marital status, age (provided the applicant has the capacity to enter into a binding contract), because they receive income from a public assistance program, or because they may have exercised their rights under the Consumer Credit Protection Act. If you believe there has been discrimination in handling your application you should contact the [name and address of the appropriate federal enforcement agency listed in appendix A].

Sincerely,

Form C–5—Sample Disclosure of Right to Request Specific Reasons for Credit Denial Date

Dear Applicant: Thank you for applying to us for _____.

After carefully reviewing your application, we are sorry to advise you that we cannot [open an account for you/grant a loan to you/increase your credit limit] at this time. If you would like a statement of specific reasons why your application was denied, please contact [our credit service manager] shown below within 60 days of the date of this letter. We will provide you with the statement of reasons within 30 days after receiving your request.

Creditor's Name

Address

Telephone Number

If we obtained information from a consumer reporting agency as part of our consideration of your application, its name, address, and [toll-free] telephone number is shown below. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. [You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency.] You have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you received is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency. You can find out about the information contained in your file (if one was used) by contacting:

Consumer reporting agency's name

Address

[Toll-free] Telephone number

[We also obtained your credit score from this consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your credit score: _____

Date: _____

Scores range from a low of _____ to a high of _____

Key factors that adversely affected your credit score:

_____

_____

_____

_____

[Number of recent inquiries on consumer report, as a key factor]

[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at:

Address: _____

_____

[Toll-free] Telephone number:_____]]

Sincerely,

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

* * * * *

■ 4. Supplement I to part 202 is amended by revising paragraph 9(b)(2)–9 to read as follows:

Supplement I to Part 202—Official Staff Interpretations

* * * * *

Section 202.9—Notifications

* * * * *

Paragraph 9(b)(2)

* * * * *

9. *Combined ECOA–FCRA disclosures.* The ECOA requires disclosure of the principal reasons for denying or taking other adverse action on an application for an extension of credit. The Fair Credit Reporting Act (FCRA) requires a creditor to disclose when it has based its decision in whole or in part on information from a source other than the applicant or its own files. Disclosing that a consumer report was obtained and used in the denial of the application, as the FCRA requires, does not satisfy the ECOA requirement to disclose specific reasons. For example, if the applicant's credit history reveals delinquent credit obligations and the application is denied for that reason, to satisfy § 202.9(b)(2) the creditor must disclose that the application was denied because of the applicant's delinquent credit obligations. The FCRA also requires a creditor to disclose, as applicable, a credit score it used in taking adverse action along with related information, including up to four key factors that adversely affected the consumer's credit score (or up to five factors if the number of inquiries made with respect to that consumer report is a key factor). Disclosing the key factors that adversely affected the consumer's credit score does not satisfy the ECOA requirement to disclose specific reasons for denying or taking other adverse action on an application or extension of credit. Sample forms C–1 through C–5 of Appendix C of the regulation provide for both the ECOA and FCRA disclosures. See also comment 9(a)(2)–1.

* * * * *

By order of the Board of Governors of the Federal Reserve System, July 6, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–17585 Filed 7–14–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 222

[Regulation V; Docket No. R–1407]

RIN 7100–AD66

FEDERAL TRADE COMMISSION

16 CFR Parts 640 and 698

RIN R411009

Fair Credit Reporting Risk-Based Pricing Regulations

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

ACTION: Final rules.

SUMMARY: On January 15, 2010, the Board and the Commission published final rules to implement the risk-based pricing provisions in section 311 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), which amended the Fair Credit Reporting Act (FCRA). The final 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 Board and the Commission are amending their respective risk-based pricing rules to require disclosure of credit scores and information relating to credit scores in risk-based pricing notices if a credit score of the consumer is used in setting the material terms of credit. These final rules reflect the new requirements in section 615(h) of the FCRA that were added by section 1100F of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

DATES: These rules are effective August 15, 2011.

FOR FURTHER INFORMATION CONTACT: *Board:* Krista P. Ayoub, Counsel; Mandie K. Aubrey or Nikita M. Pastor, Senior Attorney; or Catherine Henderson, Attorney, Division of Consumer and Community Affairs, (202)

452–3667 or (202) 452–2412, 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: Manas Mohapatra and Katherine White, Attorneys, 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 [1]:

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. Section 311 of the FACT Act added section 615(h), 15 U.S.C. 1681m(h), to the Fair Credit Reporting Act (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 section 615(h) of the FCRA, a person generally must provide a risk-based pricing notice to a consumer when the person uses a consumer report in connection with an extension of credit and, based in whole or in part on the consumer report, extends credit to the consumer on terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers. The risk-based pricing notice is designed primarily to improve the accuracy of consumer reports by alerting consumers to the existence of negative information in their consumer reports, so that consumers can, if they choose, check their consumer reports for accuracy and correct any inaccurate information. The Board and the Commission (the Agencies) jointly published regulations implementing these risk-based pricing provisions on January 15, 2010, which had a mandatory compliance date of January 1, 2011. 75 FR 2724 (January 2010 Final Rule).

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) was signed into law. Pub. L. 111–203, 124 Stat. 1376. Section 1100F of the Dodd-Frank Act amends section 615(h) of the FCRA to require that additional content be disclosed to consumers in risk-based pricing notices; specifically, if a credit score is used in making the credit decision, the creditor must disclose that score and certain information relating to the credit score. The effective date of these amendments is July 21, 2011.[2]

The Agencies published proposed regulations and model forms to reflect these requirements on March 15, 2011. 76 FR 13902. The comment period closed on April 14, 2011, and comments on the Paperwork Reduction Act analysis closed on May 16, 2011. The Agencies received more than 35 comment letters regarding the proposal from banks and other creditors, industry trade associations, consumer groups, individual consumers, and others.

Title X of the Dodd-Frank Act also establishes a Bureau of Consumer Financial Protection (the Bureau), to which rulewriting authority for certain consumer protection laws will transfer. Section 1088(a)(9) of the Dodd-Frank Act amends section 615(h)(6) to provide that rulewriting authority for section 615(h) will transfer to the Bureau. Pursuant to section 1100H of the Dodd-Frank Act, however, this rulewriting authority does not transfer to the Bureau until July 21, 2011.[3] Thus, rulewriting authority for the risk-based pricing provisions of the FCRA, including the amendments prescribed by section 1100F of the Dodd-Frank Act, will not be vested in the Bureau until the date that the section 1100F amendments become effective.

The Agencies believe it is important to have implementing regulations and revised model forms in place as close as possible to July 21, 2011. This will help ensure that consumers receive consistent disclosures of credit scores and information relating to credit scores, and will help facilitate uniform compliance when section 1100F of the Dodd-Frank Act becomes effective.

Accordingly, the Agencies are finalizing amendments to the risk-based pricing rules and notices to incorporate the additional content required by section 1100F of the Dodd-Frank Act, pursuant to their existing authority under section 615(h) of the FCRA. Section 615(h) gives the Agencies the authority to issue rules implementing the risk-based pricing provisions, and requires the Agencies to address in those rules the form, content, timing, and manner of delivery of risk-based pricing notices.

In particular, section 615(h)(5) prescribes certain content requirements for the risk-based pricing notices, but provides that the required content elements are the minimum that must be disclosed. Moreover, section 615(h)(6)(B)(iv) provides that the Agencies must provide a model notice that can be used to comply with section 615(h). Therefore, the Agencies have the authority to add content to the risk-based pricing notices that they deem appropriate. The Agencies believe that adding to the requirements for the risk-based pricing notice the content required by section 1100F of the Dodd-Frank Act, and providing revised model notices is appropriate to avoid consumer confusion, and to ensure timely and consistent compliance with the new content provisions.

As discussed more fully below, the Agencies received some comments from industry and consumer advocates that did not relate to the changes to the model notices to incorporate the section 1100F requirements, such as a new request to exempt certain entities from the risk-based pricing rules entirely. Given the impending transfer of rulemaking authority to the Bureau, however, the Agencies are not making changes to the risk-based pricing rules and notices beyond those required by section 1100F of the Dodd-Frank Act. Such changes are beyond the scope of this rulemaking.

II. Section-by-Section Analysis

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

Section ____.73(a) Content of the Notice

Content

Section 615(h) of the FCRA requires a person to include certain information in a risk-based pricing notice. The January 2010 Final Rule implements the general

[1] The Board is placing the final rules in the part of its regulations that implements the FCRA—12 CFR PART 222. For ease of reference, the discussion in the **SUPPLEMENTARY INFORMATION** section uses the numerical suffix of each of the Board's regulations. The FTC also is placing the final rules and model forms in the part of its regulations implementing the FCRA, specifically, 16 CFR part 640. However, the FTC uses different numerical suffixes that equate to the numerical suffixes discussed in the **SUPPLEMENTARY INFORMATION** section as follows: suffix .70 = FTC suffix .1, suffix .71 = FTC suffix .2, suffix .72 = FTC suffix .3, suffix .73 = FTC suffix .4, suffix .74 = FTC suffix .5, and suffix .75 = FTC suffix .6.

[2] Section 1100H of the Dodd-Frank Act provides that the amendments in Subtitle H of Title X, which includes Section 1100F, become effective on a ''designated transfer date.'' The Secretary of the Treasury set the designated transfer date as July 21, 2011. 75 FR 57252 (Sept. 20, 2010).

[3] Section 1100H of the Dodd-Frank Act provides that the amendments in Subtitle H of Title X, which includes Section 1088, become effective on a ''designated transfer date.'' The Secretary of the Treasury set the designated transfer date as July 21, 2011. 75 FR 57252 (Sept. 20, 2010).

content requirements for risk-based pricing notices in § 222.72(a)(1) and § 640.3(a)(1) (hereafter ''general risk-based pricing notice''). The January 2010 Final Rule also 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 an account review in § 222.72(a)(2) and § 640.3(a)(2) (hereafter ''account review notice'').

Section 1100F of the Dodd-Frank Act amends section 615(h) of the FCRA to require that creditors disclose additional information in risk-based pricing notices. Consistent with section 1100F of the Dodd-Frank Act, proposed ____.73(a)(1) and (a)(2) amended the content requirements of the general risk-based pricing notice and the account review notice, pursuant to section 615(h) of the FCRA. Proposed ____.73(a)(1)(ix) required a person to provide the additional content in a general risk-based pricing notice if a credit score of the consumer to whom a person grants, extends, or otherwise provides credit is used in setting the material terms of credit. Similarly, proposed ____.73(a)(2)(ix) required a person to provide the additional content in an account review notice if a credit score of the consumer whose extension of credit is under review is used in increasing the annual percentage rate.

Specifically, § ____.73(a)(1)(ix)(B)–(F) and § ___.73(a)(2)(ix)(B)–(F) of the proposed rules required the following disclosures: (1) the credit score [4] used by the person in making the credit decision; (2) the range of possible credit scores under the model used to generate the credit score; (3) all of the key factors that adversely affected the credit score, which shall not exceed four key factors, except that if one of the key factors is the number of enquiries made with respect to the consumer report, the number of key factors shall not exceed five; (4) the date on which the credit score was created; and (5) the name of the consumer reporting agency or other person that provided the credit score. In addition, to provide context for the additional content requirements, proposed § ____.73(a)(1)(ix)(A) and § ____.73(a)(2)(ix)(A) required 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.

[4] ''Credit score'' is defined in the January 2010 Final Rule in ___.71(l) to have the same meaning as in section 609(f)(2)(A) of the FCRA, 15 U.S.C. 1681g(f)(2)(A). This is consistent with the definition of ''numerical credit score'' in section 1100F of the Dodd-Frank Act.

