reserve while still providing adequate funding to meet program expenses.

This rule continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers.

In addition, the Committee's meeting was widely publicized throughout the Washington potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the January 26, 2011, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178, Vegetable and Specialty Crops. No changes in those requirements as a result of this action are anticipated. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large Washington potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Comments on the interim rule were required to be received on or before May 31, 2011. No comments were received. Therefore, for reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to: *http://www.regulations.gov/#!documentDetail;D=AMS–FV–11–0012–0001.*

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (76 FR 18001, April 1, 2011) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

PART 946—IRISH POTATOES GROWN IN WASHINGTON [AMENDED]

■ Accordingly, the interim rule amending 7 CFR part 946, which was published at 76 FR 18001 on April 1, 2011, is adopted as a final rule, without change.

Dated: July 12, 2011.

Ellen King,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–17881 Filed 7–14–11; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R–1408]

RIN 7100–AD67

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Final rule.

SUMMARY: Section 701 of the Equal Credit Opportunity Act (ECOA) requires a creditor to notify a credit applicant when it has taken adverse action against the applicant. The ECOA adverse action requirements are implemented in the Board's Regulation B. Section 615(a) of the Fair Credit Reporting Act (FCRA) also requires a person to provide a notice when the person takes an adverse action against a consumer based in whole or in part on information in a consumer report. Certain model notices in Regulation B include the content required by both the ECOA and the FCRA adverse action provisions, so that creditors can use the model notices to comply with the adverse action requirements of both statutes. The Board is amending these model notices in Regulation B to include the disclosure of credit scores and related information if a credit score is used in taking adverse action. The revised model notices reflect the new content requirements in section 615(a) of the FCRA as amended by section 1100F of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

DATES: These rules are effective August 15, 2011.

FOR FURTHER INFORMATION CONTACT: Krista P. Ayoub, Counsel; Mandie K. Aubrey or Nikita M. Pastor, Senior Attorneys; or Catherine Henderson, Attorney, Division of Consumer and Community Affairs, (202) 452–3667 or (202) 452–2412, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. For users of a Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691 et seq., makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of sex, race, color, religion, national origin, marital status, or age (provided the applicant has the capacity to contract), because all or part of an applicant's income derives from public assistance, or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Board's Regulation B (12 CFR part 202) implements the ECOA.

Section 701(d) of the ECOA generally requires a creditor to notify a credit applicant against whom it has taken an adverse action. Under section 701(d)(6) of the ECOA, an adverse action generally means a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in substantially the amount or on substantially the terms requested.

Section 615(a) of the FCRA, 15 U.S.C. 1681m(a), also requires a person to provide an adverse action notice when the person takes an adverse action based in whole or in part on information in a consumer report. The definition of adverse action in section 603(k) of the FCRA incorporates, for purposes of credit transactions, the definition of adverse action under the ECOA. The adverse action provisions in both the ECOA and the FCRA require certain disclosures to be given to consumers.

The ECOA adverse action provisions are implemented in Regulation B. There are no implementing regulations for the adverse action requirements of section 615(a) of the FCRA. However, as explained in staff commentary that accompanies Regulation B, certain model notices in Regulation B include the content required by both the ECOA and the FCRA, so that persons can use the model notices to comply with the adverse action requirements of both statutes.

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) was signed into law. Public Law 111–203, 124 Stat. 1376. Section 1100F of the Dodd-Frank Act amends section 615(a)

of the FCRA to require creditors to disclose on FCRA adverse action notices a credit score used in taking any adverse action and information relating to that score. The effective date of these amendments is July 21, 2011.[1]

On March 15, 2011, the Board proposed to amend the model adverse action notices in Regulation B that incorporate the content requirements of FCRA section 615(a) to reflect the new content requirements added by section 1100F of the Dodd-Frank Act. 76 FR 13896. The comment period closed on April 14, 2011.[2] The Board received more than 30 comment letters regarding the proposal from banks and other creditors, industry trade associations, consumer groups, individual consumers, and others. After considering the comments received, pursuant to its authority in section 703(a) of the ECOA, the Board is issuing revised model adverse action notices substantially as proposed. As revised, the adverse action model notices in Regulation B are consistent with the requirements of section 1100F of the Dodd-Frank Act to help facilitate compliance with that provision when it becomes effective.

II. Section-by-Section Analysis

Section 202.12(b)(4)

In 2007, the Board redesignated § 202.17 of Regulation B as § 202.16. See 72 FR 63451, November 9, 2007. However, a reference to § 202.17 in § 202.12(b)(4) was not revised to reflect the change. The Board is correcting the citation in § 202.12(b)(4) so that it refers to § 202.16.

Appendix C to Part 202—Sample Notification Forms

Under section 701(d) of the ECOA, a creditor must provide to applicants against whom adverse action is taken either: (1) A statement of reasons for taking the adverse action as a matter of course; or (2) a notification of adverse action which discloses the applicant's right to a statement of reasons within thirty days after receipt by the creditor of a request made by the applicant within sixty days after the written notification. Section 615(a) of the FCRA requires a person to provide, in an adverse action notice, information regarding the consumer reporting agency that furnished the consumer report used in taking the adverse action. It also requires a person to disclose that a consumer has a right to a free consumer report and a right to dispute the accuracy or completeness of any information in a consumer report.

Section 1100F of the Dodd-Frank Act amends section 615(a) of the FCRA to require that creditors disclose additional information on FCRA adverse action notices. The statute generally requires that a FCRA adverse action notice include: (1) A numerical credit score used in making the credit decision; (2) the range of possible scores under the model used; (3) up to four key factors that adversely affected the consumer's credit score (or up to five factors if the number of inquiries made with respect to that consumer report is a key factor); (4) the date on which the credit score was created; and (5) the name of the person or entity that provided the credit score.

Model Notices C–1 Through C–5

General Content

As explained in paragraph 2 of Appendix C to Part 202, model notices C–1 through C–5 may be used to comply with the adverse action provisions of both the ECOA and the FCRA. The Board is amending model notices C–1 through C–5 substantially as proposed to incorporate the additional content requirements prescribed by section 1100F of the Dodd-Frank Act.

The Board proposed to revise Forms C–1 through C–5 to include, as applicable, a statement that the creditor obtained the consumer's credit score from a consumer reporting agency named in the notice, and used the score in making the credit decision. The proposed model notices also contained language stating that a credit score is a number that reflects the information in the consumer's consumer report, and that the consumer's credit score can change, depending on how the information in the consumer report changes. The proposed model notices provided space for the creditor to include the content required under section 1100F of the Dodd-Frank Act that is specific to the consumer. This content includes: the consumer's credit score, the date the credit score was created, the range of possible credit scores under the model used, and up to four key factors that adversely affected the consumer's credit score (or up to five factors if the number of inquiries made with respect to that consumer report is a key factor). The Board also proposed additional changes to Form C–3 for clarity, which are discussed in more detail below.

In the proposal, the Board noted that section 1100F of the Dodd-Frank Act requires a creditor to provide, if applicable, a consumer's credit score and related information to a consumer, regardless of whether the creditor provides a statement of specific reasons for taking the adverse action or a disclosure of the applicant's right to a statement of specific reasons for an adverse action. Therefore, a creditor would not comply with the adverse action provisions in section 1100F by providing the required FCRA disclosures only if a consumer responds with a request for a statement of specific reasons for an adverse action. As a result, proposed Form C–5 reflected the requirement to provide the disclosures required by section 615(a) of the FCRA, including the consumer's credit score and key factors that adversely affected the consumer's credit score, at the time a creditor provides a disclosure of the applicant's right to a statement of specific reasons for the adverse action.

