

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: Notice of proposed rulemaking.

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 amends 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 propose to amend 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 proposed amendments 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: Comments must be received on or before **[INSERT DATE 30 days after date of publication]**. Comments on the Paperwork Reduction Act analysis set forth in Section III.A. of this Federal Register notice must be received on or before **[INSERT DATE 60 days after date of publication]**.

FOR FURTHER INFORMATION CONTACT:

Board: Mandie K. Aubrey, 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 INFORMATION¹:

I. Background

The Fair and Accurate Credit Transactions Act of 2003 (FACT Act) was signed into law on December 4, 2003. Pub. L. 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

¹ The Board is placing the proposed regulations 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 proposed regulations 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.

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 (75 Fed. Reg. 2724) (January 2010 Final Rule). The January 2010 Final Rule has 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. Pub. L. No. 111-203, 124 Stat. 1376. Section 1100F of the Dodd-Frank Act amends section 615(h) of the FCRA to require creditors to disclose in risk-based pricing notices a credit score used in making a credit

decision and information relating to such credit score. The effective date of these amendments is July 21, 2011.²

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 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 by 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 proposing amendments to the risk-based pricing rules that are consistent with 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

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 Fed. Reg. 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 Fed. Reg. 57252 (Sept. 20, 2010).

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.

II. Section-by-Section Analysis

Section ____.73 Content, form, and timing of risk-based pricing notices.

Section ____.73(a) Content of the notice

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 content requirements for risk-based pricing notices in § 222.72(a)(1) and § 640.4(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 § 640.4(a)(2) (hereafter “account review notice”).

Pursuant to section 615(h) of the FCRA, the January 2010 Final Rule provides that a general risk-based pricing notice must include a statement that the person sending the notice has set the terms of credit offered, such as the annual percentage rate, based on

information from a consumer report, and a statement that those terms may be less favorable than the terms offered to consumers with better credit histories. Similarly, the January 2010 Final Rule provides that the account review notice must include a statement that the person sending the notice has conducted a review of the account based in whole or in part on information from a consumer report, and a statement that as a result of that review the annual percentage rate on the account has been increased. The January 2010 Final Rule also requires a person to provide certain information about the consumer reporting agency that furnished a consumer report and about the consumer's right to a free consumer report. The January 2010 Final Rule also provides that the general risk-based pricing notice and the account review notice must encourage consumers to verify the accuracy of the information in their consumer reports.

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. Specifically, a person must disclose in a risk-based pricing notice a credit score used in making a credit decision and information relating to such credit score, in addition to the information currently required by section 615(h) of the FCRA. Section 1100F of the Dodd-Frank Act requires that a risk-based pricing notice include: (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.

Pursuant to section 615(h) of the FCRA, proposed _____.73(a)(1) and (a)(2) would amend the content requirements of the general risk-based pricing notice and the

account review notice, consistent with section 1100F of the Dodd-Frank Act. Proposed ____73(a)(1)(ix) would require a person to provide the additional content described above 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) would require a person to provide the additional content described above 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.

Section 1100F of the Dodd-Frank Act requires a risk-based pricing notice to include a disclosure of a credit score used by a person in making the credit decision. However, a person who is required to provide a general risk-based pricing notice or account review notice may use a credit 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 would not be required to disclose a credit score and information relating to a credit score in such a notice.

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) would only require a person to disclose a credit score and information relating to a credit score 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.⁴ 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 credit report or credit score of the guarantor, co-signer, surety, or endorser.

The Agencies do not believe the credit score of one consumer, such as a guarantor, co-signer, surety, or endorser, should be disclosed to a different consumer who is required to be given a risk-based pricing notice. Therefore, when a person only uses a credit score 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, the proposal would not require a credit score to be provided in the general risk-based pricing notice or account review notice.

