consummation. For open-end credit, the notice would be sent before the first transaction. For account reviews, the notice would be sent when the decision to increase the APR is communicated or, where there is no notice before the increase takes effect, not later than five days after the rate change takes effect.

ICBA believes the notice should be furnished to consumers as proposed. The proposed timing requirements are sufficiently flexible, although ICBA is concerned this may be challenging in certain contexts such as automobile dealer financing. The key is to provide the information so that consumers could avoid completing the transaction and the timing requirements as proposed would achieve that outcome. ICBA is not aware of any situations where the notice could or should be sent after the first transaction.

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[10] The risk-based pricing notice would be in addition to any other notices that might be required under different rules.

ICBA strongly supports the use of model forms. Model forms give creditors a safe harbor and provide a template that helps ensure consistent information for consumers. In addition, for smaller companies, model forms simplify the costs and burdens of compliance. To be effective, it is important that the forms be as simple as possible and be pre-tested with consumers.

To provide context about how consumer reports are used, additional information about the credit reporting process would be included in the notice. To encourage consumers to check their credit reports, the notice would state that the terms offered *may* be less favorable than terms offered to those with better credit histories. The notice also would encourage consumers to check the accuracy of information and explain they have the right to dispute inaccurate information. For account review notices, an additional statement would explain that the review was based in whole or in part on a consumer report and that the APR on the account was increased as a result of that review.

ICBA does not believe the notice needs different language to explain to consumers that terms "may be" less favorable. Since some consumers who receive the most favorable terms could also be given the notice, the proposed terminology is appropriate.

Exceptions

The proposal outlines instances when the risk-based notice would not be required. If a consumer applies for credit on specific terms and those terms are granted, no notice would be necessary. If the consumer receives an adverse action notice, since a separate risk-based pricing notice would be redundant, the proposal would not require a risk-based pricing notice. Third, no notice would be needed if the creditor prescreens consumers to identify who will receive a firm offer of credit.[11] And perhaps most important, the proposal would allow creditors that use credit scores to supply a consumer with a notice that includes the consumer's credit score in lieu of the risk-based pricing notice.

ICBA supports these exceptions. The exceptions are logical, will help avoid potential customer confusion, will reduce unnecessary paperwork, and will help control the costs of complying with the new rules.

Credit Score Exceptions

Credit Score Notice for Real Estate Loans. When a loan is secured by residential real property, instead of the risk-based pricing notice a creditor would have the option of providing a credit score disclosure that includes the credit score used to underwrite the loan. The credit score notice would be given to all consumers without the need to compare terms granted to different consumers. In addition to the credit score, the disclosure would give consumers information about the credit score process, the date of the credit score, the name of the entity that created the score, information about the range of possible scores using a bar graph of similar format, and up to four key factors that

[11] However, if a consumer responds to a prescreened offer that has multiple possible APRs and the consumer does not get the lowest APR, then the notice would be required.

adversely affected the score. Generally, the score disclosed would be the one used for the credit decision. However, if the score was not created by a consumer reporting agency, such as a proprietary score, the creditor would have the option of providing the actual score used *or* a credit score and associated information from an entity regularly engaged in the business of selling credit scores.

Similar to a risk-based pricing notice, a credit score notice would encourage consumers to verify the accuracy of information in the credit report, explain how to obtain a copy of their credit report (including a disclosure that federal law requires a free annual credit report), contact information for obtaining the free annual credit report, and referral to the Federal Reserve or FTC websites for additional information. The notice would have to be clear and conspicuous, separate from other information and in writing. This notice would be integrated with the previously required Fair Credit Reporting Act (FCRA) notice that discloses credit scores in connection with residential real estate loans. As with the FCRA notice, the credit score notice would have to be provided as soon as practicable.

Credit Score Notice for Non-Mortgage Loans. For non-real estate secured credit, creditors would be given a similar option. Under this exception, creditors would provide a notice with much of the same information as that provided under the credit score exception for real estate loans. The disclosures would provide consumers with information about the credit report and credit score process and help educate them about the import and impact of their credit history on the availability and terms of credit. A creditor that does not use credit scores for underwriting could still use this exception by purchasing and providing the consumer with a credit score and associated information it obtains from an entity regularly engaged in the business of selling credit scores.