Industry commenters generally supported the additional content. Some industry commenters, however, requested additional flexibility in disclosing the factors that adversely affect the credit score, as discussed below. Consumer advocates suggested that the Agencies add additional information related to credit scores to the risk-based pricing notices, as discussed below. For the reasons discussed below, the final rules adopt the changes to § __.73(a)(1)(ix)(A)–(F) and § ___.73(a)(2)(ix)(A)–(F), as proposed, with an addition to clarify that the credit score was used in setting the terms of credit.

Key factors. Several industry commenters and a consumer advocate argued that creditors should have flexibility to disclose only factors that substantially affected the credit score. They asserted that requiring creditors to disclose the top four key factors (or five factors if the number of enquiries made with respect to that consumer report is one of the key factors) was burdensome and expensive for creditors, and confusing and of limited value to consumers. In contrast, one commenter stated that creditors should be required to disclose all factors that affected the credit score, not just the top four key factors (or five factors if the number of enquiries made with respect to that consumer report is a key factor).

Section 1100F of the Dodd-Frank Act requires a person engaging in risk-based pricing to provide the consumer the information set forth in subparagraphs (B) through (E) of section 609(f)(1) of the FCRA. Section 609(f)(1)(C) of the FCRA requires disclosure of all of the key factors that adversely affected the credit score of the consumer in the model used, up to four, subject to section 609(f)(9) of the FCRA. This section requires that if the key factors that adversely affected the credit score include the number of enquiries made with respect to the consumer report, the number of enquiries must also be disclosed as a key factor. Because the statutes thus require disclosure of the top four (or five) key factors that adversely affected the credit score, the Agencies adopt § ____.73(a)(1)(ix)(B)–(F) and § ____.73(a)(2)(ix)(B)–(F) as proposed.

An industry commenter requested clarification that a creditor is permitted to rely on and disclose the key factors provided with the scores purchased from consumer reporting agencies, without verification. The commenter further asked for guidance in the event that a consumer reporting agency does not provide the key factors with the score.

Under section 1100F of the Dodd-Frank Act, the person setting the material terms of credit is responsible for providing the credit score disclosure, including the key factors adversely affecting the credit score. If a creditor is using a credit score purchased from a consumer reporting agency, the consumer reporting agency is in the best position to identify the key factors that affected the score. Thus, the creditor would need to and could rely on that information in its disclosure to consumers. With respect to the manner in which this information may be obtained from the consumer reporting agencies, the Agencies acknowledge that the contractual arrangements between creditors and consumer reporting agencies may vary as to how creditors will receive the credit score information necessary to comply with section 1100F, but do not believe that imposing specific disclosure requirements on consumer reporting agencies is within the scope of this rulemaking. In any event, creditors have two options: (1) they can write their contracts with consumer reporting agencies to require the consumer reporting agencies to provide them the key factors adversely affecting the credit score, or (2) they can choose to send credit score disclosure exception notices to all consumers applying for non-mortgage credit. See *Exception Notices,* below.

Number of enquiries. Several industry commenters suggested that creditors not be required to disclose the number of enquiries as a key factor that adversely affected the credit score if the number of enquiries is not one of the top four key factors. In these cases, the commenters said that the effect of the number of enquiries on the credit score is marginal, so that disclosing the number of enquiries as a key factor may be confusing to consumers.

As discussed above, section 609(f)(9) of the FCRA states that if the number of enquiries is a key factor that adversely affected the consumer's credit score, that factor must be disclosed pursuant to section 609(f)(1)(C) of the FCRA, without regard to the numerical limitation. The FCRA accordingly requires disclosure of the number of enquiries as a key factor, regardless of whether it is one of the top four key factors. Thus, the Agencies adopt the proposed provision without change.

Additional information regarding credit scores. Consumer advocates suggested that the Agencies add additional information related to credit scores to the risk-based pricing notices. Specifically, consumer advocates suggested that the risk-based pricing notice include an explanation that the

consumer does not have a single credit score, and that the credit score may vary with the consumer reporting agency, scoring model provider, or particular credit product for which the consumer applied. These commenters indicated that consumers need this information to help them understand why they are receiving a particular score that may not be the same as a generic score, such as a FICO or Vantage score.

The Agencies believe that requiring these additional disclosures might create ''information overload'' for consumers, and detract from the primary purpose of the credit score information, which is to inform consumers of the credit score that has been used to set the material terms of credit, or used in the review of the account. The Agencies agree, however, that a disclosure that informs the consumer that the disclosed score was used in setting the credit terms, or in review of the credit terms, would further consumer understanding. The Agencies are thus adding a requirement that the notice include this information. In addition, the Agencies are revising the model forms H–6 and H–7 in the Board's rule and B–6 and B–7 in the Commission's rule to add the statement: ''We used your credit score to set the terms of credit we are offering you,'' in the ''What you should know about your credit score'' box on the model forms. This statement mirrors a sentence on the current risk-based pricing notice, informing consumers that their credit report was used to set the terms of credit being offered.

Other comments on content. The January 2010 Final Rule requires that the risk-based pricing notice include a statement that the terms offered, such as the annual percentage rate, have been set based on information from a consumer report. Model Form H–1 adopted as part of the January 2010 Final Rule, and proposed Model Form H–6 state ''We used information from your credit report(s) to set the terms of the credit we are offering you, such as [Annual Percentage Rate/down payment].''

Some industry commenters objected to language in the final rules and model forms adopted as part of the January 2010 Final Rule that indicated that the terms of credit were ''set'' or ''based on'' information from a consumer report. These commenters instead recommended language stating that the terms of credit were ''based in whole or in part on information from a consumer report.'' The final rules retain the current language in the regulation and model forms, as described above. The Agencies believe that the current language in the regulation and model forms is more concise and understandable to consumers than the language suggested by the commenters.

Proprietary Scores

As discussed above, proposed ____.73(a)(1)(ix) required a person to provide the additional content (i.e., the credit score and related information) in a general risk-based pricing notice if a credit score of the consumer to whom a person grants, extends, or otherwise provides credit is used in setting the material terms of credit. Similarly, proposed ____.73(a)(2)(ix) required a person to provide the additional content in an account review notice if a credit score of the consumer whose extension of credit is under review is used in increasing the annual percentage rate.

Some industry commenters specifically asked when a proprietary score would be deemed a credit score for purposes of § ____.73. Proprietary scores are those developed by creditors themselves or for specific creditors, as opposed to those developed by consumer reporting agencies or large scoring companies such as FICO or Vantage Score for use by individual creditors. Commenters also asked for clarification regarding the information a creditor should disclose under § ____.73 and the model form a creditor should use when a creditor uses a proprietary score in setting the material terms of credit. Some industry commenters indicated that a proprietary score should not be required to be disclosed under section 1100F of the Dodd-Frank Act because Congress intended for this provision to apply only to credit scores that are obtained from consumer reporting agencies, and disclosing proprietary scores would be confusing to consumers. Consumer advocates suggested that all proprietary scores, in particular credit-based insurance scores, be subject to disclosure under § ____.73.

''Credit score'' for purposes of section 1100F of the Dodd-Frank Act and § ____.71(1) of the January 2010 Final Rule is defined to have the same meaning as section 609(f)(2)(A) of the FCRA, 15 U.S.C. 1681g(f)(2)(A). Specifically, section 609(f)(2)(A) of the FCRA defines a credit score to mean ''a numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors, including default[.]'' Accordingly, scores not used to predict the likelihood of certain credit behaviors, such as insurance scores or scores used to predict the likelihood of false identity, are not credit scores by definition, and thus are not required to be disclosed.

Most credit scores that meet the FCRA definition are scores that creditors obtain from consumer reporting agencies. Section 609(f)(2)(A) of the FCRA specifically excludes some—but notall—proprietary scores. The definition of credit score does not include any mortgage score or rating of an automated underwriting system that considers one or more factors in addition to credit information, including the loan-to-value ratio, the amount of down payment, or the financial assets of a consumer.

Thus, if a creditor uses a proprietary score that is based on one or more of these factors in addition to information obtained from a consumer reporting agency, this proprietary score is not a credit score for purposes of § ____.71(1) and ____.73 and thus does not need to be disclosed to the consumer. If, however, the creditor uses both a proprietary score that does not meet the definition of a credit score and a credit score from a consumer reporting agency in setting the material terms of credit or reviewing the account, the creditor would disclose the credit score from the consumer reporting agency under § ____.73(a)(1)(ix) and ____.73(a)(2)(ix), as applicable. Similarly, if a creditor uses a credit score from a consumer reporting agency as an input to a proprietary score, but that proprietary score itself is not a credit score, the creditor would disclose the credit score from the consumer reporting agency under § ____.73. The creditor may use the ''Your Credit Score and Understanding Your Credit Score'' section of Forms H–6 and H–7 of the Board's rules and Forms B–6 and B–7 of the Commission's rules for these disclosures.

In contrast, if a creditor uses a proprietary score that only includes information acquired from a consumer reporting agency in setting the material terms of credit or reviewing the account, the proprietary score would be a credit score under section 609(f)(2)(A) of the FCRA. Commenters asked for guidance on how to disclose information required under § ____.73(a)(1)(ix) and ____.73(a)(2)(ix) when a creditor uses only a proprietary score deemed a credit score under 609(f)(2)(A) of the FCRA.

These commenters also suggested that the rules should permit creditors to purchase a credit score from a consumer reporting agency and disclose that credit score, instead of disclosing the proprietary score that is used in setting the material terms of credit or reviewing the account. Section 1100F of the Dodd-Frank Act requires disclosure of the

credit score used in setting the material terms of credit or reviewing the account. The Agencies do not believe that a creditor would comply with the statute by disclosing a different credit score purchased after setting the material terms of credit based on a proprietary score.

In these situations, the creditor should modify the ''Your Credit Score and Understanding Your Credit Score'' section of Forms H–6 and H–7 of the Board's rules and Forms B–6 and B–7 of the Commission's rules to reflect that the creditor did not obtain a credit score from a consumer reporting agency, but rather used a proprietary score that met the definition of a credit score under 609(f)(2)(A) of the FCRA in setting the material terms of credit or reviewing the account. The creditor should disclose the value of the proprietary score, the date, the range of proprietary scores, and the key factors adversely affecting the consumer's proprietary score. The creditor should indicate that it is the source of the proprietary score. Alternatively, the creditor has the option of providing all consumers requesting an extension of credit with a credit score disclosure exception notice pursuant to the January 2010 Final Rule discussed below.

Commenters also asked for guidance on what information to disclose under § ____.73(a)(1)(ix) and ____.73(a)(2)(ix) when a creditor uses both a proprietary score that meets the definition of a credit score, and a credit score from a consumer reporting agency in setting the material terms of credit or reviewing the account. Both scores would be deemed credit scores under section 609(f)(2)(A) of the FCRA. In such cases where both credit scores are used, a creditor has the option to choose which credit score to disclose, as detailed in § ____.73(d) discussed below. The creditor may use Forms H–6 and H–7 of the Board's rules and Forms B–6 and B–7 of the Commission's rules to comply with the requirements of § ____.73(a)(1)(ix) and ____.73(a)(2)(ix). If the creditor chooses to disclose the proprietary score, it would amend the model forms as discussed above. If the creditor chooses to disclose the credit score from a consumer reporting agency, the creditor would disclose the value of that credit score, the date, the range of credit scores, and the key factors adversely affecting the consumer's credit score. The creditor would indicate the consumer reporting agency that is the source of the credit score.

Use of a Credit Score

Section 1100F of the Dodd-Frank Act requires a risk-based pricing notice to include disclosure of a credit score used by a person in making the credit decision. A person who is required to provide a general risk-based pricing notice or account review notice may use a consumer report to set the credit terms offered or extended to consumers without using a credit score. In a case where a person does not use a credit score in making the credit decision requiring a risk-based pricing notice or account review notice, the person is not required to disclose a credit score and information relating to a credit score.