In those situations where a person must provide a credit score and information relating to a credit score to a consumer in a general risk-based pricing notice or an account review notice, §§ ____.73(a)(1)(ix)(B)-(F) and ____.73(a)(2)(ix)(B)-(F) of the proposed rules would require the following disclosures: (1) the credit score⁵ 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 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; (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.

⁴ See 75 Fed. Reg. at 2731 (Jan. 15, 2010).

⁵ “Credit score” is defined in the January 2010 Final Rule in ____.71(l) to have the same meaning as 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.

In addition, to provide context for the additional content requirements, proposed §§ _____.73(a)(1)(ix)(A) and _____.73(a)(2)(ix)(A) also would require 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.

The Agencies request comment as to whether the proposed additional content for general risk-based pricing notices and account review notices in the proposed rules is appropriate.

Finally, 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). Nothing in section 1100F of the Dodd-Frank Act or this proposal limits the ability of creditors to provide these exception notices in lieu of the general risk-based pricing notice.

Section _____.73(b) Form of the notice

The Agencies provide model forms that may be used for compliance with the risk-based pricing requirements in Appendix H of the January 2010 Final Rule. Paragraph (b)(2) 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 are deemed to be in compliance with §§ _____.72(a) and (c), and § _____.72(d), respectively. Use of these model forms is optional.

Under the proposal, the Agencies would amend 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) would clarify that appropriate use of Model Form H-1 or H-6, or B-1 or B-6, would be deemed to comply with the requirements of the requirements of § ____.72(a) and (c). It would also clarify that appropriate use of Model Form H-2 or H-7, or B-2 or B-7, would be deemed to comply with the requirements of § ____.72(d).

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 are proposing § ____.73(d) to address situations where a creditor obtains multiple credit scores from consumer reporting agencies and must provide either a general risk-based pricing notice or an account review notice to a consumer.

Proposed § ____.73(d)(i) provides 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 would be 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 would be 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)(ii) provides 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)(ii)(A) applies 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)(ii)(B) applies 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 may choose any one of these scores to include in its notices.

Section ____.75 Rules of construction.

Section ____.75(c) Multiple consumers

The proposed rules would amend § ____.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 retain 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, would amend 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) provides 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 would also amend § ____.75(c)(3)(i) to provide an example to illustrate 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) would clarify 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.

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 for the credit score disclosure exceptions. Each of the model forms is designated for use in a particular set of circumstances as indicated by the title of that model form. Model forms H-1 and B-1 are for use in complying with the general risk-based pricing notice requirements in § ____.72. Model forms H-2 and B-2 are for use in complying with the risk-based pricing notices given in connection with account review in § ____.72.

The proposed rules would add 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.

The Agencies request comment on the design and content of these model forms. The Agencies specifically solicit 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 credit reports.

Model forms H-1 and H-2, and B-1 and B-2 would be 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 would be 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 would be deemed to be acting in compliance with the general risk-based pricing notice or account review requirement when the content provisions of §§ ____.73(a)(1)(ix) or (a)(2)(ix) apply.

Finally, the proposal would amend 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.

III. Regulatory Analysis

A. Paperwork Reduction Act

1. Request for Comment on Proposed Information Collection

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3512; 5 CFR part 1320, Appendix A.1), the Board and the Commission may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

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

found in 12 CFR 222.73(a)(1) and (a)(2). The Board's OMB control number is 7100-0308.⁶

The information collection requirements contained in this joint notice of proposed rulemaking will be submitted by the Commission to OMB for review and approval under the PRA.⁷ The requirements are found in 16 CFR 640.4(a)(1) and (a)(2).

Comments are invited on:

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

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

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

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

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

All comments will become a matter of public record.

Comments should be addressed to:

Board: You may submit comments, identified by Docket No. R-1407 and RIN No.

RIN 7100-AD66, by any of the following methods:

⁶ 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 proposed rulemaking. The current OMB inventory for Regulation V is available at: <http://www.reginfo.gov/public/do/PRAMain>.

