

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL TRADE COMMISSION

### 16 CFR Part 640

RIN 3084-AB63

#### Duties of Creditors Regarding Risk-Based Pricing Rule

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of proposed rulemaking; request for public comment.

**SUMMARY:** The Federal Trade Commission (“FTC” or “Commission”) requests public comment on its Duties of Creditors Regarding Risk-Based Pricing Rule (“Risk-Based Pricing Rule”) as part of the FTC’s systematic review of all current Commission regulations and guides. In addition, the FTC is proposing to amend the Rule to correspond to changes made to the Fair Credit Reporting Act (“FCRA”) by the Dodd-Frank Act.

**DATES:** Written comments must be received on or before December 22, 2020.

**ADDRESSES:** Interested parties may file a comment online or on paper by following the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Amendment to the Risk-Based Pricing Rule, 16 CFR part 640, Project No. P205408” on your comment and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** David Lincicum (202-326-2773), Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission,

600 Pennsylvania Avenue NW, Washington, DC 20580.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

###### A. The Risk-Based Pricing Rule

The Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”) was signed into law on December 4, 2003. Public Law 108-159, 117 Stat. 1952. Section 311 of the FACT Act added section 615(h), 15 U.S.C. 1681m(h), to the FCRA to address risk-based pricing. Risk-based pricing refers to the practice of setting or adjusting the price and other terms of credit offered or extended to a particular consumer to reflect the risk of nonpayment by that consumer. Information from a consumer report is often used in evaluating the risk posed by the consumer. Creditors that engage in risk-based pricing generally offer more favorable terms to consumers with good credit histories and less favorable terms to consumers with poor credit histories.

Under section 615(h) of the FCRA, a person generally must provide a risk-based pricing notice to a consumer when the person uses a consumer report in connection with an extension of credit and, based in whole or in part on the consumer report, extends credit to the consumer on terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers. The risk-based pricing notice is designed primarily to improve the accuracy of consumer reports by alerting consumers to the existence of negative information in their consumer reports, so that consumers can, if they choose, check their consumer reports for accuracy and correct any inaccurate information. The Federal Reserve Board and the Commission jointly published regulations implementing these risk-based pricing provisions on January 15, 2010.<sup>1</sup> The Rule was amended in July 2011 to include a requirement that, if a credit score is used in making the credit decision, the creditor must disclose that score and certain information relating to the credit score.<sup>2</sup>

###### B. Dodd-Frank Act

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-

Frank Act”) was signed into law in 2010.<sup>3</sup> The Dodd-Frank Act substantially changed the federal legal framework for financial services providers. Among the changes, the Dodd-Frank Act transferred to the Consumer Financial Protection Bureau (“CFPB”) the Commission’s rulemaking authority under portions of the FCRA.<sup>4</sup> Accordingly, in 2012, the Commission rescinded several of its FCRA rules that had been replaced by rules issued by the CFPB.<sup>5</sup> The FTC retained rulemaking authority for other rules promulgated under the Acts to the extent the rules apply to motor vehicle dealers described in section 1029(a) of the Dodd-Frank Act<sup>6</sup> that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.<sup>7</sup> The retained rules include the Risk-Based Pricing Rule, which now applies only to motor vehicle dealers.<sup>8</sup> Consumer report users that are not motor vehicle dealers are covered by the CFPB’s rule.<sup>9</sup>

##### II. Technical Changes To Correspond to Statutory Changes Resulting From the Dodd-Frank Act

###### A. Scope

The Commission promulgated the Risk-Based Pricing Rule at a time when it had rulemaking authority for a broader group of consumer report users. While the Dodd-Frank Act did not change the Commission’s enforcement authority for the Risk-Based Pricing Rule, it did narrow the Commission’s rulemaking authority with respect to the Rule. It now covers only motor vehicle dealers.<sup>10</sup> The amendments in the Dodd-Frank Act necessitate technical revisions to the Risk-Based Pricing Rule to ensure that it is consistent with the text of the amended FCRA. Accordingly, the Commission proposes to modify the Risk-Based Pricing Rule to reflect the Rule’s scope.

<sup>3</sup> Public Law 111-203 (2010).

<sup>4</sup> 15 U.S.C. 1681 *et seq.* The Dodd-Frank Act does not transfer to the CFPB rulemaking authority for section 615(e) of the FCRA (“Red Flag Guidelines and Regulations Required”) and section 628 of the FCRA (“Disposal of Records”). See 15 U.S.C. 1681s(e).

<sup>5</sup> 77 FR 22200 (April 13, 2012); 12 U.S.C. 5519.

<sup>6</sup> 15 U.S.C. 5519.

<sup>7</sup> 77 FR 22200 (April 13, 2012).

<sup>8</sup> *Id.*

<sup>9</sup> 12 CFR 1022.70-75.

<sup>10</sup> 15 U.S.C. 1681s(e)(1); 12 U.S.C. 5519.

<sup>1</sup> 75 FR 2723 (January 15, 2010).

<sup>2</sup> 76 FR 41602 (July 15, 2011).

The proposed amendment to § 640.1(a) narrows the description of the scope of the Risk-Based Pricing Rule to those entities set forth in the Dodd-Frank Act that are predominantly engaged in the sale and servicing of motor vehicles, excluding those dealers that directly extend credit to consumers and do not routinely assign the extensions of credit to an unaffiliated third party.<sup>11</sup> It does so by replacing the broad term “person” with “motor vehicle dealer,” as defined in amended § 640.2. The proposed amendment replaces “person” with “motor vehicle dealer” throughout the Rule, whenever “person” is used to describe the entity covered by the Rule. In provisions where “person” does not refer to a motor vehicle dealer covered by the Rule, such as §§ 640.4(c)(2) and 640.6(b)(2), the term “person” is retained.<sup>12</sup>

The proposed amendment also removes § 640.1(b), which describes the process by which the Commission worked with the Federal Reserve Board to issue the Risk-Based Pricing Rule, and states that the Commission’s and the Board’s rules are substantively identical. The Commission proposes to remove this section because the Dodd-Frank Act transferred the Board’s rulemaking authority for the Risk-Based Pricing Rule to the CFPB.

