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Fair Credit Reporting Risk-Based Pricing Regulations; Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 222

[Regulation V; Docket No. R–1316]

FEDERAL TRADE COMMISSION

16 CFR Parts 640 and 698

RIN 3084–AA94

Fair Credit Reporting Risk-Based Pricing Regulations

AGENCIES: Board of Governors of the Federal Reserve System (Board) and Federal Trade Commission (Commission).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board and the Commission are publishing for comment proposed rules to implement the risk-based pricing provisions in section 311 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), which amends the Fair Credit Reporting Act (FCRA). The proposed rules generally require a creditor to provide a risk-based pricing notice to a consumer when the creditor uses a consumer report to grant or extend credit to the consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that creditor. The proposed rules also provide for two alternative means by which creditors can determine when they are offering credit on material terms that are materially less favorable. The proposed rules also include certain exceptions to the general rule, including exceptions for creditors that provide a consumer with a disclosure of the consumer's credit score in conjunction with additional information that provides context for the credit score disclosure.

DATES: Comments must be received on or before August 18, 2008.

ADDRESSES: The Board and the Commission will jointly review all of the comments submitted. Therefore, you may comment to either the Board or the Commission and you need not send comments (or copies) to both agencies. Because paper mail in the Washington area and at the Board and the Commission is subject to delay, please submit your comments by electronic means whenever possible. Commenters are encouraged to use the title ''FACT Act Risk-Based Pricing Rule'' in addition to the docket or RIN number in their submission. Interested parties are invited to submit comments in accordance with the following instructions:

Board: You may submit comments, identified by Docket No. R–1316, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov*. Include docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Commission: Comments should refer to ''FACT Act Risk-Based Pricing Rule, Project No. R411009,'' and may be submitted by any of the following methods. If, however, the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled ''Confidential.'' [1]

- *Web Site:* Comments filed in electronic form should be submitted by clicking on the following Web link: *https://secure.commentworks.com/ftc-RiskBasedPricing* and following the instructions on the Web-based form. To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at *https://secure.commentworks.com/ftc-RiskBasedPricing*.
- *Federal eRulemaking Portal:* If this notice appears at *http://www.regulations.gov*, you may also file an electronic comment through that Web site. The Agencies will consider all comments that regulations.gov forwards to the Commission.
- *Mail or Hand Delivery:* A comment filed in paper form should include ''FACT Act Risk-Based Pricing Rule, Project No. R411009,'' both in the text and on the envelope and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission/Office of the Secretary, Room H–135 (Annex M), 600 Pennsylvania Avenue, NW., Washington, DC 20580. The Commission is requesting that any comment filed in paper form be sent by courier or overnight service, if possible.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should additionally be submitted to: Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–6974 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the Commission's Web site, to the extent practicable, at *http://www.ftc.gov/os/publiccomments.htm*. As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the Commission's Web site. More information, including routine uses permitted by the Privacy Act, may be found in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT:

Board: David A. Stein, Managing Counsel, or Amy E. Burke, Senior Attorney, Division of Consumer and Community Affairs, (202) 452–3667 or (202) 452–2412; or Andrea K. Mitchell, Senior Attorney, Legal Division, (202) 452–2458, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. For users of a Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

Commission: Kellie Cosgrove Riley, Senior Attorney, or Stacey Brandenburg,

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, (202) 326–2252, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Fair and Accurate Credit Transactions Act of 2003 (FACT Act) was signed into law on December 4, 2003. Public Law 108–159, 117 Stat. 1952. In general, the FACT Act amended the Fair Credit Reporting Act (FCRA) to enhance the ability of consumers to combat identity theft, increase the accuracy of consumer reports, and allow consumers to exercise greater control regarding the type and amount of solicitations they receive.

Section 311 of the FACT Act added a new section 615(h) to the FCRA to address risk-based pricing. Risk-based pricing refers to the practice of setting or adjusting the price and other terms of credit offered or extended to a particular consumer to reflect the risk of nonpayment by that consumer. Information from a consumer report is often used in evaluating the risk posed by the consumer. Creditors that engage in risk-based pricing generally offer more favorable terms to consumers with good credit histories and less favorable terms to consumers with poor credit histories.

Under the new section 615(h) of the FCRA, a risk-based pricing notice must be provided to consumers in certain circumstances. Generally, a person must provide a risk-based pricing notice to a consumer when the person uses a consumer report in connection with an application, grant, extension, or other provision of credit and, based in whole or in part on the consumer report, grants, extends, or provides credit to the consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that person.

Section 311 is part of Title III of the FACT Act, which is entitled ''Enhancing the Accuracy of Consumer Report Information.'' The risk-based pricing notice requirement is designed primarily to improve the accuracy of consumer reports by alerting consumers to the existence of negative information on their consumer reports so that consumers can, if they choose, check their consumer reports for accuracy and correct any inaccurate information.[2]

Section 615(h) requires the Board and the Commission (Agencies) jointly to issue rules implementing the risk-based pricing provisions. The statute requires the Agencies to address in the implementing rules the form, content, timing, and manner of delivery of any notices pursuant to section 615(h). The rules also must clarify the meaning of certain terms used in this section, including what are ''material'' credit terms and when credit terms are ''materially less favorable.'' Section 615(h) gives the Agencies the authority to provide exceptions to the notice requirement for classes of persons or transactions for which the Agencies determine that risk-based pricing notices would not significantly benefit consumers. Finally, the Agencies must provide a model notice that can be used to comply with section 615(h).

II. Developing the Proposed Rules

In developing these proposed risk-based pricing rules, the Agencies sought to implement the statutory provisions in a manner that would be operationally feasible for the wide variety of entities that will be subject to the rules. At the outset of developing the proposed rules, the Agencies conducted outreach to various interested parties, including consumer groups, financial institutions, mortgage bankers, and consumer reporting agencies. The goals of this initial outreach were to get a broad sense of how risk-based pricing is used in practice, how information from consumer reports factors into risk-based pricing, and how interested parties believe the Agencies should implement these provisions.

Based on this initial outreach, the Agencies determined that it may not be operationally feasible in many cases for creditors to compare the terms offered to each consumer with the terms offered to other consumers to whom the creditor has extended credit. After considering several approaches, the Agencies concluded that the most effective way to implement the statute was to develop certain tests that could serve as proxies for comparing the terms offered to different consumers. These tests could be used by creditors for which making direct comparisons among consumers would be difficult or infeasible.

The Agencies then conducted additional, more in-depth outreach meetings with interested parties, including consumer groups, consumer reporting agencies, and a variety of different types of creditors, including large banks, small community banks, credit card issuers, mortgage bankers, auto finance companies, automobile dealers, private student loan creditors, manufactured housing lenders, and industry trade associations. This outreach provided the Agencies with valuable information about how risk-based pricing is conducted in various sectors of the consumer credit market. In addition, the Agencies sought feedback from outreach participants on a number of possible tests that could be used to implement the requirements of the statute. The Agencies' goal was to determine which tests would both identify those consumers who likely received materially less favorable terms than the terms obtained by other consumers and be operationally feasible for creditors to implement.

The proposed rules reflect the Agencies' judgments as to the best approaches identified through these outreach efforts. As discussed more fully below, the Agencies recognize that no single test or approach is likely to be feasible for all of the various types of creditors to which the rules apply or for the many different credit products for which risk-based pricing is used. Therefore, the proposed rules provide a menu of approaches that creditors may use to comply with the statute's legal requirements. The next section provides a brief explanation of the proposed rules.

III. Summary of the Proposed Rules

Risk-Based Pricing Notice

The proposed rules implement the risk-based pricing notice requirement of section 615(h). The proposed rules apply to any person that both: (i) Uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to a consumer; and (ii) 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 terms available to a substantial proportion of consumers from or through that person. The proposed rules clarify that the risk-based pricing notice requirements apply only in connection with credit that is primarily for personal, household, or family purposes, but not in connection with business credit. For more information about the scope of the proposed rules, see the discussion of §____.70 in the Section-by-Section Analysis.

Definitions

The proposed rules define certain key terms. Specifically, the proposed rules define ''material terms'' as the annual percentage rate for credit that has an annual percentage rate,[3] or, in the case

[2] *See* S. Rep. No. 108–166, at 20 (Oct. 17, 2003).

[3] Under Regulation Z, which implements the Truth in Lending Act, 15 U.S.C. 1601, *et seq.*, the

Continued

of credit that does not have an annual percentage rate, as any monetary terms, such as the down payment amount or deposit, that the person varies based on the consumer report. For credit cards, which may have multiple annual percentage rates applicable to different features, ''material terms'' is defined as the annual percentage rate applicable to purchases. In addition, the proposed rules define ''materially less favorable,'' as it applies to material terms, to mean that the terms granted or extended to a consumer differ from the terms granted or extended to another consumer from or through the same person such that the cost of credit to the first consumer would be significantly greater than the cost of credit to the other consumer. For more information about the definitions of these and other terms used in the proposed rules, see the discussion of §____.71 in the Section-by-Section Analysis.

General Rule and Methods for Identifying Consumers Who Must Receive Notice

The proposed rules generally restate the statutory requirement that a person must provide the consumer with a notice if that person both: (i) Uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to that consumer; and (ii) 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 terms available to a substantial proportion of consumers from or through that person. The proposed rules apply to a person to whom the obligation is initially payable (also referred to as ''the original creditor'').

A person subject to the rule may determine, on a case-by-case basis, whether a consumer has received material terms that are materially less favorable terms than other consumers have received from or through that person by comparing the material terms offered to the consumer to the material terms offered to other consumers in similar transactions. It may not be operationally feasible for many persons subject to the rule to make such direct comparisons between consumers, however.

For those persons who prefer not to compare directly the material terms offered to their consumers, the proposed rules provide two alternative methods for determining which consumers must receive risk-based pricing notices. Using either method, a person may determine when credit offered from or through that person is on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that person.

The first method is the credit score proxy method. A credit score is a numerical representation of a consumer's credit risk based on information in the consumer's credit file. The proposed rules permit a creditor that uses credit scores to set the material terms of credit to determine a cutoff score, representing the point at which approximately 60 percent of its consumers have lower credit scores, and provide a risk-based pricing notice to each consumer who has a credit score lower than the cutoff score. The proposed rules require periodic updating of the cutoff score.

The second method is the tiered pricing method. The proposed rules permit a creditor that sets the material terms of credit by assigning each consumer to one of a discrete number of pricing tiers, based in whole or in part on a consumer report, to use this method to provide a risk-based pricing notice to each consumer who is not assigned to the top pricing tier or tiers. The number of tiers of consumers to whom the notice is required to be given depends upon the total number of tiers. For more information about the general rule and the methods for determining which consumers must receive notices, see the discussion of §____.72 in the Section-by-Section Analysis.

Application of Rule to Credit Card Issuers

The proposed rules set forth a special test to identify circumstances in which a credit card issuer must provide a notice to consumers. A credit card issuer is required to provide a risk-based pricing notice to a consumer if the consumer applies for a credit card in connection with a multiple-rate offer and, based in whole or in part on a consumer report, is granted credit at a purchase annual percentage rate that is higher than the lowest purchase annual percentage rate available under that offer. The proposed rules assume that a consumer who applies for credit in response to a multiple-rate offer is applying for the best rate available. For more information about the application of the rule to credit card issuers, see the discussion of §____.72 in the Section-by-Section Analysis.

Account Review

Some creditors conduct periodic reviews of a consumer report in connection with credit that has been extended to a consumer. If the consumer's credit history has deteriorated, the creditor may, pursuant to applicable account terms, increase the annual percentage rate applicable to that consumer's account. The proposed rules require the creditor to provide a risk-based pricing notice to the consumer if the creditor increases the consumer's annual percentage rate in an account review based in whole or in part on a consumer report. For more information about the application of the general rule to account reviews, see the discussion of §____.72 in the Section-by-Section Analysis.

Content of the Notice

In addition to the minimum content prescribed by section 615(h)(5) of the FCRA, the proposed rules require the risk-based pricing notice to include a statement that the terms offered may be less favorable than the terms offered to consumers with better credit histories. The Agencies believe that including such a statement in the notice could encourage consumers to check their consumer reports for inaccuracies. The proposed rules also include special content requirements for the notice in the context of account reviews. For more information about the content of the risk-based pricing notices, see the discussion of §____.73 in the Section-by-Section Analysis.

Timing of the Notice

Section 615(h)(2) of the FCRA states that the risk-based pricing notice may be provided at the time of an application for, or a grant, extension, or other provision of, credit or at the time of communication of an approval of an application for, or grant, extension, or other provision of, credit. Section 615(h)(6)(B)(v) of the FCRA, however, gives the Agencies broad discretion to set the timing requirements for the notice by rule.

The proposed rules generally require a risk-based pricing notice to be provided to the consumer after the terms of credit have been set, but before the consumer becomes contractually obligated on the credit transaction. In the case of closed-end credit, the notice must be provided to the consumer before consummation of the transaction, but not earlier than the time the approval decision is communicated to the consumer. In the case of open-end credit, the notice must be provided to the consumer before the first transaction

annual percentage rate is a measure of the cost of credit, expressed as a yearly or annualized rate. *See* 12 CFR 226.14, 226.22. Regulation Z requires creditors to disclose accurately the cost of credit, including the annual percentage rate. *See* 12 CFR 226.5a(b)(1), 226.5b(d)(6) and (12), and 226.18(e).

is made under the plan, but not earlier than the time the approval decision is communicated to the consumer. For account reviews, the notice must be provided at the time that the decision to increase the annual percentage rate is communicated to the consumer or, if no notice of the increase in the annual percentage rate is provided to the consumer prior to the effective date of the change in the annual percentage rate, no later than five days after the effective date of the change in the annual percentage rate. For more information about the timing requirements, see the discussion of § ____.73 in the Section-by-Section Analysis.

Exceptions to the Risk-Based Pricing Notice Requirement

The proposed rules contain a number of exceptions to the risk-based pricing notice requirement. First, the proposed rules implement the statutory exceptions that apply: (i) When a consumer applies for, and receives, specific material terms; and (ii) when a consumer is receiving an adverse action notice under section 615(a) of the FCRA in connection with the transaction.

The Agencies also have used the exception authority set forth in section 615(h)(6)(iii) of the FCRA to propose additional exceptions for classes of persons or transactions regarding which the Agencies believe that the notice would not significantly benefit consumers. The Agencies are proposing exceptions for creditors that provide consumer applicants with certain information, including their credit score, in lieu of the risk-based pricing notice.[4] For credit secured by one to four units of residential real property, an exception applies when a creditor provides the consumer with a notice containing the credit score disclosure required by section 609(g) of the FCRA along with certain additional information that provides context for the credit score disclosure, describes the creditor's use of credit scores to set the terms of credit, and explains how a consumer can obtain his or her free annual consumer reports. Another proposed exception applies to credit that is not secured by one to four units of residential real property, and is thus not subject to the credit score disclosure requirements of section 609(g). This exception is similar to the credit score disclosure exception for residential real property secured credit.

In some cases, a consumer's credit file may not contain sufficient information to permit a consumer reporting agency or other person to calculate a score for that individual. A creditor using either of the credit score disclosure exceptions described above is permitted to comply with the regulation by providing an alternate narrative notice that does not include a credit score to those consumers for whom a score is not available.

Finally, the Agencies have proposed an exception for prescreened solicitations. Under this exception, a creditor will not be required to provide a risk-based pricing notice if that creditor obtains a consumer report that is a prescreened list and uses that consumer report to make a firm offer of credit to the consumers, regardless of how the material terms of that offer compare to the terms that the creditor includes in other firm offers of credit. For more information about the exceptions, see the discussion of § ____.74 in the Section-by-Section Analysis.

Free Consumer Report

Section 615(h)(5)(C) of the FCRA states that the risk-based pricing notice must contain a statement informing the consumer that he or she may obtain a copy of a consumer report, without charge, from the consumer reporting agency identified in the notice. Some industry representatives have interpreted this section as a reference to the free annual consumer report described in section 612(a) of the FCRA.[5] These industry representatives do not believe that section 615(h) of the FCRA gives rise to a right to a separate free consumer report. Consumer groups, on the other hand, interpret this section as giving a consumer a right to a separate free consumer report.[6] The proposed rule is based on the Agencies' reading of section 615(h) as giving consumers a right to a separate free consumer report upon receipt of a risk-based pricing notice.

Section 612(b) of the FCRA provides for free consumer reports to consumers who have received a notification pursuant to ''section 615'' of the FCRA. Section 615 of the FCRA includes both the adverse action notice requirement (section 615(a)), the risk-based pricing notice provision (section 615(h)), and certain other requirements. Accordingly, the Agencies read the reference to the free consumer report in section 612(b) to apply equally when notices are given under section 615(a) and section 615(h)(5)(C), *i.e.*, to require in both those cases a free report that is separate from the free annual report.

The notices provided under the credit score disclosure exceptions are not risk-based pricing notices, and therefore do not give rise to the right to a free consumer report. Instead, a consumer who receives a credit score disclosure notice that identifies a consumer reporting agency or other third party as the source of the credit score could request the free annual consumer report that is available from each of the three nationwide consumer reporting agencies. For more information about the credit score disclosure exceptions, see the discussion of § ____.74 in the Section-by-Section Analysis.

One Notice Per Credit Extension

The proposed rules contain a rule of construction to clarify that, in general, only one risk-based pricing notice will need to be provided per credit extension, except in the case of a notice provided in connection with an account review. The person to whom the obligation is initially payable must provide the risk-based pricing notice, or satisfy one of the exceptions, even if the loan is assigned to a third party or if that person is not the funding source for the loan. Although legal responsibility for providing the notice rests with the person to whom the obligation is initially payable, the various parties involved in a credit extension could determine by contract which party will send the notice. Purchasers or assignees of credit contracts will not be subject to the risk-based pricing notice requirements. For more information about the rules of construction, see the discussion of § ____.75 in the Section-by-Section Analysis.

[4] These exceptions are distinct from the credit score proxy method discussed above. The credit score proxy method is one way in which creditors can comply with the proposed rules' requirement to identify those consumers who should receive a risk-based pricing notice. The credit score disclosure exceptions, on the other hand, provide consumers with a credit score and related information *in lieu* of a risk-based pricing notice. A creditor, therefore, can comply with the proposed rules either by using the credit score proxy method (or one of the other enumerated methods) to determine for a given class of products which consumers should receive a risk-based pricing notice, or by providing the credit score disclosure to its consumers for that class of products.

[5] *See* letter from Mortgage Bankers Association to the Federal Trade Commission (Aug. 16, 2004), available at *http://www.ftc.gov/os/comments/FACTA-summaries/511461–0007.pdf* and letter from American Bankers Association & America's Community Bankers *et al.*, to Alan Greenspan and Deborah Platt Majoras (Sept. 9, 2004), available at *http://www.mortgagebankers.org/files/ResourceCenter/FACTA/FACTARisk-BasedPricingComments9-9-04.pdf.*

[6] *See* letter from National Consumer Law Center and Consumers Union *et al.*, to Alan Greenspan and Deborah Platt Majoras (Feb. 2, 2005), available at *http://www.consumerlaw.org/issues/credit_reporting/ content/facta_riskbased.pdf.*

Model Forms

Section 615(h)(6)(B)(iv) requires the Agencies to provide a model notice that may be used to comply with the risk-based pricing rules. For each of the risk-based pricing notices and alternative credit score disclosures, the Agencies have proposed model forms that are appended to the proposed rules as Appendices H–1 through H–5 of the Board's rule and Appendices B–1 through B–5 of the Commission's rule. For more information, see the discussion of the model forms in the Section-by-Section Analysis.

IV. Section-by-Section Analysis

Section ____.70 Scope

Proposed § ____.70 sets forth the scope of the Agencies' rules. Proposed paragraph (a)(1) generally tracks the statutory language from section 615(h)(1) of the FCRA, except that it limits coverage of the proposed rules to credit to a consumer that is primarily for a consumer's personal, family, or household purposes.

Proposed paragraph (a)(2) provides that the risk-based pricing rules do not apply to persons who use consumer reports in connection with an application for, grant, extension, or other provision of, credit for business purposes. Section 615(h) of the FCRA does not explicitly state that it applies only to a person using a consumer report in connection with consumer purpose credit. Section 615(h) does, however, require a person using a consumer report to compare the terms of credit offered in a particular transaction to the most favorable terms available to a substantial proportion of ''consumers'' and to provide a notice to the ''consumer'' if the person offers or extends credit on materially less favorable terms. In addition, several of the statutory exceptions reference the ''consumer'' or ''consumers,'' including those in section 615(h)(3)(A) (''the consumer applied for specific material terms * * *'') and section 615(h)(6)(B)(iii) (''* * * regarding which the agencies determine that notice would not significantly benefit consumers''). The statute's repeated use of the term ''consumer,'' which section 603(c) of the FCRA defines to mean ''an individual,'' suggests that Congress intended for the risk-based pricing provisions to apply only to credit that is primarily for personal, family, or household purposes.

Business-purpose loans generally are made to partnerships or corporations, as well as to individual consumers in the case of sole proprietorships. The Agencies understand that business borrowers generally are more sophisticated than individual consumers. For business loans made to partnerships or corporations, a creditor may obtain consumer reports on the principals of the business who may serve as guarantors for the loan.[7] The credit is granted or extended to the business entity, however, based primarily on that entity's creditworthiness, and that entity is primarily responsible for the loan. Also, when a consumer report is used in connection with a small business loan, the report may factor into the underwriting process quite differently than a consumer report utilized in connection with a consumer purpose loan. It may not be operationally feasible to compare the terms of credit granted for different business purposes because some types of business ventures pose a greater degree of risk than other types of business ventures. In addition, the Agencies believe that a comparison of the terms of business purpose credit to the terms of consumer purpose credit would not be meaningful. For example, the underwriting process used to set the terms for a business loan made to purchase a fleet of vehicles may differ substantially from the underwriting process used to set the terms of a single auto loan made to an individual consumer. The Agencies solicit comment regarding whether there are any circumstances under which creditors should be required to provide risk-based pricing notices in connection with credit primarily for business purposes.

Proposed paragraph (b) provides that compliance with either the Board's or the Commission's substantively identical risk-based pricing rules would be deemed to satisfy the requirements of the statute. Both the Board's and the Commission's rules would apply to the persons covered by paragraph (a). The Board proposes to codify its risk-based pricing rules at 12 CFR 222.70 *et seq.,* and the Commission proposes to codify its risk-based pricing rules at 16 CFR 640. There is, however, no substantive difference between the two sets of rules.

Proposed paragraph (c), consistent with the statutory language in section 615(h)(8), provides that the risk-based pricing rules will be enforced in accordance with sections 621(a) and (b) by the relevant federal agencies and officials identified in those sections, including state officials. The risk-based pricing provisions do not provide for a private right of action.

Section ____.71 Definitions

Proposed § ____.71 contains definitions for the following terms: ''annual percentage rate'' (and the related terms ''closed-end credit'' and ''open-end credit plan''), ''credit,'' ''creditor,'' ''credit card,'' ''credit card issuer,'' ''credit score,'' ''material terms'' (and the related term ''consummation''), and ''materially less favorable.''

Annual Percentage Rate

Proposed paragraph (a) defines ''annual percentage rate'' by incorporating the definitions of ''annual percentage rate'' for open-end credit plans and closed-end credit set forth in sections 226.14(b) and 226.22 of Regulation Z, respectively. (12 CFR 226.14(b), 12 CFR 226.22). The concept of an annual percentage rate, as discussed later in this Section-by-Section analysis, is relevant to the Agencies' proposed definition of ''material terms.'' The Agencies believe that use of the Regulation Z definitions of annual percentage rate promotes consistency among the rules pertaining to consumer credit, including the rules that implement the FCRA and the Truth-in-Lending Act. Regulation Z prescribes two separate methods for calculating the annual percentage rate for credit, depending on whether that credit is open-end or closed-end. To ensure that the correct calculation methods for the annual percentage rate are applied to the appropriate products, the proposal also incorporates the Truth-in-Lending Act's definition of ''open-end credit plan,'' as interpreted by the Board,[8] and the Regulation Z definition of ''closed-end credit.'' Paragraph (b) of the proposal defines ''closed-end credit'' to have the same meaning as in Regulation Z (12 CFR 226.2(a)(10)). Paragraph (k) of the proposal defines ''open-end credit plan'' to have the same meaning as set forth in the Truth-in-Lending Act, as implemented by the Board in Regulation Z and the Official Staff Commentary to Regulation Z (15 U.S.C. 1602(i), 12 CFR 226.2(a)(20)).

Credit, Creditor, Credit Card, Credit Card Issuer, and Credit Score

Proposed paragraphs (d), (e), (f), (g), and (h) incorporate the FCRA's statutory definitions of ''credit,'' ''creditor,'' ''credit card,'' ''credit card issuer,'' and

[7] *See* FTC Staff Opinion Letter from Joel Winston to Julie L. Williams, J. Virgil Mattingly, William F. Kroener, III, and Carolyn Buck (June 22, 2001) (available at *http://www.ftc.gov/os/statutes/fcra/tatelbaumw.shtm).*

[8] The Board defines the term ''open-end credit'' in Regulation Z, rather than ''open-end credit plan.'' 12 CFR 226.2(a)(20).

''credit score.'' Each of these terms is used in the proposed rules.

Material Terms

Proposed paragraph (i) contains three separate definitions of ''material terms,'' depending on whether the credit is extended under an open-end credit plan for which there is an annual percentage rate, is closed-end credit for which there is an annual percentage rate, or is credit for which there is no annual percentage rate.

Proposed paragraph (i)(1) defines ''material terms'' for credit extended under an open-end credit plan as the annual percentage rate required to be disclosed in the account-opening disclosures required by Regulation Z (12 CFR 226.6(a)(2)). The definition excludes both any temporary initial rate that is lower than the rate that would apply after the temporary rate expires and any penalty rate that would apply upon the occurrence of one or more specific events, such as a late payment or extension of credit that exceeds the credit limit. The annual percentage rate has historically been one of the most significant pricing terms for open-end credit, and it is probably the term that creditors most often adjust as a result of risk-based pricing.

