



These regulations under its authority

DCU BULLETIN

Division of Credit Unions

Washington State Department of Financial Institutions

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Fair Credit Reporting Act Disclosures and Indirect Automobile Lending

The Division of Credit Unions (Division) is issuing this bulletin after reviewing indirect lending compliance at various credit unions and finding inconsistent practices. This bulletin provides guidance for state-chartered credit unions on indirect lending compliance requirements.

The Fair Credit Reporting Act (“FCRA”) requires that a **Risk-Based Pricing Notice** be provided when a consumer report is used in connection with providing credit on materially less favorable terms than the most favorable terms available to a substantial proportion of customers.¹ The notice is required only for loans that are primarily for personal, household, or family purposes. The Dodd-Frank Act amended the FCRA to require creditors to disclose the credit score used in pricing any credit product and information related to that score.²

Indirect automobile lending occurs when a consumer secures vehicle financing through a dealership, which typically originates the loan to the consumer and arranges financing through a third-party financial institution (the indirect lender).³ The **Risk-Based Pricing Notice** requirement is designed to improve the accuracy of consumer reports by alerting consumers to the existence of negative information in their consumer reports. It must include a statement [*see* attached Model Form H-1, *Exhibit A*] that the terms offered may be less favorable than the terms offered to consumers with better credit histories.⁴

Alternatively, a creditor may elect to provide a credit-score disclosure **Exception Notice** to *all* consumer applicants. The Exception Notice must disclose the distribution of credit scores among consumers who are measured under the same scoring model that is used to generate the consumer's credit score, using the same scale as that of the credit score provided to the consumer. This information must be presented as either:

1. A bar graph containing a minimum of six bars that illustrates the percentage of consumers with credit scores within the range of scores reflected in each bar [*see* attached Model Form H-4, *Exhibit B*]; or
2. A clear and readily understandable statement informing the consumer how his or her credit score compares with the scores of other consumers.⁵

Timing of Disclosure. For automobile lending, the Risk-Based Pricing Notice must be provided after credit approval is communicated to the consumer, but before consummation.⁶ If the creditor relies on the dealership to deliver the notice, the creditor must maintain reasonable policies and procedures to verify that the dealership or other party provides the Notice within the required time frame.⁷ If the creditor chooses to provide an exception notice in lieu of a risk-based pricing notice, the exception notice must be provided to the consumer as soon as reasonably practicable after requesting the consumer's credit score but not later than consummation.⁸

Review by Examiners. The Division of Credit Unions (DCU) examiners will review loan file documentation to determine whether required notices are provided to consumers. Credit unions should either retain the notices in the loan files or perform due diligence on automobile dealers to confirm they are providing the notices in a timely manner. Examiners will also review whether credit unions have adequate procedures in place for compliance with the above provisions of the FCRA and Regulation V.⁹

Conclusion

Any questions about this Bulletin should be directed to Margaret Esola at Margaret.Esola@dfi.wa.gov or (360) 970-0349.

¹ Section 615(h) of FCRA, 15 U.S.C. §1681m(h).

² Pub.L. 111-203, Title X, 1088(a)(2)(C), (7)-(9), 1100(F) (July 21, 2010).

³ CFPB Bulletin 2013-02 (March 21, 2013), available at http://files.consumerfinance.gov/f/201303_cfpb_march_-_Auto-Finance-Bulletin.pdf.

⁴ See 12 C.F.R. §1022.73(a)(iii).

⁵ See 12 C.F.R. §1022.74(e)(1)(ii)(F).

⁶ See 12 C.F.R. §1022.73(c)(1)(i).

⁷ See 12 C.F.R. §1022.73(c)(2).

⁸ See 12 C.F.R. §1022.74(e)(3).

⁹ Under Section 615(h)(7) of the FCRA, "a person shall not be liable for failure to perform the duties required by this section if, at the time of the failure, *the person maintained reasonable policies and procedures to comply with this section.*" [Emphasis added.] Section 615(h)(8) of the FCRA provides that *private* civil action penalties under Sections 616 and 617 of the FCRA do not apply to Section 615(h) disclosures. See FCRA, at 15 U.S.C. §§1681m(h)(7)-(8), 1681n, and 1681o. However, administrative enforcement by CFPB against Washington State-chartered credit unions is authorized under Sections 615(h)(8) and 621(b)(1)(H) of the FCRA [15 U.S.C. §§1681m(h)(8) and 1681s(b)(1)(H)]. The DCU also may bring administrative enforcement action for any material violation of law, whether federal or state. See RCW 31.12.003(15), 31.12.585(1)(a). In addition, the Washington Attorney General has authority to enforce these requirements under Section 621(c)(1) of the FCRA [15 U.S.C. §§1681s(c)(1)].

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

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

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

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

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

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

Understanding Your Credit Score

What you should know about credit scores	<p>Your credit score is a number that reflects the information in your credit report.</p> <p>Your credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.</p> <p>Your credit score can change, depending on how your credit history changes.</p>
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How we use your credit score	<p>Your credit score can affect whether you can get a loan and how much you will have to pay for that loan.</p>
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The range of scores	<p>Scores range from a low of [Insert bottom number in the range] to a high of [Insert top number in the range].</p> <p>Generally, the higher your score, the more likely you are to be offered better credit terms.</p>
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How your score compares to the scores of other consumers	<table border="1"><caption>Percentage of Consumers with Scores in a Particular Range</caption><thead><tr><th>Score Range</th><th>% of Consumers</th></tr></thead><tbody><tr><td>[0-100]</td><td>10%</td></tr><tr><td>[101-200]</td><td>15%</td></tr><tr><td>[201-300]</td><td>20%</td></tr><tr><td>[301-400]</td><td>30%</td></tr><tr><td>[401-500]</td><td>15%</td></tr><tr><td>[501-600]</td><td>10%</td></tr></tbody></table>	Score Range	% of Consumers	[0-100]	10%	[101-200]	15%	[201-300]	20%	[301-400]	30%	[401-500]	15%	[501-600]	10%
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[or] [Your credit score ranks higher than [X] percent of U.S. consumers.]