Writer's Direct Dial: 202 408 7407
Writer's Email: eellman@cdiaonline.org

August 18, 2008

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

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

Re: FACT Act Risk-Based Pricing Rule
Federal Reserve System, Docket No. R-1316
Federal Trade Commission, Project No. R411009

The Consumer Data Industry Association ("CDIA") is pleased to offer comments on the proposed FACT Act Risk-Based Pricing Rule (the "rule").[1] The proposed rule would implement the requirements of Section 311 of the Fair and Accurate Credit Transactions Act of 2003 (the "FACT Act"), codified in section 615(h) of the Fair Credit Reporting Act (the "FCRA"). This provision requires creditors to provide risk-based pricing notices when they use consumer reports in risk-based pricing in connection with applications for or extensions of credit. Although consumer reporting agencies have no notice obligations under the proposed rule, the proposal would directly affect CDIA's members because it would require consumer reporting agencies to provide free credit reports to consumers if a user elects to provide a risk-based pricing notice. The proposed rule would also give users the option to provide an alternative notice that includes a credit score, which is a disclosure service provided by consumer reporting agencies for which they are allowed to recover a fair and reasonable fee under the FACT Act. For these reasons, the proposed rule would have a substantial impact on CDIA's members.

---

[1] CDIA is the international trade association representing over 250 consumer data companies that provide fraud prevention and risk management products, credit and mortgage reports, tenant and employment screening services, check fraud and verification services, data for insurance underwriting and also collection services.

1090 Vermont Avenue, NW • Suite 200 • Washington, DC 20005 • Fax (202) 371-0134

I. General comments

CDIA recognizes the challenges faced by the Board of Governors of the Federal Reserve System (“FRB”) and the Federal Trade Commission (“FTC”) (collectively, the “Agencies”) in creating the risk-based pricing regulations mandated by FACT Act § 311. CDIA supports the proposed rule’s objectives to: (1) educate consumers that their behavior in obtaining and using credit will directly affect the price they pay for credit, and (2) encourage consumers to ensure that the information reported to the consumer reporting agencies accurately reflects their behavior so that they can qualify for the pricing appropriate to their risk. CDIA appreciates the difficulties in satisfying these objectives given the wide variety of entities subject to the rule.

The proposed rule appropriately limits the notice requirement to credit granted to an individual consumer for personal family or household purposes. 73 Fed. Reg. 28970; § 222.70(a)(1)-(2); § 640.1(a)(1)-(2). CDIA believes that this limitation will facilitate creditors’ compliance and fulfill the notice’s educational purposes. CDIA agrees that it would not be appropriate to require a creditor to give a risk-based pricing notice in connection with a business purpose transaction. There are multiple factors that dictate the cost of business credit, and an individual’s creditworthiness may have little or no bearing on the cost of business credit. Moreover, it would be almost impossible for creditors to implement a meaningful method of cost comparison.

CDIA also believes that the proposed rule appropriately limits the notice requirement to one risk-based pricing notice per transaction. § 222 .75(a); § 640.6(a). As discussed below in Section XI, CDIA believes that the Agencies should further clarify the notice requirement when there is more than one applicant.

CDIA agrees that, consistent with the statutory exception, a creditor who gives an adverse action notice under Section 615(a) should not be required to give a risk-based pricing notice and that the regulation should incorporate this exception. § 222.74(b); § 640.5(b). In those instances, the consumer will know that information in his or her consumer report caused the adverse action and will be informed of the right to obtain a free report from the consumer reporting agency. CDIA believes that the rule’s scope is appropriately limited to users of consumer reports. This means that when affiliates share information pursuant to the exception in FCRA Section 603(d)(2)(A)(i) (ii), the risk-based pricing notice requirement would not be triggered because the decision would not be based upon a consumer report. As such, there is no need for an exception when a creditor provides a notice under Section 615(b)(2).

Because mortgage lenders are already required to provide a notice and credit score disclosure to all home loan applicants under Section 609(g), the Agencies created an exception from the risk-based pricing notice requirement for these transactions.

§ 222.74(d); § 640.5(d). CDIA believes that this is the type of exception contemplated by Congress when it granted the Agencies the authority to create exceptions for classes of persons or transactions when the notice would not significantly benefit consumers.