ICBA supports the exceptions that permit creditors to provide the credit score information in lieu of the risk-based pricing notice. ICBA believes these exceptions are likely to be appealing to many community banks since it simplifies compliance. ICBA anticipates that over time, more community banks will rely on these credit score exceptions, although it is impossible to predict how widespread that will be when the rule is initially effective. ***ICBA strongly urges the agencies to clearly articulate in the final rule that if and when a creditor forwards a credit score relying on this exception, the creditor is not and does not become a credit reporting agency subject to all the rules, restrictions and reporting for credit reporting agencies.***

ICBA believes that providing the credit score information will help educate consumers. A credit score is likely to be much simpler to use and grasp for most consumers than the full set of information included in a credit report. By sensitizing consumers to their credit scores, it will help increase their understanding and familiarity with the entire process. Since the FACT Act passed, credit score information is much more widely publicized. Including information in the notice about how the credit scores are derived and the credit score process will also help educate consumers. It is appropriate to encourage wider dissemination of individual credit scores to individual consumers and ICBA supports the effort.

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ICBA also encourage the agencies to keep the credit score exception disclosures as simple s possible. It is important to recognize that these disclosures will not be the only information provided to a consumer in the context of a loan. The danger of information overload becomes very real. If these disclosures are intended to and designed to be educational tools, the more complex and more dense the information, the less likely consumers will read or pay attention, completely defeating the purpose and expense for providing the information.

Additional elements with respect to making these disclosures must also be addressed. For example, it is not uncommon for two or more consumers to apply for joint credit. In some instances, as where the two joint applicants are not related, the two may not want to share credit score information and so the agencies will need to provide guidance for how these disclosures are to be handled. This is especially important to address privacy concerns, but guidance will also be needed on what information must be provided and to whom. ***ICBA urges the agencies to issue a supplemental proposal for public comment to address these issues.***

Generally, creditors would give consumers the score used in the underwriting process. However, if a creditor uses a proprietary score, it would be permitted to furnish a credit score from a credit bureau. ***ICBA supports this flexibility in the proposal.***

The proposal would require graphical depiction and information, such as through the use of bar graphs, to provide information for consumers. While ICBA believes this is helpful for consumers, providing this information will be burdensome and costly. ***ICBA strongly encourages the agencies to develop standardized methods or create simple graphs that all creditors can use.*** If the agencies develop standard charts and graphs on credit scores, it will ensure the information if provided in a standard format that consumers can become accustomed to and it will ease compliance burdens. If each creditor must develop its own methods for providing this information in the final rule, then ICBA encourages the agencies to grant additional time for compliance with the final rule. Moreover, the more detailed and specific information that must be included – and the more customized each disclosure must be – the higher the cost for providing the information. In turn, these costs will be reflected in the costs of consumer credit. Therefore, ***ICBA strongly urges the agencies to keep the graphical disclosures as simple and as standardized as possible.***

The alternate credit score notice will also require creditors to provide information about the date the score was created and what provider created the score. ***ICBA agrees providing information about the date and what entity created the score is useful for consumers.*** Since credit report information is dynamic and can change over time, the date is a helpful reference point for consumers. In addition, for consumers to contact the credit reporting agency, they must know which agency created the score. And, since credit scores can be affected by data in the credit report, it is helpful to furnish them with information about adverse factors that could affect the score. However, providing information about the adverse factors that impact the score is likely to be the most burdensome and costly element of the proposal.

Credit Score Not Available. The agencies recognize that there will be instances when a consumer does not have a credit score or the company that usually supplies credit scores to the creditor does not have one for a particular consumer. However, the agencies also believe consumers with limited credit histories can benefit from a notice that explains they do not have a credit score due to insufficient information in their credit report and that consumers with limited credit histories are likely to receive less favorable terms. Therefore, the proposal includes a third credit score exception. To use this exception, the creditor must regularly obtain credit scores from a credit bureau, must give consumers the credit score disclosure, but be unable to obtain a credit score for a particular consumer.[12]

The notice in lieu of the risk-based pricing notice would explain the credit report and credit score process along with a statement that creditor could not obtain a credit score about the consumer. The notice would have to be clear and conspicuous, segregated from other information, and provided in writing. It would have to be provided as soon as reasonably practicable after the credit score was requested but in no event later than consummation of a closed-end loan or before the first transaction on an open-end credit.

ICBA supports this alternate notice for instances when a credit score is not available. ICBA also concurs with the provision in the proposal that clearly states a creditor need not contact alternate sources to obtain a score that is unavailable from its usual provider. And, ICBA agrees that informing consumers that a credit score is not available and that lack of a credit score can affect both the terms and availability of credit is useful information.

Finally, the three credit score exception notices would refer consumers to the Federal Reserve and Federal Trade Commission websites. ***ICBA supports providing consumers with this information*** and encourages the agencies to make it as simple as possible for consumers, especially less sophisticated consumers, to easily locate the relevant information on their websites. Ease of navigation will be particularly important in the first months after the rule takes effect since that will be when most consumers will turn to the agencies for additional information and to answer questions.

