

**Interagency Examination Procedures**  
**Section 615(h) Duties of Users Regarding Risk-Based Pricing**  
**(Regulation V, Subpart H)**

**Background**

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 in the *Federal Register* (75 FR 2724) implementing this section of the FCRA.

The risk-based pricing notice requirement 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 the consumers can, if they choose, check their consumer reports for accuracy and correct any inaccurate information. This notice provision is meant to complement an existing provision of the FCRA, Section 615(a), whereby a creditor that denies a consumer’s application for credit, based in whole or in part on information in a consumer’s report, must provide an adverse action notice. The new provision, Section 615(h), covers the situation where credit is offered at “materially less favorable terms,” rather than being denied.

Definitions (12 CFR 222.71)

The following definitions pertain to the rules governing the risk-based pricing regulation:

1. “Material terms” means in general:
  - a. For open-end credit, the annual percentage rate (APR) required to be disclosed in the account opening disclosures required under Regulation Z. This does not include a temporary initial rate that is lower than the rate that will apply when the temporary rate expires, any penalty rate that applies upon the occurrence of specific events (such as a late payment), or any fixed APR option for a home equity line of credit;
  - b. For credit cards (other than a credit card used to access a home equity line of credit or a charge card), the APR that applies for purchases. For credit cards without a purchase APR, “material terms” means the APR that varies based on consumer report information and that has the most significant financial impact on consumers;
  - c. For closed-end credit, the APR required to be disclosed prior to consummation under the closed-end provisions of Regulation Z; and

- d. For credit that does not have an APR, the financial term that varies based on consumer report information and that has the most significant financial impact on consumers, such as an annual membership fee for a charge card.
2. “Materially less favorable” means, generally, that the cost of credit to a consumer would be significantly greater than the cost of credit to another consumer from or through the same creditor. Relevant factors in determining the significance of a difference in cost include the type of credit product, the term of the credit extension, and the extent of the difference.

#### General requirements (12 CFR 222.72-73)

A financial institution must provide to a consumer a notice (“risk-based pricing notice”) in the form and manner prescribed by the regulation if:

1. the institution uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to a consumer for personal, family, or household purposes; and
2. based in whole or in part on the consumer report, the institution 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 that institution.

The obligation to provide the notice applies to the creditor to whom the obligation is initially payable, i.e. the original creditor. This interpretation excludes brokers and other intermediaries who do not themselves grant, extend, or provide credit to consumers. See preamble to the final regulation (75 FR at 2730 - 2731).

*Determination of which consumers must receive notice (12 CFR 222.72(b)).* A financial institution may determine, on a case-by-case basis, whether a consumer has received material terms that are materially less favorable by comparing the material terms offered to the consumer to the material terms offered to other consumers for a specific type of credit product. A “specific type of credit product” means one or more credit products with similar features that are designed for similar purposes. Examples include student loans, unsecured credit cards, secured credit cards, new automobile loans, used automobile loans, fixed-rate mortgage loans, and variable-rate mortgage loans.

Because making such a direct comparison between consumers may not be operationally feasible, the rules provide the two alternative methods, a credit score proxy method and a tiered pricing method, both of which are described as follows:

1. *Credit score proxy method (12 CFR 222.72(b)(1)).* If a creditor uses credit scores to set the material terms of credit, the creditor may determine a cutoff score that represents the point at

which approximately 40 percent of its consumers have higher credit scores and 60 percent of its consumers have lower credit scores. The creditor may then provide a risk-based pricing notice to each consumer who has a credit score lower than the cutoff score.

<b>Credit Score Proxy Example</b>	
The number of all, or a representative sample of, consumers to whom the institution granted credit for a specific type of credit product	10,000
40 percent of consumers	4,000
Credit scores of the 4,000 consumers with the highest credit scores	700 or higher
Cutoff score	700
<b>Credit scores of those consumers to whom the creditor must provide a risk-based pricing notice, because the consumers' scores are lower than cutoff score</b>	699 or lower

Alternative to 40/60 cutoff. The regulation provides an alternative to the 40/60 cutoff discussed above for situations where more than 40 percent of consumers (e.g., 80 percent) receive the most favorable material terms. In such situations, the creditor may set a different cutoff score based on its historical experience. The cutoff score would be set at a point at which the approximate percentage of consumers who historically have received the most favorable material terms based on their credit score would not receive a notice in the future. Under this alternative, the risk-based pricing notices would be provided to the approximate percentage of consumers who historically have been granted credit on material terms other than the most favorable terms.