II. Clarification of term "substantial proportion of consumers"

The Agencies did not define the term "substantial proportion of consumers." However, in the "credit score proxy" method, the Agencies created a "cutoff score" that would require creditors who rely on this method to give the risk-based pricing notice to 60% of consumers based on credit score. § 222.72((b)(1)(i)(A); § 640.3(1)(i)(A). That determination is inconsistent with the section 615(h) test that the notice be provided only to those consumers who are granted credit on material terms that are materially less favorable than the most favorable terms available to a "substantial proportion" of consumers who receive credit by or through the creditor.

Under a common sense meaning of the term, "substantial proportion" must mean more than 40% of the creditor's customers. In order for the risk-based pricing notice to retain its effectiveness *i.e.* to alert certain consumers to the fact that their credit scores are lower than other customers of the creditor the notice should be given only to those persons for whom that statement is true. Otherwise, consumers who receive the risk-based pricing notice will not view it as an indicator that they are actually receiving less favorable terms than other customers of the creditor. For this reason, it is important to (1) create a more accurate threshold for consumers who will receive the risk-based pricing notice and (2) create a separate and distinct notice application notice that a creditor may give, as discussed in Section III.

The rule's purpose would be better served by a substantially lower cutoff resulting in notification to only those consumers in the lower tiers and thus requiring notice to no more than 20 to 30% of a creditor's customers. This threshold will ensure that the risk-based pricing notice retain its value as a tool to alert consumers to potential problems in their consumer reports.

III. An application disclosure would satisfy the educational purpose of the proposed rule

CDIA understands that some smaller lenders and creditors may elect to give the risk-based pricing notice to all applicants because they do not have the tools and resources to analyze which consumers receive more unfavorable terms or to provide the credit score disclosure. A separate application notice would be the most effective approach to the risk-based pricing notice. It would be an educational piece designed to inform consumers at the earliest stage of the application process that their credit report and other factors will

affect the cost of the credit and to remind consumers to obtain their free annual credit report.

Section 615(h)(2) specifically provides for the risk-based pricing notice to be given at the time of application, when credit is granted, or when the approval is communicated to the consumer. The proposed rule, however, disregards the application notice option. As the Agencies note, such a notice would need to be generic in nature and would educate consumers about the use of consumer reports in establishing the terms of the credit (*i.e.*, that the creditor uses risk-based pricing procedures in its credit-granting decision). For that reason, a risk-based pricing notice at the time of application, or any other risk-based pricing notice would not create a new right to a free report, but would alert consumers to their right to a free annual credit report from the FCRA section 603(p) consumer reporting agencies or for any of the other reasons for which a consumer can receive a free credit file disclosure. CDIA does not believe that section 615(h) creates the right to the free credit score disclosure, as discussed in Section IV below. Therefore, CDIA believes that Congress provided for the application notice option in order to fulfill the educational goal (*i.e.*, that consumers understand before obtaining credit that the information in consumer reports reflects their credit behavior and directly affects the price they will pay for credit) so that they can qualify for the pricing appropriate to their risk at the most opportune time before pricing is established, and to create an option for creditors to comply with the notice requirement when they might otherwise have difficulty in doing so.

The reasons cited in the Supplementary Information in favor of providing notice after application actually weigh in favor of an application notice. *See* 73 Fed. Reg. 28967. A notice given at application would communicate the importance of the consumer report in establishing the terms of credit, would notify a consumer of his right to a free annual report and would encourage the consumer to review the accuracy of the report so that he or she could be in a position to obtain the most favorable pricing available.

In contrast, a notice given after application but before consummation will not have the same effect on or benefit to a consumer. For example, if a consumer applies for store financing or a credit card to make a purchase (while in the store or on-line), the consumer may not stop to consider other alternatives before consummation, and the educational opportunity will be lost. Moreover, if the consumer has already completed the application process before receiving the notice, the consumer may not want to delay the transaction. Thus, if a notice is given after application, it may lose its intended effectiveness.

CDIA urges the Agencies to reconsider their position and allow a generic notice to be given at application which educates consumers about their right to obtain a free annual report.

