



August 18, 2008

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

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 [Regulation V; Docket No. R-1316 / RIN 3084-AA94; Project No. R411009]***

Ladies and Gentlemen:

The American Financial Services Association (“AFSA”) is grateful for the opportunity to comment on the proposed FACT Act Risk-Based Pricing Rule (“Proposed Rule”). AFSA is the national trade association for the consumer credit industry protecting access to credit by consumers and their choice of credit products. The association encourages and maintains ethical business practices and supports financial education for consumers of all ages. AFSA has provided services to its members for over ninety years. AFSA’s officers, board, and staff are dedicated to continuing this legacy of commitment through the addition of new members and programs, and increasing the quality of existing services.

AFSA understands that the purpose of the Proposed Rule is to educate consumers about the effect of credit scores on the cost of credit and to encourage them to review their credit reports. AFSA supports the educational purposes and goals of the Proposed Rule. AFSA is concerned, however, that the Proposed Rule would result in over-notification to consumers because the proposed threshold for determining a substantial percentage of consumers affected by risk-based pricing would be 60%. AFSA believes that because only a minority of consumers has a significant amount of negative information in their credit reports, and an even smaller number of consumers has erroneous data in their credit files, it would be excessive to require the risk-based pricing notice (“Notice”) to be provided to 60% of consumers. As further discussed below, AFSA believes that the final Rule should either permit a generic Notice at time of application or permit that a Notice to given to a smaller percentage of consumers.

## SECTION-BY-SECTION ANALYSIS

### I. Scope

AFSA agrees with the Federal Reserve Board and the Federal Trade Commission (collectively, the “Agencies”) that the Proposed Rule should be limited to credit that is primarily for personal, family, or household purposes. Creditors should not be required to give Notices in connection with credit primarily for business purposes for the reasons given by the Agencies.

### II. Definitions

#### A. *Credit, Creditor, Credit Card, Credit Card Issuer, and Credit Score*

AFSA agrees that the Fair Credit Reporting Act’s (“FCRA”) statutory definitions should be used in this section. AFSA respectfully requests that the Agencies make clear that the final Rule does not apply to vehicle lease transactions. The weight of judicial authority is that a lease is not an extension of credit under the Equal Credit Opportunity Act (“ECOA”), and the final Rule should reflect that interpretation because under the FCRA, “credit” and “creditor” have the same meaning as in the ECOA.

#### B. *Annual Percentage Rate (“APR”) and Material Terms and Similar Types of Transactions* – See AFSA’s comments under the “Direct Comparisons and Materially Less Favorable Material Terms” section.

#### C. *Answers to Specific Requests for Comments in the Definitions Section*

- ◆ AFSA does not believe that other monetary or non-monetary terms should be included in the definition of “material terms.” Furthermore, a comparison of terms granted to consumers cannot be conducted if multiple variables were taken into account.
- ◆ In closed-end credit transactions, creditors do not price temporary initial rates, penalty rates, balance transfer rates, or cash advance rates as a result of differing risks. In open-end credit transactions, creditors sometimes vary these rates as a result of risk-based pricing; however, even when these rates vary they should not be treated as “material terms.” The proposed definition of “material terms” is clear, distinct and unambiguous, and keeping that definition simple is very important. These other rates are minor factors, compared to the APR. Since these other rates are minor factors, including them in the definition of “material terms” would dilute the effect of the Notice, the focus of which should be the APR.
- ◆ AFSA is not aware of any creditors who vary the amount of a prepayment penalty based on information in consumer reports. Thus, the tests in proposed

§ \_\_\_\_.72(b) do not need to be modified, nor would entirely new tests be required, to account for risk-based pricing of prepayment penalties.

D. *Materially Less Favorable Material Terms* - See AFSA comments under the “Credit Score Proxy Method” section.

### **III. General Requirements for Risk-Based Pricing Notices General Rule**

AFSA supports the Agencies’ determination that consumers should only receive one Notice per application for, or extension of credit. Multiple Notices are not necessary to fulfill the Proposed Rule’s purpose of educating consumers about the effect of credit scores on the cost of credit and encouraging them to review their credit reports. Additionally, requiring multiple Notices will introduce very significant compliance burdens and costs. Multiple Notices will increase costs for creditors and credit reporting agencies which will necessarily be passed on to consumers. Finally, multiple Notices will increase the risks of consumer confusion.