The proposed amendment to § 640.2 adds a definition of “motor vehicle dealer” that defines motor vehicle dealers as those entities excluded from the CFPB’s jurisdiction under the Dodd-Frank Act.<sup>13</sup> The proposed amendment also updates the definition of “open-end credit” by replacing the statutory reference to 15 U.S.C. 1602(i) with a citation to 15 U.S.C. 1602(j). It also changes references to the Federal Reserve Board’s regulation to the CFPB’s regulation.

In addition, the proposed amendments update references to the risk-based pricing notices in §§ 640.4(a)(1)(viii), 640.4(a)(2)(viii), 640.5(d)(1)(ii)(I), 640.5(e)(1)(ii)(L), and 640.5(f)(iii)(I) from the Board’s website to the CFPB’s website to reflect the CFPB’s authority under the Dodd-Frank Act.

### B. Examples

The Rule contains examples that apply to entities no longer within the scope of the Rule because of the Dodd-Frank Act. Retaining these examples

may lead to confusion about the actual scope of the Risk-Based Pricing Rule. Accordingly, in addition to changing the term “person” to “motor vehicle dealers” in some examples as discussed above, the Commission proposes to modify some of the examples to provide clearer guidance to financial institutions that are covered motor vehicle dealers. For example, the proposal removes references to utility companies and charge cards (§ 640.2(n)(3)); student loans, secured and unsecured credit cards, and fixed and variable rate mortgages (§ 640.3(b)); and replaces references to “credit card issuers” with “motor vehicle dealers” (§§ 640.4(d)(2); 640.5(a)(2); 640.5(c)(3)). These modifications to the cited examples are not intended to modify the substantive requirements of the Rule, as the examples simply illustrate the Rule’s application in a particular context.<sup>14</sup>

### III. Regulatory Review of the Risk-Based Pricing Rule

In addition to proposing the changes described above, the Commission seeks information about the costs and benefits of the Rule, and its regulatory and economic impact. It has been ten years since the Rule was enacted. Consistent with its practice of reviewing all its rules and guides periodically, the Commission seeks to ascertain whether changes in technology, business models, or the law warrant modification or rescission of the Rule. As part of this review the Commission solicits comments on, among other things, the economic impact and benefits of the Risk-Based Pricing Rule; possible conflict between the Risk-Based Pricing Rule and state, local, or other federal laws or regulations; and the effect on the Risk-Based Pricing Rule of any technological, economic, or other industry changes.

<sup>14</sup> The Commission recognizes that there are substantive provisions of the Risk-Based Pricing Rule that typically would not apply to motor vehicle dealers. For example, motor vehicle dealers rarely issue credit cards, even though that term is defined broadly as “any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.” The Commission has chosen, however, not to remove these provisions from the Rule for two reasons. First, the current Rule is substantively identical to the CFPB’s risk-based pricing rule. The Commission believes that it is beneficial to maintain this conformity and has opted to make no substantive changes to the rule, including for situations where motor vehicle dealers covered by the Rule interact with banks or other entities covered by the CFPB’s rule. Second, to the extent that motor vehicle dealers do not engage in particular conduct, *e.g.*, issuing credit cards, then those requirements would not apply.

### IV. Issues for Comment

The Commission requests written comment on any or all of the following questions. These questions are designed to assist the public and should not be construed as a limitation on the issues about which public comments may be submitted. The Commission requests that responses to its questions be as specific as possible, including a reference to the question being answered, and refer to empirical data or other evidence upon which the comment is based whenever available and appropriate.

1. Is there a continuing need for specific provisions of the Risk-Based Pricing Rule? Why or why not?
2. What benefits has the Risk-Based Pricing Rule provided to consumers? What evidence supports the asserted benefits?
3. What modifications, if any, should be made to the Risk-Based Pricing Rule to increase the benefits to consumers?
  - a. What evidence supports the proposed modifications?
  - b. How would these modifications affect the costs imposed by the Risk-Based Pricing Rule?
4. What significant costs, if any, has the Risk-Based Pricing Rule imposed on consumers? What evidence supports the asserted costs?
5. What modifications, if any, should be made to the Risk-Based Pricing Rule to reduce any costs imposed on consumers?
  - a. What evidence supports the proposed modifications?
  - b. How would these modifications affect the benefits provided by the Risk-Based Pricing Rule?
6. What benefits, if any, has the Risk-Based Pricing Rule provided to businesses, including small businesses? What evidence supports the asserted benefits?
7. What modifications, if any, should be made to the Risk-Based Pricing Rule to increase its benefits to businesses, including small businesses?
  - a. What evidence supports the proposed modifications?
  - b. How would these modifications affect the costs the Risk-Based Pricing Rule imposes on businesses, including small businesses?
  - c. How would these modifications affect the benefits to consumers?
8. What significant costs, if any, including costs of compliance, has the Risk-Based Pricing Rule imposed on businesses, including small businesses? What evidence supports the asserted costs?
9. What modifications, if any, should be made to the Risk-Based Pricing Rule

<sup>11</sup> 12 U.S.C. 5519.

<sup>12</sup> For consistency, the proposed amendments also change any use of the term “auto dealer” to “motor vehicle dealer.” *See, e.g.*, 16 CFR 640.4(c)(2)(ii).

<sup>13</sup> 12 U.S.C. 5519.

to reduce the costs imposed on businesses, including small businesses?

a. What evidence supports the proposed modifications?

b. How would these modifications affect the benefits provided by the Risk-Based Pricing Rule?

10. What evidence is available concerning the degree of industry compliance with the Risk-Based Pricing Rule?

11. What modifications, if any, should be made to the Risk-Based Pricing Rule to account for changes in relevant technology or economic conditions? What evidence supports the proposed modifications?

12. Does the Risk-Based Pricing Rule overlap or conflict with other federal, state, or local laws or regulations? If so, how?

a. What evidence supports the asserted conflicts?

b. With reference to the asserted conflicts, should the Rule be modified? If so, why, and how? If not, why not?

13. Should the Risk-Based Pricing Rule be amended to remove provisions addressing circumstances that do not apply, or typically do not apply, to motor vehicle dealers?

14. Can the examples set forth in the Rule be amended further to make them more helpful and informative to motor vehicle dealers? Would additional examples be helpful, and if so, what examples? Should examples that relate to types of transactions that are not typical in the motor vehicle context be removed?

