

proof of identity for purposes of sections 605A, 605B, and 609(a)(1) of the Fair Credit Reporting Act. In developing these requirements, the consumer reporting agencies must:

(1) Ensure that the information is sufficient to enable the consumer reporting agency to match consumers with their files; and

(2) Adjust the information to be commensurate with an identifiable risk of harm arising from misidentifying the consumer.

(b) Examples of information that might constitute reasonable information requirements for proof of identity are provided for illustrative purposes only, as follows:

(1) Consumer file match: The identification information of the consumer including his or her full name (first, middle initial, last, suffix), any other or previously used names, current and/or recent full address (street number and name, apt. no., city, state, and zip code), full 9 digits of Social Security number, and/or date of birth.

(2) Additional proof of identity: copies of government issued identification documents, utility bills, and/or other methods of authentication of a person's identity which may include, but would not be limited to, answering questions to which only the consumer might be expected to know the answer.

[69 FR 63934, Nov. 3, 2004]

## PART 640—DUTIES OF CREDITORS REGARDING RISK-BASED PRICING

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AUTHORITY: Pub. L. 108-159, sec. 311; 15 U.S.C. 1681m(h).

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### § 640.1 Scope.

(a) *Coverage*—(1) *In general*. This part applies to any person that both—

(i) Uses a consumer report in connection with an application for, or a grant,

extension, or other provision of, credit to a consumer that is primarily for personal, family, or household purposes; and

(ii) Based in whole or in part on the consumer report, grants, extends, or otherwise provides credit to the consumer on material terms that are materially less favorable than the most favorable material terms available to a substantial proportion of consumers from or through that person.

(2) *Business credit excluded*. This part does not apply to an application for, or a grant, extension, or other provision of, credit to a consumer or to any other applicant primarily for a business purpose.

(b) *Relation to Board of Governors of the Federal Reserve System rules*. The rules in this part were developed jointly with the Board of Governors of the Federal Reserve System (Board) and are substantively identical to the Board's risk-based pricing rules in 12 CFR part 222. Both rules apply to the covered person described in paragraph (a) of this section. Compliance with either the Board's rules or the Commission's rules satisfies the requirements of the statute (15 U.S.C. 1681m(h)).

(c) *Enforcement*. The provisions of this part will be enforced in accordance with the enforcement authority set forth in sections 621(a) and (b) of the FCRA.

### § 640.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Adverse action* has the same meaning as in 15 U.S.C. 1681a(k)(1)(A).

(b) *Annual percentage rate* has the same meaning as in 12 CFR 226.14(b) with respect to an open-end credit plan and as in 12 CFR 226.22 with respect to closed-end credit.

(c) *Closed-end credit* has the same meaning as in 12 CFR 226.2(a)(10).

(d) *Consumer* has the same meaning as in 15 U.S.C. 1681a(c).

(e) *Consummation* has the same meaning as in 12 CFR 226.2(a)(13).

(f) *Consumer report* has the same meaning as in 15 U.S.C. 1681a(d).

(g) *Consumer reporting agency* has the same meaning as in 15 U.S.C. 1681a(f).

(h) *Credit* has the same meaning as in 15 U.S.C. 1681a(r)(5).

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(i) *Creditor* has the same meaning as in 15 U.S.C. 1681a(r)(5).

(j) *Credit card* has the same meaning as in 15 U.S.C. 1681a(r)(2).

(k) *Credit card issuer* has the same meaning as in 15 U.S.C. 1681a(r)(1)(A).

(l) *Credit score* has the same meaning as in 15 U.S.C. 1681g(f)(2)(A).

(m) *Firm offer of credit* has the same meaning as in 15 U.S.C. 1681a(1).

(n) *Material terms* means—

(1) (i) Except as otherwise provided in paragraphs (n)(1)(ii) and (n)(3) of this section, in the case of credit extended under an open-end credit plan, the annual percentage rate required to be disclosed under 12 CFR 226.6(a)(1)(ii) or 12 CFR 226.6(b)(2)(i), excluding any temporary initial rate that is lower than the rate that will apply after the temporary rate expires, any penalty rate that will apply upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit, and any fixed annual percentage rate option for a home equity line of credit;

(ii) In the case of a credit card (other than a credit card that is used to access a home equity line of credit or a charge card), the annual percentage rate required to be disclosed under 12 CFR 226.6(b)(2)(i) that applies to purchases (“purchase annual percentage rate”) and no other annual percentage rate, or in the case of a credit card that has no purchase annual percentage rate, the annual percentage rate that varies based on information in a consumer report and that has the most significant financial impact on consumers;

(2) In the case of closed-end credit, the annual percentage rate required to be disclosed under 12 CFR 226.17(c) and 226.18(e); and

(3) In the case of credit for which there is no annual percentage rate, the financial term that varies based on information in a consumer report and that has the most significant financial impact on consumers, such as a deposit required in connection with credit extended by a telephone company or utility or an annual membership fee for a charge card.

(o) *Materially less favorable* means, when applied to material terms, that the terms granted, extended, or other-

wise provided to a consumer differ from the terms granted, extended, or otherwise provided to another consumer from or through the same person such that the cost of credit to the first consumer would be significantly greater than the cost of credit granted, extended, or otherwise provided to the other consumer. For purposes of this definition, factors relevant to determining the significance of a difference in cost include the type of credit product, the term of the credit extension, if any, and the extent of the difference between the material terms granted, extended, or otherwise provided to the two consumers.

(p) *Open-end credit plan* has the same meaning as in 15 U.S.C. 1602(i), as interpreted by the Board in Regulation Z and the Official Staff Commentary to Regulation Z.

(q) *Person* has the same meaning as in 15 U.S.C. 1681a(b).

#### § 640.3 General requirements for risk-based pricing notices.

(a) *In general.* Except as otherwise provided in this part, a person must provide to a consumer a notice (“risk-based pricing notice”) in the form and manner required by this part if the person both—

(1) Uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to that consumer that is primarily for personal, family, or household purposes; and

(2) Based in whole or in part on the consumer report, grants, extends, or otherwise provides credit to that consumer on material terms that are materially less favorable than the most favorable material terms available to a substantial proportion of consumers from or through that person.

(b) *Determining which consumers must receive a notice.* A person may determine whether paragraph (a) of this section applies by directly comparing the material terms offered to each consumer and the material terms offered to other consumers for a specific type of credit product. For purposes of this section, a “specific type of credit product” means one or more credit products with similar features that are designed for similar purposes. Examples of a