Consistent with this determination, the final Rule should make clear that the requirement to give only one Notice per application or extension of credit also applies in the case of multiple applicants. Requiring only one Notice to multiple applicants is consistent with ECOA Regulation B. The final Rule should specifically provide that the Notice may be given to any applicant unless a primary applicant, is readily apparent.

In addition, AFSA believes that intermediaries to the transaction, such as brokers, should *not* be required to provide Notices to consumers. Brokers do not grant or extend credit, nor do they have a statistical base of borrowers. Requiring additional Notices by brokers, other intermediaries or by other participants in the credit transaction, such as assignees, would result in duplication and confusion to consumers.

#### *A. Direct Comparisons and Materially Less Favorable Material Terms*

The Agencies are to be commended for establishing a clear, distinct and unambiguous definition of “material terms.” Unfortunately, in the case of a creditor using the direct comparison method to determine when consumers must receive Notices, the application of that definition is not as clear as it should be since the phrase “similar types of transactions” is not defined at all.

Although it is anticipated that most large creditors and card issuers will use the credit score proxy method or the tiered pricing method for determining when a consumer must receive a Notice, many smaller closed-end lenders will find the direct comparison method more compatible with their product lines, more practical in its application and more meaningful to their consumers. In order for the direct comparison method to work; however, it is necessary that these creditors be given a bright line test for determining the products within their product lines upon which the comparison must be made. As the rules are proposed, that bright line does not exist.

The problem arises though a combination of the use of the undefined expression “cost of credit” in the definition of “materially less favorable” (§ 640.2(j) in the proposed FTC regulation) and the use of the expression “in *similar* types of transactions” (emphasis added) in the subsection on procedure for determining when consumers must receive a Notice (§ 640.3(b) in the proposed FTC regulation). For many relatively short term closed-end loans, the actual cost of credit (dollars of Finance Charge divided by dollars of Amount Financed) actually goes up as the APR for different loans goes down. Therefore, a borrower who received a loan with a lower APR will have a higher (*i.e.*, materially less favorable) cost of credit.

Because of this, as the proposed regulations appear to implicitly but not expressly state, a direct comparison of loans that could be called “similar” but which have different Amounts Financed and terms to maturity can lead to the unintended result that a borrower receiving materially less favorable terms (*i.e.*, whose cost of credit is greater) would not receive a Notice but a borrower who receives materially more favorable terms (*i.e.*, whose cost of credit is less) will receive a Notice.

For example, all of a lender’s loans with an Amount Financed of \$2,000 have a term to maturity of 10 months and an APR of 37%. The cost of credit for those \$2,000 loans is \$1.1777 per dollar borrowed. All of the same lender’s larger loans with an Amount Financed of \$2,500 have a term to maturity of 12 months and a lower APR of 35%. For those larger loans, the cost of credit increases to \$1.1999 per dollar borrowed. If an applicant is turned down for the larger loan (\$2500), but approved and accepts the smaller loan of \$2,000, does the applicant get a Notice because her APR went up or does the applicant not get one because her cost of credit went down? AFSA believes that the creditor should not be required to give a Notice in either event because the loans are different and, therefore, not comparable. In this example, the rule should clarify that the Notice is not required because everybody who is approved by this lender for and accepts a \$2,000 loan gets an APR of 37% and everybody who is approved by this same lender and accepts a \$2,500 loan gets an APR of 35%. All applicants are treated equally, and so no applicant should be required to get the Notice.

The solution is to expressly state under “Determining when consumers must receive a Notice” that the direct comparison is to be made between similar types of transactions that have the same amount financed and the same term to maturity. Under this solution, § 640.3(b) would, and should, read:

“(b) *Determining when consumers must receive a Notice.* A person may make a determination under paragraph (a) of this section by directly comparing the material terms offered to each consumer and the material terms offered to other consumers in similar types of transactions having the same Amounts Financed and the same terms to maturity.”