Credit cards, unlike other open-end credit products, have multiple annual percentage rates, including annual percentage rates for cash advances, balance transfers, and purchases. The Agencies believe that purchases are the most common type of open-end credit card transaction, and thus the annual percentage rate for purchases is the most commonly applied rate in credit card transactions. Moreover, it is one of the most common terms that consumers compare when shopping for credit cards. Therefore, for credit cards (other than those used to access a home equity line of credit), the proposal defines ''material terms'' as the annual percentage rate applicable to purchases (''purchase annual percentage rate''), and no other annual percentage rate.

Similarly, proposed paragraph (i)(2) defines ''material terms'' for closed-end credit as the annual percentage rate required to be disclosed prior to consummation under the provisions of Regulation Z regarding closed-end credit (12 CFR 226.17(c) and 226.18(e)). This definition does not address temporary initial rates or penalty rates, because any such rates are not annual percentage rates for the purposes of the closed-end provisions of Regulation Z.

The related term ''consummation'' is defined in proposed paragraph (c) to mean the time that a consumer becomes contractually obligated on a credit transaction. The proposed definition is identical to the definition of ''consummation'' in Regulation Z. 12 CFR 226.2(a)(13). Consummation is defined in the proposed rules for clarity and completeness.

Most consumer credit products have an annual percentage rate, and it has historically been a significant factor, and often the most significant factor, in the pricing of credit. As discussed below, the Agencies have proposed a definition of ''material terms'' that generally focuses on a single term in order to ensure that there is a feasible way for creditors to identify those consumers who must receive risk-based pricing notices. The Agencies believe that focusing on the annual percentage rate is appropriate because the Agencies understand that when risk-based pricing occurs, it typically affects the annual percentage rate.

The Agencies acknowledge that the pricing of credit products is complex and that the annual percentage rate is only one of the costs of consumer credit. In addition to the annual percentage rate(s) applicable to a given credit product, there may be other terms that affect the cost of credit, such as the amount of any down payment, prepayment penalties, or late fees. In addition, a single credit product may have a number of different rate structures, such as a credit card that has different annual percentage rates for purchases, cash advances, and balance transfers. The Agencies understand that the annual percentage rate is the primary term that varies as a result of risk-based pricing and that, for credit cards, the purchase annual percentage rate is the primary term that varies as a result of risk-based pricing. Thus, the Agencies believe that, in most cases, defining ''material terms'' with reference to the annual percentage rate will effectively target those consumers who are likely to have received credit on terms that are materially less favorable than the terms offered to other consumers. If creditor practices were to change in the future such that other terms of credit begin to vary as a result of risk-based pricing, the Agencies could revise the meaning of ''material terms.''

To satisfy the risk-based pricing notice requirements, creditors must have some feasible means of comparing different credit granted to different consumers. The Agencies believe that it would not be operationally feasible for creditors to compare credit terms on the basis of multiple variables. For example, it is unclear how a creditor would compare one mortgage loan with a certain combination of annual percentage rate, down payment, and points and fees to another such loan where all three variables differ, even for the same product, such as a 30-year fixed-rate loan. The Agencies welcome comment on whether there are other monetary or non-monetary terms that should be included in the definition of ''material terms,'' and how the comparison between terms granted to consumers could be conducted if multiple variables were taken into account.

The Agencies solicit comment as to whether creditors vary temporary initial rates, penalty rates, balance transfer rates, or cash advance rates, on either closed-end or open-end credit, as a result of risk-based pricing. If those rates do vary as a result of risk-based pricing, the Agencies request comment on whether those rates also should be treated as ''material terms,'' and whether it would be possible to apply to those rates the existing tests described in proposed § ____.72(b). If new tests would be required under such a broader definition of ''material terms,'' the Agencies solicit comment on what those tests might be.

The Agencies understand that some home-secured closed-end and home-secured open-end credit plans may charge prepayment penalties. The Agencies invite comment on whether creditors vary prepayment penalties based on information in consumer reports, and whether prepayment penalties should be treated as ''material terms.'' The Agencies also request comment on how the tests in proposed § ____.72(b) could be modified to account for risk-based pricing of prepayment penalties or whether entirely new tests would be required and, if so, what those new tests might be.

Proposed paragraph (i)(3) defines ''material terms'' for credit with no annual percentage rate as any monetary terms that the person varies based on information in a consumer report, such as the down payment or deposit. This provision applies to creditors such as telephone companies or utilities that use consumer reports in extending credit (for example, in determining the amount of a deposit or prepayment requirement) but do not extend credit subject to annual percentage rates. This provision also applies to charge cards for which the annual membership fee varies based on information from a consumer report. The Agencies solicit comment as to whether the definition's reference to ''any monetary terms'' that the person varies based on information from a consumer report is sufficiently specific or too broad.

Materially Less Favorable Material Terms

Proposed paragraph (j) defines ''materially less favorable,'' as it applies to material terms, to mean that the terms granted or extended to a consumer differ from the terms granted or extended to another consumer from or through the same person such that the cost of credit to the first consumer would be significantly greater than the cost of credit granted or extended to the other consumer. This definition clarifies that a comparison between one set of material terms and another set of material terms is generally required to satisfy the general rule and to identify which consumers must receive the notice.

The statute focuses on whether the material terms granted or extended to a consumer are ''materially less favorable than the most favorable terms available to a substantial proportion of consumers'' from or through a particular person. Therefore, for purposes of making this comparison, creditors must: (1) Select the ''most favorable terms'' available to a group of consumers that represents a substantial proportion of consumers to whom the creditor extends credit; and (2) compare the material terms granted or extended to the individual consumer to the most favorable material terms granted or extended to the comparison group. It would not be acceptable, for example, to compare a consumer's material terms to an arbitrarily selected benchmark, such as the creditor's median or average material terms or to the material terms generally available to the creditor's less creditworthy consumers. On the other hand, a creditor should not use in its comparison material terms that are available to only a tiny percentage of its most exceptionally creditworthy consumers, such as very high net worth individuals.

The proposed rules do not define what constitutes ''a substantial proportion'' of consumers, even though that concept is integrally linked to the concept of ''materially less favorable'' terms under the statute. The Agencies have not identified a definition of ''a substantial proportion'' that could reflect the widely varying pricing practices of creditors generally. For example, one creditor may offer its most favorable material terms to ninety percent of its consumers and materially less favorable material terms to ten percent of its consumers. Another creditor may offer its most favorable material terms to ten percent of its consumers and materially less favorable material terms to ninety percent of its consumers. A third creditor may offer its most favorable material terms to one percent of its consumers, slightly less favorable material terms to twenty percent of its consumers, and materially less favorable material terms to its remaining consumers. For these reasons, the Agencies do not believe it is appropriate to define ''a substantial proportion.'' Nonetheless, the Agencies expect that creditors would consider ''a substantial proportion'' as constituting more than a de minimis percentage, but that may or may not represent a majority.

Within these limitations, however, the proposed definition provides guidance regarding how to determine whether a particular set of terms is materially less favorable. Under the proposed definition, factors relevant to determining the significance of a difference in the cost of credit include the type of credit product, the term of the credit extension, if any, and the extent of the difference between the material terms granted or extended to the individual consumer and the material terms granted or extended to the comparison group. Consideration of these factors by different creditors may result in two creditors reaching opposite conclusions about the materiality of the same difference in annual percentage rates. For example, a credit card issuer considering these factors may conclude that a one-quarter percentage point difference in the annual percentage rate is not material, whereas a mortgage lender may conclude that a one-quarter percentage point difference in the annual percentage rate is material. In assessing the extent of the difference between two sets of material terms, a creditor should consider how much the consumer's cost of credit would increase as a result of receiving the less favorable material terms and whether that difference is likely to be important to a reasonable consumer.

The Agencies solicit comment on the proposed definition of ''materially less favorable.'' In particular, the Agencies seek comment on whether the proposed definition is helpful, and whether the interrelated terms ''most favorable terms'' and ''a substantial proportion of consumers'' also should be defined and, if so, how they should be defined.

Section ____.72 General Requirements for Risk-Based Pricing Notices General Rule

Proposed § ____.72 establishes the basic rules implementing the risk-based pricing notice requirement of section 615(h). Paragraph (a) states the general requirement that a person must provide the consumer with a notice if that person both: (i) 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 (ii) 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 terms available to a substantial proportion of consumers from or through that person. This paragraph mirrors the language in proposed § ____.70(a) and generally tracks the statutory language.

Although the statute would permit various interpretations of ''from or through that person,'' the Agencies interpret the phrase to refer to the person to whom the obligation is initially payable, *i.e.*, the original creditor. Under this interpretation, the original creditor is responsible for determining whether consumers received materially less favorable material terms and providing risk-based pricing notices to consumers, whether or not that person is the source of funding for the loan. When the original creditor is the source of funding for the loan, the consumer obtains credit from the original creditor. This occurs, for example, where the consumer obtains credit directly from a bank or finance company. When the original creditor is not the source of funding for the loan, however, the consumer obtains credit through the original creditor. This occurs, for example, where the consumer enters into a credit contract with an auto dealer, but the dealer does not fund the loan. Instead, the dealer has an agreement with a bank or finance company to purchase the contract. The bank or finance company provides the funding for the loan. The dealer immediately assigns the credit contract to a bank or finance company upon consummation of the transaction. In that case, the consumer has obtained credit through the auto dealer, rather than from the auto dealer.

The Agencies recognize that this interpretation excludes from the scope of the proposed rules brokers and other intermediaries who do not themselves grant, extend, or provide credit, but who, based in whole or in part on a consumer report, shop credit applications to creditors that offer less favorable rates than other creditors. Instead the proposed rules require an intermediary, such as a broker, to provide risk-based pricing notices to consumers only when the intermediary is the person to whom the obligation is initially payable. The Agencies believe this is the most appropriate

interpretation of the statute, given its language and purpose.

With respect to the statutory language, section 615(h) applies to the ''material terms'' granted, extended, or provided to the consumer based on a consumer report. An intermediary's decision regarding where to shop a consumer's credit application generally occurs before the material terms are set. Thus, at the time the application is shopped to various creditors, it is too early in the process to perform the direct comparison of material terms required by the statute, even if a consumer report influenced the intermediary's decision regarding where to shop the consumer's credit application.

The Agencies also believe that their interpretation of the statute with respect to intermediaries is consistent with its purposes. For the reasons described below, requiring intermediaries to provide notices based on the creditors to which they shop a consumer's credit application would not provide a significant benefit to consumers; would likely be confusing to consumers; and would be operationally difficult, burdensome, and costly.

First, a rule requiring intermediaries to provide notices when they shop applications to certain creditors would frequently result in the consumer receiving multiple risk-based pricing notices in connection with a single extension of credit. Under such a rule, consumers who work through intermediaries would in many cases receive two notices: The first from the intermediary when it shops the application, and the second from the creditor itself if the creditor grants credit to the consumer on materially less favorable material terms than it grants to a substantial proportion of its other consumers. In some cases, the intermediary is also the original creditor and could be required to provide two notices to the consumer. This scenario could arise, for example, in the context of an automobile loan. Under a rule requiring a shopping-triggered notice, if a dealer shops the consumer's application to finance companies that offer materially less favorable material terms than do other sources of financing, the dealer would be required to provide a notice to the consumer. In addition, an auto dealer that is the original creditor on the loan must provide a notice to a consumer who receives materially less favorable material terms than those received by a substantial proportion of the dealer's other consumers.

The Agencies generally do not believe that a consumer would benefit from receiving more than one risk-based pricing notice in connection with a single extension of credit. The purpose of the statute is to notify consumers that information in their consumer reports caused them to receive materially less favorable material terms, and to encourage those consumers to check their consumer reports for possible errors. The Agencies do not believe that providing a consumer with a second notice in connection with the same extension of credit is necessary or beneficial to educate or motivate the consumer to obtain a copy of his or her credit report. For that reason, the rules of construction in proposed § ____.75, discussed below, codify the principle that generally one notice for each extension of credit is sufficient.

Second, requiring multiple notices in connection with a single extension of credit would introduce significant compliance burdens and costs. As an operational matter, it would be difficult to establish by regulation appropriate criteria for determining when shopping a consumer's credit application to certain lenders would trigger the requirement to provide a risk-based pricing notice. There is no single, uniform method for distinguishing a prime lender from a subprime lender, for example, and some lenders may make both prime and subprime loans. In addition, requiring multiple notices in connection with a single extension of credit could impose significant costs on the credit reporting system (which costs would be passed on to consumers) in view of the Agencies' reading of the statute as providing consumers with a right to request a free consumer report upon receipt of each risk-based pricing notice.

The Agencies recognize that, under the proposed rules, some consumers who use an intermediary will not receive a risk-based pricing notice, even though their consumer reports, in whole or in part, influenced the intermediary's decision to shop their credit applications only to creditors that generally offer less favorable material terms than other creditors. This would occur if the creditor to whom the application was shopped granted its most favorable material terms to the consumer. Under the statute, however, the same issue exists when a consumer applies directly to subprime lenders because the statute does not require a creditor to compare the material terms it offers to consumers to the material terms offered by other creditors. The Agencies solicit comment on whether intermediaries who are not original creditors, such as brokers, should be required to provide risk-based pricing notices to consumers based upon the intermediaries' decisions regarding the shopping of consumer credit applications to certain creditors and, if so, how such a requirement could be structured.

Direct Comparisons and Materially Less Favorable Material Terms

Creditors may follow the general rule in determining, on a case-by-case basis, whether a consumer has received materially less favorable terms than the terms a substantial proportion of consumers have received from or through that creditor. The general rule is flexible and permits the creditor to determine, consistent with its particular circumstances, when material terms are ''materially less favorable than the most favorable terms available to a substantial proportion'' of its consumers.

When a creditor undertakes direct, consumer-to-consumer comparisons, such comparisons necessarily must account for the unique aspects of that creditor's business. For example, many creditors make pricing decisions based on a number of variables that are not based on information in a consumer report (*e.g.*, debt-to-income ratio or type of collateral) in addition to variables that are based on information in a consumer report. The role each of these variables plays in the pricing decision may vary from creditor to creditor and product to product. Similarly, creditors must compare the transaction at issue with past transactions of a similar type, and must control for changes in interest rates and other market conditions over time. A particular method of comparison that is sensible and feasible for one creditor may not be sensible and feasible for another creditor. No precise regulatory benchmark could account for such creditor-specific and product-specific variations.

Although the proposed rules do not impose a quantitative standard or specific methodology for determining whether a consumer is receiving materially less favorable terms, the determination should be made in a reasonable manner. The Agencies expect that creditors would provide risk-based pricing notices to some, but fewer than all, of the consumers to whom they extend credit. Under the general rule, the creditor would first need to identify the appropriate subset of its current or past consumers to compare to any given consumer. Each consumer would need to be compared to an adequate sample of consumers who have engaged in similar transactions, such as those who have applied for or received the particular credit product for which the consumer has applied. The terms offered to a

consumer in a 30-year fixed-rate purchase money mortgage, for example, cannot be compared to the terms offered to consumers who obtain auto loans, credit cards, student loans, or adjustable-rate mortgages. The creditor also would need to tailor its comparison to disregard any underwriting criteria that do not depend upon consumer report information. Such a comparison also would have to account for changes in the creditor's customer base, product offerings, or underwriting criteria over time. Similarly, adjustments would have to be made if the terms offered to consumers in the past are not presently offered to consumers.

The Agencies recognize that, even with the flexibility provided in the proposed rules, it may not be feasible or practical for many creditors to make the direct comparisons required by the general rule. Many creditors are likely to encounter operational difficulties in determining whether a consumer report played a role in a particular pricing decision that was based on multiple variables, and in identifying an appropriate benchmark with which to compare a given consumer's material terms. Small creditors in particular may have difficulty identifying a sufficient number of comparable benchmark credit transactions, since those creditors may make relatively few loans of any given type.

For these reasons, proposed paragraph (b) sets forth two other methods, the ''credit score proxy method'' and the ''tiered pricing method,'' that creditors can use to identify which consumers must receive notices for a given class of products. These two methods provide alternatives to the direct consumer-to-consumer comparison described in section 615(h) of the FCRA. Consumers identified by either of these two methods will be deemed to have been granted, extended, or otherwise provided credit on materially less favorable material terms.

The Agencies have crafted these two methods in order to enable a creditor to provide the risk-based pricing notice to fewer than all consumers without having to make a direct comparison between the material terms granted to each consumer and the material terms granted to its other consumers. The Agencies recognize that these methods may not result in a precise differentiation in every case between consumers who received the most favorable terms and those who received materially less favorable terms. The Agencies believe, however, that each of these methods is a reasonable proxy or substitute for identifying those consumers who received materially less favorable terms. Permitting the use of proxy methods also recognizes that, at least in some cases, there is no reliable way to determine which consumers received materially less favorable terms. Moreover, through the two alternative methods, the Agencies can provide clear guidance regarding the meaning of materially less favorable material terms.

The Agencies believe that the credit score proxy method and the tiered-pricing method generally will identify those consumers who receive materially less favorable material terms from or through a particular person. In applying either of these methods, however, there may be some instances where a consumer receives a notice, but does not receive material terms that are materially less favorable than the most favorable terms generally available to a substantial proportion of consumers. For example, using the credit score proxy method, a consumer with a credit score below the cutoff score would receive a notice even if he or she received the creditor's most favorable terms. It would not violate the rules to provide risk-based pricing notices to some consumers who receive the most favorable terms so long as the selection of those consumers results from the proper application of either of these two methods. Neither of these methods, however, would permit a creditor to provide the notice to all consumers.

Although the proposed rules set forth two alternate methods that a person may use, for purposes of consistency a person must use the same method to evaluate all consumers who are granted, extended, or otherwise provided substantially similar products from or through that person. For example, if a creditor uses the credit score proxy method to evaluate consumers who obtain credit to finance the purchase of a new automobile, the creditor must use that method for all such consumers for new vehicle loans. On the other hand, the Agencies recognize that the feasibility of these methods may vary among different product lines. Thus, a person may use one method to evaluate consumers who obtain mortgages and the other method to evaluate consumers who obtain auto loans.

The Agencies recognize that there may be other methods that would serve as effective proxies for identifying the appropriate consumers to receive the risk-based pricing notice. Based on the information available to the Agencies, the two methods in the proposed rules appear to represent the approaches that best balance effective targeting of the notice to those consumers who are likely to have received materially less favorable terms with operational feasibility. The Agencies solicit comment on whether there are other methods, in addition to those included in this proposal, that would satisfy the Agencies' criteria and provide other operationally feasible options for identifying those consumers who must receive risk-based pricing notices.

Credit Score Proxy Method

Proposed paragraph (b)(1) sets forth the credit score proxy method. Under this method, 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 section 615(h) requirements by (i) determining the credit score that represents the point at which approximately 40 percent of its consumers have higher credit scores and approximately 60 percent of its consumers have lower credit scores, and (ii) providing a risk-based pricing notice to each consumer with a credit score below that cutoff score.[9] A creditor that sets its material terms based in whole or in part on a credit score may use the credit score proxy method, and is not required to consider the actual credit terms offered to each consumer. Rather, that creditor is required only to compare the credit score of a given consumer with the pre-calculated cutoff score, which determines whether a notice is required. The Agencies believe that, all other things being equal, consumers with lower credit scores are likely to receive materially less favorable terms than consumers with higher credit scores when the terms are set based in whole or in part on their consumer reports. As a result, the Agencies believe that this method will target the risk-based pricing notice to those consumers who are likely to have received materially less favorable terms due to risk-based pricing.

The credit score proxy method focuses on only one variable, the consumer's credit score. A credit score obtained from an entity regularly engaged in the business of selling credit scores is based on information in a consumer report. For a creditor that obtains such a credit score, the credit score proxy method generally eliminates the influence of variables that are not derived from information in a consumer report, such as the consumer's income, the term of the loan, or the amount of any down payment. In effect, this method substitutes a comparison of the

[9] The proposed rules do not require a precise cutoff point at the 40 percent/60 percent mark. Depending on the available data set and the practices of the creditor, the cutoff point may be approximate.

credit scores of different consumers as a proxy for a comparison of the material terms offered to different consumers.

The Agencies believe that setting the standard for the cutoff score at a point that requires notices to be provided to the approximately 60 percent of a creditor's consumers with the lowest credit scores is appropriate and reasonable. The point at which consumers typically begin to receive materially less favorable material terms from a creditor will vary from creditor to creditor and product to product. The Agencies believe, however, that setting a numerical standard for calculating the cutoff score represents a reasonable balancing of the goal of providing notices to consumers most likely to benefit from them with the need for a clear, bright-line standard that provides certainty and predictability for creditors. If the Agencies did not establish a numerical standard for calculating the cutoff score, each creditor would have to determine how to calculate its own cutoff score based on its own consumer base, which would involve a complex analysis that may be difficult to implement. In addition, setting a numerical standard for determining the cutoff score should enhance the ability of regulators to enforce compliance against creditors using this method.

The Agencies solicit comment on whether the credit score proxy method generally will result in risk-based pricing notices being provided to consumers who are likely to have received materially less favorable terms due to risk-based pricing. The Agencies also request comment on whether setting the cutoff score at approximately the point at which 40 percent of a creditor's consumers have higher scores and 60 percent have lower scores is appropriate and workable, or whether a different point, such as the point at which 50 percent of a creditor's consumers have higher scores and 50 percent have lower scores, would be more appropriate. The Agencies also solicit comment regarding any empirical data regarding the point at which consumers typically begin to receive materially less favorable material terms and that may suggest the most appropriate point at which to set the cutoff score.

Proposed paragraph (b)(1)(ii) describes two methods for determining the cutoff score. In general, creditors will be required to use the sampling approach set forth in paragraph (b)(1)(ii)(A). The sampling approach provides that a person that currently uses risk-based pricing with respect to the credit products it offers must calculate the cutoff score by considering the credit scores of all or a representative sample of the consumers to whom it has granted, extended, or otherwise provided credit for a given class of products. When a creditor's customer base or underwriting standards vary significantly among different classes of products, it may be necessary to calculate separate cutoff scores for each class of products based on representative samples of consumers offered that type of credit. For example, a creditor with a varied portfolio of credit products may have to calculate separate cutoff scores for mortgages, credit cards, automobile loans, and student loans.

The Agencies recognize that the sampling approach will not be feasible for some creditors, such as new entrants to the credit business, entities that introduce new credit products, or entities that have just started to use risk-based pricing and have not yet developed a representative sample of consumers. Proposed paragraph (b)(1)(ii)(B) permits such creditors initially to determine the appropriate cutoff score based on information from appropriate market research or relevant third-party sources for similar products, such as information from companies that develop credit scores. For example, one major provider of credit scores publishes a chart on its web site showing the distribution of credit scores across the U.S. population. In addition, proposed paragraph (b)(1)(ii)(B) permits a creditor that acquires a credit portfolio as a result of a merger or acquisition to determine the cutoff score based on information it received from the merged or acquired party.

Proposed paragraph (b)(1)(ii)(C) addresses the recalculation of cutoff scores. In general, persons using the sampling approach will need to recalculate their cutoff scores at least every two years. A person whose cutoff score was determined using the secondary source approach in paragraph (b)(1)(ii)(B), however, will be required to recalculate its cutoff score based on a representative sample of its own consumers within one year after it begins using a cutoff score derived from third-party source data. If, however, a person using the secondary source approach does not grant, extend, or otherwise provide credit to a sufficient number of new consumers during that one-year period, and therefore lacks sufficient data with which to recalculate its cutoff score after one year, the person will be permitted to continue to use a cutoff score derived from third-party source data until it grants, extends, or otherwise provides credit to a sufficient number of new consumers and is able to collect sufficient data on which to base the recalculation.

The distribution of credit scores for a creditor's customer base may shift over time, so it is important to recalculate the cutoff score from time to time. The time period between recalculations, however, should be long enough to avoid requiring continual sampling and to minimize the risk of introducing distortions, such as seasonal variations, into the data used to calculate the cutoff score as a result of having abbreviated sampling periods. The Agencies solicit comment on the recalculation requirements, specifically regarding whether two years, as opposed to a shorter or longer period, is the appropriate interval at which the recalculation generally should be conducted under the sampling approach. The Agencies also solicit comment on whether one year is the appropriate period of time within which a person using the secondary source approach must recalculate its cutoff score using the sampling approach.

Proposed paragraph (b)(1)(ii)(D) addresses the situation where a creditor uses two or more credit scores in setting the material terms of credit. Some creditors may request credit scores from multiple sources and may use more than one of those scores in connection with the underwriting process. Proposed paragraph (b)(1)(ii)(D) states that if a person using the credit score proxy method generally uses two or more scores in setting the material terms of credit granted, extended, or otherwise provided to a consumer, the person must determine the appropriate cutoff score based on how the person evaluates the multiple credit scores when making credit decisions. For example, if a creditor generally purchases two scores for each consumer and uses the average of those two scores when setting the material terms of credit, it must use the average of its consumers' scores when calculating its cutoff score.

Some creditors that use multiple scores, however, may not consistently use the same method for evaluating those scores. For example, a creditor may sometimes use the average score and other times use the high score in its credit evaluation. In these circumstances, the proposed rules require that the creditor use reasonable means to determine the appropriate cutoff score and provide a safe harbor to a creditor that uses either a method that the creditor regularly uses or the average credit score for each consumer as the means of calculating the cutoff score.

Some consumers, particularly those with limited credit histories, may not

have credit scores. There is no way to compare those consumers to the cutoff score. A person using the credit score proxy method may sometimes grant, extend, or otherwise provide credit to such a consumer for whom a credit score is not available. Under those circumstances, proposed paragraph (b)(1)(iii) provides that the person using the credit score proxy method must assume that a consumer for whom a credit score is not available receives credit on material terms that are materially less favorable than the most favorable credit terms offered to a substantial proportion of consumers, and provide a risk-based pricing notice to that consumer. The Agencies believe this assumption is appropriate because consumers for whom a credit score is not available are likely to receive less favorable terms than those offered to other consumers. The Agencies solicit comment on whether this assumption is appropriate. The Agencies also solicit comment on whether, if no credit score is available, there are other reasonable means by which a person may determine whether the consumer received materially less favorable credit terms.

Proposed paragraph (b)(1)(iv) provides an example of how a credit card issuer could apply the credit score proxy method. The credit card issuer in this hypothetical example calculates a cutoff score of 720. The Agencies expect that cutoff scores will vary for different creditors, depending on the type of credit score used and the score distributions of each creditor's customer base. For example, among creditors using the same scoring model, a subprime-only creditor would likely have a lower cutoff score than a creditor that makes both prime and subprime loans, or a creditor that makes only prime loans.