⁷ Current PRA clearance for the existing Fair Credit Reporting Risk-Based Pricing Regulations, under OMB control number 3084-0145, expires January 31, 2013.

- Agency Web Site: <http://www.federalreserve.gov>. Follow the instructions for submitting comments on the

<http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- E-mail: regs.comments@federalreserve.gov. Include docket number in the subject line of the message.

- FAX: 202-452-3819 or 202-452-3102.

- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

All public comments are available from the Board's Web site at

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

Commission: Comments should refer to "FCRA Risk-Based Pricing Rule Amendments: Project No. R411009," and may be submitted by any of the following methods. However, if the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled "Confidential."⁸

⁸ FTC Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by

- Web site: Comments filed in electronic form should be submitted by clicking on the following web link:

<https://ftcpublic.commentworks.com/ftc/riskbasedpricingamendnprm> and following the instructions on the Web-based form. To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at <https://ftcpublic.commentworks.com/ftc/riskbasedpricingamendnprm>.

- Federal eRulemaking Portal: If this notice appears at <http://www.regulations.gov>, you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

- Mail or Hand Delivery: A comment filed in paper form should include “FCRA Risk-Based Pricing Rule Amendments: Project No. R411009,” both in the text and on the envelope and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission/Office of the Secretary, Room H-113 (Annex M), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The Commission is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington, DC area and at the Commission is subject to delay due to heightened security precautions.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should additionally be submitted to: Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile

to (202) 395-6974 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

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

2. Proposed Information Collection

Title of Information Collection: Fair Credit Reporting Risk-Based Pricing Notice Amendments.

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.

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.

Abstract:

As discussed above, §§ ____.73(a)(1)(ix)(B)-(F) and ____.73(a)(2)(ix)(B)-(F) of the proposed rules would require the following disclosures: (1) the credit score⁹ 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 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; (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, proposed §§ ____.73(a)(1)(ix)(A) and ____.73(a)(2)(ix)(A) also would require a statement that a credit score is a number that takes into account information in a

⁹ “Credit score” is defined in the January 2010 Final Rule in ____.71(l) to have the same meaning as 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.

consumer report and that a credit score can change over time to reflect changes in the consumer's credit history.

Estimated Burden:

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

Board:

The Board believes that since financial institutions are familiar with the existing provisions of section 615(h) of the FCRA, which require risk-based pricing disclosures when a person uses a consumer report in setting the material terms of credit, implementation of the proposed requirements should not be overly burdensome. The proposed requirements would require a person to add information to a disclosure that it is already providing to a consumer.

The Board estimates that there are 18,173 respondents regulated by the federal financial regulatory agencies potentially affected by the new disclosure requirements. The Board estimates that the 18,173 respondents would take, on average, 16 hours (2 business days) to update their systems and modify model notices with to comply with proposed requirements. This one-time annual burden is estimated to be 290,768 hours. The Board believes that, on a continuing basis, the revision to the rule would have a negligible effect on the annual burden.

Commission:

Number of respondents:

As discussed above, the proposed requirements would require a 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 to add information to that disclosure.

Given the broad scope of creditors, it is difficult to determine precisely the number of them that are subject to the Commission's jurisdiction and that engage in risk-based pricing and use a credit score in making the credit decision requiring a risk-based pricing notice. As a whole, the entities under the Commission's jurisdiction are so varied that there are no general sources that provide a record of their existence, and they include many small entities for which there is no formal tracking method. Nonetheless, Commission staff estimates that the proposed regulations will affect approximately 199,500 creditors subject to the Commission's jurisdiction.¹⁰ The Commission invites comment and information about the categories and number of creditors subject to its jurisdiction.

