

REGULATORY ALERT

NATIONAL CREDIT UNION ADMINISTRATION 1775 Duke Street, Alexandria, VA 22314

DATE: December 2010 **NO.:** 10-RA-15
TO: Federally Insured Credit Unions
SUBJ: Risk-Based Pricing Rule Changes Effective January 1, 2011
ENCL: FACT Act¹ Risk Based Pricing.xlsx

Dear Board of Directors:

If your credit union offers risk-based pricing² loan programs and uses credit scores to determine the annual percentage rate charged to each borrower, you will need to comply with upcoming changes to risk-based pricing notices.

New requirements take effect on January 1, 2011, as a result of rules issued by the Federal Reserve Board and the Federal Trade Commission.

The new rules implement the risk-based pricing provisions in §311 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), which amends the Fair Credit Reporting Act (FCRA 15 U.S.C. 1681m(h)). The two agencies' rules are substantively identical and can be found at 12.CFR Part 222 and 16.CFR Part 640 and 698, respectively. The rules are meant to complement the existing adverse action notice provisions of the FCRA.³

Section 615(h) of the FCRA generally requires a user of consumer reports to provide a risk-based pricing notice to a consumer. The notice is required when your credit union uses a consumer report in connection with an application, extension, or other provision of credit and, based on the consumer report, grants, extends, or provides credit on terms that are materially less favorable than terms your credit union has extended to other consumers. Section 615(h) does not apply to an application primarily for a business purpose.

¹ In general, the FACT Act amended the Fair Credit Reporting Act (FCRA) to enhance the ability of consumers to combat identity theft, increase the accuracy of consumer reports, and allow consumers to exercise greater control regarding the type and amount of solicitations they receive.

² Risk-based pricing refers to the practice of setting or adjusting the price and other terms of credit offered or extended to a particular consumer to reflect the risk posed by the consumer.

³ Under §615(a) of the FCRA, creditors that deny a consumer's application for credit based in whole or in part on information in a consumer report must provide an adverse action notice to that consumer. When a creditor does not reject an application with impaired credit, however, but instead offers credit on less favorable terms, the creditor generally is not required to provide an adverse action notice.

The rules provide alternative means by which your credit union can determine who should receive a risk-based pricing notice. The rules also include certain exceptions to the general rule, including exceptions for creditors that provide a consumer with a disclosure of the consumer's credit score.

The risk-based pricing notice requirement is designed primarily to improve the accuracy of consumer reports by alerting consumers to the existence of negative information on their reports. Consumers will be able to check their reports for accuracy and correct any inaccurate information.

To view the Federal Reserve press release and the Federal Register notice, use the following link:

<http://federalreserve.gov/newsevents/press/bcreg/20091222b.htm>

Examiners will use the enclosed Interagency Examination Procedures and the questionnaire⁴ to review and document credit union compliance with the recent additions to the regulation.

If you have any questions regarding these rules, please contact your district examiner, regional office, or state supervisory authority.

Sincerely,

/s/

Debbie Matz
Chairman

Enclosure

⁴ This questionnaire will be incorporated into AIREs during the March 2011 update. In the interim, staff should include this questionnaire as part of the AIREs exam/supervision report.