IV. The FCRA does not provide for an additional free credit report with risk-based pricing notice

Although FCRA § 615(h) requires the risk-based pricing notice to include a statement that the consumer "*may obtain*" a free credit report, CDIA does not read this provision as granting the consumer the right to a free credit report in addition to the free annual report provided under FCRA § 612(a).

There are several examples of Congress' intent to create the right to a free report. First, Congress created the right to a free annual disclosure. FCRA § 612(a) requires consumer reporting agencies to provide a file disclosure once during any 12-month period upon request of the consumer and without charge to the consumer. Congress created this right at the same time it created the risk-based pricing notice requirement in Section 615(h). If Congress intended to create the right to an additional free credit report, then it would have done so expressly, especially given the significant implications of requiring a private business to provide a product to consumers at no cost.

In those instances where Congress intended for consumers to have an additional free credit report, Congress has done so expressly. Section 612(d) requires consumer reporting agencies to provide a free report without charge to the consumer as provided in sections 605A(a)(2) and (b)(2). Section 605A(a)(2) requires that disclosure be made upon request and without charge after a fraud alert is placed, and subsection (b)(2) entitles a consumer to two free copies of the file during the 12-month period when an extended fraud alert is placed on the file. Under Section 612(b), a consumer has the right to "free disclosure after adverse notice to consumer." This subsection extends to consumers the right to a free file disclosure when they suffer an "adverse action." In contrast to the situation where a consumer receives an adverse action notice, a risk based pricing decision is not adverse because the consumer has, in fact, received an extension of credit.

In contrast, the statutory language related to the risk-based pricing notice merely states that the notice must include a statement informing the consumer that he or she "*may obtain*" a copy of the consumer report. In describing the contents of a notice, Congress did not create another substantive right to a free report. CDIA believes that the less severe consequences of the risk-based pricing decision should *not* result in the same (another free disclosure) or greater (free general score provision exception) rights than for a consumer who suffered the more severe consequences of an adverse action decision or was the victim of identity theft.

As noted above, CDIA's members understand that many creditors currently plan to give the risk-based pricing notice to a very high proportion of approved consumers and perhaps even to all applicants. Thus, the proposed rule will result in the risk-based

pricing notice being given as if it were an application notice, without regard to the fact that notice informs consumers that the terms of credit were unfavorable (even if they were not). This approach will have serious consequences for CDIA's members because, as currently drafted, the risk-based pricing notice gives consumers a free credit report in addition to the annual report, resulting in unlimited coupons for free credit reports. Congress never intended this result.

The Agencies should not impose obligations by regulation that do not reflect the intent of Congress and that have the effect of taking away a property right of consumer reporting agencies. CDIA urges the Agencies to adopt a risk-based pricing notice disclosure that will alert the consumer to the fact that the consumer may obtain a free annual report rather than create a new right to an additional report.

V. Credit score disclosure notice exception

FCRA § 615(h)(6)(b)(iii) authorizes the Agencies to identify appropriate exceptions "for classes of persons or transactions regarding which the agencies determine that notice would not significantly benefit consumers." Citing this authority, the Agencies propose to create the alternative credit score disclosure notice for non-mortgage transactions. § 222.74(e); § 640.5(e). The Agencies have not made it clear that the credit score disclosure is an exception to the risk-based pricing form of notice that need only be given to those consumers who would receive the risk-based pricing notice. The Agencies should clarify this limitation so that creditors do not provide this notice to all consumers as though it is a generic application notice. Moreover, given the sensitive privacy issues related to disclosure of a credit score, the Agencies should not want creditors to give a credit score disclosure to every applicant. As noted above, CDIA supports an application notice, but believes that the notice should be generic in nature so as not to disclose sensitive information.

If the Agencies intended to create an "exception" that would allow a creditor to give a notice to every applicant, CDIA believes that this is beyond the statutory authority granted to the Agencies to identify narrow exceptions to the risk-based pricing notice requirements. There is no indication that Congress intended to create an entirely new and different type of notice with potentially widespread applicability other than a generic application notice.

