

August 11, 2008

Via email:

reg.comments@federalreserve.gov

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

RE: Docket No. R-1316 – Fair Credit Reporting Risk-Based Pricing Regulations

Dear Ms. Johnson:

Please accept these comments with respect to the proposed FACT Act Risk-Based Pricing Rule, Project No. R411009. Amarillo National Bank, a \$2.6 billion asset community bank located in the Texas Panhandle, thanks the agencies for the opportunity to comment. We are an aggressive consumer lender with small dollar loans, auto loans, dealer paper, home improvement, home equity and mortgage lending. We are currently the number 1 consumer lender in our MSA averaging well over 5,000 loan applications monthly. As an aggressive lender we consider credit scores lower than those considered by most other banks and use risk-based pricing grids for our products that include the credit score, loan to value and term of the loan.

It has been our experience with consumer borrowers that they fall into two categories. One set is well aware of their credit scores, shop for rates and often look at all three credit reporting agency reports on an annual basis. The other set does not shop for rates, does not know their credit scores and does not review their credit reports; in fact this set doesn't particularly care about their credit scores or loan rates. They care whether they can afford the payment – period.

The purpose of this section of the FACT Act is to notify consumers that information in their consumer reports caused them to receive materially less favorable terms and to encourage them to check their consumer reports for possible errors. We believe that the proposed risk-based pricing notice will provide an opportunity that won't be acted on in the cases where it would be most beneficial. Therefore, since providing a notice is the law, the simpler the notice and the less complicated the procedure, the better. A notice, like the exception notices, that provides the credit score, brief information about credit scores and contact numbers might serve better than a notice of the availability of a free credit report with a warning about less favorable credit terms.

Although we will opt to use one of the exception notices contained in the proposal (not the risk-based pricing notice), we have several comments to make about the risk-based notice.

The Agencies solicit comment on the credit score proxy method and tiered pricing method (in general)

We believe there are too many variables that go into pricing loans other than the credit score. Basing delivery of a notice on credit score alone will not present the true picture of risk-based pricing. Since each bank and market and/or product within the bank has its own particular risk, adding additional criteria for determining what is “materially less favorable” will unduly complicate the issue and create undue burden for banks to calculate points at which a risk-based pricing notice is required. We suggest that the agencies use the exception allowed rather than a complicated notice determination and delivery procedure for borrowers with less favorable credit scores.

...whether... “a substantial proportion of consumers” also should be defined and, if so, how they should be defined.

Yes, we believe that the term should be defined if the risk-based pricing notice is adopted. This is especially necessary since the proposed rule declines to define the term but arbitrarily uses 60% and the bottom three of four pricing tiers or three of five pricing tiers as benchmarks for providing the pricing notice.

...solicit comment on whether this assumption if appropriate (credit score not available receive less than favorable terms)

We use alternate letters of credit in lieu of a regular credit score as suggested by Fair Lending laws. The applicant does not necessarily receive less favorable terms because of a missing credit score provided by a credit bureau if adequate alternate credit is presented. The assumption that no credit score results in less favorable terms is incorrect.

...solicit comment on the appropriateness of a 60-day period to receive a free credit report in the notice.

If the agencies dispense with the risk-based pricing notice, this question is moot. If not, then the timing opportunity to obtain a credit report is best answered by the credit bureaus.

...solicit comment on whether there are any circumstances in which the notice should be permitted to be provided after consummation...

We work with several auto dealerships and provide a credit source to their prospective buyers. We approve the credit with a faxed application and fund the loan but do not see the customer. Providing the notice before consummation of the loan in these instances will be difficult to do. We would have to rely on the auto dealer representative. We suggest that the notice could be part of the coupon payment booklet or welcome letter after consummation.

Credit Score Disclosure Exception for Credit Secured by Residential Real Property...

It is not clear whether this disclosure must be given in addition to the required disclosure of 609(g) or replaces the 609(g) disclosure. We ask

that the agencies combine the requirements of these two disclosures into one. A consumer who receives two disclosures with similar content will likely be confused.

...solicit comment to simplify exceptions notices by requiring the same elements in the disclosure such as the key factors...

We wholeheartedly agree with the attempt to make the disclosures similar thereby simplifying the notice form and content.

...solicit comment on the design and content of the proposed model forms...

In general, we commend the agencies for the format of the model forms. We have one comment. The Notice to the Home Loan Applicant contains the same information contained in the body of the model form H-3 and B-3 under the first three question of "Understanding Your Credit Score" and the first question under "Checking Your Credit Report". We suggest that this information could be combined.

We do have some additional questions:

1. It is not clear to us in the rules governing multi-party transactions, who is responsible for providing the disclosure. As we mentioned above we purchase dealer paper but also fund loans for auto dealerships, receive the credit application, make the credit decision but never see the consumer. Who is responsible for delivery of the notice in this case? It appears the second example in (b)(3)(iii) fits our situation. But since we do not see the consumer, how and when is the notice considered timely delivered?
2. We often do not pull a credit report on high net worth consumers, consumer loans for our commercial customers or customers with compensating deposit account relationships and successful prior borrowing histories. The proposal is unclear whether these situations are exceptions to required delivery of a risk-based pricing disclosure or one of the exceptions. How do we treat these situations?

In general, the proposal to provide risk-based pricing notices appears overly complicated. We agree that all applicants for credit should be reviewing their credit scores and credit bureau history. Adverse action notices provide a consumer the opportunity to obtain credit report information and correct inaccurate information. A simple disclosure to consumers who consummate a loan that includes their credit score and an invitation to review their credit report should accomplish the intent of the law.

Thank you for this opportunity to comment.

Sincerely,

Chris Newell
AVP and Compliance Officer