



Via email: regs.comments@federalreserve.gov

August 18, 2008

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave, N.W.
Washington, DC 20051

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

Dear Ms. Johnson:

PSCU Financial Services, Inc. provides credit processing services to over 550 credit union members (“CUs”) and we are an active participant in many credit union-dedicated councils (PSCU-FS”). We believe credit unions that offer credit card programs continue to provide their members with very consumer-friendly policies. We also believe that risk based pricing is an important part of any well-managed credit card portfolio and that credit card pricing notices need to have meaningful content in order for consumers to benefit from them. It is our hope that our experience in shaping those consumer-friendly policies with our CUs offers the Board a useful guidepost for many of the proposed changes on docket number R-1316, aka FACT Act Risk-Based Pricing Rule.

Section _____.72 General Requirements for Risk Based Pricing Notices

General Rule

Direct Comparisons and Materially Less Favorable Material Terms

Whether there are other methods (other than the credit score proxy method or tiered-pricing method) that would satisfy the Agencies’ criteria to identify consumers who must receive the Risk Based Pricing Notice (“RBPN”). There are many variations of internal credit evaluation methods. PSCU-FS believes other methods are possible but are too difficult to effectively communicate in a brief notice and are subject to change over time.

The tiered-pricing method most closely describes how our CUs do their risk-based pricing. Our system can support up to five pricing tier programs for credit cards. The three most common are: platinum, the lowest rate given to those with the highest credit score; gold, the standard, a higher rate offered to consumers with lower credit scores; and rewards which will have a rate “less favorable” than the lowest rate as the trade off to get rewards benefits and points.

Most consumers have more than one credit card and most consumers are familiar with tiered pricing since this method has been used for 20 years or longer. They have some understanding that the credit card program with a lower rate program is given a higher status by creditors. Consumers can understand tiered pricing credit scoring methods more readily than other credit scoring methods even if they are not as yet familiar with the terminology.

Although much is made about “universal default”, most consumers do understand that their ability to make payments on time and to live within their means does affect their long term financial position and how much credit is available to them. Most consumers understand that their past financial behavior will impact whether they qualify for the best (lowest) interest rate. Most consumers who do not qualify for the best rate already know their credit standing even if they do not know their credit score. We do not believe that (1) providing all consumers with a Notice (the proposed credit score disclosure exception) that functions as an educational tool or FAQ; or (2) providing any consumer who receives less than the best credit at account opening an RBPN, is necessary or achieves the Agencies’ goal of encouraging consumers to educate themselves about how credit scores impact the cost of their credit.

We believe the Agencies’ intent of the RBPN and the Notice is to educate those consumers who don’t understand how credit reports and credit scores work. Millions more consumers than those who need it will receive these notices, and they will receive the notices many more times than necessary. We believe the end result will be over-notification and that the RBPN and the Notice will not have the relevance and meaning it is intended to provide. It will become the “privacy notice” that everyone signs or gets from health care providers but doesn’t provide needed information in circumstances where it is most useful and applicable.

The Agencies requested comment on the usefulness of disclosing a ratio and cutoff score. We do not believe a cutoff score (for example, 40% higher, 60% lower), can be clearly and effectively communicated. We believe ratios would be different for every issuer. The ratios aren’t based upon some sort of standard. Also, the time period (six months or twelve months) for the 40/60 would need to be disclosed and the cutoff score would be different for each of our CUs.

Using the tiered pricing method, a CU may offer a different price point for its rewards program. The rewards rate is higher than the CU’s “platinum” card but it’s the best rate for a rewards program. Likewise, if CU offers an air-miles card through a joint-marketing program it has with an airline carrier, that rate will not be the lowest rate the

CU offers. However, those programs offer greater benefits in exchange for the higher interest rate. We do not believe that consumers who select the rewards program need to receive a RBPN. Some consumers might be offered a rewards program card if they do not qualify for our lowest rate but most consumers select the rewards program, it is a choice for the consumer. We believe an RBPN for these consumers may have unintended consequences if the consumer believes something negative has happened to their credit when in fact the only reason for the rate difference is that they are receiving benefits “points” or “cash back” in exchange for that higher rate.

