

August 18, 2008

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

RE: FACT Act Risk-Based Pricing Rule
Docket No. R-1316

Dear Ms. Johnson:

Thank you for the opportunity to comment on the notice of proposed rulemaking to implement the risk-based pricing provisions in section 311 of the FACT Act. We are an \$80 million de novo community bank located in Lakeland, Florida and will be directly affected by the requirements outlined in this proposal. Please consider the following comments regarding the aforementioned proposal:

- The proposal commented that the “Agencies determined that it may not be operationally feasible in many cases for creditors to compare the terms offered each consumer with the terms offered to other consumers to whom the creditor has extended credit” when determining whether a risk-based pricing notice should be given. We agree that statement would be the case for our Bank, especially with all the variables to account for in making credit decisions. While two alternatives were included in the proposal for the credit score proxy method and the tiered pricing method, neither of those alternatives would be feasible for our Bank either. The credit score proxy method would not be conclusive since our Bank has only been opened for over a year and a sufficient number of credit scores may not be available. Plus, this method appears to be very burdensome to manually implement and to update on a periodic basis. In addition, we do not currently tier our pricing for loan products so that particular method would not be practicable.
- Fortunately, the proposal did outline exceptions to the risk-based pricing notice requirements that, for the most part, the Bank can live with. The Agencies are proposing exceptions for creditors that provide consumer applicants with certain information, including their credit score, in lieu of the risk-based pricing notice. Model notices have been included in the proposal. It is our understanding that a financial institution can utilize the exceptions as long as the required notice information is provided to “all” consumers (where credit is primarily for personal, family, or household purposes) where a consumer report was used. Model notices have been proposed for credit that is secured by one to four units of residential real property (that also contains the credit score disclosure the Bank currently provides), credit that is not secured by one to four units of residential real property, and a third notice where

there is insufficient credit information. We agree that these are acceptable exceptions. However, more clarification may be required for the following:

- According to the regulation on the Notice to the Home Loan Applicant (credit score disclosure) for residential 1-4 family properties, we are to provide the name of the person or entity that provided the credit score or credit file upon which the credit score was created. The actual “Notice to the Home Loan Applicant” language also includes the statement that “If you have questions about your credit score or the credit information that is furnished to you, contact the consumer reporting agency at the address and telephone number provided with this notice...” While the model form H-3 indicates the “Source” (surmise this is where the credit reporting agency name would belong), there is no place to indicate the address or telephone number of the “consumer reporting agency” that the Bank utilized. All of this information is now currently shown on the Notice to the Home Loan Applicant disclosure that we provide consumers when required. Although we understand that using one of the methods shown in the model form section for “How you can obtain a copy of your credit report?” (e.g., visiting www.annualcreditreport.com) will have access to all three credit bureaus, consumers who read this disclosure probably don’t know the difference. For example, if we utilize “Experian” and then show that particular credit reporting agency in the “Source” block of the notice, a consumer may question how they can contact “Experian” to get a copy of their credit report. It is recommended that either the model language in the Notice to the Home Loan Applicant be changed if there will be no place to show specific credit reporting agency addresses or telephone numbers or include a section in the model notice where the actual credit reporting agency that we used will have the address and telephone number (as will be required for models H-1 and H-2).
- The proposal is not clear as to whether a Bank that utilizes more than one credit reporting agency, would then need to give the risk-based pricing notice (using model H-3 for exceptions) for each credit report used to each consumer. For example, many banks pull credit from all three nationwide credit bureaus. Since some of the information would be different for each credit bureau shown on the risk-based pricing notice (source name, range of scores, score range or ranking, and key factors), the rules need to be clear as to whether one disclosure has to be provided for each credit bureau report pulled. If a disclosure has to be provided to each consumer for each credit report pulled, there is the possibility then that six disclosures would have to be provided if there was a joint application. That appears to be excessive, and it is recommended that further consideration be given to this issue and/or the risk-based pricing notice configured where all three nationwide credit bureau required information can be accommodated on one form (note that credit bureaus may produce them in this manner). Nonetheless, there are additional disclosure requirements that most likely the increased costs will be passed on to consumers. The Agencies should ensure that costs are minimized for both consumers and creditors who will be required to provide the notices.
- The regulation is not clear for exceptions in Section 222.74 as to whether a notice needs to be provided when no credit report was used during the application and credit process. There may be instances when no credit report is pulled such as renewing a loan. The discussion states, in part, “a person that does not use a credit score in its