For example, based on a sample of credit extended in the past six months, a creditor may determine that approximately 80 percent of its consumers received credit at its lowest APR (i.e., the most favorable material terms), and 20 percent of its consumers received credit at a higher APR (i.e., material terms other than the most favorable). Approximately 80 percent of the sampled consumers had a credit score at or above 750,

and 20 percent had a credit score below 750. As a result, the card issuer could select 750 as its cutoff score. Consumers who have credit scores lower than 750 would receive the risk-based pricing notice. See preamble to the final regulation (75 FR at 2733).

Recalculation. An institution must recalculate the score no less than every two years.

Specific type of product. A financial institution must calculate the cutoff score by considering the credit scores of all, or a representative sample of, the consumers who have received credit for a specific type of credit product.

New entrants or new products. For new entrants into the credit business or for new products subject to risk-based pricing, a financial institution may determine the cutoff score based on information from market research or other third-party sources. For a newly acquired credit portfolio, a financial institution may determine the cutoff score from information obtained from the party from which it acquired the portfolio. The institution must recalculate the cutoff score using the scores of its own consumers within one year after it begins using a score derived from market research, a third-party, or the party from which it acquired the portfolio. If, within that one year, it has not granted credit to a sufficient number of new consumers, thus preventing it from having sufficient data with which to recalculate a cut-off score based on the credit scores of its own consumers, it may continue to use the original cutoff score. However, within two years, it must calculate its own cutoff score if it has granted credit to some new consumers within those two years.

Use of multiple credit scores. For a financial institution that generally uses two or more credit scores to set material credit terms, the institution must determine the cutoff score using the same method used to evaluate multiple scores when making credit decisions (for example, using an average credit score). If the institution does not consistently use the same method for evaluating multiple scores, the institution must use a reasonable means. For example, the institution may use any one of the methods that the institution ordinarily uses or the average credit score of each consumer to calculate the credit score by a reasonable means.

No credit score available for a consumer. If no credit score is available for a consumer, a financial institution must assume that it is granting credit on materially less favorable terms and thus must provide a risk-based pricing notice to the consumer.

2. *Tiered pricing method (12 CFR 222.72(b)(2)).* If a financial institution sets the material terms of credit by assigning each consumer to 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, the institution

may provide a risk-based pricing notice to each consumer who is not assigned to the top pricing tier or tiers.

If the financial institution uses four or fewer pricing tiers, it complies by providing risk-based pricing notices to all consumers who do not qualify for the top, best-priced tier. If the institution uses five or more pricing tiers, it complies by providing the notices to all consumers who do not qualify for the two top, best-priced tiers and any other tier that, combined with the top two tiers, equal no less than the top 30 percent and no more than the top 40 percent of the total number of tiers.

<b>Tiered Pricing Example</b>		
<b>Four or fewer tiers</b>		
Top tier = best rate	APR	Notice requirement
Tier 1 (top)	8%	No risk-based pricing notice required.
Tier 2	10%	<b>Risk-based pricing notice required for Tiers 2, 3 and 4.</b>
Tier 3	12%	
Tier 4	14%	

<b>Five or more tiers (5 tiers)</b>		
Top tier = best rate	APR	
Tier 1 (top)	8%	No risk-based pricing notice required for top 30% to 40% of tiers.
Tier 2	10%	
Tier 3	12%	<b>Risk-based notices required for Tiers 3-5.</b>
Tier 4	14%	
Tier 5	16%	

<b>Five or more tiers (9 tiers)</b>		
Top tier = best rate	APR	
Tier 1 (top)	8%	No risk-based pricing notice required for top 30% to 40% of tiers.
Tier 2	10%	
Tier 3	12%	
Tier 4	14%	<b>Risk-based notices required for Tiers 4-9.</b>
Tier 5	16%	
Tier 6	18%	
Tier 7	20%	
Tier 8	22%	
Tier 9	24%	

*Application to credit card issuers (12 CFR 222.72(c)).* A credit card issuer may use any of the methods in 12 CFR 222.72(b) to identify consumers to whom it must provide a risk-based pricing notice. Alternatively, the card issuer may provide the notice when:

- (a) a consumer applies for a credit card in connection with an application program or in response to a solicitation, and more than one purchase APR may apply under the program or solicitation, and
- (b) based in whole or in part on a consumer report, the credit card is issued to a consumer with an APR that is higher than the lowest APR available in connection with the application or solicitation.