#### B. *Credit Score Proxy Method*

AFSA agrees with the Agencies that it may not be feasible or practical for many creditors to make the direct comparisons required by the general rule. Thus, AFSA fully supports the use of proxy methods.

However, setting the cutoff score for the credit score proxy method at the approximate point at which 40% of a creditor's consumers have higher scores and 60% have lower scores, will result in a large percentage of borrowers receiving the Notice who did not, in fact, receive materially less favorable terms. Requiring the majority of consumers to receive the Notice dilutes the purpose of the Notice.

Forty percent is not a "substantial proportion." The statute and the Proposed Rule require that a Notice be given when a person uses a consumer report in connection with an application, grant, extension, or other provision of credit and, based in whole or in part on the consumer report, grants, extends, or provides credit to the consumer on material terms that are materially less favorable than the most favorable terms available to a *substantial proportion of consumers*. In other words, the Notice is required when the consumer receives less favorable terms than most other consumers. Thus, a minority of consumers should receive a Notice. However, the Agencies propose, under the credit score proxy method, that a creditor identify the point at which 40% of its consumers have higher credit scores and 60% have lower credit scores, and provide the credit score disclosure to the 60% of consumers with lower credit scores. Thus, a majority of consumers will receive credit score disclosures. Given the language of the statute, it is more appropriate for creditors to identify the point at which 60% of its consumers have higher credit scores and provide the credit score disclosure to only the 40% of consumers with lower credit scores.

AFSA respectfully suggests that the Agencies simplify the Credit Score Proxy Method by permitting creditors to send a Notice to consumers with a credit score that Fair Isaac or another credit score provider publicly identifies as reflecting the 40% of consumers nationwide with lower credit scores. For example, according to Fair Isaac's Web site,<sup>1</sup> about 40% of consumers currently have a credit score of 699 or below. A creditor should be able to rely on this Web site and provide the Notice to consumers with a credit score of 699 or below.

AFSA believes that two years is the appropriate interval at which the credit score should be recalculated under the sampling approach.

### *C. Tiered Pricing Method*

AFSA respectfully suggests that the Agencies give creditors two options regarding the tiered pricing method. Creditors should be able to choose whether they want to determine which consumers get the Notice (1) according to which consumers fall below the top tier or two as the Agencies propose, or alternatively; (2) according to the percentage of consumers who fall below the top tiers.

The Agencies solicited comment on whether and how the tiered pricing method could be subject to such circumvention by creditors and whether the Proposed Rule should be modified to prevent circumvention. AFSA believes that creditors' pricing methods are

---

<sup>1</sup> [http://www.myfico.com/Downloads/Files/myFICO\\_UYFS\\_Booklet.pdf](http://www.myfico.com/Downloads/Files/myFICO_UYFS_Booklet.pdf)

extremely important and complex. Creditors would not compromise the effectiveness of their own pricing systems and thereby jeopardize their profit margins in order to circumvent the tiered pricing method. Thus, it is highly unlikely that creditors would try to circumvent this exception.

D. *Credit Cards* – AFSA does not have a comment on this section.

E. *Account Review*

The Proposed Rule requires that a Notice be given as a result of the use of a consumer report in account review. AFSA believes that the final Rule should not cover account review.

Account review is outside the scope of the FCRA’s Notice provisions and should be excluded from the Proposed Rule. The statute limits the Proposed Rule’s coverage to “an application for, or a grant, extension, or other provision of, credit,” etc. The FCRA does not define “extension of credit,” however; Regulation B limits the term to the granting of credit and it does not apply to existing credit accounts.<sup>2</sup>

The Agencies would extend the Rule’s coverage and apply it to account review, which is when a creditor “uses a consumer report in connection with a review of credit that has been extended to the consumer.” As the Agencies recognize, in an account review situation, credit has *already been extended* to the consumer; there is no new extension of credit.