Several industry commenters agreed that creditors should not disclose a credit score when they do not use a credit score in making the credit decision. These commenters also asked that a creditor not be required to disclose credit score information when a creditor obtains but does not use a credit score, or when the credit score was not the cause of the risk-based pricing.

Section 1100F of the Dodd-Frank Act requires disclosure if a credit score was used in setting the material terms of credit. A creditor that obtains a credit score and engages in risk-based pricing would need to disclose that score, unless the credit score played no role in setting the material terms of credit. Moreover, even if the credit score was not a significant factor in setting the material terms of credit but was a factor in setting those terms, the creditor will have used the credit score for purposes of section 1100F of the Dodd-Frank Act.

With respect to the scope of the term ''use,'' the Agencies received one comment suggesting that the original creditor in certain three-party financing transactions should be considered outside the scope of the risk-based pricing rules altogether and, therefore, would not be required to provide a risk-based pricing notice. The risk-based pricing rules apply to the original creditor if that person ''uses a consumer report in connection with'' an application for credit. 15 U.S.C. 1681m(h)(1). The commenter contended that the original creditor does not obtain and thus does not ''use'' a consumer report; rather the consumer report is ''used'' by an underlying finance source. The Commission believes that this view of ''use'' is too narrow.

The specific financing situation raised in the comment involves an automobile financing transaction where an automobile dealer is the original creditor. In this three-party financing transaction, a consumer visits the automobile dealer and applies for financing by completing a loan application with the dealer. The dealer submits the loan application to one or more unrelated finance sources, which finance source(s) then conducts underwriting on the consumer's credit application. Based in whole or in part on the consumer report, the finance source(s) provides the dealer with an approval of the consumer's application and the wholesale buy rate at which the finance source(s) will purchase the resulting credit contract from the dealer. The dealer then selects the finance source to which it intends to assign the contract and determines which credit terms, including a retail finance rate (''APR''), it will offer the consumer. The commenter asserts that because the original creditor (the automobile dealer) does not directly obtain the consumer report and/or credit score from a consumer reporting agency, and instead relies upon the buy rates from the underlying financing sources, the original creditor does not ''use'' the consumer report and is outside the scope of the risk-based pricing rules. The Commission disagrees. The automobile dealer must provide the consumer with a risk-based pricing notice.[5]

The original creditor has ''used'' a consumer report in connection with an application for credit because the original creditor initiated the request that caused the financing source to obtain the consumer report and used the resulting information from the financing source to set the rate offered to consumers. Applying a causal, transaction-based analysis to the term ''use'' is consistent with the clear intent of Congress to provide consumers with information about the role that their credit history plays in setting the terms for credit.[6] In the scenario set forth above, the consumer report was used in connection with the application for credit made by the consumer to the automobile dealer because the consumer report was obtained by the financing source in order to fulfill a request made to it by the automobile dealer. The finance source has not obtained and used the consumer report and/or credit score independently of the automobile dealer. The finance source, at the behest of the automobile dealer, has obtained the reports and performed underwriting and has told the automobile dealer the wholesale buy rate at which it will

[5] If the finance source used a credit score in its underwriting, that automobile dealer must include that score in the risk-based pricing notice.

[6] This interpretation of ''use'' is also consistent with the January 2010 Final Rule, where the Agencies noted that the ''automobile dealer's use of a consumer report to determine which third-party financing source is likely to purchase the retail installment sales contract and at what 'buy rate' is conduct that fits squarely within the description of risk-based pricing in [the final rules].'' 75 FR 2730.

purchase the contract.[7] The original creditor incorporated the wholesale buy rate in the rate offered to the consumer, establishing a causal connection between the consumer report and the ultimate rate offered to the consumer.[8] The original creditor has therefore ''used'' the consumer report.[9]

Guarantors and Co-Signers

In some cases, a creditor may use the credit score of a guarantor, co-signer, surety, or endorser, but not a credit score of the consumer to whom it extends credit or whose extension of credit is under review. Proposed §§ ____.73(a)(1)(ix) and ____.73(a)(2)(ix) required a person to disclose a credit score and information relating to a credit score only when using the credit score of the consumer to whom it grants, extends, or otherwise provides credit or whose extension of credit is under review. As discussed in the January 2010 Final Rule, a person is not required to provide a risk-based pricing notice to a guarantor, co-signer, surety, or endorser.[10] A person may be required, however, to provide a risk-based pricing notice *to the consumer* to whom it grants, extends, or otherwise provides credit, even if the person only uses the consumer report or credit score of the guarantor, co-signer, surety, or endorser.

Some industry commenters and consumer advocates supported the proposed rules governing guarantors and co-signers. The Agencies continue to believe that the credit score of one consumer, such as a guarantor, co-signer, surety, or endorser, should not be disclosed to a different consumer entitled to receive a risk-based pricing notice. Therefore, when a person uses a credit score only of a guarantor, co-signer, surety, or endorser to set the terms of credit for the consumer to whom it extends credit or whose extension of credit is under review, a person shall not include a credit score in the general risk-based pricing notice or account review notice provided to the consumer.

Exception Notices

The Agencies note that the January 2010 Final Rule provides exceptions to the requirements to provide general risk-based pricing notices for persons that provide credit score disclosure exception notices to consumers who request credit. See §§ 222.74(d), (e), and (f); §§ 640.5(d), (e), and (f).

Many industry commenters argued that section 1100F of the Dodd-Frank Act does not affect creditors' option to provide credit score disclosure exception notices to all consumers instead of risk-based pricing notices. Consumer advocates, however, urged the Agencies to eliminate the credit score disclosure exceptions. Consumer advocates argued that giving creditors the option to provide exception notices would result in creditors rarely providing risk-based pricing notices. They stated that a key benefit of the exception notices in comparison to the risk-based pricing notices was that consumers received a free credit score. They asserted that section 1100F of the Dodd-Frank Act eliminated this comparative benefit of the exception notices by requiring that risk-based pricing notices also disclose credit scores. Consumer advocates argued that Congress did not eliminate the exception notices in the Dodd-Frank Act because the notices were created by regulation, and were not the product of Congress. Finally, consumer advocates stated that section 1100F of the Dodd-Frank Act required disclosure of the actual credit score used by the creditor, while exception notices could contain a generic credit score.

After the Dodd-Frank Act, there remain strong arguments for retaining the credit score disclosure exceptions. The January 2010 Final Rule, which includes the credit score disclosure exceptions, was published in January 2010 and became effective on January 1, 2011. Because the rules were published more than six months before the Dodd-Frank Act was enacted, Congress could have eliminated the credit score disclosure exceptions but did not do so. Moreover, the Agencies believe that the credit score disclosure exception notices continue to be consistent with the goals of, and underlying reasons for, the risk-based pricing rule, which are to provide consumers with education about their credit profiles and alert them to potentially inaccurate information in their consumer reports that could have a negative effect on the credit terms being offered to them. Eliminating the exception notices would result in fewer consumers receiving their credit score for free. To use the exception notice provision, a creditor must provide exception notices to all consumers who apply for credit. By contrast, a creditor must provide risk-based pricing notices only to consumers receiving less favorable terms from that particular creditor. Thus, whether a consumer with a particular credit profile would receive a risk based pricing notice may depend upon the creditor to which the consumer applies. As a result, some consumers of a given creditor may not get risk-based pricing notices because they do not receive materially less favorable terms from that creditor, even though they would generally receive materially less favorable terms from other creditors based on their credit profiles. The credit score disclosure exceptions arguably achieve a better result—by requiring creditors using the exception to provide notices to all consumers who apply for credit—consumers that would not have gotten any notice would instead receive a free credit score.[11] In addition, consumers are given exception notices earlier in the credit decision process, thus giving consumers an earlier opportunity to identify any potential inaccuracies in their consumer report.[12] Consumers benefit from knowing their credit score earlier, even if they do not yet know

[7] Indeed, it is unity of interest in the same credit transaction between the original creditor/automobile dealer and the underlying finance source that provides the permissible purpose pursuant to which the finance sources may obtain the consumer's report.

[8] The Commission notes that the statute employs the word ''obtain'' when addressing physical possession, lending further support that ''use'' must be a broader concept. *See* section 604(f) (providing that ''[a] person shall not *use or obtain* a consumer report for any purpose unless * * * the consumer report is *obtained* for a purpose for which the consumer report is authorized to be furnished [under the FCRA]''); section 604(b)(1)(a) (a consumer reporting agency cannot provide a consumer report for employment purposes unless the person who ''*obtains*'' the report provides a certification to the consumer reporting agency that, among other things, it will not be ''*used*'' in violation of state or federal law).

[9] The risk-based pricing rules require the ''original creditor'' to provide consumers with the necessary notices. If the automobile dealer, the original creditor in the situation described above, was not required to provide the risk-based pricing notice, consumers purchasing automobiles in three-party financing transactions would never receive a risk-based pricing notice or, in the alternative, a credit score disclosure exception notice. Further, if the responsibility for providing the risk-based pricing notice was to be shifted to the underlying finance sources in these types of transactions, consumers could receive multiple risk-based pricing notices per transaction from unfamiliar entities, a result which would not be beneficial to consumers. *See* 75 FR at 2730 (''a consumer would not benefit from receiving more than one risk-based pricing notice in connection with a single extension of credit and requiring multiple notices would increase compliance burdens and costs'').

[10] *See* 75 FR at 2731 (Jan. 15, 2010).

[11] In addition, some consumers may not receive a risk-based pricing notice even if they did not receive the most favorable terms from that creditor because creditors may not be able to precisely distinguish those consumers who received the most favorable terms from those who did not (or may have used a proxy method). See 75 FR 2736. By virtue of the fact that exception notices are provided to all consumers who apply for credit, the credit score disclosure exceptions avoid this problem.

[12] Credit score disclosure exceptions must be given as soon as is reasonably practicable and, in any event, no later than before consummation of the transaction, whereas risk-based pricing notices are required to be provided after the terms of credit are set.

what terms of credit they will be offered. This earlier notice gives consumers more time to consider, given their current credit profile, whether they want to continue with a credit transaction at that time.

On the other hand, by requiring that risk-based pricing notices disclose credit scores when the credit scores were used to set the terms of credit, section 1100F of the Dodd-Frank Act has eliminated one of the key comparative benefits of the credit score disclosure exception notices over the risk-based pricing notices.[13] Moreover, while the exception notices contain valuable information about how a consumer's credit score compares with the credit scores of others, it does not inform consumers that they may be receiving less favorable credit terms or an increase in their interest rate based on their consumer report and/or their credit score.

The Agencies note that eliminating the credit score disclosure exception notice would fundamentally change the structure of the risk-based pricing rules and may substantially affect compliance costs. Given that rulemaking authority will be transferred to the Bureau on July 21, 2011, the Agencies do not believe that it is appropriate to make a substantial and fundamental change to the rules at this time. The final rules are limited to implementing the requirements of section 1100F of the Dodd-Frank Act. Thus, the final rules retain the credit score disclosure exception notices.

Section ____.73(b) Form of the Notice

The Agencies provided model forms that may be used for compliance with the risk-based pricing requirements in Appendices H and B of the January 2010 Final Rule. Paragraph (b)(2) of section ____.73 of the January 2010 Final Rule clarifies how each of the model forms of the risk-based pricing notices required by §§ ____.72(a) and (c), and by § ____.72(d) may be used. Paragraph (b)(2) provides that appropriate use of the model forms contained in Appendices H–1 and H–2 of the Board's rules and Appendices B–1 and B–2 of the Commission's rules is deemed to comply with §§ ____.72(a) and (c), and § ____.72(d), respectively. Use of these model forms is optional.