ACCOUNT OPENING

PSCU-FS believes that of the numerous regulations proposed (the changes to Reg Z, Reg DD, Reg AA and the FACT Act Risk Based Pricing Notice), it is the combination of all of these regulations that will significantly impact the necessary business of issuers determining the best credit product for each consumer based on risk. The cumulative effect of these regulations will cause a dramatic chill in the amount of credit available to consumers and, from the consumer perspective, (1) will cause consumers unnecessary alarm when they believe they are not receiving the most fair credit terms they can; and (2) the increased credit costs will be borne by all consumers – this is unfair to most consumers.

Ultimately PSCU-FS believes the current proposed regulations are crafted so broadly that it is unclear how readily a credit card issuer can determine an appropriate method to advise consumers who receive “materially less favorable material terms”. We do not agree that consumers who do not receive the best rate believe they did. In sending a RBPN to its CU cardholders at account opening, PSCU-FS anticipates credit union members/cardholders will experience unnecessary confusion regarding the fairness of the credit offered to them. We do not believe most consumers need notification prior to acceptance simply because they do not possess the best credit. Although credit unions offer more consumer friendly terms to their members than many issuers, the credit union’s decision to offer credit cards to members who do not receive the “best” rate can be easily misinterpreted by members who receive a Risk Based Pricing Notice that they are receiving an unfairly high interest rate. Credit unions, and any issuers, would experience a significant cancellation by consumers who want and qualify for credit but who erroneously believe they can obtain better credit terms (a lower interest rate) elsewhere. It is at this level (consumers who have good but not perfect credit) that the use of the terms “materially less favorable material terms” and “Risk Based” pricing assume a negative connotation, when in fact the credit terms offered simply match the consumer’s credit behavior and credit history.

Account Review

Consumers whose interest rate is raised in an account review would receive the RBPN and would be entitled to receive one free credit report under FCRA. This is the proposed H-1 Model Form. This is short and easy to understand, it requires little customization.

The consumer already gets a notice when their interest rate is raised. The notice currently includes the new rate that will apply to the account, comment on why the creditor changed the rate and where the consumer can contact their credit bureau, to comply with current and proposed Reg Z and/or Reg AA disclosure requirements. **PSCU-FS wishes to confirm that under the proposed regulations, issuers would now be required to send 2 notices to consumers, one for Fact Act Risk Based Pricing Notice and one for Reg Z.** If the regulations as proposed would require 2 notices from the creditors, we recommend that the notices be combined into 1 notice to reduce the burden and costs to creditors. We believe the Reg Z disclosures as proposed, would be sent too far in advance and should be combined to be sent to consumers together with the credit card plastics.

Credit Score Disclosure Exceptions

The Board recognizes the challenges creditors have to identify the appropriate subset of its current or past consumers to compare to any given consumer in order to determine who should receive the Risk Based Pricing Notice. The Board proposes the credit score disclosure exception “Notice”. The “Notice” is offered as the exception for creditors who do not want to have to identify specific class of consumers to receive RBPN and the creditor must send all consumers this “Notice”. The Notice is an FAQ for credit score and credit reports to consumers and to a certain extent takes the place of a credit report.

The Agencies believe that this background information (on the Notice) will provide helpful context for consumers who may otherwise lack familiarity with consumer reports and credit scores and how they are used.

Assuming a CU decides not to identify which consumers receive materially less favorable material terms and opts for the exception, at account opening the consumer would get the Notice. We believe the proposed Notice places a burden on the issuer that the credit bureaus should fulfill. If PSCU-FS and its CUs as creditors are forced to minimize the impact to the bureaus, that’s burdensome to us and to all creditors. We believe costs to provide the Notice should be equally borne by the credit bureaus and the creditors.