Estimated Hours Burden:

As detailed below, Commission staff estimates that respondents would require, on average, 16 hours (two business days) to update their systems and modify model notices to comply with the proposed requirements. Thus, based on an estimated 199,500

¹⁰ 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 purposes 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 .

respondents, the one-time burden, annualized for a 3 year PRA clearance, would be 1,064,000 hours $[(16 \times 199,500) \div 3]$. The Commission believes that, on a continuing basis, the revision to the rule would have a negligible effect on the annual burden.

Estimated Cost Burden:

Commission staff derived labor costs by applying appropriate estimated hourly cost figures to the burden hours described above. It is difficult to calculate with precision the labor costs associated with the proposed regulations, as they entail varying compensation levels of clerical, management, and/or technical staff among companies of different sizes. In calculating the cost figures, Commission staff assumes that managerial and/or professional technical personnel will update systems for providing risk-based pricing notices and adapt the written notices as necessary at an hourly rate of \$42.95.¹¹

Based on the above estimates and assumptions, the estimated one-time labor cost for all categories of FTC covered entities under the proposed regulations, annualized for a 3 year PRA clearance, is \$45,698,800 $[(16 \text{ hours} \times \$42.95) \times 199,500] \div 3$.

Commission staff does not anticipate that compliance with the proposed amendments will require any new capital or other non-labor expenditures. The proposed amendments 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.

¹¹ 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.

B. Regulatory Flexibility Act

Board:

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed regulations cover certain banks, other depository institutions, and non-bank entities that extend credit to consumers. The Small Business Administration (SBA) establishes size standards that define which entities are small businesses for purposes of the RFA.¹² 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 proposed regulations. The Board requests public comment in the following areas.

1. Reasons for the Proposed Rule

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)

¹² 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.

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 proposed amendments to 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 this information. The legal basis for the proposed regulations is section 615(h) of the FCRA. The proposed regulations are consistent with section 1100F of the Dodd-Frank Act.

3. Description of Small Entities to Which the Regulation Applies

The proposed regulations 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 proposal 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 9,585 depository institutions that could be considered small entities and that are potentially

subject to the proposed rule.¹³ The available data are insufficient to estimate the number of non-bank entities that would be subject to the proposed rule and that are small as defined by the SBA. Such entities would include non-bank mortgage lenders, auto finance companies, automobile dealers, other non-bank finance companies, telephone companies, and utility companies.

It also is unknown how many of these small entities that meet the SBA's size standards and are potentially subject to the proposed regulations use credit scores for risk-based pricing in connection with the provision of consumer credit. The proposed regulations do not impose any requirements on small entities that do not use credit scores for risk-based pricing in connection with consumer credit.

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

4. Projected Reporting, Recordkeeping and Other Compliance Requirements

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

The proposed regulations generally require a person 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 currently required to determine if it engages in risk-based pricing, based in whole or in part on consumer reports, in

¹³ The estimate includes 1,504 institutions regulated by the Board, 673 national banks, and 4,167 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).

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

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

The Board has not identified any federal statutes or regulations that would duplicate, overlap, or conflict with the proposed regulations. As discussed in Part III above, the proposed amendments to the risk-based pricing rules are consistent with section 1100F of the Dodd-Frank Act. The Agencies are proposing the rules pursuant to their existing authority under section 615(h) of the FCRA. The proposed 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. The Board seeks comment regarding any statutes or regulations, including state or local statutes or regulations, that would duplicate, overlap, or conflict with the proposed regulations.

6. Discussion of Significant Alternatives

The Board welcomes comments on any significant alternatives consistent with section 615(h) of the FCRA, including the provisions of section 1100F of the Dodd-Frank Act, that would minimize the impact of the proposed regulations on small entities.

Commission:

The RFA, 5 U.S.C. 601-612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (IRFA) with a proposed rule, unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 603-605. The SBA establishes size standards that define which entities are small businesses for purposes of the RFA.¹⁴ 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 proposed regulations. The Commission does not believe that the proposed regulations will have a significant economic impact on a substantial number of small business entities. The Commission recognizes that the proposed regulations will affect some small business entities; however we do not expect that a substantial number of small businesses will be affected or that the regulations will

¹⁴ 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/sites/default/files/Current_Size_Standards_Table.pdf.

have a significant economic impact on them. Nonetheless, the Commission has prepared the following IRFA. The Commission requests public comment in the following areas.