The risk-based pricing requirements do not apply to a card issuer if the credit card program offers only a single annual APR (other than temporary initial rates or penalty rates) or if the issuer offers the consumer the lowest possible APR under the credit card program.

*Content of the notice (12 CFR 222.73(a)(1)).* The risk-based pricing notice must include:

1. 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;
2. 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;
3. the identity of each consumer reporting agency that furnished a consumer report used in the credit decision;
4. 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;
5. 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;
6. a statement directing consumers to the web sites of the Federal Reserve Board and Federal Trade Commission to obtain more information about consumer reports;
7. a statement that the terms offered, such as the APR, have been set based on information from a consumer report; and
8. a statement that the terms offered may be less favorable than the terms offered to consumers with better credit histories.

See Appendix H-1 of the regulation for a model form for the risk-based pricing notice.

*Account Review (12 CFR 222.72(d)).* Generally, creditors must provide an account review risk-based pricing notice to the consumer if the creditor, based in whole or in part on a consumer report, increases the consumer's APR after a review of the consumer's account, unless one of the exceptions in 12 CFR 222.74(a), (b), or (c) applies (for example, the creditor provides an adverse action notice).

*Content of account review risk-based pricing notice (12 CFR 222.73(a)(2)).* The account review risk-based pricing notice must include:

1. 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;
2. 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;
3. the identity of each consumer reporting agency that furnished a consumer report used in the account review;
4. 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;
5. 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;
6. a statement directing consumers to the web sites of the Federal Reserve Board and Federal Trade Commission to obtain more information about consumer reports;
7. a statement that the financial institution has conducted a review of the account using information from a consumer report; and
8. a statement that as a result of the review, the APR on the account has been increased based on information from a consumer report.

NOTE: Items 1 through 6 for account review risk-based pricing notice are substantially the same as items 1 through 6 for the risk-based pricing notice. Only the last two items in each list are different.

See Appendix H-2 of the regulation for a model form for the account review risk-based pricing notice.

*Form of the notice (12 CFR 222.73(b)).* The risk-based pricing notices and the account review risk-based pricing notices must be clear and conspicuous and provided to the consumer in oral, written, or electronic form. Creditors are deemed to be in compliance with the disclosure requirements through use of the optional, applicable model forms, found in Appendix H of the regulation.

*Timing (12 CFR 222.73(c)).* The timing requirement depends on the specific type of credit transaction as specified below:

- For closed-end credit, a risk-based pricing notice must be provided to the consumer after the decision to approve a credit request is communicated to the consumer, but before consummation of the transaction.



- For open-end credit, the notice must be provided after the decision to grant credit is communicated to the consumer, but before the first transaction under the plan has been made.
- For account reviews, the notice must be provided at the time that the decision to increase the APR is communicated to the consumer. If no notice of the increase in the APR is provided to the consumer prior to the effective date of the APR change, the notice must be provided no later than five days after the effective date of the APR change.
- For automobile lending transactions made through an auto dealer that is unaffiliated with the institution, the institution may provide a risk-based pricing notice in the time periods described above for closed-end credit. Alternatively, the institution may arrange to have the auto dealer provide a risk-based pricing notice to the consumer on its behalf within these time periods and maintain reasonable policies and procedures to verify that the auto dealer provides the notices to consumers within the applicable time periods.
- For instant credit that is granted under an open-end credit plan to a consumer in person or by telephone, the risk-based pricing notice may be provided at the earlier of:
  - The time of the first mailing to the consumer after the decision is made to approve the credit, such as in a mailing containing the account agreement or a credit card; or
  - Within 30 days after the decision to approve the credit.

#### Exceptions (12 CFR 222.74)

The rules contain a number of exceptions to the risk-based pricing notice requirement, as follows:

1. when a consumer applies for specific terms of credit, and receives them, unless those terms were specified by the creditor using a consumer report after the consumer applied for the credit and after the creditor obtained the consumer report (12 CFR 222.74(a));
2. when a creditor provides a notice of adverse action (12 CFR 222.74(b));
3. when a creditor makes a firm offer of credit in a prescreened solicitation (12 CFR 222.74(c));
4. when an institution generally provides a credit score disclosure to each consumer that requests a loan that is or will be secured by residential real property (12 CFR 222.74(d));
5. when an institution generally provides a credit score disclosure to each consumer that requests a loan that is *not* or will *not* be secured by residential real property (12 CFR 222.74(e));
6. when an institution, which otherwise provides credit score disclosures to consumers that request loans, provides a disclosure about credit scores when no credit score is available (12 CFR 222.74(f)).

