MORRISON | FOERSTER

Client Alert.

March 2010

Compliance with the New Risk-Based Pricing Rule

By Andrew Smith and Joe Gabai

A new rule, issued by the Federal Reserve Board and the Federal Trade Commission, requires any company that uses a credit report or score in connection with a credit decision – including companies such as banks, mortgage bankers, auto lenders, retailers, and public utilities – to send notice to a consumer when, based on a credit report or score, the company grants credit on "material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers." *See* 12 C.F.R pt. 222, 16 C.F.R pt. 640. While these terms are inherently subjective and difficult to define, creating a potential compliance headache for creditors, the Agencies have provided companies with a wide variety of compliance options depending on the business in which they are engaged. Understanding how these options fit together is critical to developing an effective compliance program. In this client alert, we unpack the new rule and offer a succinct summary of these compliance options, including a special section outlining the options by line of business.

Background

The new rule is referred to as the *Risk-Based Pricing Rule*, and compliance is required by **January 1, 2011**. The final rule was published on January 15, 2010.

The Agencies were required to make this new rule by section 615(h) of the Fair Credit Reporting Act ("FCRA"), 15 USC § 1681m(h). This provision was added to the FCRA by the Fair and Accurate Credit Transactions Act of 2003, P.L. 108-159, § 311, and was intended to require lenders to notify consumers when the lenders charged consumers more for credit based on the consumers' credit reports. The requirement was motivated by a concern that, because consumers are entitled to "adverse action" notices under the FCRA only when they are denied credit (or do not accept a counteroffer for credit), consumers are not adequately apprised of the effect of credit reports on the pricing of credit – hence the name "Risk-Based Pricing Rule."

Enforcement

The Risk-Based Pricing Rule is enforced administratively against banks and federal credit unions by their primary federal regulator, and against other companies by the FTC. The banking agencies can exercise their regular enforcement tools and the FTC can obtain injunctive relief and penalties of $3,500 for each knowing violation that is part of a pattern or practice of violations. FCRA § 621(a), 15 USC § 1681s(a); 16 C.F.R. § 1.98(m) (adjusting civil penalties under the FCRA from $2,500 to $3,500). Section 615(c) of the FCRA, 15 USC § 1681m(c), provides that a company cannot be held liable for a violation of the Risk-Based Pricing Rule if it can show by a preponderance

Index

of the evidence that it maintained reasonable procedures to assure compliance with the Rule. There is no private right of action under the FCRA for violations of the Risk-Based Pricing Rule. FCRA § 615(h)(8), 15 USC § 1681m(h)(8). However, a violation of the Rule may provide a basis for bringing a private action under state law.

Scope

The Rule applies to you if you use credit reports or scores in connection with credit decisions. If you do not use credit reports or scores, then you are not covered. Moreover, if you use credit reports or scores, but only in connection with insurance, leasing or other non-credit decisions, you are not covered by the Rule.

In addition, the Agencies have laid out some helpful ground rules for who must provide notices:

- Notices only need to be provided in connection with credit extended to an individual primarily for personal, family or household use.
    - Notice is not required in connection with business credit.
    - Notice is not required to be provided to guarantors, co-signers, endorsers or sureties.
- Only the creditor to whom an obligation is initially payable is required to provide the notice.
    - An assignee or other purchaser that purchases debt in the secondary market is not required to provide notice.
        - The person to whom the credit is initially payable must provide the notice, even if the person assigns the credit immediately.
    - A mortgage broker or other broker or arranger of credit is not required to provide the notice.
    - Guarantors, co-signers, endorsers or sureties are not required to provide notices.
    - Special exception for auto lending: If the creditor to whom the credit obligation is initially payable grants credit for purchase of an automobile from a dealer not affiliated with the creditor, the creditor can arrange for the auto dealer to provide the notice.
        - The creditor must maintain reasonable policies and procedures to ensure that the auto dealer provides the notice.

General Rule

The Agencies have provided a general requirement that you must provide a Risk-Based Pricing Notice if:

- You use a credit report or score in connection with a credit transaction, and
- Based on the credit report or score, you provide credit to the consumer
    - On *material terms*
    - That are *materially less favorable* than the most favorable terms
    - Available to a *substantial proportion* of consumers from or through you.

The Agencies have provided some additional guidance as to the meaning of the italicized terms:

- ***Material Terms*** generally means Annual Percentage Rate ("APR"), and more specifically means:
    - Open-end credit: APR, excluding any teaser rate, penalty rate, or fixed-rate HELOC option;
    - Credit card: Purchase APR and, if no purchase APR, then the APR that varies based on a credit report or score and "has the most significant financial impact" on consumers;
    - Closed-end credit: APR; and
    - Credit for which there is no APR (*e.g.*, telecom, utility, charge card): The financial term that varies based

on a credit report or score and "has the most significant financial impact" on consumers – such as, a utility deposit or a charge card annual membership fee.