The Board also proposed to amend comment 9(b)(2)–9 to clarify that the FCRA requires a creditor to disclose, as applicable, a credit score it used in taking adverse action along with related information, including up to four key factors that adversely affected the consumer's credit score (or up to five factors if the number of inquiries made with respect to that consumer report is a key factor). Proposed comment 9(b)(2)–9 also would have clarified that disclosing the key factors that adversely affected the consumer's credit score under the FCRA does not satisfy the ECOA requirement to disclose specific reasons for denying or taking other adverse action on an application or extension of credit.

In addition, the Board proposed to amend paragraph 2 of Appendix C to discuss the new disclosure requirements set forth in section 1100F of the Dodd-Frank Act. Paragraph 2 of Appendix C discusses the disclosure requirements of section 615 of the FCRA that are contained in Forms C–1 through C–5. Paragraph 2 explains that Form C–1 contains the disclosures required by FCRA sections 615(a) and (b), and Forms C–2 through C–5 contain only the disclosures required by FCRA section 615(a).

Paragraph 2 as revised would also state that the combined ECOA–FCRA disclosures in Form C–1 through Form C–5 must state that a creditor obtained information from a consumer reporting agency that was considered in the credit decision. Consistent with section 1100F of the Dodd-Frank Act, the Board

[1] Section 1100H of the Dodd-Frank Act provides that the amendments in Subtitle H of Title X, which includes Section 1100F, become effective on the ''designated transfer date.'' The Secretary of the Treasury set the designated transfer date as July 21, 2011. 75 FR 57252 (Sept. 20, 2010).

[2] Commenters also had until May 16, 2011 to provide comments on the Board's analysis of the proposal under the Paperwork Reduction Act.

proposed to revise the paragraph to state that the combined disclosure must also include, as applicable, a credit score used in taking adverse action along with related information.

The Board received several comments on the proposed changes to the model forms, as discussed below. The Board did not receive comments on the proposed changes to comment 9(b)(2)–9 or paragraph 2 of Appendix C. For the reasons discussed below, the final rule largely adopts the proposed changes to Appendix C and model forms C–1 through C–5. For clarity, a revision has been made pertaining to the optional disclosure of contact information for the entity that provided the credit score. Comment 9(b)(2)–9 is also adopted as proposed.

Contact information for the entity that provided the credit score. Several industry commenters asked that the Board add language to the model forms directing the consumer to the consumer reporting agency for more information about the credit score. The commenters believed that consumers may otherwise contact creditors with questions about their credit score, even if creditors are not in a position to answer those questions.

The Board is adding optional language to the model forms that creditors may use to direct the consumer to the entity (which may be a consumer reporting agency or the creditor itself, for a proprietary score that meets the definition of a credit score) that provided the credit score for any questions about the credit score, along with the entity's contact information. Because this language is optional, creditors may use or not use the additional language without losing the safe harbor provided under Regulation B and the ECOA. Paragraph 2 of Appendix C is revised to clarify that the disclosure of the entity's contact information is optional.

Disclosure of source of credit score information. Some industry commenters expressed concern about the reference to ''this consumer reporting agency'' in the model form. One commenter requested that the Board provide flexibility to creditors to replace the general reference to ''this consumer reporting agency'' with a more specific reference to the name of the particular consumer reporting agency from which the creditor obtained the score being disclosed. This commenter noted that creditors need flexibility when a creditor bases its decision on reports from multiple consumer reporting agencies and only one score is disclosed on the adverse action notice.

A creditor receives a safe harbor for compliance with Regulation B for proper use of the model forms. See paragraph 5 of Appendix C. Paragraph 3 of Appendix C notes that the model forms are illustrative, however, and may not be appropriate for all creditors. The instructions provide examples of instances where a creditor would need to modify the model forms to ensure that they are accurate for the creditor's purposes. Regulation B provides creditors flexibility to change the model forms as applicable and still receive the safe harbor provided in Regulation B, although creditors must make proper use of the model forms.

When a creditor has based its adverse action decision on reports from multiple consumer reporting agencies, the Board thus expects that the creditor would replace the general reference to ''this consumer reporting agency'' with a more specific reference to the name of the consumer reporting agency from which the creditor obtained the score being disclosed, to avoid ambiguity and consumer confusion. Moreover, section 1100F of the Dodd-Frank Act requires disclosure of the source of the credit score. The Board does not believe that a general reference to ''this consumer reporting agency'' would 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 verification by the creditor. The commenter further asked for guidance in the event that a consumer reporting agency does not provide the key factors with the score.

Under section 615(a) of the FCRA as amended by section 1100F of the Dodd-Frank Act, the person taking adverse action is responsible for providing the credit score disclosure, including the key factors adversely affecting the credit score. If a creditor is using a credit score purchased from a consumer reporting agency, the consumer reporting agency is in the best position to identify the key factors that affected the score, and the creditor could rely on that information in its disclosure to consumers. The Board acknowledges, however, that the contractual arrangements between creditors and consumer reporting agencies may vary as to how creditors will receive the credit score information necessary to comply with section 1100F. The imposition of requirements on consumer reporting agencies is not within the scope of this rulemaking under the ECOA.

The proposed amendment to comment 9(b)(2)–9 clarified that disclosing the key factors that adversely affected the consumer's credit score does not satisfy the ECOA requirement to disclose specific reasons for denying or taking other adverse action on an application or extension of credit. Some industry commenters suggested that creditors only disclose either the key factors adversely affecting the consumer's credit score or the specific reasons for the adverse action decision, but not both. Other industry commenters asked that creditors be permitted to provide the list of key factors or specific reasons only once when the key factors that adversely affected the consumer's credit score are the same as the specific reasons for taking adverse action. Commenters suggested making a cross-reference to the first list rather than providing a second list.

As explained in the proposed rule, the Board recognizes that a key factor(s) that adversely affected the consumer's credit score may be the same as a specific reason(s) for denying credit or taking other adverse action. However, some specific reasons for taking adverse action may be unrelated to a consumer's credit score, such as reasons related to the consumer's income, employment, or residency. Therefore, the Board continues to believe the disclosure of both the key factors that adversely affected the consumer's credit score and the specific reasons for denying credit or taking other adverse action is necessary to fulfill the separate requirements of the ECOA and the FCRA. The Board believes providing separate lists, and thus distinguishing factors that adversely affected the credit score from reasons for the adverse action determination, will be more useful and clearer for consumers.

Number of inquiries. Several industry commenters suggested that creditors not be required to disclose the ''number of inquiries'' as a key factor that adversely affected the credit score if the number of inquiries is not one of the top four key factors. In these cases, the commenters said that the effect of the number of inquiries on the credit score is marginal, so that disclosing the ''number of inquiries'' as a key factor may be confusing to consumers.

As discussed above, section 609(f)(9) of the FCRA states that if the number of inquiries is a key factor that adversely affected the consumer's credit score, that factor must be disclosed pursuant to section 609(f)(1)(C) of the FCRA, without regard to the numerical limitation. The FCRA accordingly requires disclosure of the ''number of inquiries'' as a key factor, regardless of whether it is one of the top four key factors.

