

**GE Money Bank**

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August 18, 2008

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

Federal Trade Commission
Office of the Secretary
Room H-134 (Annex M)
600 Pennsylvania Avenue, NW
Washington, DC 20580

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

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

To whom it may concern:

This comment letter is submitted on behalf of GE Money Bank (“GEMB”) in response to the Proposed Rule issued by the Board of Governors of the Federal Reserve System (“Board”) and the Federal Trade Commission (collectively, “Agencies”) regarding risk-based pricing notices under Section 615(h) of the Fair Credit Reporting Act (“Proposed Rule”). GEMB is a federal savings bank located in Utah and part of the larger corporate General Electric family of companies. We appreciate the opportunity to provide our comments to the Agencies.

GEMB is a large issuer of private label and co-brand credit cards, and also is an originator of closed-end loans. Many of these accounts are opened by customers at the point of sale at various retail establishments.

While GEMB has coordinated with several other commenters (*e.g.*, trade associations) regarding their comments on the Proposal, there are a few issues of particular importance to GEMB that merit our own specific comments. In particular, the Proposed Rule creates significant compliance difficulties for retailers and creditors who offer credit at the point of sale. We ask the Agencies for the ability to provide risk-based pricing notices or credit score disclosures (collectively, “Notices”) to consumers within a reasonable period of time (*e.g.*, 30 days) after an account is opened. We also ask the Agencies to provide greater flexibility with respect to how a creditor may differentiate its loan products for purposes of using proxies.

Member FDIC

Providing a Notice at Point of Sale

The Proposed Rule provides creditors the option of providing a risk-based pricing notice or a credit score disclosure to customers. The Agencies would appear to disapprove of a creditor providing a risk-based pricing notice to each customer. On the other hand, the Agencies would condone providing credit score disclosures to each customer. The Notices are largely comprised of stock language, although each of them requires some level of customization (*e.g.*, the name and contact information of the consumer reporting agency). The Proposed Rule also describes the permissible timeframe in which a creditor may provide a Notice. Specifically, the Proposed Rule would require an open-end creditor to provide the risk-based pricing notice “before the first transaction is made under the plan, but not earlier than the time the decision to approve an application for...credit is communicated to the consumer by the person required to provide the notice” and a closed-end creditor to provide such notice “before consummation of the transaction, but not earlier than the time the decision to approve an application for...credit is communicated to the consumer by the person required to provide the notice.” Similarly, with respect to the credit score disclosure alternative, a non-mortgage creditor must provide it “to the consumer as soon as reasonably practicable after the credit score has been obtained, but in any event at or before consummation of a transaction in the case of closed-end credit or before the first transaction is made under an open-end credit plan.”

GEMB is concerned that a creditor who provides credit at the point of sale will not be able to comply with the requirements of the Proposed Rule. For example, based on the proposed requirements, if GEMB intended to provide the risk-based pricing notice at the point of sale, we would need to preprint three different forms. Each form would have the name and contact information of one of the major consumer reporting agencies, as it is possible that we could use any of the three in connection with underwriting a consumer’s application. Each of these three forms would need to be properly stocked at *thousands* of locations where credit applications are accepted. We would then need to develop and implement a system by which we would communicate to the retail employee not only that the consumer is entitled to a risk-based pricing notice, but which of the three notices to provide. Finally, we would then need to require each of our retail partners to train every employee that may accept an application how to determine when to hand out a risk-based pricing notice, and which risk-based notice to provide.¹ This is simply not realistic. Of course, even if it were, we suspect that a customer could become extremely dissatisfied if a friend, family member, or other shoppers witness the fact that the clerk has provided the customer with a risk-based pricing notice, possibly indicating to other observers that the consumer’s creditworthiness is not sufficient to allow the consumer to qualify for the best rate offered on the application or solicitation.

¹ Even then, the risk-based pricing notice will not have the consumer’s name preprinted on it, making it difficult for consumer reporting agencies to determine if the consumer possesses it as a result of having received a notice under Section 615, or through other means, for purposes of determining whether the consumer is entitled to a free file disclosure.

Providing the credit score disclosure at the point of sale would be even more difficult, as there are items on the document that we cannot preprint at all, such as the credit score and the date of its calculation. Even if we could print the customized information at the point of sale, and hand it to the consumer separately, we are unsure about our customers' reaction to making their credit scores available to store employees. We also could not necessarily guarantee our consumers' privacy with respect to whether other consumers or bystanders would be able to read the credit score, which would be disclosed clearly and conspicuously on a sheet of paper. This concern could be even greater if the store employee is forced to hand-write a score on a sheet of paper.