When credit report information is used in connection with account review, Regulation B and the Truth in Lending Act Regulation Z appropriately govern the notices that should be given to consumers. An increase in the consumer’s APR in an account review situation is an adverse action under Regulation B, requiring an adverse action notice unless the consumer expressly agrees to the change. Regulation Z requires creditors to provide notice of a change in terms, including an increase in the APR. Thus, consumers already receive a Regulation Z notice of an APR increase, as well as an adverse action notice when an account review results in an adverse change to which they have not expressly agreed. The Risk-Based Pricing Rule is not a substitute for or an appropriate vehicle for changing to those other laws.

We note also that Regulation B applies to “any aspect of the credit transaction.” That is the reason an adverse action notice under that regulation may be required under account

---

<sup>2</sup> Under Regulation B, “extend credit” and “extension of credit” mean “the granting of credit in any form (including, but not limited to, credit granted in addition to any existing credit or credit limit; credit granted pursuant to an open-end credit plan; the refinancing or other renewal of credit, including the issuance of any new credit card in place of an existing credit card or in substitution for an existing credit card, the consolidation of two or more credit obligations, or the continuance of existing credit without an special effort to collect at or after maturity). 12 CFR 202.2(q).

review. It does not follow that a comparable notice may be required for account review under the Risk-Based Pricing Rule, which by statute is much narrower in its coverage.

The purpose of the Notice is to educate consumers about the effect of credit scores on the cost of credit and to encourage them to review their credit reports. Requiring a Notice only at the time of “an application for, or a grant, extension, or other provision of, credit” is consistent with that purpose.

Extending coverage of the Proposed Rule to the account review situations will only increase confusion among consumers who will receive a multiplicity of notices about a single event.

#### **IV. Content, Form, and Timing of Risk-Based Pricing Notices**

##### *A. Content and Form*

AFSA agrees that it will be helpful, clear, efficient and convenient to have information on the form so consumers know how to contact the credit bureau that the creditor used. AFSA believes that it may be more helpful to list the name and contact information for each bureau. Perhaps a section on the form, “How can you obtain a copy of your credit report[s]?” that mirrors the similar section on adverse action notices would be appropriate.

Section 615(h)(1) of the FCRA allows the Notice to be provided to consumers in writing, orally, or electronically. However, the Proposed Rule requires that the credit score exception disclosures (under §§222.74(d) and 222.74(e); §§640.5(d) and (e)) be provided in writing. This requirement contradicts the express language of the statute. When Congress intends that disclosures under the FCRA be in writing, it does so explicitly (*see, e.g.*, §§610(a)(2), 611(a)(6)(A), 623(a)(7)). Conversely, there are many instances where Congress has specifically provided that a notice may be in writing, orally or electronically, such as in the case of adverse action notices under §615(a). Although the two credit score disclosures are exceptions to the risk-based pricing rule notice requirements, each of them is still a notice required pursuant to §615(h)(1) and, therefore, should be permitted to be given in the same manner as any other notice that is given in order to meet the requirements of that section.

The statutory authority to provide the Notice orally supports the argument that disclosure should be permitted at application. If the Notice is provided at application, it will be a generic Notice, and a generic Notice could feasibly be provided orally because the same Notice would be read to all consumers who must receive the Notice.

The 60-day period in which a consumer may request a free credit report is too long. Credit scores and the credit report information from which they are derived may change significantly within 60 days. Consistent with the educational purpose of the Notice, consumers should be encouraged to look at their credit reports soon after they receive the Notice. For that reason, the Notice should provide for a free report from the consumer

reporting agency identified in the Notice if the consumer requests the report within 20 days of the date of the Notice.

AFSA supports the use of the phrase “may be less favorable” on the form. “May be less favorable” is a clear and easily understandable phrase. Since the threshold determining which consumers will receive the Notice is arbitrary, using the phrase, “are likely to be” could be inaccurate and misleading.