Moreover, the proposed rule would require that this alternative notice include the consumer's credit score provided to the creditor by a consumer reporting agency. §640.5(d) (f). Thus, the Agencies would compel disclosure of a free credit score in connection with every non-mortgage credit transaction where the creditor elects to provide the alternative to the risk-based pricing notice. However, the FCRA does not contemplate this result. Section 615(h)(5) enumerates four items that must be included in

the notice.[2] The context of Section 615(h) indicates that other information included in the notice would relate to how the consumer compares to others who receive credit. Nothing in this section would require a creditor to disclose the credit score it obtained from a consumer reporting agency either in a risk-based pricing notice or some alternative notice.

If Congress intended disclosure of the credit score for non-mortgage transactions, then Congress would have expressly included such a requirement, as it did for certain mortgage lenders in FCRA § 609(g).[3] Congress did not include such a requirement, and at the same time, expressly authorized the consumer reporting agencies to charge a consumer a fair and reasonable fee for a credit score. *See* FCRA § 609(f)(8). By creating a new credit score disclosure notice, the Agencies undermine the specific Congressional determination that consumer reporting agencies could charge a fee for a credit score. If adopted, the proposed rule would essentially give consumers a product the credit score for free, a result which CDIA believes to be contrary to the express Congressional intent.

An alternative notice that includes a credit score will not advance the purpose of the proposed rule to educate consumers before consummation that negative information in their consumer reports will adversely affect the cost of credit. By focusing on the credit score disclosure, the notice fails to inform consumers that information other than the credit score may affect the cost of credit, and it will lead consumers to believe that the creditor relied solely on the score when that may not be true.[4] For example, factors in addition to a credit score, such as debt-to-income and payment-to-income ratios, may carry more weight than a credit score in the creditor's determination of the cost of credit.

---

[2] These are: (a) statement informing the consumer that the terms offered to the consumer are set based on information from a consumer report, (b), the identity of the consumer reporting agency furnishing the report, (c) a statement informing the consumer that the consumer may obtain a copy of a consumer report from that consumer reporting agency without charge and (d) the contact information specified by that consumer reporting agency for obtaining such consumer reports.

[3] Similarly, when Congress intended for the user of a consumer report to give a copy of the report to a consumer, it did so expressly. *See* FCRA § 604(b)(3)(A).

[4] For example, some creditors, like Capital One Financial Corporation, use other factors in creditworthiness decisions such as household income, whether the applicant has a checking or savings account, and an applicant's prior performance with the creditor. *See* Testimony of Jack Forestell, Capital One Financial Corp., before House Committee on Financial Services Subcommittee on Oversight and Investigations, "*What Borrowers Need to Know About Credit Scoring Models and Credit Scores*," July 29, 2008.

VI. If the rule provides for a credit score disclosure exception for non-mortgage transactions, creditors should be able to provide a non-proprietary score

Under the proposed rule, if a creditor adopts the mortgage score disclosure exception notice and also uses a proprietary score that it does not wish to disclose, the creditor may give a disclosure based on a credit score by purchasing and providing to the consumer a credit score and the associated information obtained from an entity regularly engaged in the business of selling credit scores. *See* FCRA § 609(g)(1)(C) incorporated into § 222.74(d)(1)(ii)(D); §640.4(d)(1)(ii)(D); 73 Fed. Reg. 28980. If the Agencies do adopt a credit score disclosure exception applicable to non-mortgage transactions, the rule should permit creditors that choose this exception to provide an alternative credit score under comparable circumstances.

The Agencies clearly contemplated that a creditor could use the proprietary score *or* a credit score and associated information it obtains from an entity regularly engaged in the business of selling credit scores. *See* 73 Fed. Reg. 28982. The Agencies also indicated that if the creditor does not use a credit score in its evaluation, it may rely on the exception by purchasing and providing a credit score and associated information it obtains from an entity regularly engaged in the business of selling credit scores. *Id.* Notwithstanding this language in the Supplementary Information, the proposed rule does not expressly provide this option. Instead, § 222.74(e)(1)(ii)(D) and § 640.4(e)(1)(ii)(D) require that the credit score disclosure notice include: "The current credit score of the consumer or the most recent credit score of the consumer that was previously calculated by the consumer reporting agency for a purpose related to the extension of credit." This language should be modified to make it clear that a creditor using a proprietary score could purchase the score from a consumer reporting agency to fulfill its notice obligations.