1. Reasons for the Proposed Rule

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 proposed amendments to 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 this information. The legal basis for the proposed regulations is section 615(h) of the FCRA. The proposed regulations are consistent with section 1100F of the Dodd-Frank Act.

3. Description of Small Entities to Which the Regulation Applies

The proposed regulations 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 proposal 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.

The available data is not sufficient for the Commission to realistically estimate the number of small entities, as defined by the U.S. Small Business Administration (SBA), that the Commission regulates and that would be subject to the proposed rule.¹⁵ The entities under the Commission's jurisdiction are so varied that there is no way to identify them in general and, therefore, no way to know how many of them qualify as small businesses. Generally, the entities under the Commission's jurisdiction that also are covered by section 1100F of the Dodd-Frank Act include state-chartered credit unions, non-bank mortgage lenders, auto dealers, and utility companies. The proposed regulations do not impose any requirements on small entities that do not use credit scores for risk-based pricing in connection with consumer credit.

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

4. Projected Reporting, Recordkeeping and Other Compliance Requirements

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

¹⁵ 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 \$7 million. Auto dealers have a higher size standard of \$29 million in average annual receipts for new car dealers and \$23 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/sites/default/files/Current Size Standards Table.pdf>.

The proposed regulations 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 currently 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 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. Persons that use 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 risk-based pricing notice, in addition to the information currently required by the January 2010 Final Rule. Persons would need to employ the professional skills necessary 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 risk-based pricing notice.

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

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

The Commission has not identified any federal statutes or regulations that would duplicate, overlap, or conflict with the proposed regulations. As discussed in Part III above, the proposed amendments to the risk-based pricing rules are consistent with section 1100F of the Dodd-Frank Act. The Agencies are proposing the rules pursuant to their existing authority under section 615(h) of the FCRA. The proposed 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. The Commission seeks comment regarding any statutes or regulations, including state or local statutes or regulations, that would duplicate, overlap, or conflict with the proposed regulations.

6. Discussion of Significant Alternatives

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

The proposed regulations 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. Alternatively, a business 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 or inconvenience of complying with the proposed regulations.

Similarly, the proposed regulations provide a model notice to facilitate compliance. By using the model notice, creditors qualify for 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 rule, though they would not receive the benefit of the safe harbor. Having this option provides creditors of all sizes with flexibility in how to comply with the proposed regulations.

Notwithstanding the Agencies' efforts to consider the impact of the proposed regulations on small entities, the Commission welcomes 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 proposed regulations on small entities.

Board of Governors of the Federal Reserve System

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside ► bold-type arrows ◀ while language that would be deleted is set off with [bold-type brackets].

Authority and Issuance

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

List of Subjects in 12 CFR Part 222

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

Part 222 – FAIR CREDIT 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. New paragraph (a)(1)(ix) is added.

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

D. New paragraph (a)(2)(ix) is added.

E. Paragraph (b)(2) is revised.

F. New paragraph (d) is added.

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

(a) *Content of the notice*—(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; [and]

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

(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; [and]

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

(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) *Form of the notice* * * *

(2) *Model forms.* [A m] ► M ◀ odel form ► s ◀ of the risk-based pricing notice required by Sec. 222.72(a) and (c) [is] ► are ◀ contained in Appendi[x] ► ces ◀ 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 Sec. 222.72(a) and (c). [A m] ► M ◀ odel form ► s ◀ of the risk-based pricing notice required by Sec. 222.72(d) [is] ► are ◀

contained in Appendix [x] of this part. Appropriate use of Model Form H-2 or H-7 is deemed to comply with the requirements of Sec. 222.72(d). Use of the model forms is optional.

