

~~A consumer advocate and several industry commenters supported the Agencies' proposal. Other consumer advocates recommended that creditors disclose all the credit scores used. For the reasons described below, the final rules adopt § ___.73(d) as proposed with revisions to make clear that these rules apply to use of proprietary scores that meet the definition of "credit score" in § ___.71(l) as well as credit scores obtained from consumer reporting agencies.~~

~~The final rules do not require creditors to disclose all the credit scores used if a creditor uses multiple credit scores in setting the material terms of credit. The final rules permit creditors at their option to disclose all the credit scores used. As noted above, although a creditor may use multiple credit scores in setting the material terms of credit, section 1100F of the Dodd-Frank Act only requires a person to disclose a single credit score that is used by the person in making the credit decision. Further credit scoring models may differ considerably in nature and range. The Agencies believe that disclosing multiple credit scores may confuse consumers and provide them little value. Consumers may not understand the extent to which credit scoring models differ, and may try to compare the different credit scores. Such comparisons may confuse consumers and lessen the value of the credit score disclosures.~~

~~Moreover, the Agencies do not believe that requiring disclosure of a particular credit score, for example, the lowest score, would be in the best interest of consumers when multiple scores are used. The lowest score may not truly be the "worst" score, since credit scoring models differ, and requiring businesses to identify the "worst" score would add a layer of complexity without a clear benefit to consumers. The Agencies also note that the Dodd-Frank Act requires the Bureau to "conduct a study on the nature, range, and size variations" of different credit scoring systems, and on whether these variations disadvantage consumers. Section 1078(a). The Bureau must submit a report to Congress with the results of this study within one year after the Dodd-Frank Act enactment date. Section 1078(b). That study may shed light on the extent to which disclosure of multiple credit scores would benefit consumers, and the Bureau could revisit the Agencies' judgment in view of the results of its study.~~

~~For the reasons discussed above, the final rules do not require that creditors always disclose the lowest credit score if a creditor uses two or more credit scores in setting the material terms of credit. The Agencies believe that section 1100F of the Dodd-Frank Act does not mandate that a person disclose the lowest credit score that is used by the person in making the credit decision, if the person uses multiple credit scores in setting the material terms of credit. The person must simply disclose a credit score used.~~

Section ___.75 Rules of construction.

Section ___.75(c) Multiple Consumers

The proposed rules amended § ___.75(c) to address circumstances where a person must provide multiple consumers, such as co-borrowers, with a risk-based pricing notice in a transaction. The proposed rules retained the rule of construction that clarifies that in

a transaction involving two or more consumers who are granted, extended, or otherwise provided credit, a person must provide a risk-based pricing notice to each consumer. The proposed rules, however, amended the rules addressing the provision of a risk-based pricing notice when the consumers have the same address and when the consumers have different addresses, to account for situations where a risk-based pricing notice contains a consumer's credit score.

Proposed § ____.75(c)(1) provided that whether the consumers have the same address or not, the person 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 person may satisfy the requirements by providing a single notice addressed to both consumers.

The proposed rules also amended § ____.75(c)(3)(i) to provide an example illustrating the notice requirements when a person must provide a risk-based pricing notice that includes credit score information to multiple consumers. Proposed § ____.75(c)(3)(i) clarified that, in a situation where two consumers jointly apply for credit with a creditor and the credit decision is based in part on the consumers' credit scores, a separate risk-based pricing notice must be provided to each consumer whether the consumers have the same address or not. Each separate risk-based pricing notice must contain the credit score(s) of the consumer to whom the notice is provided.

Consumer advocates supported the proposed rules governing multiple consumers. Several industry commenters asked that creditors have the option to provide risk-based pricing notices to all the applicants or only to the applicant whose credit score was used in setting the material terms of credit. Some industry commenters also argued that co-applicants elect to share information with one another, and that creditors cannot prevent co-applicants from accessing each other's risk-based pricing notices.

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 a consumer report, extends credit to the consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers. A creditor therefore must provide a risk-based pricing notice to all co-applicants, and not only to the applicant whose credit score was used in setting the material terms of credit.¹⁴ Further, the Agencies do not believe co-applicants necessarily choose, merely by applying for credit together, to share sensitive information with one another, in particular, credit scores. The Agencies understand that creditors may not be able to prevent co-applicants from accessing each other's risk-based pricing notices. Yet the Agencies believe that creditors

¹⁴ As noted above, a creditor that obtains a credit score and engages in risk-based pricing would need to disclose that score, unless the credit score played no role in setting the material terms of credit. If the credit score obtained for an applicant played no role in setting the material terms of credit, then the creditor does not need to include a credit score in the risk-based pricing notice provided to that applicant.

must provide each risk-based pricing notice to the corresponding applicant, in keeping with privacy concerns.

~~Appendix H of the Board's rules and Appendix B of the Commission's rules~~

~~Model forms~~

~~Appendix H of the Board's rules and Appendix B of the Commission's rules contain five model forms that the Agencies prepared to facilitate compliance with the rules. Two of the model forms are for risk-based pricing notices and three of the model forms are credit score disclosure exception notices. Each of the model forms is designated for use in a particular set of circumstances as indicated by the title of that model form. Model forms H-1 and B-1 are for use in complying with the general risk-based pricing notice requirements in § ____.72. Model forms H-2 and B-2 are for use in complying with the risk-based pricing notices given in connection with account review in § ____.72.~~

~~The proposed rules added two new forms that could be used when a person must disclose credit score information to a consumer. Model forms H-6 and B-6 set forth a risk-based pricing notice with credit score information that could be used to comply with the general risk-based pricing requirements if the additional content requirements of § ____.73(a)(1)(ix) apply. Model forms H-7 and B-7 set forth an account review risk-based pricing notice with credit score information that could be used to comply with the account review notice requirements if the additional content requirements of § ____.73(a)(2)(ix) apply.~~

~~Model forms H-1 and H-2, and B-1 and B-2, are retained. The general risk-based pricing and account review notices could continue to be used to comply with § ____.72 when the additional content requirements discussed in §§ ____.73(a)(1)(ix) and (a)(2)(ix) do not apply. As with the other model forms, use of the model forms H-6 or H-7, or B-6 or B-7, by creditors is optional. If a creditor appropriately uses Model Form H-6 or H-7, or B-6 or B-7, or modifies a form in accordance with the rules or the instructions to the appendix, that creditor will be within the rules' safe harbor and is deemed to be acting in compliance with the general risk-based pricing notice or account review notice requirement when the content provisions of §§ ____.73(a)(1)(ix) or (a)(2)(ix) apply.~~

~~Finally, the proposal amended instructions 1. and 2. to Appendices H and B to reflect the addition of H-6 and H-7, and B-6 and B-7. The Agencies did not receive comments on the proposed changes to instructions 1. and 2. to Appendices H and B. The Agencies are adopting the changes to instructions 1. and 2. to Appendices H and B as proposed in the final rules.~~

~~In addition, as discussed in more detail above, model forms H-6 and H-7 of the Board's rules and B-6 and B-7 of the Commission's rule are also revised to add the statement: "We used your credit score to set the terms of credit we are offering you," in the "What you should know about your credit score" box on the model forms. See Additional Information Regarding Credit Scores, above.~~