Model Form C–3

In addition to the content added to each of Forms C–1 through C–5, the Board proposed to amend Form C–3 for clarity. Form C–3 is a model notice that can be used by creditors that use a proprietary credit scoring system in taking adverse action. Proprietary scores are those developed by or for a particular creditor, as opposed to those developed by consumer reporting agencies or by a scoring company for use by multiple creditors. In the proposal, the Board explained that discussing two different types of credit scoring systems on Form C–3 could be confusing for consumers.

The Board proposed to amend Form C–3 to clarify the differences between a proprietary score and a credit score obtained from a consumer reporting agency. The proposed form allowed creditors to remove the reference to credit scoring in the title of the form. The proposed text permitted creditors to

clarify that the consumer's application was processed by a system that assigns a numerical value to the various items of information the creditor considers when evaluating the consumer's application, rather than a credit scoring system. The proposed form also added topic headings to help distinguish a proprietary score from a credit score obtained from a consumer reporting agency when both types of scores are used in making the credit decision. As explained in the supplemental information to the proposal, a person may amend, at its option, Form C–3 to remove the references to a credit scoring system and add the additional headings, even if the creditor did not use both a proprietary score and a credit score obtained from a consumer reporting agency in taking adverse action. Form C–3 should help distinguish proprietary scores from credit scores obtained from consumer reporting agencies, even if both scores are not used in taking adverse action. For the reasons discussed below, the final rule adopts these additional changes to Form C–3.

Proprietary scores. Several industry commenters specifically asked for guidance on when a proprietary score would be deemed a credit score for purposes of disclosure under section 1100F of the Dodd-Frank Act. These commenters also asked for clarification on what information a creditor should disclose under section 1100F when a creditor uses a proprietary score in taking adverse action. Some industry commenters indicated that a proprietary score should not be required to be disclosed under section 1100F of the Dodd-Frank Act because Congress intended for this provision to apply only to credit scores that are obtained from consumer reporting agencies, and disclosing proprietary scores would be confusing to consumers. Consumer advocates suggested that all proprietary scores, in particular credit-based insurance scores, be subject to disclosure under section 1100F.

''Credit score'' for purposes of section 1100F of the Dodd-Frank Act is defined to have the same meaning as in section 609(f)(2)(A) of the FCRA, 15 U.S.C. 1681g(f)(2)(A). Specifically, section 609(f)(2)(A) of the FCRA defines a credit score to mean ''a numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors, including default.'' Accordingly, scores not used to predict the likelihood of certain credit behaviors, however, such as insurance scores or scores used to predict the likelihood of false identity, are not credit scores by definition, and thus are not required to be disclosed.

Most credit scores that meet the FCRA definition are scores that a creditor obtains from a consumer reporting agency. Section 609(f)(2)(A) of the FCRA specifically excludes some—but not all—proprietary scores. Some lenders develop their own ''proprietary'' scores that may be based on one or more factors other than information in the consumer's credit report. For example, the definition of credit score does not include any mortgage score or rating of an automated underwriting system that considers one or more factors in addition to credit information, including the loan-to-value ratio, the amount of down payment, or the financial assets of a consumer.

If a creditor uses a proprietary score that is based on one or more factors that are not information obtained from a consumer reporting agency, this proprietary score is not a credit score for purposes of section 1100F of the Dodd-Frank Act and thus does not need to be disclosed to the consumer. However, if the proprietary score is the basis for the adverse action, the creditor would be required to disclose the reasons the consumer did not score well compared to other applicants. *See* § 202.9(a)(2)(i). The creditor may disclose those reasons in the ''Reasons for Denial of Credit'' section of Form C–3.

If a creditor uses a proprietary score that does not meet the definition of a credit score for purposes of section 609(f)(2)(A) of the FCRA and does not use a credit score from a consumer reporting agency, the creditor would not be required to comply with section 1100F of the Dodd-Frank Act, because the creditor would not have used a credit score, as defined by section 609(f)(2)(A) of the FCRA, in taking any adverse action. In that case, a creditor may use Form C–3, deleting the heading and information about the consumer's credit score. A creditor may amend Form C–3, at its option, to add the additional headings and remove the references to a credit scoring system, even through the creditor did not use a credit score in taking adverse action. Form C–3 should help distinguish proprietary scores from credit scores obtained from consumer reporting agencies, even if both scores are not used in taking adverse action.

If the creditor uses both a proprietary score that does not meet the definition of a credit score and a credit score from a consumer reporting agency in taking adverse action, the creditor is only required to disclose the credit score from the consumer reporting agency under section 1100F of the Dodd-Frank Act. The creditor may use the ''Information About Your Credit Score'' section of Form C–3 to disclose the credit bureau score. Likewise, if a creditor uses a credit score from a consumer reporting agency as an input to a proprietary score but the proprietary score itself is not a credit score as defined in section 609(f)(2)(A) of the FCRA, the creditor would disclose the credit score from the consumer reporting agency per the requirements of section 1100F of the Dodd-Frank Act. Again, the creditor may use the ''Information About Your Credit Score'' section of Form C–3 to disclose the credit bureau score.

In contrast, a creditor in taking adverse action may have used a proprietary score that only includes information obtained from a consumer reporting agency. In that case, the proprietary score would be a credit score under section 609(f)(2)(A) of the FCRA. In such cases, the creditor is required to comply with section 1100F of the Dodd-Frank Act and may use Form C–3. As noted in paragraph 3 of Appendix C, the model forms are illustrative and may not be appropriate for all creditors. Creditors should thus modify Form C–3 as necessary. Specifically, the creditor should modify the ''Information about Your Credit Score'' section in Form C–3 to reflect that the creditor did not obtain a credit score from a consumer reporting agency, but rather used a proprietary score that met the definition of a credit score under section 609(f)(2)(A) of the FCRA in taking adverse action. The creditor should disclose the value of the proprietary score, the date, the range of proprietary scores, and the key factors adversely affecting the consumer's proprietary score.

Commenters also asked for guidance on what information to disclose under section 1100F of the Dodd-Frank Act when a creditor uses both a proprietary score that meets the definition of a credit score, and a credit score from a consumer reporting agency in taking adverse action. If the proprietary score is the basis for the adverse action, under Regulation B the creditor would be required to disclose the reasons the consumer did not score well compared to other applicants, for the proprietary score. See § 202.9(a)(2)(i). The creditor may disclose those reasons in the ''Reasons for Denial of Credit'' section of Form C–3. In addition, under the FCRA the creditor must disclose one of the scores that it used in taking adverse action and may do so in the ''Information About Your Credit Score'' section in Form C–3. If the creditor chooses to disclose the proprietary

score, it would amend Form C–3 as discussed above. If the creditor chooses to disclose the credit score from a consumer reporting agency, the creditor would disclose the value of the credit score, the date, the range of credit scores, and the key factors adversely affecting the consumer's credit score.

Other comments on Form C–3. One commenter highlighted language in Form C–3 that describes a proprietary score as based on the repayment histories of a large number of the creditor's consumers. The commenter thought it potentially misleading to indicate that a proprietary score is only based on repayment histories rather than on an evaluation of different categories. The commenter asked that the Board revise Form C–3 so that consumers clearly understand the difference between proprietary and other scores.