We want to stress that we are not stating that it is impossible to provide important disclosures to consumers at the point of sale. In fact, GEMB does it thousands of times a day. However, the disclosures in the Proposal present fundamentally different logistical issues than the disclosures we provide today. For example, in connection with point of sale credit card applications, we generally preprint our Regulation Z disclosures and provide them to all applicants. To the extent we need to provide the APR on the account-opening disclosure, we do so by various means integrated with the specific retail partner's point of sale system, such as by using the register to print the APR, and include that communication with the other account-opening disclosures as part of an integrated document for purposes of compliance with 12 C.F.R. § 226.6. This process is discrete, and it is one that minimizes the difficulty and complexity for store employees. As we have described, however, providing either of the Notices presents challenges that are more complicated (if not insurmountable) than our current disclosure requirements.

Although we have given this issue much thought, we have not developed a viable method to provide the Notices if they are to be given at point of sale. It does not appear that the Agencies would approve if we were to provide risk-based pricing notices to every applicant. Even if the Agencies were to approve such a method, we do not believe it would provide much relief since we do not know how we would inform consumers in a meaningful way of: (i) whether they truly should have received a risk-based pricing notice; and (ii) which consumer reporting agency provided the consumer report used for underwriting. We also cannot conceive of a realistic circumstance in which we could provide a customized credit score disclosure to customers at the point of sale.

We therefore ask the Agencies to provide creditors, such as GEMB, the option of providing either of the Notices within a reasonable period of time, such as 30 days, after the account is opened at the point of sale (or in another manner that is remote from the creditor itself). Although this would result in the customer receiving the Notice later than the Agencies propose, we do not believe that this will result in consumer harm. It is *extremely* unlikely that a consumer would take the time to review the Notice *while standing at the point of sale*, decide to stop the transaction prior to the completion of the purchase, make efforts to improve his or her credit report, and then reapply for the credit at a later date. For example, in the context of a point of sale credit card application and purchase, which takes only a few seconds, it is not even clear to us how we could provide a Notice after the account is opened, but before the purchase is final, in a manner that would allow the consumer sufficient time to review the Notice and decide

whether to stop the transaction.² A creditor offering credit at the point of sale should therefore be permitted to provide a Notice within a reasonable period of time after the account is opened, such as by mailing the Notice within thirty days after account opening

Product Lines and Proxies

Under § __.72(b) of the Proposed Rule, a creditor may use various “proxies” (e.g., credit score, tiered pricing) “for a given class of products.” If a creditor chooses to use such a proxy for that “class of products,” it must use that same proxy for every loan in that “class.” GEMB very much appreciates the Agencies’ willingness to provide creditors various proxies for determining which customers may need to receive a risk-based pricing notice. We ask the Agencies to consider providing additional utility to this portion of the rule by recognizing that it may be more appropriate for a creditor to choose to treat similar types of loans differently. GEMB, for example, provides private label and co-brand open-end and closed-end credit products to a variety of different merchants. Each of these programs may have very distinctive terms, properties, and clientele. The Proposed Rule, however, would require us to evaluate a customer for one very distinct private label program against a pool of customers that share little in common other than they all have an open-end (or closed-end) loan through GEMB. We are particularly concerned because this could have significant business and customer relationship repercussions if the result is that the customers of one type of installment credit program with one retailer tend to receive a significant number of risk-based pricing notices while customers of another retailer do not.

We believe that the Agencies recognize the issue we have raised, and they have addressed it in large part as it relates to credit cards.³ Specifically, if a card issuer chooses to use the special credit card proxy, the issuer must provide a risk-based pricing notice only if the customer does not receive the lowest APR relating to that offer even if the card issuer offers lower rates in connection with other programs. GEMB believes that this ability to review a customer’s terms based on the specific program is appropriate in other contexts as well and should not be limited only to credit card programs in connection with the credit card proxy. We urge the Agencies to allow creditors to use the other proxies based on specific programs, as opposed to entire “classes” of products, to allow creditors to target risk-based pricing notices more appropriately.

² Currently, the APR could be printed on the sales slip, for example, and the consumer can review the APR prior to signing for the transaction. There is a vast distinction, however, between seeing and approving of a credit card APR prior to the first transaction on the account and reviewing a full-page (or two-page) Notice while standing at a busy cash register.

³ The extent to which it is truly addressed will depend on whether credit card issuers choose to use the credit card proxy as opposed to another method. The credit card proxy offers relative operational simplicity at the potential expense of creating the most number of risk-based pricing notices to be sent.

Conclusion

GEMB cannot stress enough the compliance difficulties the Proposed Rule presents. If the Agencies are unwilling to allow us to provide a Notice after account opening in connection with point of sale accounts, we ask the Agencies to review various options with others and us to determine what may or may not be reasonably feasible. We would be pleased to discuss this matter further as the Agencies deem appropriate. Please do not hesitate to contact me at 801 517 5600 if we may be of further assistance.

Sincerely,

—
Brent Wallace
President