- ***Materially Less Favorable*** means that, as a result of the material terms imposed, the cost of credit will be "significantly greater" for the consumer. The factors to be considered in determining "significance" include the type of credit and the term of credit. The idea here is that a difference in APR which may be "significant" for a 30-year mortgage may be less "significant" for a 48-month auto loan.
- The Agencies do not define ***Substantial Proportion***, but state that it must be more than a *de minimis* percentage of customers, and may or may not represent a majority of customers. The purpose of this requirement is to limit the notices only to those consumers who are most affected by the "risk-based pricing" – the Agencies were concerned that, if a lender sends notices to all or almost all of its applicants, the impact of the notices on consumers would be diminished. The Agencies do provide some guidance for determining a "substantial proportion," which is discussed below.

Application of the General Rule

Determining Who Receives a Notice

The Agencies provide a variety of methods of determining who is to receive notices.

Direct Comparison Method

Under the Direct Comparison Method of determining whether a consumer should receive a risk-based pricing notice, a creditor must answer the following questions:

- What is the best APR (or other material term) offered to a *substantial proportion* of consumers?
  - A "substantial proportion" is more than a *de minimis* number of customers, but not necessarily a majority.
- Is the APR offered to the consumer less favorable than the best APR offered to a substantial proportion of consumers?
  - Directly compare the APR offered to a consumer for a "specific type of credit product" with the best APR offered to a substantial proportion of consumers.
    - Examples of "specific type of credit product": student loan, signature loan, secured card, unsecured card, auto loan, used auto loan, mortgage loan, ARM.
- Is the APR offered to the consumer "materially less favorable"?
  - Will the cost of credit be "significantly greater" for the consumer?

The Direct Comparison Method requires a transaction-specific determination of whether the APR that you granted to the consumer in question is "materially less favorable" than the APR granted by you to a "substantial proportion" of your other applicants. Because this method is highly subjective and may be difficult to implement on a day-to-day basis, the Agencies offer short-cuts, or *proxies*, for a transaction-specific determination of whether a specific consumer should receive a notice. These are discussed below.

Credit Score Proxy Method

Under the Credit Score Proxy Method, you must provide notice to every consumer whose credit score falls below the *cut-off score*: a hypothetical credit score which 40% of consumers are above and 60% are below. You must determine your own cut-off score for each specific type of credit product you offer at least once every two years.

Where you give the best terms to more than 40% of consumers, you may set the cut-off score at the point where consumers historically have been given less-than-the-best terms.

If you use two or more credit scores, you must determine the cut-off score using the same method that you use to evaluate multiple scores when making credit decisions. For example, if you use the average credit score to underwrite credit, you should use the average credit score when determining the cut-off score.

Where you have just begun offering a specific type of credit product and do not have any historic experience, you may use market research to determine your cut-off score, but you must calculate a true cut-off score within one year or after you have accumulated enough data to calculate a reliable cut-off score, whichever is earlier.

Where a consumer has no credit score – if, for example, the credit bureau from which you are obtaining credit scores does not have enough information to generate a score for the consumer – you must assume that the consumer is below your cut-off score.

Tiered Pricing Method

If you price credit by placing consumers in tiers, your also can use your own tiers as a proxy for the substantial proportion calculation. If you use four or fewer tiers, you must provide notice to everyone who does not qualify for the top tier. If you use five or more tiers, you must provide notice to everyone who does not fall within the top two tiers and any other tiers that (along with the top tiers) comprise no less than the top 30% and no more than the top 40% of the total number of tiers. To illustrate, with five tiers, notices go to tier numbers 3, 4 and 5; with nine tiers, notices go to tier numbers 4 through 9 (*i.e.*, not less than 30%, nor more than 40%).

Application to Credit Card Issuers

If you issue credit cards, you can use one of the methods described above. Alternatively, where a consumer applies for a specific program (such as, in response to a take-one or a solicitation) that allows for multiple purchase APRs, you may provide a notice to everyone who does not get the best rate. You are not required to provide notice if the consumer gets the best rate or the program in question only allows for a single purchase APR. The fact that a better rate might be available to the same consumer under a different credit card program can be ignored for purposes of applying this special rule.

Application to Account Reviews

You must provide a Risk-Based Pricing Notice if you use a credit report or score in connection with an account review and you increase the APR.

As explained below, however, no risk-based pricing notice is required where you are providing an FCRA adverse action notice to the consumer. The FCRA incorporates the definition of "adverse action" from the Equal Credit Opportunity Act ("ECOA") and Regulation B, which define adverse action in the context of an account review as an "unfavorable change in the terms of an account that does not affect all or substantially all of a class of the creditor's accounts." See 12 C.F.R. § 202.2(c)(1)(ii). But, keep in mind that adverse action under the ECOA and Regulation B does not include a change in the terms of an account expressly agreed to by an applicant; or any action or forbearance relating to an account taken in connection with inactivity, default, or delinquency as to that account. What this means (assuming the ECOA definition applies): If an account is delinquent, you use a credit report or score to undertake an account review, and you increase the APR, you will not have to send an adverse action notice, but you will be required to send a Risk-Based Pricing Notice.