This issue is outside the narrow scope of this rulemaking to revise the model forms consistent with section 1100F of the Dodd-Frank Act. Moreover, the model forms are illustrative and may not be appropriate for all creditors. See paragraph 3 of Appendix C. The instructions to the model forms provide examples of when a creditor should amend the forms to ensure that they accurately reflect the creditor's actual practices. See paragraph 4 of Appendix. If a proprietary score is not solely based on the repayment histories of a large number of the creditor's consumers, the creditor can amend the language to describe what the proprietary score is based on. Further, Form C–3 includes a disclosure of the principal reasons why a consumer's proprietary score is lower than the scores for the creditor's other consumers. This list of reasons may provide consumers with a fuller understanding of the difference between proprietary and other scores.

Form of the Notices

As discussed above, the Board proposed to revise Forms C–1 through C–5 to incorporate disclosures required by section 1100F of the Dodd-Frank Act and include, as applicable, a statement that the creditor obtained the consumer's credit score from a consumer reporting agency named in the notice, and used the score in making the credit decision. The proposed model notices also stated that a credit score is a number that reflects the information in the consumer's consumer report, and that the consumer's credit score can change, depending on how the information in the consumer report changes. The proposed model notices provided space for the creditor to include the content required under section 1100F of the Dodd-Frank Act that is specific to the consumer. This content includes: The consumer's credit score, the date the credit score was created, the range of possible credit scores under the model used, and up to four key factors that adversely affected the consumer's credit score (or up to five factors if the number of inquiries made with respect to that consumer report is a key factor).

The Board proposed to include these new disclosures primarily in a narrative format. In addition, the Board proposed to add this additional information to the end of the model forms, after information related the reasons for why adverse action was taken, and a statement that the creditor obtained information from a consumer reporting agency.

The Board received several comments on the format of the proposed model forms, as discussed in more detail below. For the reasons discussed below, the final rule retains the format of the credit score information in the model forms, as proposed.

Order of content. An industry commenter asked that the credit score information precede information regarding the consumer report in the model forms. The final rule retains the order of the content of the model forms as proposed. The Board believes that it is appropriate to disclose the information related to consumer reports first because the primary purpose of the adverse action notices is to alert consumers that adverse action was taken as a result of their consumer reports.

Further, in the proposed format the content logically progresses from more general consumer report information to more specific credit score information. In addition, because a creditor may still use Forms C–1 through C–5 when the creditor does not use the consumer's credit score in taking adverse action, providing the credit score information after the consumer report information will promote ease of use for creditors. Because the credit score information comes at the end of Forms C–1 through C–5, it may be easier for a creditor to delete that information from the forms in cases where the creditor did not use a credit score in taking adverse action.

Disclosing credit score information on a separate document. Several industry commenters requested a model form that consumer reporting agencies could use to provide creditors the credit score information needed for adverse action notices under section 1100F of the Dodd-Frank Act. These commenters asked that creditors be permitted to attach the consumer reporting agency's form to their adverse action notices, and provide both documents to the consumer. These commenters did not believe that the creditor should be required to integrate the credit score information into its adverse action notice.

Section 615(a)(1) of the FCRA requires a creditor to provide notice of adverse action to consumers against whom it takes adverse action based in whole or in part on information contained in a consumer report. Section 1100F of the Dodd-Frank Act amended Section 615(a) to require a creditor to provide such consumers credit score information. Providing a form with credit score information separately from an adverse action notice does not appear to be consistent with the legislation.

Use of graphs or table formats. Some industry commenters requested that creditors be permitted to use a graph or table format to provide the information in the model forms without losing the safe harbor for compliance with Regulation B. These commenters asserted that graphs, tables, and other visual devices may be clearer and more useful to consumers.

To comply with Regulation B, a creditor must provide the required disclosures in a clear and conspicuous manner, in a reasonably understandable format that does not obscure the required information. See § 202.4(d)(1). Use of a different format from the model forms, such as by adding graphs or tables, could meet this standard for compliance with the regulation, but this would be determined on a case by case basis.

Substitute Notices and Combined Notices

As discussed above, section 1100F of the Dodd-Frank Act amends section 615(a) of the FCRA to require creditors to disclose on FCRA adverse action notices a credit score used in taking any adverse action and information relating to that score. Creditors might, however, disclose credit score information to consumers to satisfy other disclosure requirements. Specifically, in January 2010, the Board and the Federal Trade Commission (the Agencies) published final rules to implement the risk-based pricing provisions in section 311 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), which amended the FCRA (January 2010 Final Rule). 75 FR 2724. The January 2010 Final Rule generally requires a creditor to provide a risk-based pricing notice to a consumer when the creditor uses a consumer report to grant or extend 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 that creditor. See § 222.72; § 640.3. The January 2010 Final Rule provides exceptions to the requirements to provide general risk-based pricing notices for persons that provide certain credit score disclosure notices to consumers who request credit (so called ''credit score disclosure exception notices''). See §§ 222.74(d), (e), and (f); §§ 640.5(d), (e), and (f). In addition, section 609(g) of the FCRA requires creditors to provide credit score information to consumers applying for loans secured by one to four units of residential real property.

For loans secured by one to four units of residential real property, the credit score disclosure exemption notice would be required to be provided to the consumer concurrently and combined with the notice required by section 609(g) of the FCRA, but in any event, at or before consummation of a closed-end credit transaction or before the first transaction under an open-end credit plan. § 222.74(d)(3). Section 609(g)(1) of the FCRA states that the notice required by that subsection must be provided to the consumer ''as soon as reasonably practicable.'' In the January 2010 Final Rule, the Agencies noted that industry practice is generally to provide the credit score disclosure within three business days of obtaining a credit score and the Agencies would expect the integrated disclosure generally would be provided within the same timeframe. 75 FR 2741. For loans not secured by one to four units of residential real property, the credit disclosure exemption notice must be provided to the consumer as soon as reasonably practicable after the credit score has been obtained, 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. § 222.74(e)(3).

Some industry commenters asked the Board to clarify that if a creditor provides credit score exception notices or section 609 notices to consumers, the creditor would not be required to include the disclosures required by section 1100F of the Dodd-Frank Act in the adverse action notice. One industry commenter also requested that the Board clarify that a creditor is allowed to combine the section 609(g) notice with an adverse action notice. For the reasons discussed below, the Board does not believe a creditor would comply with the FCRA adverse action provisions in section 1100F by providing a credit score disclosure exception notice or section 609(g) notice. In addition, the Board does not believe that the 609(g) notice may be integrated into a FCRA adverse action notice.

Substitute notices. One industry commenter asked the Board to clarify that if a creditor provides credit score disclosure exception notices in connection with all loan applications, the creditor would not be required to include the credit score disclosures required by section 1100F of the Dodd-Frank Act in the adverse action notice.

In addition, one industry commenter suggested that if a creditor provides consumers with the disclosures required by section 609(g) of the FCRA, the creditor should not be required to disclose credit score information under section 1100F of the Dodd-Frank Act in the adverse action notice. This commenter noted that the credit score might change between the 609(g) disclosure and adverse action notice, leading to consumer confusion. The commenter argued that Congress likely did not intend consumers to receive multiple credit disclosures in connection with a single transaction.

