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

Dear Ms. Johnson:

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

On behalf of the California and Nevada Credit Union Leagues, I appreciate the opportunity to comment on the proposed rule issued jointly by the Federal Reserve Board and the Federal Trade Commission (collectively, "the Agencies") to implement the risk-based pricing notices in Section 311(a) of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). By way of background, the California and Nevada Credit Union Leagues are the largest state trade associations for credit unions in the United States, representing the interests of more than 400 credit unions and their 9 million members.

Overview of the Proposal Rule

The proposal requires creditors to provide consumers with a risk-based pricing notice in situations in which credit is offered to the consumer on terms that are materially less favorable than those offered to a "substantial proportion" of consumers by that creditor. (A "substantial portion" does not have to constitute a majority of consumers.) The notice informs the consumer that they may be receiving credit on less than favorable terms and provides additional information regarding the use of credit reports. The proposal would only cover credit to a consumer that is primarily for personal, family, or household purposes and would require that only one notice be given to the applicant in connection with a less favorable offer, although a notice may be required later if the terms change due to an account review.

The Leagues' Position

The Leagues believe that consumers should receive clear, usable, and meaningful information about their credit terms, and feel that consumers will be helped to this end by providing risk-based pricing notices. We support the proposal, and commend the Agencies on their in-depth outreach efforts with interested parties— and their careful deliberation—in seeking to implement the statutory provisions of the FACT Act in a balanced and operationally feasible manner. In particular, we would like to highlight our support of the following provisions:

- We support the credit proxy method and the tiered pricing method for determining which consumers should receive the risk-based pricing notices, although we feel the "consumer-to-consumer" approach should be retained as an option.
- We agree that the standard annual percentage rate (APR) should generally be the credit term for purposes of determining who should receive a risk-based pricing notice, as it will be the easiest for consumers to understand and the least burdensome approach for credit unions and other creditors.
- We believe the risk-based pricing notices should be modified to alleviate burdens on creditors by allowing creditors to use the current mortgage loan credit score disclosure required under Section 212(c) of the FACT Act, with appropriate modifications to the introductory language of the disclosure to indicate that consumers are receiving credit on less favorable terms.

While we support the proposal and, overall, its methods, the Leagues find that several terms and/or provisions should be clarified or revised in order to bring about a clearer, more workable final rule. The balance of this letter will address these items, as well as one provision we do not support, and our concerns about implementation of the final rule.

Terms and Provisions That Need Clarification or Revision

"Materially less favorable"
"Most favorable terms"
"Substantial portion of consumers"

The Leagues believe the term "materially less favorable" needs to be clarified, as it may lead to situations in which one creditor sends more risk-based pricing notices than another, even if both offer similar APRs to consumers with similar credit histories. This could lead to a false perception that one creditor is offering more unfavorable APRs than the other, which would have the effect of unfavorably impacting the reputation of that creditor, even though this perception would stem solely from a difference in how each of them complies with these requirements. For example, two creditors using risk-based pricing might each offer a credit card with a 10% APR to consumers with the best credit scores. However, one may decide that any credit card it issues that is higher than 10% would be "materially less favorable" than its best rate, while the other may decide that only cards it issues with an APR above 14% should be considered "materially less favorable." The result would be that the first creditor would likely be issuing more risk-based pricing notices only because it is taking a more cautious approach in complying with these requirements.

We recognize this problem may primarily apply to creditors using the "consumer-to-consumer comparison" approach for determining which consumers should receive a risk-based pricing notice, as opposed to the "credit score proxy method" or the "tiered pricing method." However, if the "consumer-to-consumer" approach is retained, we believe this potential inequity necessitates further clarification of the term "materially less favorable." For similar reasons, we also believe the terms "most favorable terms" and "substantial proportion of consumers" should be further clarified. This will help creditors in their efforts to comply with these requirements and will benefit consumers by treating them all relatively equal for purposes of determining who should receive the risk-based pricing notices.

Indirect Automobile Lending

The Leagues have concerns about the proposal's provisions that describe which party is required to provide the risk-priced notices in certain situations, specifically in connection with indirect automobile lending. The proposed rule makes distinctions based on how the transaction is conducted. In general, the distinction is made based on "to whom the loan obligation is originally payable," which would be the party responsible for providing the risk-based pricing notice.