Content, Format and Delivery of Risk-Based Pricing Notice

The Agencies have provided model form notices that provide a "safe harbor" for compliance:

- General Notice
- Account Review Notice
- You may rearrange or make technical modifications to the model forms.
  - Changes may not affect substance, clarity, comprehensibility, or sequence.
  - You may not eliminate "white space" from the Model Form.
- You may not print forms on register receipts or "intersperse" them with other disclosures.

Content and Format

If you decide not to use the models, your notice must:

- Be clear and conspicuous;
- Describe the type of information in credit reports;
- State that the credit terms have been set based on a credit report or score;
- State that the terms *may be* less favorable than the terms offered to consumers with better credit histories;
  - "Account review" notice must state that the APR has been increased "as a result of" the account review;
- Encourage consumers to verify the accuracy of the information in their credit report;
- Provide the name and contact information for each credit bureau that provided you with a credit report (and a toll-free number for each of the three nationwide credit bureaus from which you obtained a credit report);
- Notify the consumer that he/she can obtain a free credit report with 60 days, plus an explanation of how to obtain a credit report;
- Direct consumers to the FTC and FRB Websites for more information about credit reports and their FCRA rights; and
- Certain additional information also must be provided.

Additional language that may be added to notice:

- Name of the consumer;
- Transaction ID number; and
- Date notice is being provided.

Additional language that may *not* be added to the notice:

- "This notice is required by federal law";
- "The credit bureau did not make the decision to extend credit"; and
- "Your terms may have been established based on creditworthiness criteria other than a credit score."

The Agencies determined that these statements would "add to length" and "potentially detract from" key messages.

Delivery and Timing of Notice

- Notice may be provided verbally, electronically or in writing.
- Timing of Notice:
  - Closed-end credit: Before consummation, but not earlier than the decision to approve is communicated to the consumer;

    - Open-end credit: Before the first transaction is made under the plan, but not earlier than the decision to approve is communicated to the consumer;
    - Account Review: When the decision to raise the APR is communicated to the consumer, or not later than five days after the effective date of the APR increase;
        - Under the Credit CARD Act, 12 C.F.R. § 226.9(c)(2), you must provide 45 days' advance notice of an increase in APR;
    - Instant Credit: can provide notice at time of first mailing to the consumer or within 30 days after the decision to approve credit (whichever is earliest);
        - Applies only to open-end credit;
        - Applies only to telephone and in-person, not online.
- Only one notice required per credit extension.
- Co-borrowers:
    - May send one notice to all co-borrowers, where they have the same address;
    - Must send a notice to each co-borrower if at different addresses.

Exceptions to Notice Requirements

Application for Specific Terms

You are not required to provide notice to a consumer who applies for *specific terms* and is granted those terms (unless those terms were specified by you after reviewing a credit report or score).

- Specific terms means a single term, not a range of terms (*e.g.*, APR from 10% to 20%).
- Example: You are not required to provide a notice to a consumer who receives a prescreened card offer with 12% purchase APR and applies for and receives the card with 12% purchase APR.

Prescreened Solicitations

You are not required to provide notice to a consumer if you use a credit report or score to make a "firm offer" of credit with a single rate, even when you make other firm offers of credit to other consumers on more favorable terms.

Adverse Action Notice

You are not required to provide notice to a consumer if you provide an "adverse action" notice to the consumer under section 615(a) of FCRA.

Credit Score Disclosure Exceptions

The Agencies have provided two exceptions to the general rule, intended to streamline compliance by obviating the need to determine who is to receive a notice, and the need to target a notice to those individuals. In exchange for streamlined compliance, creditors commit to providing *all* consumers (not just a "substantial proportion" of consumers) with a special notice that contains the consumer's credit score, as well as additional information about credit scores.

One of these exceptions applies only to real estate-secured credit – *i.e.,* home mortgages and home equity lines of credit – and the other can be used in connection with all other credit. You are not permitted, however, to use a Credit Score Disclosure Exception Notice in lieu of an Account Review Notice.

As with other notices, the Agencies have provided a model form for the Residential Mortgage Credit Score Disclosure Exception Notice and the General Credit Score Disclosure Exception Notice (for credit not secured by residential real estate). If you decide not to use the models, your notice must:

- Disclose the consumer's credit score.
  - If you obtain multiple scores to underwrite the credit application, you are only required to disclose the score you actually *use*.
    - For example, if you obtain scores from all three major bureaus, but underwrite on the middle of the three, you are only required to disclose the middle score and accompanying information.
    - If you use multiple scores (*e.g.*, an average of all three scores) to set the terms of credit, you must disclose one of the credit scores.
    - You are not prohibited from disclosing multiple scores, should you prefer to do so.
- Show the distribution of credit scores under the *same* model used to score the consumer, using the same scale (*e.g.*, 0 to 850).
  - Distribution must be presented in a bar graph, other graph, *or* simple narrative.
- Required content:
  - Must encourage the consumer to check his or her credit report for inaccuracies;
  - Must notify the consumer of his or her right to obtain a free annual credit report, plus an explanation of how to obtain a free credit report; and
  - Must direct consumers to the FTC and FRB Websites for more information about credit reports and their FCRA rights.
- Certain additional information also must be provided.