Tiered Pricing Method

Proposed paragraph (b)(2) sets forth the tiered pricing method for determining which consumers should receive a risk-based pricing notice. The general rule in proposed paragraph (b)(2)(i) provides that a person that sets the material terms of credit granted, extended, or otherwise provided to a consumer by placing the consumer within one of a discrete number of pricing tiers, based in whole or in part on a consumer report, may use the tiered pricing method. Pricing tiers may be reflected, for example, in a rate sheet that lists different rates available to the consumer depending upon information in a consumer report, such as the consumer's credit score, among other factors. The only factor that a person using this method must consider is tiers with different annual percentage rates, or, in the case of credit for which there is no annual percentage rate, other monetary terms that the person varies based on consumer report information such as the down payment or deposit. For example, if a lender offers automobile loans for which the annual percentage rate will be set at seven, nine, or eleven percent based in whole or in part on information from a consumer report, the lender would only need to consider which annual percentage rate pricing tier applies to a consumer in order to determine whether the consumer should receive a risk-based pricing notice, even if factors other than the consumer report influence the annual percentage rate received by the consumer.

Proposed paragraph (b)(2)(i) describes the application of the tiered pricing method when a person using this method has four or fewer pricing tiers. In order to comply with the tiered pricing method in those circumstances, the person must provide a risk-based pricing notice to each consumer who does not qualify for the top, or lowest-priced, tier.

Proposed paragraph (b)(2)(ii) describes the application of the tiered pricing method when a person using this method has five or more tiers. In this circumstance, a person using the tiered pricing method may comply with the rule by sending a risk-based pricing notice to each consumer who does not qualify for the top two (lowest-priced) tiers, plus any other tier that represents at least the top 30 percent but no more than the top 40 percent of the total number of tiers. The example provided in this paragraph explains that in the case of a person with nine pricing tiers, a notice would need to be provided to all consumers who are not priced in the top three tiers.

The Agencies recognize that creditors may use different pricing tiers for different types of products, such as automobile loans and boat loans. If a creditor uses different pricing tiers for different products, a separate analysis will be required for each product for which different tiers apply. If the same tiers apply regardless of the product, then a creditor need not distinguish between those products.

The tiered pricing method focuses only on the number and percentage of tiers, not on the number or percentage of consumers who are assigned to each tier. A test that took into consideration the number of consumers within each tier could be extremely complicated and difficult to administer. The Agencies solicit comment on whether the tiered pricing method should take into account the percentage of consumers placed in each tier and how that could be accomplished without creating undue burdens or introducing excessive complexity to the tiered pricing method.

The Agencies have considered the possibility that creditors may attempt to circumvent the tiered pricing method by establishing an additional tier or tiers for which no consumers will likely qualify. A creditor using the tiered pricing method is not permitted to consider tiers for which no consumers have qualified nor are reasonably expected to qualify. For example, if a creditor's underwriting standards prohibit lending to consumers with credit scores below 640, the creditor would not be able to use any pricing tiers that correlate with scores below 640. Similarly, a creditor should not consider a top tier that is available only to consumers with perfect or near-perfect credit and which the creditor rarely, if ever, uses. The Agencies solicit comment on whether and how the tiered pricing method could be subject to such circumvention by creditors and whether the proposed rules should be modified to prevent circumvention.

Credit Cards

Proposed paragraph (c) sets forth the special requirements applicable to credit card issuers. Proposed paragraph (c)(1) generally requires a credit card issuer to provide a risk-based pricing notice to a consumer if: (i) The consumer applies for a credit card in connection with an application program, such as a direct-mail or take-one offer, or a pre-screened solicitation, for which more than a single possible purchase annual percentage rate may apply; and (ii) based in whole or in part on that consumer's consumer report, the card issuer provides a credit card to the consumer with a purchase annual percentage rate that is higher than the lowest purchase annual percentage rate available under that application or solicitation. The Agencies are basing the proposed rule on the assumption that when a credit card issuer offers a range of rates within a single solicitation or offer, the consumer applies for the best rate available under that offer.

Proposed paragraph (c)(2) describes those circumstances in which a credit card issuer is not required to provide a risk-based pricing notice. Under this provision, a credit card issuer is not required to provide a risk-based pricing notice to a consumer if the consumer applies for a credit card for which the creditor provides a single purchase annual percentage rate (excluding temporary and penalty rates). In

addition, a credit card issuer is not required to provide a risk-based pricing notice to a consumer if the consumer is offered the lowest purchase annual percentage rate available under the credit card offer for which the consumer applied, even if a lower rate is available from that issuer under a different credit card offer. These interpretations are consistent with the statutory exception in section 615(h)(3)(A) of the FCRA, which provides that a risk-based pricing notice is not required if a consumer applies for, and receives, specific material terms, unless those terms were initially specified by the person after the transaction was initiated by the consumer and after the person obtained a consumer report. In each of the cases described in the proposed rules, the consumer applies for specific material terms and receives them, regardless of what other offers may be available to consumers from or through that credit card issuer. Proposed paragraph (c)(3) sets forth an example of the application of the risk-based pricing rules to a credit card solicitation containing multiple possible purchase annual percentage rates.

Account Review

Proposed paragraph (d) describes how the risk-based pricing rules apply to the account review process. Proposed paragraph (d)(1) provides that a person must provide a risk-based pricing notice to a consumer if it: (i) Uses a consumer report in connection with a review of credit that has been extended to the consumer; and (ii) based in whole on in part on that consumer report, increases the annual percentage rate. Proposed paragraph (d)(2) illustrates this provision's applicability to credit card accounts. If a credit card issuer periodically obtains consumer reports in order to review the terms of the credit it has extended to consumers, and based on such a review increases the purchase annual percentage rate applicable to a consumer's card, then it must provide that consumer with a risk-based pricing notice.

Section ____.73 Content, Form, and Timing of Risk-Based Pricing Notices

Proposed § ____.73 establishes the content, form, and timing for risk-based notices required to be given. These proposed rules apply whether the creditor makes the direct, consumer-to-consumer comparisons described in the general rule, or uses one of the proxy methods. Proposed paragraph (a)(1) states the general content requirements. Paragraphs (a)(1)(ii), (a)(1)(v), (a)(1)(vi), and (a)(1)(vii) generally implement the statutory minimum content requirements in section 615(h)(5) of the FCRA, to which the Agencies have added certain supplemental information as described below to provide additional context to consumers.

Terms based on consumer report. Proposed paragraph (a)(1)(ii) requires the notice to contain a statement informing the consumer that the terms offered, such as the annual percentage rate, have been set based on information from a consumer report. This statement generally tracks the statutory requirement in section 615(h)(5)(A) of the FCRA, except that the Agencies also propose to require that the notice include the annual percentage rate as an example of the terms offered. The Agencies believe that this example will help consumers to understand how the terms of credit offered to them may be affected by information in a consumer report.

Identity of consumer reporting agency. Proposed paragraph (a)(1)(v) implements the statutory requirement in paragraph 615(h)(5)(B) of the FCRA. This paragraph requires the risk-based pricing notice to state the identity of each consumer reporting agency that furnished a consumer report used in the credit decision. The statutory language refers to ''the consumer reporting agency'' furnishing the report. The Agencies have expanded this statutory minimum content by requiring that the name of each consumer reporting agency that furnished a consumer report that was used in the credit decision, not just one consumer reporting agency, be disclosed on the notice. The Agencies believe that it is important to inform a consumer that multiple consumer reports were used in the credit decision, because the consumer may wish to check each of those reports for errors.

Copy of consumer report. Proposed paragraph (a)(1)(vi) implements the statutory requirement in paragraph 615(h)(5)(C) of the FCRA that the notice include a statement informing the consumer that the consumer may obtain a copy of a consumer report without charge from the consumer reporting agency identified in the risk-based pricing notice. Proposed paragraph (a)(1)(vi) requires the notice to include a statement that federal law gives the consumer the right to obtain a consumer report from the consumer reporting agency or agencies identified in the notice without charge for 60 days after receipt of the notice.

Although section 615(h) does not set forth a 60-day time period, the proposed 60-day time period is consistent with the time limit contained in the adverse action notice provisions in section 612(b) of the FCRA. Any right to a free consumer report arising under section 612(b) is valid for 60 days after the consumer receives the notice that gives rise to that right. Incorporation of this 60-day rule is consistent with the Agencies' reading of the statute as giving consumers who receive a risk-based pricing notice the right to a free consumer report separate from the free annual report. The Agencies believe that it is important that the risk-based pricing notice let consumers know that their right to a free report expires after 60 days so that consumers will be encouraged to request any free reports to which they may be entitled in a timely manner. The Agencies solicit comment on whether it is appropriate to require disclosure of the 60-day period in the notice.

Consumer reporting agency contact information. Proposed paragraph (a)(1)(vii) implements the statutory requirement in paragraph 615(h)(5)(D) of the FCRA that the risk-based pricing notice include the contact information specified by the consumer reporting agency identified in the notice for obtaining the free consumer report referenced in the notice. The notice must include a statement informing the consumer how to obtain the free consumer report from the consumer reporting agency or agencies identified in the notice and providing contact information specified by each consumer reporting agency. The Agencies also have clarified that the notice should include a toll-free number, if applicable, for each consumer reporting agency.

Consumer report explanation. In addition to the minimum content requirements imposed by the statute and in some cases supplemented by the Agencies, the proposal also requires that the risk-based pricing notice contain additional background information regarding consumer reports. Proposed paragraph (a)(1)(i) requires a statement explaining that a consumer report includes information about a consumer's credit history and the type of information included in that history. This general background information describing consumer reports will provide additional context that may be helpful to consumers who lack familiarity with consumer reports and what they contain.

Less favorable terms. Proposed paragraph (a)(1)(iii) requires the notice to state that the terms offered to the consumer may be less favorable than the terms offered to consumers with better credit histories. This statement relates the general information about credit history and credit pricing to the specific consumer. Absent this statement, some consumers may assume that the general

information has no relevance to them. This statement is designed to carry out the statutory purpose of prompting consumers to check their consumer reports for any errors.

The proposed rules do not require the notice to state that the terms offered to the consumer ''are'' or ''will be'' less favorable than the terms offered to other consumers. Such a statement would not be accurate in certain cases because the creditor may not be able to precisely distinguish consumers who received the most favorable terms from those who did not. For example, if a creditor applies the credit score proxy method, some consumers may receive a risk-based pricing notice even if they receive the most favorable terms available from that creditor. This may occur, for instance, because factors other than the consumer report, such as income or down payment amount, also influenced the pricing decision.

The Agencies solicit comment on whether the notice should state that the terms ''may be'' less favorable, as proposed, or should use a different phrase, such as that the terms ''are likely to be'' less favorable. The Agencies request comment on 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.

Errors, disputes, and information sources. Proposed paragraph (a)(1)(iv) requires that the notice contain 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 consumer report. The Agencies believe that this additional information may prompt consumers to check their consumer reports for any errors and may be helpful to consumers who lack familiarity with their ability to correct mistakes on their consumer reports. Proposed paragraph (a)(1)(viii) requires the notice to include a statement directing the consumer to the web sites of the Board and the Commission to obtain more information about consumer reports.

Account review notices. Proposed paragraph (a)(2) sets forth the content requirements for any risk-based pricing notice required to be given as a result of the use of a consumer report in account review. The proposal requires this notice to include a statement that the person sending the notice has conducted a review of the account based in whole or in part on information from a consumer report and a statement informing the consumer that as a result of that review the annual percentage rate on the account has been increased. Consistent with the general risk-based pricing notice and with section 615(h)(5), the remaining content of the notice must: (i) State that a consumer report includes information about a consumer's credit history and the type of information included in that credit history; (ii) state 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 consumer report; (iii) state the identity of each consumer reporting agency that furnished a consumer report used in the account review; (iv) state that federal law gives the consumer a right to obtain a free copy of his or her consumer report from that consumer reporting agency for 60 days after receipt of the notice; (v) inform the consumer how to obtain such a consumer report; and (vi) direct the consumer to the web sites of the Board and the Commission to obtain more information about consumer reports.

Format. Proposed paragraph (b) sets forth the format requirements for risk-based pricing notices. Proposed paragraph (b)(1)(i) requires that risk-based pricing notices be clear and conspicuous. Proposed paragraph (b)(1)(ii) specifies that persons subject to the rule are permitted to make the disclosures in writing, orally, or electronically. This is consistent with section 615(h)(1) of the FCRA, which permits the risk-based pricing notice to be provided to the consumer in writing, orally, or electronically.

Proposed paragraph (b)(2) references the model forms of the risk-based pricing notices required by § ____.72(a) and (c), and by § ____.72(d), which are contained in Appendices H–1 and H–2 of the Board's rule and Appendices B–1 and B–2 of the Commission's rule. Appropriate use of these model forms will be deemed to be a safe harbor for compliance with the risk-based pricing notice requirements. Use of these model forms is optional.

Timing. Proposed paragraph (c) sets forth the timing requirements for providing risk-based pricing notices in connection with extensions of closed-end and open-end credit, as well as credit account reviews. For closed-end transactions, proposed paragraph (c)(1) requires the notice to be provided to the consumer before consummation of the transaction, but not earlier than the time the decision to approve an application for, or a grant, extension, or other provision of, credit is communicated to the consumer by the person required to give the notice. For open-end credit, proposed paragraph (c)(2) requires the notice to be provided to the consumer before the first transaction is made under the plan, but not earlier than the time the decision to approve an application for, or a grant, extension, or other provision of credit is communicated to the consumer. Finally, for account reviews, proposed paragraph (c)(3) requires that the notice be provided to the consumer at the time the decision to increase the annual percentage rate based on a consumer report is communicated to the consumer by the person required to give the notice, or if no notice of the increase in the annual percentage rate is provided to the consumer prior to the effective date of the change in the annual percentage rate, no later than five days after the effective date of the change in the annual percentage rate.

Section 615(h)(2) of the FCRA states that the risk-based pricing notice may be provided at the time of application or at the time that the approval of an application for credit is communicated to the consumer. The Agencies considered whether to allow the risk-based pricing notice to be provided at the time of application, but rejected that approach. Instead, the Agencies have concluded that the notice generally should be provided no earlier than the time when approval is communicated to the consumer. The Agencies have proposed this approach for several reasons.

First, an application notice generally would have to be provided to all consumer applicants before a consumer report is reviewed and would have to be completely generic. The general rule, however, requires persons engaged in risk-based pricing to differentiate between consumers and to provide notice to those consumers who receive materially less favorable material terms than other consumers. The Agencies believe that requiring the notice to be provided later than the time of application gives effect to the general rule and ensures that risk-based pricing notices are provided only to those consumers who may receive materially less favorable material terms.

Second, the Agencies believe that a completely generic and depersonalized notice provided at the time of application may not be effective in communicating to consumers the importance of the consumer report in potentially establishing the terms of credit. The Agencies believe that such a notice is less likely to be noticed, read, and acted upon by consumers than a more targeted, personalized notice.

Third, permitting the notice to be provided at the time of application would likely increase significantly the number of risk-based pricing notices provided to consumers compared to the number of notices that would be provided later in the credit process. If, consistent with the Agencies' reading of the statute, receipt of a risk-based pricing notice entitles the consumer to a free copy of his or her consumer report, then permitting application notices could greatly expand the number of free reports to which consumers may be entitled in ways that could be costly for all parties, including consumers, and offer little or no benefit to consumers. Accordingly, the proposed rules specify that the earliest that the risk-based pricing notice may be provided would be at the time that approval of the extension of credit is communicated to the consumer.

Finally, the Agencies also believe that the notice is likely to have the most utility if it is provided early enough in a transaction that it encourages a consumer to check his or her consumer report for inaccuracies. For this reason, the proposal requires that the notice be given prior to consummation of any closed-end transaction or prior to the first transaction under any open-end plan. The Agencies understand that for some transactions there may be very little time between approval of an application and either consummation or the first transaction under the plan. For example, a credit card account may be opened quickly. For other types of credit, there may be more time between approval of the application and either consummation or the first transaction under the plan. In those cases, a consumer may be more likely to check his or her consumer report for errors and, after reviewing the consumer report, may decide not to go forward with the transaction until any errors in the consumer report are corrected. The Agencies solicit comment on whether there are any circumstances in which the notice should be permitted to be provided after consummation or after the first transaction under the plan, and whether a notice provided after consummation or after the first transaction under the plan would be effective for consumers.

Section ____.74 Exceptions

Proposed § ____.74 sets forth a number of exceptions to the general requirements regarding risk-based pricing notices. Each exception is discussed below.

Statutory Exceptions

Proposed paragraph (a) provides that notice is not required if the consumer applied for specific material terms and was granted those terms, unless those terms were initially specified by the person after the transaction was initiated by the consumer and after that person obtained a consumer report. This exception implements the statutory exception in FCRA section 615(h)(3)(A). This proposed exception clarifies that ''specific material terms'' means a single material term or set of material terms, such as a single annual percentage rate, and not a range of alternatives, such as an offer that gives multiple annual percentage rates or a range of annual percentage rates. The example in proposed paragraph (a)(ii) explains that if a consumer receives a firm offer of credit from a credit card issuer with a single rate, based in whole or in part on a consumer report, a risk-based pricing notice is not required to be provided if the consumer applies for and receives a credit card with that advertised rate. This is the result because the creditor set the material terms of the offer before, not after, the consumer applied for or requested the credit.

Proposed paragraph (b) provides that a risk-based pricing notice is not required if a creditor has provided or will provide an adverse action notice to the consumer under FCRA section 615(a) in connection with the transaction. This exception implements the statutory exception in FCRA section 615(h)(3)(B). The proposed exception applies to any risk-based pricing notices otherwise required under the general rule, the rule applicable to credit card issuers, or the rule applicable upon account review, so long as an adverse action notice has been or will be provided to the consumer pursuant to section 615(a) of the FCRA.

Prescreened Solicitations Exception

Proposed paragraph (c) provides an exception to the general risk-based pricing rule when consumer reports are used to set the terms in a prescreened solicitation (firm offer of credit). Proposed paragraph (c)(1) states that a person is not required to provide a risk-based pricing notice if that person (i) obtains a consumer report that is a prescreened list as described in section 604(c)(2) of the FCRA, and (ii) uses that consumer report for the purpose of making a firm offer of credit to the consumer, as described in section 603(l) of the FCRA. This exception applies regardless of the terms the creditor may offer to other consumers in other firm offers of credit. In other words, a creditor is not required to provide a risk-based pricing notice to a consumer to whom it sends a particular prescreened solicitation just because the creditor sends prescreened solicitations that offer materially more favorable material terms to another group of consumers.

The Agencies note that this exception applies only when a consumer report is used to set the terms offered in a prescreened solicitation to a consumer at the pre-application stage, and does not eliminate the requirement to provide a risk-based pricing notice later in connection with the credit extension, pursuant to proposed § ____.72. For example, a firm offer of credit may contain several possible rates and, if a consumer applies in response to the offer and does not receive the lowest rate, the creditor generally is required to provide a risk-based pricing notice to that consumer.

The Agencies believe that requiring a notice in connection with prescreened solicitations will not significantly benefit consumers, but will impose substantial burdens on creditors and the credit reporting system. The Agencies understand that only about one half of one percent of consumers who receive prescreened solicitations respond to them. Therefore, for the vast majority of consumers who are not interested in obtaining credit via the prescreened solicitation, a risk-based pricing notice would have no relevance.[10] Moreover, a requirement for creditors to provide notices to all consumers who receive certain prescreened solicitations and the corresponding availability of free consumer reports for each of those consumers would impose a significant burden on creditors and the credit reporting system.

This exception also is consistent with the Agencies' determination that the appropriate time for providing a notice is no earlier than the time the decision to approve the credit application, or to grant, extend, or provide credit, is communicated to the consumer. At the time a creditor sends a prescreened solicitation, however, the consumer has

[10] Whether a prescreened solicitation is made ''in connection with an application for, or a grant, extension, or other provision of credit''—and, thus, whether it is covered by section 615(h)—could depend on the circumstances of a particular solicitation, including whether a specific consumer actually applies for credit in response to the solicitation. Because the Agencies have created an exception for prescreened solicitations based on their finding, pursuant to section 615(h)(6)(B)(iii), that there is no significant benefit to consumers, the Agencies do not need to reach the issue of whether such solicitations are ''in connection with'' an application for credit.

not made an application or otherwise indicated any interest in the credit.

Finally, the exception also is consistent with the rule of construction that consumers should receive only one risk-based pricing notice per credit transaction. See detailed discussion of proposed § ____.75 below. Absent this exception, some consumers who respond to prescreened solicitations would receive multiple notices in connection with the transaction: The first at the time they receive the solicitation, and the second when they respond to the solicitation but do not receive the most favorable terms offered in that solicitation (e.g., when the solicitation offers more than one possible annual percentage rate). The Agencies find that there is no significant benefit to consumers from receiving more than one notice, and more than one opportunity to obtain free consumer reports, in connection with a single extension of credit.

Credit Score Disclosure Exceptions

The Agencies are proposing three exceptions to the risk-based pricing notice requirement for creditors that provide a credit score disclosure to consumers. Each exception is described more fully below. The credit score disclosure generally will include the consumer's credit score, along with explanatory information regarding the score and information regarding the use of consumer reports and scores in the underwriting process. Under this exception, a creditor will provide this disclosure to all consumers and will not need to apply a test to determine which consumers likely were offered or received materially less favorable material terms. The Agencies also have proposed an alternate form of the notice to be provided to consumers for whom credit scores are unavailable. As discussed below, the Agencies are proposing these exceptions under section 615(h)(6)(iii) of the FCRA, which gives the Agencies the authority to create exceptions to the risk-based pricing notice requirement for classes of persons or transactions regarding which the Agencies determine that the notice would not significantly benefit consumers.

Credit Score Disclosure Exception for Credit Secured by Residential Real Property

Proposed paragraph (d) provides an exception to the risk-based pricing notice requirement for creditors offering loans secured by one to four units of residential real property. This exception permits creditors offering loans to consumers that are secured by residential real property (purchase money mortgages, mortgage refinancings, home-equity lines of credit, and home-equity plans) to comply with the regulations by adding certain supplemental disclosures regarding the use of consumer reports to the credit score disclosure they already are required to provide to consumers pursuant to section 609(g) of the FCRA. These creditors could provide this integrated notice to all consumers in connection with loans secured by real property, and would not be required to do a comparison of terms offered to different consumers, as is required by the general rule.

Proposed paragraph (d)(1) sets forth the requirements that a creditor must meet to avail itself of the exception and states that a creditor is not required to provide a risk-based pricing notice if it complies with this subsection. Paragraph (d)(1)(i) provides that in order to qualify for the exception, the credit requested by the consumer must involve an extension of credit secured by one to four units of residential real property.

Proposed paragraph (d)(1)(ii) sets forth the contents of the notice that must be provided to the consumer in order for a creditor to qualify for the exception. Proposed paragraphs (d)(1)(ii)(A)–(d)(1)(ii)(C) require disclosure of certain background information regarding consumer reports and credit scores, including: (i) A statement that a consumer report is a record of the consumer's credit history and includes information about whether the consumer pays his or her obligations on time and how much the consumer owes to creditors; (ii) a statement that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time to reflect changes in the consumer's credit history; and (iii) a statement that the consumer's credit score can affect whether the consumer can obtain credit and what the cost of that credit will be. The Agencies believe that this background information will provide helpful context for consumers who may otherwise lack familiarity with consumer reports and credit scores and how they are used.

Proposed paragraph (d)(1)(ii)(D) requires the notice to include all of the information required to be disclosed to the consumer pursuant to section 609(g) of the FCRA. Section 609(g) requires disclosure of: (i) The current credit score of the consumer or the most recent credit score of the consumer that was previously calculated for a purpose related to the extension of credit; (ii) the date on which that score was created; (iii) the name of the person or entity that provided the credit score or credit file on which the credit score was created; (iv) the range of possible credit scores under the model used; and (v) up to four key factors that adversely affected the consumer's credit score (or up to five factors if the number of enquiries made with respect to that consumer report is one of the factors).

A person relying upon the exception set forth in proposed paragraph (d) generally is required to provide to the consumer a credit score that was used in connection with the credit decision. If, however, a person uses a credit score that was not created by a consumer reporting agency, such as a proprietary score, that person is permitted to satisfy the exception either by providing the proprietary score to the consumer or by providing to the consumer a credit score and associated information it obtains from an entity regularly engaged in the business of selling credit scores. In addition, a person that does not use a credit score in its credit evaluation process is permitted to rely on this exception by purchasing and providing to the consumer a credit score and associated information it obtains from an entity regularly engaged in the business of selling credit scores. This approach is consistent with the approach taken in section 609(g) of the FCRA and provides consumers with relevant summary information from their consumer reports. The Agencies request comment on the types of entities from which a creditor should be permitted to purchase credit scores for use under this exception in circumstances where the creditor does not otherwise use credit scores in the credit evaluation process.

For many consumers, a disclosure of the credit score number alone will provide no indication of whether that credit score is favorable, unfavorable, or about average when compared to the credit scores of other consumers. Therefore, proposed paragraph (d)(1)(ii)(E) contains the additional requirement that the notice disclose by clear and readily understandable means either a distribution of credit scores (*i.e.*, the proportion of consumers who have scores within the specified ranges) or a statement about how the consumer's credit score compares to the scores of other consumers. This additional information will provide important context to help consumers understand their credit scores. Any distribution or comparison of scores should reflect the population of consumers who have been scored under the model used by the person providing the score. If that information is not available from the person providing the score, or if the

creditor is disclosing a proprietary score, then the creditor may base the distribution or comparison on its own consumers who have been scored using the model.

If a creditor chooses to disclose the credit score distribution, this information can be presented in the form of a bar graph containing a minimum of six bars, or by a different form of graphical presentation that is clear and readily understandable. If a credit score has a range of 1 to 100, the distribution must be disclosed using that same 1 to 100 scale. For a creditor using the bar graph, each bar must illustrate the percentage of consumers with credit scores within the range of scores reflected by that bar. A creditor is not required to prepare its own bar graph; use of a bar graph obtained from the person providing the credit score that meets the requirements of this paragraph will be deemed compliant. The Agencies understand that some credit score vendors make such graphs available to interested persons, such as at a Web site. The Agencies believe that providing a graphical depiction of how the consumer's credit score compares to those of other consumers is an effective way of communicating this important contextual information to consumers that they can use to evaluate their individual circumstances.

