Exception Notices

The Agencies note that the January 2010 Final Rule provides exceptions to the requirements to provide general risk-based pricing notices for persons that provide credit score disclosure exception notices to consumers who request credit. See §§ 222.74(d), (e), and (f); §§ 640.5(d), (e), and (f).

Many industry commenters argued that section 1100F of the Dodd-Frank Act does not affect creditors' option to provide credit score disclosure exception notices to all consumers instead of risk-based pricing notices. Consumer advocates, however, urged the Agencies to eliminate the credit score disclosure exceptions. Consumer advocates argued that giving creditors the option to provide exception notices would result in creditors rarely providing risk-based pricing notices. They stated that a key benefit of the exception notices in comparison to the risk-based pricing notices was that consumers received a free credit score. They asserted that section 1100F of the Dodd-Frank Act eliminated this comparative benefit of the exception notices by requiring that risk-based pricing notices also disclose credit scores. Consumer advocates argued that Congress did not eliminate the exception notices in the Dodd-Frank Act because the notices were created by regulation, and were not the product of Congress. Finally, consumer advocates stated that section 1100F of the Dodd-Frank Act required disclosure of the actual credit score used by the creditor, while exception notices could contain a generic credit score.

After the Dodd-Frank Act, there remain strong arguments for retaining the credit score disclosure exceptions. The January 2010 Final Rule, which includes the credit score disclosure exceptions, was published in January 2010 and became effective on January 1, 2011. Because the rules were published more than six months before the Dodd-Frank Act was enacted, Congress could have eliminated the credit score disclosure exceptions but did not do so. Moreover, the Agencies believe that the credit score disclosure exception notices continue to be consistent with the goals of, and underlying reasons for, the risk-based pricing rule, which are to provide consumers with education about their credit profiles and alert them to potentially inaccurate information in their consumer reports that could have a negative effect on the credit terms being offered to them. Eliminating the exception notices would result in fewer consumers receiving their credit score for free. To use the exception notice provision, a creditor must provide exception notices to all consumers who apply for credit. By contrast, a creditor must provide risk-based pricing notices only to consumers receiving less favorable terms from that particular creditor. Thus, whether a consumer with a particular credit profile would receive a risk based pricing notice may depend upon the creditor to which the consumer applies. As a result, some consumers of a given creditor may not get risk-based pricing notices because they do not receive materially less favorable terms from that creditor, even though they would generally receive materially less favorable terms from other creditors based on their credit profiles. The credit score disclosure exceptions arguably achieve a better result -- by requiring creditors using the exception to provide notices to all consumers who apply for credit – consumers that would not have gotten any notice would instead receive a free credit score.[11] In addition, consumers are given exception notices earlier in the credit decision process, thus giving consumers an earlier opportunity to identify any potential inaccuracies in their consumer report.[12] Consumers benefit from knowing their credit score earlier, even if they do not yet know what terms of credit they will be offered. This earlier notice gives consumers more time to consider, given their current credit profile, whether they want to continue with a credit transaction at that time.

On the other hand, by requiring that risk-based pricing notices disclose credit scores when the credit scores were used to set the terms of credit, section 1100F of the Dodd-Frank Act has eliminated one of the key comparative benefits of the credit score disclosure exception notices over the risk-based pricing notices.[13] Moreover, while the exception notices contain valuable information about how a consumer's credit score compares with the credit scores of others, it does not inform consumers that they may be receiving less favorable credit terms or an increase in their interest rate based on their consumer report and/or their credit score.

The Agencies note that eliminating the credit score disclosure exception notice would fundamentally change the structure of the risk-based pricing rules and may substantially affect compliance costs. Given that rulemaking authority will be transferred to the Bureau on July 21, 2011, the Agencies do not believe that it is appropriate to make a substantial and fundamental change to the rules at this time. The final rules are limited to implementing the requirements of section 1100F of the Dodd-Frank Act. Thus, the final rules retain the credit score disclosure exception notices.

Section ___.73(b) Form of the Notice

The Agencies provided model forms that may be used for compliance with the risk-based pricing requirements in Appendices H and B of the January 2010 Final Rule. Paragraph (b)(2) of section ___.73 of the January 2010 Final Rule clarifies how each of the model forms of the risk-based pricing notices required by §§ ___.72(a) and (c), and by § ___.72(d) may be used. Paragraph (b)(2) provides that appropriate use of the model forms contained in Appendices H-1 and H-2 of the Board's rules and Appendices B-1 and B-2 of the Commission's rules is deemed to comply with §§ ___.72(a) and (c), and § ___.72(d), respectively. Use of these model forms is optional.

Under the proposal, the Agencies amended Appendices H and B of the January 2010 Final Rule to add two new model forms in Appendices H-6 and H-7 of the Board's proposed rules and Appendices B-6 and B-7 of the Commission's proposed rules, for

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[11] In addition, some consumers may not receive a risk-based pricing notice even if they did not receive the most favorable terms from that creditor because creditors may not be able to precisely distinguish those consumers who received the most favorable terms from those who did not (or may have used a proxy method). *See* 75 FR 2736. By virtue of the fact that exception notices are provided to all consumers who apply for credit, the credit score disclosure exceptions avoid this problem.

[12] Credit score disclosure exceptions must be given as soon as is reasonably practicable and, in any event, no later than before consummation of the transaction, whereas risk-based pricing notices are required to be provided after the terms of credit are set.

[13] See 75 FR at 2742 (highlighting benefit to consumers of providing credit scores to consumers in exception notices).