August 18, 2008

Via Electronic Delivery

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

RE: FACT Act Risk-Based Pricing Rule
Project No. R411009

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

RE: FACT Act Risk-Based Pricing Rule
Docket Number: R-1316

Ladies and Gentlemen:

Thank you for the opportunity to comment on the Federal Trade Commission's and the Board of Governors of the Federal Reserve System's (hereinafter jointly referred to as the "Agencies") Notice of Proposed Rulemaking ("NPRM") for the implementation of the risk-based pricing provisions in Section 311 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) which amends the Fair Credit Reporting Act (FCRA). This letter is submitted on behalf of the Education Finance Council, the National Council of Higher Education Loan Programs and the Student Loan Servicing Alliance (the "Associations"). The Associations represent organizations involved in the making, servicing and administration of government-insured and private student loans.

Of primary interest to the Associations is the effect of these proposed regulations on the administration of non-government, private student loan programs. These programs rely on information from credit reporting agencies to make underwriting decisions and evaluate risk, and may be likely to offer more favorable terms to consumers with good credit histories and less favorable terms to consumers with poor credit histories. Government programs, such as the Federal Family Education Loan Program, do not make such a distinction and are therefore not subject to these regulations.

Private loan programs are offered by state and nationally-chartered banks, federal savings banks, credit unions, student loan secondary markets, state-authorized direct lenders and state-licensed lenders. Student loan service providers are responsible for a range of services to lenders, including without limitation the processing of loan applications, communications with consumers, the provision of disclosures and billings, the processing of payments and the collection of past-due payments.

It is clear to the Associations that the Agencies have attempted to implement Section 311 of the FACT Act in a way that would be operationally feasible for creditors. The Associations truly appreciate these efforts and commend the Agencies for taking this approach.

The Associations understand that the Agencies are performing their mandate to promulgate regulations to implement the FACT Act passed by the Congress. Nevertheless, the Associations desire to express their deep concern that the ever-growing number, duplication and complexity of credit-related disclosures will ultimately undermine – rather than facilitate – a clear understanding of material loan terms and informed credit shopping. For example, the Higher Education Opportunity Act (P.L. 110-315), which passed the Congress and was signed by the President while these comments were being prepared, contains a series of complicated new disclosures that need to be made with respect to private student loans at the time of solicitation/application, loan approval, and consummation. As we further indicate below, we believe it is very important that the Board of Governors develop regulations for the risk-based pricing notice with an eye toward the full breadth of credit-related disclosures that will apply to private student loans to ensure effective and clear delivery of meaningful information to consumers.

Material Terms

Proposed paragraph (i)(2) defines "material terms" for closed-end credit as the Annual Percentage Rate (APR). Private education loans are closed-end loans. The Associations agree that the definition of material terms should focus on a single term and that APR is the best term on which to focus if a lender is using the comparison method to determine who must receive the notice. It makes sense for lenders using the comparison method to compare loans based on their APRs.

Using APRs, however, does not work in the tiered pricing method for student loans. Typically, student loan lenders establish tiered pricing with the top most favorable tier reflecting the best interest rate and lowest fees that the lender offers, rather than the lowest APR. The APR for a $10,000 loan for 5 years with an interest rate of 7% per year and a fee of $100 will be different from the APR for a $20,000 loan with the same terms. The APRs for loans that have the same interest rate and fee but different terms to maturity will also be different. In each of these examples, the loans will be in the same tier. As a result, it is entirely possible that the APR of a loan to a borrower in the top tier will be the same or higher than the APR of a loan to a borrower in a lower tier.

We propose that this section allow lenders that set their interest rates and fees based in whole or in part on a consumer report to comply by providing the notice to each consumer who is not placed within the top pricing tier or tiers.

Timing of Risk-based Pricing Notices

The timing requirements seem consistent with other key consumer credit notification requirements, like the approval notice in Regulation B and disclosures in Regulation Z, and

appear to provide the opportunity to combine the risk-based pricing notice with other notices provided to the consumer.

For example, loan approval notices provided under Regulation B would be an appropriate point at which a creditor could provide the risk-based pricing notice. Disclosures required by Regulation Z generally are provided at or prior to loan consummation, which appears to align with the requirement that the risk-based pricing notice be provided before the "consumer becomes contractually obligated." As a result, creditors may want to provide the risk-based pricing notice at the same time that Regulation Z disclosures are made. Similarly, a creditor may desire to provide the risk-based pricing notice together with the disclosures to be developed by the Board of Governors pursuant to the Higher Education Opportunity Act.

The Associations request that the Agencies specifically state, either in the final rule itself or the preamble, that the "clear and conspicuous" requirement does not preclude providing the risk-based pricing notice at the same time or along with other notices required under the Truth in Lending Act or the Equal Credit Opportunity Act. This approach facilitates a holistic and more effective delivery of loan-related information to consumers, leading to better-informed credit decisions.

Providing Credit Scores to Consumers

Due to the complexity of determining when a credit score triggers the notice required by proposed §222.72, many lenders may be considering providing notice under the exception in §222.74(e). To increase comfort with utilizing this exception, we believe it is important to clarify that the exclusion from liability under FCRA Section 609(g)(2) applies to all types of credit and is not limited to credit score disclosures made in connection with credit secured by 1-4 units of residential real property. Creditors would be provided with appropriate protection if the final regulation were to specifically state that credit reporting agencies may not prohibit lenders from disclosing scores under §222.74(e) and that the liability limitation in Section 609(g)(2) applies to such disclosures.

Notice to Consumers

The Associations believe that the risk-based pricing notice should include a reference to the fact that the consumer's right to a free credit report expires after 60 days, as required by proposed §222.73(a)(1)(vi).

Provision of Risk-based Notice to Primary and Other Applicants

The last issue for your consideration is our request that the proposed regulation specifically address how the notice requirement applies to a joint application or co-signers for credit. In a vast majority of cases, private student loans involve a co-borrower or co-signer in addition to the primary applicant. As a result, credit reports are pulled and reviewed with respect to both the primary applicant and the co-borrower or cosigner. It appears that the proposed risk-based pricing regulation requires notice to both individuals. The Associations support such a requirement. We believe it is important that the Agencies clarify that for purposes of providing

notices under the exception in §222.74(e), a particular consumer's credit score need only be disclosed to that consumer (i.e. that the credit score of the co-signer need not be provided to the primary applicant, and vice versa). This clarification is particularly important to student lending where in most cases the co-borrower/co-signer is the parent of the primary applicant. We respectfully request clarification regarding this point either in the final rule or the preamble. The Associations and its members would also find it useful for the Agencies to produce another notice within the model form that addresses co-signers and joint applicants.

The Associations commend the Agencies for undertaking this well thought out approach in the NPRM. It is clear that every consideration was given to making these regulations workable for the creditor while also making them useful to the consumer and ensuring accurate consumer reports. The Associations urge the Agencies to consult with the Associations and their members not only to ensure that the regulatory requirements are workable from an operations perspective, but also to accurately assess the cost of the regulations to both creditors and consumers. If you have any questions, please do not hesitate to contact us at the addresses listed below.

Sincerely,

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