VII. The rule should permit creditors to provide the notice orally, in writing or electronically

Under FCRA § 615(h), a creditor may provide an oral, written, or electronic risk-based pricing notice. Consistent with the statute, the proposed rule would permit creditors to give a risk-based pricing notice orally, in writing, or electronically. § 222.73(b)(1)(ii); §640.4(b)(1)(ii). However, the Agencies do not extend the same delivery mechanism for the alternative credit score disclosure notice. Instead, when a creditor elects to give the credit score disclosure notice, the creditor must do so "in writing and in a form that the consumer may keep." §§ 222.74(d)(2)(iv), 222.74(e)(2)(iii), 222.74(f)(3)(iii), 640.5(d)(2)(iv), 640.5(e)(2)(iii), and 640.5(f)((3)(iii). This discrepancy may result from the fact that the Agencies have no statutory mandate for the credit score disclosure alternative. In any event, there is no reason to distinguish between the delivery mechanisms for the different notices provided under the rule or to limit the delivery

mechanism when one particular notice is given, even if it is given pursuant to an exception. On the contrary, by expressly permitting the risk-based pricing notice to be given orally, in writing or electronically, Congress clearly indicated that all three delivery mechanisms should be available whenever a notice is given pursuant to the rule or an exception to the rule. The rule's informational and educational purposes are met under all three delivery options. These options provide flexibility and facilitate creditor compliance and ease of access by consumers. These are undoubtedly the reasons why Congress chose to provide for the three delivery options, and the Agencies should also provide for them whenever a creditor gives notice under the rule.

Moreover, because a credit score is a consumer report that includes sensitive information, there are important privacy considerations when a creditor gives a credit score disclosure notice. CDIA believes that for improved security of the score disclosure, provision of the score and factor information through a secure website or telephonically should be allowed.

To maximize the security protections and consistent with the Congressional intent, the rule should be amended to permit electronic and oral disclosure of the information in the notice. These amendments could be accomplished by permitting electronic and oral disclosures under §§ 222.74(d)(2)(iv) and 640.5(d)(2)(iv),

VIII. The rule should permit creditors to deliver the credit score disclosure notice through a third party

If the Agencies permit credit score disclosure notices, creditors should have the ability to hire a third party to provide a service through which a consumer may access his/her credit score electronically rather than requiring the written notice to include the credit score. This option could alleviate potential privacy issues that would arise if the notice was simply mailed or handed to a consumer. The Agencies contemplate possible third party delivery when there are multiple parties involved in a credit extension. *See* 73 Fed. Reg. 28969. This option should be incorporated into the final rule.

The rule should be amended to permit third party delivery of the notice and/or score by adding a provision after §§ 222.74(d)(2)(iv), 222.74(e)(2)(iii), 222.74(f)(3)(iii); 640.5(d)(2)(iv), 640.5(e)(2)(iii), and 640.5(f)((3)(iii)the following statement: "*A creditor may contract with a third party for delivery of the notice and/or credit score in a manner permitted by this rule*."

IX. The rule should make clear that it applies only to credit transactions

A. Checks and other negotiable instruments

Some of CDIA's members have expressed a concern that the proposed rule will apply to specialty consumer reporting agencies, such as those entities that provide check verification services, or creditors that accept checks and other negotiable instruments. CDIA is aware that, under existing case law and the Federal Reserve Board's interpretation, a bank does not extend credit when it permits a customer to overdraw its checking account without a pre-arranged right to defer payment or impose a finance charge. *See e.g., Roberts v. Walmart Stores*, 736 F.Supp. 1527 (E.D. Mo. 1990). However, because there may be some confusion about whether a risk-based pricing notice or credit score disclosure would be required merely because a consumer paid by a check or other negotiable instrument, the Agencies should clarify, that credit does not include transactions in which the consumer pays by check or other negotiable instrument and the person accepting the check does not intend to defer payment or impose a finance charge.

B. Lease transactions

CDIA also recommends making clear that the final rule does not apply to consumer lease transactions. The FCRA defines "credit" and "creditor" to have the same meaning as in ECOA. Case law also supports the interpretation that a lease is not an extension of credit under the ECOA. *See*, *e.g. Liberty Leasing Co. v. Machamer*, 6 F.Supp.2d 714 (S.D. Ohio 1998) (Holding that equipment lease not a credit transaction under ECOA); *Laramore v. Ritchie Realty Management Co*., 397 F.3d 544 (7th Cir. 2005) (Holding that residential lease not a credit transaction under ECOA); *see also* 50 Fed.Reg. 48018, 48020 (Nov. 20, 1985) ("The Board believes that the Congress did not intend the ECOA, which on its face applies only to credit transactions, to cover lease transactions unless the transaction results in a "credit sale" as defined in the Truth in Lending Act and Regulation Z."). Therefore, leases should be clearly outside of the risk-based pricing rule's requirements.