Under the proposal, the Agencies amended Appendices H and B of the January 2010 Final Rule to add two new model forms in Appendices H–6 and H–7 of the Board's proposed rules and Appendices B–6 and B–7 of the Commission's proposed rules, for situations where a credit score and information relating to such credit score must be disclosed. See *Model Forms,* below. Proposed paragraph (b)(2) clarified that appropriate use of Model Form H–1 or H–6, or B–1 or B–6, is deemed to comply with the requirements of §§ ____.72(a) and (c). It also clarified that appropriate use of Model Form H–2 or H–7, or B–2 or B–7, is deemed to comply with the requirements of § ____.72(d).

The final rules adopt § ____.73(b) as proposed. The comments received on the proposed model forms are discussed below. See *Model Forms,* below.

Section ____.73(d) Multiple Credit Scores

Some creditors may obtain multiple credit scores from consumer reporting agencies in connection with their underwriting processes. A creditor may use one or more of those scores in setting the material terms of credit. Section 1100F of the Dodd-Frank Act only requires a person to disclose a single credit score that is used by the person in making the credit decision. The Agencies proposed § ____.73(d) to address situations where a creditor obtains multiple credit scores from consumer reporting agencies, or obtains a credit score from a consumer reporting agency in addition to using a proprietary score deemed a credit score under the FCRA, and must provide either a general risk-based pricing notice or an account review notice to a consumer.

Proposed § ____.73(d)(1) provided that when a person uses one of those credit scores in setting the material terms of credit, for example, by using the low, middle, high, or most recent score, the general risk-based pricing and account review notices are required to include that credit score and information relating to that credit score as required by proposed §§ ____.73(a)(1)(ix) and (a)(2)(ix). When a person uses two or more credit scores in setting the material terms of credit, for example, by computing the average of all the credit scores obtained, the notices are required to include any one of those credit scores and information relating to the credit score as required by proposed §§ ____.73(a)(1)(ix) and (a)(2)(ix). The notice may, at the person's option, include more than one credit score, along with the information specified in proposed §§ ____.73(a)(1)(ix) and (a)(2)(ix) for each credit score disclosed.

Proposed § ____.73(d)(2) provided examples to illustrate the notice requirements for creditors that obtain multiple credit scores from consumer reporting agencies. The first example described in proposed § ____.73(d)(2)(i) applied when a person that uses consumer reports to set the material terms of credit cards granted, extended, or provided to consumers regularly requests credit scores from several consumer reporting agencies and uses the low score when determining the material terms it will offer to the consumer. Under the proposed rules, that person must disclose the low score in its notices. The example described in proposed § ____.73(d)(2)(ii) applied when a person that uses consumer reports to set the material terms of automobile loans granted, extended, or provided to consumers regularly requests credit scores from several consumer reporting agencies, each of which it uses in an underwriting program in order to determine the material terms it will offer to the consumer. Under the proposal, that person could choose any one of these scores to include in its notices.

A consumer advocate and several industry commenters supported the Agencies' proposal. Other consumer advocates recommended that creditors disclose all the credit scores used. For the reasons described below, the final rules adopt § ____73(d) as proposed with revisions to make clear that these rules apply to use of proprietary scores that meet the definition of ''credit score'' in § ____.71(l) as well as credit scores obtained from consumer reporting agencies.

The final rules do not require creditors to disclose all the credit scores used if a creditor uses multiple credit scores in setting the material terms of credit. The final rules permit creditors at their option to disclose all the credit scores used. As noted above, although a creditor may use multiple credit scores in setting the material terms of credit, section 1100F of the Dodd-Frank Act only requires a person to disclose a single credit score that is used by the person in making the credit decision. Further credit scoring models may differ considerably in nature and range. The Agencies believe that disclosing multiple credit scores may confuse consumers and provide them little value. Consumers may not understand the extent to which credit scoring models differ, and may try to compare the different credit scores. Such comparisons may confuse consumers and lessen the value of the credit score disclosures.

Moreover, the Agencies do not believe that requiring disclosure of a particular credit score, for example, the lowest score, would be in the best interest of

[13] See 75 FR at 2742 (highlighting benefit to consumers of providing credit scores to consumers in exception notices).

consumers when multiple scores are used. The lowest score may not truly be the ''worst'' score, since credit scoring models differ, and requiring businesses to identify the ''worst'' score would add a layer of complexity without a clear benefit to consumers. The Agencies also note that the Dodd-Frank Act requires the Bureau to ''conduct a study on the nature, range, and size variations'' of different credit scoring systems, and on whether these variations disadvantage consumers. Section 1078(a). The Bureau must submit a report to Congress with the results of this study within one year after the Dodd-Frank Act enactment date. Section 1078(b). That study may shed light on the extent to which disclosure of multiple credit scores would benefit consumers, and the Bureau could revisit the Agencies' judgment in view of the results of its study.

For the reasons discussed above, the final rules do not require that creditors always disclose the lowest credit score if a creditor uses two or more credit scores in setting the material terms of credit. The Agencies believe that section 1100F of the Dodd-Frank Act does not mandate that a person disclose the lowest credit score that is used by the person in making the credit decision, if the person uses multiple credit scores in setting the material terms of credit. The person must simply disclose a credit score used.

Section ____.75 Rules of construction

Section ____.75(c) Multiple Consumers

The proposed rules amended § ____.75(c) to address circumstances where a person must provide multiple consumers, such as co-borrowers, with a risk-based pricing notice in a transaction. The proposed rules retained the rule of construction that clarifies that in a transaction involving two or more consumers who are granted, extended, or otherwise provided credit, a person must provide a risk-based pricing notice to each consumer. The proposed rules, however, amended the rules addressing the provision of a risk-based pricing notice when the consumers have the same address and when the consumers have different addresses, to account for situations where a risk-based pricing notice contains a consumer's credit score.

Proposed § ____.75(c)(1) provided that whether the consumers have the same address or not, the person must provide a separate notice to each consumer if a notice includes a credit score(s). Each separate notice that includes a credit score(s) must contain only the credit score(s) of the consumer to whom the notice is provided, and not the credit score(s) of the other consumer. If the consumers have the same address, and the notice does not include a credit score(s), a person may satisfy the requirements by providing a single notice addressed to both consumers.

The proposed rules also amended § ____.75(c)(3)(i) to provide an example illustrating the notice requirements when a person must provide a risk-based pricing notice that includes credit score information to multiple consumers. Proposed § ____.75(c)(3)(i) clarified that, in a situation where two consumers jointly apply for credit with a creditor and the credit decision is based in part on the consumers' credit scores, a separate risk-based pricing notice must be provided to each consumer whether the consumers have the same address or not. Each separate risk-based pricing notice must contain the credit score(s) of the consumer to whom the notice is provided.

Consumer advocates supported the proposed rules governing multiple consumers. Several industry commenters asked that creditors have the option to provide risk-based pricing notices to all the applicants or only to the applicant whose credit score was used in setting the material terms of credit. Some industry commenters also argued that co-applicants elect to share information with one another, and that creditors cannot prevent co-applicants from accessing each other's risk-based pricing notices.

Under section 615(h) of the FCRA, a person generally must provide a risk-based pricing notice to a consumer when the person uses a consumer report in connection with an extension of credit and, based in whole or in part on a consumer report, extends credit to the consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers. A creditor therefore must provide a risk-based pricing notice to all co-applicants, and not only to the applicant whose credit score was used in setting the material terms of credit.[14] Further, the Agencies do not believe co-applicants necessarily choose, merely by applying for credit together, to share sensitive information with one another, in particular, credit scores. The Agencies understand that creditors may not be able to prevent co-applicants from accessing each other's risk-based pricing notices. Yet the Agencies believe that creditors must provide each risk-based pricing notice to the corresponding applicant, in keeping with privacy concerns.

Appendix H of the Board's Rules and Appendix B of the Commission's Rules

Model Forms

Appendix H of the Board's rules and Appendix B of the Commission's rules contain five model forms that the Agencies prepared to facilitate compliance with the rules. Two of the model forms are for risk-based pricing notices and three of the model forms are credit score disclosure exception notices. 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 use in complying with the risk-based pricing notices given in connection with account review in § ____.72.

The proposed rules added two new forms that could be used when a person must disclose credit score information to a consumer. Model forms H–6 and B–6 set forth a risk-based pricing notice with credit score information that could be used to comply with the general risk-based pricing requirements if the additional content requirements of § ____.73(a)(1)(ix) apply. Model forms H–7 and B–7 set forth an account review risk-based pricing notice with credit score information that could be used to comply with the account review notice requirements if the additional content requirements of § ____.73(a)(2)(ix) apply.

Model forms H–1 and H–2, and B–1 and B–2, are retained. The general risk-based pricing and account review notices could continue to be used to comply with § ____.72 when the additional content requirements discussed in §§ ____.73(a)(1)(ix) and (a)(2)(ix) do not apply. As with the other model forms, use of the model forms H–6 or H–7, or B–6 or B–7, by creditors is optional. If a creditor appropriately uses Model Form H–6 or H–7, or B–6 or B–7, or modifies a form in accordance with the rules or the instructions to the appendix, that creditor will be within the rules' safe harbor and is deemed to be acting in compliance with the general risk-based pricing notice or account review notice requirement when the content provisions of §§ ____.73(a)(1)(ix) or (a)(2)(ix) apply.

[14] As noted above, a creditor that obtains a credit score and engages in risk-based pricing would need to disclose that score, unless the credit score played no role in setting the material terms of credit. If the credit score obtained for an applicant played no role in setting the material terms of credit, then the creditor does not need to include a credit score in the risk-based pricing notice provided to that applicant.

Finally, the proposal amended instructions 1. and 2. to Appendices H and B to reflect the addition of H–6 and H–7, and B–6 and B–7. The Agencies did not receive comments on the proposed changes to instructions 1. and 2. to Appendices H and B. The Agencies are adopting the changes to instructions 1. and 2. to Appendices H and B as proposed in the final rules.

In addition, as discussed in more detail above, model forms H–6 and H–7 of the Board's rules and B–6 and B–7 of the Commission's rule are also revised to add the statement: ''We used your credit score to set the terms of credit we are offering you,'' in the ''What you should know about your credit score'' box on the model forms. See *Additional Information Regarding Credit Scores, above.*

The Agencies received several comments on the proposed model forms, as discussed in more detail below. The final rules adopt model forms H–6 and H–7 of the Board's rule and B–6 and B–7 of the Commission's rule as proposed with one revision pertaining to the disclosure of contact information for the entity that provided the credit score.

Contact information for the entity that provided the credit score. An industry commenter asked that the Agencies add language to the model forms directing the consumer to the consumer reporting agency for more information about the credit score. The commenter believed that consumers may otherwise contact creditors with questions about their credit score, but that creditors are not in a position to answer those questions.

The Agencies are adding optional language to model forms H–6 and H–7 of the Board's rule and B–6 and B–7 of the Commission's rule directing the consumer to the entity (which may be a consumer reporting agency or, in the case of a proprietary score that meets the definition of a credit score, the creditor itself) that provided the credit score for any questions about the credit score, along with the entity's contact information. Creditors may use or not use the additional language without losing the safe harbor, since the language is optional. The final rules add new instruction 4. to Appendices H and B to make clear that this disclosure of the entity's contact information is optional.

Co-applicants, guarantors, and co-signers. An industry commenter recommended providing creditors with the flexibility to add language to the model forms to indicate that for co-applicants, the terms of credit may be based on either or both of the applicants' credit information. A consumer advocate similarly suggested adding language to the model forms indicating that for applications with a guarantor or co-signer, the terms of credit may be based on either or both of the applicant's, guarantor's, or co-signer's credit information. The commenters explained that such language would decrease consumer confusion, since an applicant with an excellent credit profile who receives a risk-based pricing notice may not realize that the risk-based pricing decision may have been made because of the co-applicant's, guarantor's, or co-signer's credit profile.

