§ 640.3 16 CFR Ch. I (1–1–11 Edition)

(a) In general. Except as otherwise provided in this part, a person must provide to a consumer a notice ("risk-based pricing notice") in the form and manner required by this part if the person both—

1. Uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to that consumer that is primarily for personal, family, or household purposes; and

2. Based in whole or in part on the consumer report, grants, extends, or otherwise provides credit to that consumer on material terms that are materially less favorable than the most favorable material terms available to a substantial proportion of consumers from or through that person.

(b) Determining which consumers must receive a notice. A person may determine whether paragraph (a) of this section applies by directly comparing the material terms offered to each consumer and the material terms offered to other consumers for a specific type of credit product. For purposes of this section, a "specific type of credit product" means one or more credit products with similar features that are designed for similar purposes. Examples of a

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specific type of credit product include student loans, unsecured credit cards, secured credit cards, new automobile loans, used automobile loans, fixed-rate mortgage loans, and variable-rate mortgage loans. As an alternative to making this direct comparison, a person may make the determination by using one of the following methods:

(1) Credit score proxy method—(i) In general. A person that sets the material terms of credit granted, extended, or otherwise provided to a consumer, based in whole or in part on a credit score, may comply with the requirements of paragraph (a) of this section by—

(A) Determining the credit score (hereafter referred to as the “cutoff score”) that represents the point at which approximately 40 percent of the consumers to whom it grants, extends, or provides credit have higher credit scores and approximately 60 percent of the consumers to whom it grants, extends, or provides credit have lower credit scores; and

(B) Providing a risk-based pricing notice to each consumer to whom it grants, extends, or provides credit whose credit score is lower than the cutoff score.

(ii) Alternative to the 40/60 cutoff score determination. In the case of credit that has been granted, extended, or provided on the most favorable material terms to more than 40 percent of consumers, a person may, at its option, set its cutoff score at a point at which the approximate percentage of consumers who historically have been granted, extended, or provided credit on material terms other than the most favorable terms would receive risk-based pricing notices under this section.

(iii) Determining the cutoff score—(A) Sampling approach. A person that currently uses risk-based pricing with respect to the credit products it currently offers may initially determine the cutoff score based on information derived from appropriate market research or relevant third-party sources for a specific type of credit product, such as research or data from companies that develop credit scores. A person that acquires a credit portfolio as a result of a merger or acquisition may determine the cutoff score based on information from the party which it acquired, with which it merged, or from which it acquired the portfolio.

(C) Recalculation of cutoff scores. A person using the credit score proxy method must recalculate its cutoff score(s) no less than every two years in the manner described in paragraph (b)(1)(iii)(A) of this section. A person using the credit score proxy method using market research, third-party data, or information from a party which it acquired, with which it merged, or from which it acquired the portfolio as permitted by paragraph (b)(1)(iii)(B) of this section generally must calculate a cutoff score(s) based on the scores of its own consumers in the manner described in paragraph (b)(1)(iii)(A) of this section within one year after it begins using a cutoff score derived from market research, third-party data, or information from a party which it acquired, with which it merged, or from which it acquired the portfolio. If such a person does not grant, extend, or provide credit to new consumers during that one-year period such that it lacks sufficient data with which to recalculate a cutoff score based on the credit scores of its own consumers, the person may continue to use a cutoff score derived from market research, third-party data, or information from a party which it acquired, with which it merged, or from which it acquired the portfolio as provided in paragraph (b)(1)(iii)(B) until it obtains sufficient data on which to base the recalculation. However, the person must recalculate its cutoff score(s) in the manner described in paragraph (b)(1)(iii)(A) of this section within two years, if it has granted, extended, or provided credit to some new consumers during that two-year period.
(D) Use of two or more credit scores. A person that generally uses two or more credit scores in setting the material terms of credit granted, extended, or provided to a consumer must determine the cutoff score using the same method the person uses to evaluate multiple scores when making credit decisions. These evaluation methods may include, but are not limited to, selecting the low, median, high, most recent, or average credit score of each consumer to whom it grants, extends, or provides credit. If a person that uses two or more credit scores does not consistently use the same method for evaluating multiple credit scores (e.g., if the person sometimes chooses the median score and other times calculates the average score), the person must determine the cutoff score using a reasonable means. In such cases, use of any one of the methods that the person regularly uses or the average credit score of each consumer to whom it grants, extends, or provides credit is deemed to be a reasonable means of calculating the cutoff score.

