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## FCRA Fundamentals

# Disclosure of Credit Scores and Risk-Based Pricing

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This article will focus on the Fair Credit Reporting Act (FCRA) disclosure requirements when financial institutions (FIs) make or arrange mortgage loans using credit scores or set the terms of any type of consumer credit based on a consumer report. For more information on the disclosure requirements when adverse action is taken on a credit application using a consumer report or credit score, please see [Adverse action disclosures and the intersection with ECOA](#).

## Disclosure of credit scores by certain mortgage lenders

As required by FCRA Section 609(g), FIs who use a consumer's credit score in the evaluation of an application for a covered transaction must provide the credit score and other related information to the consumer. In this context, a covered transaction is a consumer purpose loan to be secured by a one-to-four family residential property, whether open-end or closed-end, or a first or junior lien (FCRA Section 609(g)(1)). Also in this context, a credit score is defined as "a numerical value or a categorization derived from a statistical tool or modeling system ... to predict the likelihood of certain credit behaviors, including default," that does not involve any other factors outside of the consumer's credit history (FCRA Section 609(f)(2)(A)).

In such covered transactions, the FI must provide a Notice to the Home Loan Applicant (Notice) which must contain specific language as outlined in FCRA Section 609(g)(1)(D) that describes how the credit score is used and what the consumer



should do with the credit score information provided. The Notice must also include the name, address, and telephone number of each consumer reporting agency (CRA) that provided a credit score.

Similar to the credit score disclosures in an adverse action notice, the related information that must accompany the Notice includes the credit score itself, the range of possible scores, the date the score was created, and the key factors used in the score calculation (FCRA Sections 609(g)(1)(A) and (f)(1)). The term "key factors" is defined as "all relevant elements or reasons adversely affecting the credit score for the [consumer], listed in the order of their importance based on their effect on the credit

score" (FCRA Section 609(f)(2)(B)). The total number of factors to be disclosed must not exceed four (FCRA Section 609(f)(1)(C)). However, if one of the key factors is the number of inquiries into a consumer's credit information, then the total number of factors must not exceed five, with the number of inquiries being listed as the last factor (FCRA Section 609(f)(9)). All the preceding information must be disclosed for all credit scores obtained in connection with the application, but only one disclosure per transaction is required (FCRA Section 609(g)(1)(E)(iv)). Additional requirements addressing the use of credit scores not obtained directly from a CRA can be found in FCRA Sections 609(g)(1)(A) and (B).

Regarding the timing of the Notice and credit score disclosures, FCRA requires delivery to the applicant(s) as soon as reasonably practicable after obtaining the score (FCRA Section 609)(g)(1)). The FI is ultimately responsible for FCRA compliance. However, as part of their contract with the FI, CRAs typically either provide the Notice and accompanying disclosures directly to the applicant(s) or provide these documents to the FI at the time the consumer report and credit score are obtained.

## Risk-based pricing notice

As required by FCRA Section 615(h) and Regulation V §1022.72, FIs that, based on a consumer report, extend credit to a consumer on materially less favorable terms than the most favorable terms available from the FI to a substantial proportion of consumers must provide a risk-based pricing notice (RBPN) to the consumer.

While there are nuances depending on whether the subject credit is open- or closed-end, the material terms under consideration generally refer to the annual percentage rate (APR). If the credit does not have an APR, the material term is the financial term that varies based on consumer

report information and has the most significant financial impact (Regulation V §1022.71(n)) such as an annual fee for a charge card or the cash collateral required for a secured credit card. Material terms are materially less favorable if they are provided to a consumer at a significantly higher cost than the cost of credit granted to other consumers as determined by factors including the type of credit product, the term of the credit, and the extent of the difference in the material terms provided to the two consumers (Regulation V §1022.71(o)).

The FI may determine on a case-by-case basis whether it has offered materially less favorable terms for a specific type of credit product (for example, student loans, unsecured credit cards, secured credit cards, new automobile loans, used automobile loans, fixed-rate mortgage loans, or variable-rate mortgage loans) (Regulation V §1022.72(b)). However, because making a case-by-case determination may not be operationally feasible, Regulation V allows for two alternative methods:

1. **Credit score proxy method:** The FI determines a cutoff score that represents the point at which approximately 40 percent of the consumers to whom it extends the specific type of credit have higher credit scores and 60 percent have lower credit scores. The FI must provide the RBPN to each consumer applying for the specific type of credit who has a credit score lower than the cutoff score (Regulation V §1022.72(b)(1)(i)). The FI generally must recalculate the cutoff score at least every two years. Refer to Regulation V §1022.72(b) for more information and examples for determining the cutoff score as described, for circumstances when a consumer's credit score is not available or when the FI generally uses two or more scores in setting the terms

of credit, and for an alternative to the 40/60 cutoff score determination.

2. **Tiered pricing method:** If the FI 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, based in whole or in part on a consumer report, the FI must provide the RBPN to each consumer who is not assigned to the top pricing tier or tiers. Consumers who must receive the RBPN are determined by the total number of pricing tiers for the specific type of credit. For further details on the pricing tiers, refer to Regulation V §1022.72(b)(2).

Additional requirements of the alternative methods for providing RBPNs that apply to credit card issuance and account review are described in Regulation V §1022.72(c) and (d).