The Agencies believe the additional language may simply complicate the disclosures without providing a substantial benefit to consumers. An applicant with strong credit who receives a risk-based pricing notice will likely understand that the adverse decision was based on the co-applicant, guarantor, or co-signer's credit information or will contact the creditor to inquire.

Disclosure that no credit score is available. In some cases, a creditor may try to obtain a credit score for an applicant, but the applicant may have insufficient credit history for the consumer reporting agency to generate a credit score. One commenter asked that the creditor have the option to amend the model forms to provide the applicant notice that no credit score was available from a consumer reporting agency in the space available on the model forms for the credit information disclosure.

Section 1100F only applies when a creditor uses a credit score in setting the material terms of credit. The creditor cannot and is not required to disclose credit score information if an applicant has no credit score. Nothing in section 1100F of the Dodd-Frank Act prevents a creditor from providing the applicant notice that no credit score was available from a consumer reporting agency, although section 1100F does not require such notice.

Order of content. The Agencies specifically solicited comment on the ordering of the content in Model Forms H–6 and H–7, and B–6 and B–7, and whether the credit score and information relating to a credit score should be presented prior to the information on consumer reports.

Some commenters indicated that the Agencies should not change the order of the content in the model forms to present the credit score and information relating to the credit score prior to information on consumer reports. One commenter indicated that changing the order of content would impose additional compliance burdens on creditors without providing significant additional benefits for consumers.

Another commenter proposed that the credit score information should be moved up and incorporated into the information on consumer reports, instead of disclosed separately at the bottom of the notice. The final rules retain the order of the content in the model forms as proposed. The Agencies believe that it is appropriate to disclose the information related to credit reports first because the primary purpose of the risk-based pricing notices is to alert consumers that risk-based pricing occurred as a result of their consumer reports. Further, in retaining the proposed order of the content, the model forms more logically progress from more general consumer report information to more specific credit score information. In addition, given that a creditor may still provide a consumer Forms H–1 and H–2 of the Board's rules and Forms B–1 and B–2 of the Commission's rules when the creditor does not use the consumer's credit score in setting the material terms of credit, providing the credit score information after the consumer report information will promote ease of use for creditors who use Forms H–1 and H–2 of the Board's rules and Forms B–1 and B–2 of the Commission's rules for some consumers and the amended model forms for other consumers.

Order of credit report information. One commenter suggested that the credit report information in the model form should be reordered. Proposed Model Forms H–6 and H–7 of the Board's rules and Forms B–6 and B–7 of the Commission's rules disclose the credit score in the first row of the section ''Your Credit Score and Understanding Your Credit Score.'' An explanation of what credit scores are is disclosed in the second row of this section. The commenter suggested that the information would be more understandable to consumer if the explanation of what credit scores are was disclosed in the first row of this section.

The final rules retain the proposed order of the credit report information in model forms H–6 and H–7 of the Board's rules and Forms B–6 and B–7 of the Commission's rules. The Agencies believe that disclosing the credit score that is used in setting the material credit terms or reviewing the account is the primary purpose of the provisions of section 1100F of the Dodd-Frank Act. By placing the credit score that is applicable to the consumer in the first row of the section ''Your Credit Score and Understanding Your Credit Score,''

the Agencies believe that consumers are more likely to continue reading the notice to find out additional information about the credit score.

Attaching the credit score information to the current model form. One industry commenter asked the Agencies to clarify that a creditor may staple or append the credit score information using a supplemental document to a current model form on general risk-based pricing (H–1 and B–1) or an account review notice (H–2 and B–2). The Agencies note that information contained on the first page of H–1 and B–1 is the same as the information contained on the first page of H–6 and B–6. Likewise, the information contained on the first page of H–2 and B–2 is the same as the information contained on the first page of H–7 and B–7. The difference between H–1 (or B–1) and H–6 (or B–6) is the inclusion of the credit score information contained in the section ''Your Credit Score and Understanding Your Credit Score'' that is contained on the second page of H–6 and B–6. Likewise, the difference between H–2 (or B–2) and H–7 (or B–7) is the inclusion of the credit score information contained in the section ''Your Credit Score and Understanding Your Credit Score'' that is contained on the second page of H–7 and B–7. Thus, the Agencies believe that a creditor will be deemed to have used H–6 or B–6 if it staples or appends to H–1 or B–1 the credit score information contained in the section ''Your Credit Score and Understanding Your Credit Score'' that is contained on the second page of H–6 and B–6. Instruction 3. to Appendices H and B sets out the modifications that may be made to the model forms without losing the benefit of safe harbor. The combined H–1 or B–1 and attachment must comply with Instruction 3. to Appendices H and B for the creditor to retain the safe harbor for using H–6 or B–6. Likewise, a creditor will be deemed to have used H–7 or B–7 if it staples or appends to H–2 or B–2 the credit score information contained in the section ''Your Credit Score and Understanding Your Credit Score'' that is contained on the second page of H–7 and B–7, in a format substantially similar to H–7 and B–7. The combined H–2 or B–2 and attachment must comply with Instruction 3. to Appendices H and B for the creditor to retain the safe harbor for using H–7 or B–7.

Use of graphs or table format. An industry commenter requested that the Agencies clarify that creditors may use a graph or table format to provide the information in the model forms without losing the safe harbor. The commenter stressed that graphs, tables, and other visual devices may be clearer and more useful to consumers.

Although the Agencies certainly encourage simplicity, one of the key benefits of a safe harbor is uniformity. Thus, it is difficult to make a blanket statement that creditors may substitute graphs or tables without losing the safe harbor.

The Agencies reiterate the interpretation in the proposed rule. A creditor may rearrange the format of the model forms or make technical modifications to the language of the model forms, so long as the creditor does not change the substance of the disclosures. *See* Instruction 3. to Appendices H and B. The creator may not, however, make such an extensive rearrangement or modification of the language of the model forms as to materially affect the substance, clarity, comprehensibility, or meaningful sequence of the model forms. *See* Instruction 3. to Appendices H and B. Such extensive rearrangements or modification of the language of the model forms would result in loss of the safe harbor. *See* Instruction 3. to Appendices H and B. Whether a graph or table could be used without losing the safe harbor would have to be determined on a case by case basis using this standard.

Implementation Date

The Agencies noted in the proposal that the amendments in section 1100F of the Dodd-Frank Act are effective on July 21, 2011. Several industry commenters asked that the Agencies delay the implementation date by 6 months to at least 12 months. One commenter suggested that the Agencies stay the rulemaking, and let the Bureau finalize the rules. Another commenter requested that creditors receive the benefit of the safe harbor for using the proposed model forms until creditors can implement the requirements in the final rule.

Several industry commenters argued that the risk-based pricing requirements in section 1100F do not become effective until incorporated by rules, because section 1100F amends section 615(h) of the FCRA, and that section 615(h)(6) of the FCRA states that regulations are required to implement risk-based pricing requirements. Further, one industry commenter asserted that section 1088(a)(9) of the Dodd-Frank Act amends the FCRA to require the Bureau to issue regulations implementing section 1100F. This commenter argued that Congress could not have intended section 1100F of the Dodd-Frank Act to take effect on July 21, 2011 since the Bureau would not yet be operational. The commenter concluded that section 1100F of the Dodd-Frank Act is an exception to the July 21, 2011 effective date.

Section 1100F of the Dodd-Frank Act provides that the amendments in Subtitle H of Title X, which includes Section 1100F, become effective on a ''designated transfer date.'' The Secretary of the Treasury set the designated transfer date as July 21, 2011. 75 FR 57252 (Sept. 20, 2010). Thus, effective July 21, 2011, section 1100F of the Dodd-Frank Act amends section 615(h)(5) of the FCRA, which sets forth the minimum content required for risk-based pricing notices. Even if the Agencies did not modify the model forms to incorporate this additional minimum content, creditors would be required to disclose this information pursuant to the statute.

Rather than have creditors create their own notices in order to comply with section 1100F of the Dodd-Frank Act, the Agencies are exercising their existing authority to amend the model notices to reflect these changes to avoid consumer confusion, and to ensure timely, consistent, and uniform compliance with the new content provisions. Section 615(h) gives the Agencies the authority to issue rules implementing the risk-based pricing provisions, including authority to address ''the form, content, timing, and manner of delivery'' of risk-based pricing notices. The Agencies believe that adding to the requirements for the risk-based pricing notice the content required by section 1100F of the Dodd-Frank Act, and providing revised model notices is appropriate. These final rules are thus effective and compliance is mandatory beginning 30 days after the date of publication in the **Federal Register**.

III. Regulatory Analysis

A. Paperwork Reduction Act

The Agencies have reviewed the final rules and determined that they contain ''collections of information'' subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521 (PRA). An agency 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.

The Board has reviewed and approved the final rulemaking under the authority delegated by OMB. 5 CFR part 1320, Appendix A.1. The collections of information required by this final

rulemaking are found in 12 CFR 222.73(a)(1) and (a)(2).[15]

The Commission submitted the information collection requirements contained in the proposed rulemaking to OMB for review and approval under the PRA; OMB withheld formal action on the rulemaking pending its further review of the joint final rules. The collections of information required by this final rulemaking are found in 16 CFR 640.4(a)(1) and (a)(2).

As discussed above, on March 15, 2011, the Agencies published in the **Federal Register** a joint notice of proposed rulemaking that is consistent with new content requirements in section 615(h) of the FCRA that were added by section 1100F of the Dodd-Frank Act. 76 FR 13902. The final rules require creditors to disclose credit score information to consumers when a credit score is used to set or adjust the terms of credit. Specifically, the final rules would require the following disclosures: (1) The credit score used by the person in making the credit decision; (2) the range of possible credit scores under the model used to generate the credit score; (3) all of the key factors that adversely affected the credit score, which shall not exceed four key factors, except that if one of the key factors is the number of enquiries made with respect to the consumer report, the number of key factors shall not exceed five; (4) the date on which the credit score was created; and (5) the name of the consumer reporting agency or other person that provided the score. In addition, the final rules require a statement that a credit score is a number that takes into account information in a consumer report, that the consumer's credit score was used to set the terms of credit offered, and that a credit score can change over time to reflect changes in the consumer's credit history.

In the proposal, the Agencies collectively estimated that respondents potentially affected by the additional notice would take, on average, 16 hours (2 business days) to update their systems and modify model notices to comply with the proposed requirements. The Agencies recognized that the amount of time needed for any particular creditor subject to the proposed requirements may be higher or lower, but believed this average figure was a reasonable estimate.

Comments Received

The Agencies received 13 comments—two from banks, three from utilities, two from credit union trade association, two from banking trade associations, two from credit and financial services companies, one from a consumer credit trade association, and one from a law firm on behalf of an unspecified client—in response to the PRA section of the proposal. The commenters asserted that the time needed to update their systems to incorporate these requirements and coordinate with consumer reporting agencies as necessary would exceed the 16 hours estimated by the Agencies.

Burden Statement

Based on these comments, the Agencies agree that some additional time beyond 16 hours may be needed. The Agencies, therefore, have revised upward their prior burden estimate. The Agencies believe that 32 hours (4 business days) is a reasonable estimate of the average amount of time to modify existing database systems to incorporate these new requirements. Entities affected by these final rules are already familiar with the existing provisions of section 615(h) of the FCRA, which require risk-based pricing disclosures when a person uses a consumer report in setting the material terms of credit. The new requirement to require creditors to disclose credit score information to consumers when a credit score is used to set or adjust the terms of credit should not be burdensome. In addition, the Agencies have provided model notices that should significantly reduce the cost of compliance with the final rules. Moreover, the Agencies have provided exceptions to the final rules, whereby creditors may fulfill their compliance obligation by providing credit score disclosure exception notices.