(iv) Credit score not available. For purposes of this section, a person using the credit score proxy method who grants, extends, or provides credit to a consumer for whom a credit score is not available must assume that the consumer receives credit on material terms that are materially less favorable than the most favorable credit terms offered to a substantial proportion of consumers from or through that person and must provide a risk-based pricing notice to the consumer.

(v) Examples. (A) A credit card issuer engages in risk-based pricing, and the annual percentage rates it offers to consumers are based in whole or in part on a credit score. The credit card issuer takes a representative sample of the consumers to whom it issued credit cards over the preceding six months. The credit card issuer determines that approximately 80 percent of the sampled consumers have a credit score at or above 750 (on a scale of 350 to 850), and 20 percent have a credit score below 750. Thus, the card issuer selects 750 as its cutoff score. A consumer applies to the credit card issuer for a credit card. The card issuer obtains a credit score for the consumer. The consumer's credit score is 740. Since the consumer's 740 credit score falls below the 750 cutoff score, the credit card issuer must provide a risk-based pricing notice to the consumer.

(B) A credit card issuer engages in risk-based pricing, and the annual percentage rates it offers to consumers are based in whole or in part on a credit score. The credit card issuer takes a representative sample of the consumers to whom it issued credit cards over the preceding six months. The credit card issuer determines that approximately 80 percent of the sampled consumers have a credit score at or above 750 (on a scale of 350 to 850), and 20 percent have a credit score below 750. Thus, the card issuer selects 750 as its cutoff score. A consumer applies to the credit card issuer for a credit card. The card issuer obtains a credit score for the consumer. The consumer's credit score is 740. Since the consumer's 740 credit score falls below the 750 cutoff score, the credit card issuer must provide a risk-based pricing notice to the consumer.

(C) An auto lender engages in risk-based pricing, obtains credit scores from one of the nationwide consumer reporting agencies, and uses the credit score proxy method to determine which consumers must receive a risk-based pricing notice. A consumer applies to the auto lender for credit to finance the purchase of an automobile. A credit score about that consumer is not available from the consumer reporting agency from which the lender obtains credit scores. The lender nevertheless grants, extends, or provides credit to the consumer. The lender must provide a risk-based pricing notice to the consumer.

(2) Tiered pricing method—(i) In general. A person that sets the material terms of credit granted, extended, or provided to a consumer by placing the consumer within one of a discrete number of pricing tiers for a specific type of credit product, based in whole or in part on a credit report, may comply with the requirements of paragraph (a)
of this section by providing a risk-based pricing notice to each consumer who is not placed within the top pricing tier or tiers, as described below.

(ii) Four or fewer pricing tiers. If a person using the tiered pricing method has four or fewer pricing tiers, the person complies with the requirements of paragraph (a) of this section by providing a risk-based pricing notice to each consumer to whom it grants, extends, or provides credit who does not qualify for the top tier (that is, the lowest-priced tier). For example, a person that uses a tiered pricing structure with annual percentage rates of 8, 10, 12, and 14 percent would provide the risk-based pricing notice to each consumer to whom it grants, extends, or provides credit at annual percentage rates of 10, 12, and 14 percent.