Credit Score Disclosure Exception Notices must be in writing and in a form that the consumer may keep. You must send *separate* Credit Score Disclosure Exception Notices to each co-borrower, regardless of whether they reside at the same address. The notices of two or more co-borrowers may not be sent in the same envelope.

Credit Score Disclosure Exception for Real Estate-Secured Credit

This exception applies to credit secured by 1 to 4 units of residential real property, and complements the existing "Notice to Home Loan Applicant," which requires disclosure of credit score and related information. You must deliver this notice to the consumer at the same time as the Notice to Home Loan Applicant ("as soon as reasonably practicable"), but not later than the consummation of a closed-end loan or the first transaction under an open-end credit plan.

The Agencies have provided a model notice that incorporates the existing FCRA "Notice to Home Loan Applicant" as the third page. Although the notice should be delivered with the "Notice to Home Loan Applicant," it must be segregated from all other information provided to the consumer.

Credit Score Disclosure Exception for Non-Mortgage Credit

This exception may be used for all other credit – *i.e.*, credit not secured by 1 to 4 units of residential real property – but may not be used in connection with an account review. The Agencies have provided a model notice to use in connection with non-mortgage-related credit transactions.

The notice must be segregated from all other information provided to the consumer, and must be delivered "as soon as reasonably practicable," but not later than consummation of a closed-end loan or the first transaction under an open-end plan.

If you are an auto lender and are "arranging" for the notice to be delivered to the consumer by the auto dealer, the notice may provide the credit score used by the auto dealer or by you. The auto dealer is effectively your agent, and can provide a copy of the notice to you without becoming a consumer reporting agency.

No Score Available Exception

If you regularly obtain credit scores and regularly provide Credit Score Disclosure Exception Notices, you are not required to provide a Risk-Based Pricing Notice to a consumer if no score is available for the consumer – if, for example, the credit bureau from which you regularly obtain credit scores does not have enough information to generate a score for the consumer and you have not obtained a score from another credit bureau.

Instead, where no score is available for a consumer, you must provide a notice with special content explaining the importance of credit scores and that a credit score was not available for the individual. This notice must be segregated from other information, and must be in writing and in a form that the consumer may keep. The Agencies have provided a model form notice, which you can use to comply with this requirement.

Application to Specific Business Lines

Credit Cards

Notice Options at Application

- If you increase the purchase APR, based on a credit report or score, you must:
    - Provide a General Notice:
        - If you use the special method for credit card issuers, to all applicants who did not receive the lowest purchase APR for the specific program; or
        - If you use the Direct Comparison Method, to those applicants who received a purchase APR that is "materially less favorable" than the purchase APR granted to a "substantial proportion" of your other applicants; or
        - If you use the Credit Score Proxy Method, to those applicants who fall below your 40/60 "cut-off score"; or
        - If you use the Tiered Pricing Method, to those applicants in the bottom 60% to 70% of your tiers.
    - Or, you may simply provide a General Credit Score Disclosure Exception Notice to all applicants.
        - If you cannot obtain a score for the consumer, provide a No Score Available Exception Notice.
- No Risk-Based Pricing Notice is required if:
    - the consumer applied for a specific purchase APR and received it, or
    - you have only one purchase APR.
- Timing:
    - Before the first transaction is made under the plan, but not earlier than the decision to approve is communicated to the consumer; or
    - In the case of instant retail credit (by telephone or in person, but not online): Can provide notice at the time of the first mailing to the consumer or within 30 days after the decision to approve credit (whichever is earliest).

Account Review Requirements

- If you increase the purchase APR, based on a credit report or score, you must:
    - Provide an Account Review Notice; or
    - Provide an adverse action notice (if applicable).
- If you do not increase the purchase APR, no Risk-Based Pricing Notice is required.

- Timing: When the decision to raise the APR is communicated to the consumer, or not later than five days after the effective date of the APR increase.
  - Under the Credit CARD Act, 12 C.F.R. § 226.9(c)(2), you must provide 45 days' advance notice of an increase in APR.

Mortgage Loans

- If you increase the APR, based on a credit report or score, you must:
  - Provide a General Notice:
    - If you use the Direct Comparison Method, to those applicants who received a "materially less favorable" APR than the APR granted to a "substantial proportion" of your other applicants; or
    - If you use the Credit Score Proxy Method, to those applicants who fall below your 40/60 "cut-off score"; or
    - If you use the Tiered Pricing Method, to those applicants in the bottom 60% to 70% of your tiers.
  - Or, you may simply provide a Residential Mortgage Credit Score Disclosure Exception Notice to all applicants.
    - If you cannot obtain a score for the consumer, provide a No Score Available Exception Notice.
- If the consumer applied for a specific APR and received it, no Risk-Based Pricing Notice is required.
- Timing:
  - General Notice – before consummation, but not earlier than the decision to approve is communicated to the consumer.
  - Residential Mortgage Credit Score Disclosure Exception Notice – at the same time as the Notice to Home Loan Applicant ("as soon as reasonably practicable"), but not later than consummation.