Frequency of Response: On occasion.

Affected Public: Any person that is required to provide a risk-based pricing notice and uses a credit score in making the credit decision requiring a risk-based pricing notice.

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 may include, among others, State member banks, national banks, insured nonmember banks, savings associations, Federally-chartered credit unions, and other mortgage lending institutions.

Number of Respondents: 18,173.

Estimated Time per Response: 32 hours (four business days) to update systems and modify model notices to comply with final requirements.

Total Estimated Annual Burden: 581,536 hours.

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

Number of Respondents: 199,500.[16]

Estimated Time per Response: 32 hours (4 business days) to update systems and modify model notices.

Total Estimated Annual Burden: Based on an estimated 199,500 respondents, the one-time burden, annualized for a 3 year PRA clearance, would be 2,128,000 hours [(32 × 199,500) ÷ 3]. The Commission believes that, on a continuing basis, the revision to the final rules would have a negligible effect on the annual burden. The estimated one-time labor cost for all categories of FTC covered entities under the final rule, annualized for a 3 year PRA clearance, is $91,397,600.

Total 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

[15] The information collections (ICs) in this rule will be incorporated with the Board's Recordkeeping and 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 final rulemaking. The current OMB inventory for Regulation V is available at: *http://www.reginfo.gov/public/do/PRAMain.*

[16] 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 Credit Union National Association for the number of non-federal credit unions. See *http://www.ncua.gov/news/quick_facts/Facts2007.pdf.* For purposed of estimating the burden, Commission staff made the conservative assumption that all of the included entities engage in risk-based pricing and use a credit score in making the credit decision requiring a risk-based pricing notice.

calculate with precision the labor costs associated with the final rules, 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 update systems for providing risk-based pricing notices and adapt the written notices as necessary at an hourly rate of $42.95.[17] Based on the above estimates, the estimated one-time labor cost for all categories of FTC covered entities under the final rule, annualized for a 3 year PRA clearance, is $91,397,600 [((32 hours × $42.95) × 199,500) ÷ 3].

Commission staff does not anticipate that compliance with the final rules will require any new capital or other non-labor expenditures. The final rules provide a simple and concise model notice that creditors may use to comply, and, as creditors already are providing risk-based pricing notices to consumers under the FCRA, they already have the necessary resources to generate and distribute these notices. Thus, any capital or non-labor costs associated with compliance would be negligible.

B. Regulatory Flexibility Act

Board:

The Board prepared an initial regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) in connection with the proposed rules. The final rules 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.[18] The size standard to be considered a small business is: $175 million or less in assets for banks and other depository institutions; and $7 million or less in annual revenues for the majority of non-bank entities that are likely to be subject to the final rules. Under Section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rules will not have a significant economic impact on a substantial number of small entities. The Board hereby certifies that the final rules will not have a significant economic impact on a substantial number of small business entities. The Board recognizes that the final rules will affect some small business entities; however the Board does not expect that a substantial number of small businesses will be affected or that the final rules will have a significant economic impact on them. Nonetheless, the Board has decided to publish a final regulatory flexibility analysis with the final rules and has prepared the following analysis:

1. Reasons for the Final Rules

Section 1100F of the Dodd-Frank Act amends section 615(h) of the FCRA to require persons to disclose a credit score and information relating to that credit score in risk-based pricing notices when the person uses a credit score in setting the material terms of credit. Specifically, a person must disclose, in addition to the information currently required by the January 2010 Final Rule: (1) A numerical credit score used in making the credit decision; (2) the range of possible scores under the model used; (3) the key factors that adversely affected the credit score of the consumer in the model used; (4) the date on which the credit score was created; and (5) the name of the person or entity that provided the credit score. The effective date of these amendments is July 21, 2011.

The Agencies are issuing final rules to amend the risk-based pricing rules pursuant to their existing authority under section 615(h) of the FCRA, to facilitate compliance with the new requirements under section 1100F of the Dodd-Frank Act.

2. Statement of Objectives and Legal Basis

The **SUPPLEMENTARY INFORMATION** above contains information on the objectives and legal basis of the final rules. The legal basis for the final rules is section 615(h) of the FCRA. The final rules are consistent with section 1100F of the Dodd-Frank Act.

3. Summary of Issues Raised by Commenters

Some industry commenters stated that the proposed rules would create substantial compliance burdens, particularly for small entities. They asked that small entities be exempt from the requirements, or that the Board delay the implementation date for small entities.

The compliance burdens identified by these commenters are not substantially different from the burdens imposed by the January 2010 Final Rule. In addition, the exemption requested by the commenters would also affect the underlying January 2010 Final Rule. Further, changes to the risk-based pricing rules and notices beyond those required by section 1100F of the Dodd-Frank Act are outside the scope of this rulemaking. Finally, the Agencies do not believe such changes to the January 2010 Final Rule are appropriate in light of the impending transfer of rulemaking authority to the Bureau.

4. Description of Small Entities to Which the Regulation Applies

The final rules apply to any person that (1) is required to provide a risk-based pricing notice to a consumer; and (2) uses a credit score in making the credit decision requiring a risk-based pricing notice. The total number of small entities likely to be affected by the final rules is unknown, because the Agencies do not have data on the number of small entities that use credit scores for risk-based pricing in connection with consumer credit. The risk-based pricing provisions of section 1100F of the Dodd-Frank Act have broad applicability to persons who use credit scores for risk-based pricing in connection with the provision of consumer credit.

Based on estimates compiled by the Board, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, there are approximately 9,458 depository institutions that could be considered small entities and that are potentially subject to the final rules.[19] The available data are insufficient to estimate the number of non-bank entities that would be subject to the final rules and that are small as defined by the SBA. Such entities would include non-bank mortgage lenders, automobile 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 that are potentially subject to the final rules use credit scores for risk-based pricing in connection with the provision of consumer credit. The final rules do not impose any requirements on small entities that do not use credit scores for

[17] This cost is derived from the median hourly wage for management occupations found in the May 2009 National Occupational Employment and Wage Estimates of the Bureau of Labor Statistics, Table 1.

[18] 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.*

[19] The estimate includes 1,459 institutions regulated by the Board, 659 national banks, and 4,099 federally-chartered credit unions, as determined by the Board. The estimate also includes 2,872 institutions regulated by the FDIC and 369 thrifts regulated by the OTS. *See* 75 FR 36016, 36020 (Jun. 24, 2010).

risk-based pricing in connection with consumer credit.

5. Projected Reporting, Recordkeeping and Other Compliance Requirements

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

The final rules generally require a person that is required to provide a risk-based pricing notice to a consumer and uses a credit score in making the credit decision to provide a credit score and information relating to that credit score in the notice, in addition to the information currently required by the January 2010 Final Rule.

Pursuant to the January 2010 Final Rule, a person is required 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. If the person does engage in risk-based pricing based on consumer reports, the person generally is currently required to establish procedures for identifying those consumers to whom it must provide risk-based pricing notices.

A person that is required to provide risk-based pricing notices to certain consumers would need to analyze the regulations. The person would need to determine whether it used credit scores for risk-based pricing of the consumers to whom it must provide risk-based pricing notices. Pursuant to the final rules, a person that uses credit scores for risk-based pricing would need to provide a credit score and information relating to that credit score to those consumers to whom it must provide an risk-based pricing notice, in addition to the information currently required by the January 2010 Final Rule. The person would need to design, generate, and provide notices, including a credit score and information relating to that credit score, to the consumers to whom it must provide a risk-based pricing notice.

The Board does not expect that the costs associated with the final rules will place a significant burden on small entities.

6. 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 final rules. As discussed in Part II above, the amendments to the risk-based pricing rules are consistent with section 1100F of the Dodd-Frank Act. The Agencies are issuing the final rules pursuant to their existing authority under section 615(h) of the FCRA. The amendments to the risk-based pricing rules have been designed to work in conjunction with the requirements of section 1100F of the Dodd-Frank Act, to help facilitate uniform compliance when this section becomes effective.

7. Steps Taken To Minimize the Economic Impact on Small Entities

The Board solicited comments on any significant alternatives consistent with section 615(h) of the FCRA, including the provisions of section 1100F of the Dodd-Frank Act, that would minimize the impact of the final rules on small entities. As noted above, several industry commenters suggested that small entities be exempt from the proposed rules, or that the Board delay the effective date for small entities.

The Board has sought to minimize the economic impact on small entities by adopting rules that are consistent with those adopted by the Commission, and providing model notices to ease creditors' burden. As explained above, given the impending transfer of rulemaking authority to the Bureau, the Agencies do not believe it is appropriate to make changes to the January 2010 risk-based pricing rules and notices beyond those required by section 1100F of the Dodd-Frank Act. Such changes are beyond the scope of this rulemaking. In addition, Congress set the effective date for section 1100F of the Dodd-Frank Act for July 21, 2011. To facilitate compliance, the final rules are effective and compliance is mandatory beginning 30 days after the date of publication in the **Federal Register**.

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 rules and a Final Regulatory Flexibility Analysis (FRFA) with the final rules, unless the Commission certifies that the rules will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603–605.

The Commission hereby certifies that the final rules will not have a significant economic impact on a substantial number of small business entities. The Commission recognizes that the final rules will affect some small business entities; however we do not expect that a substantial number of small businesses will be affected or that the final rules will have a significant economic impact on them.

The Commission continues to believe that a precise estimate of the number of small entities that fall under the final rules is not feasible. The Commission did not receive any comments relating to the total number of small entities that would be affected by the final rules. We did receive some comments from industry suggesting that the compliance with the final rules would be burdensome. One comment stated that publicly owned utilities, many of which qualify as small entities, will incur ''significant'' costs to comply with the final rules and requested that the Commission conduct the full FRFA analysis. The Commission considered these comments, and based on the Commission's own experience and knowledge of industry practices, the Commission continues to believe that the cost and burden to small entities of complying with the final rules are minimal. Accordingly, this document serves as notice to the Small Business Administration of the agency's certification of no effect. Nonetheless, the Commission has decided to publish a FRFA with the final rules and has prepared the following analysis:

1. Need for and Objectives of the Rules

Section 1100F of the Dodd-Frank Act amends section 615(h) of the FCRA to require persons to disclose a credit score and information relating to that credit score in risk-based pricing notices when the person uses a credit score in setting the material terms of credit. Specifically, a person must disclose, in addition to the information currently required by the January 2010 Final Rule: (1) The numerical credit score used in making the credit decision; (2) the range of possible scores under the model used; (3) the key factors that adversely affected the credit score of the consumer in the model used; (4) the date on which the credit score was created; and (5) the name of the person or entity that provided the credit score. The effective date of these amendments is July 21, 2011.

The Agencies are issuing final rules to amend the risk-based pricing rules pursuant to their existing authority under section 615(h) of the FCRA, to facilitate compliance with the new requirements under section 1100F of the Dodd-Frank Act.

2. Significant Issues Received by Public Comment

The Commission received a number of comments in response to the proposed rules. Some of the industry comments stated that the proposed rules would create substantial compliance burdens, particularly for small entities. They asked that certain small entities be exempt from the requirements, or that the Commission delay the implementation date for small entities.

The compliance burdens identified by these comments are not substantially different or distinct from the burdens imposed by the original Final Rule, which became effective January 1, 2011. Therefore the exemption requested by the comments—to be excluded from the requirement to provide risk-based pricing notices—would affect the underlying Rule. Given the impending transfer of rulemaking authority to the Bureau, however, the Agencies do not believe it is appropriate to make changes to the risk-based pricing rules and notices beyond those required by section 1100F of the Dodd-Frank Act. Such changes are beyond the scope of this rulemaking.