The RBPN must be made clearly and conspicuously and may be in oral, written, or electronic form. It must include several elements including information about the consumer's credit score and the CRA providing the score as well as information that describes how the credit score is used and what the consumer should do with the credit score information provided to them. Refer to Regulation V §1022.73(a) for further detailed disclosure content information. Appendix H of Regulation V provides model forms H-1, H-2, H-6, and H-7 which are deemed to comply with RBPN requirements when used as appropriate. The timing of the RBPN depends on the type of credit; notice must be provided before consummation of closed-end credit or before the first transaction under an open-end credit plan, but not earlier than when the approval decision is communicated to the consumer for either credit type, or at the time the decision to increase the APR is

communicated as a result of an account review. Refer to Regulation V §1022.73(c) for more information about RBPN timing.

## Exceptions to RBPNs and alternative notice requirements

Because of the complex nature of providing RBPNs, many FIs opt to follow the exception rules. Regulation V §1022.74 describes several exceptions under which the FI is not required to provide the RBPN:

1. If the consumer applies for and is granted specific material terms.
2. If the FI has provided an adverse action notice under the provisions of FCRA Section 615(a).
3. If the FI makes a firm offer of credit as part of a prescreened solicitation covered by FCRA Section 604(c).
4. If the FI provides a credit score disclosure to all consumers in connection with an application for either:
  - a) A consumer loan to be secured by a one-to-four family residential property, or
  - b) Consumer credit not secured by residential property.
5. If the FI provides a notice to all consumers applying for consumer credit whose credit scores are not available.

The credit score disclosures for residential and non-residential secured loans, as well as the notice when a consumer's credit score is not available, are the alternatives to the RBPNs otherwise required when material terms are based on a consumer report. The credit score disclosures generally include the same elements,

such as information about the consumer report and credit score and how they impact the cost of credit, the distribution of credit scores among consumers, and what the consumer can do with the information provided in the credit score disclosure, among others. However, the credit score disclosure for loans secured by real estate also includes the Notice described above regarding the evaluation of an application for a covered transaction. Refer to Regulation V §1022.74(d) and (e) for further details about the credit score disclosures.

The notice to a consumer whose credit score is not available is similar to the credit score disclosures as its content also includes information about the consumer report and credit score and how they impact the cost of credit. In addition, it includes how the lack of a credit score can affect the consumer and what the consumer can do with the information provided in the notice, among other elements. Refer to Regulation V §1022.74(f) for further details about the notice.

Appendix H of Regulation V provides model forms for the credit score disclosures (H-3 and H-4) and the notice (H-5) which are deemed to comply with disclosure requirements when used as appropriate. The disclosures must be made clearly and conspicuously in writing and segregated from other information and must be provided as soon as reasonably practicable, 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.

## Exam considerations

Examiners assess FCRA compliance risk as part of the FI's compliance examination. The first step in

demonstrating a strong FCRA compliance management system is to implement effective policies and detailed procedures. As part of the overarching compliance training program, training records should be maintained that include descriptions of content, employee rosters, and completion status. Such records should be maintained for any training required and completed since the prior examination.

FCRA compliance monitoring and testing activities completed since the prior examination should be maintained. For each activity, document the date and scope of the review, summary of findings, corrective action plans, and any follow-up conducted. Examples of testing for compliance with the FCRA provisions covering credit score disclosures and RBPNs include:

1. Loan file testing to validate that disclosures include all required elements and are provided timely and accurately to consumers. If disclosures are issued from the CRAs directly to consumers, an effective third-party provider risk management program would include periodic verification of the CRAs' activities.
2. Testing to validate that cutoff scores are accurately calculated and recalculated timely if the FI issues RBPNs using the credit score proxy method.
3. Testing to validate that the appropriate consumers receive RBPNs when they are issued using the tiered pricing method.

Any source documentation reviewed as part of testing may also be helpful. Testing schedules and the risk assessment on which they are based should also be presented for examiner review.

Regulators consider consumer complaints a significant indication of risk, and an effective

complaint management program is a regulatory expectation. Identify FCRA-related complaints, particularly those alleging inaccurate credit history and score information, and summarize their resolution to be included as part of the information provided to the examination team.

## Conclusion

Final rules implementing the risk-based pricing disclosure requirements were published in 2010, and amendments implementing Dodd-Frank Act

changes relating to credit score disclosures were published in 2011, both of which introduced significant complexities to an already complex regulation that continues to be a highly scrutinized area during compliance examinations. With so many priorities on the compliance team's plate, taking the time now to review your FI's FCRA compliance program for credit score disclosures and RBPNs will take you one step closer to a satisfactory examination outcome.

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## ABOUT THE AUTHOR



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## ABA MEMBER RESOURCES

**ABA Training: FCRA Notice to Consumers (Risk-Based Pricing):** [aba.com/training-events/online-training/fcra-notice-consumers-risk-based-pricing](https://www.aba.com/training-events/online-training/fcra-notice-consumers-risk-based-pricing)

**ABA Certificate: Mortgage Lending Compliance:** [aba.com/training-events/online-training/certificate-in-mortgage-lending-compliance](https://www.aba.com/training-events/online-training/certificate-in-mortgage-lending-compliance)

**ABA Topic: Mortgage & Home Finance:** [aba.com/banking-topics/consumer-banking/mortgage-home-finance](https://www.aba.com/banking-topics/consumer-banking/mortgage-home-finance)