Additional Elements

<u>One Notice per Extension of Credit</u>

The proposal clarifies that consumers need only be given one risk-based pricing notice for each loan. First, one notice should be sufficient to encourage consumers to check their credit reports. Second, more than one notice could actually confuse consumers. The one exception to the limit of one notice per loan would apply where the risk-based pricing notice is prompted by an account review. ***ICBA believes that this is***

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[12] A creditor would not have to seek a credit score from a different credit bureau if the one that usually furnishes the information to the creditor does not have a credit score for a particular consumer.

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helpful. Providing a single notice will help alleviate burdens and costs and will help minimize consumer confusion.

Who Furnishes the Notice

Generally, the risk-based pricing notice would be provided by the creditor to whom the obligation is initially payable. The original creditor would have to give the notice even if it immediately transfers the obligation. For example, an automobile loan might be initially payable to the dealership even though the dealer immediately sells the loan to the local bank. In that case, the dealer – not the bank – would have to furnish the risk-based pricing notice. ***ICBA agrees with this requirement.*** Having the original creditor responsible for providing the notice is simple from a compliance standpoint and less confusing for consumers.

One question raised is whether brokers should be required to provide a risk-based pricing notice. From a simple compliance standpoint, ICBA believes that the approach taken in the proposal and having the initial creditor provide the notice is appropriate. However, given the problems with mortgage lending, especially subprime mortgages, ICBA believes it may be appropriate to require some form of broker disclosures. If a broker relies on credit report information to determine how to structure or shop a loan, separate disclosures from brokers may be useful. While broker disclosures may be helpful for consumers, relying on the risk-based pricing notice requirements may not be the most appropriate way to address the situation. ICBA encourages the agencies to consider any broker disclosures in a broader context separate from the risk-based pricing notices.

Free Consumer Report

When the agencies were developing the proposal, questions were raised about whether a risk-based pricing notice automatically gave consumers the right to a free credit report. Under federal law, when a consumer receives an adverse action notice, he or she is granted 60 days to obtain a copy of the credit report from the appropriate credit reporting agency without cost. Separately, the FACT Act gave all consumers the right to a free annual credit report. The statute is silent on whether the risk-based pricing notice confers a new right to a free credit report; industry representatives opposed the idea while consumer groups adamantly supported the concept. After careful analysis, the agencies concluded that a risk-based pricing notice does give consumers the right to a free credit report.

When a creditor relies on one of the credit score exceptions, though, consumers are not entitled to a free credit report since a credit score notice is not a risk-based pricing notice. More important, for non-mortgage loans, giving consumers their credit score has a tangible value to consumers since they receive a free credit score that otherwise would only be available for a fee. Finally, the agencies believe a credit score disclosure and notice give consumers more meaningful personalized data than the generic information in a risk-based pricing notice.

ICBA does not object to the provision that a consumer be entitled to a free credit report* if *they receive a risk-based pricing notice. However, ICBA also questions

whether this is necessary. It would be helpful to consider the numbers of consumers who actually take advantage of the existing provision granting them access to a free annual credit report. In addition, the costs associated with providing this information will ultimately be borne by all consumers. In the final analysis, it would be helpful if the agencies clearly articulated the rationale for requiring that credit reporting agencies provide a new free credit report for consumers following a risk-based pricing notice as well as clearly explaining why the existing right to a free annual report must be supplemented with a right to a free credit report following receipt of a risk-based pricing notice.

Regulatory Burden

The agencies do not believe the requirements will be overly burdensome. The Federal Reserve estimates that, on average, it should take approximately 40 hours or one work-week to reprogram and update systems, provide employee training and modify model notices (model notices are provided with the proposal). Once a bank implements the program, the Federal Reserve estimates it will take approximately five hours each month to distribute the risk-based pricing notices to consumers.

ICBA seriously questions these estimates. Given that this is a new requirement, and since some of the changes may require software updates, ICBA believes these estimates are too low.

Effective Date

Ordinarily, ICBA would recommend the agencies consider at least a one-year transition period after the final rule is issued to allow community banks to update policies, procedures and systems to comply with the changes. However, given the many other mandates that community banks must address in the coming months, especially the changes to disclosures and procedures for consumer credit cards and overdraft protection services, as well as substantial changes for mortgages, ICBA strongly urges the agencies to allow at least two years from the date final rules are issued. A longer timeframe is especially important here where these rules will substantially alter how community banks communicate with all loan customers and applicants.

Thank you for the opportunity to comment. If you have any questions or need additional information, please contact the undersigned by telephone at 202-659-8111 or by e-mail at robert.rowe@icba.org.

Sincerely,

Robert G. Rowe, III

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