### *B. Timing*

AFSA respectfully requests that the Agencies give creditors three options regarding the time the Notice should be given. First, creditors should be allowed to give a generic Notice at the time of application,<sup>3</sup> as provided by § 615(h)(2) of the FCRA. Second, creditors should be able to give the Notice during the timeframe specified in the Proposed Rule. Third, creditors should be able to give the Notice shortly after the first transaction has been completed. This is necessary for point of sale transactions where there may be only seconds or even milliseconds between when the borrower is approved and when the transaction occurs.

*Notice at Time of Application:* The Proposed Rule should allow creditors to provide the Notice at application. This timing is consistent with the purpose of the Proposed Rule and with the language of the statute. The purpose of the Proposed Rule is to show consumers that information in consumer reports can affect the credit terms offered to a particular consumer. This goal is met by allowing consumers to receive the Notice at application. In addition, providing the Notice at time of application gives consumers the ability to understand the pricing of the credit transaction prior to consummation and allows consumers the opportunity to look at their credit report and to shop around for better credit terms.

As the consumer credit industry increasingly moves toward electronic approval of credit applications, the time between a creditor’s receipt of the credit report or credit score and consummation is too brief to provide consumers with a meaningful opportunity to understand the pricing of their transaction prior to consummation. In a typical case, a customer who wants to purchase consumer goods on credit will submit an application to a store employee who keys in information from that application. That information is then electronically submitted to a creditor at a distant location. Within 30 seconds or less the consumer’s credit report is accessed and within a total of 60 seconds the application is electronically approved, or disapproved, in which case an adverse action Notice will be sent.

The reasons cited by the Agencies in the Supplementary Materials in favor of providing Notice after application actually weigh in favor of an application Notice. For example, the Agencies believe that a generic Notice at application will not effectively communicate to consumers the importance of consumer report information and is less

---

<sup>3</sup> The “time of application” should be defined as the “time that an application is submitted to a creditor for the purpose of obtaining an extension of credit.”



likely to be acted upon by consumers than a more targeted, personalized Notice. Typically, consumers have committed themselves to transactions by the time they complete applications for credit. However, if creditors provide the Notice at application, consumers will have time to consider the information in that Notice, check their credit scores and shop for better terms.

Further, the FACT Act expressly allows creditors the option of providing a generic Notice at application. The Agencies reject this approach without any apparent authority for doing so. Therefore, allowing creditors the option to provide a generic Notice at application is consistent with the statutory language of the FACT Act.

There may be arguments that if the Notice is given at time of application, the creditor may not know from which consumer reporting agency it will obtain the report in connection with the transaction. However, the Notice could inform the consumer of the right to a free annual report from the nationwide consumer reporting agencies.

*Notice Before Consummation But After Application:* Creditors should have the option to provide the Notice before consummation of the transaction, but not earlier than the time the decision to approve an application for, or a grant, extension, or other provision of, credit is communicated to the consumer. However, for the reasons given above and below, this should not be the only option available to creditors.

*Notice After Consummation:* The Proposed Rule requires that the Notice be provided for closed-end transactions to the consumer “before consummation of the transaction, but not earlier than the time the decision to approve an application for, or a grant, extension, or other provision of, credit is communicated to the consumer by the person required to give the Notice.” Similarly, if a creditor gives a Notice under the credit score exception for non-mortgage transactions, the Notice must be given “as soon as reasonably practicable after the credit score has been obtained, but in any event at or before consummation of a closed-end transaction.”

This timeframe will not work for certain types of transactions, including sales finance transactions, retail merchant credit account transactions, and other transactions conducted at a retailer’s location, where a consumer is approved for credit on site and can enter into a credit transaction at that time. Online transactions pose a similar, if not greater, problem – the consumer is approved for credit and applies for credit at the same time. It is not practical for a creditor to provide the consumer applicant, who is likely in another state or perhaps a different country, with a Notice within that short time frame. If the Agencies do not allow creditors to provide Notice at application, they should allow creditors in these types of transactions to provide Notice after consummation.

## **V. Exceptions**

### *A. Prescreened Solicitations*

AFSA supports the exceptions to the general requirements for providing Notices.