15. The Commission proposes to amend the Rule now that it applies exclusively to motor vehicle dealers. Are the proposed modifications appropriate? Should additional amendments be made? Would these amendments create conflicts with any other federal, state, or local regulations or laws?

## V. Request for Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before December 22, 2020. Write “Risk-Based Pricing Rule, 16 CFR part 640, Project No. P205408” on the comment. Your comment, including your name and your state, will be placed on the public record of this proceeding, including the <https://www.regulations.gov> website.

Because of the public health emergency in response to the COVID-19 outbreak and the agency’s heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comment online

through the <https://www.regulations.gov> website. To ensure the Commission considers your online comment, please follow the instructions on the web-based form.

If you file your comment on paper, write “Risk-Based Pricing Rule, 16 CFR part 640, Project No. P205408” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex B), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on <https://www.regulations.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’s Social Security number, date of birth, driver’s license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential,” as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2), including in particular, competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest. Once your comment has been

posted on <https://www.regulations.gov>, we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the Commission website at <https://www.ftc.gov> to read this document and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before December 22, 2020. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

## VI. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner’s advisor, will be placed on the public record.<sup>15</sup>

## VII. Paperwork Reduction Act

The Risk-Based Pricing Rule contains information collection requirements as defined by 5 CFR 1320.3(c), the definitional provision within the Office of Management and Budget (“OMB”) regulations that implement the Paperwork Reduction Act (“PRA”). 44 U.S.C. 3501 *et seq.* OMB has approved the Rule’s existing information collection requirements through August 31, 2020 (OMB Control No. 3084-0145). Under the existing clearance, the FTC has attributed to itself the estimated burden regarding all motor vehicle dealers and then shares equally the remaining estimated PRA burden with the CFPB for other persons for which both agencies have enforcement authority regarding the Risk-Based Pricing Rule.

This proposal would amend 16 CFR part 640. The collections of information related to the Risk-Based Pricing Rule have been previously reviewed and approved by OMB in accordance with the PRA.<sup>16</sup>

The proposed amendments do not modify or add to information collection requirements that were previously approved by OMB. The amendments make no substantive changes to the

<sup>15</sup> 16 CFR 1.26(b)(5).

<sup>16</sup> OMB Control No. 3084-0145.

Rule, other than to clarify that the scope of the Rule is limited to motor vehicle dealers. The Rule's OMB clearance already reflects that scope. Therefore, the Commission does not believe the proposed amendments would modify substantially or materially any "collections of information" as defined by the PRA.

### VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires an agency to either provide an Initial Regulatory Flexibility Analysis ("IRFA") with a proposed rule, or certify that the proposed rule will not have a significant impact on a substantial number of small entities.<sup>17</sup> The Commission does not expect that the proposed changes to this Rule, if adopted, would have the threshold impact on small entities. The Commission does not expect the proposal to impose costs on small motor vehicle dealers because the amendments are primarily for clarification purposes and should not result in any increased burden on any motor vehicle dealer. Thus, a small entity that complies with current law need not take any different or additional action if the proposal is adopted.

Therefore, based on available information, the Commission certifies that amending the Risk-Based Pricing Rule as proposed will not have a significant economic impact on a substantial number of small businesses. Although the Commission certifies under the RFA that the proposed amendment would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an IRFA to inquire into the impact of the proposed amendment on small entities. Therefore, the Commission has prepared the following analysis:

#### A. Description of the Reasons for the Proposed Rule

To address the Dodd-Frank Act's changes to the Commission's rulemaking authority, the Commission proposes to clarify that the Rule applies only to motor vehicle dealers.

#### B. Statement of the Objectives, and Legal Basis For, the Proposed Rule

The objectives of the proposed Rule are discussed above. The legal basis for the proposed Rule is 15 U.S.C. 1681m(h).

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

Determining a precise estimate of the number of small entities<sup>18</sup> is not readily feasible. Financial institutions covered by the Rule include certain motor vehicle dealers. A substantial number of these entities likely qualify as small businesses. The Commission estimates that the proposed amendment will not have a significant impact on small businesses because it imposes no new obligations.

#### D. Projected Reporting, Recordkeeping, and Other Compliance Requirements, Including Classes of Covered Small Entities and Professional Skills Needed To Comply

The proposed amendments would impose no new reporting, recordkeeping, or other compliance requirements. The small entities potentially covered by the proposed amendment will include all such entities subject to the Rules.

#### E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed amendment. The Commission is requesting comment on the extent to which other federal standards involving consumer reports may duplicate, satisfy, or possibly conflict with the Rule's requirements for any covered financial institutions.

#### F. Description of Any Significant Alternatives to the Proposed Rule

The Commission has not proposed any specific small entity exemption or other significant alternatives because the proposed amendment would not impose any new requirements or compliance costs. Nonetheless, the Commission welcomes comment on any significant alternative consistent with

<sup>18</sup> The U.S. Small Business Administration Table of Small Business Size Standards Matched to North American Industry Classification System Codes (NAICS) are generally expressed in either millions of dollars or number of employees. A size standard is the largest that a business can be and still qualify as a small business for Federal Government programs. For the most part, size standards are the annual receipts or the average employment of a firm. New car dealers (NAICS code 441100) are classified as small if they have fewer than 200 employees. Used car dealers (NAICS code 441120) are classified as small if their annual receipts are \$27 million or less. Recreational vehicle dealers, boat dealers, motorcycle, ATV and all other motor vehicle dealers (NAICS codes 441210, 441222 and 441228) are classified as small if their annual receipts are \$35 million or less. The 2019 Table of Small Business Size Standards is available at <https://www.sba.gov/document/support-table-size-standards>.

the FCRA that would minimize the impact of the proposed Rule on small entities—specifically institutions that would be newly covered financial institutions—if there are any.

### IX. Proposed Rule Language

#### List of Subjects in 16 CFR Part 640

Consumer protection, Credit, Trade practices.