* * * * *

▶ (d) *Multiple credit scores*—(i) *In General*. When a person obtains two or more credit scores from consumer reporting agencies 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 (a)(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 two or more credit scores from consumer reporting agencies and uses multiple credit scores in setting the material terms of credit, for example, by computing the average of all the credit scores obtained, the notices described in paragraphs (a)(1) and (a)(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.

(ii) *Examples*. (A) 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 (a)(2) of this section.

(B) 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 (a)(2) of this section. ◀

* * * * *

3. Section 222.75 is amended as follows:

A. Paragraph (c)(1) is revised.

B. Paragraph (c)(3)(i) is revised.

§ 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). [If the consumers have the same address, a person may satisfy the requirements by providing a single notice addressed to both consumers. If the consumers do not have the same address, a person must provide a notice to each consumer.]

▶ 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, t◀ [T]he 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 two consumers reside at different addresses.] The creditor provides risk-based pricing notices to satisfy its obligations under this subpart. The creditor must provide a risk-based pricing notice to each consumer [at the address where each consumer resides.] ▶ whether the consumers have the same address or not. Each separate 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 as follows:

A. Paragraphs 1. and 2. are amended.

B. Model Forms H-6 and H-7 are added.

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

1. This appendix contains [two] ► 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.

* * *

H-1 Model form for risk-based pricing notice

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

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

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

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

▶ H-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 ◀

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)] : <i>By telephone:</i> Call toll-free: 1-877-xxx-xxxx <i>By mail:</i> Mail your written request to: [Insert address] <i>On the web:</i> 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. 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 fifth factor, if applicable]

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]?	<p>We have used information from your credit report[s] to review the terms of your account with us.</p> <p>Based on our review of your credit report[s], we have increased the annual percentage rate on your account.</p>
What if there are mistakes in your credit report[s]?	<p>You have a right to dispute any inaccurate information in your credit report[s].</p> <p>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].</p> <p>It is a good idea to check your credit report[s] to make sure the information [it contains/they contain] is accurate.</p>
How can you obtain a copy of your credit report[s]?	<p>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)]:</p> <p style="margin-left: 40px;"><i>By telephone:</i> Call toll-free: 1-877-xxx-xxxx</p> <p style="margin-left: 40px;"><i>By mail:</i> Mail your written request to: [Insert address]</p> <p style="margin-left: 40px;"><i>On the web:</i> Visit [insert web site address]</p>
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. 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 <u>factors</u> that adversely affected your credit score	[Insert first factor] [Insert second factor] [Insert third factor] [Insert fourth factor] [Insert fifth factor, if applicable]

Federal Trade Commission

16 CFR Chapter I

Authority and Issuance

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

PART 640 – DUTIES OF CREDITORS REGARDING RISK-BASED PRICING

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

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

2. Section 640.4 is amended as follows:

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

B. New paragraph (a)(1)(ix) is added.

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

D. New paragraph (a)(2)(ix) is added.

E. Paragraph (b)(2) is revised.

F. New paragraph (d) is added.

3. 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.

§ 640.4 Content, Form, and Timing of Risk-Based Pricing Notices

(a) *Content of the notice.* (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; [and]

(viii) A statement directing consumers to the web sites of the Federal Reserve Board and Federal Trade Commission to obtain more information about consumer reports[.] ▶ ; 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 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 factors, except that if one of the key factors is the number of inquires 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; [and]

(viii) A statement directing consumers to the web sites of the Federal Reserve Board and Federal Trade Commission to obtain more information about consumer reports [.]▶▶; 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 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 factors, except that if one of the key factors is the number of inquires 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) *Form of the notice* * * *

(2) Model forms. [A m] Model forms of the risk-based pricing notice required by Sec. 640.3(a) and (c) [is] are contained in Appendixes 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 Sec. 640.3(a) and (c). [A m] Model forms of the risk-based pricing notice required by Sec. 640.3(d) [is] are contained in Appendixes 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 Sec. 640.3(d). Use of the model forms is optional.