The regulation contains specific disclosure requirements for Sections 222.74(d)-(f) exceptions, as discussed below.

*Section 222.74(d) exception - credit score disclosure for loans secured by residential real property (12 CFR 222.74(d)).* An institution is not required to provide a risk-based pricing notice to a consumer under Sections 222.72(a) or (c) if:

1. The consumer requests from an institution an extension of credit that is or will be secured by one to four units of residential real property; and
2. The institution generally provides to each consumer that requests such an extension of credit 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. 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;
  - e. 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;
  - f. Contact information for the centralized source from which consumers may obtain their free annual consumer reports;
  - g. A statement directing consumers to the web sites of the Federal Reserve Board and Federal Trade Commission to obtain more information about consumer reports;
  - h. The information required to be disclosed to the consumer in Section 609(g) of the FCRA, and as described in Module 3 of these examination procedures, under "Disclosure of Credit Scores by Certain Mortgage Lenders (FCRA), Section 609(g)"; and
  - i. 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. The distribution must:
    - (i) Use the same scale as that of the credit score provided to the consumer, and
    - (ii) Be 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,
- by other clear and readily understandable graphical means, or
- in a clear and readily understandable statement informing the consumer how his or her credit score compares to the scores of other consumers.

The presentation may use a graph or statement obtained from the entity providing the credit score if it meets these requirements.

Form of the notice. The Section 222.74(d) notice must be:

- a. Clear and conspicuous;
- b. Provided on or with the notice required by Section 609(g) of the FCRA;
- c. Segregated from other information provided to the consumer, except for the notice required by Section 609(g) of the FCRA; and
- d. Provided to the consumer in writing and in a form that the consumer may keep.

Timing. The Section 222.74(d) notice must be provided to the consumer at the same time as the disclosure required by Section 609(g) of the FCRA is provided to the consumer, which must be provided as soon as reasonably practicable after the credit score has been obtained. In any event, the Section 222.74(d) notice must be provided at or before consummation in the case of closed-end credit or before the first transaction is made under an open-end credit plan.

Content of the notice when using multiple credit scores. When an institution obtains two or more credit scores from consumer reporting agencies in setting material terms of credit, the content of the Section 222.74(d) notice varies depending upon whether the institution only relies upon one of the credit scores or relies upon multiple credit scores.

- a. If an institution only relies upon 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 must include that credit score and the other information required by Section 222.74(d).
- b. If an institution relies upon 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 must include one of those credit scores and the other information required by Section 222.74(d).

At the institution's option, the notice may include more than one credit score, along with the additional information required by Section 222.74(d) for each credit score disclosed.

Examples.

- a. An institution uses consumer reports to set the material terms of mortgage credit granted, extended, or provided to consumers and regularly requests credit scores from several consumer reporting agencies. It relies upon the low score when determining the material terms it will offer to the consumer. The institution must disclose the low score in the Section 222.74(d) notice.
- b. An institution uses consumer reports to set the material terms of mortgage credit granted, extended, or provided to consumers and regularly requests credit scores from several consumer reporting agencies. The institution takes an average of all of the credit scores obtained in order to determine the material terms it will offer to the consumer, and thus relies upon all of the credit scores that it receives. The institution may choose one of these scores to include in the Section 222.74(d) notice.

Model form. Appendix H-3 of the regulation contains a model form of the Section 222.74(d) notice that is consolidated with the notice required by Section 609(g) of the FCRA. While use of the model form is optional, appropriate use of Model Form H-3 is deemed to comply with the requirements of Section 222.74(d).

*Section 222.74(e) exception - credit score disclosure for loans not secured by residential real property (12 CFR 222.74(e)).* An institution is not required to provide a risk-based pricing notice to a consumer under Section 222.72(a) or (c) if:

1. The consumer requests from an institution an extension of credit that is *not* or will *not* be secured by one to four units of residential real property; and
2. The institution provides to each consumer that requests such an extension of credit 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. 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;
  - e. 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;

- f. Contact information for the centralized source from which consumers may obtain their free annual consumer reports;
- g. A statement directing consumers to the web sites of the Federal Reserve Board and Federal Trade Commission to obtain more information about consumer reports;
- h. 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;
- i. 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. The distribution must:
  - a. Use the same scale as that of the credit score provided to the consumer, and
  - b. Be presented:
    - (i) 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,
    - (ii) by other clear and readily understandable graphical means, or
    - (iii) in a clear and readily understandable statement informing the consumer how his or her credit score compares to the scores of other consumers.

