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August 18, 2008

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

Re: Notice of Proposed Rulemaking to Implement the Risk-Based Pricing Provisions of the Fair and Accurate Credit Transaction Act of 2003

Dear Ms. Johnson:

The following comments are provided on behalf of Comerica Incorporated, a $66 billion bank holding company, headquartered in Dallas, Texas with offices located in various states including Arizona, California, Florida, Michigan, and Texas. Comerica appreciates the opportunity to comment on this proposal.

**Background**

Section 311 of the FACT Act added a new section 615(h) to the FCRA to address risk-based pricing. Risk-based pricing refers to the practice of setting or adjusting the price and other terms of credit offered or extended to a particular consumer to reflect the risk of nonpayment by that consumer. These comments are in response to the proposed rule regarding the new section 615(h) which requires persons to provide consumers notice when the person uses a consumer report in connection with an application, grant, extension, or other provision of credit and, based in whole or in part on the consumer report, grants, extends, or provides credit to the consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that person.

**Definitions**

We agree with the Agencies definition of "material terms" to include only APR, as that term is most affected by information contained in the consumer report and is recognized as the best indicator of the cost of credit.

Additionally, we appreciate the difficulty with defining "materially less favorable" given the fact that one test may not be appropriate for all products. The use of the term "significant" strikes a good balance to give enough guidance while maintaining needed flexibility.

We do recommend clarifying "types" of credit products to explicitly include variations of similar purpose products.

**General Requirements for Risk-Based Pricing Notices:**

Comerica appreciates the Agencies' efforts to accommodate the differences in financial institutions and products offered by those institutions by offering several options, including exceptions, to determine when a customer must receive a risk-based pricing notice.

Under the credit score proxy option, creditors would determine the score that represents the point at which approximately 60 percent of its "consumers" have lower credit scores and provide notice to those below the 60 percent threshold. While this approach is appreciated, we do not expect it to be particularly practical. In addition, it is not clear the reasoning for the 60 percent threshold, which we believe would result in a confused message to consumers.

Under this proposed threshold Comerica's customer base may misinterpret the message due to our higher credit standards. The negative notice suggests and will likely be interpreted to mean that the recipient has credit problems: "The terms offered to you may be less favorable than the terms offered to consumers who have better credit histories." However, depending on the creditor's particular experience and the narrowness of the range of credit scores involved, the consumer might in fact be a good risk and may not in fact be receiving an offer that is "materially less favorable." While we recognize that it is not possible to arrive at a perfect solution, we suggest that the proposed threshold will cause unnecessary consumer angst and should be lowered to a more meaningful number such as 40 percent.

For similar reasons, we suggest that the Agencies adjust proposed thresholds presented in the tiered pricing method. Under this method, lenders that set terms within "one of a discrete number of pricing tiers" may comply by providing a notice to each consumer who does not qualify for the top tier. For example, a lender using five or more pricing tiers must send the notice to those who do not qualify for the top two tiers. The result will be consumers with good credit histories who are not necessarily receiving a "materially less favorable" rate will receive a notice informing them that there are other customers "who have better credit histories." We suggest that the threshold be changed so that the notice would only be sent to consumers falling within the bottom 40% of tiers.

**Exceptions to Risk-Based Pricing Notice Requirements:**

Comerica strongly supports all of the proposed exceptions. We believe the Agencies' proposed exception for utilizing a disclosure similar to the credit score disclosure currently required for certain loans under Section 609(g) of FCRA, is a good alternative to the required notice. Unlike the required notice under the other options, the information provided to consumers under this exception is easy for the consumer to understand and will provide valuable information to allow the consumer to make the determination as to if their credit score is at the best level for them.

**One Notice Per Credit Extension:**

The proposal does not appear to address instances when multiple applicants are involved. Under Section 202.9(f), adverse action notices need only be given to one of the applicants, but must be given to the primary applicant where one is readily apparent. We suggest that the Agencies adopt a similar approach so that the lender need only provide one risk-base pricing notice or credit score disclosure to one of the applicants, but the primary one if readily apparent. The reasons for only requiring a single adverse action notice apply equally to the risk-based pricing notice, which was intended to address any "gap" for adverse action notices in the event of a counteroffer.

**Conclusion**

Comerica commends the Agencies on their efforts in interpreting difficult statutory language and drafting a practical and flexible rule. Please consider the aforementioned suggestions when drafting the final rules on risk-based pricing.

Thank you again for the opportunity to comment on this important issue.

Sincerely,

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Corporate Compliance

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