

August 4, 2008



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

Subject: Proposal on FACT Act Risk-Based Pricing Rule, Project No. R411009

Dear Federal Trade Commission:

Boeing Employees' Credit Union (BECU) appreciates the opportunity to provide comments on the proposed Fair and Accurate Credit Transaction (FACT) Act Risk-Based Pricing Rule. BECU is a federally insured, state-chartered credit union with assets of \$8.1 billion representing a membership base of over 531,000 members.

This proposal would implement the section of the FACT Act which requires risk-based pricing notices. Such a notice would be required when, based on the consumer's credit report, we offer credit to the consumer on terms that are materially less favorable than those offered to a substantial proportion of other consumers by us. Your rule provides certain exceptions to this requirement.

There is a list of issues you requested input on. We will address them below:

1. Are there any circumstances under which creditors should be required to provide risk-based pricing notices in connection with credit primarily for business purposes?

*No. In BECU's opinion, businesses are sophisticated borrowers. Normally, the regulations apply to consumers primarily for personal, family or household purposes. Making this one apply would be inconsistent.*

2. Is the proposed definition of "materially less favorable" helpful? Should the interrelated terms "most favorable terms" and "a substantial proportion of consumers" also be defined and, if so, how should they be defined?



*BECU feels that "most favorable terms" is easier to understand. Materially less favorable has a negative connotation. BECU recommends that all phrases in the final rule be defined so that they are not open for interpretation.*

3. Do creditors vary temporary initial rates, penalty rates, balance transfer rates, or cash advance rates, on either closed-end or open-end credit, as a result of risk-based pricing? If those rates do vary as a result of risk-based pricing, should any of them be treated as "material terms," in addition to the general annual percentage rate (APR), and would it be possible to apply to those rates the existing tests-consumer-to-consumer comparison, credit score proxy method, and tiered pricing method? If new tests would be required under such a broader definition of "material terms", what might those tests be?

*BECU does not have teaser rates.*

4. Is the definition's reference to "any monetary terms" that the creditor varies based on information from a consumer report is sufficiently specific or too broad.

*In your proposal, the definition of "any monetary terms" applies to credit that does not have an annual percentage rate (APR) and to items such as down payment amount or deposit based on the person's credit report. BECU's credit products all have an APR so this would not apply to us. BECU believes that this is sufficiently specific.*

5. Should intermediaries who are not original creditors, such as brokers, 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 that generally offer less favorable terms and, if so, how could such a requirement be structured?

*Yes. Intermediaries, such as brokers and auto dealers, communicate the same information to consumers as creditors do and should be required to follow the same rules.*

6. Will the credit score proxy method generally result in risk-based pricing notices being provided to consumers who are likely to have received materially less favorable terms? Will setting the cutoff score at approximately the point at which 40% of a creditor's consumers have higher score and 60% have lower score be appropriate and workable, or should a different point, such as the point at which 50% of a creditor's consumers have higher scores and 50% have lower scores, be more appropriate? Do you know of any empirical data regarding the point at which consumers typically begin to receive materially less favorable terms that may suggest the most appropriate point at which to set the cutoff score?

*This method is too complicated and would require continual monitoring and adjustment. To determine the cutoff score the proposal says that we must calculate by considering all or a representative sample of consumers we have provided credit to for a given class of products. There is no definition of "representative sample". Again, BECU recommends that all phrases*

*have specific definitions so that it is not left open to interpretation. Additionally BECU feels that basing the cutoff score on percentages may potentially benefit the subprime lenders.*

*For a sub-prime lender, a split by percentage does not make a lot of sense since all or most of their customers are scoring low. BECU would argue most of their customers are receiving "less favorable terms" than those who use traditional lenders and products. By using a percentage, subprime lenders may be charging less favorable terms but would not have to disclose it to 60% of their customer base.*

7. What should the requirement be to recalculate the credit score cutoff, specifically regarding whether two years, as opposed to a shorter or longer period, is the appropriate interval at which the recalculation generally should be conducted? Is one year the appropriate period of time within which a person using the secondary source approach must recalculate its cutoff score using the sampling approach? The secondary source approach is determining the appropriate cutoff score based on information derived from appropriate market research or relevant third-party sources for similar products.

*BECU feels the Federal Reserve Board (FRB) and the Federal Trade Commission should dictate this. BECU recommends the FTC and the FRB publish notices similar to the ones the FRB publishes regarding Regulation Z's 226.32. However, to ensure consistency and equal competitiveness, BECU recommends the same time frames between the creditors governed by the FRB versus the creditors/companies governed by the FTC.*

8. Regarding the credit score proxy method, when a consumer's credit score is not available, the Agencies have proposed an assumption that the consumer receives credit on less favorable terms than other consumers and should therefore receive a risk-based pricing notice. Is this an accurate assumption? If no credit score is available, are there other reasonable means by which a creditor may determine whether the consumer received materially less favorable credit terms?

*That assumption is not correct for how BECU does business. If the consumer does not have a credit score, BECU gives the consumer our standard rate. However, this varies among institutions.*

9. Should the tiered pricing method take into account the percentage of consumers placed in each tier and how could that be accomplished without creating undue burdens or introducing excessive complexity to the tiered pricing method?

