Fair Credit Reporting Risk-Based Pricing Regulations

BAI Learning & Development Whitepaper

The Board of Governors of the Federal Reserve System (Board) and Federal Trade Commission (Commission) have 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) at the beginning of 2010. These 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 Section 615(h) of the FCRA that were added by Section 1100F of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The Board placed these final rules in the part of its regulations that implements the FCRA (Regulation V, 12 CFR § 222). For ease of reference, the discussion in this document will use the Board's numbering system. The FTC also placed the final rules and model forms in the part of its regulations implementing the FCRA, specifically, 16 CFR part 640.

Effective Date

These rules are effective 30 days after the date of publication in the Federal Register (probably mid-August, 2011).

Effect on Banks

This rule essentially amends Appendix Examples H-1 and H-2 of the risk-based pricing rule. Most banks are not spending much time using H-2, as that is only used if you are re-evaluating a credit card interest rate based on the customer's current credit scores. If this describes your bank, the H-2/H-7 change will have no impact.

However, some banks are using H-1, which is the disclosure that is used whenever you employ the risk-based pricing methods of the 40%/60% split, with the bottom 60% of your customer base receiving the notice, or the tiered pricing method, with the bottom 60% of your tiers receiving the risk-based pricing notice. Beginning in August, if you use a credit score to set material terms, the customer will need to receive H-6 rather than H-1.

If your bank is currently giving all customers their credit scores using H-3 (notice to home loan applicant/real estate), H-4 (giving the credit score to all applicants for non real estate loans), or H-5 (giving this notice to applicants with no credit scores), then this pronouncement will not have any measurable impact upon your bank. However, it is possible that, as the control of this regulation moves from the Federal Reserve Board to the Consumer Financial Protection Bureau, there will be additional changes.

Background

The Fair and Accurate Credit Transactions Act of 2003 (FACT Act) was signed into law on December 4, 2003. Part of that law addressed risk-based pricing. Risk-based pricing refers to the practice of setting or adjusting the price and other terms of credit offered or extended to a particular consumer to reflect the risk of nonpayment by that consumer. Information from a consumer report is often used in evaluating the risk posed by the consumer. Creditors that engage in risk-based pricing generally offer more favorable terms to consumers with good credit histories and less favorable terms to consumers with poor credit histories.

Under the 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 current regulation was jointly published on January 15, 2010, with a mandatory compliance date of January 1, 2011.

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) was signed into law. The Dodd-Frank Act amended 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 Dodd-Frank Act also established a Bureau of Consumer Financial Protection (the Bureau), to which rule writing authority for certain consumer protection laws will transfer, including this rule, as of July 21, 2011. 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.

Accordingly, the Agencies finalized amendments to the risk-based pricing rules and notices to incorporate the additional content required by the Dodd-Frank Act, pursuant to their existing authority. Given the impending transfer of rulemaking authority to the Bureau, however, the Agencies did not make changes to the risk-based pricing rules and notices beyond those required by the Dodd-Frank Act.

Section-by-Section Analysis

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

The January 2010 Final Rule implemented the general content requirements for risk-based pricing notices in § 222.72(a)(1), hereafter the "general risk-based pricing notice." The January 2010 Final Rule also set 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), hereafter the "account review notice."

The "new" Dodd-Frank Act amended section of the FCRA requires that creditors disclose additional information in risk-based pricing notices. Consistent with the Dodd-Frank Act, the proposal amended the content requirements of the general risk-based pricing notice and the account review notice, pursuant to the "new" FCRA. Another proposed section 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, another proposed section 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, these amendments required 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 inquiries made with respect to the consumer report, the number of key factors shall not exceed five;

Because the statutes thus require disclosure of the top four (or five) key factors that adversely affected the credit score, the Agencies adopted this section as proposed.

Under 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, 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)

If the number of inquiries is a key factor that adversely affected the consumer‘s credit score, that factor must be disclosed pursuant to FCRA, without regard to the numerical limitation. The FCRA accordingly requires disclosure of the number of inquiries as a key factor, regardless of whether it is one of the top four key factors. Thus, the Agencies adopted the proposed provision without change.

(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, the proposal 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.

Additional Information Regarding Credit Scores

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. The Agencies revised the model forms H-6 and H-7 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.

Proprietary Scores

The proposal 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, another section 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.

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.

Credit score, for purposes of section the Dodd-Frank Act, FCRA, and the January 2010 Final Rule is defined as "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. The FCRA specifically excludes some, but not all, 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.

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 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, 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. The creditor may use appropriate sections of Forms H-6 and H-7 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 FCRA.

The Dodd-Frank Act requires disclosure of the credit score used in setting the material terms of credit or reviewing the account. The score presented to the customer should be the score that was used, regardless of source. 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.

If a proprietary score is used, the creditor should modify Forms H-6 and H-7 of the Board�What 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 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.

Commenter's also asked for guidance on what information to disclose 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 FCRA. In such cases where both credit scores are used, a creditor has the option to choose which credit score to disclose. The creditor may use Forms H-6 and H-7 of the Board‛s rules to comply with this requirement.

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

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.