C. Suggested language

The Agencies could insert clarification that the final rule does not apply to leases and check transactions in one of several places: (1) the rule's scope (§ 222.71 and § 640.1), the definition of "credit" (§222.72(d) and § 640.2(d)) or in the Rules of Construction (§ 222.76 and §640.6). The definition could state: "*Credit* has the same meaning as in 15 U.S.C. 1681a(r)(5) and, therefore, does not include lease transactions or transactions in which the consumer pays by check or other negotiable instrument and the person accepting the check does not intend to defer payment or impose a finance charge." The scope or rule of construction could state: "Because the term "credit" has the same

meaning as in 15 U.S.C. 1681a(r)(5), the rule does not apply to lease transactions or transactions in which the consumer pays by check or other negotiable instrument and the person accepting the check does not intend to defer payment or impose a finance charge."

X. Activities that should be excluded from the notice requirement

A. Account review

The proposed rule would require a risk-based pricing notice when a creditor changes the annual percentage rate in connection with a credit card agreement. § 222.72(d); § 640.4(a)(2). CDIA believes that account review is beyond the scope of the statutory provision and of the proposed rule, both of which describe coverage as applying to "an application for, or a grant, extension, or other provision of, credit." In an account review situation, credit has already been extended to the consumer; there is no new extension of credit. Imposing a risk-based notice pricing notice requirement when there is an increase in the annual percentage rate also contradicts the proposed rule provision that the notice needs to be given only one time in connection with an extension of credit.

There is no reason for a consumer to receive an additional risk-based pricing notice when the APR is increased after an account review. Consumers already receive adequate notice when a creditor takes adverse action based upon information in a credit report or on other information contained in the file at the consumer reporting agency. A consumer subject to a change in terms, including the APR, will or should receive an adverse action notice required by Regulation B and/or a change in terms notice under Regulation Z.

Requiring a risk-based pricing notice to be sent when there is a change after an account review will confuse consumers and creditors and may discourage a creditor's account review procedures, which are important to safety and soundness. To the extent the Agencies believe that consumers are not receiving appropriate notices under Regulation B or Regulation Z, the Agencies should propose amending the notice requirements in those regulations.

B. Prescreening

CDIA agrees that the proposed exception properly applies to prescreening firm offers of credit and consumers who receive the rate stated in the firm offer. CDIA also agrees that prescreened lists obtained by a creditor pursuant to Section 604(c) do not trigger any notice obligation under the proposed rule. CDIA urges the Agencies to expand the exception.

1. Range of Rates

The purpose of the risk-based pricing notice is to give the consumer the opportunity to obtain the best credit terms based on his or her credit history. If a consumer receives a firm offer, the consumer will have had the opportunity to consider whether the terms are favorable. The prescreened offer will include a disclosure that a consumer report was used in making the offer, so the consumer will know that his or her credit report was used in connection with the offer. *See* FCRA §§ 604(c) and (e).

If a consumer applies in response to a firm offer, even when there is a certain range of rates, it would not make sense or further any educational purpose to also send a risk-based pricing notice. The risk-based pricing notice will be confusing to consumers who respond to a firm offer and receive the terms expected, even if terms included in the offer are not limited to one annual percentage rate.[5] For these reasons, CDIA does not believe that the purpose of the statute will be advanced by so narrowly limiting the applicability to firm offers that include a single annual percentage rate.

2. Consumer-Authorized Prescreening

If a consumer authorizes prescreening under FCRA § 604(c)(1)(A), then the creditor should not need to provide a risk-based pricing notice. In this scenario, the creditor would ask the consumer if she or he wants to be prescreened for an offer. If the consumer responds affirmatively, then the creditor will obtain the necessary information from the consumer reporting agency and make an offer. The consumer will then have the option to apply on the terms of the offer. In this situation, a risk-based pricing notice or credit score disclosure would not substantially benefit the consumer. As such, CDIA requests that the Agencies expand the exemption to include prescreened activities conducted pursuant to Section 604(c)(1)(A).