* * * * *

(d) *Multiple credit scores*—(i) *In General*. When a person obtains two or more credit scores from consumer reporting agencies 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 (a)(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 two or more credit scores from consumer reporting agencies and uses multiple credit scores in setting the material terms of credit, for example, by computing the average of all the credit scores obtained, the notices described in paragraphs (a)(1) and (a)(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.

(ii) *Examples.* (A) 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 (a)(2) of this section.

(B) 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 (a)(2) of this section. ◀

* * * * *

4. Section 640.6 is amended as follows:

A. Paragraph (c)(1) is revised.

B. Paragraph (c)(3)(i) is revised.

§ 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). [If the consumers have the same address, a person may satisfy the

requirements by providing a single notice addressed to both consumers. If the consumers do not have the same address, a person must provide a notice to each consumer.]

► 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, t ◀ [T]he 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 two consumers reside at different addresses.] The creditor provides risk-based pricing notices to satisfy its obligations under this subpart. The creditor must provide a risk-based pricing notice to each consumer [at the address where each consumer resides.] ► whether the consumers have the same address or not. Each separate risk-based pricing notice must contain only the credit score(s) of the consumer to whom the notice is provided. ◀

* * * * *

5. In Part 698, Appendix B is amended as follows:

A. Paragraphs 1. and 2. are amended.

B. Model Forms B-6 and B-7 are added.

Appendix B to Part 640 – Appendix B – Model Forms for Risk-Based Pricing and Credit Score Disclosure Exception Notices

1. This appendix contains [two] ► 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 Sec. 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 Sec. 640.3 if a credit score is 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

used in increasing the annual percentage rate. ◀ All forms contained in this appendix are models; their use is optional.

* * *

B-1 Model form for risk-based pricing notice

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

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

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

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

▶ B-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 ◀

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]?	<p>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].</p> <p>The terms offered to you may be less favorable than the terms offered to consumers who have better credit histories.</p>
What if there are mistakes in your credit report[s]?	<p>You have a right to dispute any inaccurate information in your credit report[s].</p> <p>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].</p> <p>It is a good idea to check your credit report[s] to make sure the information [it contains/they contain] is accurate.</p>
How can you obtain a copy of your credit report[s]?	<p>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)]:</p> <p><i>By telephone:</i> Call toll-free: 1-877-xxx-xxxx</p> <p><i>By mail:</i> Mail your written request to: [Insert address]</p> <p><i>On the web:</i> Visit [insert web site address]</p>
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. 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 <u>factors</u> that adversely affected your credit score	[Insert first factor] [Insert second factor] [Insert third factor] [Insert fourth factor] [Insert fifth factor, if applicable]

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)] : <i>By telephone:</i> Call toll-free: 1-877-xxx-xxxx <i>By mail:</i> Mail your written request to: [Insert address] <i>On the web:</i> 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. 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 <u>factors</u> that adversely affected your credit score	[Insert first factor] [Insert second factor] [Insert third factor] [Insert fourth factor] [Insert fifth factor, if applicable]

**[THIS SIGNATURE PAGE PERTAINS TO THE JOINT NOTICE ENTITLED
“Fair Credit Reporting Risk-Based Pricing Regulations”]**

By order of the Board of Governors of the Federal Reserve System, February ____, 2011.

Jennifer J. Johnson,
Secretary of the Board.

BILLING CODE 6210-01-P

**[THIS SIGNATURE PAGE PERTAINS TO THE JOINT NOTICE ENTITLED
“Fair Credit Reporting Risk-Based Pricing Regulations”]**

By the direction of the Commission.

Donald S. Clark
Secretary.

BILLING CODE 6750-01-S