BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

DIVISION OF CONSUMER AND COMMUNITY AFFAIRS

DATE: November 22, 2000

TO: Board of Governors

FROM: Governor Gramlich, Chairman
Committee on Consumer and Community Affairs

SUBJECT: Proposed amendments to Regulation C (Home Mortgage Disclosure)

The attached item has been reviewed by the members of the Consumer and Community Affairs Committee and is now ready for Board consideration.

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DIVISION OF CONSUMER AND COMMUNITY AFFAIRS

DATE: November 22, 2000

TO: Board of Governors

FROM: Division of Consumer and Community Affairs
(D. Smith, A. Hurt, J. Gell, and Staff[1])

SUBJECT: Review of Regulation C

ACTION REQUESTED: Approval to publish the attached draft rule amending Regulation C (Home Mortgage Disclosure). The proposed changes relate to coverage of nondepository lenders, definitions of covered loans and applications, mandatory reporting of home-equity lines of credit, and the collection of additional items of information.

SUMMARY:

The Home Mortgage Disclosure Act (HMDA) requires depository and certain for-profit, nondepository institutions to collect, report, and disclose data about originations and purchases of home mortgage and home improvement loans. Institutions must also report data about applications that do not result in originations.

The Board's Regulation C implements HMDA. Regulation C generally requires that institutions report data about:

- Each application or loan, including the application date; the action taken and the date of that action; the loan amount; the loan type and purpose; and, if the loan is sold, the type of purchaser;

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[1] J. Wood, J. Mann, and K. Ryan.

- Each applicant or borrower, including national origin or race, gender, and annual income; and
- Each property, including occupancy status and location.[2]

HMDA data can be used to help determine whether institutions are serving the housing needs of their communities. The data help public officials target public investment to attract private investment where it is needed. HMDA data also assist in identifying possible discriminatory lending patterns and in enforcing antidiscrimination statutes.

The Board began its review of Regulation C in March 1998 with the publication of an Advance Notice of Proposed Rulemaking (Advance Notice). The Board identified several possible areas for revision, including reporting requests for preapproval; revising the definitions of reportable refinancings and home improvement loans; and requiring lenders to report additional data, such as reasons for denial and the appraised value of the property securing a loan. The Board received approximately 100 comment letters. Most commenters addressed only the issues identified in the Advance Notice.

The Board has received many suggestions on how it might use its authority under HMDA to increase understanding of the mortgage markets and to assist in fair lending enforcement. These suggestions have been the main focus of the staff's comprehensive review of the regulation and of the staff's development of recommendations for the Board to consider.

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[2] Institutions report these data to their supervisory agencies on an application-by-application basis using a register format. Institutions must make their loan/application registers available to the public, with certain fields redacted to preserve applicants' privacy. The Federal Financial Institutions Examination Council (FFIEC), on behalf of the supervisory agencies, compiles the reported data and prepares an individual disclosure statement for each institution, aggregate reports for all covered institutions in each metropolitan area, and other reports. These disclosure statements and reports are also available to the public.

Other suggestions for change related to increased public and agency concerns about "predatory lending" practices.[3] Some of them were presented in Curbing Predatory Home Mortgage Lending, a report by the Department of Housing and Urban Development and the Department of the Treasury submitted to the Congress in June 2000 (HUD/Treasury Report). These suggestions include requiring reporting of the interest rate on a loan, the fees associated with a loan, whether a loan is subprime, and the applicant's credit score, debt-to-income ratio, and age. The Board received other suggestions at hearings on possible changes to the Home Ownership and Equity Protection Act (HOEPA) held in Charlotte, Boston, Chicago, and San Francisco.[4]

The staff has analyzed the suggestions received from these and other sources—focusing on whether the likely benefits from each suggestion exceed the probable burdens. In its review of possible changes to Regulation C, the staff met with a wide range of interested parties, including industry and consumer representatives, and officials of financial regulatory and fair lending enforcement agencies. The staff's analysis of possible changes has been guided by consideration of the purposes of the statute. In each case, the staff has considered

[3] While no precise definition of this term exists, predatory lending can be regarded as lending activities that, for example, involve targeting financially unsophisticated homeowners—frequently those having significant equity in their homes—for loans with high rates and fees and with repayment terms that are difficult or impossible to meet, thus putting their homes at risk. In addition, fraud or unlawful representations by brokers or lenders are often features of predatory lending.