The presentation may use a graph or statement obtained from the entity providing the credit score if it meets these requirements.

- j. The range of possible credit scores under the model used to generate the credit score;
- k. The date on which the credit score was created; and
- l. The name of the consumer reporting agency or other person that provided the credit score.

NOTE: Items a, b, c, d, e, f, g, and i for the Section 222.74(e) notice are the same as items a, b, c, d, e, f, g, and i for the Section 222.74(d) notice.

Form of the notice. The Section 222.74(e) notice must be:

- a. Clear and conspicuous;
- b. Segregated from other information provided to the consumer; and
- c. Provided to the consumer in writing and in a form that the consumer may keep.

Timing. The Section 222.74(e) notice generally 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. The notice may alternatively be provided in the following manner:

- For automobile lending transactions made through an auto dealer that is unaffiliated with the institution, the institution may provide a Section 222.74(e) notice in the time periods described above . Alternatively, the institution may arrange to have the auto dealer

provide a Section 222.74(e) notice to the consumer on its behalf within these time periods and maintain reasonable policies and procedures to verify that the auto dealer provides the notice to the consumer within the applicable time periods. If the institution arranges to have the auto dealer provide a Section 222.74(e) notice, the institution complies if the consumer receives a notice containing a credit score obtained by the dealer, even if a different credit score is obtained and used by the institution. (12 CFR 222.73(c)(2))

- For instant credit that is granted under an open-end credit plan to a consumer in person or by telephone, the Section 222.74(e) notice may be provided at the earlier of:
  - The time of the first mailing to the consumer after the decision is made to approve the credit, such as in a mailing containing the account agreement or a credit card; or
  - Within 30 days after the decision to approve the credit. 12 CFR 222.73(c)(3))

Multiple credit scores. When an institution obtains two or more credit scores from consumer reporting agencies in setting material terms of credit, the content of the Section 222.74(e) notice varies depending if the institution relies upon only one of the credit scores or relies upon multiple credit scores. These disclosures requirements are the same as those for the Section 222.74(d) notices, as described previously.

Model form. Appendix H-4 of the regulation contains a model form of the Section 222.74(e) notice. While use of the model form is optional, appropriate use of Model Form H-4 is deemed to comply with the requirements of Section 222.74(e).

*Section 222.74(f) exception - credit score not available (12 CFR 222.74(f)).* An institution is not required to provide a risk-based pricing notice to a consumer under Section 222.72(a) or (c) if the institution:

1. Regularly obtains credit scores from a consumer reporting agency and provides credit score disclosures to consumers in accordance with Sections 222.74(d) or (e), but a credit score is not available from the consumer reporting agency from which the institution regularly obtains credit scores for a consumer to whom the institution grants, extends, or provides credit;
2. Does not obtain a credit score from another consumer reporting agency in connection with granting, extending, or providing credit to the consumer; and
3. 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 web sites of the Federal Reserve Board and Federal Trade Commission to obtain more information about consumer reports.

NOTE: Items b, f, g, h, and i for the Section 222.74(f) notice are the same as items b, f, g, h, and i for the Sections 222.74(d) and (e) notices.

Example. An institution uses consumer reports to set the material terms of non-mortgage credit granted, extended, or provided to consumers and regularly requests credit scores from a particular consumer reporting agency. As required by Section 222.74(e), the institution provides those credit scores and additional information to consumers. The consumer reporting agency provides to the institution a consumer report on a particular consumer that contains one trade line, but does *not* provide the institution with a credit score on that consumer. If the institution 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 institution may provide the Section 222.74(f) notice. If, however, the institution obtains a credit score from another consumer reporting agency, the institution may not rely upon the Section 222.74(f) exception, but must satisfy the requirements of Section 222.74(e).

Form of the notice. The Section 222.74(f) notice must be:

- a. Clear and conspicuous;
- b. Segregated from other information provided to the consumer; and
- c. Provided to the consumer in writing and in a form that the consumer may keep.

Timing. The Section 222.74(f) notice generally must be provided to the consumer as soon as reasonably practicable after the institution 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. The notice may alternatively be provided in the following manner:

- For automobile lending transactions made through an auto dealer that is unaffiliated with the institution, the institution may provide a Section 222.74(f) notice in the time periods described above. Alternatively, the institution may arrange to have the auto dealer provide a Section 222.74(f) notice to the consumer on its behalf within these time periods and maintain reasonable policies and procedures to verify that the auto dealer provides the notice to the consumer within the applicable time periods. 12 CFR 222.73(c)(2))
- For instant credit that is granted under an open-end credit plan to a consumer in person or by telephone, the Section 222.74(f) notice may be provided at the earlier of:
  - The time of the first mailing to the consumer after the decision is made to approve the credit, such as in a mailing containing the account agreement or a credit card; or
  - Within 30 days after the decision to approve the credit. 12 CFR 222.73(c)(3))

Model form. Appendix H-5 of the regulation contains a model form of the Section 222.74(f) notice. While use of the model form is optional, appropriate use of Model Form H-5 is deemed to comply with the requirements of Section 222.74(f).