Alternatively, the notice can inform the consumer by clear and readily understandable means how his or her credit score compares to the scores of other consumers. As discussed more fully in the Model Forms section below, a concise narrative statement informing the consumer that his or her credit score ranks higher than a specified percentage of consumers is a clear and readily understandable means of providing this information.

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. 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. The Agencies also solicit comment on whether the rule should set forth other examples of specific methods of presenting the score distribution or score comparison, such as a narrative, a statement of the midpoint of scores, or different forms of graphical presentation.

Proposed paragraph (d)(1)(ii)(F) requires the notice to include 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 consumer report. The Agencies believe that this statement may encourage consumers who otherwise will not be aware of their right to dispute errors to do so.

Proposed paragraphs (d)(1)(ii)(G) and (d)(1)(ii)(H) require the credit score disclosure to provide the consumer with information about how to obtain his or her consumer report. The notice must state that federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free consumer report from each of the nationwide consumer reporting agencies once during any 12-month period, and provide contact information for the centralized source from which consumers can obtain their free annual reports. Finally, proposed paragraph (d)(1)(ii)(I) requires the notice to include a statement directing the consumer to the Web sites of the Board and the Commission to obtain more information about consumer reports.

Unlike a risk-based pricing notice given under proposed § ____.72, the notice provided with the credit score disclosure under this exception does not give rise to an independent right to a free consumer report for several reasons. First, the exception notice is not a risk-based pricing notice under section 615(h) of the FCRA. Therefore, the Agencies' reading that receipt of a risk-based pricing notice will trigger a free consumer report under section 612(b) of the FCRA does not apply. Second, under this exception, consumers will receive, in addition to the free credit scores they currently receive, specific information to enable consumers to compare their credit scores to the credit scores of other consumers. Finally, consumers who receive free credit scores will have other opportunities to obtain free consumer reports, such as the free annual reports available from the centralized source, if they have not already done so in anticipation of entering into a residential real property transaction.

The Agencies propose to create this exception under FCRA section 615(h)(6)(iii), which gives the Agencies authority to create exceptions to the risk-based pricing notice requirement for classes of persons or transactions regarding which the Agencies determine that the risk-based pricing notice will not significantly benefit consumers. For the reasons discussed below, the Agencies believe that a separate risk-based pricing notice will not provide a significant benefit to consumers who receive a credit score disclosure that satisfies the exception.

The credit score disclosure required by section 609(g) of the FCRA provides to the consumer free of charge his or her credit score, which is an important piece of individualized information about the consumer's credit history. The notice required to qualify for the exception will augment the section 609(g) notice by integrating the score disclosure with the additional information that will provide consumers with context for understanding how their credit scores may affect the terms of the offer and how their credit scores compare with the credit scores of other consumers. The Agencies believe it is better for consumers to receive all of this information at the same time in a single disclosure, rather than piecemeal in different notices.

In addition, a consumer who discovers that his or her credit score ranks less favorably than the credit scores of other consumers may have a greater motivation to check his or her consumer report for errors than a consumer who receives the more generic information about consumer reports that will be included in a risk-based pricing notice. The credit score disclosure and notice will encourage consumers to check their consumer reports and will contain the contact information that the consumer needs in order to obtain his or her free annual consumer reports. By providing a consumer with such specific information about his or her own credit history and how it compares to the credit histories of other consumers, the credit score disclosure and notice likely will provide consumers with equal or greater value than the more generic information a consumer will receive in a risk-based pricing notice. Furthermore, this specific information can be provided to consumers without the need for creditors to determine whether the terms of some offers are materially less favorable than the terms of other offers. Finally, a consumer will obtain this valuable information without having to take action to request a consumer report from a consumer reporting agency, something many consumers may fail to do. Thus, the Agencies believe that consumers who receive this information integrated with the section 609(g) notice will not significantly benefit from also receiving a separate risk-based pricing notice.

Proposed paragraph (d)(2) sets forth the form that the credit score disclosure must take in order to satisfy the exception. The notice must be clear and conspicuous, provided on or with the notice required by section 609(g) of the FCRA, and segregated from other information provided to the consumer. The notice also must be provided to the consumer in writing in a form retainable by the consumer. The requirement that the notice be in writing is satisfied if it is provided in electronic form in accordance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

Proposed paragraph (d)(3) describes the timing requirements for the notice that will satisfy the exception. The notice is required to be provided to the consumer concurrently with the notice required by section 609(g) of the FCRA, 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. Section 609(g) of the FCRA states that the notice required by that subsection must be provided to the consumer ''as soon as reasonably practicable.'' The Agencies understand that industry practice is generally to provide the credit score disclosure within three business days of obtaining a credit score and will expect the integrated disclosure generally to be provided within the same timeframe.

Proposed paragraph (d)(4) states that a model form of the notice described in paragraph (d)(1)(ii), consolidated with the notice required by section 609(g) of the FCRA, is contained in Appendix H–3 of the Board's rules and Appendix B–3 of the Commission's rules. Appropriate use of this model form will be deemed to be a safe harbor for compliance with the exception. Use of the model form is optional.

Credit Score Disclosure Exception for Non-Mortgage Credit

Proposed paragraph (e)(1) sets forth a credit score disclosure exception for loans that are not secured by one to four units of residential real property, for which creditors are not required to provide the section 609(g) notice. This exception can be used, for example, by auto lenders, credit card issuers, and student loan companies. Creditors offering loans that are not secured by residential real property can comply with the regulations by disclosing a consumer's credit score along with certain additional information.

This exception is similar to the exception proposed for credit secured by residential real property. As discussed in more detail below, consistent with the exception for credit secured by residential real property set forth in proposed paragraph (d), the Agencies propose this exception under the authority conferred by FCRA section 615(h)(6)(iii) to create exceptions to the risk-based pricing notice requirement for classes of persons or transactions regarding which the Agencies determine that the risk-based pricing notice will not significantly benefit consumers. Creditors can provide this notice to all consumers in connection with loans that are not secured by real property, without performing a comparison of the terms offered to different consumers.

Proposed paragraph (e)(1) sets forth the requirements that a creditor must meet in order to satisfy the exception and states that a person is not required to provide a risk-based pricing notice if it complies with this subsection. Proposed paragraph (e)(1)(i) states that in order to qualify for the exception, the credit requested by the consumer must involve credit other than an extension of credit secured by one to four units of residential real property. Thus, a creditor that is obligated to give the notice required by FCRA section 609(g)(1) cannot use this exception, but will need to use the exception described in proposed paragraph (d).

Proposed paragraph (e)(1)(ii) requires that the person provide a notice to the consumer that includes certain specified content in order to satisfy the exception. Proposed paragraphs (e)(1)(ii)(A)–(e)(1)(ii)(C) require the notice to include contextual information identical to that required in proposed paragraphs (d)(1)(ii)(A)–(d)(1)(ii)(C) for credit secured by residential real property.

Proposed paragraph (e)(1)(ii)(D) requires disclosure of the current credit score of the consumer or the most recent credit score of the consumer that was previously calculated for a purpose related to the extension of credit. As with the exception under proposed paragraph (d), a person using this exception generally is required to provide a credit score that was used in connection with the credit decision. Also consistent with the proposed exception for credit secured by residential real property, a person that uses a credit score that was not created by a consumer reporting agency, such as a proprietary score, is permitted to satisfy the exception either by providing the proprietary score to the consumer or by providing to the consumer a credit score and associated information it obtains from an entity regularly engaged in the business of selling credit scores. Similarly, a creditor that does not use a credit score in its credit evaluation process is permitted to rely on this exception by purchasing and providing to the consumer a credit score and associated information it obtains from an entity regularly engaged in the business of selling credit scores.

Proposed paragraph (e)(1)(ii)(E) requires disclosure of the range of possible credit scores under the model used to generate the credit score disclosed to the consumer. This is consistent with the disclosure that would be provided under proposed paragraph (d) as part of the section 609(g) disclosure given to consumers of credit secured by residential real property.

Proposed paragraph (e)(1)(ii)(F) requires that the notice disclose by clear and readily understandable means either a distribution of credit scores (*i.e.*, the proportion of consumers who have scores within the specified ranges) or a statement about how the consumer's credit score compares to the scores of other consumers. As with the exception in proposed paragraph (d), the distribution of credit scores can be presented in the form of a bar graph containing a minimum of six bars, or by a different form of graphical presentation that is clear and readily understandable. For those creditors using bar graphs, each bar must illustrate the percentage of consumers with credit scores within the range of scores reflected by that bar. Use of a bar graph obtained from the person providing the credit score that meets the requirements of this paragraph will comply with this requirement. Alternatively, the notice can inform the consumer by clear and readily understandable means how his or her credit score compares to the scores of other consumers. As discussed more fully in the Model Forms section below, a concise narrative statement informing the consumer that his or her credit score ranks higher than a specified percentage of consumers is a clear and readily understandable means of providing this information. As discussed above in connection with proposed paragraph (d), the Agencies request comment on the usefulness and form of this requirement and whether there are better alternatives.

Proposed paragraphs (e)(1)(ii)(G)–(e)(1)(ii)(H) require disclosure of additional information regarding the credit score that is consistent with what is required to be disclosed pursuant to section 609(g) for credit secured by residential real property. Proposed paragraph (e)(1)(ii)(G) states that the notice must contain the date on which the credit score was created. Proposed

paragraph (e)(1)(ii)(H) requires the creditor to disclose the name of the consumer reporting agency or other person that provided the credit score. The Agencies solicit comment on whether the disclosures of the score creation date and the source of the score will be beneficial to consumers or will impose undue burdens on industry.

Unlike the notice required by section 609(g), the Agencies are not proposing to require this notice to contain up to four key factors that adversely affected the credit score. The Agencies believe that disclosure of the key factors that affected the credit score may not be helpful to many consumers. Among other things, the short summary descriptions of the four factors that are usually given may not be useful to consumers, and the list of factors does not effectively convey the importance of each factor. For example, a consumer with a high credit score will still receive four factors, even if some of those factors may not have had a significant adverse effect on that consumer's credit score. Although disclosure of the four factors is required by section 609(g), and, for that reason, is included in the notice to be provided when credit is secured by residential real property, it is not necessary for the Agencies to require the disclosure of the key factors in this notice.

The Agencies solicit comment on whether requiring disclosure of the key factors in this notice will be helpful to consumers or will impose undue burdens on industry. The Agencies also solicit comment on whether including the four key factors in this notice will simplify compliance with the rules by making the content of this notice more similar to the content of the notice for credit secured by residential real property.

Proposed paragraphs (e)(1)(ii)(I)–(e)(1)(ii)(L) are identical to proposed paragraphs (d)(1)(ii)(F)–(d)(1)(ii)(I) and require that the notice: contain a statement that the consumer is encouraged to verify the accuracy of the consumer report information and has the right to dispute any inaccurate information in the consumer report; provide the consumer with information about how to obtain his or her consumer report; and include a statement directing the consumer to the web sites of the Board and the Commission to obtain more information about consumer reports.

For reasons similar to those discussed above in connection with proposed paragraph (d), the notice provided with the credit score disclosure under this exception will not give rise to an independent right to a free consumer report for the following reasons. First, the exception notice is not a risk-based pricing notice under section 615(h) of the FCRA. Therefore, the Agencies' reading that receipt of a risk-based pricing notice will trigger a free consumer report under section 612(b) of the FCRA does not apply. Second, under this exception, consumers will receive free credit scores, which themselves are consumer reports, along with specific information to enable consumers to compare their credit scores with the credit scores of other consumers. Third, it would not be equitable to provide some consumers both free credit scores and free consumer reports, while other consumers will only obtain free consumer reports. Finally, consumers who receive free credit scores would have other opportunities to obtain free consumer reports, such as the free annual reports available from the centralized source.

The Agencies propose to create this exception under FCRA section 615(h)(6)(iii), which gives the Agencies authority to create exceptions to the risk-based pricing notice requirement for classes of persons or transactions regarding which the Agencies determine that the risk-based pricing notice will not significantly benefit consumers. For the reasons discussed below, the Agencies believe that a separate risk-based pricing notice will not provide a significant benefit to consumers who receive a credit score disclosure that satisfies this exception.

The notice required to qualify for the exception provides consumers with their credit scores without charge along with contextual information to help consumers understand how their credit scores may affect the terms of the offer and how their credit scores compare to the credit scores of other consumers. The credit score disclosure provides tangible value to consumers because free credit scores typically are not available to consumers in connection with non-mortgage transactions. Consumer reporting agencies and other sellers of credit scores typically charge consumers between $6 and $10 for a credit score.

The credit score disclosure and notice provides a consumer with specific information about his or her own credit history that will likely be more effective than the more generic information about consumer reports that will be included in a risk-based pricing notice. A consumer who discovers that his or her credit score is less favorable than the credit scores of other consumers may have a greater motivation to check his or her consumer report for errors than a consumer who receives a more generic risk-based pricing notice. The credit score disclosure and notice will encourage consumers to check their consumer reports and will contain the contact information that a consumer needs in order to obtain his or her free annual consumer reports. By providing a consumer with such specific information about his or her own credit history and how it compares to the credit histories of other consumers, the credit score disclosure and notice likely will provide consumers with equal or greater value than the more generic information a consumer will receive in a risk-based pricing notice. Furthermore, this specific information can be provided to consumers without the need for creditors to determine whether the terms of some offers are materially less favorable than the terms of other offers.

Finally, the credit score disclosure will be provided to the consumer without requiring the consumer to take any action to obtain his or her score. By contrast, a consumer who receives a risk-based pricing notice will have to take action to request his or her consumer report. In this respect, the credit score disclosure exception is superior to a risk-based pricing notice because consumers often do not take action to exercise their rights with regard to consumer reports.

Proposed paragraph (e)(2) sets forth the form that the credit score notice must take in order to satisfy the exception. These requirements are similar to the form prescribed for the exception in proposed paragraph (d). The notice must be clear and conspicuous and segregated from other information provided to the consumer. The notice also must be provided to the consumer in writing in a form retainable by the consumer. The requirement that the notice be in writing will be satisfied if the notice is provided in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act.

Proposed paragraph (e)(3) describes the timing requirements for the notice that would satisfy the exception. The notice must be provided 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. This timing requirement is intended to be consistent with the timing requirement for the exception for loans secured by residential real property.

Proposed paragraph (e)(4) states that a model form of the notice described in paragraph (e)(1)(ii) is contained in Appendix H–4 of the Board's rules and Appendix B–4 of the Commission's rules. Appropriate use of this model form will be deemed to be a safe harbor for compliance with the exception. Use of the model form is optional.

Credit Score Disclosure Exception—No Credit Score Available

The Agencies recognize that a creditor may not be able to obtain a credit score for each consumer for whom it obtains a consumer report. This might occur, for example, when a creditor obtains the consumer report for an individual who has only a limited credit history with few trade lines. A consumer report that contains such limited data may not produce sufficient information to permit the computation of a score.

Proposed paragraph (f) creates an exception to the risk-based pricing notice requirement for creditors that regularly use the credit score disclosure exceptions in proposed paragraph (d) or (e), but are unable to provide the notices described in those paragraphs to a consumer because a credit score is not available for that consumer. To take advantage of this exception, the creditor must provide a notice meeting the requirements of paragraph (f)(1)(ii).

The Agencies believe that consumers with limited credit histories will benefit from receiving a notice indicating that they do not have a credit score because there is insufficient information in their consumer reports. In addition, the Agencies also believe that this exception is appropriate because a creditor that otherwise uses the credit score disclosure exception should not be required to use a different analysis for those consumers for whom no credit score is available. Requiring creditors to undertake a different analysis in these circumstances could impose significant burdens on creditors that exceed any benefits to consumers from such a requirement. In addition, it is unclear what type of analysis would be feasible in those circumstances. The Agencies believe that it is important, however, that a notice be provided to individuals for whom credit scores are not available. Consumers who have limited credit histories are likely to receive less favorable terms than those offered to other consumers and should be encouraged to check their consumer reports for accuracy.

Proposed paragraph (f)(1) sets forth the requirements for the exception that applies when no credit score is available. Proposed paragraph (f)(1)(i) states that in order to qualify for the exception, the person must regularly obtain credit scores from a consumer reporting agency and provide credit score disclosures to consumers in accordance with the exceptions in paragraphs (d) or (e) of this section, and must be unable to obtain a credit score for the particular consumer from the consumer reporting agency from which the person regularly obtains credit scores. This exception is only available to creditors that regularly use one of the credit score disclosure exceptions.

Proposed paragraph (f)(1)(ii) clarifies that a person may qualify for this exception only if that person does not obtain a credit score from another consumer reporting agency in connection with granting, extending, or otherwise providing credit to the consumer. A person is not required, however, to seek a credit score from another consumer reporting agency if the consumer reporting agency from which that person regularly obtains credit scores does not provide a credit score for a particular consumer. In addition, a person that regularly requests a particular type of credit score from a consumer reporting agency to provide to consumers to satisfy the requirements of paragraphs (d) or (e) of this section need not obtain or seek to obtain a different type of credit score if the score that it regularly obtains is not available. For example, a person that regularly requests a credit score from a consumer reporting agency that is based on traditional forms of data, such as credit card, mortgage, and installment loan accounts, need not request a different score that takes into consideration non-traditional forms of data, such as rental payment history, telephone service payment history, and utility service payment history.

Proposed paragraph (f)(1)(iii) requires that the person provide a notice to the consumer that contains certain specified content. Consistent with the exceptions proposed under paragraphs (d) and (e), the notice must include: (i) A statement that the person was not able to obtain a credit score about the consumer from a consumer reporting agency, which must be identified by name, which may be the result of insufficient information regarding the consumer's credit history; (ii) a statement that a consumer report includes information about a consumer's credit history; (iii) a statement that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time if the consumer's credit history changes; (iv) a statement that credit scores are important because consumers with higher credit scores generally obtain more favorable credit terms; and (v) a statement that not having a credit score can affect whether the consumer can obtain credit and what the cost of that credit will be. The notice also must include 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 consumer report, and provide the consumer with information about how to obtain his or her consumer report. The notice must inform the consumer that federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free consumer report from each of the nationwide consumer reporting agencies once during any 12-month period, and will give contact information for the centralized source from which consumers can obtain their free annual reports. This notice does not give rise to an independent right to a free consumer report because it is not a risk-based pricing notice provided under section 615(h) of the FCRA. Finally, the notice includes a statement directing the consumer to the Web sites of the Board and the Commission to obtain more information about consumer reports.

As with the exceptions proposed in paragraphs (d) and (e), the Agencies believe that the notice required by this exception provides individualized information that will be more useful to consumers with limited credit histories than the more generalized risk-based pricing notice. A consumer for whom a credit score is not available will be told that a score could not be obtained generally because of insufficient information regarding the consumer's credit history. This notice will help the consumer to understand how his or her limited credit history might affect the consumer's ability to obtain credit, and the terms of such credit, in the absence of a credit score. The Agencies believe that providing a personalized notice to a consumer that no credit score is available and that he or she has a limited credit history gives a consumer more specific information about his or her particular circumstances than the consumer would receive in a risk-based pricing notice. This notice might provide the consumer with greater reason to check his or her consumer report to see what information it contains and to correct any inaccuracies than the more generic risk-based pricing notice will provide. For these reasons, the Agencies believe that a consumer who receives this personalized notice containing specific information

regarding his or her limited credit history will not significantly benefit from also receiving a separate risk-based pricing notice.

Proposed paragraph (f)(2) illustrates this exception with an example. The example describes a person that uses consumer reports to set the material terms of non-mortgage credit provided to consumers, and who regularly requests credit scores from a particular consumer reporting agency and provides those credit scores to consumers to satisfy the exception set forth in proposed paragraph (e). The consumer reporting agency provides a consumer report on a particular consumer that contains one trade line, but does not provide a credit score on that consumer. If the creditor does not obtain a credit score from another consumer reporting agency and, based in whole or in part on information in a consumer report, extends credit to the consumer, the creditor may provide the notice described under paragraph (f)(1)(iii) in order to satisfy its obligations under this subsection. If, however, the person obtains a credit score from another consumer reporting agency in connection with offering credit to the consumer, that person may not rely on the exception in paragraph (f) of this section, but must satisfy the requirements of paragraph (e) and disclose the score obtained.

Proposed paragraph (f)(3) sets forth the form that the notice must take in order to satisfy the exception for circumstances where a credit score is not available. These requirements are similar to the form prescribed for the exceptions in proposed paragraphs (d) and (e). The notice must be clear and conspicuous and segregated from other information provided to the consumer. The notice also must be provided to the consumer in writing in a form retainable by the consumer. The requirement that the notice be in writing will be satisfied if the notice were provided in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act.

Proposed paragraph (f)(4) describes the timing requirements for the notice that will satisfy the exception. The notice must be provided to the consumer as soon as reasonably practicable after the credit score has been requested, 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. This timing requirement is intended to be consistent with the timing requirements for the exceptions in proposed paragraphs (d) and (e).

Proposed paragraph (f)(5) states that a model form of the notice described in paragraph (f)(1)(iii) is contained in Appendix H–5 of the Board's rules and Appendix B–5 of the Commission's rules. Appropriate use of this model form will be deemed to be a safe harbor for compliance with the exception. Use of the model form is optional.

Request for Comment on Proposed Exceptions

The Agencies request comment on all of the proposed exceptions to the requirement to provide risk-based pricing notices and on whether any other exceptions would be appropriate. In particular, the Agencies solicit comment regarding a possible exception for credit extended in connection with a private banking relationship available only to high net worth consumers.

Section ____.75 Rules of Construction

Proposed paragraph § ____.75 sets forth two rules of construction. Proposed paragraph (a) states that a consumer generally is entitled to no more than one risk-based pricing notice under proposed paragraph § ____.72(a) or (c) or one notice under proposed paragraph § ____.74(d), (e), or (f), for each grant, extension, or other provision of credit. The statute focuses on the material terms granted or extended to a consumer, and consumers receive only a single material term or set of material terms in each extension of credit. Therefore, the Agencies generally do not interpret the statute as requiring the consumer to receive more than one risk-based pricing notice in connection with a single extension of credit. Moreover, the Agencies do not believe that consumers would benefit by receiving multiple notices or multiple free consumer reports in connection with a single credit extension. For example, for an auto loan, the auto dealer and the financing source or assignee may conduct separate underwriting. In that circumstance, the Agencies believe that a consumer should receive only one risk-based pricing notice for the credit extension if the consumer receives materially less favorable terms. One notice is sufficient to encourage a consumer to check his or her consumer report for any errors. Even if a consumer has previously received a risk-based pricing notice, another notice may be required as a result of account review, if the conditions set forth in proposed paragraph § ____.72(d) have been met.

Proposed paragraph (b) sets forth the rules governing multi-party transactions. Proposed paragraph (b)(1) states that the person to whom the loan obligation is initially payable must provide a risk-based pricing notice under § ____.72 or comply with the notice requirements of the exceptions under § ____.74, even if that person immediately assigns the loan to a third party and is not the source of funding for the loan. Correspondingly, proposed paragraph (b)(2) clarifies that a purchaser or assignee of a credit contract with a consumer is not required to provide the risk-based pricing notice or satisfy the conditions for one of the exceptions, even if that purchaser or assignee provides the funding for the loan.

Proposed paragraph (b)(3) illustrates the rules of construction with several examples pertaining to auto finance transactions. The first example in paragraph (b)(3)(i) addresses a transaction in which a consumer obtains credit through an auto dealer to finance the purchase of an automobile, and the auto dealer is the original creditor under a retail installment sales contract. Even if the auto dealer immediately assigns the loan to a bank or finance company, the auto dealer must provide the risk-based pricing notice to the consumer, or satisfy the requirements for one of the exceptions in § ____.74. The bank or finance company, as an assignee, would have no duty to provide a risk-based pricing notice to the consumer.

The second example in paragraph (b)(3)(ii) addresses the situation where the bank or finance company, and not the auto dealer, is the person to whom the loan obligation is initially payable. In that case, the bank or finance company must provide the risk-based pricing notice to the consumer, or satisfy the requirements for one of the exceptions in § ____.74. The auto dealer, under these circumstances, would have no duty to provide a risk-based pricing notice to the consumer.

Model Forms

Proposed Appendix H of the Board's rules and Appendix B of the Commission's rules contain model forms that the Agencies prepared to facilitate compliance with the regulations. Two of the model forms are for risk-based pricing notices and three of the model forms are for use in connection with the credit score disclosure exceptions. Each of the model forms is designated for use in a particular set of circumstances as indicated by the title of that model form. Model forms H–1 and B–1 are for use in complying with the general risk-based pricing notice requirements in § ____.72. Model forms H–2 and B–2 are for risk-based pricing notices given in connection with account review. Model forms H–3 and B–3 are for use in

connection with the credit score disclosure exception for loans secured by residential real property. Model forms H–4 and B–4 are for use in connection with the credit score disclosure exception for loans that are not secured by residential real property. Model forms H–5 and B–5 are for use in connection with the credit score disclosure exception when no credit score is available for a consumer. Each form, including its format, language, and other elements, is designed to communicate key information in a clear and readily understandable manner.

Although the Agencies have not tested the proposed model forms with consumers, the design of the model forms has been informed by consumer testing undertaken in connection with the interagency short-form privacy notice project and the Board's review of its credit card disclosure rules under the Truth in Lending Act.[11] In addition, the Agencies tested the proposed model forms using two widely available readability tests, the Flesch reading ease test and the Flesch-Kincaid grade level test, each of which generates a readability score.[12] Proposed Model Form H–1 and proposed Model Form B–1 have Flesch reading ease scores of 62.0, and Flesch-Kincaid grade level scores of 8.9. Proposed Model Form H–2 and proposed Model Form B–2 have Flesch reading ease scores of 64.2, and Flesch-Kincaid grade level scores of 8.4. Proposed Model Form H–3 and proposed Model Form B–3 (excluding the third page of the notice, which is language mandated by section 609(g)(1)(D) of the FCRA) have Flesch reading ease scores of 63.2, and Flesch-Kincaid grade level scores of 8.3. Proposed Model Form H–4 and proposed Model Form B–4 have Flesch reading ease scores of 63.2, and Flesch-Kincaid grade level scores of 8.3. Proposed Model Form H–5 and proposed Model Form B–5 have Flesch reading ease scores of 55.0, and Flesch-Kincaid grade level scores of 9.8.