Home Equity Lines of Credit

- If you increase the APR, based on a credit report or score, you must:
  - Provide a General Notice:
    - If you use the Direct Comparison Method, to those applicants who received a "materially less favorable" APR than the APR granted to a "substantial proportion" of your other applicants; or
    - If you use the Credit Score Proxy Method, to those applicants who fall below your 40/60 "cut-off score"; or
    - If you use the Tiered Pricing Method, to those applicants in the bottom 60% to 70% of your tiers.
  - Or, you may simply provide a Residential Mortgage Credit Score Disclosure Exception Notice to all applicants.
    - If you cannot obtain a score for the consumer, provide a No Score Available Exception Notice.
- If the consumer applied for a specific APR and received it, no Risk-Based Pricing Notice is required.
- Timing:
  - General Notice – Before the first transaction is made under the plan, but not earlier than the decision to approve is communicated to the consumer.
  - Residential Mortgage Credit Score Disclosure Exception Notice – at the same time as the Notice to Home Loan Applicant ("as soon as reasonably practicable"), but not later than the consummation of a closed-end loan or the first transaction under an open-end credit plan.

Auto Lending

- If you increase the APR, based on a credit report or score, you must:
  - Provide a General Notice:
    - If you use the Direct Comparison Method, to those applicants who received a “materially less favorable” APR than the APR granted to a “substantial proportion” of your other applicants; or
    - If you use the Credit Score Proxy Method, to those applicants who fall below your 40/60 “cut-off score”; or
    - If you use the Tiered Pricing Method, to those applicants in the bottom 60% to 70% of your tiers.
  - Or, you may simply provide a General Credit Score Disclosure Exception Notice to all applicants.
    - An auto dealer that is not the creditor to whom the loan is initially payable may use its own score or the score used by the lender.
    - If you cannot obtain a score for the consumer, provide a No Score Available Exception Notice.
- If the consumer applied for a specific APR and received it, no Risk-Based Pricing Notice is required.
- Timing:
  - Before consummation, but not earlier than the decision to approve is communicated to the consumer.
- Delivery of Notice:
  - Where the loan is initially payable to the auto dealer (*e.g.*, retail sales installment contract), the auto dealer must deliver the notice, even where the loan is subsequently assigned.
  - Where the loan is initially payable to a third party lender, notice may be delivered by the auto dealer that arranges the credit.
    - If a General Credit Score Disclosure Exception Notice is provided, the auto dealer may use its own score or the score used by the lender.

Public Utilities or Telecommunications Credit

- If you require a deposit, prepayment of service or otherwise condition service, based on a credit report or score, you must:
  - Provide a General Notice:
    - If you use the Direct Comparison Method, to those applicants who were required to pay a “materially less favorable” deposit than the deposit required of a “substantial proportion” of your other applicants; or
    - If you use the Credit Score Proxy Method, to those applicants who fall below your 40/60 “cut-off score”; or
    - If you use the Tiered Pricing Method, to those applicants in the bottom 60% to 70% of your tiers.
  - Or, you may simply provide a General Credit Score Disclosure Exception Notice to all applicants.
    - If you cannot obtain a score for the consumer, provide a No Score Available Exception Notice.
- No Risk-Based Pricing Notice is required if the consumer applied for an account with a deposit or a prepaid account and received it.

Closed-End Credit (Non-Real Estate)

- If you increase the APR, based on a credit report or score, you must:
  - Provide a General Notice:
    - If you use the Direct Comparison Method, to those applicants who received a "materially less favorable" APR than the APR granted to a "substantial proportion" of your other applicants; or
    - If you use the Credit Score Proxy Method, to those applicants who fall below your 40/60 "cut-off score"; or
    - If you use the Tiered Pricing Method, to those applicants in the bottom 60% to 70% of your tiers.
  - Or, you may simply provide a General Credit Score Disclosure Exception Notice to all applicants.
    - If you cannot obtain a score for the consumer, provide a No Score Available Exception Notice.
- No Risk-Based Pricing Notice is required if the consumer applied for a specific APR and received it.
- Timing: Before consummation, but not earlier than the decision to approve is communicated to the consumer.