#### Rules of Construction (12 CFR 222.75)

The rules clarify that, in general, only one risk-based pricing notice or one credit score exception notice is required to be provided per credit extension (however, an account review would still be required, if applicable). In a transaction involving two or more consumers, a financial institution must provide a risk-based pricing notice to each consumer. If the consumers have the same address, a financial institution may satisfy the requirements by providing a single risk-based pricing notice addressed to both consumers. For credit score disclosure exception notices, whether the consumers have the same address or not, the financial institution must provide a separate notice to each consumer.

#### Appendix H

Appendix H contains five optional model forms that may be used to comply with the regulatory requirements. The five model forms are:

1. H-1 Model form for risk-based pricing notice
2. H-2 Model form for account review risk-based pricing notice
3. H-3 Model form for credit score disclosure exception for credit secured by one to four units of residential real property



4. H-4 Model form for credit score disclosure exception for loans not secured by residential real property
5. H-5 Model form for credit score disclosure exception for loans where credit score is not available

Use of the model forms is not required. A financial institution may change the forms by rearranging the format or by making technical modifications to the language of the forms. However, any change may not be so extensive as to materially affect the substance, clarity, comprehensibility, or meaningful sequence of the forms. Institutions making such extensive revisions would lose the “safe harbor” that Appendix H provides. Examples of acceptable changes are provided in Appendix H to the regulation.

## Examination Procedures

1. Determine whether the financial institution uses consumer report information in consumer credit decisions.

If yes, determine whether the institution uses such information to provide credit on terms that are “materially less favorable” than the most favorable material terms available to a substantial proportion of its consumers. Relevant factors in determining the significance of differences in the cost of credit include the type of credit product, the term of the credit extension, and the extent of the difference.

If “yes,” the financial institution is subject to the risk-based pricing regulations.

2. Determine whether the financial institution provides a risk-based pricing notice to a consumer (12 CFR 222.72(a)). If it does, proceed to step #3. If the institution does not provide a risk-based pricing notice, proceed to step #5 to determine whether an exception applies (12 CFR 222.74).
3. Determine the method the financial institution uses to identify consumers who must receive a risk-based pricing notice and whether the method complies with the regulation (12 CFR 222.72(b)).
  - a. For institutions that use the direct comparison method (12 CFR 222.72(b)), determine whether the institution directly compares the material terms offered to each consumer and the material terms offer to the other consumers for a specific type of credit product.
  - b. For institutions that use the credit score proxy method: (12 CFR 222.72(b)(1))
    - i. determine whether the institution calculates the cutoff score by considering the credit scores of all, or a representative sample, of consumers who have received credit for a specific type of credit product;
    - ii. determine whether the institution recalculates the cutoff score no less than every two years;
    - iii. for new entrants into the credit business, for new products subject to risk-based pricing, or for acquired credit portfolios, determine whether the institution recalculates the cutoff scores within time periods specified in the regulation;
    - iv. for institutions using more than one credit score to set material terms, determine whether the institution establishes a cutoff score according to the methods specified in the regulation; and
    - v. if no credit score is available for a consumer, determine whether the institution provides the consumer a risk-based pricing notice.
  - c. For institutions that use the tiered pricing method: (12 CFR 222.72(b)(2))