The Board does not believe a creditor would comply with the FCRA adverse action provisions by providing a credit score disclosure exception notice or section 609(g) notice. These notices provide different information and have different timing requirements than the adverse action notice. In addition, the credit score disclosed on the credit score disclosure exception notice or section 609(g) notice might not be the credit score used in taking adverse action. For example, for purposes of the credit score disclosure exception notice, if a person uses a credit score that was not created by a consumer reporting agency, such as a proprietary score, that person is permitted to disclose either the proprietary score or a credit score it obtained from an entity regularly engaged in the business of selling credit scores, even if the latter credit score was not used in the credit decision. Nonetheless, in that circumstance, the FCRA adverse action notice must contain the proprietary score under 1100F. As discussed above, if a creditor uses a proprietary ''credit'' score in taking adverse action and does not use a credit score from a consumer reporting agency, the creditor must disclose information about the proprietary score under section 1100F.

Combined notices. One industry commenter requested that the Board clarify that a creditor is allowed to combine the section 609(g) notice with a FCRA adverse action notice. The Board does not believe a creditor would comply with the FCRA adverse action provisions by combining the section 609(g) notice with an adverse action notice for the reasons discussed above. In addition, the Board believes that allowing the section 609(g) notice to be combined with the adverse action notice might detract consumers from the primary purposes of the adverse action notice, which is to notify the consumer that adverse action has been taken.

Co-Applicants

Several industry commenters asked who should receive an adverse action notice when a credit application involves multiple applicants. These commenters stated that applicants should not receive each other's credit scores. They also recommended adding language to the model forms to indicate that for co-applicants, the adverse action decision may be based on either or both of the applicants' credit information. They explained that such language would decrease consumer confusion, since an applicant with an excellent credit profile who receives an adverse action notice may not realize that the adverse action decision may have been made because of the co-applicant's credit profile.

Section 202.9(f) of Regulation B permits a creditor to provide an adverse action notice to only one applicant, and requires a creditor to provide an adverse action notice to the primary applicant, when a primary applicant is readily apparent. In contrast, section 615(a) of the FCRA requires a creditor to provide the disclosures mandated by that section to ''any consumer'' against whom adverse action is taken, if the adverse action is based in whole or in part on information from a consumer report. The FCRA's reference to ''any consumer'' would seem to include co-applicants. Given privacy and customer relations concerns, the Board expects that creditors would generally provide separate FCRA adverse action notices to each applicant with only the individual's credit score on each notice.

As discussed above, several commenters recommended adding language to the model forms to indicate that for co-applicants, the adverse action decision may be based on either or both of the applicants' credit information. The Board believes that providing this additional language on the model forms would complicate the disclosures without providing a substantial benefit to consumers. An applicant with strong credit who receives an adverse action notice will likely understand that the adverse action decision was based on the co-applicant's credit information or will contact the creditor to inquire.

Guarantors and Co-Signers

An application may involve a guarantor or co-signer. Some industry commenters asked whether a guarantor or co-signer should receive an adverse action notice. These commenters also asked whether the guarantor's or co-signer's credit score should be disclosed to the applicant, where the creditor uses the guarantor's or co-signer's credit score in taking adverse action.

Under section 701(d)(6) of the ECOA and § 202.2(c) of Regulation B, only an applicant can experience adverse action. Further, a guarantor or co-signer is not deemed an applicant under § 202.2(e). Sections 603(k)(1)(A) and 603(k)(1)(B)(2) of the FCRA provide that adverse action has the same meaning for purposes of the FCRA as is provided in the ECOA and Regulation B in the context of a credit application. Therefore, a guarantor or co-signer would not receive an adverse action notice under the ECOA or the FCRA. The credit applicant would, however, receive an adverse action notice, even if the adverse action decision is made solely based on information in the guarantor's or co-signer's consumer report. Section 1100F of the Dodd-Frank Act does not address whether, in this circumstance, the adverse action notice received by an applicant under the FCRA should include a guarantor or co-signer's credit score. The Board does not believe, however, that Congress intended for an individual to receive another individual's credit score. Section 609(f)(2) of the FCRA associates a credit score with a particular individual. The Board accordingly believes that a guarantor or co-signer's credit score should not be disclosed to an applicant in an adverse action notice.

Multiple Scores

Some creditors may obtain multiple credit scores from consumer reporting agencies in connection with their underwriting processes. A creditor may use one or more of those scores in taking adverse action. Section 1100F of the Dodd-Frank Act only requires a person to disclose a single credit score used in taking adverse action.

When a creditor obtains multiple scores but only uses one in making the decision, the creditor must disclose the credit score that it used. Commenters asked what credit score or scores creditors should disclose when creditors use multiple scores in taking adverse action, for example, from different consumer reporting agencies. Section 1100F of the Dodd-Frank Act does not specify what credit score should be disclosed in such cases, but only requires a person to disclose a single credit score that is used by the person in making the credit decision. A creditor would comply with the statute by disclosing any of the credit scores that it used. The Board expects that creditors will have policies and procedures to determine which of the multiple credit scores was used in taking adverse action. For instance, a creditor could have policies and procedures specifying that: (1) When the creditor obtains or creates multiple credit scores but only uses one of those credit scores in taking adverse action, for example, by using the low, middle, high, or most recent score, the creditor would disclose that credit score and information relating to that credit score; and (2) when a creditor uses multiple credit scores in taking adverse action, for example, by computing the average of all the credit scores obtained, the creditor would disclose any one of those credit scores and information relating to the credit score.

Because credit scoring models may differ considerably in nature and the range of scores used, consumers would not necessarily benefit if they receive and try to compare multiple scores. Disclosing multiple credit scores could confuse consumers who do not understand the differences, which might lessen the value of the section 1100F disclosures. Moreover, section 1078(a) of the Dodd-Frank Act requires the Consumer Financial Protection Bureau (CFPB) to conduct a study of the different credit scoring systems, and whether these variations disadvantage consumers. The CFPB's study might develop a record that could serve as the basis for reconsidering this issue in a future rulemaking.

Adverse Actions Not Limited to Credit

An industry commenter asked whether credit score information under section 1100F of the Dodd-Frank Act must be disclosed in FCRA adverse action notices for non-lending products. This commenter notes that the definition of ''credit score'' for purposes of section 1100F of the Dodd-Frank Act refers to a credit score ''used by a person who makes or arranges a loan.'' The commenter asserted argued that Congress intended to limit the section 1100F disclosures to credit decisions.

Section 202.2(c) of the ECOA limits the definition of adverse action to decisions regarding credit. The FCRA, however, does not include such a limitation. See section 603(k)(1) of the FCRA. The FCRA therefore applies to adverse action decisions related to credit, but also decisions regarding, for example, a deposit account, insurance product, or employment. Although a credit score may generally be used in making or arranging loans, a credit score may also be used in taking adverse action not related to credit. The Board believes that a person would need to disclose a credit score obtained from a consumer reporting agency as part of the adverse action notice as set forth in section 1100F of the Dodd Frank Act, even if the person used the credit score to take adverse action for a non-lending product. In requiring credit score disclosures, section 1100F does not state that the credit score disclosures are only required for adverse action decisions related to credit.

Implementation Date

Some industry commenters asked that the Board delay the rule's implementation date by 6 months to at least 12 months. One commenter suggested that the Board stay the rulemaking, and let the CFPB finalize the rule.[3] Another commenter requested that creditors should receive a safe harbor for using the proposed model forms until creditors can implement the requirements in the final rule.