However, the exception for prescreened solicitations does not go far enough. Currently, the Proposed Rule provides an exception to the requirement for a Notice when a consumer report is used in connection with a firm offer of credit, unless the solicitation contains more than one rate and the consumer is not offered the lowest rate. In that situation, the creditor is not required to provide Notice to all consumers who receive the prescreened solicitation.

Moreover, if any of those consumers respond to the prescreened offer, the creditor would be required to provide the Notice. AFSA believes that prescreening should be exempted from the Notice requirements entirely. The “exception” for prescreening is not really an exception at all. The stated scope of the Proposed Rule is the grant, provision or other extension of credit. It does not govern solicitations.

### *B. Credit Score Disclosure*

AFSA applauds the Agencies for recognizing the complexity of the Notices and for providing the credit score disclosure exception. However, AFSA raises the same issues with the timing of the exception disclosure as discussed above in connection with the Notice.

AFSA believes that requiring disclosure of either the distribution of credit scores or how a consumer’s credit score compares to the scores of other consumers will be helpful to consumers. AFSA believes that consumers will find it helpful to know, for example, if their credit score falls above or below 699, and that approximately 60% of consumers have credit scores above 699. (This break point should be recalculated every two years.)

This approach would be more helpful to consumers than the bar graph form of the disclosure contained in the Proposed Rule. First, including the phrase, “Scores range from a low of [Insert bottom number in the range] to a high of [Insert top number in the range],” is redundant and unnecessary, as the graph makes the range obvious. Second, consumers are unlikely to care what percentage of consumers have scores within the defined ranges. Instead, the forms could include a statement applicable to all customers such as, “[x%] of US consumers have a credit score above [x].” Third, AFSA would like clarification that the information needed to complete the graph would come from the score provider. AFSA understands from the credit bureaus that such a graph would be proprietary. There is currently no language regarding how often the information must be updated or how accurate it must be. It is not clear how often the score providers will release updated graphs, or whether creditors will have to immediately update their disclosures updated information is provided. AFSA requests that the Agencies clarify that graph only needs to be updated at fixed two year intervals. Fourth, a narrative of score distribution or different form of graphical presentation will be equally ineffective.

The model form also includes a section on key factors that adversely affected the consumer’s credit score. AFSA believes that this section should be removed. Few creditors use their own proprietary scores, and since creditors do not calculate credit

scores, they cannot be expected to know what factors adversely affected a consumer's score. However, AFSA understands that it may be useful for consumers to learn how their score was calculated, and so AFSA advocates that the model form direct consumers to the Web site, [www.myfico.com/CreditEducation](http://www.myfico.com/CreditEducation) for more information.

Additionally, AFSA does not believe that it will be helpful to consumers to know the exact date that the score was created. It would be enough for the consumer to know that the score was recent. Disclosing the score creation date would impose undue burden on the industry in exchange for little to no benefit to the consumer. Additionally, instead of disclosing the source of the score, the form should include contact information for all of the credit bureaus.

The Proposed Rule's four factors requirement applies only for the mortgage credit score exception Notice, and the FCRA requires the four factors to be listed under those circumstances. AFSA agrees with the Agencies that it is not necessary to require the disclosure of the key factors in this Notice.

Creditors that use proprietary credit scores should be able to give the credit score exception disclosure based on a credit score and information obtained from a credit score developer. Under the Proposed Rule, this alternative would be available in mortgage transactions (*see* § \_\_.73(d)(i)(D); §640.4(d)(i)(D)). The Supplemental Information indicates that the Agencies intend this option to be available as well in non-mortgage transactions; however, the Proposed Rule does not specifically allow creditors to choose this option outside of mortgage transactions.

Finally, AFSA asks the Agencies to clarify the credit score exception requirements for multiple applicants. As discussed above, AFSA believes that, in the case of multiple applicants, a creditor should be able to give just one Notice. Therefore, it follows that, if a creditor obtains credit scores on more than one applicant, the creditor should be able to give the Notice to only one applicant, and the Notice should include the score that was obtained on that applicant. AFSA requests that the final Rule explain these requirements.