- i. when four or fewer pricing tiers are used, determine if the institution sends risk-based pricing notices to consumers who do not qualify for the top, best-priced tier; or
  - ii. when five or more pricing tiers are used, determine if the institution provides risk-based pricing notices to consumers who do not qualify for the two top, best-priced tiers and any other tier that, combined with the top two tiers, equal no less than the top 30 percent and no more than the top 40 percent of the total number of tiers.
- d. For credit card issuers:
  - i. Determine whether the card issuer uses the credit score proxy method or the tiered pricing method to identify consumers to whom it must provide a risk-based pricing notice.
  - ii. If the institution does not use the credit score proxy method or the tiered pricing method, determine whether the card issuer uses the following method as permitted by 12 CFR 222.72(c) to identify consumers to whom it must provide a risk-based pricing notice.:
    - a) 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
    - b) Based in whole or in part on a consumer report, the credit card issuer provides a credit card to the consumer with a purchase APR that is greater than the lowest purchase APR available in connection with the application or solicitation.
  - iii. Determine whether the card issuer provides a risk-based pricing notice to each consumer that is provided a credit card with a purchase APR greater than the lowest purchase APR available under the program or solicitation.
- 4. Determine whether the risk based pricing notice contains: (12 CFR 222.73(a)(1))
  - 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 the terms offered, such as the APR, have been set based on information from a consumer report;
  - c. a statement that the terms offered may be less favorable than the terms offered to consumers with better credit histories;
  - d. 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;
  - e. the identity of each consumer reporting agency that furnished a consumer report used in the credit decision;

- f. 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;
- g. 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
- h. a statement directing consumers to the web sites of the Federal Reserve Board and Federal Trade Commission to obtain more information about consumer reports.

Proceed to step #10.

5. If the institution does not provide a risk-based pricing notice, determine if one of the following situations that qualify for a regulatory exception applies: (12 CFR 222.74(a)-(f))
  - a. when a consumer applies for specific terms of credit, and receives them, unless those terms were specified by the creditor using a consumer report after the consumer applied for the credit and after the creditor obtained the consumer report;
  - b. when a creditor provides a notice of adverse action;
  - c. when a creditor makes a firm offer of credit in a prescreened solicitation;
  - d. when an institution generally provides a credit score disclosure to each consumer that requests a loan that is or will be secured by residential real property;
  - e. when an institution generally provides a credit score disclosure to each consumer that requests a loan that is *not* or will *not* be secured by residential real property;
  - f. when an institution, which otherwise provides credit score disclosures to consumers that request loans, provides a disclosure for when no credit score is available.
  
6. For institutions that choose to provide a credit score disclosure to consumers that request a loan that is or will be secured by residential real property, determine whether the Section 222.74(d) notice generally is provided to each consumer that requests such an extension of credit and that each notice contains:
  - 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. 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;
  - e. 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;

- f. Contact information for the centralized source from which consumers may obtain their free annual consumer reports;
- g. A statement directing consumers to the web sites of the Federal Reserve Board and Federal Trade Commission to obtain more information about consumer reports;
- h. The information required to be disclosed to the consumer in Section 609(g) of the FCRA, and as described in Module 3 of these examination procedures, under “Disclosure of Credit Scores by Certain Mortgage Lenders (FCRA), Section 609(g)”;
- i. 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. The distribution should:
  - a. Use the same scale as that of the credit score provided to the consumer, and
  - b. Be presented:
    - 1. 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,
    - 2. by other clear and readily understandable graphical means, or
    - 3. in a clear and readily understandable statement informing the consumer how his or her credit score compares to the scores of other consumers.

The presentation may use a graph or statement obtained from the entity providing the credit score if it meets these requirements.

- 7. For institutions that chooses to provide a credit score disclosure to consumers that request a loan that is *not* or will *not* be secured by residential real property, determine whether the Section 222.74(e) notice generally is provided to each consumer that requests such an extension of credit and that each notice contains:
  - 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. 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;
  - e. 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;

- f. Contact information for the centralized source from which consumers may obtain their free annual consumer reports;
- g. A statement directing consumers to the web sites of the Federal Reserve Board and Federal Trade Commission to obtain more information about consumer reports;
- h. 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;
- i. 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. The distribution should:
  - a. Use the same scale as that of the credit score provided to the consumer, and
  - b. Be presented:
    - (i) 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,
    - (ii) by other clear and readily understandable graphical means, or
    - (iii) in a clear and readily understandable statement informing the consumer how his or her credit score compares to the scores of other consumers.

The presentation may use a graph or statement obtained from the entity providing the credit score if it meets these requirements;