[4] In 1994, HOEPA amended the Truth in Lending Act. The Act restricts certain loan terms, such as balloon payments in home-equity loans, where (1) the APR exceeds by more than 10 percentage points the yield on Treasury securities of comparable maturity to the loan, or (2) the total points and fees payable by the consumer exceed the greater of 8 percent of the loan amount or a dollar figure that is adjusted annually (currently $451).

whether changes to Regulation C could be proposed that might help the public and the regulatory agencies to better understand the mortgage markets, in light of changes that have been taking place in the past decade. The staff gave special attention to data associated with the subprime market—given that this sector has grown substantially in recent years and also in light of concerns that it is the market sector in which predatory lending practices appear more likely to occur.

Based on the comments and on its own analysis, the staff recommends that the Board propose certain changes to Regulation C. The recommended changes pertaining to the coverage of transactions would broaden the data available on the home mortgage market generally and on the subprime market in particular; they would also reduce inconsistencies among the data reported. One recommended change would expand the coverage of nondepository lenders. Specifically, the staff recommends:

- Simplifying the definition of a "refinancing." The current definition offers lenders several options for deciding which refinancings to report; the recommended simplification would establish a definition applicable to all lenders. This would generate more complete and consistent data.

- Requiring lenders to report requests for preapproval. The rule recommended would capture requests for preapproval that are applications for credit, which are covered by the act. Requests for preapproval have been excluded from reporting under HMDA because of earlier concerns about how to differentiate between applications for credit and requests for prequalification. Defining coverage narrowly would limit compliance burden.

- Simplifying the definition of a reportable home improvement loan. In a change to the present reporting system, all loans for the purpose of home improvement would be reported; currently, lenders may exclude them if they do not classify them as home improvement loans. This would produce more consistent data.

- Requiring lenders to report home-equity lines of credit. The reporting of home-equity lines of credit, which is now optional, would become mandatory. Research by Board staff has shown that most home-equity lines of credit are used in part for home improvement purposes, so mandatory coverage would provide more complete information about the home improvement market. Gathering information about home improvement loans has been required by HMDA since its enactment in 1975.

- Expanding coverage of nondepository lenders. Nondepository lenders are particularly active in the subprime market. The staff recommends adding a dollar-volume threshold of $50 million to the current loan-percentage test to better ensure that all significant lenders are covered.

The staff recommendations would also require lenders to report additional items of data that would enhance understanding of the home mortgage market generally and the subprime market in particular. Capturing these data would also assist fair lending enforcement. Specifically, the staff recommends requiring institutions to report:

- The annual percentage rate (APR) of the loan and whether the loan is subject to HOEPA; and

- Whether the loan or application involves a manufactured home.

Each of the staff's recommendations directly addresses one or more of HMDA's purposes, which include helping to determine whether financial institutions are serving the housing needs of their communities and assisting in fair lending enforcement. The staff believes that the benefits of each recommendation—and of the combined package—exceed the additional burden that would be imposed.

Clarifying the definitions of refinancings and home improvement loans (including mandating the coverage of home-equity lines of credit) is necessary if those categories of HMDA data are to be made useful to the agencies and the public. Covering requests for preapproval is necessary to fully implement the statutory coverage of an "application." The narrowly drawn definition should mitigate the burden caused by the change. Amending the coverage test applicable to nondepository lenders will better ensure that significant participants in the mortgage market report under HMDA. The recommendations to require the reporting of pricing information and manufactured home status would produce data useful

for fair lending analysis and helpful in understanding the subprime market. To reduce burden, these recommendations leverage existing regulatory definitions or requirements.

Some of the recommended changes have been under consideration for several years. For example, the staff has recognized for some years that the analysis of aggregate data on certain metropolitan areas is complicated by the lack of separate reporting of manufactured home transactions, which have underwriting standards significantly different from those of transactions involving site-built homes. The staff has waited to propose the separate reporting of these loans, together with other revisions, so that lenders could make all upcoming changes to their software and data collection systems at one time and minimize disruption.

There are many data collections suggested by other agencies and the public that, after careful consideration, the staff is not recommending. Attachment B discusses specific examples, which include such items as reporting the interest rate on loans and the identification of subprime loans. Generally, the staff determined that in these cases a requirement to collect the data entailed burden not clearly justified by the resulting benefits at this time. In some cases, the staff is recommending alternatives that would generate greater benefits with less burden. The draft Federal Register notice solicits comment on whether each of the additional data collections—and all of them taken together—would enhance HMDA data sufficiently to justify the burden they would impose. In addition, the draft Federal Register notice solicits comment on whether institutions should be required to report the loan-to-value ratio (LTV), the reasons why a loan application was denied, and the identities of their parent companies, if any.