3. Small Entities to Which the Final Rules Will Apply

The final rules apply to any person that (1) Is required to provide a risk-based pricing notice to a consumer; and (2) uses a credit score in making the credit decision requiring a risk-based pricing notice. The total number of small entities likely to be affected by the final rules is unknown, because the Commission does not have data on the number of small entities that use credit scores 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 entities. Generally, the entities under the Commission's jurisdiction that also are covered by section 311 include state-chartered credit unions, non-bank mortgage lenders, automobile dealers, and utility companies. The available data, however, are not sufficient for the Commission to realistically estimate the number of small entities, as defined by the SBA, that the Commission regulates and that would be subject to the proposed rules.[20] The Commission received one comment stating that a majority of publicly owned utilities qualified as small entities and would, therefore, be affected by these final rules. The final rules do not, however, impose any requirements on small entities that do not use credit scores for risk-based pricing in connection with the provision of consumer credit.

4. Projected Reporting, Recordkeeping and Other Compliance Requirements

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

The final rules generally require a creditor that is required to provide a risk-based pricing notice to a consumer, and uses a credit score in making the credit decision to provide a credit score and information relating to that credit score in the notice, in addition to the information that is currently required by the January 2010 Final Rule. Pursuant to the January 2010 Final Rule, a person is required 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. If the person does engage in risk-based pricing based on consumer reports, the person generally is required to establish procedures for identifying those consumers to whom it must provide risk-based pricing notices.

A person that is required to provide risk-based pricing notices would need to analyze the rules. The person would need to determine whether it used credit scores for risk-based pricing of the consumers to whom it must provide risk-based pricing notices. Pursuant to the final rules, a person that uses credit scores for risk-based pricing would need to provide credit score information relating to that credit score to those consumers to whom it must provide a risk-based pricing notice, in addition to the information currently required by the January 2010 Final Rule. The person would need to design, generate, and provide notices, including a credit score and information relating to that credit score, to the consumers to whom it must provide a risk-based pricing notice.

Compliance with the final rules will involve some expenditure of time and resources, although Commission staff anticipates that the costs per entity will not be significant. Most of the costs will be incurred initially as entities update their systems for determining which of their consumers should receive risk-based pricing notices, and update notices to include a credit score and information relating to that score, as necessary, and as they train staff to comply with the rules. In calculating these costs, Commission staff assumes that for all entities managerial or professional technical personnel will handle the initial aspects of compliance with the rule, and that sales associates or administrative personnel will handle any ongoing responsibilities. To further minimize the costs associated with the final rules, the Agencies have provided a model notice to facilitate compliance. Cost estimates for compliance with the final rules are described in detail in the PRA section of this Notice.

Commission staff does not expect that the costs associated with the final rules will place a significant burden on small entities.

5. Steps Taken To Minimize Significant Economic Impact of the Rules on Small Entities

The Commission considered whether any significant alternatives, consistent with section 615(h) of the FCRA, including the provisions of section 1100F of the Dodd-Frank Act, could further minimize the final rules' impact on small entities. As noted above, some industry commenters suggested that small entities be exempt from the rules, or that the Commission delay the effective date for small entities.

As explained above, given the impending transfer of rulemaking authority to the Bureau, however, the Agencies do not believe it is appropriate to make changes to the risk-based pricing rules and notices beyond those required by section 1100F of the Dodd-Frank Act. Such changes are beyond the scope of this rulemaking. In addition, Congress set the effective date for section 1100F of the Dodd-Frank Act for July 21, 2011. The final rules are effective and compliance is mandatory beginning 30 days after the date of publication in the **Federal Register**.

The Commission has sought to minimize the economic impact on small entities by providing a model notice to ease creditor's burden and facilitate compliance. By using the model notice, creditors qualify for the safe harbor. Creditors are not required to use the model notice, however. If they provide a notice that clearly and conspicuously conveys the required information, these creditors would comply with the requirements of the rules, though they would not receive the benefit of the safe harbor. In addition, compliance with this notice requirement is format-neutral. Finally, a creditor may comply with the January 2010 Final Rule by providing consumers with a credit score disclosure notice. By providing a range of options, the Agencies have sought to help businesses of all sizes reduce the burden of complying with the final rules.

[20] 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. Automobile 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.*

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

Credit, Trade practices.

16 CFR Part 698

Credit, Trade practices.

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the joint preamble, the Board is amending chapter II of title 12 of the Code of Federal Regulations by amending 12 CFR part 222, as follows:

PART 222—FAIR CONSUMER REPORTING (REGULATION V)

■ 1. The authority citation for part 222 continues 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. Section 222.73 is amended as follows:

■ A. Paragraphs (a)(1)(vii) and (viii) are revised.

■ B. Paragraph (a)(1)(ix) is added.

■ C. Paragraphs (a)(2)(vii) and (viii) are revised.

■ D. Paragraph (a)(2)(ix) is added.

■ E. Paragraph (b)(2) is revised.

■ F. Paragraph (d) is added.

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

(a) * * *

(1) * * *

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

(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; and

(ix) If a credit score of the consumer to whom a person grants, extends, or otherwise provides credit is used in setting the material terms of credit:

(A) A statement that a credit score is a number that takes into account information in a consumer report, that the consumer's credit score was used to set the terms of credit offered, and that a credit score can change over time to reflect changes in the consumer's credit history;

(B) The credit score used by the person in making the credit decision;

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

(D) All of the key factors that adversely affected the credit score, which shall not exceed four key factors, except that if one of the key factors is the number of enquiries made with respect to the consumer report, the number of key factors shall not exceed five;

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

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

(2) * * *

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

(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; and

(ix) If a credit score of the consumer whose extension of credit is under review is used in increasing the annual percentage rate:

(A) A statement that a credit score is a number that takes into account information in a consumer report, that the consumer's credit score was used to set the terms of credit offered, and that a credit score can change over time to reflect changes in the consumer's credit history;

(B) The credit score used by the person in making the credit decision;

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

(D) All of the key factors that adversely affected the credit score, which shall not exceed four key factors, except that if one of the key factors is the number of enquires made with respect to the consumer report, the number of key factors shall not exceed five;

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

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

(b) * * *

(2) *Model forms.* Model forms of the risk-based pricing notice required by § 222.72(a) and (c) are contained in Appendices H–1 and H–6 of this part. Appropriate use of Model Form H–1 or H–6 is deemed to comply with the requirements of § 222.72(a) and (c). Model forms of the risk-based pricing notice required by § 222.72(d) are contained in Appendices H–2 and H–7 of this part. Appropriate use of Model Form H–2 or H–7 is deemed to comply with the requirements of § 222.72(d). Use of the model forms is optional.

* * * * *

(d) *Multiple credit scores*—(1) *In general.* When a person obtains or creates two or more credit scores and uses one of those credit scores in setting the material terms of credit, for example, by using the low, middle, high, or most recent score, the notices described in paragraphs (a)(1) and (2) of this section must include that credit score and information relating to that credit score required by paragraphs (a)(1)(ix) and (a)(2)(ix). When a person obtains or creates two or more credit scores and uses multiple credit scores in setting the material terms of credit by, for example, computing the average of all the credit scores obtained or created, the notices described in paragraphs (a)(1) and (2) of this section must include one of those credit scores and information relating to credit scores required by paragraphs (a)(1)(ix) and (a)(2)(ix). The notice may, at the person's option, include more than one credit score, along with the additional information specified in paragraphs (a)(1)(ix) and (a)(2)(ix) of this section for each credit score disclosed.

(2) *Examples.* (i) A person that uses consumer reports to set the material terms of credit cards granted, extended, or provided to consumers regularly requests credit scores from several consumer reporting agencies and uses the low score when determining the material terms it will offer to the consumer. That person must disclose the low score in the notices described in paragraphs (a)(1) and (2) of this section.

(ii) A person that uses consumer reports to set the material terms of automobile loans granted, extended, or provided to consumers regularly requests credit scores from several consumer reporting agencies, each of which it uses in an underwriting program in order to determine the material terms it will offer to the consumer. That person may choose one of these scores to include in the notices described in paragraph (a)(1) and (2) of this section.

■ 3. Section 222.75 is amended by revising paragraphs (c)(1) and (c)(3)(i) to read as follows:

§ 222.75 Rules of construction.

* * * * *

(c) *Multiple consumers*—(1) *Risk-based pricing notices.* In a transaction involving two or more consumers who are granted, extended, or otherwise provided credit, a person must provide a notice to each consumer to satisfy the requirements of § 222.72(a) or (c). Whether the consumers have the same address or not, the person must provide a separate notice to each consumer if a notice includes a credit score(s). Each separate notice that includes a credit score(s) must contain only the credit score(s) of the consumer to whom the notice is provided, and not the credit score(s) of the other consumer. If the consumers have the same address, and the notice does not include a credit score(s), a person may satisfy the requirements by providing a single notice addressed to both consumers.

* * * * *

(3) *Examples.* (i) Two consumers jointly apply for credit with a creditor. The creditor obtains credit scores on both consumers. Based in part on the credit scores, the creditor grants credit to the consumers on material terms that are materially less favorable than the most favorable terms available to other consumers from the creditor. The creditor provides risk-based pricing notices to satisfy its obligations under this subpart. The creditor must provide a separate risk-based pricing notice to each consumer whether the consumers have the same address or not. Each risk-based pricing notice must contain only the credit score(s) of the consumer to whom the notice is provided.

* * * * *

■ 4. Appendix H is amended by revising paragraphs 1.,2., and 4. and adding Model Forms H–6 and H–7 to read as follows:

Appendix H to Part 222—Appendix H—Model Forms for Risk-Based Pricing and Credit Score Disclosure Exception Notices

1. This appendix contains four 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 Sec. 222.72 if a credit score is not used in setting the material terms of credit. Model form H–2 is for risk-based pricing notices given in connection with account review if a credit score is not used in increasing the annual percentage rate. 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. Model form H–6 is for use in complying with the general risk-based pricing notice requirements in Sec. 222.72 if a credit score is used in setting the material terms of credit. Model form H–7 is for risk-based pricing notices given in connection with account review if a credit score is used in increasing the annual percentage rate. All forms contained in this appendix are models; their use is optional.

* * * * *

4. Optional language in model forms H–6 and H–7 may be used to direct the consumer to the entity (which may be a consumer reporting agency or the creditor itself, for a proprietary score that meets the definition of a credit score) that provided the credit score for any questions about the credit score, along with the entity's contact information. Creditors may use or not use the additional language without losing the safe harbor, since the language is optional.

* * * * *

H–6 Model form for risk-based pricing notice with credit score information

H–7 Model form for account review risk-based pricing notice with credit score information

* * * * *

BILLING CODE 6210–01–P

BILLING CODE 6750–01–P

H-6. Model form for risk-based pricing notice with credit score information

[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.

Your Credit Score and Understanding Your Credit Score

Your credit score	**[Insert credit score]** Source: **[Insert source]** Date: **[Insert date score was created]**
What you should know about credit scores	Your credit score is a number that reflects the information in your credit report. We used your credit score to set the terms of credit we are offering you. Your credit score can change, depending on how your credit history changes.
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]**.
Key factors that adversely affected your credit score	**[Insert first factor]** **[Insert second factor]** **[Insert third factor]** **[Insert fourth factor]** **[Insert number of enquiries as a key factor, if applicable]**
[How can you get more information about your credit score?]	[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at: Address: _____ _____ [Toll-free] Telephone number:_____]

H-7. Model form for account review risk-based pricing notice with credit score information

[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.