■ For the reasons stated above, the Federal Trade Commission proposes to amend title 16 of the Code of Federal Regulations by revising part 640 to read as follows:

#### PART 640—DUTIES OF CREDITORS REGARDING RISK-BASED PRICING

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

**Authority:** 15 U.S.C. 1681m(h); 12 U.S.C. 5519(d); Sec. 311, Pub. L. 108–159.

##### § 640.1 Scope.

(a) *Coverage*—(1) *In general*. This part applies to any motor vehicle dealer as defined in § 640.2 that both—

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

(ii) Based in whole or in part on the consumer report, grants, extends, or otherwise provides credit to the consumer on material terms that are materially less favorable than the most favorable material terms available to a substantial proportion of consumers from or through that motor vehicle dealer.

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

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

##### § 640.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Adverse action* has the same meaning as in 15 U.S.C. 1681a(k)(1)(A).

(b) *Annual percentage rate* has the same meaning as in 12 CFR 1026.14(b) with respect to an open-end credit plan

<sup>17</sup> 5 U.S.C. 603–605.

and as in 12 CFR 1026.22 with respect to closed-end credit.

(c) *Closed-end credit* has the same meaning as in 12 CFR 1026.2(a)(10).

(d) *Consumer* has the same meaning as in 15 U.S.C. 1681a(c).

(e) *Consummation* has the same meaning as in 12 CFR 1026.2(a)(13).

(f) *Consumer report* has the same meaning as in 15 U.S.C. 1681a(d).

(g) *Consumer reporting agency* has the same meaning as in 15 U.S.C. 1681a(f).

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

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

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

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

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

(m) *Firm offer of credit* has the same meaning as in 15 U.S.C. 1681a(l).

(n) *Material terms* means—

(1)(i) Except as otherwise provided in paragraphs (n)(1)(ii) and (n)(3) of this section, in the case of credit extended under an open-end credit plan, the annual percentage rate required to be disclosed under 12 CFR 226.6(a)(1)(ii) or 12 CFR 226.6(b)(2)(i), excluding any temporary initial rate that is lower than the rate that will apply after the temporary rate expires, any penalty rate that will apply upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit, and any fixed annual percentage rate option for a home equity line of credit;

(ii) In the case of a credit card (other than a credit card that is used to access a home equity line of credit or a charge card), the annual percentage rate required to be disclosed under 12 CFR 226.6(b)(2)(i) that applies to purchases (“purchase annual percentage rate”) and no other annual percentage rate, or in the case of a credit card that has no purchase annual percentage rate, the annual percentage rate that varies based on information in a consumer report and that has the most significant financial impact on consumers;

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

(3) In the case of credit for which there is no annual percentage rate, the financial term that varies based on information in a consumer report and that has the most significant financial impact on consumers, such as a deposit required in connection with an extension of credit.

(o) *Materially less favorable* means, when applied to material terms, that the

terms granted, extended, or otherwise provided to a consumer differ from the terms granted, extended, or otherwise provided to another consumer from or through the same motor vehicle dealer such that the cost of credit to the first consumer would be significantly greater than the cost of credit granted, extended, or otherwise provided to the other consumer. For purposes of this definition, factors relevant to determining the significance of a difference in cost include the type of credit product, the term of the credit extension, if any, and the extent of the difference between the material terms granted, extended, or otherwise provided to the two consumers.

(p) *Motor vehicle dealer* means any person excluded from Consumer Financial Protection Bureau jurisdiction as described in 12 U.S.C. 5519.

(q) *Open-end credit plan* has the same meaning as in 15 U.S.C. 1602(j), as interpreted by the Board in Regulation Z and the Official Staff Commentary to Regulation Z.

(r) *Person* has the same meaning as in 15 U.S.C. 1681a(b).

#### **§ 640.3 General requirements for risk-based pricing notices.**

(a) *In general.* Except as otherwise provided in this part, a motor vehicle dealer must provide to a consumer a notice (“risk-based pricing notice”) in the form and manner required by this part if the motor vehicle dealer both—

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

(2) Based in whole or in part on the consumer report, grants, extends, or otherwise provides credit to that consumer on material terms that are materially less favorable than the most favorable material terms available to a substantial proportion of consumers from or through that motor vehicle dealer.

(b) *Determining which consumers must receive a notice.* A motor vehicle dealer may determine whether paragraph (a) of this section applies by directly comparing the material terms offered to each consumer and the material terms offered to other consumers for a specific type of credit product. For purposes of this section, a “specific type of credit product” means one or more credit products with similar features that are designed for similar purposes. Examples of a specific type of credit product include new automobile loans and used automobile loans. As an alternative to making this direct

comparison, a motor vehicle dealer may make the determination by using one of the following methods:

(1) *Credit score proxy method*—(i) *In general.* A motor vehicle dealer that sets the material terms of credit granted, extended, or otherwise provided to a consumer, based in whole or in part on a credit score, may comply with the requirements of paragraph (a) of this section by—

(A) Determining the credit score (hereafter referred to as the “cutoff score”) that represents the point at which approximately 40 percent of the consumers to whom it grants, extends, or provides credit have higher credit scores and approximately 60 percent of the consumers to whom it grants, extends, or provides credit have lower credit scores; and

(B) Providing a risk-based pricing notice to each consumer to whom it grants, extends, or provides credit whose credit score is lower than the cutoff score.

(ii) *Alternative to the 40/60 cutoff score determination.* In the case of credit that has been granted, extended, or provided on the most favorable material terms to more than 40 percent of consumers, a motor vehicle dealer may, at its option, set its cutoff score at a point at which the approximate percentage of consumers who historically have been granted, extended, or provided credit on material terms other than the most favorable terms would receive risk-based pricing notices under this section.

(iii) *Determining the cutoff score*—(A) *Sampling approach.* A motor vehicle dealer that currently uses risk-based pricing with respect to the credit products it offers must calculate the cutoff score by considering the credit scores of all or a representative sample of the consumers to whom it has granted, extended, or provided credit for a specific type of credit product.

(B) *Secondary source approach in limited circumstances.* A motor vehicle dealer that is a new entrant into the credit business, introduces new credit products, or starts to use risk-based pricing with respect to the credit products it currently offers may initially determine the cutoff score based on information derived from appropriate market research or relevant third-party sources for a specific type of credit product, such as research or data from companies that develop credit scores. A motor vehicle dealer that acquires a credit portfolio as a result of a merger or acquisition may determine the cutoff score based on information from the party which it acquired, with which it

merged, or from which it acquired the portfolio.