Use of the model forms by creditors is optional. If a creditor does use an appropriate Appendix H or Appendix B model form, or modifies a form in accordance with the regulations or the instructions to the appendix, that creditor shall be deemed to be acting in compliance with the provisions of paragraphs § ____.72 and § ____.73, or § ____.74, as applicable, of this regulation. It is intended that appropriate use of model form H–3 or model form B–3 also will be compliant with the disclosure that may be required under section 609(g) of the FCRA.

A creditor may change the forms by rearranging the format without modifying the substance of the disclosures and still rely upon the safe harbor. Rearrangement of the model forms may not be so extensive as to affect materially the substance, clarity, comprehensibility, or meaningful sequence of the forms. Creditors making revisions with that effect will lose the benefit of the safe harbor for appropriate use of Appendix H or Appendix B model forms. As the Agencies have learned from consumer testing on privacy notices and credit card disclosures, format changes can have a significant effect on consumer comprehension.[13] Creditors, however, are not required to undertake consumer testing to compare consumer comprehension of a revised form with consumer comprehension of the relevant model form when rearranging the format of a model form. The Agencies recognize that some format changes will not have a material adverse effect on the model forms, and may even enhance consumer comprehension. A creditor may use different colors or shading in its notice, include graphics or icons in its notice, such as a corporate logo or insignia, or make corrections or updates to telephone numbers, mailing addresses, or web site addresses that may change over time.

In addition, a creditor may use clear and readily understandable means, other than the bar graph set forth in model forms H–3 and H–4 of the Board's rules and B–3 and B–4 of the Commission's rules, to disclose the distribution of credit scores. Other clear and readily understandable means may include a different form of graphical presentation of the distribution. Alternatively, a creditor may include a short narrative statement such as that set forth in model forms H–3 and H–4 of the Board's rules and B–3 and B–4 of the Commission's rules to disclose how a consumer's credit score compares to the scores of other consumers. This statement should be simple and concise; a paragraph-length narrative description about the credit score distribution, such as a narrative description of the information represented in the bar graph set forth in the model forms, would not satisfy the clear and readily understandable standard.

The Agencies solicit comment on the design and content of the proposed model forms. The Agencies also request comment on whether the proposed model forms and the accompanying instructions provide creditors with an appropriate degree of flexibility to change the forms without losing the compliance safe harbor. For example, the Agencies solicit comment on whether the instructions should permit creditors using proposed Model Form H–4 or Model Form B–4 to include the four key factors, even though not required by the proposed rules.

Request for Comment

The Agencies solicit comment on all aspects of the proposal. In particular, the Agencies invite comment on the methods contained in the proposal that creditors may use to identify which consumers must receive risk-based pricing notices, and the approach of providing creditors with several options for complying with the rules. The Agencies also solicit comment on any other operationally feasible tests or approaches that would enable creditors to distinguish consumers who must receive notices from consumers who should not receive notices that commenters believe should be added to the options contained in the proposed rules. The Agencies also solicit comment on the appropriateness of the proposed exceptions, and whether any additional or different exceptions should be adopted. Finally, the Agencies solicit comment on the form and content of each of the proposed model forms.

V. Regulatory Analysis

A. Paperwork Reduction Act

1. Request for Comment on Proposed Information Collection

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506; 5 CFR part 1320, Appendix A.1), the Board and the Commission may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

In accordance with the PRA, the Board has reviewed the proposed rule under the authority delegated by OMB. The proposed rule contains requirements subject to the PRA. The collections of information that would be required by this proposed rule are found

[11] *See* 72 FR 32,948, 32,951 (June 14, 2007) (Truth in Lending); 72 FR 14,940, 14,944 (Mar. 29, 2007) (Privacy).

[12] The Flesch reading ease test generates a score between zero and 100, where the higher score correlates with improved readability. The Flesch-Kincaid grade level test generates a numerical assessment of the grade-level at which the text is written. The Flesch-Kincaid readability tests are widely used by government agencies to evaluate readability levels of consumer communications.

[13] *See* 72 FR 32,948 (June 14, 2007) (proposed revisions to credit card disclosures); 72 FR 14,940 (March 29, 2007) (proposed short-form privacy notice).

in 12 CFR 222.72(a), (c), and (d); and 222.74(d), (e), and (f). The Board's OMB control number is 7100–0308.[14]

The information collection requirements contained in this joint notice of proposed rulemaking will be submitted by the Commission to OMB for review and approval under the PRA. The requirements are found in 16 CFR 640.72(a), (c), and (d); and 640.74(d), (e), and (f).

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record.

Comments should be addressed to:

Board: You may submit comments, identified by R–1316, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov*. Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov*. Include the docket number in the subject line of the message.
- *Fax:* 202–452–3819 or 202–452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Commission: Comments should refer to ''FACT ACT Risk-Based Pricing Rule: Project No. R411009,'' and may be submitted by any of the following methods. However, if the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled ''Confidential.''[15]

- *Web Site:* Comments filed in electronic form should be submitted by clicking on the following web link: *https://secure.commentworks.com/ftc-RiskBasedPricing* and following the instructions on the Web-based form. To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at *https://secure.commentworks.com/ftc-RiskBasedPricing*.
- *Federal eRulemaking Portal:* If this notice appears at *http://www.regulations.gov*, you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.
- *Mail or Hand Delivery:* A comment filed in paper form should include ''FACT ACT Risk-Based Pricing Rule: Project No. R411009,'' both in the text and on the envelope and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission/Office of the Secretary, Room H–135 (Annex M), 600 Pennsylvania Avenue, NW., Washington, DC 20580. The Commission is requesting that any comment filed in paper form be sent by courier or overnight service, if possible.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should additionally be submitted to: Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–6974 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the Commission's Web site, to the extent practicable, at *http://www.ftc.gov/os/publiccomments.htm*. As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the Commission's Web site. More information, including routine uses permitted by the Privacy Act, may be found in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

2. Proposed Information Collection

Title of Information Collection: Fair Credit Reporting Risk-Based Pricing Notices and Disclosure Exceptions.

Frequency of Response: On occasion.

Affected Public: Any creditor that engages in risk-based pricing and uses a consumer report to set the terms on which credit is extended to consumers.

Board: For purposes of the PRA, the Board is estimating the burden for entities regulated by the Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, and the U.S. Department of Housing and Urban Development (collectively, the ''federal financial regulatory agencies''). Such entities are identified in section 621(b)(1)–(3) of the FCRA, 15 U.S.C. 1681s(b)(1)–(3), and may include, among others, state member banks, national banks, insured nonmember banks, savings associations, federally-chartered credit unions, and other mortgage lending institutions.

Commission: For purposes of the PRA, the Commission is estimating the burden for entities that extend credit to consumers for personal, household, or family purposes, and are subject to administrative enforcement by the FTC pursuant to section 621(a)(1) of the FCRA (15 U.S.C. 1681s(a)(1)). These businesses include, among others, non-bank mortgage lenders, consumer lenders, utilities, state-chartered credit unions, and automobile dealers and

[14] The information collections (ICs) in this rule will be incorporated with the Board's Disclosure Requirements Associated with Regulation V (OMB No. 7100–0308). The burden estimates provided in this rule pertain only to the ICs associated with this proposed rulemaking. The current OMB inventory for Regulation V is available at: *http://www.reginfo.gov/public/do/PRAMain*.

[15] FTC Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

retailers that directly extend credit to consumers for personal, non-business uses.

Abstract: Proposed § ____.72(a) generally requires a creditor to provide a risk-based pricing notice to a consumer if that creditor 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 terms available to a substantial proportion of consumers from or through that creditor. In addition, proposed § ____.72(c), generally requires a credit card issuer to provide a risk-based pricing notice to a consumer if: (1) The 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 one possible purchase annual percentage rate may apply under the program or solicitation; and (2) based in whole or in part on a consumer report, the credit card issuer provides a credit card to the consumer with a purchase annual percentage rate that is greater than the lowest purchase annual percentage rate available under that application or solicitation.

Proposed § ____.72(d) sets forth the rule applicable to account reviews. That paragraph generally requires a creditor to provide a risk-based pricing notice to a consumer if the creditor: (1) Uses a consumer report in connection with a review of credit that has been extended to the consumer; and (2) based in whole or in part on the consumer report, increases the annual percentage rate (the purchase annual percentage rate in the case of a credit card).

Proposed § ____.73 describes the content, form and timing of the notice requirements found in § ____.72(a), (c), and (d). Appropriate use of the model forms contained in Appendices H–1 and B–1 may be used to satisfy the notice requirements in § ____.72(a) or (c). Likewise, appropriate use of the model forms contained in Appendices H–2 and B–2 may be used to satisfy the notice requirements in § ____.72(d).

Proposed § ____.74(a) and (b) implement exceptions to the risk-based pricing notice requirements that are set forth in section 615(h)(3) of the FCRA. Proposed § ____.74(a) states that in general a creditor is not required to provide a risk-based pricing notice to the consumer if the consumer applies for specific material terms and is granted those terms, unless those terms were specified by the creditor using the consumer report after the consumer applied for or requested credit and after the creditor obtained the consumer report. Proposed § ____.74(b) states that a creditor is not required to provide a risk-based pricing notice to the consumer if the creditor provides an adverse action notice to the consumer pursuant to section 615(a) of the FCRA.

Proposed § ____.74(c) provides an exception from the risk-based pricing notice requirement for a creditor that uses a consumer report for the purpose of making a prescreened solicitation, also known as a firm offer of credit, to the consumer.

Proposed § ____.74(d), (e), and (f) provides additional exceptions for creditors that provide their consumers with an alternative credit score disclosure notice. In the case of credit secured by one to four units of residential real property, an exception applies under § ____.74(d) for creditors that provide the consumer with a notice containing the credit score disclosure required by section 609(g) of the FCRA along with certain additional information that provides context for the credit score disclosure. Appropriate use of the model forms contained in Appendices H–3 and B–3 may be used to satisfy the notice requirements in § ____.74(d).

Proposed § ____.74(e) creates an exception similar to the exception in proposed § ____.74(d) for credit that is not secured by one to four units of residential real property, and is thus not subject to the credit score disclosure requirements of section 609(g). As with the credit score disclosure exception that applies to credit secured by residential real property, this disclosure will provide consumers with specific information about their own credit histories in the form of individual credit scores, as well as certain additional information that provides context for the credit score disclosure. Appropriate use of the model forms contained in Appendices H–4 and B–4 may be used to satisfy the notice requirements in § ____.74(e).

Proposed § ____.74(f) permits creditors that regularly use the credit score disclosure exceptions in proposed § ____.74(d) or (e), but are unable to provide the notices described in those paragraphs to a consumer because a credit score is not available for that consumer, to provide an alternative notice to that consumer. Appropriate use of the model forms contained in Appendices H–5 and B–5 may be used to satisfy the notice requirements in § ____.74(f).

Estimated Burden:

To ease creditors' burden and cost of complying with the notice and disclosure requirements the Agencies have provided model forms in Appendices H and B of the proposed regulations.

Board:

The Board believes that since financial institutions are familiar with the existing provisions of section 615 of the FCRA, which require specific disclosures in connection with adverse action notices whenever a lender uses a credit report to either deny credit, or to make a counteroffer to the credit applicant that is rejected, implementation of the proposed requirements should not be overly burdensome.

The Board estimates that there are 18,173 respondents regulated by the federal financial regulatory agencies potentially affected by the new notice and disclosure requirements. The Board estimates that the 18,173 respondents would take, on average, 40 hours (1 business week) to reprogram and update systems, provide employee training, and modify model notices with respondent information [16] to comply with proposed requirements. This one-time annual burden is estimated to be 725,600 hours. In addition, the Board estimates that, on a continuing basis, respondents would take 5 hours a month to modify and distribute notices to consumers. This annualized burden is estimated to be 1,090,380 hours. The Board estimates the total annual burden to be 1,815,980 hours.

Commission:

Number of respondents:

As discussed above, the proposed regulations require creditors to provide a risk-based pricing notice to a consumer when the creditor uses a consumer report in connection with an application for, or a grant, extension, or other provision of credit, and, based in whole or in part on the consumer report, grants, extends, or provides credit to the consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that person. Given the broad scope of creditors, it is difficult to determine precisely the number of them

[16] These modifications may include corrections or updates to telephone numbers, mailing addresses, or Web site addresses that may change over time, the addition of graphics or icons, such as the creditor's corporate logo, the alteration of the shading or color contained in the model forms, and the use of a different form of graphical presentation to depict the distribution of credit scores.

that are subject to the Commission's jurisdiction and that engage in risk-based pricing. As a whole, the entities under the Commission's jurisdiction are so varied that there are no general sources that provide a record of their existence, and they include many small entities for which there is no formal tracking method. Nonetheless, Commission staff estimates that the proposed regulations will affect approximately 199,500 creditors subject to the Commission's jurisdiction.[17] The Commission invites comment and information about the categories and number of creditors subject to its jurisdiction.

Estimated Hours Burden:

As detailed below, Commission staff estimates that the average annual information collection burden during the three-year period for which OMB clearance is sought will be 14,630,000 hours (rounded). The estimated annual labor cost associated with this burden is $236,870,000 (rounded).

Commission staff believes that because creditors already are familiar with the existing provisions of section 615 of the FCRA, which require specific disclosures in connection with adverse action notices whenever a lender uses a credit report to deny credit, implementation of the proposed requirements should not be overly burdensome. The proposed rule also offers several different ways that entities can perform a risk-based pricing analysis, allowing them to choose the method that is least burdensome and best-suited to their particular business model. Additionally, the proposed rule provides a model risk-based pricing notice that entities can use, thereby significantly limiting the time and effort required by them to comply with the proposed rule.

Commission staff believes that during the first year that the proposed rule is in effect businesses likely will develop automated or other processes for determining whether a consumer should receive a risk-based pricing notice. Commission staff estimates that it will take businesses, on average, forty (40) hours (1 business week) to reprogram and update their systems to incorporate the new notice requirements, to provide employee training, and to modify model notices with respondent information to comply with the proposed requirements. This one-time burden in the aggregate would be 7,980,000 hours (199,500 creditors x 40 hours) (rounded to the nearest thousand) for the first year. In addition, Commission staff estimates that, on a continuing basis, businesses would need five (5) hours per month to modify and distribute notices to consumers. This annual burden is estimated to be 11,970,000 hours (rounded to the nearest thousand). Commission staff estimates the average annual burden over the three-year PRA clearance sought will be 14,630,000 hours [(7,980,000 ÷ 3) + 11,970,000].

Estimated Cost Burden:

Commission staff derived labor costs by applying appropriate estimated hourly cost figures to the burden hours described above. It is difficult to calculate with precision the labor costs associated with the proposed regulations, as they entail varying compensation levels of clerical, management, and/or technical staff among companies of different sizes. In calculating the cost figures, Commission staff assumes that managerial and/or professional technical personnel will develop procedures for conducting the risk-based pricing analyses, adapt the written notices as necessary, and train staff, at an hourly rate of $38.93.[18] To distribute and update the notices, Commission staff assumes that personnel involved in sales and similar responsibilities will update and distribute the notices at an hourly rate of $11.14.[19]

Based on the above estimates and assumptions, the estimated average annual labor cost for all categories of covered entities under the proposed regulations is $236,870,000 (rounded to the nearest thousand) [((40 hours × $38.93) + (180 hours × $11.14)) × 199,500 ÷ 3].

Commission staff does not anticipate that compliance with the proposed rule will require any new capital or other non-labor expenditures. The proposed rule provides a simple and concise model notice that creditors may use to comply, and as creditors already are providing notices to consumers in the adverse action context under the FCRA, they are likely to have the necessary resources to generate and distribute these risk-based pricing notices. Similarly, those creditors who provide 609(g) notices may incorporate the risk-based pricing notice into their existing 609(g) notices. Thus, any capital or non-labor costs associated with compliance would be negligible.

B. Regulatory Flexibility Act

Board: The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed regulations cover certain banks, other depository institutions, and non-bank entities that extend credit to consumers. The Small Business Administration (SBA) establishes size standards that define which entities are small businesses for purposes of the RFA.[20] The size standard to be considered a small business is: $165 million or less in assets for banks and other depository institutions; and $6.5 million or less in annual revenues for the majority of non-bank entities that are likely to be subject to the proposed regulations. The Board requests public comment in the following areas.

1. Reasons for the Proposed Rule

Section 311 of the FACT Act (which amends section 615 of the FCRA by adding a new subsection (h)) requires the Agencies to prescribe regulations jointly to implement the duty of users of consumer reports to provide risk-based pricing notices in certain circumstances. Specifically, the regulations must address, but are not limited to, the following aspects of section 615(h) of the FCRA: (i) The form, content, time, and manner of delivery of any risk-based pricing notice; (ii) clarification of the meaning of terms used in section 615(h), including what credit terms are material, and when credit terms are materially less favorable; (iii) exceptions to the risk-based pricing notice requirement for classes of persons or transactions regarding which the Agencies determine that notice would

[17] This estimate derives in part from an analysis of the figures obtained from the North American Industry Classification System (NAICS) Association's database of U.S. businesses. *See http://www.naics.com/search.htm.* Commission staff identified categories of entities under its jurisdiction that also directly provide credit to consumers. Those categories include retail, vehicle dealers, consumer lenders, and utilities. The estimate also includes state-chartered credit unions, which are subject to the Commission's jurisdiction. *See* 15 U.S.C. 1681s. For the latter category, Commission staff relied on estimates from the National Credit Union Administration for the number of non-federal credit unions. See *http://www.ncua.gov/news/quick_facts/Facts2007.pdf.* For purposes of estimating the burden, Commission staff made the conservative assumption that all of the included entities engage in risk-based pricing.

[18] This cost is derived from the median hourly wage for management occupations found in the 2006 National Occupational Employment and Wage Estimates of the Bureau of Labor Statistics.

[19] This cost is derived from the median hourly wage for sales and related occupations found in the 2006 National Occupational Employment and Wage Estimates of the Bureau of Labor Statistics.

[20] U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

not significantly benefit consumers; (iv) a model notice that may be used to comply with section 615(h); and (v) the timing of the risk-based pricing notice, including the circumstances under which the notice must be provided after the terms offered to the consumer were set based on information from a consumer report. The Agencies are issuing the proposed regulations to fulfill their statutory duty to implement the risk-based pricing notice provisions of section 615(h) of the FCRA.

2. Statement of Objectives and Legal Basis

The **SUPPLEMENTARY INFORMATION** above contains this information. The legal basis for the proposed regulations is section 311 of the FACT Act.

3. Description of Small Entities to Which the Regulation Applies

The proposed regulations apply to any person that both (i) uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to a consumer that is primarily for personal, family, or household purposes; and (ii) based in whole or in part on the consumer report, grants, extends, or otherwise provides credit to the consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that person. The proposed regulations do not apply to any person that uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to a consumer or to any other applicant primarily for a business purpose.

The total number of small entities likely to be affected by the proposal is unknown because the Agencies do not have data on the number of small entities that use consumer reports for risk-based pricing in connection with consumer credit. The risk-based pricing provisions of the FACT Act have broad applicability to persons who use consumer reports and engage in risk-based pricing in connection with the provision of consumer credit.

Based on estimates compiled by the federal bank and thrift regulatory agencies [21] in connection with a recent proposed rule, there are approximately 6,208 depository institutions that could be considered small entities and that are potentially subject to the proposed rule.[22] The available data are insufficient to estimate the number of non-bank entities that would be subject to the proposed rule and that are small as defined by the SBA. Such entities would include non-bank mortgage lenders, auto finance companies, automobile dealers, other non-bank finance companies, telephone companies, and utility companies.

It also is unknown how many of these small entities that meet the SBA's size standards and are potentially subject to the proposed regulations engage in risk-based pricing based in whole or in part on consumer reports. The proposed regulations do not impose any requirements on small entities that do not use consumer reports or that do not engage in risk-based pricing of consumer credit on the basis of consumer reports.

The Board invites comment regarding the number and type of small entities that would be affected by the proposed rule.

4. Projected Reporting, Recordkeeping and Other Compliance Requirements

The compliance requirements of the proposed regulations are described in detail in the **SUPPLEMENTARY INFORMATION** above.

The proposed regulations generally require a person to provide a risk-based pricing notice to a consumer when that person uses a consumer report to grant or extend credit to the consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that person. A person can identify consumers to whom it must provide the notice by directly comparing the material terms offered to its consumers or by using one of two alternative methods specified in the proposed regulations. The proposed regulations also include several exceptions to the general rule, including exceptions that would allow a person otherwise subject to the risk-based pricing notice requirement to provide a consumer with a credit score disclosure in conjunction with additional information that provides context for the credit score disclosure.

A person would need to determine if it engages in risk-based pricing, based in whole or in part on consumer reports, in connection with the provision of consumer credit. A person that does engage in such risk-based pricing would need to analyze the regulations. Subject to the exceptions set forth in the proposed rule, the person generally would need to establish procedures for identifying those consumers to whom it must provide risk-based pricing notices. These procedures could involve either applying the general rule and performing a direct comparison among the terms offered to the person's consumers or utilizing one of the alternative methods set forth in the proposed regulations. Persons required to provide risk-based pricing notices also would need to design, generate, and provide those notices to the consumers that they have identified. Alternatively, a person that complies with the regulations by providing notices that meet the requirements of any of the credit score disclosure exceptions would need to design, generate, and provide those notices to its consumers.

The Board seeks information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule to small institutions.

5. Identification of Duplicative, Overlapping, or Conflicting Federal Regulations

The Board has not identified any federal statutes or regulations that would duplicate, overlap, or conflict with the proposed regulations. The proposed credit score disclosure for credit secured by residential real property has been designed to work in conjunction with the existing requirements of section 609(g) of the FCRA. The Board seeks comment regarding any statutes or regulations, including state or local statutes or regulations, that would duplicate, overlap, or conflict with the proposed regulations.

6. Discussion of Significant Alternatives

The Board welcomes comments on any significant alternatives, consistent with section 311 of the FACT Act, that would minimize the impact of the proposed regulations on small entities.

Commission: The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (IRFA) with a proposed rule and a Final Regulatory Flexibility Analysis (FRFA) with the final rule, unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of entities. *See* 5 U.S.C. 603–605. The Commission has determined that it is appropriate to publish an IRFA in order to inquire into the impact of the proposed rule on small entities. Therefore, the Commission has prepared the following analysis:

[21] The Office of the Comptroller of the Currency, Board, Federal Deposit Insurance Corporation, and Office of Thrift Supervision.

[22] The estimate includes 948 national banks, 1,448 institutions regulated by the Board, 3,400 FDIC-insured state nonmember banks, and 412 savings associations. *See* 72 FR 70944, 70961–70967 (Dec. 13, 2007).

1. Description of the Reasons That Action by the Agency Is Being Taken

Section 311 of the FACT Act (which amends section 615 of the FCRA by adding a new subsection (h)) requires the Agencies jointly to prescribe rules to implement the duty of users of consumer reports to provide risk-based pricing notices in certain circumstances. Specifically, the rules must address, but are not limited to, the following aspects of section 615(h) of the FCRA: (i) The form, content, time, and manner of delivery of any risk-based pricing notice; (ii) clarification of the meaning of terms used in section 615(h), including what credit terms are material, and when credit terms are materially less favorable; (iii) exceptions to the risk-based pricing notice requirement for classes of persons or transactions regarding which the Agencies determine that notice would not significantly benefit consumers; (iv) a model notice that may be used to comply with section 615(h); and (v) the timing of the risk-based pricing notice, including the circumstances under which the notice must be provided after the terms offered to the consumer were set based on information from a consumer report. The Agencies are issuing the proposed rules to fulfill their statutory duty to implement the risk-based pricing notice provisions of section 615(h) of the FCRA.

2. Statement of Objectives of and Legal Basis for the Proposed Rule

The **SUPPLEMENTARY INFORMATION** above contains information concerning the objectives of the proposed rule. The legal basis for the proposed rule is section 311 of the FACT Act.

3. Description of Small Entities to Which the Proposed Rule Will Apply

The proposed rule applies to any creditor that both (i) uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to a consumer that is primarily for personal, family, or household purposes; and (ii) based in whole or in part on the consumer report, grants, extends, or otherwise provides credit to the consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that creditor. The proposed rule does not apply to any creditor that uses a consumer report in connection with an application for, or a grant, extension or other provision of, credit primarily for a business purpose.

The total number of small entities likely to be affected by the Commission's proposal is unknown, because the Commission does not have data on the number of small entities that use consumer reports for risk-based pricing in connection with consumer credit. Moreover, the entities under the Commission's jurisdiction are so varied that there is no way to identify them in general and, therefore, no way to know how many of them qualify as small businesses. Generally, the entities under the Commission's jurisdiction that also are covered by section 311 include state-chartered credit unions, non-bank mortgage lenders, auto dealers, and utility companies. The available data, however, is not sufficient for the Commission to realistically estimate the number of small entities, as defined by the U.S. Small Business Administration (SBA), that the Commission regulates and that would be subject to the proposed rule.[23] The Commission invites comment and information regarding the number and type of small entities affected by the proposed rule.

4. Projected Reporting, Recordkeeping and Other Compliance Requirements

The compliance requirements of the proposed rules are described in detail in the **SUPPLEMENTARY INFORMATION** above.

The proposed rule generally requires a creditor to provide a risk-based pricing notice to a consumer when that creditor uses a consumer report to grant or extend credit to the consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that creditor. A creditor can identify consumers to whom it must provide the notice by directly comparing the material terms offered to its consumers or by using one of the two alternative methods specified in the proposed rule. The proposed rule also includes several exceptions to the general rule, including exceptions that would allow a creditor otherwise subject to the risk-based pricing notice requirement to provide a consumer with a credit score disclosure in conjunction with additional information that provides context for the credit score disclosure.

The proposed rule will involve some expenditure of time and resources for entities to comply, although Commission staff anticipates that the costs will not be significant. Most of the costs will be incurred initially as entities develop systems for determining which of their consumers should receive risk-based pricing notices and as they train staff to comply with the rule. In calculating these costs, Commission staff assumes that for all entities managerial and/or professional technical personnel will handle the initial aspects of compliance with the proposed rule, and that sales associates or administrative personnel will handle any ongoing responsibilities.