Section 1100F of the Dodd-Frank Act is self-effectuating and will become legally effective on July 21, 2011, even if there are no implementing rules or model forms. To provide guidance to institutions in establishing their compliance programs, this final rule will become effective 30 days after the date of publication in the **Federal Register.**

III. Regulatory Analysis

A. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521; 5 CFR part 1320 Appendix A.1), the Board reviewed the final rulemaking under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is required by this final rulemaking is found in 12 CFR part 202. In addition, as permitted by the PRA, the Board will extend for three years the current recordkeeping and disclosure requirements in connection with Regulation B. The Board may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0201.

Section 703(a)(1) of the Equal Credit Opportunity Act (15 U.S.C. 1691b(a)(1)) authorizes the Board to issue regulations

[3] Rule writing authority under the FCRA will transfer to the CFPB on July 21, 2011.

to carry out the provisions of the Act. The purpose of the Act is to ensure that credit is made available to all creditworthy customers without discrimination on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), receipt of public assistance income, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act (15 U.S.C. 1600 *et seq.*). This information collection is mandatory.

Regulation B applies to all types of creditors, not just State member banks. However, under the PRA, the Board accounts for the burden of the paperwork associated with the regulation only for entities that are supervised by the Board. Appendix A of Regulation B defines these creditors as State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other federal agencies account for the paperwork burden for the institutions they supervise. Creditors are required to retain records for 12 to 25 months as evidence of compliance.

As discussed above, on March 15, 2011, the Board published in the **Federal Register** a notice of proposed rulemaking that is consistent with new content requirements in section 615(a) of the FCRA that were added by section 1100F of the Dodd-Frank Act. 76 FR 13896. The PRA comment period expired on May 16, 2011.

In the proposal, the Board estimated that respondents potentially affected by the additional notice would take, on average, 16 hours (2 business days) to update their systems and modify model notices to comply with the proposed requirements. The Board recognized that the amount of time needed for any particular creditor subject to the proposed requirements may be higher or lower, but believed this average figure was a reasonable estimate.

Several industry commenters believed that the Board underestimated the compliance burden of the proposed rule. These commenters asserted that compliance would require between 2 weeks and 8,000 hours.

Based on these comments, the Board is inclined to agree that some additional time beyond 16 hours may be needed. The Board, therefore, has revised upward its prior burden estimate. The Board believes that 32 hours (4 business days) is a reasonable estimate of the average amount of time to modify existing database systems to incorporate these new requirements. In addition, an industry commenter asked that the Board clarify whether the Board proposed to extend current recordkeeping requirements for 3 years, or to lengthen current recordkeeping requirements. As explained in the proposed rule, the Board is extending current recordkeeping and disclosure requirements for 3 years.

Entities affected by this final rule are already familiar with the existing adverse action provisions. It should not be overly burdensome to persons using a credit score when making the decision requiring an adverse action notice to add additional information to that notice. In addition, the Board has provided model notices that should significantly reduce the cost of compliance with the final rule.

B. Regulatory Flexibility Act

The Board prepared an initial regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) in connection with the proposed rule. The final rule covers certain banks, other depository institutions, and non-bank entities that take adverse action against consumers. The Small Business Administration (SBA) establishes size standards that define which entities are small businesses for purposes of the RFA.[4] The size standard to be considered a small business is: $175 million or less in assets for banks and other depository institutions; and $7 million or less in annual revenues for the majority of non-bank entities that are likely to be subject to the final rule. Under section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the final rule will not have a significant economic impact on a substantial number of small entities. The Board hereby certifies that the final rule will not have a significant economic impact on a substantial number of small business entities. The Board recognizes that the final rule will affect some small business entities; however the Board does not expect that a substantial number of small businesses will be affected or that the final rule will have a significant economic impact on them, particularly in light of the information already required to be disclosed under section 615(a) of the FCRA. Nonetheless, the Board has decided to publish a final regulatory flexibility analysis with the final rule and has prepared the following analysis:

1. Reasons for the Final Rule

Section 1100F of the Dodd-Frank Act amends section 615(a) of the FCRA to require persons to disclose a credit score and information relating to that credit score in adverse action notices when the person uses a credit score in taking adverse action. Specifically, a person must disclose, in addition to the information currently required by section 615(a) of the FCRA: (1) A numerical credit score used in making the credit decision; (2) the range of possible scores under the model used; (3) up to four key factors that adversely affected the consumer's credit score (or up to five factors if the number of inquiries made with respect to that consumer report is a key factor); (4) the date on which the credit score was created; and (5) the name of the person or entity that provided the credit score. The effective date of these amendments is July 21, 2011.

Certain model notices in Regulation B include the content required by both the ECOA and the FCRA adverse action provisions, so that creditors can use the model notices to comply with the adverse action requirements of both statutes. The Board is issuing the final rule to amend the combined ECOA–FCRA adverse action model notices in Regulation B pursuant to its existing authority under section 703(a) of the ECOA, to facilitate compliance with the new requirements under section 1100F of the Dodd-Frank Act.

2. Statement of Objectives and Legal Basis

The **SUPPLEMENTARY INFORMATION** above contains information on the objectives and legal basis of the final rule. The legal basis for the final rule is section 703(a) of the ECOA. The final rule is consistent with section 1100F of the Dodd-Frank Act.

3. Summary of Issues Raised by Commenters

Some industry commenters stated that the proposed rules would create substantial compliance burdens, particularly for small entities. They asked that small entities be exempt from the requirements, or that the Board delay the implementation date for small entities.

This issue is outside the scope of this rulemaking, because the Board does not have authority under the ECOA to carve

[4] U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

out small entities from the requirements of section 1100F of the Dodd-Frank Act. Further, as discussed above, Congress set the effective date for section 1100F of the Dodd-Frank Act for July 21, 2011. Section 1100F is self-implementing and will become legally effective on July 21, 2011, even if there is no implementing regulation or model forms. The final rule will facilitate compliance by providing guidance for institutions in establishing their compliance programs, and will become effective 30 days after the date of publication in the **Federal Register**.

4. Description of Small Entities to Which the Final Rule Applies

The final rule applies to any person that (1) is required to provide an adverse action notice to a consumer; and (2) uses a credit score in making the credit decision requiring an adverse action notice. The total number of small entities likely to be affected by the final rule is unknown, because the Board does not have data on the number of small entities that use credit scores in taking adverse action in connection with consumer credit. The adverse action provisions of section 1100F of the Dodd-Frank Act have broad applicability to persons who use credit scores in taking adverse action in connection with the provision of consumer credit.

Based on estimates compiled by the Board, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, there are approximately 9,458 depository institutions that could be considered small entities and that are potentially subject to the final rule.[5] The available data are insufficient to estimate the number of non-bank entities that would be subject to the final rule and that are small as defined by the SBA. Such entities would include non-bank mortgage lenders, auto finance companies, automobile dealers, other non-bank finance companies, insurance companies, employers, telephone companies, and utility companies.

It also is unknown how many of these small entities that meet the SBA's size standards and that are potentially subject to the final rule use credit scores in taking adverse action in connection with the provision of consumer credit. The final rule does not, however, impose any requirements on small entities that do not use credit scores in taking adverse action in connection with consumer credit.

5. Projected Reporting, Recordkeeping and Other Compliance Requirements

The compliance requirements of the final rule are described in detail in the **SUPPLEMENTARY INFORMATION** above.

A person must currently determine if it takes adverse action in connection with the provision of consumer credit, based in whole or in part on consumer reports. If the person takes adverse action based on consumer reports, the person must provide adverse action notices with the information currently required by section 615(a) of the FCRA.