(C) *Recalculation of cutoff scores.* A motor vehicle dealer using the credit score proxy method must recalculate its cutoff score(s) no less than every two years in the manner described in paragraph (b)(1)(iii)(A) of this section. A motor vehicle dealer using the credit score proxy method using market research, third-party data, or information from a party which it acquired, with which it merged, or from which it acquired the portfolio as permitted by paragraph (b)(1)(iii)(B) of this section generally must calculate a cutoff score(s) based on the scores of its own consumers in the manner described in paragraph (b)(1)(iii)(A) of this section within one year after it begins using a cutoff score derived from market research, third-party data, or information from a party which it acquired, with which it merged, or from which it acquired the portfolio. If such a motor vehicle dealer does not grant, extend, or provide credit to new consumers during that one-year period such that it lacks sufficient data with which to recalculate a cutoff score based on the credit scores of its own consumers, the motor vehicle dealer may continue to use a cutoff score derived from market research, third-party data, or information from a party which it acquired, with which it merged, or from which it acquired the portfolio as provided in paragraph (b)(1)(iii)(B) of this section until it obtains sufficient data on which to base the recalculation. However, the motor vehicle dealer must recalculate its cutoff score(s) in the manner described in paragraph (b)(1)(iii)(A) of this section within two years, if it has granted, extended, or provided credit to some new consumers during that two-year period.

(D) *Use of two or more credit scores.* A motor vehicle dealer that generally uses two or more credit scores in setting the material terms of credit granted, extended, or provided to a consumer must determine the cutoff score using the same method the motor vehicle dealer uses to evaluate multiple scores when making credit decisions. These evaluation methods may include, but are not limited to, selecting the low, median, high, most recent, or average credit score of each consumer to whom it grants, extends, or provides credit. If a motor vehicle dealer that uses two or more credit scores does not consistently use the same method for evaluating multiple credit scores (e.g., if the motor vehicle dealer sometimes chooses the median score and other times calculates the average score), the motor vehicle

dealer must determine the cutoff score using a reasonable means. In such cases, use of any one of the methods that the motor vehicle dealer regularly uses or the average credit score of each consumer to whom it grants, extends, or provides credit is deemed to be a reasonable means of calculating the cutoff score.

(iv) *Credit score not available.* For purposes of this section, a motor vehicle dealer using the credit score proxy method who grants, extends, or provides credit to a consumer for whom a credit score is not available must assume that the consumer receives credit on material terms that are materially less favorable than the most favorable credit terms offered to a substantial proportion of consumers from or through that motor vehicle dealer and must provide a risk-based pricing notice to the consumer.

(v) *Examples.* (A) A motor vehicle dealer engages in risk-based pricing and the annual percentage rates it offers to consumers are based in whole or in part on a credit score. The motor vehicle dealer takes a representative sample of the credit scores of consumers to whom it extended loans within the preceding three months. The motor vehicle dealer determines that approximately 40 percent of the sampled consumers have a credit score at or above 720 (on a scale of 350 to 850) and approximately 60 percent of the sampled consumers have a credit score below 720. Thus, the motor vehicle dealer selects 720 as its cutoff score. A consumer applies to the motor vehicle dealer for a loan. The motor vehicle dealer obtains a credit score for the consumer. The consumer's credit score is 700. Since the consumer's 700 credit score falls below the 720 cutoff score, the motor vehicle dealer must provide a risk-based pricing notice to the consumer.

(B) A motor vehicle dealer engages in risk-based pricing, and the annual percentage rates it offers to consumers are based in whole or in part on a credit score. The motor vehicle dealer takes a representative sample of the consumers to whom it extended loans over the preceding six months. The motor vehicle dealer determines that approximately 80 percent of the sampled consumers received credit at its lowest annual percentage rate, and 20 percent received credit at a higher annual percentage rate. Approximately 80 percent of the sampled consumers have a credit score at or above 750 (on a scale of 350 to 850), and 20 percent have a credit score below 750. Thus, the motor vehicle dealer selects 750 as its cutoff score. A consumer applies to the motor vehicle dealer for an automobile

loan. The motor vehicle dealer obtains a credit score for the consumer. The consumer's credit score is 740. Since the consumer's 740 credit score falls below the 750 cutoff score, the motor vehicle dealer must provide a risk-based pricing notice to the consumer.

(C) A motor vehicle dealer engages in risk-based pricing, obtains credit scores from one of the nationwide consumer reporting agencies, and uses the credit score proxy method to determine which consumers must receive a risk-based pricing notice. A consumer applies to the motor vehicle dealer for credit to finance the purchase of an automobile. A credit score about that consumer is not available from the consumer reporting agency from which the lender obtains credit scores. The motor vehicle dealer nevertheless grants, extends, or provides credit to the consumer. The motor vehicle dealer must provide a risk-based pricing notice to the consumer.

(2) *Tiered pricing method—(i) In general.* A motor vehicle dealer that sets the material terms of credit granted, extended, or provided to a consumer by placing the consumer within one of a discrete number of pricing tiers for a specific type of credit product, based in whole or in part on a consumer report, may comply with the requirements of paragraph (a) of this section by providing a risk-based pricing notice to each consumer who is not placed within the top pricing tier or tiers, as described in paragraphs (b)(2)(ii) and (iii) of this section.

(ii) *Four or fewer pricing tiers.* If a motor vehicle dealer using the tiered pricing method has four or fewer pricing tiers, the motor vehicle dealer complies with the requirements of paragraph (a) of this section by providing a risk-based pricing notice to each consumer to whom it grants, extends, or provides credit who does not qualify for the top tier (that is, the lowest-priced tier). For example, a motor vehicle dealer that uses a tiered pricing structure with annual percentage rates of 8, 10, 12, and 14 percent would provide the risk-based pricing notice to each consumer to whom it grants, extends, or provides credit at annual percentage rates of 10, 12, and 14 percent.