*How BECU interprets this method to be is if there are 4 or fewer tiers, creditors would be required to provide notices to all consumers who are granted credit in the 3 highest tiers (3 highest rates). But if there are 5 or more tiers, then the creditor must provide a notice to each consumer who does not qualify for the top two tiers and any other tier that, together with the top tiers, comprised no less than the top 30% but no more than the top 40% of the total number of tiers. BECU feels this is confusing to determine who goes in what percentage as well as cumbersome and require constant tracking. BECU also recommends clearer examples to aid creditors in their determination.*

10. Could the tiered pricing method be subject to such circumvention by creditors and how can that be prevented?

*BECU feels the subprime and scrupulous lenders could circumvent this method by not placing their customers in the correct tiers. BECU feels in order to ensure compliance with this, training should be provided to the appropriate examiner to audit for this type of unscrupulous practice.*

11. The proposed rule would require that the risk-based pricing notice contain a statement alerting consumers that a free consumer report can be obtained for 60 days following a receipt of the notice. Is it appropriate to require disclosure of the 60-day period in the notice?

*Yes BECU feels this would not be burdensome and could be hard-coded in the notices so that it's automatically there. If the information is not there, consumers who read the information will not know that is available to them.*

12. Should the notice state the terms "may be" less favorable, as proposed, or should a different phrase be used, such as the terms "are likely to be" less favorable? What language would best serve the dual goals of most accurately describing the probability that the consumer received materially less favorable terms while prompting consumers to obtain and review their consumer reports?

*The language should be the least deceptive. According to the rules, if the consumer receives this notice, they are receiving terms that are less favorable than some of the consumers receiving credit from that lender. BECU feels the language should be less vague.*

13. Are there any circumstances in which the notice should be permitted to be provided after consummation or after the first transaction under the plan, and would notice provided after consummation or after the first transaction under the plan be effective for consumers?

*No. This information should be discussed prior to the consumer receiving the funds or the first transaction. If this was provided after and the consumer did request their consumer report from the credit reporting agency and there were discrepancies that after corrected, would change their terms, the consumer would need to reapply with the creditor to get their terms changed. That would be unnecessary work for the consumer and the creditor.*

14. Is the bar graph form of disclosure for the mortgage loan credit score exception the simplest and most useful form of disclosure for consumers, or are there different graphical or other means that would provide greater consumer benefit? Should the rule set forth other examples of specific methods of presenting the score distribution or score comparison, such as a narrative, a statement of midpoint scores, or different forms of graphical presentation?

*In BECU's opinion, there is no need for a graph. It is too big and requires creditors to have to provide more information than necessary. This may require creditors to have to explain the information that is provided by the credit reporting agencies and creditors are not a credit*

reporting agency. BECU is ok with the disclosure at the bottom of the graph section that says "Your credit score ranks higher than [X] percent of U.S. consumers."

15. Would the disclosures of the credit score creation date and the source of the score be beneficial to consumers or would it impose undue burdens on the industry?

*BECU does not feel this is necessary and would create undue burden. This is a credit reporting agency disclosure. Again, this may require creditors to have to explain the information that is provided by the credit reporting agencies and creditors are not a credit reporting agency. If this remains on the notice, definition of this date is needed. Is it the same date as the when the credit report is received? BECU does not feel this would be beneficial to the consumer nor for creditors to have to explain.*

16. Would requiring disclosure of the key factors that adversely affected the credit score in the credit score notice be helpful to consumers or would it impose undue burdens on the industry? Would including the four key factors simplify compliance with the rules by making the content of this notice more similar to the content of the credit score notice for loans secured by residential real property?

*This is very confusing and negatively perceived by consumers. If the key factors are disclosed it should only be the ones that "negatively" impacted the score. Creditors have no control on what credit reporting agencies put in the notice. This is a credit reporting agency disclosure and should be left to them to explain to the consumer. BECU recommends instead of the key factors being disclosed, that verbiage similar to: "To understand what key factors attributed to your credit score, please contact XXX Consumer Reporting Agency at 800-XXX-XXXX."*

17. The Agencies solicit comment on the design and content of the proposed model forms. Do the proposed model forms and the accompanying instructions provide creditors with an appropriate degree of flexibility to change the forms without losing the compliance safe harbor?

*The formatting is too long and the information is redundant. The forms will force creditors to educate the consumer versus the credit reporting agencies doing the education of their information. These notices are one more multiple page form to provide to the consumer that they may not read. In BECU's opinion, producing more paper is not thinking "green" and a waste of paper.*

18. The Agencies solicit comment on all aspects of the proposal, particularly on the methods contained in the proposal that creditors may use to identify which consumers must receive risk-based pricing notices, and the approach of providing creditors with several options for complying with the rules. The Agencies also solicit comment on any other operationally feasible tests or approaches that would enable creditors to distinguish consumers who must receive notices from consumers who should not receive notices. The Agencies also solicit comment on the

appropriateness of the proposed exceptions, and whether additional or different exceptions should be adopted.

*BECU feels if a cut-off score, such as 650, was set for all lenders to comply with it would simplify the process of determining who should receive the notice. The graphical format will be difficult to implement and keep updated. We are also concerned with the statement: "X% of the population with higher score than you". That would be difficult to implement without work on both the credit bureaus and loan origination system vendors. At this time, we do not have any way to access that information from the credit bureaus.*

Thank you for allowing us the opportunity to provide comments on this proposal. We look forward to the outcome.

Sincerely,

Gary J. Oakland  
President and CEO

Joe Brancucci  
Executive Vice President  
President – CEO, Prime Alliance Solutions, Inc.

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