PSCU-FS has concerns about unintended consequences of either the RBPN or the Notice. We agree with the Agencies’ comment that consumers would not benefit from receiving more than one risk-based pricing notice in connection with a single extension of credit. However, we wish to add that consumers usually have more than one credit card (the average is 3 or more), unlike auto loans or mortgages. We assert that a RBPN from a CU credit card program to a consumer would confuse many consumers where the consumer has not received that RBPN from other issuers. The consumer will believe there is something wrong with their credit when it may simply be that the CU credit card program the consumer applied to has higher underwriting standards and the consumer does not qualify for the CU’s “best” rate. We anticipate this will happen to millions of consumers.

What language would best serve the dual goals of most accurately describing the probability that the consumer received materially less favorable material terms and most effectively prompting consumers to obtain and review their consumer reports.

We believe the most effective way to prompt consumers to obtain and review their consumer reports is, in lieu of the Notice, a consumer get an abbreviated “Notice” during the call to activate the card. The activation process would include an option that asks them if they received a “Notice” header on the insert to press X for specific information about the account and they would then be advised what the Notice is and why they should review their credit report and how to take action, if they want. “If this is not the rate you thought you would get, please review your consumer report as it contains useful information about how your credit history and credit score affected the credit we have offered you. The consumer report can be obtained by contacting the credit bureau...” An activation menu option can draw more attention to consumer reports.

We believe when consumers receive their plastics, the insert for the plastics should contain in large font a website address and phone number. The website would be an FAQ to educate consumers about credit scoring and credit reports. The phone number on the Notice would be an automated system for consumers to request an FAQ be mailed to the consumer if he/she provides his/her name and address. The insert would also include a website address and phone number for the credit bureaus.

TIMING OF THE NOTICE

The proposal requires that the RBPN or Notice be sent prior to the first transaction under any open-end plan. We believe this can be accomplished with credit cards by including it with the credit card plastics. We believe it is difficult to ensure the Notice would be delivered ahead of the plastics. The creditor does not want to hold up the plastic order but it may not be feasible to synchronize the Notice mailing and the plastics delivery if the two processes occur in different locations, for example, a Notice is mailed from one facility in the southeast and the plastics are mailed from the mid-west and postal delivery times can vary. If the Notice or RBPN is included with the plastics, the consumer will receive it before activation/consummation on the account. Electronic delivery of a Notice (separate and ahead of plastics mail delivery) may not be accepted by consumers who have concerns about data security and privacy of information transmitted on the internet. Even with the risks of delivery of postal mail, the inclusion of the Notice with the plastics is easiest way to be sure consumer sees the Notice. We believe a prompt at card activation, not a Notice, is the most effective way to get consumers to review the interest rate for the card and take action to review their consumer credit report. But if a Notice is required, we believe that any regulation that is implemented should not require that the Notice be delivered prior to the consumer’s receipt of credit card plastics. In fact, requiring the Notice to be delivered to the consumer prior to the plastics will add additional cost, delay the availability of credit to the consumer and is less likely to be noticed by the consumer.

The Agencies request comment on whether 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, and whether such a requirement will be unduly burdensome to industry or costly to implement.

If the “abbreviated” Notice we proposed above in response to the Agencies request for comment (“...to meet the dual goals of describing to consumers when they have received materially less favorable material terms and prompting them to review their consumer report...”), is not considered, and if the Agencies believe the Notice that is implemented must include specific credit score and credit history information as provided in the model forms, we recommend the deletion of several rows of information proposed on the Notice form and the resulting Notice would be reduced to one 8 ½” x 11” page, and possibly smaller. The reduction in size is to make the Notice information more useful and readily understood by consumers as well as to reduce creditors’ costs.

Model Form B-3, H-3

Range of scores: PSCU-FS does not support disclosing the range of scores for the credit product offered. Each creditor determines what its range of credit scores is for the specific credit product. The score range can vary between creditors so consumers may not gain beneficial information about the range of scores. Most importantly, each creditor arrives at its range of scores using its own internal credit criteria so this information is proprietary. We think cutoffs disclose proprietary information and confuse consumers who would not understand that cutoffs may change over time and will vary between creditors.