(iii) *Five or more pricing tiers.* If a motor vehicle dealer using the tiered pricing method has five or more pricing tiers, the motor vehicle dealer complies with the requirements of paragraph (a) of this section by providing a risk-based pricing notice to each consumer to whom it grants, extends, or provides credit who does not qualify for the top two tiers (that is, the two lowest-priced tiers) and any other tier that, together

with the top tiers, comprise no less than the top 30 percent but no more than the top 40 percent of the total number of tiers. Each consumer placed within the remaining tiers must receive a risk-based pricing notice. For example, if a motor vehicle dealer has nine pricing tiers, the top three tiers (that is, the three lowest-priced tiers) comprise no less than the top 30 percent but no more than the top 40 percent of the tiers. Therefore, a motor vehicle dealer using this method would provide a risk-based pricing notice to each consumer to whom it grants, extends, or provides credit who is placed within the bottom six tiers.

(c) *Application to credit card issuers*—(1) *In general.* A credit card issuer subject to the requirements of paragraph (a) of this section may use one of the methods set forth in paragraph (b) of this section to identify consumers to whom it must provide a risk-based pricing notice. Alternatively, a credit card issuer may satisfy its obligations under paragraph (a) of this section by providing a risk-based pricing notice to a consumer when—

(i) A consumer applies for a credit card either in connection with an application program, such as a direct-mail offer or a take-one application, or in response to a solicitation under 12 CFR 226.5a, and more than a single possible purchase annual percentage rate may apply under the program or solicitation; and

(ii) Based in whole or in part on a consumer report, the credit card issuer provides a credit card to the consumer with an annual percentage rate referenced in § 640.2(n)(1)(ii) that is greater than the lowest annual percentage rate referenced in § 640.2(n)(1)(ii) available in connection with the application or solicitation.

(2) *No requirement to compare different offers.* A credit card issuer is not subject to the requirements of paragraph (a) of this section and is not required to provide a risk-based pricing notice to a consumer if—

(i) The consumer applies for a credit card for which the card issuer provides a single annual percentage rate referenced in § 640.2(n)(1)(ii), excluding a temporary initial rate that is lower than the rate that will apply after the temporary rate expires and a penalty rate that will apply upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit; or

(ii) The credit card issuer offers the consumer the lowest annual percentage rate referenced in § 640.2(n)(1)(ii) available under the credit card offer for which the consumer applied, even if a

lower annual percentage rate referenced in § 640.2(n)(1)(ii) is available under a different credit card offer issued by the card issuer.

(3) *Examples.* (i) A credit card issuer sends a solicitation to the consumer that discloses several possible purchase annual percentage rates that may apply, such as 10, 12, or 14 percent, or a range of purchase annual percentage rates from 10 to 14 percent. The consumer applies for a credit card in response to the solicitation. The card issuer provides a credit card to the consumer with a purchase annual percentage rate of 12 percent based in whole or in part on a consumer report. Unless an exception applies under § 640.5, the card issuer may satisfy its obligations under paragraph (a) of this section by providing a risk-based pricing notice to the consumer because the consumer received credit at a purchase annual percentage rate greater than the lowest purchase annual percentage rate available under that solicitation.

(ii) The same facts as in the example in paragraph (c)(3)(i) of this section, except that the card issuer provides a credit card to the consumer at a purchase annual percentage rate of 10 percent. The card issuer is not required to provide a risk-based pricing notice to the consumer even if, under a different credit card solicitation, that consumer or other consumers might qualify for a purchase annual percentage rate of 8 percent.

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

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

(ii) Based in whole or in part on the consumer report, increases the annual percentage rate (the annual percentage rate referenced in § 640.2(n)(1)(ii) in the case of a credit card).

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

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

(a) *Content of the notice*—(1) *In general.* The risk-based pricing notice required by § 640.3(a) or (c) must include:

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

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

(iii) A statement that the terms offered may be less favorable than the terms offered to consumers with better credit histories;

(iv) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;

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

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

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

(viii) A statement directing consumers to the websites of the Consumer Financial Protection Bureau and Federal Trade Commission to obtain more information about consumer reports; and

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

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

(B) The credit score used by the motor vehicle dealer in making the credit decision;

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

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

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

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

(2) *Account review.* The risk-based pricing notice required by § 640.3(d) must include:

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

(ii) A statement that the credit card issuer has conducted a review of the account using information from a consumer report;

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

(iv) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;

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

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

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

(viii) A statement directing consumers to the websites of the Consumer Financial Protection Bureau and Federal Trade Commission to obtain more information about consumer reports; and

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

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

reflect changes in the consumer's credit history;

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

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

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

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

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

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

(i) Clear and conspicuous; and

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

(2) *Model forms.* Model forms of the risk-based pricing notice required by § 640.3(a) and (c) are contained in appendices A–1 and A–6 of part 698. Appropriate use of Model form A–1 or A–6 is deemed to comply with the requirements of § 640.3(a) and (c). Model forms of the risk-based pricing notice required by § 640.3(d) are contained in appendices A–2 and A–7 of part 698. Appropriate use of Model form A–2 or A–7 is deemed to comply with the requirements of § 640.3(d). Use of the model forms is optional.

(c) *Timing—(1) General.* Except as provided in paragraph (c)(3) of this section, a risk-based pricing notice must be provided to the consumer—

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

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

(iii) In the case of a review of credit that has been extended to the consumer, at the time the decision to increase the annual percentage rate (annual percentage rate referenced in

§ 640.2(n)(1)(ii) in the case of a credit card) based on a consumer report is communicated to the consumer by the motor vehicle dealer required to provide the notice, or if no notice of the increase in the annual percentage rate is provided to the consumer prior to the effective date of the change in the annual percentage rate (to the extent permitted by law), no later than five days after the effective date of the change in the annual percentage rate.

(2) *Application to certain automobile lending transactions.* When a person to whom a credit obligation is initially payable grants, extends, or provides credit to a consumer for the purpose of financing the purchase of an automobile from an motor vehicle dealer or other party that is not affiliated with the person, any requirement to provide a risk-based pricing notice pursuant to this part is satisfied if the person:

(i) Provides a notice described in §§ 640.3(a), 640.5(e), or 640.5(f) to the consumer within the time periods set forth in paragraph (c)(1)(i) of this section, § 640.5(e)(3), or § 640.5(f)(4), as applicable; or

(ii) Arranges to have the motor vehicle dealer or other party provide a notice described in §§ 640.3(a), 640.5(e), or 640.5(f) to the consumer on its behalf within the time periods set forth in paragraph (c)(1)(i) of this section, § 640.5(e)(3), or § 640.5(f)(4), as applicable, and maintains reasonable policies and procedures to verify that the motor vehicle dealer or other party provides such notice to the consumer within the applicable time periods. If the person arranges to have the motor vehicle dealer or other party provide a notice described in § 640.5(e), the person's obligation is satisfied if the consumer receives a notice containing a credit score obtained by the dealer or other party, even if a different credit score is obtained and used by the person on whose behalf the notice is provided.