Open-End Credit (Non-Credit Card and Non-Real Estate)

Notice Options at Application

- If you increase the APR, based on a credit report or score, you must:
  - Provide a General Notice:
    - If you use the Direct Comparison Method, to those applicants who received a "materially less favorable" APR than the APR granted to a "substantial proportion" of your other applicants; or
    - If you use the Credit Score Proxy Method, to those applicants who fall below your 40/60 "cut-off score;" or
    - If you use the Tiered Pricing Method, to those applicants in the bottom 60% to 70% of your tiers.
  - Or, you may simply provide a General Credit Score Disclosure Exception Notice to all applicants.
    - If you cannot obtain a score for the consumer, provide a No Score Available Exception Notice.
- No Risk-Based Pricing Notice is required if the consumer applied for a specific APR and received it.
- Timing:
  - Before the first transaction is made under the plan, but not earlier than the decision to approve is communicated to the consumer.
  - Instant Credit (by telephone or in person, but not online): Can provide notice at time of first mailing to the consumer or within 30 days after the decision to approve credit (whichever is earliest).

Account Review Requirements

- If you increase the APR, based on a credit report or score, you must:
  - Provide an Account Review Notice; or
  - Provide an adverse action notice (if applicable).
- If you do not increase the APR, no Risk-Based Pricing Notice is required.
- Timing: When the decision to raise the APR is communicated to the consumer, or not later than five days after the effective date of the APR increase.

Business Credit

No Risk-Based Pricing Notice is required.

Secondary Market Purchase of Debt

No Risk-Based Pricing Notice is required.

Contact:

Andrew Smith	Joe Gabai
(202) 887-1558	(213) 892-5284
asmith@mofo.com	jgabai@mofo.com

About Morrison & Foerster:

We are Morrison & Foerster—a global firm of exceptional credentials in many areas. Our clients include some of the largest financial institutions, Fortune 100 companies, investment banks and technology and life science companies. Our clients count on us for innovative and business-minded solutions. Our commitment to serving client needs has resulted in enduring relationships and a record of high achievement. For the last six years, we've been included on *The American Lawyer*'s A-List. *Fortune* named us one of the "100 Best Companies to Work For." We are among the leaders in the profession for our longstanding commitment to pro bono work. Our lawyers share a commitment to achieving results for our clients, while preserving the differences that make us stronger. This is MoFo. Visit us at www.mofo.com.

Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.

Appendix – Model Form Notices

General Notice

B-1. Model form for risk-based pricing notice

[Name of Entity Providing the Notice]
Your Credit Report[s] and the Price You Pay for Credit

What is a credit report?	A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.
How did we use your credit report[s]?	We used information from your credit report[s] to set the terms of the credit we are offering you, such as the [Annual Percentage Rate/down payment]. The terms offered to you may be less favorable than the terms offered to consumers who have better credit histories.
What if there are mistakes in your credit report[s]?	You have a right to dispute any inaccurate information in your credit report[s]. If you find mistakes on your credit report[s], contact **[insert name of CRA(s)]**, which [is/are] the [consumer reporting agency/consumer reporting agencies] from which we obtained your credit report[s]. It is a good idea to check your credit report[s] to make sure the information [it contains/they contain] is accurate.
How can you obtain a copy of your credit report[s]?	Under federal law, you have the right to obtain a copy of your credit report[s] without charge for 60 days after you receive this notice. To obtain your free report[s], contact **[insert name of CRA(s)]**: *By telephone:* Call toll-free: 1-877-xxx-xxxx *By mail:* Mail your written request to: **[Insert address]** *On the web:* Visit **[insert web site address]**
How can you get more information about credit reports?	For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's web site at www.federalreserve.gov, or the Federal Trade Commission's web site at www ftc.gov.

Appendix – Model Form Notices

Account Review Notice

B-2. Model form for account review risk-based pricing notice

[Name of Entity Providing the Notice]
Your Credit Report[s] and the Pricing of Your Account

What is a credit report?	A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.
How did we use your credit report[s]?	We have used information from your credit report[s] to review the terms of your account with us. Based on our review of your credit report[s], we have increased the annual percentage rate on your account.
What if there are mistakes in your credit report[s]?	You have a right to dispute any inaccurate information in your credit report[s]. If you find mistakes on your credit report[s], contact **[insert name of CRA(s)]**, which [is/are] [a consumer reporting agency/consumer reporting agencies] from which we obtained your credit report[s]. It is a good idea to check your credit report[s] to make sure the information [it contains/they contain] is accurate.
How can you obtain a copy of your credit report[s]?	Under federal law, you have the right to obtain a copy of your credit report[s] without charge for 60 days after you receive this notice. To obtain your free report[s], contact **[insert name of CRA(s)]**: *By telephone:* Call toll-free: 1-877-xxx-xxxx *By mail:* Mail your written request to: **[Insert address]** *On the web:* Visit **[insert web site address]**
How can you get more information about credit reports?	For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's web site at www.federalreserve.gov, or the Federal Trade Commission's web site at www ftc.gov.