- credit evaluation process is permitted to rely on this exception by purchasing and providing to the consumer a credit score and associated information it obtains from an entity regularly engaged in the business of selling credit scores.” We strongly disagree that the proposal should “require” that creditors must always obtain credit score information for consumers, including those instances when no credit score was used in the evaluation (or a credit report even generated). This will only increase the costs to the banks or consumers and micro-manages the underwriting process for creditors. It would instead be more logical to develop another model notice that would provide consumers information where they can obtain their credit score information, which is the intent of the regulation.
- The proposal requires an additional requirement on the notice for those using the exception to the risk-based pricing notice that discloses either a distribution of credit scores (i.e., the proportion of consumers who have scores within the specified ranges) or a statement about how the consumer’s credit score compares to the scores of other consumers. Any distribution or comparison of scores should reflect the population of consumers who have been scored under the model used by the “person providing the score.” If that information is not available from the person providing the score, then the creditor may base the distribution or comparison on its own consumers who have been scored using the model. The latter is certainly not feasible due to the reasons noted in this comment letter where it is operationally not possible to perform, especially for small de novo community banks. Therefore, it would appear that if we use the model forms under the exceptions rules we can only depend on the credit reporting agencies to provide this information within the risk-based pricing notice. If none of the credit reporting agencies will provide this required information, then the requirement should be removed or other alternatives proposed. Of course, by requiring this additional information, the costs will most likely be passed on to consumers even if the information does appear to be beneficial to consumers.
 - The proposal solicits comments on whether the disclosures of the score creation date and the source of the score for non-mortgage exception disclosures will be beneficial to consumers or will impose undue burdens on the industry. If the credit reporting agencies are already including the creation date on the Notice to Home Loan Applicant disclosure, then it would not appear to be burdensome to include it on the new risk-based pricing notices for all notices required under the exceptions. As for the source of the score, it is believed that this refers to the name of the credit reporting agency (e.g., Experian). If the credit reporting agency that the bank used is not shown on the risk-based pricing notice, then it will be difficult for the consumer to know which report showed the actual credit score, score range and ranking, and factors affecting the score. By only showing how to order the free annual credit report on the notice, the consumer will not know which credit reporting agency to choose that matches up with the information shown on the notice. Since credit scores and credit information can vary for each of the nationwide credit reporting agencies, it would be important for the consumer to know which credit report reflected the information on the notice.
 - A comment also was made in the discussion for non-mortgage exception disclosures that the Agencies are not proposing to require the notice to contain up to four key factors that adversely affected the credit score since they believe it may not be useful

to consumers and the list of factors does not effectively convey the importance of each factor (don't quite understand this statement though since the four key factors are included in model form H-4). We disagree with this comment and do believe that key factors adversely affecting the credit score are helpful to consumers. While the consumer would be able to determine whether their credit score ranked higher or lower than consumer, they would not be able to discern what factors would have affected a lower credit score. It is surmised that bankers would be asked questions from loan applicants as to why their credit score may be lower (or how to improve their credit score) and without the adverse factors being shown, this helpful information could not be provided. Again, if the credit reporting agencies already have the factors affecting the credit score programmed into the software that provides the risk-based pricing notice, then it would not appear to be burdensome to the industry to include this type of information. We believe that the notices should be similar for both covered residential mortgage loans and non-mortgage credit.

- It is suggested that testing of the model forms be undertaken with consumers prior to finalizing as has been done recently with other disclosures.
- While no request was made as to an appropriate timeline to implement the new rules, it is recommended that the industry have at least one year since systems will need to be upgraded, new procedures put in place, and training provided, where needed.

In summary, we agree with the proposal regarding inclusion of exceptions where risk-based pricing notices can be provided to all consumers when required without the need for creditors to determine whether the terms of some offers are materially less favorable than the terms of other offers.

Thank you for your consideration of these comments.

Sincerely,

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