

~~satisfy the requirements of the statute when a creditor has based its adverse action decision on reports from multiple consumer reporting agencies.~~

~~*Disclosure that credit score has been used.* Model forms C-1 through C-5 contain the following language: “We also obtained your credit score from this consumer reporting agency and used it in making our credit decision.” Some industry commenters requested that the Board revise this language to allow a creditor in all cases to disclose that the creditor “may have used” the credit score in making the credit decision because the commenters believe there are circumstances where it may be ambiguous whether a creditor used a credit score. For example, one commenter stated that if a creditor judgmentally evaluates a joint application, it might not be clear whether the underwriter used one of the co-applicants’ credit score. To ensure compliance with section 1100F of the Dodd-Frank Act, these commenters noted that many creditors may prefer to disclose the applicant’s credit score (along with related information) whenever they receive a score as part of the application process. To facilitate this, the commenters suggested that the Board change the new model language in Appendix C to indicate that the creditor “may have used” the credit score in making the credit decision. These commenters asserted that this revised language would allow creditors to provide credit score disclosures even if there is some ambiguity regarding whether a credit score was used in the credit decision without raising the question of whether the model language is accurate.~~

~~The model forms do not include the suggested change. The commenters’ suggestion would result in all consumers receiving a disclosure stating that their credit score “may” have been used. The Board believes that modifying the language in model forms C-1 through C-5 as suggested by commenters would likely confuse consumers, would not be consistent with the statute, and would substantially decrease the value of the disclosures for consumers. Creditors may still use the language in the model form stating that the creditor “used” a credit score (instead of “may have used”), even if there is some ambiguity regarding whether a credit score obtained by the creditor was considered in a judgmental evaluation. As discussed further below, the Board does not believe that section 1100F of the Dodd-Frank Act sets a high threshold for what constitutes use of a credit score.~~

*Use of a credit score.* In some cases, a creditor that is required to provide an adverse action notice under the FCRA may use a consumer report, but not a credit score, in taking the adverse action. Under section 1100F of the Dodd-Frank Act, a person is not required to disclose a credit score and related information if a credit score is not used in taking the adverse action. Therefore, the proposed amendments to Forms C-1 through C-5 generally were applicable only if a credit score was used in taking an adverse action. Some industry commenters stated that creditors should not be required to disclose credit score information when a creditor obtains but does not use a credit score, or when the credit score was not the primary cause of the adverse action decision.

Section 1100F of the Dodd-Frank Act requires disclosure if a credit score was used in taking adverse action. A creditor that obtains a credit score and takes adverse action is required to disclose that score, unless the credit score played no role in the

adverse action determination. If the credit score was a factor in the adverse action decision, even if it was not a significant factor, the creditor will have used the credit score for purposes of section 1100F of the Dodd-Frank Act.

A trade association representing motor vehicle dealers submitted a comment letter asserting that in certain three-party transactions where the dealer is the original creditor, the dealer should not be subject to the requirements of section 1100F, because a third party that purchases the debt obligation from the dealer obtains the creditor score, rather than the dealer. This issue is outside the scope of this rulemaking under Regulation B and the ECOA, because it seeks an interpretation of the FCRA as it applies to a particular type of transaction. This issue is addressed, however, in the FCRA rulemaking under section 1100F of the Dodd-Frank Act published elsewhere in today's Federal Register notice.

*Disclosure that no credit score is available.* In some cases, a creditor may try to obtain a credit score for an applicant, but the applicant may have insufficient credit history for the consumer reporting agency to generate a credit score. One commenter asked that the creditor have the option to provide the applicant notice that no credit score was available from a consumer reporting agency in the space available for the credit information disclosure.

Section 1100F only applies when a creditor uses a credit score in taking adverse action. The creditor cannot disclose credit score information if an applicant has no credit score. Nothing in section 1100F of the Dodd-Frank Act prevents a creditor, however, from providing the applicant notice that no credit score was available from a consumer reporting agency, although section 1100F does not require such notice.

~~*Key factors.* Several industry commenters argued that creditors should have flexibility to disclose only factors that substantially affected the credit score. They asserted that requiring creditors to disclose the top four key factors (or five factors if the number of inquiries made with respect to that consumer report is a key factor) is burdensome and expensive for creditors, is confusing and will be of limited value to consumers. In contrast, one commenter stated that creditors should be required to disclose all factors that affected the credit score, not just the top four (or five) key factors.~~

~~Section 1100F of the Dodd-Frank Act expressly requires disclosure of the top four (or five) key factors that adversely affected the credit score, whether or not the effect was substantial. A person taking adverse action must provide the consumer the information set forth in subparagraphs (B) through (E) of section 609(f)(1) of the FCRA. Section 609(f)(1)(C) of the FCRA requires disclosure of all of the key factors that adversely affected the credit score in the model used, up to four, subject to section 609(f)(9) of the FCRA, which states that if the key factors that adversely affected the credit score include the number of inquiries made with respect to the consumer report, the "number of inquiries" must be disclosed as a key factor.~~

~~An industry commenter requested clarification that a creditor is permitted to rely on and disclose the key factors provided by consumer reporting agencies, without~~