If the range of scores offered is intended to simply educate the consumer that credit scores have high and low ranges, the row heading should be more consumer friendly to invite inquiry, to use more of an FAQ format. But if the range of scores is that generic, we do not believe sending this kind of generic Notice to consumers would be necessary to send as often as proposed. The large cost to creditors to implement the “range of scores”, costs that would be passed along to the consumer, outweighs the small benefit consumers would obtain from this information.

The Agencies also solicit comment as to whether the bar graph form of the disclosure contained in this proposal is the simplest and most useful form of the disclosure for consumers, or whether there are different graphical or other means that would provide greater consumer benefit.

How your score compares to the scores of other consumers: PSCU-FS does not believe providing consumers with distribution of credit scores gives meaningful information to the consumer. Although consumers might learn where they rank, most consumers with low credit scores know it. Knowing your low credit score places you in the lower third instead of the lower half is not meaningful to a consumer who cannot obtain the best credit available. We believe the bar graphs take up too much room on the notice for the limited use of the information intended to be conveyed. On the higher end, consumers who do not get the “best” credit aren’t the ones we understand to be targeted

by the proposed regulation. These consumers already know something about building good credit and using it well or they would be at the lower end of credit scores.

Again, we believe the intended benefit any consumers could receive from this additional information is outweighed by the cost to creditors to implement and those costs will be passed along to the consumer.

KEY FACTORS

Although not a request for comment, we think the key factors should be excluded from the Notice. Key factors can be, and are, often misinterpreted. One of our CUs was advised by their legal counsel to revise their Change in Terms notice to include credit bureau reason codes and credit bureau definition of reason codes. The CU did not anticipate the huge backlash it got from consumers who received the revised notice. The CU experienced a significant increased call volume of complaints, threats to close accounts and attrition by consumers.

For this reason, we support that the use of the RBPB be kept as proposed and we do not support the inclusion of key factors in the Notice. We believe consumers will misinterpret the key factors in the context of the Notice as well. We also believe the credit bureaus and the scoring company should work with regulators to develop credit reports for consumers that provide meaningful and clear credit information instead of placing the burden of credit education on the creditors who do not develop the credit scoring weights, methods and analytics.

TIME TO IMPLEMENT

As the Agencies have noted, the proposed FCRA regulations are so difficult to define in order to apply to every creditor, the Agencies have offered the use of the Notice as an exception. The difficulty each creditor will have in setting and disclosing credit scoring methodologies, as well as the difficulty each creditor would have in ensuring its program effectively discerns every consumer who receives materially less favorable material terms and thus receive the proposed RBPB, will require large operational changes and greater investment in credit scoring analytics. Issuers will need to coordinate getting the right credit report data in the Notice (and RBPB if applicable) with the credit bureaus and set up those systems. Moreover, issuers will need to anticipate how to respond to consumers with questions on the changes. Issuers will have to add more customer service call center resources and have those resources trained in order to be prepared for and responsive to, the spike in calls they can anticipate resulting from the new RBPB and Notice. Call center investment is already high and those costs may double because of the service level needed to adequately respond. For all of these reasons, we respectfully request an implementation schedule of 24 months for any new FCRA requirements so that the changes can be done properly, with the least amount of disruption and with the cost impacts minimized.

The only way to implement changes in a year will be with higher costs because the scale of changes is a two to three year project but would get crammed into a one year timeframe, so those costs will be passed on to consumers.

SUMMARY

We commend the Board and the Agencies efforts to seek to aid and encourage consumers to educate themselves how credit scores impact the cost of their credit. We are hopeful that our comments support the Agencies' efforts in the most effective manner.

PSCU-FS appreciates this opportunity to submit comments on the Agencies' proposed changes to FACT Act Risk-Based Pricing Rule. If you have any questions or would like additional information on these comments, please contact Steve Salzer, General Counsel, Ethics and Compliance Officer, at (727) 561-2227.

Sincerely,

A handwritten signature in black ink, appearing to read "David J. Serlo". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

David J. Serlo
President/CEO