XI. There should be only one notice per transaction

CDIA agrees with the Agencies that there need only be one notice per credit transaction. 73 Fed. Reg. 28969; § 222.75(a); § 640.6(a). Consumers, creditors and CDIA's members will all benefit from this requirement because it will eliminate duplicative notices that might be confusing to consumers and costly to creditors and CDIA's members. Similarly, the Agencies include a logical exclusion from the notice requirement for those instances when a consumer applies for specific terms and receives those terms. §

[5] In addition, a risk-based pricing notice may have no value when given to consumers who respond to firm offers of credit for credit cards if the prescreen notice includes the disclosure proposed by the FRB, the OTS and the NCUA in the Unfair or Deceptive Acts or Practices Rule. *See* 73 Fed. Reg. 28904, Proposed § .28(a) disclosure: "If you are approved for credit, your annual percentage rate and credit limit will depend on your credit history, income, and debts."

222.74(a); § 640.5. This is a practical approach that will avoid sending notice that would undoubtedly confuse a consumer who has just received credit on the specific terms for which he or she applied.

The Agencies do not address how creditors should treat joint applicants. CDIA requests that the Agencies clarify this limitation to ensure that only one notice is given per application even if there are multiple applicants in connection with the same transaction.

XII. Language of model notices should further the educational purpose of the rule

Consumers receive so many notices today that it is often difficult for them to sift through the notices and understand how or why the notices are important. Therefore, it is critical that every notice be clear, direct and accurate. The proposed Model Notices should be modified to achieve maximum clarity. In addition to the substantive comments above, CDIA provides the following comments on the technical aspects of the proposed model notices.

A. H-1/B-1 – Model Form for Risk-Based Pricing Notices

This notice should include a statement that the consumer reporting agency played no part in the creditor's decision and is unable to supply specific reasons for the creditor's decision on the application or the terms of credit.

A statement should be added to make clear that the terms of credit may have been established based on creditworthiness criteria other than a credit score, including income, loan to value ratio, etc. Otherwise, consumers may believe that the credit score was the only factor considered.

If the Agencies allow creditors to give this form of notice as an "application notice," then the notice should include a statement that the consumer has a right to a free annual report, not an additional free report. *See* discussion above.

B. H-2/B-2 – Model Form for Account Review Risk-Based Pricing Notice

If this notice requirement is retained, then the notice should include a statement that the consumer reporting agency played no part in the creditor's decision and is unable to supply specific reasons for the creditor's decision.

C. H-4/B-4 – Model Form for Credit Score Disclosure Exception for Loans not Secured by Residential Real Property

In addition to the substantive comments above, CDIA makes the following comments to the technical form of the notice.

The notice is misleading in that it states that the credit score could affect the consumer's *ability to get a loan* because only consumers who are approved for credit will receive this notice. That statement should be deleted. A statement should be added to make clear that the terms of credit may have been established based on creditworthiness criteria other than a credit score, including income, loan to value ratio, etc. Otherwise, consumers may believe that the credit score was the only factor considered when this is usually not true.

The notice should include a statement that tells the consumer the reason for the notice. For example, it would be helpful to tell a consumer: "*You are receiving this notice because you applied for and were approved for credit with us. This notice does not mean that there are errors in your credit report. Instead, you are receiving the notice because information in your credit report may have affected the terms of your credit.*" Giving the reason up-front will help consumers, creditors and consumer reporting agencies address questions from consumers who receive the notice.

This notice should include a statement that the consumer reporting agency played no part in the creditor's decision and is unable to supply specific reasons for the creditor's decision on the application or the terms of credit.

XIII. Conclusion

CDIA appreciates the opportunity to comment on the proposal. CDIA firmly believes in the importance of educating consumers about information in their consumer reports and encouraging consumers to take steps to ensure the accuracy of their reports. To the extent that this proposed rule creates requirements to achieve that goal, CDIA supports the proposal.

Respectfully submitted,

Eric J. Ellman
Vice President, Public Policy and Legal Affairs