For automobile lending, the proposal provides an example of when the dealer is the original creditor under a retail installment sales contract. In these situations, the dealer is deemed to be responsible for providing the risk-based pricing notice, even though the contract is immediately assigned to a financial institution. We understand that this example may be intended to address indirect automobile lending practices in which it is recognized that the dealer would be in the best position to provide the notices.

However, in some indirect automobile lending arrangements, the financial institution would be listed as the creditor on the sales contract and would be the party "to whom the obligation is originally payable." Under the proposal, we are concerned this would mean that the financial institution would be required to provide the notice in these situations, which would be virtually impossible to do in a timely manner. For example, many consumers may choose to purchase an automobile on a weekend or during the evening after the financial institution is closed. If they decide to purchase an automobile during that visit, they expect to be able to consummate the purchase at that time and to leave the dealer with their new car. In these situations, it would appear that the financial institution would have to provide the notice.

Therefore, the Leagues recommend that this provision be revised to require the automobile dealer to provide the notice in all indirect lending situations (i.e., to not make the distinction of who provides the notice based on which party is listed on the retail installment sales contract). Otherwise, there may be a significant delay in consummating the transaction, which would be contrary to the consumer's expectation of being able to take possession of the new car at the time they decide to make the purchase. The financial institution may, of course, be able to provide in advance the notice that the dealer would give to the consumer who is entitled to receive it, whether in paper or electronic form. However, the institution would have to rely on the dealer to identify which consumer must receive the form and to provide the dealer with the form before the transaction is consummated.

Joint Applicants

The Leagues believe that further clarification is needed as who receives the notice when there is a joint application for credit. As it is reasonable to assume joint applicants will share information and consult with each other when they receive important information and notices about their application, we view any requirement to provide the same notice to each joint applicant to be duplicative, more costly, and of questionable benefit. We suggest that creditors should be permitted to provide only one notice to either of the joint applicants.

Exceptions to Providing Notices

The proposed rule provides creditors with a number of exceptions to the requirement to provide risk-based pricing notices. These include exceptions in which creditors would not be required to provide these notices if they instead offer credit score information to all consumers who apply for credit. This information must include the score and additional disclosures regarding the use of consumer reports and credit scores during the underwriting process. The Leagues believe that many creditors may elect to provide credit score information under these exceptions to all consumers who apply for credit. In our view, this ignores the intent of Section 311(a) of the FACT Act, which is to provide additional information to those consumers who are receiving higher-priced credit, based on their credit report information.

We recognize that the Agencies are creating these exceptions based on its authority under Section 615(h) (6)(B)(iii) of the Fair Credit Reporting Act. These provisions give the Agencies the authority to create exceptions to the risk-pricing notice requirements for classes of persons or transactions in which the agencies determine that the notice would not significantly benefit consumers. However, we do not believe this authority to create exceptions for certain classes of persons or transactions can be construed so broadly as to create exceptions that will allow creditors to

completely bypass the risk-based pricing notice requirements by providing credit score information to all consumers who apply for credit.

It is the Leagues' opinion that consumers will not be well served if they receive credit score information every time they apply for credit. If creditors utilize these exceptions, consumers will receive the same general disclosure information each time they apply for credit. The result will be a repetitive and redundant disclosure, especially for consumers who frequently apply for credit. This disclosure may also be confusing because consumers will likely receive a different score each time they apply for credit. These scores not only vary based on the credit history of the consumer at the time the consumer applies for credit, but may also vary because creditors use credit scores from various sources. Therefore, we do not support the proposed exceptions permitted if creditors offer credit score information to all consumers who apply for credit

Implementation Date

Because the preparation and implementation of this proposal will be complex and time-consuming, the Leagues believe that credit unions and other creditors should be given a significant amount of time to prepare for these changes. We respectfully urge the Agencies delay mandatory compliance for at least two years after these changes are issued in final form. This time will be necessary in order to allow credit unions and other creditors sufficient time to develop and adopt the new risk-based pricing notices, provide appropriate staff training, and implement the necessary data processing changes. Although we realize two years is a significant period of time, we believe it is warranted for this proposal. Not only is this proposal complex, but the Agencies have issued a significant number of new, involved consumer protection rules over the past several years and will issue several more in the near future. We believe this increased recent compliance burden warrants delaying the mandatory compliance date for a longer time period.

In closing, I would like to thank the Agencies for the opportunity to comment on this important issue. We appreciate your consideration of our views as you work to craft reasonable, fair, and effective regulations for consumers and financial institutions.

Sincerely,

Bill Cheney
President/CEO
California and Nevada Credit Union Leagues