To minimize these costs, the proposed rule offers several different ways that businesses can perform a risk-based pricing analysis, allowing businesses to choose the method that is least burdensome and best-suited to their particular business model. Additionally, Commission staff believes that, as creditors, most of the covered entities are familiar already with the existing provisions of section 615 of the FCRA, which require specific disclosures in connection with adverse action notices whenever a creditor uses a credit report to deny credit. Commission staff anticipates that many businesses already have systems in place to handle the existing requirements under section 615 and that they will be able to incorporate the risk-based pricing notice requirements into those systems. As for any continuing costs such as those involved in preparing and distributing the notices, the proposed rule provides a model risk-based pricing notice, thereby significantly limiting the ongoing time and effort required by businesses to comply with the rule.

For these reasons, Commission staff does not expect that the costs associated with the proposed rule will place a significant burden on small entities. Nonetheless, the Commission requests information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule to small businesses.

5. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed rule. The proposed credit score disclosure for credit secured by residential real property has been designed to work in conjunction with the existing requirements of section 609(g) of the

[23] Under the SBA's size standards, many creditors, including the majority of non-bank entities that are likely to be subject to the proposed regulations and are subject to the Commission's jurisdiction, are considered small if their average annual receipts do not exceed $6.5 million. Auto dealers have a higher size standard of $26.5 million in average annual receipts for new car dealers and $21 million in average annual receipts for used car dealers. A list of the SBA's size standards for all industries can be found in the SBA's Table of Small Business Size Standards Matched to North American Industry Classification Codes, which is available at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

FCRA. The Commission invites comment and information about any statutes or rules, including state or local statutes or rules, which would duplicate, overlap, or conflict with the proposed rule.

6. Discussion of Significant Alternatives to the Proposed Rule

The compliance requirements of the proposed rules are described in detail in the **SUPPLEMENTARY INFORMATION** above. The requirements provide flexibility so that a covered entity, regardless of its size, may tailor its practices to its individual needs. For example, the rule identifies several different ways that an entity can perform a risk-based pricing analysis, allowing each entity to choose the approach that fits best with its business model. A small business may find it easiest to make individual, consumer-to-consumer comparisons. If it uses a tiered system to determine a consumer's interest rate, however, then it may prefer to use the tiered pricing method to conduct the risk-based pricing analysis. Alternatively, a business may find the credit score disclosure notice to be least burdensome, and opt for that approach to comply with the rule. By providing a range of options, the Agencies have sought to help businesses of all sizes reduce the burden or inconvenience of complying with the proposed rule.

Similarly, the proposed rule provides model notices and model credit score disclosures to facilitate compliance. By using these model notices, businesses qualify for a safe harbor. They are not required to use the model notices, however, as long as they provide a notice that effectively conveys the required information, these businesses simply would not receive the benefit of the safe harbor. Having this option, again, provides businesses of all sizes flexibility in how to comply with the proposed rule.

Notwithstanding the Agencies' efforts to consider the impact of the proposed rule on small entities, the Commission welcomes comments on any significant alternatives, consistent with section 311 of the FACT Act, which would minimize the impact of the proposed rules on small entities.

VI. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Pub. L. 102, section 722, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board invites comment on how to make this proposed regulation easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the regulation clearly stated? If not, how could the regulation be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- Would more, but shorter, sections be better? If so, which sections should be changed?
- What else could we do to make the regulation easier to understand?

List of Subjects

12 CFR Part 222

Banks, Banking, Consumer protection, Fair Credit Reporting Act, Holding companies, Privacy, Reporting and recordkeeping requirements, State member banks.

16 CFR Part 640

Consumer reporting agencies, Consumer reports, Credit, Fair Credit Reporting Act, Trade practices.

16 CFR Part 698

Consumer reporting agencies, Consumer reports, Credit, Fair Credit Reporting Act, Trade practices.

Board of Governors of the Federal Reserve System

12 CFR Chapter II.

Authority and Issuance

For the reasons discussed in the joint preamble, the Board of Governors of the Federal Reserve System proposes to amend chapter II of title 12 of the Code of Federal Regulations by amending 12 CFR part 222 as follows:

PART 222—FAIR CREDIT REPORTING (REGULATION V)

1. The authority citation for part 222 is revised to read as follows:

Authority: 15 U.S.C. 1681b, 1681c, 1681m and 1681s; Secs. 3, 214, and 216, Pub. L. 108–159, 117 Stat. 1952.

2. Add Subpart H to part 222 to read as follows:

Subpart H—Duties of Users Regarding Risk-Based Pricing

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Subpart H—Duties of Users Regarding Risk-Based Pricing

§ 222.70 Scope.

(a) *Coverage.* (1) *In general.* This subpart applies to any person that both—

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

(ii) Based in whole or in part on the consumer report, grants, extends, or otherwise provides credit to the 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.

(2) *Business credit excluded.* This subpart does not apply to any person that uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to a consumer or to any other applicant primarily for a business purpose.

(b) *Relation to Federal Trade Commission rules.* These rules were developed jointly with the Federal Trade Commission (Commission) and are substantively identical to the Commission's risk-based pricing rules in 16 CFR part 640. Both rules apply to the covered person described in paragraph (a) of this section. Compliance with either the Board's rules or the Commission's rules satisfies the requirements of the statute.

(c) *Enforcement.* The provisions of this subpart will be enforced in accordance with the enforcement authority set forth in sections 621(a) and (b) of the FCRA.

§ 222.71 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Annual percentage rate* has the same meaning as in 12 CFR 226.14(b) with respect to an open-end credit plan and as in 12 CFR 226.22 with respect to closed-end credit.

(b) *Closed-end credit* has the same meaning as in 12 CFR 226.2(a)(10).

(c) *Consummation* means the time that a consumer becomes contractually obligated on a credit transaction.

(d) *Credit* has the same meaning as in 15 U.S.C. 1681a(r)(5).

(e) *Creditor* has the same meaning as in 15 U.S.C. 1681a(r)(5).

(f) *Credit card* has the same meaning as in 15 U.S.C. 1681a(r)(2).

(g) *Credit card issuer* has the same meaning as in 15 U.S.C. 1681a(r)(1)(A).

(h) *Credit score* has the same meaning as in 15 U.S.C. 1681g(f)(2)(A).

(i) *Material terms* means—

(1) (i) In the case of credit extended under an open-end credit plan, the annual percentage rate required to be disclosed under 12 CFR 226.6(a)(2), excluding both any temporary initial rate that is lower than the rate that will apply after the temporary rate expires and any 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;

(ii) In the case of a credit card (other than a credit card that is used to access a home equity line of credit), the annual percentage rate that applies to purchases (''purchase annual percentage rate'') and no other annual percentage rate;

(2) In the case of closed-end credit, the annual percentage rate required to be disclosed prior to consummation under 12 CFR 226.17(c) and 226.18(e); and

(3) In the case of credit for which there is no annual percentage rate, such as credit extended to consumers by a telephone company or a utility, any monetary terms that the person varies based on information in a consumer report, such as the down payment or deposit.

(j) *Materially less favorable* means, when applied to material terms, that the terms granted or extended to a consumer differ from the terms granted or extended to another consumer from or through the same person such that the cost of credit to the first consumer would be significantly greater than the cost of credit granted or extended to the other consumer. For purposes of this definition, factors relevant to determining the significance of a difference in cost include the type of credit product, the term of the credit extension, if any, and the extent of the difference between the material terms granted or extended to the two consumers.

(k) *Open-end credit plan* has the same meaning as in 15 U.S.C. 1602(i), as interpreted by the Board of Governors of the Federal Reserve System in Regulation Z (12 CFR part 226) and the Official Staff Commentary to Regulation Z (Supplement I to Part 226).

§ 222.72 General requirements for risk-based pricing notices.

(a) *In general*. Except as otherwise provided in this subpart, a person must provide to a consumer a notice (''risk-based pricing notice'') in the form and manner required by this subpart 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 when consumers must receive a notice*. A person may make a determination under paragraph (a) of this section by directly comparing the material terms offered to each consumer and the material terms offered to other consumers in similar types of transactions. As an alternative to making this direct comparison, a person may make the determination for a given class of products 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 that represents the point at which approximately 40 percent of its consumers have higher credit scores and approximately 60 percent of its consumers have lower credit scores (hereafter referred to as the ''cutoff score''); and

(B) Providing a risk-based pricing notice to each consumer whose credit score is lower than the cutoff score.

(ii) *Determining the cutoff score*. (A) *Sampling approach*. A person that currently uses risk-based pricing with respect to the credit products it offers must calculate the appropriate cutoff score by considering the credit scores of all or a representative sample of the consumers to whom it has granted, extended, or otherwise provided credit for a given class of products, such as mortgages, credit cards, or auto loans.

(B) *Secondary source approach in limited circumstances*. A person that is a new entrant into the credit business, introduces new credit products, or starts to use risk-based pricing with respect to the credit products it currently offers may initially determine the appropriate cutoff score based on information derived from appropriate market research or relevant third-party sources for similar products, 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 appropriate cutoff score based on information from the merged or acquired party.

(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)(ii)(A) of this section. A person using the credit score proxy method using market research, third-party data, or information from a merged or acquired party as permitted by paragraph (b)(1)(ii)(B) of this section generally must calculate its own cutoff score(s) based on the credit scores of its own consumers in the manner described in paragraph (b)(1)(ii)(A) of this section within one year after it begins using a cutoff score derived from data supplied by third-party sources. If such a person does not grant, extend, or otherwise provide credit to new consumers during that one-year period, and therefore lacks any 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 third-party source data as provided in paragraph (b)(1)(ii)(B) until it grants, extends, or otherwise provides credit to new consumers and is able to collect data on which to base the recalculation.

(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 otherwise provided to a consumer must determine the appropriate 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. 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 appropriate cutoff score using a reasonable means. In such cases, use of either one of the methods that the person regularly uses or the average credit score of each consumer is deemed

to be a reasonable means of calculating the cutoff score.

(iii) *Lack of availability of a credit score.* For purposes of this section, a person using the credit score proxy method who grants, extends, or otherwise 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.

(iv) *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 credit scores of consumers to whom it issued credit cards within the preceding 3 months. The credit card issuer determines that approximately 40 percent of the sampled consumers have a credit score at or above 720 (on a scale of 350 to 850) and approximately 60 percent of the sampled consumers have a credit score below 720. Thus, 720 is an appropriate cutoff score for this card issuer. 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 700. Since the consumer's 700 credit score falls below the 720 cutoff score, the credit card issuer provides a risk-based pricing notice to the consumer.

(B) An auto lender engaged 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 extends 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 otherwise provided to a consumer by placing the consumer within one of a discrete number of pricing tiers, based in whole or in part on a consumer 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 who does not qualify for the top tier (that is, the lowest-priced tier). For example, a creditor that uses a tiered pricing structure with annual percentage rates of 8, 10, 12, and 14 percent would comply by providing the risk-based pricing notice to all consumers who are granted credit at annual percentage rates of 10, 12, and 14 percent, based in whole or in part on information from their consumer reports.

(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 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 creditor 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 placed within the bottom six tiers.

(c) *Application to credit card issuers.* (1) *In general.* Except as otherwise provided by this subpart, a credit card issuer is subject to the requirements of paragraph (a) of this section and must provide a risk-based pricing notice to a consumer in the form and manner required by this subpart if—

(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 a purchase annual percentage rate that is greater than the lowest purchase annual percentage rate available under that 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 creditor provides a single purchase annual percentage rate, excluding both 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 purchase annual percentage rate available under the credit card offer for which the consumer applied, even if a lower purchase annual percentage rate is available under a different credit card offer issued by the credit card issuer.

(3) *Example.* 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 credit card issuer provides a credit card to the consumer with a purchase annual percentage rate of 12 percent based in whole or in part on a consumer report. Unless an exception applies, the credit card issuer must provide a risk-based pricing notice to the consumer because the consumer received credit at a purchase annual percentage rate greater than the lowest purchase annual percentage rate available under that solicitation. On the other hand, if the credit card issuer provided a credit card to the consumer at a purchase annual percentage rate of 10 percent, the credit card issuer would not be required to provide a risk-based pricing notice to that consumer, even if under a different credit card solicitation, that consumer or other consumers might qualify for a purchase annual percentage rate of 8 percent.

(d) *Account review.* (1) *In general.* Except as otherwise provided in this subpart, a person is subject to the requirements of paragraph (a) of this section and must provide a risk-based pricing notice to a consumer in the form and manner required by this subpart if the person—

(i) Uses a consumer report in connection with a review of credit that has been extended to the consumer; and

(ii) Based in whole or in part on the consumer report, increases the annual percentage rate (the purchase annual percentage rate in the case of a credit card).

(2) *Example*. A credit card issuer periodically obtains consumer reports for the purpose of reviewing the terms of credit it has extended to consumers in connection with credit cards. As a result of this review, the credit card issuer increases the purchase annual percentage rate applicable to a consumer's credit card based in whole or in part on information in a consumer report. The credit card issuer is subject to the requirements of paragraph (a) of this section and must provide a risk-based pricing notice to the consumer.

§ 222.73 Content, form, and timing of risk-based pricing notices.

(a) *Content of the notice*. (1) *In general*. The risk-based pricing notice required by § 222.72(a) or (c) must include:

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

(iii) A statement informing the consumer 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 consumer 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 that consumer reporting agency without charge for 60 days after receipt of the notice;

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

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

(2) *Account review*. The risk-based pricing notice required by § 222.72(d) must include:

(i) A statement informing the consumer 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 based in whole or in part on information from a consumer report;

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

(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 consumer report;

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

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

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

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

(b) *Form of the notice*. (1) *In general*. The risk-based pricing notice required by § 222.72(a), (c), or (d) must be:

(i) Clear and conspicuous; and

(ii) Provided to the consumer in oral, written, or electronic form.

(2) *Model forms*. A model form of the risk-based pricing notice required by § 222.72(a) and (c) is contained in Appendix H–1 of this part. Appropriate use of Model Form H–1 is deemed to comply with the requirements of § 222.72(a) and (c). A model form of the risk-based pricing notice required by § 222.72(d) is contained in Appendix H–2 of this part. Appropriate use of Model Form H–2 is deemed to comply with the requirements of § 222.72(d). Use of the model forms is optional.

(c) *Timing*. A risk-based pricing notice must be provided to the consumer—

(1) In the case of a grant, extension, or other provision of closed-end credit, before consummation of the transaction, but not earlier than the time the decision to approve an application for, or a grant, extension, or other provision of, credit is communicated to the consumer by the person required to provide the notice;

(2) In the case of credit granted, extended, or provided under an open-end credit plan, before the first transaction is made under the plan, but not earlier than the time the decision to approve an application for, or a grant, extension, or other provision of, credit is communicated to the consumer by the person required to provide the notice; or

(3) In the case of a review of credit that has been extended to the consumer, at the time the decision to increase the annual percentage rate (purchase annual percentage rate in the case of a credit card) based on a consumer report is communicated to the consumer by the person required to provide the notice, or if no notice of the increase in the annual percentage rate is provided to the consumer prior to the effective date of the change in the annual percentage rate, no later than five days after the effective date of the change in the annual percentage rate.

§ 222.74 Exceptions.

(a) *Application for specific terms*. (1) *In general*. A person is not required to provide a risk-based pricing notice to the consumer under § 222.72(a) or (c) if the consumer applies for specific material terms and is granted those terms, unless those terms were specified by the person using the consumer report after the consumer applied for or requested credit and after the person obtained the consumer report. For purposes of this section, ''specific material terms'' means a single material term, or set of material terms, such as an annual percentage rate of 10 percent, and not a range of alternatives, such as an annual percentage rate that may be 8, 10, or 12 percent, or between 8 and 12 percent, based in whole or in part upon the consumer's creditworthiness as reflected in a consumer report.

(2) *Example*. A consumer receives a solicitation from a credit card issuer that is a firm offer of credit. The terms of the solicitation are based in whole or in part on information from a consumer report that the credit card issuer obtained in accordance with the FCRA's provisions regarding firm offers of credit. The solicitation offers the consumer a credit card with a single purchase annual percentage rate of 12 percent. The consumer applies for and receives a credit card with an annual percentage rate of 12 percent. Other customers with the same credit card have a purchase annual percentage rate of 10 percent. The exception applies because the

consumer applied for specific material terms and was granted those terms. Although the credit card issuer specified the material term or terms in the firm offer of credit based in whole or in part on a consumer report, the credit card issuer specified that term or those terms before, not after, the consumer applied for or requested credit.

(b) *Adverse action notice.* A person is not required to provide a risk-based pricing notice to the consumer under § 222.72(a), (c), or (d) if the person provides an adverse action notice to the consumer pursuant to section 615(a) of the FCRA.

(c) *Prescreened solicitations.* (1) *In general.* A person is not required to provide a risk-based pricing notice to the consumer under § 222.72(a) or (c) if the person:

(i) Obtains a consumer report that is a prescreened list as described in section 604(c)(2) of the FCRA; and

(ii) Uses the consumer report for the purpose of making a firm offer of credit to the consumer, as described in section 603(l) of the FCRA, without regard to the material terms that the person includes in other firm offers of credit.

(2) *Example.* A credit card issuer obtains two prescreened lists from a consumer reporting agency. One list includes consumers with high credit scores. The other list includes consumers with low credit scores. The issuer mails a firm offer of credit to the high credit score consumers with a single purchase annual percentage rate of 10 percent. The issuer also mails a firm offer of credit to the low credit score consumers with a single purchase annual percentage rate of 14 percent. The credit card issuer is not required to provide a risk-based pricing notice to the low credit score consumers who receive the 14 percent offer because use of a consumer report to make a firm offer of credit does not trigger the risk-based pricing notice requirement based on differences in the material terms of two or more firm offers of credit.

(d) *Loans secured by residential real property—credit score disclosure.* (1) *In general.* A person is not required to provide a risk-based pricing notice to the consumer under § 222.72(a) or (c) if:

(i) The credit requested by the consumer involves an extension of credit that is or will be secured by one to four units of residential real property; and

(ii) The person provides to the consumer a notice that contains the following—

(A) A statement informing the consumer that a consumer report (or credit report) is a record of the consumer's credit history and includes information about whether the consumer pays his or her obligations on time and how much the consumer owes to creditors;

(B) A statement informing the consumer that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time to reflect changes in the consumer's credit history;

(C) A statement that the consumer's credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;

(D) The information required to be disclosed to the consumer pursuant to section 609(g) of the FCRA;

(E) The distribution of credit scores among all consumers using the same scale as that of the credit score that is provided to the consumer, presented in the form of a bar graph containing a minimum of six bars that illustrates the percentage of consumers with credit scores within the range of scores reflected in each bar or by other clear and readily understandable graphical means, or a clear and readily understandable statement informing the consumer how his or her credit score compares to the scores of other consumers. Use of a graph or statement obtained from the person providing the credit score that meets the requirements of this paragraph (d)(1)(ii)(E) is deemed to comply with this requirement;

(F) 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 consumer report;

(G) A statement that federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free consumer report from each of the nationwide consumer reporting agencies once during any 12-month period;

(H) Contact information for the centralized source from which consumers may obtain their free annual consumer reports; and

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

(2) *Form of the notice.* The notice described in paragraph (d)(1)(ii) of this section must be:

(i) Clear and conspicuous;

(ii) Provided on or with the notice required by section 609(g) of the FCRA;

(iii) Segregated from other information provided to the consumer, except for the notice required by section 609(g) of the FCRA; and

(iv) Provided to the consumer in writing and in a form that the consumer may keep.

(3) *Timing.* The notice described in paragraph (d)(1)(ii) of this section must be provided to the consumer at the time the disclosure required by section 609(g) of the FCRA is provided to the consumer, 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.

(4) *Model form.* A model form of the notice described in paragraph (d)(1)(ii) of this section consolidated with the notice required by section 609(g) of the FCRA is contained in Appendix H–3 of this part. Appropriate use of Model Form H–3 is deemed to comply with the requirements of § 222.74(d). Use of the model form is optional.

(e) *Other extensions of credit—credit score disclosure.* (1) *In general.* A person is not required to provide a risk-based pricing notice to the consumer under § 222.72(a) or (c) if:

(i) The credit requested by the consumer involves an extension of credit other than an extension of credit that is or will be secured by one to four units of residential real property; and

(ii) The person provides to the consumer a notice that contains the following—

(A) A statement informing the consumer that a consumer report (or credit report) is a record of the consumer's credit history and includes information about whether the consumer pays his or her obligations on time and how much the consumer owes to creditors;

(B) A statement informing the consumer that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time to reflect changes in the consumer's credit history;

(C) A statement that the consumer's credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;

(D) The current credit score of the consumer or the most recent credit score of the consumer that was previously calculated by the consumer reporting agency for a purpose related to the extension of credit;

(E) The range of possible credit scores under the model used to generate the credit score;

(F) The distribution of credit scores among all consumers using the same scale as that of the credit score that is provided to the consumer, presented in the form of a bar graph containing a

minimum of six bars that illustrates the percentage of consumers with credit scores within the range of scores reflected in each bar, or by other clear and readily understandable graphical means, or a clear and readily understandable statement informing the consumer how his or her credit score compares to the scores of other consumers. Use of a graph or statement obtained from the person providing the credit score that meets the requirements of this paragraph (e)(1)(ii)(F) is deemed to comply with this requirement;

(G) The date on which the credit score was created;

(H) The name of the consumer reporting agency or other person that provided the credit score;

(I) 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 consumer report;

(J) A statement that federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free consumer report from each of the nationwide consumer reporting agencies once during any 12-month period;

(K) Contact information for the centralized source from which consumers may obtain their free annual consumer reports; and

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

(2) *Form of the notice.* The notice described in paragraph (e)(1)(ii) of this section must be:

(i) Clear and conspicuous;

(ii) Segregated from other information provided to the consumer; and

(iii) Provided to the consumer in writing and in a form that the consumer may keep.

(3) *Timing.* The notice described in paragraph (e)(1)(ii) of this section must be provided 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.

(4) *Model form.* A model form of the notice described in paragraph (e)(1)(ii) of this section is contained in Appendix H–4 of this part. Appropriate use of Model Form H–4 is deemed to comply with the requirements of § 222.74(e). Use of the model form is optional.

(f) *Credit score not available.* (1) *In general.* A person is not required to provide a risk-based pricing notice to the consumer under § 222.72(a) or (c) if the person:

(i) Regularly obtains credit scores from a consumer reporting agency and provides credit score disclosures to consumers in accordance with paragraphs (d) or (e) of this section, but a credit score is not available from the consumer reporting agency from which the person regularly obtains credit scores for a consumer to whom the person grants, extends, or otherwise provides credit based in whole or in part on information in a consumer report;

(ii) Does not obtain a credit score from another consumer reporting agency in connection with granting, extending, or otherwise providing credit to the consumer; and

(iii) Provides to the consumer a notice that contains the following—

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

(B) A statement informing the consumer that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time in response to changes in the consumer's credit history;

(C) A statement informing the consumer that credit scores are important because consumers with higher credit scores generally obtain more favorable credit terms;

(D) A statement informing the consumer that not having a credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;

(E) A statement that the person was not able to obtain a credit score about the consumer from a consumer reporting agency, which must be identified by name, generally due to insufficient information regarding the consumer's credit history;

(F) 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 consumer report;

(G) A statement that federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free consumer report from each of the nationwide consumer reporting agencies once during any 12-month period;

(H) The contact information for the centralized source from which consumers may obtain their free annual consumer reports; and

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

(2) *Example.* A person that uses consumer reports to set the material terms of non-mortgage credit granted, extended, or otherwise provided to consumers regularly requests credit scores from a particular consumer reporting agency and provides those credit scores and additional information to consumers to satisfy the requirements of paragraph (e) of this section. That consumer reporting agency provides to the person a consumer report on a particular consumer that contains one trade line, but does not provide the person with a credit score on that consumer. If the person does not obtain a credit score from another consumer reporting agency and, based in whole or in part on information in a consumer report, grants, extends, or otherwise provides credit to the consumer, the person may provide the notice described in paragraph (f)(1)(iii) of this section. If, however, the person obtains a credit score from another consumer reporting agency, the person may not rely upon the exception in paragraph (f) of this section, but may satisfy the requirements of paragraph (e) of this section.

(3) *Form of the notice.* The notice described in paragraph (f)(1)(iii) of this section must be:

(i) Clear and conspicuous;

(ii) Segregated from other information provided to the consumer; and

(iii) Provided to the consumer in writing and in a form that the consumer may keep.

(4) *Timing.* The notice described in paragraph (f)(1)(iii) of this section must be provided to the consumer as soon as reasonably practicable after the person has requested the credit score, but in any event not later than consummation of a transaction in the case of closed-end credit or when the first transaction is made under an open-end credit plan.

(5) *Model form.* A model form of the notice described in paragraph (f)(1)(iii) of this section is contained in Appendix H–5 of this part. Appropriate use of Model Form H–5 is deemed to comply with the requirements of § 222.74(f). Use of the model form is optional.

§ 222.75 Rules of construction.

For purposes of this subpart, the following rules of construction apply:

(a) *One notice per credit extension.* A consumer is entitled to no more than one risk-based pricing notice under

§ 222.72(a) or (c), or one notice under § 222.74(d), (e), or (f), for each grant, extension, or other provision of credit. Notwithstanding the foregoing, even if a consumer has previously received a risk-based pricing notice in connection with a grant, extension, or other provision of credit, another risk-based pricing notice is required if the conditions set forth in § 222.72(d) have been met.

(b) *Multi-party transactions.* (1) *Initial creditor.* The person to whom a credit obligation is initially payable must provide the risk-based pricing notice described in § 222.72(a) or (c), or satisfy the requirements for and provide the notice required under one of the exceptions in § 222.74(d), (e), or (f), even if that person immediately assigns the credit agreement to a third party and is not the source of funding for the credit.

(2) *Purchasers or assignees.* A purchaser or assignee of a credit contract with a consumer is not subject to the requirements of this subpart and is not required to provide the risk-based pricing notice described in § 222.72(a) or (c), or satisfy the requirements for and provide the notice required under one of the exceptions in § 222.74(d), (e), or (f).