Section 1100F of the Dodd-Frank Act amends section 615(a) of the FCRA to require a person who takes adverse action and uses a credit score in making the adverse action determination to provide credit score information in the adverse action notice, in addition to the information currently required by section 615(a) of the FCRA. Under the FCRA, the person would need to design, generate, and provide notices that include the credit score information. This final rule provides model forms that may be used by creditors to comply with these new requirements.

The Board does not expect that the costs associated with this final rule will place a significant burden on small entities.

6. Identification of Duplicative, Overlapping, or Conflicting Federal Regulations

The Board has not identified any federal statutes or regulations that would duplicate, overlap, or conflict with the final rule. As discussed in Part II above, the amendments to the adverse action notices are consistent with section 1100F of the Dodd-Frank Act. The Board is issuing the final rule pursuant to its existing authority under section 703(a) of the ECOA. The amendments to the adverse action model notices have been designed to work in conjunction with the requirements of section 1100F of the Dodd-Frank Act to help facilitate uniform compliance when this section becomes effective.

7. Steps Taken To Minimize the Economic Impact on Small Entities

The Board solicited comments on any significant alternatives consistent with section 703(a) of the ECOA and the provisions of section 1100F of the Dodd-Frank Act that would minimize the impact of the final rule on small entities. As noted above, several industry commenters suggested that small entities be exempt from the proposed rules, or that the Board delay the implementation date for small entities.

The Board has sought to minimize the economic impact on small entities by providing model notices to ease creditors' burden. As explained above, however, the Board does not have authority under the ECOA to carve out small entities from the requirements of section 1100F of the Dodd-Frank Act. In addition, Congress set the effective date for section 1100F of the Dodd-Frank Act for July 21, 2011. Section 1100F is self-implementing and will become legally effective on July 21, 2011, even if there is no implementing regulation. This final rule will provide guidance to institutions in establishing their compliance programs. Accordingly, the final rule will become effective 30 days after the date of publication in the **Federal Register**.

List of Subjects in 12 CFR Part 202

Aged, Banks, Banking, Civil rights, Consumer protection, Credit, Discrimination, Federal Reserve System, Marital status discrimination, Penalties, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination.

For the reasons set forth in the preamble, the Board amends 12 CFR part 202 and the Official Staff Commentary, as follows:

PART 202—EQUAL CREDIT OPPORTUNITY ACT (REGULATION B)

■ 1. The authority citation for part 202 continues to read as follows:

Authority: 15 U.S.C. 1693b.

■ 2. Section 202.12(b)(4) is amended as follows:

§ 202.12 Record retention.

* * * * *

(b) * * *

(4) *Enforcement proceedings and investigations.* A creditor shall retain the information beyond 25 months (12 months for business credit, except as provided in paragraph (b)(5) of this section) if the creditor has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation of the Act or this part, by the Attorney General of the United States or by an enforcement agency charged with monitoring that creditor's compliance with the Act and this regulation, or if it has been served with notice of an action filed pursuant to section 706 of the Act and § 202.16 of this part. The creditor shall retain the information until final disposition of the

[5] The estimate includes 1,459 institutions regulated by the Board, 659 national banks, and 4,099 federally-chartered credit unions, as determined by the Board. The estimate also includes 2,872 institutions regulated by the FDIC and 369 thrifts regulated by the OTS. *See* 75 FR 36016, 36020 (Jun. 24, 2010).

matter, unless an earlier time is allowed by order of the agency or court.

* * * * *

■ 3. Appendix C to Part 202 is amended by revising paragraph 2 and Forms C–1 through C–5 to read as follows:

APPENDIX C To Part 202—Sample Notification Forms

* * * * *

2. Form C–1 contains the Fair Credit Reporting Act disclosure as required by sections 615(a) and (b) of that act. Forms C–2 through C–5 contain only the section 615(a) disclosure (that a creditor obtained information from a consumer reporting agency that was considered in the credit decision and, as applicable, a credit score used in taking adverse action along with related information). A creditor must provide the section 615(a) disclosure when adverse action is taken against a consumer based on information from a consumer reporting agency. A creditor must provide the section 615(b) disclosure when adverse action is taken based on information from an outside source other than a consumer reporting agency. In addition, a creditor must provide the section 615(b) disclosure if the creditor obtained information from an affiliate other than information in a consumer report or other than information concerning the affiliate's own transactions or experiences with the consumer. Creditors may comply with the disclosure requirements for adverse action based on information in a consumer report obtained from an affiliate by providing either the section 615(a) or section 615(b) disclosure. Optional language in Forms C–1 through C–5 may be used to direct the consumer to the entity that provided the credit score for any questions about the credit score, along with the entity's contact information. Creditors may use or not use this additional language without losing the safe harbor, since the language is optional.

* * * * *

Form C–1—Sample Notice of Action Taken and Statement of Reasons Statement of Credit Denial, Termination or Change

Date: _____

Applicant's Name: _____

Applicant's Address: _____

Description of Account, Transaction, or Requested Credit:

_____

_____

Description of Action Taken:

_____

_____

Part I—Principal Reason(s) for Credit Denial, Termination, or Other Action Taken Concerning Credit

This section must be completed in all instances.

____Credit application incomplete

____Insufficient number of credit references provided

____Unacceptable type of credit references provided

____Unable to verify credit references

____Temporary or irregular employment

____Unable to verify employment

____Length of employment

____Income insufficient for amount of credit requested

____Excessive obligations in relation to income

____Unable to verify income

____Length of residence

____Temporary residence

____Unable to verify residence

____No credit file

____Limited credit experience

____Poor credit performance with us

____Delinquent past or present credit obligations with others

____Collection action or judgment

____Garnishment or attachment

____Foreclosure or repossession

____Bankruptcy

____Number of recent inquiries on credit bureau report

____Value or type of collateral not sufficient

____Other, specify:_____

Part II—Disclosure of Use of Information Obtained From an Outside Source

This section should be completed if the credit decision was based in whole or in part on information that has been obtained from an outside source.

____Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

Name: _____

Address: _____

_____

[Toll-free] Telephone number: _____

[We also obtained your credit score from this consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your credit score:_____

Date:_____

Scores range from a low of_____to a high of_____

Key factors that adversely affected your credit score:

_____

_____

_____

_____

[Number of recent inquiries on consumer report, as a key factor]

[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at:

Address: _____

_____

[Toll-free] Telephone number:]] _____

____Our credit decision was based in whole or in part on information obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, no later than 60 days after you receive this notice, for disclosure of the nature of this information.

If you have any questions regarding this notice, you should contact:

Creditor's name: _____

Creditor's address: _____

Creditor's telephone number: _____

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

Form C–2—Sample Notice of Action Taken and Statement of Reasons

Date

Dear Applicant: Thank you for your recent application. Your request for [a loan/a credit card/an increase in your credit limit] was carefully considered, and we regret that we are unable to approve your application at this time, for the following reason(s):

Your Income:

____is below our minimum requirement.

____is insufficient to sustain payments on the amount of credit requested.

____could not be verified.

Your Employment:

____is not of sufficient length to qualify.

____could not be verified.

Your Credit History:

____of making payments on time was not satisfactory.

____could not be verified.

Your Application:

____lacks a sufficient number of credit references.

____lacks acceptable types of credit references.

____reveals that current obligations are excessive in relation to income.

Other: _____

The consumer reporting agency contacted that provided information that influenced our decision in whole or in part was [name, address and [toll-free] telephone number of the reporting agency]. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You have a right under the Fair Credit Reporting Act to know the

information contained in your credit file at the consumer reporting agency. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency. Any questions regarding such information should be directed to [consumer reporting agency]. If you have any questions regarding this letter, you should contact us at [creditor's name, address and telephone number].