- j. The range of possible credit scores under the model used to generate the credit score;
  - k. The date on which the credit score was created; and
  - l. The name of the consumer reporting agency or other person that provided the credit score.
8. For institutions that otherwise provide credit score disclosures to consumers that request loans, determine whether the Section 222.74(f) notice is provided to the applicable consumers in situations where no credit score is available for the consumer, as required by 222.74(f). Determine whether each notice contains:
- 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 web sites of the Federal Reserve Board and Federal Trade Commission to obtain more information about consumer reports.
9. For institutions that provide credit score exception notices and that obtain multiple credit scores in setting material terms of credit, determine whether the score(s) is disclosed in a manner consistent with the regulation: (12 CFR 222.74(d)(4) and .74 (e)(4))
- a. If an institution only relies upon 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), determine whether the notice includes that credit score and the other information required by Section 222.74(d).
  - b. If an institution relies upon 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), determine whether the notice includes one of those credit scores and the other information required by Section 222.74(d).
10. Regardless of whether the institution provides risk-based pricing notices or credit score exception notices, if the institution increases the consumer's APR as the result of a review of a consumer's account, determine whether the financial institution provided the consumer with an account review risk-based pricing notice (12 CFR 222.72(d)) if an adverse action notice was not already provided.
11. Determine whether the account review risk-based pricing notice contains: (12 CFR 222.73(a)(2))
- 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 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;
  - c. the identity of each consumer reporting agency that furnished a consumer report used in the credit decision;
  - d. 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;
  - e. a statement that informs the consumer how to obtain a consumer report from the consumer reporting agency or agencies identified in the notice and provides contact information (including a toll-free telephone number, where applicable) specified by the consumer reporting agency or agencies;
  - f. a statement that directs consumers to the web sites of the Federal Reserve Board and Federal Trade Commission to obtain more information about consumer reports;
  - g. a statement that the financial institution has conducted a review of the account using information from a consumer report; and
  - h. a statement that, as a result of the review, the APR on the account has been increased based on information from a consumer report.
12. For all notices, determine whether the notices are clear and conspicuous and comply with the specific format requirements for the notices (12 CFR 222.73(b), .74(d)(2), .74(e)(2), and .74(f)(3)).
13. For all notices, determine whether the notices are provided within the required timeframes: (12 CFR 222.73(c), .74(d)(3), .74(e)(3), and .74(f)(4))

*Risk-based pricing notices and account review risk-based pricing notices*

- For closed-end credit, the notice generally must be provided to the consumer after the decision to approve a credit request is communicated to the consumer, but before consummation of the transaction.
- For open-end credit, the notice generally must be provided after the decision to grant credit is communicated to the consumer, but before the first transaction under the plan has been made.
- For account reviews, the notice generally must be provided at the time that the decision to increase the APR is communicated to the consumer or no later than five days after the effective date of the change in the APR.

*Credit score disclosures for loans secured by residential real property*

- The credit score disclosure for loans secured by residential real property must be provided to the consumer at the same time as the disclosure required by Section 609(g) of the FCRA is provided to the consumer. The 609(g) notice must be provided as soon as reasonably practicable after the credit score has been obtained. In any event, the credit



score disclosure for loans secured by residential real property must be provided at or before consummation in the case of closed-end credit or before the first transaction is made under an open-end credit plan.

*Credit score disclosures for loans not secured by residential real property*

- The notice generally 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.

*Credit score exception notices when no credit score is available*

- The notice generally must be provided to the consumer as soon as reasonably practicable after the institution 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.

*All notices, except credit score disclosures for loans secured by residential real property*

- For automobile lending transactions made through an auto dealer that is unaffiliated with the institution, the institution may provide a notice in the time periods described above. Alternatively, the institution may arrange to have the auto dealer provide a notice to the consumer on its behalf within these time periods and maintain reasonable policies and procedures to verify that the auto dealer provides the notice to the consumer within the applicable time periods. If the institution arranges to have the auto dealer provide a credit score disclosure for loans not secured by residential real property, the institution complies if the consumer receives a notice containing a credit score obtained by the dealer with these time periods, even if a different credit score is obtained and used by the institution.
- For instant credit that is granted under an open-end credit plan to a consumer in person or by telephone, the notice may be provided at the earlier of:
  - The time of the first mailing to the consumer after the decision is made to approve the credit, such as in a mailing containing the account agreement or a credit card; or
  - Within 30 days after the decision to approve the credit.

14. For all notices, determine whether the financial institution follows the rules of construction pertaining to the number of notices provided to the consumer(s) (12 CFR 222.75). In a transaction involving two or more consumers, a financial institution must provide a risk-based notice to each consumer. If the consumers have the same address, a financial institution may satisfy the requirements by providing a single risk-based pricing notice addressed to both consumers. For credit score disclosure exception notices, whether the

consumers have the same address or not, the financial institution must provide a separate notice to each consumer.

15. For all notices, determine whether the financial institution uses the model forms in Appendix H of the regulation. If yes, determine that it does not modify the model form so extensively as to affect the substance, clarity, comprehensibility, or meaningful sequence of the forms (Appendix H).