The Dodd-Frank Act requires disclosure of a credit score. 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 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. 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 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, and the 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 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. If the finance source used a credit score in its underwriting, that automobile dealer must include that score in the risk-based pricing notice. 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.

In this scenario, 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 purchase the contract.

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. The original creditor has therefore "used" the consumer report.

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. The proposal 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.

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.

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 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.

After the Dodd-Frank Act, there remain strong arguments for retaining the credit score disclosure exceptions. The January 2010 Final Rule, which included the credit score disclosure exceptions, was 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 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. 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.

By requiring that risk-based pricing notices disclose credit scores when the credit scores were used to set the terms of credit, the Dodd-Frank Act eliminated one of the key comparative benefits of the credit score disclosure exception notices over the risk-based pricing notices. While the exception notices contain valuable information about how a consumer�because 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.

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 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 Appendix H of the January 2010 Final Rule. This paragraph of the January 2010 Final Rule clarifies how each of the model forms of the risk-based pricing notices required by this regulation may be used. Under the proposal, the Agencies amended the appendix by adding two new model forms (H-6 and H-7) for situations where a credit score and information relating to such credit score must be disclosed. The proposal clarified that appropriate use of Model Form H-1 or H-6, is deemed to comply with the requirements of the regulation. It also clarified that appropriate use of Model Form H-2 or H-7 is deemed to comply with other requirements of the regulation.

The final rules adopted the forms as proposed. The comments received on the proposed model forms are discussed 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. 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 this section 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.

This section 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. 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. The notice may, at the person‘s option, include more than one credit score, along with the other additional information that is required to be included for each credit score disclosed.

The final rules do not require creditors to disclose all 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, 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 believe that disclosing multiple credit scores may confuse consumers and provide them little value. 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. The Bureau must submit a report to Congress with the results of this study within one year after the Dodd-Frank Act enactment date. That study may shed light on the extent to which disclosure of multiple credit scores would benefit consumers, and the Bureau could revisit this issue in light of the results of its study.

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 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

The proposed rules amended this section 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 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�by credit score.

The proposal stated 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 this section 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. It 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.

Under 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.

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 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.

The proposed rules added two new forms that could be used when a person must disclose credit score information to a consumer. Model form H-6 sets 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 form H-7 sets 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 are retained. The general risk-based pricing and account review notices could continue to be used to comply when the additional Dodd-Frank content requirements do not apply. As with the other model forms, use of the model forms H-6 or H-7 by creditors is optional. If a creditor appropriately uses Model Form H-6 or H-7 or modifies a form in accordance with the rules or the instructions to the appendix, that creditor will be within the safe harbor and is deemed to be acting in compliance with the general risk-based pricing notice or account review notice requirement.

Finally, the proposal amended instructions to Appendix H to reflect the addition of H-6 and H-7.

In addition, model forms H-6 and H-7 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.

The final rules adopt model forms H-6 and H-7 of the Board�据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.

The Agencies are adding optional language to model forms H-6 and H-7 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 or may not use the additional language without losing safe harbor, since the language is optional. The final rules add new instruction to make clear that this disclosure of the entity‛s contact information is optional.

Co-Applicants, Guarantors, and Co-Signers

Some commenter's 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.

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.

Dodd-Frank 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 the Dodd-

Frank Act prevents a creditor from providing the applicant notice that no credit score was available from a consumer reporting agency, although not required.

Order of Content

The Agencies specifically solicited comment on the ordering of the content in Model Forms H-6 and H-7. No changes were made.

Order of Credit Report Information

Proposed Model Forms H-6 and H-7 disclose the credit score in the first row of the section "Your Credit Score and Understanding Your Credit Score." The final rules retain the proposed order of the credit report information in model forms H-6 and H-7.

Attaching the Credit Score Information to the Current Model Form

The difference between H-1 and H-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. The difference between H-2 and H-7 is much the same. The Agencies believe that a creditor will be deemed to have used H-6 if it staples or appends to H-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. Instruction 3 to Appendix H sets out the modifications that may be made to the model forms without losing the benefit of safe harbor.

The combined H-1 and attachment must comply with Instruction 3 for the creditor to retain the safe harbor for using H-6. The same rules apply to a creditor using H-7 if it staples or appends to H-2 the same credit score information, in a format substantially similar to H-7.

Use of Graphs or Table Format

A creditor may rearrange the format of the model forms or make technical modifications to the language of the model forms, as long as the creditor does not change the substance of the disclosures. 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.

Such extensive rearrangements or modification of the language of the model forms would result in loss of safe harbor. 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 amendments in Section 1100F of the Dodd-Frank Act are effective on July 21, 2011. This section 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.

The Agencies believe that providing revised model notices, and adding to the requirements for the risk-based pricing notice the content required by Section 1100F of the Dodd-Frank Act, is appropriate. These final rules are thus effective and compliance is mandatory beginning 30 days after the date of publication in the Federal Register.

To view the new H-6 and H-7, go to:

http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20110706a1.pdf

You can find these disclosures on pages 37-44.

For more information on BAI's compliance training products and services, visit us online at www.LearnBAI.org.