[We also obtained your credit score from this consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your credit score: _____

Date: _____

Scores range from a low of_____to a high of_____

Key factors that adversely affected your credit score:

_____

_____

_____

_____

[Number of recent inquiries on consumer report, as a key factor]

[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at:

Address: _____

_____

[Toll-free] Telephone number:_____]]

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

Form C–3—Sample Notice of Action Taken and Statement of Reasons [(Credit Scoring)]

Date

Dear Applicant: Thank you for your recent application for _____. We regret that we are unable to approve your request.

[**Reasons for Denial of Credit**]

Your application was processed by a [credit scoring] system that assigns a numerical value to the various items of information we consider in evaluating an application. These numerical values are based upon the results of analyses of repayment histories of large numbers of customers.

The information you provided in your application did not score a sufficient number of points for approval of the application. The reasons you did not score well compared with other applicants were:

- Insufficient bank references
- Type of occupation
- Insufficient credit experience
- Number of recent inquiries on credit bureau report

[**Your Right to Get Your Consumer Report**]

In evaluating your application the consumer reporting agency listed below provided us with information that in whole or in part influenced our decision. The consumer reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. It can be obtained by contacting: [name, address, and [toll-free] telephone number of the consumer reporting agency]. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

[**Information about Your Credit Score]**

We also obtained your credit score from this consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your credit score: _____

Date: _____

Scores range from a low of _____to a high of_____

Key factors that adversely affected your credit score:

_____

_____

_____

_____

[Number of recent inquiries on consumer report, as a key factor]

[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at:

Address: _____

_____

[Toll-free] Telephone number:_____]]

If you have any questions regarding this letter, you should contact us at

Creditor's Name: _____

Address: _____

_____

Telephone: _____

Sincerely,

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (with certain limited exceptions); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

Form C–4—Sample Notice of Action Taken, Statement of Reasons and Counteroffer

Date

Dear Applicant: Thank you for your application for _____. We are unable to offer you credit on the terms that you requested for the following reason(s):

_____

We can, however, offer you credit on the following terms:

_____

If this offer is acceptable to you, please notify us within [amount of time] at the following address: _____.

Our credit decision on your application was based in whole or in part on information obtained in a report from [name, address and [toll-free] telephone number of the consumer reporting agency]. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

[We also obtained your credit score from this consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your credit score: _____

Date: _____

Scores range from a low of _____ to a high of _____

Key factors that adversely affected your credit score:

_____

_____

_____

_____

[Number of recent inquiries on consumer report, as a key factor]

[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at:

Address: _____

_____

[Toll-free] Telephone number:_____]]

You should know that the federal Equal Credit Opportunity Act prohibits creditors, such as ourselves, from discriminating against credit applicants on the basis of their race, color, religion, national origin, sex,

marital status, age (provided the applicant has the capacity to enter into a binding contract), because they receive income from a public assistance program, or because they may have exercised their rights under the Consumer Credit Protection Act. If you believe there has been discrimination in handling your application you should contact the [name and address of the appropriate federal enforcement agency listed in appendix A].

Sincerely,

Form C–5—Sample Disclosure of Right to Request Specific Reasons for Credit Denial Date

Dear Applicant: Thank you for applying to us for _____.

After carefully reviewing your application, we are sorry to advise you that we cannot [open an account for you/grant a loan to you/increase your credit limit] at this time. If you would like a statement of specific reasons why your application was denied, please contact [our credit service manager] shown below within 60 days of the date of this letter. We will provide you with the statement of reasons within 30 days after receiving your request.

Creditor's Name

Address

Telephone Number

If we obtained information from a consumer reporting agency as part of our consideration of your application, its name, address, and [toll-free] telephone number is shown below. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. [You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency.] You have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you received is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency. You can find out about the information contained in your file (if one was used) by contacting:

Consumer reporting agency's name

Address

[Toll-free] Telephone number

[We also obtained your credit score from this consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your credit score: _____

Date: _____

Scores range from a low of _____ to a high of _____

Key factors that adversely affected your credit score:

_____

_____

_____

_____

[Number of recent inquiries on consumer report, as a key factor]

[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at:

Address: _____

_____

[Toll-free] Telephone number:_____]]

Sincerely,

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

* * * * *

■ 4. Supplement I to part 202 is amended by revising paragraph 9(b)(2)–9 to read as follows:

Supplement I to Part 202—Official Staff Interpretations

* * * * *

Section 202.9—Notifications

* * * * *

Paragraph 9(b)(2)

* * * * *

9. *Combined ECOA–FCRA disclosures.* The ECOA requires disclosure of the principal reasons for denying or taking other adverse action on an application for an extension of credit. The Fair Credit Reporting Act (FCRA) requires a creditor to disclose when it has based its decision in whole or in part on information from a source other than the applicant or its own files. Disclosing that a consumer report was obtained and used in the denial of the application, as the FCRA requires, does not satisfy the ECOA requirement to disclose specific reasons. For example, if the applicant's credit history reveals delinquent credit obligations and the application is denied for that reason, to satisfy § 202.9(b)(2) the creditor must disclose that the application was denied because of the applicant's delinquent credit obligations. The FCRA also requires a creditor to disclose, as applicable, a credit score it used in taking adverse action along with related information, including up to four key factors that adversely affected the consumer's credit score (or up to five factors if the number of inquiries made with respect to that consumer report is a key factor). Disclosing the key factors that adversely affected the consumer's credit score does not satisfy the ECOA requirement to disclose specific reasons for denying or taking other adverse action on an application or extension of credit. Sample forms C–1 through C–5 of Appendix C of the regulation provide for both the ECOA and FCRA disclosures. See also comment 9(a)(2)–1.

* * * * *

By order of the Board of Governors of the Federal Reserve System, July 6, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–17585 Filed 7–14–11; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 222

[Regulation V; Docket No. R–1407]

RIN 7100–AD66

FEDERAL TRADE COMMISSION

16 CFR Parts 640 and 698

RIN R411009

Fair Credit Reporting Risk-Based Pricing Regulations

AGENCIES: Board of Governors of the Federal Reserve System (Board) and Federal Trade Commission (Commission).

ACTION: Final rules.

SUMMARY: On January 15, 2010, the Board and the Commission published final rules to implement the risk-based pricing provisions in section 311 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), which amended the Fair Credit Reporting Act (FCRA). The final rules generally require a creditor to provide a risk-based pricing notice to a consumer when the creditor uses a consumer report to grant or extend 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 that creditor. The Board and the Commission are amending their respective risk-based pricing rules to require disclosure of credit scores and information relating to credit scores in risk-based pricing notices if a credit score of the consumer is used in setting the material terms of credit. These final rules reflect the new requirements in section 615(h) of the FCRA that were added by section 1100F of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

DATES: These rules are effective August 15, 2011.

FOR FURTHER INFORMATION CONTACT: *Board:* Krista P. Ayoub, Counsel; Mandie K. Aubrey or Nikita M. Pastor, Senior Attorney; or Catherine Henderson, Attorney, Division of Consumer and Community Affairs, (202)