(3) *Examples.* (i) A consumer obtains credit to finance the purchase of an automobile. If the auto dealer is the person to whom the loan obligation is initially payable, such as where the auto dealer is the original creditor under a retail installment sales contract, the auto dealer must provide the risk-based pricing notice to the consumer (or satisfy the requirements for and provide the notice required under one of the exceptions noted above), even if the auto dealer immediately assigns the loan to a bank or finance company. The bank or finance company, which is an assignee, has no duty to provide a risk-based pricing notice to the consumer.

(ii) A consumer obtains credit to finance the purchase of an automobile. If a bank or finance company is the person to whom the loan obligation is initially payable, the bank or finance company must provide the risk-based pricing notice to the consumer (or satisfy the requirements for and provide the notice required under one of the exceptions noted above) based on the terms offered by that bank or finance company only. The auto dealer has no duty to provide a risk-based pricing notice to the consumer.

3. In Part 222, Appendix H is added to read as follows:

Appendix H—Model Forms for Risk-Based Pricing and Credit Score Disclosure Exception Notices

1. This appendix contains two model forms for risk-based pricing notices and three model forms for use in connection with the credit score disclosure exceptions. Each of the model forms is designated for use in a particular set of circumstances as indicated by the title of that model form.

2. Model form H–1 is for use in complying with the general risk-based pricing notice requirements in § 222.72. Model form H–2 is for risk-based pricing notices given in connection with account review. Model form H–3 is for use in connection with the credit score disclosure exception for loans secured by residential real property. Model form H–4 is for use in connection with the credit score disclosure exception for loans that are not secured by residential real property. Model form H–5 is for use in connection with the credit score disclosure exception when no credit score is available for a consumer. All forms contained in this appendix are models; their use is optional.

3. A creditor may change the forms by rearranging the format without modifying the substance of the disclosures. The rearrangement of the model forms may not be so extensive as to materially affect the substance, clarity, comprehensibility, or meaningful sequence of the forms. Creditors making revisions with that effect will lose the benefit of the safe harbor for appropriate use of Appendix H model forms. A creditor is not required to conduct consumer testing when rearranging the format of the model forms. Acceptable changes include, for example:

a. Corrections or updates to telephone numbers, mailing addresses, or Web site addresses that may change over time.

b. The addition of graphics or icons, such as the creditor's corporate logo.

c. Alteration of the shading or color contained in the model forms.

d. Use of a different form of graphical presentation to depict the distribution of credit scores.

4. If a creditor uses an appropriate Appendix H model form, or modifies a form in accordance with the above instructions, that creditor shall be deemed to be acting in compliance with the provisions of § 222.72 and § 222.73, or § 222.74, as applicable, of this regulation. It is intended that appropriate use of model form H–3 also will be compliant with the disclosure that may be required under section 609(g) of the FCRA.

H–1 Model form for risk-based pricing notice

H–2 Model form for account review risk-based pricing notice

H–3 Model form for credit score disclosure exception for credit secured by one to four units of residential real property

H–4 Model form for credit score disclosure exception for loans not secured by residential real property

H–5 Model form for credit score disclosure exception for loans where credit score is not available

H-1. Model form for risk-based pricing notice

[Name of Entity Providing the Notice]
Your Credit Report[s] and the Price You Pay for Credit

What is a credit report?	A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.
How did we use your credit report[s]?	We used information from your credit report[s] to set the terms of the credit we are offering you, such as the [Annual Percentage Rate/down payment]. The terms offered to you may be less favorable than the terms offered to consumers who have better credit histories.
What if there are mistakes in your credit report[s]?	You have a right to dispute any inaccurate information in your credit report[s]. If you find mistakes on your credit report[s], contact **[insert name of CRA(s)]**, which [is/are] the [consumer reporting agency/consumer reporting agencies] from which we obtained your credit report[s]. It is a good idea to check your credit report[s] to make sure the information [it contains/they contain] is accurate.
How can you obtain a copy of your credit report[s]?	Under federal law, you have the right to obtain a copy of your credit report[s] without charge for 60 days after you receive this notice. To obtain your free report[s], contact **[insert name of CRA(s)]**: *By telephone:* Call toll-free: 1-877-xxx-xxxx *By mail:* Mail your written request to: **[Insert address]** *On the web:* Visit **[insert web site address]**
How can you get more information about credit reports?	For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's web site at www.federalreserve.gov, or the Federal Trade Commission's web site at www.ftc.gov.

H-2. Model form for account review risk-based pricing notice

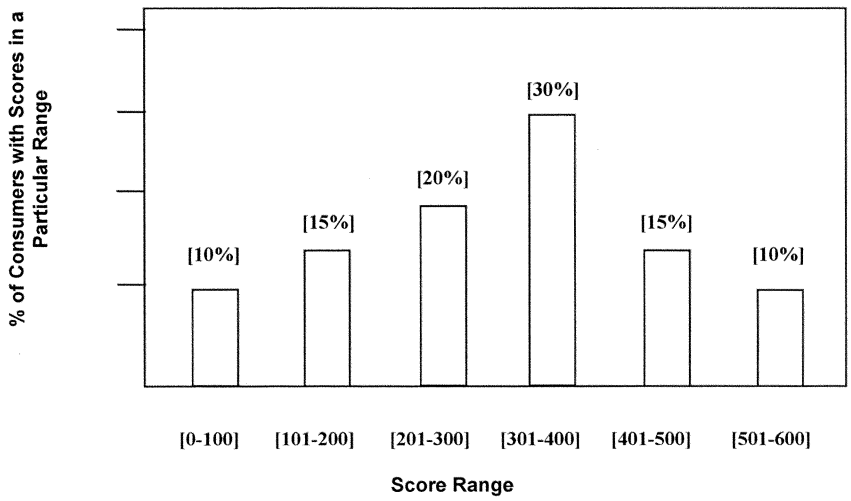
[Name of Entity Providing the Notice]
Your Credit Report[s] and the Pricing of Your Account

What is a credit report?	A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.
How did we use your credit report[s]?	We have used information from your credit report[s] to review the terms of your account with us. Based on our review of your credit report[s], we have increased the annual percentage rate on your account.
What if there are mistakes in your credit report[s]?	You have a right to dispute any inaccurate information in your credit report[s]. If you find mistakes on your credit report[s], contact **[insert name of CRA(s)]**, which [is/are] [a consumer reporting agency/consumer reporting agencies] from which we obtained your credit report[s]. It is a good idea to check your credit report[s] to make sure the information [it contains/they contain] is accurate.
How can you obtain a copy of your credit report[s]?	Under federal law, you have the right to obtain a copy of your credit report[s] without charge for 60 days after you receive this notice. To obtain your free report[s], contact **[insert name of CRA(s)]**: *By telephone:* Call toll-free: 1-877-xxx-xxxx *By mail:* Mail your written request to: **[Insert address]** *On the web:* Visit **[insert web site address]**
How can you get more information about credit reports?	For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's web site at www.federalreserve.gov, or the Federal Trade Commission's web site at www.ftc.gov.

H-3. Model form for credit score disclosure exception for loans secured by one to four units of residential real property

[Name of Entity Providing the Notice]
Your Credit Score and the Price You Pay for Credit

Your Credit Score	
Your credit score	**[Insert credit score]** Source: **[Insert source]** Date: **[Insert date score was created]**

Understanding Your Credit Score	
What you should know about credit scores	Your credit score is a number that reflects the information in your credit report. Your credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors. Your credit score can change, depending on how your credit history changes.
How we use your credit score	Your credit score can affect whether you can get a loan and how much you will have to pay for that loan.
The range of scores	Scores range from a low of **[Insert bottom number in the range]** to a high of **[Insert top number in the range]**. Generally, the higher your score, the more likely you are to be offered better credit terms.
How your score compares to the scores of other consumers	 **[or]** [Your credit score ranks higher than [X] percent of U.S. consumers.]

Understanding Your Credit Score (continued)	
Key factors that adversely affected your credit score	**[Insert first factor]** **[Insert second factor]** **[Insert third factor]** **[Insert fourth factor]** **[Insert fifth factor, if applicable]**

Checking Your Credit Report	
What if there are mistakes in your credit report?	You have a right to dispute any inaccurate information in your credit report. If you find mistakes on your credit report, contact the consumer reporting agency. It is a good idea to check your credit report to make sure the information it contains is accurate.
How can you obtain a copy of your credit report?	Under federal law, you have the right to obtain a free copy of your credit report from each of the nationwide consumer reporting agencies once a year. To order your free annual credit report— *By telephone:* Call toll-free: 1-877-322-8228 *On the web:* Visit www.annualcreditreport.com *By mail:* Mail your completed Annual Credit Report Request Form (which you can obtain from the Federal Trade Commission's web site at http://www.ftc.gov/ bcp/conline/include/requestformfinal.pdf) to: Annual Credit Report Request Service P.O. Box 105281 Atlanta, GA 30348-5281
How can you get more information?	For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's web site at www.federalreserve.gov, or the Federal Trade Commission's web site at www.ftc.gov.

Notice to the Home Loan Applicant

In connection with your application for a home loan, the lender must disclose to you the score that a consumer reporting agency distributed to users and the lender used in connection with your home loan, and the key factors affecting your credit scores.

The credit score is a computer generated summary calculated at the time of the request and based on information that a consumer reporting agency or lender has on file. The scores are based on data about your credit history and payment patterns. Credit scores are important because they are used to assist the lender in determining whether you will obtain a loan. They may also be used to determine what interest rate you may be offered on the mortgage. Credit scores can change over time, depending on your conduct, how your credit history and payment patterns change, and how credit scoring technologies change.

Because the score is based on information in your credit history, it is very important that you review the credit-related information that is being furnished to make sure it is accurate. Credit records may vary from one company to another.

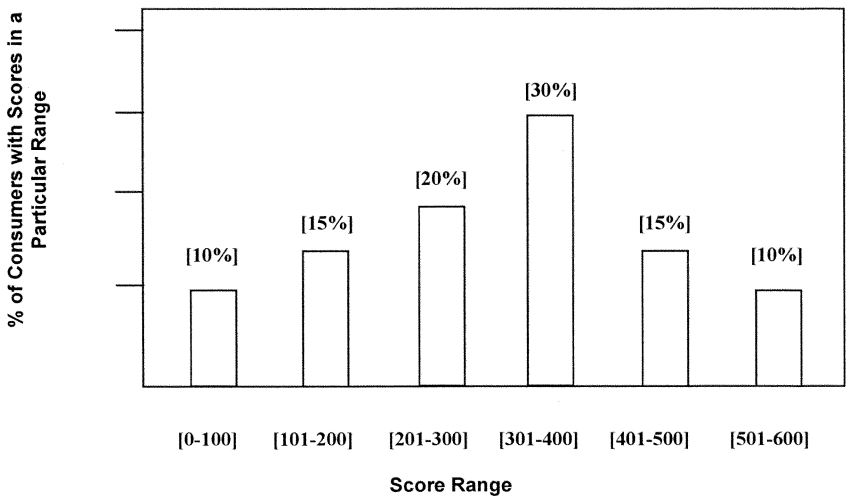
If you have questions about your credit score or the credit information that is furnished to you, contact the consumer reporting agency at the address and telephone number provided with this notice, or contact the lender, if the lender developed or generated the credit score. The consumer reporting agency plays no part in the decision to take any action on the loan application and is unable to provide you with specific reasons for the decision on a loan application.

If you have questions concerning the terms of the loan, contact the lender.

H-4. Model form for credit score disclosure exception for loans not secured by residential real property

[Name of Entity Providing the Notice]
Your Credit Score and the Price You Pay for Credit

Your Credit Score	
Your credit score	**[Insert credit score]** Source: **[Insert source]** Date: **[Insert date score was created]**

Understanding Your Credit Score	
What you should know about credit scores	Your credit score is a number that reflects the information in your credit report. Your credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors. Your credit score can change, depending on how your credit history changes.
How we use your credit score	Your credit score can affect whether you can get a loan and how much you will have to pay for that loan.
The range of scores	Scores range from a low of **[Insert bottom number in the range]** to a high of **[Insert top number in the range]**. Generally, the higher your score, the more likely you are to be offered better credit terms.
How your score compares to the scores of other consumers	 **[or]** [Your credit score ranks higher than [X] percent of U.S. consumers.]

Understanding Your Credit Score (continued)	
Key factors that adversely affected your credit score	**[Insert first factor]** **[Insert second factor]** **[Insert third factor]** **[Insert fourth factor]** **[Insert fifth factor, if applicable]**

Checking Your Credit Report	
What if there are mistakes in your credit report?	You have a right to dispute any inaccurate information in your credit report. If you find mistakes on your credit report, contact the consumer reporting agency. It is a good idea to check your credit report to make sure the information it contains is accurate.
How can you obtain a copy of your credit report?	Under federal law, you have the right to obtain a free copy of your credit report from each of the nationwide consumer reporting agencies once a year. To order your free annual credit report— *By telephone:* Call toll-free: 1-877-322-8228 *On the web:* Visit www.annualcreditreport.com *By mail:* Mail your completed Annual Credit Report Request Form (which you can obtain from the Federal Trade Commission's web site at http://www.ftc.gov/ bcp/conline/include/requestformfinal.pdf) to: Annual Credit Report Request Service P.O. Box 105281 Atlanta, GA 30348-5281
How can you get more information?	For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's web site at www.federalreserve.gov, or the Federal Trade Commission's web site at www.ftc.gov.

H-5. Model form for loans where credit score is not available

[Name of Entity Providing the Notice]
Credit Scores and the Price You Pay for Credit

Your Credit Score	
Your credit score	Your credit score is not available from **[Insert name of CRA]**, which is a consumer reporting agency, because they may not have enough information about your credit history to calculate a score.
What you should know about credit scores	A credit score is a number that reflects the information in a credit report. A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors. A credit score can change, depending on how a consumer's credit history changes.
Why credit scores are important	Credit scores are important because consumers who have higher credit scores generally will get more favorable credit terms. Not having a credit score can affect whether you can get a loan and how much you will have to pay for that loan.

Checking Your Credit Report	
What if there are mistakes in your credit report?	You have a right to dispute any inaccurate information in your credit report. If you find mistakes on your credit report, contact the consumer reporting agency. It is a good idea to check your credit report to make sure the information it contains is accurate.
How can you obtain a copy of your credit report?	Under federal law, you have the right to obtain a free copy of your credit report from each of the nationwide consumer reporting agencies once a year. To order your free annual credit report— *By telephone:* Call toll-free: 1-877-322-8228 *On the web:* Visit www.annualcreditreport.com *By mail:* Mail your completed Annual Credit Report Request Form (which you can obtain from the Federal Trade Commission's web site at http://www.ftc.gov/bcp/conline/include/requestformfinal.pdf) to: Annual Credit Report Request Service P.O. Box 105281 Atlanta, GA 30348-5281

Checking Your Credit Report (continued)	
How can you get more information?	For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's web site at www.federalreserve.gov, or the Federal Trade Commission's web site at www.ftc.gov.

Federal Trade Commission

16 CFR Chapter I

For the reasons discussed in the joint preamble, the Federal Trade Commission proposes to amend chapter I, title 16, Code of Federal Regulations, as follows:

1. Add new part 640 to read as follows:

PART 640—DUTIES OF CREDITORS REGARDING RISK-BASED PRICING

Sec.
640.1 Scope.
640.2 Definitions.
640.3 General requirements for risk-based pricing notices.
640.4 Content, form, and timing of risk-based pricing notices.
640.5 Exceptions.
640.6 Rules of construction.

Authority: Pub. L. 108–159, sec. 311; 15 U.S.C. 1681m(h).

§ 640.1 Scope.

(a) *Coverage.* (1) *In general.* This part applies to any person that both—

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

(ii) Based in whole or in part on the consumer report, grants, extends, or otherwise provides credit to the 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.

(2) *Business credit excluded.* This part does not apply to any person that uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to a consumer or to any other applicant primarily for a business purpose.

(b) *Relation to Board of Governors of the Federal Reserve System rules.* The rules in this part were developed jointly with the Board of Governors of the Federal Reserve System (Board) and are substantively identical to the Board's risk-based pricing rules in 12 CFR 222. Both rules apply to the covered person described in paragraph (a) of this section. Compliance with either the Board's rules or the Commission's rules satisfies the requirements of the statute.

(c) *Enforcement.* The provisions of this part will be enforced in accordance with the enforcement authority set forth in sections 621(a) and (b) of the FCRA.

§ 640.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Annual percentage rate* has the same meaning as in 12 CFR 226.14(b) with respect to an open-end credit plan and as in 12 CFR 226.22 with respect to closed-end credit.

(b) *Closed-end credit* has the same meaning as in 12 CFR 226.2(a)(10).

(c) *Consummation* means the time that a consumer becomes contractually obligated on a credit transaction.

(d) *Credit* has the same meaning as in 15 U.S.C. 1681a(r)(5).

(e) *Creditor* has the same meaning as in 15 U.S.C. 1681a(r)(5).

(f) *Credit card* has the same meaning as in 15 U.S.C. 1681a(r)(2).

(g) *Credit card issuer* has the same meaning as ''card issuer'' in 15 U.S.C. 1681a(r)(1)(A).

(h) *Credit score* has the same meaning as in 15 U.S.C. 1681g(f)(2)(A).

(i) *Material terms* means—

(1)(i) In the case of credit extended under an open-end credit plan, the annual percentage rate required to be disclosed under 12 CFR 226.6(a)(2), excluding both any temporary initial rate that is lower than the rate that will apply after the temporary rate expires and any 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;

(ii) In the case of a credit card (other than a credit card that is used to access a home equity line of credit), the annual percentage rate that applies to purchases (''purchase annual percentage rate'') and no other annual percentage rate;

(2) In the case of closed-end credit, the annual percentage rate required to be disclosed prior to consummation under 12 CFR 226.17(c) and 226.18(e); and

(3) In the case of credit for which there is no annual percentage rate, such as credit extended to consumers by a telephone company or a utility, any monetary terms that the person varies based on information in a consumer report, such as the down payment or deposit.

(j) *Materially less favorable* means, when applied to material terms, that the terms granted or extended to a consumer differ from the terms granted or extended to another consumer from or through the same person such that the cost of credit to the first consumer would be significantly greater than the cost of credit granted or extended to the other consumer. For purposes of this definition, factors relevant to determining the significance of a difference in cost include the type of credit product, the term of the credit extension, if any, and the extent of the difference between the material terms granted or extended to the two consumers.

(k) *Open-end credit plan* has the same meaning as in 15 U.S.C. 1602(i), as interpreted by the Board in Regulation Z (12 CFR part 226) and the Official Staff Commentary to Regulation Z (Supplement I to Part 226).

§ 640.3 General requirements for risk-based pricing notices.

(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 when consumers must receive a notice.* A person may make a determination under paragraph (a) of this section by directly comparing the material terms offered to each consumer and the material terms offered to other consumers in similar types of transactions. As an alternative to making this direct comparison, a person may make the determination for a given class of products 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 that represents the point at which approximately 40 percent of its consumers have higher credit scores and approximately 60 percent of its consumers have lower credit scores (hereafter referred to as the ''cutoff score''); and

(B) Providing a risk-based pricing notice to each consumer whose credit score is lower than the cutoff score.

(ii) *Determining the cutoff score.* (A) *Sampling approach.* A person that currently uses risk-based pricing with respect to the credit products it offers must calculate the appropriate cutoff score by considering the credit scores of all or a representative sample of the

consumers to whom it has granted, extended, or otherwise provided credit for a given class of products, such as mortgages, credit cards, or auto loans.

(B) *Secondary source approach in limited circumstances.* A person that is a new entrant into the credit business, introduces new credit products, or starts to use risk-based pricing with respect to the credit products it currently offers may initially determine the appropriate cutoff score based on information derived from appropriate market research or relevant third-party sources for similar products, 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 appropriate cutoff score based on information from the merged or acquired party.

(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)(ii)(A) of this section. A person using the credit score proxy method using market research, third-party data, or information from a merged or acquired party as permitted by paragraph (b)(1)(ii)(B) of this section generally must calculate its own cutoff score(s) based on the credit scores of its own consumers in the manner described in paragraph (b)(1)(ii)(A) of this section within one year after it begins using a cutoff score derived from data supplied by third-party sources. If such a person does not grant, extend, or otherwise provide credit to new consumers during that one-year period, and therefore lacks any 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 third-party source data as provided in paragraph (b)(1)(ii)(B) until it grants, extends, or otherwise provides credit to new consumers and is able to collect data on which to base the recalculation.

(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 otherwise provided to a consumer must determine the appropriate 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. 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 appropriate cutoff score using a reasonable means. In such cases, use of either one of the methods that the person regularly uses or the average credit score of each consumer is deemed to be a reasonable means of calculating the cutoff score.

(iii) *Lack of availability of a credit score.* For purposes of this section, a person using the credit score proxy method who grants, extends, or otherwise 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.

(iv) *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 credit scores of consumers to whom it issued credit cards within the preceding 3 months. The credit card issuer determines that approximately 40 percent of the sampled consumers have a credit score at or above 720 (on a scale of 350 to 850) and approximately 60 percent of the sampled consumers have a credit score below 720. Thus, 720 is an appropriate cutoff score for this card issuer. 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 700. Since the consumer's 700 credit score falls below the 720 cutoff score, the credit card issuer provides a risk-based pricing notice to the consumer.

(B) An auto lender engaged 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 extends 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 otherwise provided to a consumer by placing the consumer within one of a discrete number of pricing tiers, based in whole or in part on a consumer 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 who does not qualify for the top tier (that is, the lowest-priced tier). For example, a creditor that uses a tiered pricing structure with annual percentage rates of 8, 10, 12, and 14 percent would comply by providing the risk-based pricing notice to all consumers who are granted credit at annual percentage rates of 10, 12, and 14 percent, based in whole or in part on information from their consumer reports.

(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 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 creditor 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 placed within the bottom six tiers.

(c) *Application to credit card issuers.* (1) *In general.* Except as otherwise provided by this part, a credit card issuer is subject to the requirements of paragraph (a) of this section and must provide a risk-based pricing notice to a consumer in the form and manner required by this part if—

(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 a purchase annual percentage rate that is greater than the lowest purchase annual percentage rate available under that 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 creditor provides a single purchase annual percentage rate, excluding both 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 purchase annual percentage rate available under the credit card offer for which the consumer applied, even if a lower purchase annual percentage rate is available under a different credit card offer issued by the credit card issuer.

(3) *Example.* 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 credit card issuer provides a credit card to the consumer with a purchase annual percentage rate of 12 percent based in whole or in part on a consumer report. Unless an exception applies, the credit card issuer must provide a risk-based pricing notice to the consumer because the consumer received credit at a purchase annual percentage rate greater than the lowest purchase annual percentage rate available under that solicitation. On the other hand, if the credit card issuer provided a credit card to the consumer at a purchase annual percentage rate of 10 percent, the credit card issuer would not be required to provide a risk-based pricing notice to that consumer, even if under a different credit card solicitation, that consumer or other consumers might qualify for a purchase annual percentage rate of 8 percent.

(d) *Account review.* (1) *In general.* Except as otherwise provided in this part, a person is subject to the requirements of paragraph (a) of this section and must provide a risk-based pricing notice to a consumer in the form and manner required by this part if the person—

(i) Uses a consumer report in connection with a review of credit that has been extended to the consumer; and

(ii) Based in whole or in part on the consumer report, increases the annual percentage rate (the purchase annual percentage rate in the case of a credit card).

(2) *Example.* A credit card issuer periodically obtains consumer reports for the purpose of reviewing the terms of credit it has extended to consumers in connection with credit cards. As a result of this review, the credit card issuer increases the purchase annual percentage rate applicable to a consumer's credit card based in whole or in part on information in a consumer report. The credit card issuer is subject to the requirements of paragraph (a) of this section and must provide a risk-based pricing notice to the consumer.

§ 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 informing the consumer 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 informing the consumer that the terms offered, such as the annual percentage rate, have been set based on information from a consumer report;

(iii) A statement informing the consumer 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 consumer 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 that consumer reporting agency without charge for 60 days after receipt of the notice;

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

(viii) A statement directing consumers to the web sites of the Board and 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 informing the consumer 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 based in whole or in part on information from a consumer report;

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

(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 consumer report;

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

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

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

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

(b) *Form of the notice.* (1) *In general.* The risk-based pricing notice required by § 640.3(a), (c), or (d) must be:

(i) Clear and conspicuous; and

(ii) Provided to the consumer in oral, written, or electronic form.

(2) *Model forms.* A model form of the risk-based pricing notice required by § 640.3(a) and (c) is contained in 16 CFR Part 698, Appendix B. Appropriate use of Model Form B–1 is deemed to comply with the requirements of § 640.3(a) and (c). A model form of the risk-based pricing notice required by § 640.3(d) is contained in Appendix B–2. Appropriate use of Model Form B–2 is deemed to comply with the requirements of § 640.3(d). Use of the model forms is optional.

(c) *Timing.* A risk-based pricing notice must be provided to the consumer—

(1) In the case of a grant, extension, or other provision of closed-end credit, before consummation of the transaction, but not earlier than the time the decision to approve an application for, or a grant, extension, or other provision of, credit, is communicated to the consumer by the person required to provide the notice;

(2) In the case of credit granted, extended, or provided under an open-end credit plan, before the first transaction is made under the plan, but not earlier than the time the decision to approve an application for, or a grant, extension, or other provision of, credit is communicated to the consumer by the person required to provide the notice; or

(3) In the case of a review of credit that has been extended to the consumer, at the time the decision to increase the annual percentage rate (purchase annual percentage rate in the case of a credit card) based on a consumer report is communicated to the consumer by the person required to provide the notice, or if no notice of the increase in the annual percentage rate is provided to the consumer prior to the effective date of the change in the annual percentage rate, no later than five days after the effective date of the change in the annual percentage rate.

§ 640.5 Exceptions.

(a) *Application for specific terms.* (1) *In general.* A person is not required to provide a risk-based pricing notice to the consumer under § 640.3(a) or (c) if the consumer applies for specific material terms and is granted those terms, unless those terms were specified by the person using the consumer report after the consumer applied for or requested credit and after the person obtained the consumer report. For purposes of this section, ''specific material terms'' means a single material term, or set of material terms, such as an annual percentage rate of 10 percent, and not a range of alternatives, such as an annual percentage rate that may be 8, 10, or 12 percent, or between 8 and 12 percent, based in whole or in part upon the consumer's creditworthiness as reflected in a consumer report.