Your Credit Score and Understanding Your Credit Score

Your credit score	**[Insert credit score]** Source: **[Insert source]** Date: **[Insert date score was created]**
What you should know about credit scores	Your credit score is a number that reflects the information in your credit report. We used your credit score to set the terms of credit we are offering you. Your credit score can change, depending on how your credit history changes.
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]**.
Key factors that adversely affected your credit score	**[Insert first factor]** **[Insert second factor]** **[Insert third factor]** **[Insert fourth factor]** **[Insert number of enquiries as a key factor, if applicable]**
[How can you get more information about your credit score?]	[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at: Address: _____ _____ [Toll-free] Telephone number:_____]

BILLING CODE 6210–01–C
BILLING CODE 6750–01–C

Federal Trade Commission

16 CFR Chapter I

Authority and Issuance

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

PART 640—DUTIES OF CREDITORS REGARDING RISK–BASED PRICING

■ 5. The authority citation for part 640 continues to read as follows:

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

■ 6. Section 640.4 is amended as follows:

■ A. Paragraphs (a)(1)(vii) and (viii) are revised.

■ B. Paragraph (a)(1)(ix) is added.

■ C. Paragraphs (a)(2)(vii) and (viii) are revised.

■ D. Paragraph (a)(2)(ix) is added.

■ E. Paragraph (b)(2) is revised.

■ F. Paragraph (d) is added.

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

(a) * * *

(1) * * *

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

(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; and

(ix) If a credit score of the consumer to whom a person grants, extends, or otherwise provides credit is used in setting the material terms of credit:

(A) A statement that a credit score is a number that takes into account information in a consumer report, that the consumer's credit score was used to set the terms of credit offered, and that a credit score can change over time to reflect changes in the consumer's credit history;

(B) The credit score used by the person in making the credit decision;

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

(D) All of the key factors that adversely affected the credit score, which shall not exceed four key factors, except that if one of the key factors is the number of enquiries made with respect to the consumer report, the number of key factors shall not exceed five;

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

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

(2) * * *

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

specified by the consumer reporting agency or agencies;

(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; and

(ix) If a credit score of the consumer whose extension of credit is under review is used in increasing the annual percentage rate:

(A) A statement that a credit score is a number that takes into account information in a consumer report, that the consumer's credit score was used to set the terms of credit offered, and that a credit score can change over time to reflect changes in the consumer's credit history;

(B) The credit score used by the person in making the credit decision;

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

(D) All of the key factors that adversely affected the credit score, which shall not exceed four key factors, except that if one of the key factors is the number of enquiries made with respect to the consumer report, the number of key factors shall not exceed five;

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

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

(b) * * *

(2) *Model forms.* Model forms of the risk-based pricing notice required by Sec. 640.3(a) and (c) are contained in Appendices B–1 and B–6 of this part. Appropriate use of Model form B–1 or B–6 is deemed to comply with the requirements of § 640.3(a) and (c). Model forms of the risk-based pricing notice required by § 640.3(d) are contained in Appendices B–2 and B–7 of this part. Appropriate use of Model form B–2 or B–7 is deemed to comply with the requirements of § 640.3(d). Use of the model forms is optional.

* * * * *

(d) *Multiple credit scores*—(1) *In general.* When a person obtains or creates two or more credit scores and uses one of those credit scores in setting the material terms of credit, for example, by using the low, middle, high, or most recent score, the notices described in paragraphs (a)(1) and (2) of this section must include that credit score and information relating to that credit score required by paragraphs (a)(1)(ix) and (a)(2)(ix). When a person obtains or creates two or more credit scores and uses multiple credit scores in setting the material terms of credit by, for example, computing the average of all the credit scores obtained or created, the notices described in paragraphs (a)(1) and (2) of this section must include one of those credit scores and information relating to credit scores required by paragraphs (a)(1)(ix) and (a)(2)(ix). The notice may, at the person's option, include more than one credit score, along with the additional information specified in paragraphs (a)(1)(ix) and (a)(2)(ix) of this section for each credit score disclosed.

(2) *Examples.* (i) A person that uses consumer reports to set the material terms of credit cards granted, extended, or provided to consumers regularly requests credit scores from several consumer reporting agencies and uses the low score when determining the material terms it will offer to the consumer. That person must disclose the low score in the notices described in paragraphs (a)(1) and (2) of this section.

(ii) A person that uses consumer reports to set the material terms of automobile loans granted, extended, or provided to consumers regularly requests credit scores from several consumer reporting agencies, each of which it uses in an underwriting program in order to determine the material terms it will offer to the consumer. That person may choose one of these scores to include in the notices described in paragraph (a)(1) and (2) of this section.

■ 7. Section 640.6 is amended by revising paragraphs (c)(1) and (c)(3)(i) to read as follows:

§ 640.6 Rules of construction.

* * * * *

(c) *Multiple consumers*—(1) *Risk-based pricing notices.* In a transaction involving two or more consumers who are granted, extended, or otherwise provided credit, a person must provide a notice to each consumer to satisfy the requirements of § 640.3(a) or (c). Whether the consumers have the same address or not, the person must provide a separate notice to each consumer if a notice includes a credit score(s). Each separate notice that includes a credit score(s) must contain only the credit score(s) of the consumer to whom the notice is provided, and not the credit score(s) of the other consumer. If the consumers have the same address, and the notice does not include a credit score(s), a person may satisfy the requirements by providing a single notice addressed to both consumers.

* * * * *

(3) *Examples.* (i) Two consumers jointly apply for credit with a creditor. The creditor obtains credit scores on both consumers. Based in part on the credit scores, the creditor grants credit to the consumers on material terms that are materially less favorable than the most favorable terms available to other consumers from the creditor. The creditor provides risk-based pricing notices to satisfy its obligations under this subpart. The creditor must provide a separate risk-based pricing notice to each consumer whether the consumers have the same address or not. Each risk-based pricing notice must contain only the credit score(s) of the consumer to whom the notice is provided.

* * * * *

PART 698—MODEL FORMS AND DISCLOSURES

■ 8. The authority citation for part 698 continues 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.

■ 9. Appendix B to Part 698 is amended by revising paragraphs 1., 2., and 4, and adding Model Forms B–6 and B–7 to read as follows:

Appendix B to Part 698—Model Forms for Risk-Based Pricing and Credit Score Disclosure Exception Notices

1. This appendix contains four 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 § 640.3 if a credit score is not used in setting the material terms of credit. Model form B–2 is for risk-based pricing notices given in connection with account review if a credit score is not used in increasing the annual percentage rate. 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. Model form B–6 is for use in complying with the general risk-based pricing notice requirements in § 640.3 if a credit score is used in setting the material terms of credit. Model form B–7 is for risk-based pricing notices given in connection with account review if a credit score is used in increasing the annual percentage rate. All forms contained in this appendix are models; their use is optional.

* * * * *

4. Optional language in model forms B–6 and B–7 may be used to direct the consumer

to the entity (which may be a consumer reporting agency or the creditor itself, for a proprietary score that meets the definition of a credit score) that provided the credit score for any questions about the credit score, along with the entity's contact information. Creditors may use or not use the additional language without losing the safe harbor, since the language is optional.

* * * * *

B–6 Model form for risk-based pricing notice with credit score information

B–7 Model form for account review risk-based pricing notice with credit score information

* * * * *

BILLING CODE 6210–01–P;6750–01–P

B-6. Model form for risk-based pricing notice with credit score information

[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.

Your Credit Score and Understanding Your Credit Score

Your credit score	**[Insert credit score]** Source: **[Insert source]** Date: **[Insert date score was created]**
What you should know about credit scores	Your credit score is a number that reflects the information in your credit report. We used your credit score to set the terms of credit we are offering you. Your credit score can change, depending on how your credit history changes.
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]**.
Key factors that adversely affected your credit score	**[Insert first factor]** **[Insert second factor]** **[Insert third factor]** **[Insert fourth factor]** **[Insert number of enquiries as a key factor, if applicable]**
[How can you get more information about your credit score?]	[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at: Address: _____ _____ [Toll-free] Telephone number:_____]

B-7. Model form for account review risk-based pricing notice with credit score information

[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.

Your Credit Score and Understanding Your Credit Score

Your credit score	**[Insert credit score]** Source: **[Insert source]** Date: **[Insert date score was created]**
What you should know about credit scores	Your credit score is a number that reflects the information in your credit report. We used your credit score to set the terms of credit we are offering you. Your credit score can change, depending on how your credit history changes.
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]**.
Key factors that adversely affected your credit score	**[Insert first factor]** **[Insert second factor]** **[Insert third factor]** **[Insert fourth factor]** **[Insert number of enquiries as a key factor, if applicable]**
[How can you get more information about your credit score?]	[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at: Address: _____ _____ [Toll-free] Telephone number:_____]

BILLING CODE 6210–01–C; 6750–01–C

By order of the Board of Governors of the Federal Reserve System, July 5, 2011.

Jennifer J. Johnson,

Secretary of the Board.

By the direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2011–17649 Filed 7–14–11; 8:45 am]

BILLING CODE 6210–01–P; 6750–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 380

Certain Orderly Liquidation Authority Provisions under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act

AGENCY: Federal Deposit Insurance Corporation (''FDIC'').

ACTION: Final rule.

SUMMARY: The FDIC is issuing a final rule (''Final Rule'') to implement certain provisions of its authority to resolve covered financial companies under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'' or the ''Act''). The Final Rule will establish a more comprehensive framework for the implementation of the FDIC's orderly liquidation authority and will provide greater transparency to the process for the orderly liquidation of a systemically important financial institution under the Dodd-Frank Act.

DATES: The effective date of the Final Rule is August 15, 2011.

FOR FURTHER INFORMATION CONTACT: R. Penfield Starke, Senior Counsel, Legal Division, (703) 562–2422; or Marc Steckel, Associate Director, Division of Insurance and Research, (202) 898–3618. For questions to the Legal Division concerning the following parts of the Final Rule contact:

Avoidable transfer provisions: Phillip E. Sloan, Counsel (703) 562–6137.

Compensation recoupment: Patricia G. Butler, Counsel (703) 516–5798.

Subpart B—Priorities of Claims: Elizabeth Falloon, Counsel (703) 562–6148.

Subpart C—Receivership Administrative Claims Procedures: Thomas Bolt, Supervisory Counsel (703) 562–2046.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Act (Pub. L. 111–203, 12 U.S.C. 5301 *et seq.,* July 21, 2010) was enacted on July 21, 2010. Title II of the Act provides for the appointment of the FDIC as receiver of a nonviable financial company that poses significant risk to the financial stability of the United States (a ''covered financial company'') following the prescribed recommendation, determination, and judicial review process set forth in the Act. Title II outlines the process for the orderly liquidation of a covered financial company following the FDIC's appointment as receiver and provides for additional implementation of the orderly liquidation authority by rulemaking. The Final Rule is being promulgated pursuant to section 209 of the Act, which authorizes the FDIC, in consultation with the Financial Stability Oversight Council, to prescribe such rules and regulations as the FDIC considers necessary or appropriate to implement Title II; section 210(s)(3), which directs the FDIC to promulgate regulations to implement the requirements of the Act with respect to recoupment of compensation from senior executives or directors materially responsible for the failed condition of a covered financial company, which regulation is required to include a definition of the term ''compensation;'' section 210(a)(7)(D), with respect to the establishment of a post-insolvency interest rate; and section 210(b)(1)(C)–(D), with respect to the index for inflation applied to certain employee compensation and benefit claims. While it is not expected that the FDIC will be appointed as receiver for a covered financial company in the near future, it is important for the FDIC to have rules in place in a timely manner so that stakeholders may plan transactions going forward.