(3) *Timing requirements for contemporaneous purchase credit.* When credit under an open-end credit plan is granted, extended, or provided to a consumer in person or by telephone for the purpose of financing the contemporaneous purchase of goods or services, any risk-based pricing notice required to be provided pursuant to this part (or the disclosures permitted under § 640.5(e) or (f)) may be provided at the earlier of:

(i) The time of the first mailing by the motor vehicle dealer to the consumer after the decision is made to approve the grant, extension, or other provision of open-end credit, such as in a mailing containing the account agreement or a credit card; or



(ii) Within 30 days after the decision to approve the grant, extension, or other provision of credit.

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

(2) *Examples.* (i) A motor vehicle dealer 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 and uses the low score when determining the material terms it will offer to the consumer. That motor vehicle dealer must disclose the low score in the notices described in paragraphs (a)(1) and (2) of this section.

(ii) A motor vehicle dealer 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 motor vehicle dealer may choose one of these scores to include in the notices described in paragraph (a)(1) and (2) of this section.

#### § 640.5 Exceptions.

(a) *Application for specific terms*—(1) *In general.* A motor vehicle dealer is not required to provide a risk-based pricing notice to the consumer under § 640.3(a) or (c) if the consumer applies for specific material terms and is granted those terms, unless those terms were specified by the motor vehicle dealer using a consumer report after the consumer applied for or requested

credit and after the motor vehicle dealer obtained the consumer report. For purposes of this section, “specific material terms” means a single material term, or set of material terms, such as an annual percentage rate of 10 percent, and not a range of alternatives, such as an annual percentage rate that may be 8, 10, or 12 percent, or between 8 and 12 percent.

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

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

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

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

(ii) Uses the consumer report for the purpose of making a firm offer of credit to the consumer.

(2) *More favorable material terms.* This exception applies to any firm offer of credit offered by a motor vehicle dealer to a consumer, even if the motor vehicle dealer makes other firm offers of credit to other consumers on more favorable material terms.

(3) *Example.* A motor vehicle dealer obtains two prescreened lists from a consumer reporting agency. One list includes consumers with high credit scores. The other list includes consumers with low credit scores. The motor vehicle dealer mails a firm offer of credit to the high credit score consumers with an annual percentage

rate of 10 percent. The motor vehicle dealer also mails a firm offer of credit to the low credit score consumers with an annual percentage rate of 14 percent. The motor vehicle dealer is not required to provide a risk-based pricing notice to the low credit score consumers who receive the 14 percent offer because use of a consumer report to make a firm offer of credit does not trigger the risk-based pricing notice requirement.

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

(i) The consumer requests from the motor vehicle dealer an extension of credit that is or will be secured by one to four units of residential real property; and

(ii) The motor vehicle dealer provides to each consumer described in paragraph (d)(1)(i) of this section a notice that contains the following—

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

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

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

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

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

(F) A statement that the consumer is encouraged to verify the accuracy of the

information contained in the consumer report and has the right to dispute any inaccurate information in the report;

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

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

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

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

(i) Clear and conspicuous;

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

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

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

(3) *Timing.* The notice described in paragraph (d)(1)(ii) of this section must be provided to the consumer at the time the disclosure required by section 609(g) of the FCRA is provided to the consumer, but in any event at or before consummation in the case of closed-end credit or before the first transaction is made under an open-end credit plan.

(4) *Multiple credit scores—(i) In general.* When a motor vehicle dealer obtains two or more credit scores from consumer reporting agencies and uses one of those credit scores in setting the material terms of credit granted, extended, or otherwise provided to a consumer, for example, by using the low, middle, high, or most recent score, the notice described in paragraph (d)(1)(ii) of this section must include that credit score and the other information required by that paragraph. When a motor vehicle dealer obtains two or more credit scores from consumer reporting agencies and uses multiple credit scores in setting the material terms of credit granted, extended, or otherwise provided to a consumer, for example, by computing the average of all the credit scores obtained, the notice described in paragraph (d)(1)(ii) of this section must include one of those credit scores and the other information required by that paragraph. The notice may, at the motor vehicle dealer's option, include more than one credit score, along with the additional information specified in

paragraph (d)(1)(ii) of this section for each credit score disclosed.

(ii) *Examples.* (A) A motor vehicle dealer that uses consumer reports to set the material terms of credit 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 motor vehicle dealer must disclose the low score in the notice described in paragraph (d)(1)(ii) of this section.

(B) A motor vehicle dealer that uses consumer reports to set the material terms of mortgage credit 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 motor vehicle dealer may choose one of these scores to include in the notice described in paragraph (d)(1)(ii) of this section.

(5) *Model form.* A model form of the notice described in paragraph (d)(1)(ii) of this section consolidated with the notice required by section 609(g) of the FCRA is contained in 16 CFR part 698, appendix A. Appropriate use of Model Form A-3 is deemed to comply with the requirements of § 640.5(d). Use of the model form is optional.

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

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

(ii) The motor vehicle dealer provides to each consumer described in paragraph (e)(1)(i) of this section a notice that contains the following—

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

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

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

(D) The current credit score of the consumer or the most recent credit score

of the consumer that was previously calculated by the consumer reporting agency for a purpose related to the extension of credit;

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

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

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

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

(I) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;

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

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

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

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

(i) Clear and conspicuous;

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

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

(3) *Timing.* The notice described in paragraph (e)(1)(ii) of this section must be provided to the consumer as soon as reasonably practicable after the credit score has been obtained, but in any event at or before consummation in the

case of closed-end credit or before the first transaction is made under an open-end credit plan.