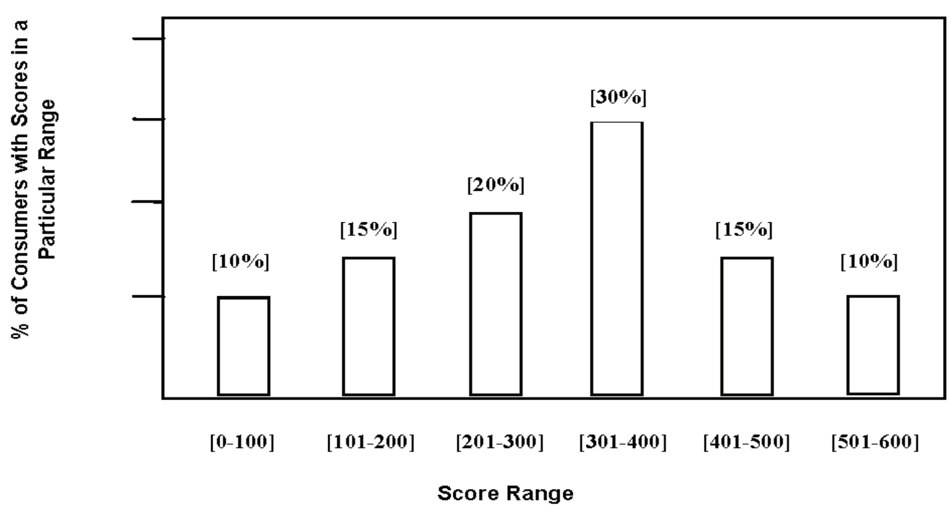
Appendix – Model Form Notices

Residential Mortgage Credit Score Disclosure Exception Notice

B-3. Model form for credit score disclosure exception for loans secured by one to four units of residential real property

[Name of Entity Providing the Notice]
Your Credit Score and the Price You Pay for Credit

Your Credit Score	
Your credit score	**[Insert credit score]** Source: **[Insert source]** Date: **[Insert date score was created]**

Understanding Your Credit Score	
What you should know about credit scores	Your credit score is a number that reflects the information in your credit report. Your credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors. Your credit score can change, depending on how your credit history changes.
How we use your credit score	Your credit score can affect whether you can get a loan and how much you will have to pay for that loan.
The range of scores	Scores range from a low of **[Insert bottom number in the range]** to a high of **[Insert top number in the range]**. Generally, the higher your score, the more likely you are to be offered better credit terms.
How your score compares to the scores of other consumers	 **[or]** [Your credit score ranks higher than [X] percent of U.S. consumers.]

Appendix – Model Form Notices

Residential Mortgage Credit Score Disclosure Exception Notice (Continued)

Understanding Your Credit Score (continued)	
Key factors that adversely affected your credit score	**[Insert first factor]** **[Insert second factor]** **[Insert third factor]** **[Insert fourth factor]** **[Insert fifth factor, if applicable]**

Checking Your Credit Report	
What if there are mistakes in your credit report?	You have a right to dispute any inaccurate information in your credit report. If you find mistakes on your credit report, contact the consumer reporting agency. It is a good idea to check your credit report to make sure the information it contains is accurate.
How can you obtain a copy of your credit report?	Under federal law, you have the right to obtain a free copy of your credit report from each of the nationwide consumer reporting agencies once a year. To order your free annual credit report— *By telephone:* Call toll-free: 1-877-322-8228 *On the web:* Visit www.annualcreditreport.com *By mail:* Mail your completed Annual Credit Report Request Form (which you can obtain from the Federal Trade Commission's web site at http://www.ftc.gov/ bcp/conline/include/requestformfinal.pdf) to: Annual Credit Report Request Service P.O. Box 105281 Atlanta, GA 30348-5281
How can you get more information?	For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's web site at www.federalreserve.gov, or the Federal Trade Commission's web site at www.ftc.gov.

Appendix – Model Form Notices

Residential Mortgage Credit Score Disclosure Exception Notice (Continued)

Notice to the Home Loan Applicant

In connection with your application for a home loan, the lender must disclose to you the score that a consumer reporting agency distributed to users and the lender used in connection with your home loan, and the key factors affecting your credit scores.

The credit score is a computer generated summary calculated at the time of the request and based on information that a consumer reporting agency or lender has on file. The scores are based on data about your credit history and payment patterns. Credit scores are important because they are used to assist the lender in determining whether you will obtain a loan. They may also be used to determine what interest rate you may be offered on the mortgage. Credit scores can change over time, depending on your conduct, how your credit history and payment patterns change, and how credit scoring technologies change.

Because the score is based on information in your credit history, it is very important that you review the credit-related information that is being furnished to make sure it is accurate. Credit records may vary from one company to another.

If you have questions about your credit score or the credit information that is furnished to you, contact the consumer reporting agency at the address and telephone number provided with this notice, or contact the lender, if the lender developed or generated the credit score. The consumer reporting agency plays no part in the decision to take any action on the loan application and is unable to provide you with specific reasons for the decision on a loan application.

If you have questions concerning the terms of the loan, contact the lender.