### *C. Additional Exceptions*

AFSA believes that it would be appropriate for the Agencies to create an exception for large credit transactions and for credit extended in private banking relationships available only to high net worth consumers. Under such an exception, no Notice would be required if the amount of credit involved in the application or transaction is more than \$50,000, unless the credit is secured by a residential mortgage. Consumers in these circumstances are much less likely to have credit extended or priced on the information in their credit reports, and they are much more likely to understand the effect of credit report information on the pricing of credit extended. These circumstances, therefore, involve a class of consumers and transactions for which the Notice will provide no significant benefit. Thus, under § 615(h)(6)(B)(iii), an exception is appropriate.

## **VI. Rules of Construction**

AFSA agrees with the Agencies that consumers only need one Notice per transaction and that that Notice should be provided by the original creditor to whom the obligation is initially payable. Since the statute focuses on the material terms granted or extended to a consumer, and consumers receive only a single material term or set of material terms, more than one Notice in connection with a single extension of credit would be overly burdensome to the creditor and confusing to the consumer.

AFSA commends the Agencies for their example regarding auto loans. It is most appropriate for the Notice to be given by the original creditor, which in the case of retail installment contracts, is the motor vehicle dealer. This is because dealers, not retail installment lenders, set the terms of the auto loan. It is true that the auto dealer and the financing source or assignee may conduct separate underwriting. Even so, AFSA agrees with the Agencies that a consumer should still only receive one Notice for the credit extension if the consumer receives materially less favorable terms, since one Notice is sufficient to encourage a consumer to check his or her consumer report for any errors.

If the retail installment lender were required to send the Notice, the consumer would receive multiple Notices because many potential assignees may have seen, and possibly approved, the proposed transaction. Additionally, retail installment lenders are often unaware of a completed transaction until they are asked to purchase the executed contract. Thus, it would not be possible for the retail installment lender to give the Notice within the timeframe specified in the Proposed Rule.

## **VII. Model Forms**

The proposed model forms are confusing and misleading. The model forms, as currently drafted do not clearly explain why the Notice is being provided and they imply that there is a problem with the consumer's credit score or credit report and that the consumer is being treated less favorably. The model forms should be revised to clarify that there is most likely not a problem with the consumer's credit score or consumer report. In addition, the Notice states that the credit score could affect the consumer's ability to get a loan. This statement is misleading because only consumers who are approved for credit will receive this Notice. There should also be an explanation that the credit terms may have been established based on factors 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, even though this is usually not true.

Consumers also need an explanation as to why they are receiving a Notice. The model forms should be revised to include language from Notice to Home Loan Applicant, which explains more clearly why the Notice is being provided and how a consumer's credit score is used in making the credit decision.

Additionally, the model forms should include the language from adverse action notices

that explains that consumer reporting agencies played no role in making the credit decision and will not be able to explain why a creditor set the terms as it did. This kind of statement is required in adverse action notices under FCRA § 615(a), and provides useful information to consumers.

As noted above, the form should require consumers to obtain a free report within 20 days of the receipt of the Notice.

The model forms do not, but should, include a place for the creditor to indicate the consumer's name and the date the form was generated.

The second half of the phrase on the model forms, "We used information from your credit report[s] to set the terms of the credit we are offering you, such as the [Annual Percentage Rate/down payment]," is unnecessary. The phrase, "such as the [Annual Percentage Rate/down payment]" should be removed.

Finally, AFSA respectfully requests that the Agencies increase the degree of flexibility to change the forms without losing the compliance safe harbor. For example, creditors should be able to use the word "credit" instead of the word "loan."

## **VII. Conclusion**

AFSA appreciates the opportunity to comment on the Proposed Rule. We recognize the difficulty the Agencies have faced in developing a rule that is consistent with the statutory language and intent. We support the educational and informational purposes of the Rule, and we respectfully request that the Agencies adopt a final Rule that furthers these purposes without creating undue burdens on the consumer credit industry.

Please feel free to contact me with any questions at 202-296-5544, ext. 616 or [bhimpler@afsamail.org](mailto:bhimpler@afsamail.org).

Respectfully submitted,

/Bill Himpler  
Executive Vice President, Federal Government Affairs  
American Financial Services Association