(4) *Multiple credit scores*—(i) *In General.* When a motor vehicle dealer obtains two or more credit scores from consumer reporting agencies and uses one of those credit scores in setting the material terms of credit granted, extended, or otherwise provided to a consumer, for example, by using the low, middle, high, or most recent score, the notice described in paragraph (e)(1)(ii) of this section must include that credit score and the other information required by that paragraph. When a motor vehicle dealer obtains two or more credit scores from consumer reporting agencies and uses multiple credit scores in setting the material terms of credit granted, extended, or otherwise provided to a consumer, for example, by computing the average of all the credit scores obtained, the notice described in paragraph (e)(1)(ii) of this section must include one of those credit scores and the other information required by that paragraph. The notice may, at the motor vehicle dealer's option, include more than one credit score, along with the additional information specified in paragraph (e)(1)(ii) of this section for each credit score disclosed.

(ii) *Examples.* The manner in which multiple credit scores are to be disclosed under this section are substantially identical to the manner set forth in the examples contained in paragraph (d)(4)(ii) of this section.

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

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

(i) Regularly obtains credit scores from a consumer reporting agency and provides credit score disclosures to consumers in accordance with paragraphs (d) or (e) of this section, but a credit score is not available from the consumer reporting agency from which the motor vehicle dealer regularly obtains credit scores for a consumer to whom the motor vehicle dealer grants, extends, or provides credit;

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

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

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

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

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

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

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

(F) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the consumer report;

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

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

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

(2) *Example.* A motor vehicle dealer that uses consumer reports to set the material terms of credit granted, extended, or provided to consumers regularly requests credit scores from a particular consumer reporting agency and provides those credit scores and additional information to consumers to satisfy the requirements of paragraph (e) of this section. That consumer reporting agency provides to the motor vehicle dealer a consumer report on a particular consumer that contains one trade line, but does not provide the motor vehicle dealer with a credit score on that consumer. If the motor vehicle dealer does not obtain a credit score from another consumer reporting agency and, based in whole or in part on information in a consumer report, grants, extends, or

provides credit to the consumer, the motor vehicle dealer may provide the notice described in paragraph (f)(1)(iii) of this section. If, however, the motor vehicle dealer obtains a credit score from another consumer reporting agency, the motor vehicle dealer may not rely upon the exception in paragraph (f) of this section, but may satisfy the requirements of paragraph (e) of this section.

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

(i) Clear and conspicuous;

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

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

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

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

#### § 640.6 Rules of construction.

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

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

(b) *Multi-party transactions*—(1) *Initial creditor.* The motor vehicle dealer to whom a credit obligation is initially payable must provide the risk-based pricing notice described in § 640.3(a) or (c), or satisfy the requirements for and provide the notice required under one of the exceptions in § 640.5(d), (e), or (f), even if that motor vehicle dealer immediately assigns the credit agreement to a third party and is not the source of funding for the credit.

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

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

(ii) A consumer obtains credit to finance the purchase of an automobile. If a bank or finance company is the person to whom the loan obligation is initially payable, the bank or finance company must provide the risk-based pricing notice to the consumer (or satisfy the requirements for and provide the notice required under one of the exceptions noted in paragraph (b) of this section) based on the terms offered by that bank or finance company only. The motor vehicle dealer has no duty to provide a risk-based pricing notice to the consumer. However, the bank or finance company may comply with this rule if the motor vehicle dealer has agreed to provide notices to consumers before consummation pursuant to an arrangement with the bank or finance company, as permitted under § 640.4(c).

(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 motor vehicle dealer must provide a notice to each consumer to satisfy the requirements of § 640.3(a) or (c). Whether the consumers have the same address or not, the motor vehicle dealer 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 motor vehicle dealer may satisfy the requirements by

providing a single notice addressed to both consumers.

(2) *Credit score disclosure notices.* In a transaction involving two or more consumers who are granted, extended, or otherwise provided credit, a motor vehicle dealer must provide a separate notice to each consumer to satisfy the exceptions in § 640.5(d), (e), or (f). Whether the consumers have the same address or not, the motor vehicle dealer must provide a separate notice to each consumer. Each separate notice 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.

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

(ii) Two consumers jointly apply for credit with a creditor. The two consumers reside at the same address. The creditor obtains credit scores on each of the two consumer applicants. The creditor grants credit to the consumers. The creditor provides credit score disclosure notices to satisfy its obligations under this part. Even though the two consumers reside at the same address, the creditor must provide a separate credit score disclosure notice to each of the consumers. Each notice must contain only the credit score of the consumer to whom the notice is provided.

By direction of the Commission, Commissioner Slaughter and Commissioner Wilson not participating.

**April J. Tabor,**  
*Acting Secretary.*

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## POSTAL REGULATORY COMMISSION

### 39 CFR Part 3050

[Docket No. RM2020-13; Order No. 5694]

#### Periodic Reporting

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission is acknowledging a recent filing requesting the Commission initiate a rulemaking proceeding to consider changes to analytical principles relating to periodic reports (Proposal Six). This document informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* November 24, 2020.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202-789-6820.

#### SUPPLEMENTARY INFORMATION:

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- I. Introduction
- II. Proposal Six
- III. Notice and Comment
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#### I. Introduction

On September 15, 2020, the Postal Service filed a petition pursuant to 39 CFR 3050.11, requesting that the Commission initiate a rulemaking proceeding to consider changes to analytical principles relating to periodic reports.<sup>1</sup> The Petition identifies the proposed analytical changes filed in this docket as Proposal Six.

#### II. Proposal Six

*Background.* Proposal Six introduces a new methodology for estimating volume variabilities for certain mail processing cost pools: Delivery Barcode Sorter (DBCS), Automated Flats Sorting Machine (AFSM) 100, and Flats Sequencing System (FSS). Petition, Proposal Six at 1. The cost pools at issue involve labor expenses associated with the distribution of letters (DBCS) and flats (AFSM 100 and FSS). *Id.* at 2. The

<sup>1</sup> Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Six), September 15, 2020 (Petition). The Petition was accompanied by a study supporting its proposal. See A. Thomas Bozzo & Tim Huegerich, Analysis of Labor Variability for Automated Letter and Flat Sorting, Christensen Associates, September 15, 2020 (Variability Report). The Postal Service also filed a notice of filing of public and non-public materials relating to Proposal Six. Notice of Filing of USPS-RM2020-13-1 and USPS-RM2020-13-NP1 and Application for Nonpublic Treatment, September 15, 2020.