

May 7, 2004

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

Re: Docket No. R-1187
Proposed Rule for Model Form to Regulation V
(FACT Act Section 217: Notice regarding furnishing negative credit
information to consumer reporting agency)

Dear Ms. Johnson:

Wells Fargo & Company and its affiliates (“Wells Fargo”), including Wells Fargo Bank, N.A., Wells Fargo Home Mortgage, Inc. and Wells Fargo Financial, Inc., appreciate the opportunity to comment on the proposed rule (Regulation V) concerning the addition of a model form that financial institutions can use to comply with the notice requirement that pertains to furnishing negative credit information to consumer reporting agencies. Wells Fargo is a financial services company that owns and operates national banks in 23 Western and Midwestern states, the nation’s leading retail mortgage lender, and one of the nation’s leading finance companies.

The model form (“Model Notice”) proposed by the Board, of course, is the means by which financial institutions can satisfy the *safe harbor* notice requirements of section 217 of the FACT Act (“Section 217”). While we believe that the proposed Model Notice is a meaningful notice that complies with the requirements of Section 217, we also believe that changes to the language in the Model Notice would enhance its overall clarity and readability. We further believe that it would be helpful for the Board to clarify certain other issues regarding the delivery of the Model Notice.

I. Model Notice Modifications

The FACT Act states that if any financial institution “extends credit and regularly and in the ordinary course of business furnishes information to a consumer reporting agency . . . [and] furnishes negative information to such an agency regarding credit extended to a customer, the financial institution shall provide a notice of such furnishing of negative information, in writing, to the customer.”¹ Negative information is defined as information concerning a customer’s delinquencies, late payments, insolvency or any form of default.

¹ FACT Act § 217(a).

The proposed Model Notice reads, “[w]e [may provide]/ [have provided] information to credit bureaus about an insolvency, delinquency, late payment, or default on your account to include in your credit report.”² The proposed Model Notice is twenty-four words in length and uses a sequence of terms. We recommend that the Board shorten and simplify this Model Notice to make it easier for consumers to read and understand.

The proposed model uses each of the four elements of negative information specified in Section 217—delinquencies, late payments, insolvency and default. We believe that the term “delinquency” effectively repeats the term “late payment” and should be omitted in favor of “late payment,” which is easier for consumers to understand. The term “insolvency” also presents problems, since it is not well understood by many consumers. The term “default” is more comprehensive than the term “insolvency” and is better understood by consumers. Accordingly, the term “insolvency” should be omitted in favor of “default.” In summary, the only specific examples of negative information that the Model Notice should include are the terms “late payment” and “default”—terms that consumers can easily identify and understand as negative information.

We also believe the Model Notice should be structured as two alternate notices—one notice that can be given in advance of providing negative information to a credit bureau and one that can be used after providing negative information to a credit bureau. Two alternative choices will better address two discrete situations. If given in advance, the Model Notice may appear threatening and may give the consumer the impression that the creditor fully expects that the consumer will actually make a late payment or default upon their account. Although creditors may avoid creating this impression by only providing the notice after negative information has been provided to a credit bureau, providing such “event driven” notices is costly and error prone. Moreover, Section 217 includes the option of an advance notice for precisely this reason. To avoid this negative impression and underscore the constructive policy of educating consumers about their repayment practices and the affects of those practices on their credit history, we believe that the Board should approve two alternative model notices:

- We recommend that the first notice read: “If there is a late payment or default on your account, we may tell a credit bureau about it.” (This notice has 19 words; it is a succinct and appropriate disclosure for a notice given in advance of reporting negative information.)
- We recommend that the second notice read: “We have told a credit bureau that there was a late payment or default on your account.” (This notice has 17 words; it is a succinct and appropriate disclosure for a notice given after reporting negative information.)

These two models offer significant improvement in consumer understanding over the Model Notice included in the Proposed Rule. Moreover, our proposed model language for use in advance of providing information to a credit bureau is likely to be viewed as less adversarial or threatening.

² 69 Fed. Reg. at 19,125.

Finally, consistent with Section 217, the Board should clarify that the critical elements of these models' reference to late payment, default and reporting to a credit bureau can be rearranged or combined with other language and still come within the safe harbor of the Model Notice provided that the meaning of the Model Notice is retained.

II. Clarification of Delivery Requirements

Although Section 217 requires financial institutions to provide the consumer notice regarding negative information reporting “prior to, or no later than 30 days after[] furnishing negative information to a credit bureau,” we believe that the Board should clarify the delivery requirements in two contexts to facilitate financial institution compliance. While we recognize that Section 217 does not authorize the Board to write regulations concerning the delivery requirements for the Model Notice, we believe that Section 621(e) of the FCRA gives the Federal banking agencies the authority to adopt rules to clarify the delivery requirements for the Model Notice for persons within their jurisdiction as defined in Section 621.

A. Existing Accounts—Prior Similar Notices

Section 217 requires financial institutions to provide the Model Notice to consumers with existing accounts on December 1, 2004, the effective date of that section, if the financial institution subsequently provides negative information to a credit bureau about credit extended to those consumers. Providing these notices to existing accounts will be a daunting task that will require either a costly mass mailing or a costly tracking system to determine when negative information is provided to credit bureaus and to provide the notice on those accounts. To mitigate these costs, the Board should clarify that no notice is required if a financial institution has previously provided a substantially equivalent notice to the consumer.

B. Only One Notice for Each Extension of Credit

As discussed above, Section 217 states that after providing the negative information reporting notice, financial institutions “may submit additional negative information to a consumer reporting agency . . . with respect to the same transaction, extension of credit, account, or customer without providing additional notice.” This strongly suggests that notice should only be required once per loan transaction or extension of credit. Neither Section 217 nor the Proposed Rule, however, elaborates on the extent to which a single notice can be relied on by multiple creditors who may, from time to time, have an interest in a single loan, as owner, servicer or participant, and may report negative information to a credit bureau. In this regard, we believe that one notice provided by the originator of a loan or another party should satisfy the requirement of Section 217 for all financial institutions that may report negative information about a consumer with respect to a single extension of credit. For example, if a financial institution purchases an existing loan where the consumer has previously been provided a Model Notice, we believe it should be clear that Section 217 does not require the purchasing financial institution to provide another notice to the consumer with respect to information that may be reported about this loan.

Thank you for the opportunity to comment on these proposed changes. We would be pleased to supplement our comments or to discuss any of them with you. Please contact me if you have any questions.

Sincerely,

s/Craig Litsey

Craig Litsey
Managing Counsel