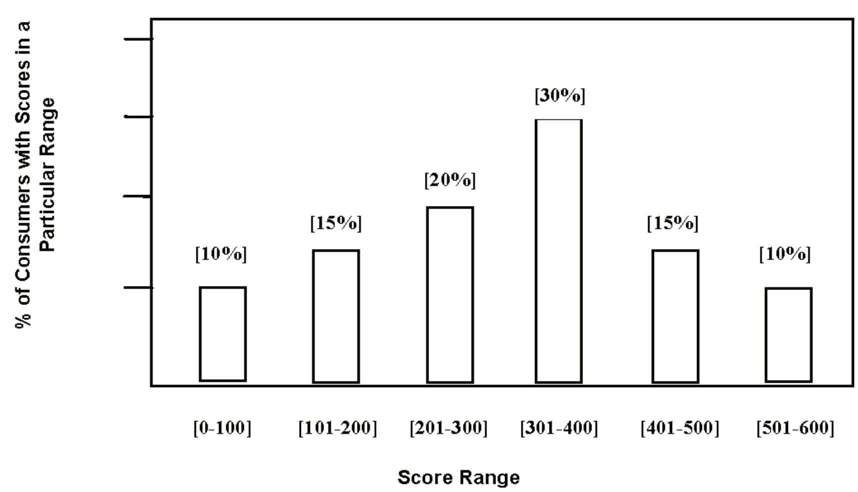
Appendix – Model Form Notices

General Credit Score Disclosure Exception Notice

B-4. Model form for credit score disclosure exception for loans not secured by residential real property

[Name of Entity Providing the Notice]
Your Credit Score and the Price You Pay for Credit

Your Credit Score	
Your credit score	**[Insert credit score]** Source: **[Insert source]** Date: **[Insert date score was created]**

Understanding Your Credit Score	
What you should know about credit scores	Your credit score is a number that reflects the information in your credit report. Your credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors. Your credit score can change, depending on how your credit history changes.
How we use your credit score	Your credit score can affect whether you can get a loan and how much you will have to pay for that loan.
The range of scores	Scores range from a low of **[Insert bottom number in the range]** to a high of **[Insert top number in the range]**. Generally, the higher your score, the more likely you are to be offered better credit terms.
How your score compares to the scores of other consumers	 **[or]** [Your credit score ranks higher than [X] percent of U.S. consumers.]

Appendix – Model Form Notices

General Credit Score Disclosure Exception Notice (Continued)

Checking Your Credit Report	
What if there are mistakes in your credit report?	You have a right to dispute any inaccurate information in your credit report. If you find mistakes on your credit report, contact the consumer reporting agency. It is a good idea to check your credit report to make sure the information it contains is accurate.
How can you obtain a copy of your credit report?	Under federal law, you have the right to obtain a free copy of your credit report from each of the nationwide consumer reporting agencies once a year. To order your free annual credit report— *By telephone:* Call toll-free: 1-877-322-8228 *On the web:* Visit www.annualcreditreport.com *By mail:* Mail your completed Annual Credit Report Request Form (which you can obtain from the Federal Trade Commission's web site at http://www.ftc.gov/ bcp/conline/include/requestformfinal.pdf) to: Annual Credit Report Request Service P.O. Box 105281 Atlanta, GA 30348-5281
How can you get more information?	For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's web site at www.federalreserve.gov, or the Federal Trade Commission's web site at www.ftc.gov.

Appendix – Model Form Notices

No Score Available Exception Notice

B-5. Model form for loans where credit score is not available

[Name of Entity Providing the Notice]
Credit Scores and the Price You Pay for Credit

Your Credit Score	
Your credit score	Your credit score is not available from [**Insert name of CRA**], which is a consumer reporting agency, because they may not have enough information about your credit history to calculate a score.
What you should know about credit scores	A credit score is a number that reflects the information in a credit report. A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors. A credit score can change, depending on how a consumer's credit history changes.
Why credit scores are important	Credit scores are important because consumers who have higher credit scores generally will get more favorable credit terms. Not having a credit score can affect whether you can get a loan and how much you will have to pay for that loan.
Checking Your Credit Report	
What if there are mistakes in your credit report?	You have a right to dispute any inaccurate information in your credit report. If you find mistakes on your credit report, contact the consumer reporting agency. It is a good idea to check your credit report to make sure the information it contains is accurate.
How can you obtain a copy of your credit report?	Under federal law, you have the right to obtain a free copy of your credit report from each of the nationwide consumer reporting agencies once a year. To order your free annual credit report— *By telephone:* Call toll-free: 1-877-322-8228 *On the web:* Visit www.annualcreditreport.com *By mail:* Mail your completed Annual Credit Report Request Form (which you can obtain from the Federal Trade Commission's web site at http://www.ftc.gov/bcp/conline/include/requestformfinal.pdf) to: Annual Credit Report Request Service P.O. Box 105281 Atlanta, GA 30348-5281
How can you get more information?	For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's web site at www.federalreserve.gov, or the Federal Trade Commission's web site at www.ftc.gov.

