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MEMORANDUM FOR: CHIEF EXECUTIVE OFFICERS

FROM: Thomas A. Barnes, Deputy Director
Examinations, Supervision, and Consumer Protection

SUBJECT: Risk-Based Pricing Notices for
Less Favorable Credit based on a Consumer Report:
FCRA Examination Procedures

Section 615(h) of the Fair Credit Reporting Act (FCRA) generally requires a user of consumer reports, such as a financial institution, to provide a risk-based pricing notice to a consumer when the financial institution, based on a consumer report, extends credit to the consumer on terms that are “materially less favorable” than the terms the financial institution has extended to other consumers. On January 15, 2010, the Federal Reserve and the Federal Trade Commission published final rules (75 FR 2724) implementing this section of the FCRA. The rules are effective on January 1, 2011.

Section 1300 of the Examination Handbook contains procedures used by OTS examiners to assess compliance with the FCRA. The module on disclosures to consumers (Module 3) now includes the requirements of the new rules.

Summary of Key Regulatory Provisions

The risk-based pricing notice requirement alerts consumers to the existence of negative information in their consumer reports so that they may make corrections if the information is inaccurate. This requirement complements another provision of the FCRA, Section 615(a), which requires creditors to provide an adverse action notice when they deny a consumer’s application for credit, based in whole or in part on information in a consumer’s report. The new provision, Section 615(h), covers situations where the creditor does not deny credit, but offers it at materially less favorable terms” or increases the APR after reviewing the consumer’s account based on a consumer report.¹

¹ A creditor must also provide the consumer with an *account review* risk-based pricing notice if the creditor, based on a consumer report, increases a consumer’s APR after a review of the consumer’s account.

Creditors have several options for determining which consumers should receive a notice. The various options are generally outlined below. Since the first three options are likely to be burdensome, it is likely that creditors will favor the “credit score” exceptions.²

1. *Case-by-case method* – determine whether a consumer has received materially less favorable terms than other consumers. If so, the creditor must provide a risk-based pricing notice.
2. *Credit score proxy method* – a creditor sets a “cutoff” score that represents the point at which approximately 40 percent of its consumers have higher credit scores than other consumers. For consumers whose credit scores are below the cutoff, the creditor must provide a risk-based pricing notice.
3. *Tiered pricing method* – a creditor assigns each consumer to one of a discrete number of pricing tiers, based on consumer reports. For consumers who are not in the top tiers that receive the most favorable terms the creditor must provide a risk-based pricing notice.
4. *Credit score disclosure for loans secured by residential real property* – this option allows a creditor to provide the consumer’s credit score along with explanatory information to each consumer that requests credit secured by residential real property.
5. *Credit score disclosure for loans not secured by residential real property* – this option allows a creditor to provide the consumer’s credit score along with explanatory information to each consumer that requests such credit.
6. *Credit score not available* – creditors that regularly obtain credit scores and provide the credit score disclosures may provide the consumer specific explanatory information about credit scores in cases where the consumer does not have a credit score.

These procedures were developed by an interagency working group and approved by the FFIEC.

For additional information, please contact Suzanne McQueen, Senior Compliance Program Analyst, at (202) 906-6459.

Link: [Examination Handbook 1300](#)

² In addition to the three “credit score exceptions,” no notice is required if (a) a consumer applies for and receives specific terms of credit, (b) creditor provides a notice of adverse action, or (c) a creditor makes a firm offer of credit in a prescreened solicitation.