(2) *Example.* A consumer receives a solicitation from a credit card issuer that is a firm offer of credit. The terms of the solicitation are based in whole or in part on information from a consumer report that the credit card issuer obtained in accordance with the FCRA's provisions regarding firm offers of credit. The solicitation offers the consumer a credit card with a single purchase annual percentage rate of 12 percent. The consumer applies for and receives a credit card with an annual percentage rate of 12 percent. Other customers with the same credit card have a purchase annual percentage rate of 10 percent. The exception applies because the consumer applied for specific material terms and was granted those terms. Although the credit card issuer specified the material term or terms in the firm offer of credit based in whole or in part on a consumer report, the credit card issuer specified that term or those terms before, not after, the consumer applied for or requested credit.

(b) *Adverse action notice.* A person is not required to provide a risk-based pricing notice to the consumer under § 640.3(a), (c), or (d) if the person provides an adverse action notice to the consumer pursuant to section 615(a) of the FCRA.

(c) *Prescreened solicitations.* (1) *In general.* A person is not required to provide a risk-based pricing notice to the consumer under § 640.3(a) or (c) if the person:

(i) Obtains a consumer report that is a prescreened list as described in section 604(c)(2) of the FCRA; and

(ii) Uses the consumer report for the purpose of making a firm offer of credit to the consumer, as described in section 603(l) of the FCRA, without regard to the material terms that the person includes in other firm offers of credit.

(2) *Example.* A credit card issuer obtains two prescreened lists from a consumer reporting agency. One list includes consumers with high credit scores. The other list includes consumers with low credit scores. The issuer mails a firm offer of credit to the high credit score consumers with a single purchase annual percentage rate of 10 percent. The issuer also mails a firm offer of credit to the low credit score consumers with a single purchase annual percentage rate of 14 percent. The credit card issuer is not required to provide a risk-based pricing notice to the low credit score consumers who receive the 14 percent offer because use of a consumer report to make a firm offer of credit does not trigger the risk-based pricing notice requirement based on differences in the material terms of two or more firm offers of credit.

(d) *Loans secured by residential real property—credit score disclosure.* (1) *In general.* A person is not required to provide a risk-based pricing notice to the consumer under § 640.3(a) or (c) if:

(i) The credit requested by the consumer involves an extension of credit that is or will be secured by one to four units of residential real property; and

(ii) The person provides to the consumer a notice that contains the following—

(A) A statement informing the consumer that a consumer report (or credit report) is a record of the consumer's credit history and includes information about whether the consumer pays his or her obligations on time and how much the consumer owes to creditors;

(B) A statement informing the consumer that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time to reflect changes in the consumer's credit history;

(C) A statement that the consumer's credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;

(D) The information required to be disclosed to the consumer pursuant to section 609(g) of the FCRA;

(E) The distribution of credit scores among all consumers using the same scale as that of the credit score that is provided to the consumer, presented in the form of a bar graph containing a minimum of six bars that illustrates the percentage of consumers with credit scores within the range of scores reflected in each bar or by other clear and readily understandable graphical means, or a clear and readily understandable statement informing the consumer how his or her credit score compares to the scores of other consumers. Use of a graph or statement obtained from the person providing the credit score that meets the requirements of this paragraph (d)(1)(ii)(E) is deemed to comply with this requirement;

(F) 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 consumer report;

(G) A statement that federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free consumer report from each of the nationwide consumer reporting agencies once during any 12-month period;

(H) Contact information for the centralized source from which consumers may obtain their free annual consumer reports; and

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

(2) *Form of the notice.* The notice described in paragraph (d)(1)(ii) of this section must be:

(i) Clear and conspicuous;

(ii) Provided on or with the notice required by section 609(g) of the FCRA;

(iii) Segregated from other information provided to the consumer, except for the notice required by section 609(g) of the FCRA; and

(iv) Provided to the consumer in writing and in a form that the consumer may keep.

(3) *Timing.* The notice described in paragraph (d)(1)(ii) of this section must be provided to the consumer at the time the disclosure required by section 609(g) of the FCRA is provided to the consumer, 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.

(4) *Model form.* A model form of the notice described in paragraph (d)(1)(ii) of this section consolidated with the notice required by section 609(g) of the FCRA is contained in Appendix B–3 of 16 CFR part 698. Appropriate use of Model Form B–3 is deemed to comply with the requirements of § 640.3(d). Use of the model form is optional.

(e) *Other extensions of credit—credit score disclosure.* (1) *In general.* A person is not required to provide a risk-based pricing notice to the consumer under § 640.3(a) or (c) if:

(i) The credit requested by the consumer involves an extension of credit other than an extension of credit that is or will be secured by one to four units of residential real property; and

(ii) The person provides to the consumer a notice that contains the following—

(A) A statement informing the consumer that a consumer report (or credit report) is a record of the consumer's credit history and includes information about whether the consumer pays his or her obligations on time and how much the consumer owes to creditors;

(B) A statement informing the consumer that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time to reflect changes in the consumer's credit history;

(C) A statement that the consumer's credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;

(D) The current credit score of the consumer or the most recent credit score of the consumer that was previously calculated by the consumer reporting agency for a purpose related to the extension of credit;

(E) The range of possible credit scores under the model used to generate the credit score;

(F) The distribution of credit scores among all consumers using the same scale as that of the credit score that is provided to the consumer, presented in the form of a bar graph containing a minimum of six bars that illustrates the percentage of consumers with credit scores within the range of scores reflected in each bar, or by other clear and readily understandable graphical means, or a clear and readily understandable statement informing the consumer how his or her credit score compares to the scores of other consumers. Use of a graph or statement obtained from the person providing the credit score that meets the requirements of this paragraph (e)(1)(ii)(F) is deemed to comply with this requirement;

(G) The date on which the credit score was created;

(H) The name of the consumer reporting agency or other person that provided the credit score;

(I) 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 consumer report;

(J) A statement that federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free consumer report from each of the nationwide consumer reporting agencies once during any 12-month period;

(K) Contact information for the centralized source from which consumers may obtain their free annual consumer reports; and

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

(2) *Form of the notice.* The notice described in paragraph (e)(1)(ii) of this section must be:

(i) Clear and conspicuous;

(ii) Segregated from other information provided to the consumer; and

(iii) Provided to the consumer in writing and in a form that the consumer may keep.

(3) *Timing.* The notice described in paragraph (e)(1)(ii) of this section must be provided 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.

(4) *Model form.* A model form of the notice described in paragraph (e)(1)(ii) of this section is contained in Appendix B–4 in 16 CFR part 698. Appropriate use of Model Form B–4 is deemed to comply with the requirements of § 640.5(e). Use of the model form is optional.

(f) *Credit score not available.* (1) *In general.* A person is not required to provide a risk-based pricing notice to the consumer under § 640.3(a) or (c) if the person:

(i) Regularly obtains credit scores from a consumer reporting agency and provides credit score disclosures to consumers in accordance with paragraphs (d) or (e) of this section, but a credit score is not available from the consumer reporting agency from which the person regularly obtains credit scores for a consumer to whom the person grants, extends, or otherwise provides credit based in whole or in part on information in a consumer report;

(ii) Does not obtain a credit score from another consumer reporting agency in connection with granting, extending, or otherwise providing credit to the consumer; and

(iii) Provides to the consumer a notice that contains the following—

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

(B) A statement informing the consumer that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time in response to changes in the consumer's credit history;

(C) A statement informing the consumer that credit scores are important because consumers with higher credit scores generally obtain more favorable credit terms;

(D) A statement informing the consumer that not having a credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;

(E) A statement that the person was not able to obtain a credit score about the consumer from a consumer reporting agency, which must be identified by name, generally due to insufficient information regarding the consumer's credit history;

(F) 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 consumer report;

(G) A statement that federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free consumer report from

each of the nationwide consumer reporting agencies once during any 12-month period;

(H) The contact information for the centralized source from which consumers may obtain their free annual consumer reports; and

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

(2) *Example.* A person that uses consumer reports to set the material terms of non-mortgage credit granted, extended, or otherwise provided to consumers regularly requests credit scores from a particular consumer reporting agency and provides those credit scores and additional information to consumers to satisfy the requirements of paragraph (e) of this section. That consumer reporting agency provides to the person a consumer report on a particular consumer that contains one trade line, but does not provide the person with a credit score on that consumer. If the person does not obtain a credit score from another consumer reporting agency and, based in whole or in part on information in a consumer report, grants, extends, or otherwise provides credit to the consumer, the person may provide the notice described in paragraph (f)(1)(iii) of this section. If, however, the person obtains a credit score from another consumer reporting agency, the person may not rely upon the exception in paragraph (f) of this section, but may satisfy the requirements of paragraph (e) of this section.

(3) *Form of the notice.* The notice described in paragraph (f)(1)(iii) of this section must be:

(i) Clear and conspicuous;

(ii) Segregated from other information provided to the consumer; and

(iii) Provided to the consumer in writing and in a form that the consumer may keep.

(4) *Timing.* The notice described in paragraph (f)(1)(iii) of this section must be provided to the consumer as soon as reasonably practicable after the person has requested the credit score, but in any event not later than consummation of a transaction in the case of closed-end credit or when the first transaction is made under an open-end credit plan.

(5) *Model form.* A model form of the notice described in paragraph (f)(1)(iii) of this section is contained in Appendix B–5 in 16 CFR part 698. Appropriate use of Model Form B–5 is deemed to comply with the requirements of § 640.5(f). Use of the model form is optional.

§ 640.6 Rules of construction.

For purposes of this part, the following rules of construction apply:

(a) *One notice per credit extension.* A consumer is entitled to no more than one risk-based pricing notice under § 640.3(a) or (c), or one notice under § 640.5(d), (e), or (f), for each grant, extension, or other provision of credit. Notwithstanding the foregoing, even if a consumer has previously received a risk-based pricing notice in connection with a grant, extension, or other provision of credit, another risk-based pricing notice is required if the conditions set forth in § 604.3(d) have been met.

(b) *Multi-party transactions.* (1) *Initial creditor.* The person to whom a credit obligation is initially payable must provide the risk-based pricing notice described in § 604.3(a) or (c), or satisfy the requirements for and provide the notice required under one of the exceptions in § 640.5(d), (e), or (f), even if that person immediately assigns the credit agreement to a third party and is not the source of funding for the credit.

(2) *Purchasers or assignees.* A purchaser or assignee of a credit contract with a consumer is not subject to the requirements of this part and is not required to provide the risk-based pricing notice described in § 640.3(a) or (c), or satisfy the requirements for and provide the notice required under one of the exceptions in § 640.5(d), (e), or (f).

(3) *Examples.* (i) A consumer obtains credit to finance the purchase of an automobile. If the auto dealer is the person to whom the loan obligation is initially payable, such as where the auto dealer is the original creditor under a retail installment sales contract, the auto dealer must provide the risk-based pricing notice to the consumer (or satisfy the requirements for and provide the notice required under one of the exceptions noted above), even if the auto dealer immediately assigns the loan to a bank or finance company. The bank or finance company, which is an assignee, has no duty to provide a risk-based pricing notice to the consumer.

(ii) A consumer obtains credit to finance the purchase of an automobile. If a bank or finance company is the person to whom the loan obligation is initially payable, the bank or finance company must provide the risk-based pricing notice to the consumer (or satisfy the requirements for and provide the notice required under one of the exceptions noted above) based on the terms offered by that bank or finance company only. The auto dealer has no duty to provide a risk-based pricing notice to the consumer.

PART 698—MODEL FORMS AND DISCLOSURES

2. Revise the authority citation in part 698 to read as follows:

Authority: 15 U.S.C. 1681e, 1681g, 1681j, 1681m, 1681s, and 1681s–3; Pub. L. 108–159, sections 211(d), 214(b), and 311; 117 Stat. 1952.

3. Amend § 698.1 by revising paragraph (b) to read as follows:

§ 698.1 Authority and purpose.

* * * * *

(b) *Purpose.* The purpose of this part is to comply with sections 607(d), 609(c), 609(d), 612(a), 615(d), 615(h) and 624 of the Fair Credit Reporting Act, as amended by the Fair and Accurate Credit Transactions Act of 2003, and sections 211(d) and 214(b) of the Fair and Accurate Credit Transactions Act of 2003.

4. In part 698, Appendix B is added to read as follows:

Appendix B—Model Forms for Risk-Based Pricing and Credit Score Disclosure Exception Notices

1. This appendix contains two model forms for risk-based pricing notices and three model forms for use in connection with the credit score disclosure exceptions. Each of the model forms is designated for use in a particular set of circumstances as indicated by the title of that model form.

2. Model form B–1 is for use in complying with the general risk-based pricing notice requirements in § 640.2 of this chapter. Model form B–2 is for risk-based pricing notices given in connection with account review. Model form B–3 is for use in connection with the credit score disclosure exception for loans secured by residential real property. Model form B–4 is for use in connection with the credit score disclosure exception for loans that are not secured by residential real property. Model form B–5 is for use in connection with the credit score disclosure exception when no credit score is available for a consumer. All forms contained in this appendix are models; their use is optional.

3. A creditor may change the forms by rearranging the format without modifying the substance of the disclosures. The rearrangement of the model forms may not be so extensive as to materially affect the substance, clarity, comprehensibility, or meaningful sequence of the forms. Creditors making revisions with that effect will lose the benefit of the safe harbor for appropriate use of Appendix B model forms. A creditor is not required to conduct consumer testing when rearranging the format of the model forms. Acceptable changes include, for example:

a. Corrections or updates to telephone numbers, mailing addresses, or web site addresses that may change over time.

b. The addition of graphics or icons, such as the creditor's corporate logo.

c. Alteration of the shading or color contained in the model forms.

d. Use of a different form of graphical presentation to depict the distribution of credit scores.

4. If a creditor uses an appropriate Appendix B model form, or modifies a form in accordance with the above instructions, that creditor shall be deemed to be acting in compliance with the provisions of 16 CFR 660.3, 660.4, and 660.5, as applicable. It is intended that appropriate use of model form B–3 also will be compliant with the disclosure that may be required under section 609(g) of the FCRA.

B–1 Model form for risk-based pricing notice

B–2 Model form for account review risk-based pricing notice

B–3 Model form for credit score disclosure exception for credit secured by one to four units of residential real property

B–4 Model form for credit score disclosure exception for loans not secured by residential real property

B–5 Model form for credit score disclosure exception for loans where credit score is not available

B-1. Model form for risk-based pricing notice

[Name of Entity Providing the Notice]
Your Credit Report[s] and the Price You Pay for Credit

What is a credit report?	A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.
How did we use your credit report[s]?	We used information from your credit report[s] to set the terms of the credit we are offering you, such as the [Annual Percentage Rate/down payment]. The terms offered to you may be less favorable than the terms offered to consumers who have better credit histories.
What if there are mistakes in your credit report[s]?	You have a right to dispute any inaccurate information in your credit report[s]. If you find mistakes on your credit report[s], contact **[insert name of CRA(s)]**, which [is/are] the [consumer reporting agency/consumer reporting agencies] from which we obtained your credit report[s]. It is a good idea to check your credit report[s] to make sure the information [it contains/they contain] is accurate.
How can you obtain a copy of your credit report[s]?	Under federal law, you have the right to obtain a copy of your credit report[s] without charge for 60 days after you receive this notice. To obtain your free report[s], contact **[insert name of CRA(s)]**: *By telephone:* Call toll-free: 1-877-xxx-xxxx *By mail:* Mail your written request to: **[Insert address]** *On the web:* Visit **[insert web site address]**
How can you get more information about credit reports?	For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's web site at www.federalreserve.gov, or the Federal Trade Commission's web site at www.ftc.gov.

B-2. Model form for account review risk-based pricing notice

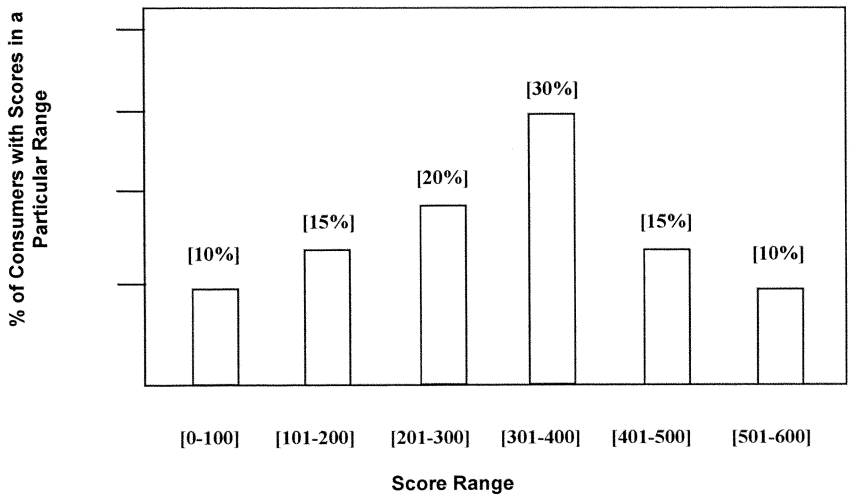
[Name of Entity Providing the Notice]
Your Credit Report[s] and the Pricing of Your Account

What is a credit report?	A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.
How did we use your credit report[s]?	We have used information from your credit report[s] to review the terms of your account with us. Based on our review of your credit report[s], we have increased the annual percentage rate on your account.
What if there are mistakes in your credit report[s]?	You have a right to dispute any inaccurate information in your credit report[s]. If you find mistakes on your credit report[s], contact **[insert name of CRA(s)]**, which [is/are] [a consumer reporting agency/consumer reporting agencies] from which we obtained your credit report[s]. It is a good idea to check your credit report[s] to make sure the information [it contains/they contain] is accurate.
How can you obtain a copy of your credit report[s]?	Under federal law, you have the right to obtain a copy of your credit report[s] without charge for 60 days after you receive this notice. To obtain your free report[s], contact **[insert name of CRA(s)]**: *By telephone:* Call toll-free: 1-877-xxx-xxxx *By mail:* Mail your written request to: **[Insert address]** *On the web:* Visit **[insert web site address]**
How can you get more information about credit reports?	For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's web site at www.federalreserve.gov, or the Federal Trade Commission's web site at www.ftc.gov.

B-3. Model form for credit score disclosure exception for loans secured by one to four units of residential real property

[Name of Entity Providing the Notice]
Your Credit Score and the Price You Pay for Credit

Your Credit Score	
Your credit score	**[Insert credit score]** Source: **[Insert source]** Date: **[Insert date score was created]**

Understanding Your Credit Score	
What you should know about credit scores	Your credit score is a number that reflects the information in your credit report. Your credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors. Your credit score can change, depending on how your credit history changes.
How we use your credit score	Your credit score can affect whether you can get a loan and how much you will have to pay for that loan.
The range of scores	Scores range from a low of **[Insert bottom number in the range]** to a high of **[Insert top number in the range]**. Generally, the higher your score, the more likely you are to be offered better credit terms.
How your score compares to the scores of other consumers	 **[or]** [Your credit score ranks higher than [X] percent of U.S. consumers.]

Understanding Your Credit Score (continued)	
Key factors that adversely affected your credit score	**[Insert first factor]** **[Insert second factor]** **[Insert third factor]** **[Insert fourth factor]** **[Insert fifth factor, if applicable]**

Checking Your Credit Report	
What if there are mistakes in your credit report?	You have a right to dispute any inaccurate information in your credit report. If you find mistakes on your credit report, contact the consumer reporting agency. It is a good idea to check your credit report to make sure the information it contains is accurate.
How can you obtain a copy of your credit report?	Under federal law, you have the right to obtain a free copy of your credit report from each of the nationwide consumer reporting agencies once a year. To order your free annual credit report— *By telephone:* Call toll-free: 1-877-322-8228 *On the web:* Visit www.annualcreditreport.com *By mail:* Mail your completed Annual Credit Report Request Form (which you can obtain from the Federal Trade Commission's web site at http://www.ftc.gov/ bcp/conline/include/requestformfinal.pdf) to: Annual Credit Report Request Service P.O. Box 105281 Atlanta, GA 30348-5281
How can you get more information?	For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's web site at www.federalreserve.gov, or the Federal Trade Commission's web site at www.ftc.gov.

Notice to the Home Loan Applicant

In connection with your application for a home loan, the lender must disclose to you the score that a consumer reporting agency distributed to users and the lender used in connection with your home loan, and the key factors affecting your credit scores.

The credit score is a computer generated summary calculated at the time of the request and based on information that a consumer reporting agency or lender has on file. The scores are based on data about your credit history and payment patterns. Credit scores are important because they are used to assist the lender in determining whether you will obtain a loan. They may also be used to determine what interest rate you may be offered on the mortgage. Credit scores can change over time, depending on your conduct, how your credit history and payment patterns change, and how credit scoring technologies change.

Because the score is based on information in your credit history, it is very important that you review the credit-related information that is being furnished to make sure it is accurate. Credit records may vary from one company to another.

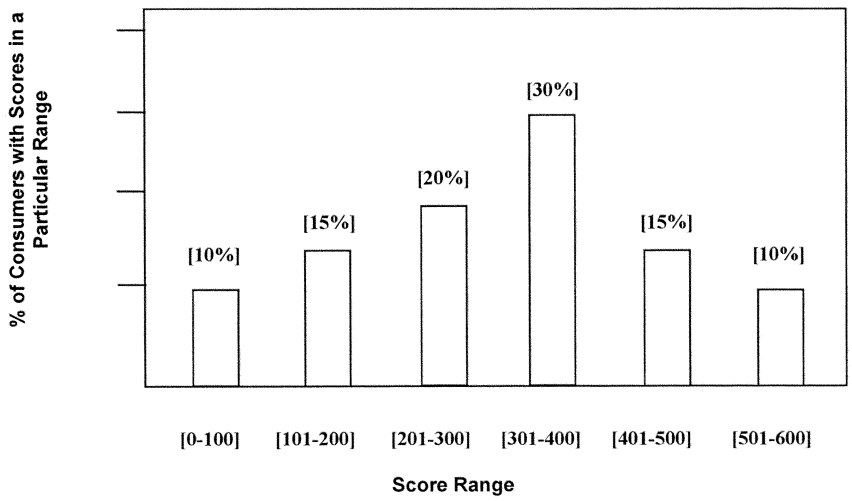
If you have questions about your credit score or the credit information that is furnished to you, contact the consumer reporting agency at the address and telephone number provided with this notice, or contact the lender, if the lender developed or generated the credit score. The consumer reporting agency plays no part in the decision to take any action on the loan application and is unable to provide you with specific reasons for the decision on a loan application.

If you have questions concerning the terms of the loan, contact the lender.

B-4. Model form for credit score disclosure exception for loans not secured by residential real property

[Name of Entity Providing the Notice]
Your Credit Score and the Price You Pay for Credit

Your Credit Score	
Your credit score	**[Insert credit score]** Source: **[Insert source]** Date: **[Insert date score was created]**

Understanding Your Credit Score	
What you should know about credit scores	Your credit score is a number that reflects the information in your credit report. Your credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors. Your credit score can change, depending on how your credit history changes.
How we use your credit score	Your credit score can affect whether you can get a loan and how much you will have to pay for that loan.
The range of scores	Scores range from a low of **[Insert bottom number in the range]** to a high of **[Insert top number in the range]**. Generally, the higher your score, the more likely you are to be offered better credit terms.
How your score compares to the scores of other consumers	 **[or]** [Your credit score ranks higher than [X] percent of U.S. consumers.]

Understanding Your Credit Score (continued)	
Key factors that adversely affected your credit score	**[Insert first factor]** **[Insert second factor]** **[Insert third factor]** **[Insert fourth factor]** **[Insert fifth factor, if applicable]**

Checking Your Credit Report	
What if there are mistakes in your credit report?	You have a right to dispute any inaccurate information in your credit report. If you find mistakes on your credit report, contact the consumer reporting agency. It is a good idea to check your credit report to make sure the information it contains is accurate.
How can you obtain a copy of your credit report?	Under federal law, you have the right to obtain a free copy of your credit report from each of the nationwide consumer reporting agencies once a year. To order your free annual credit report— *By telephone:* Call toll-free: 1-877-322-8228 *On the web:* Visit www.annualcreditreport.com *By mail:* Mail your completed Annual Credit Report Request Form (which you can obtain from the Federal Trade Commission's web site at http://www.ftc.gov/ bcp/conline/include/requestformfinal.pdf) to: Annual Credit Report Request Service P.O. Box 105281 Atlanta, GA 30348-5281
How can you get more information?	For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's web site at www.federalreserve.gov, or the Federal Trade Commission's web site at www.ftc.gov.

B-5. Model form for loans where credit score is not available

[Name of Entity Providing the Notice]
Credit Scores and the Price You Pay for Credit

Your Credit Score	
Your credit score	Your credit score is not available from **[Insert name of CRA]**, which is a consumer reporting agency, because they may not have enough information about your credit history to calculate a score.
What you should know about credit scores	A credit score is a number that reflects the information in a credit report. A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors. A credit score can change, depending on how a consumer's credit history changes.
Why credit scores are important	Credit scores are important because consumers who have higher credit scores generally will get more favorable credit terms. Not having a credit score can affect whether you can get a loan and how much you will have to pay for that loan.

Checking Your Credit Report	
What if there are mistakes in your credit report?	You have a right to dispute any inaccurate information in your credit report. If you find mistakes on your credit report, contact the consumer reporting agency. It is a good idea to check your credit report to make sure the information it contains is accurate.
How can you obtain a copy of your credit report?	Under federal law, you have the right to obtain a free copy of your credit report from each of the nationwide consumer reporting agencies once a year. To order your free annual credit report— *By telephone:* Call toll-free: 1-877-322-8228 *On the web:* Visit www.annualcreditreport.com *By mail:* Mail your completed Annual Credit Report Request Form (which you can obtain from the Federal Trade Commission's web site at http://www.ftc.gov/bcp/conline/include/requestformfinal.pdf) to: Annual Credit Report Request Service P.O. Box 105281 Atlanta, GA 30348-5281

Checking Your Credit Report (continued)	
How can you get more information?	For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's web site at www.federalreserve.gov, or the Federal Trade Commission's web site at www.ftc.gov.

By order of the Board of Governors of the Federal Reserve System, May 8, 2008.

Jennifer J. Johnson,

Secretary of the Board.

By direction of the Commission.

Donald S. Clark,

Secretary.

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