(iii) Five or more pricing tiers. If a person using the tiered pricing method has five or more pricing tiers, the person complies with the requirements of paragraph (a) of this section by providing a risk-based pricing notice to each consumer to whom it grants, extends, or provides credit who does not qualify for the top two tiers (that is, the two lowest-priced tiers) and any other tier that, together with the top tiers, comprise no less than the top 30 percent but no more than the top 40 percent of the total number of tiers. Each consumer placed within the remaining tiers must receive a risk-based pricing notice. For example, if a person has nine pricing tiers, the top three tiers (that is, the three lowest-priced tiers) comprise no less than the top 30 percent but no more than the top 40 percent of the tiers. Therefore, a person using this method would provide a risk-based pricing notice to each consumer to whom it grants, extends, or provides credit who is placed within the bottom six tiers.

(c) Application to credit card issuers—

(1) In general. A credit card issuer subject to the requirements of paragraph (a) of this section may use one of the methods set forth in paragraph (b) of this section to identify consumers to whom it must provide a risk-based pricing notice. Alternatively, a credit card issuer may satisfy its obligation under paragraph (a) of this section by providing a risk-based pricing notice to a consumer when—

(i) A consumer applies for a credit card either in connection with an application program, such as a direct-mail offer or a take-one application, or in response to a solicitation under 12 CFR 226.5a, and more than a single possible purchase annual percentage rate may apply under the program or solicitation; and

(ii) Based in whole or in part on a consumer report, the credit card issuer provides a credit card to the consumer with an annual percentage rate referenced in §640.2(n)(1)(ii) that is greater than the lowest annual percentage rate referenced in §640.2(n)(1)(ii) available in connection with the application or solicitation.

(2) No requirement to compare different offers. A credit card issuer is not subject to the requirements of paragraph (a) of this section and is not required to provide a risk-based pricing notice to a consumer if—

(i) The consumer applies for a credit card for which the card issuer provides a single annual percentage rate referenced in §640.2(n)(1)(ii), excluding a temporary initial rate that is lower than the rate that will apply after the temporary rate expires and a penalty rate that will apply upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit; or

(ii) The credit card issuer offers the consumer the lowest annual percentage rate referenced in §640.2(n)(1)(ii) available under the credit card offer for which the consumer applied, even if a lower annual percentage rate referenced in §640.2(n)(1)(ii) is available under a different credit card offer issued by the card issuer.

(3) Examples. (i) A credit card issuer sends a solicitation to the consumer that discloses several possible purchase annual percentage rates that may apply, such as 10, 12, or 14 percent, or a range of purchase annual percentage rates from 10 to 14 percent. The consumer applies for a credit card in response to the solicitation. The card issuer provides a credit card to the consumer with a purchase annual percentage rate of 12 percent based in whole or
§ 640.4 Content, form, and timing of risk-based pricing notices.

(a) Content of the notice—(1) In general. The risk-based pricing notice required by §640.3(a) or (c) must include:

(i) A statement that a consumer report (or credit report) includes information about the consumer’s credit history and the type of information included in that history;

(ii) A statement that the terms offered, such as the annual percentage rate, have been set based on information from a consumer report;

(iii) A statement that the terms offered may be less favorable than the terms offered to consumers with better credit histories;

(iv) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;

(v) The identity of each consumer reporting agency that furnished a consumer report used in the credit decision;

(vi) A statement that federal law gives the consumer the right to obtain a copy of a consumer report from the consumer reporting agency or agencies identified in the notice without charge for 60 days after receipt of the notice;

(vii) A statement informing the consumer how to obtain a consumer report from the consumer reporting agency or agencies identified in the notice and providing contact information (including a toll-free telephone number, where applicable) specified by the consumer reporting agency or agencies; and

(viii) A statement directing consumers to the Web sites of the Board and Federal Trade Commission to obtain more information about consumer reports.

(2) Account review. The risk-based pricing notice required by §640.3(d) must include:

(i) A statement that a consumer report (or credit report) includes information about the consumer’s credit history and the type of information included in that credit history;

(ii) A statement that the person has conducted a review of the account using information from a consumer report;

(iii) A statement that as a result of the review, the annual percentage rate on the account has been increased based on information from a consumer report;