The staff believes that, taken as a whole, the recommended changes to Regulation C strike an

appropriate balance between benefit and burden. The staff also took into account the fact that the recommendations cannot be evaluated in isolation, but must be assessed in the context of reporting requirements under other applicable laws and regulations. Nonetheless, the draft Federal Register notice (Attachment A) solicits the public's views on whether there are other ways in which to implement the proposed changes that would further lessen and mitigate the anticipated burden.

Several technical changes—in addition to the substantive changes discussed in this memorandum—are discussed in the draft Federal Register notice.

DISCUSSION:

I. Recommended Changes Regarding Coverage

A. Nondepository Lenders

HMDA defines a covered nondepository lender as "any person engaged for profit in the business of mortgage lending." Congress added this language to the statute in a 1989 amendment that for the first time brought unaffiliated nondepository mortgage lenders within the scope of HMDA.

To implement the statutory language, the Board adopted a coverage test focusing on a lender's home purchase mortgage lending as a proportion of its overall lending volume. Specifically, a nondepository mortgage lender is covered if in the preceding year its home purchase loan originations, including refinancings of home purchase loans, equaled or exceeded 10 percent (by dollar volume) of all its loan originations.[5] The Board intended this test to avoid coverage of lenders that, although making some mortgage loans, arguably were not engaged "in the business of" mortgage lending.

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[5] In addition, under Regulation C, a nondepository lender is exempt if its total assets, combined with those of any parent corporation, were $10 million or less on the preceding December 31, and if the institution originated fewer than 100 home purchase loans (again, including refinancings of home purchase loans) in the preceding calendar year. There is also a location test, under which a nondepository lender is exempt if on the preceding December 31 it had no

The staff has noted for some time that this test exempts lenders originating large volumes of home purchase loans, when more than 90 percent of their originations involve credit card loans or other non-home purchase products. The HUD/Treasury Report recommended the modification or elimination of the 10 percent test.

The staff recommends preserving the existing test, while adding a dollar-volume threshold to ensure coverage of nondepository lenders that are significant participants in the home mortgage market. Specifically, a nondepository lender would be required to report HMDA data if its prior-year home purchase loan originations, including refinancings of home purchase loans, equaled or exceeded $50 million, even if they did not equal or exceed 10 percent of total originations.

The average amount of a home purchase loan reported under HMDA is about $120,000, so a lender with annual home purchase originations (including refinancings) of $50 million would have originated between 400 and 500 loans. Among mortgage lenders covered in 1999, approximately half reported originations of $50 million or less. This suggests that a coverage threshold of $50 million is a reasonable test of whether such a lender is "engaged . . . in the business of mortgage lending." The draft Federal Register notice solicits comment on whether $50 million is an appropriate threshold.

B. Revising the Definition of a "Refinancing"

Regulation C requires the reporting of refinancings of home purchase and home improvement loans. The regulation defines a refinancing as a loan that satisfies and replaces an existing obligation by the same borrower.

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office in a metropolitan area, and received applications for, originated, or purchased fewer than five home purchase or

The Board has adopted several successive approaches to determining whether an application is for the refinancing of a home purchase or home improvement loan. At one time, Regulation C permitted the reporting of refinancings only if they involved an increase in the outstanding principal amount of the loan. This approach did not adequately cover refinancing activity, such as rate-driven refinancings.

For some years thereafter, Regulation C provided that a loan was covered if the balance owed on the existing loan, plus the amount of new money for home purchase or home improvement purposes, exceeded half of the total new loan amount. But lenders found this computation burdensome—for example, because they were often unable to determine the portion of new money used for the specified purposes. These difficulties also impaired the accuracy and consistency of the data.

To facilitate compliance, Regulation C currently identifies four scenarios typical of the refinancing of a home purchase or home improvement loan. It allows lenders to select from among them in deciding on which refinancings to report. The four scenarios are:

> (1) the existing obligation was a home purchase or home improvement loan, as determined by the lender (for example, by reference to available documents); or
>
> (2) the applicant states that the existing obligation was a home purchase or home improvement loan; or
>
> (3) the existing obligation was secured by a lien on a dwelling; or
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> (4) the new obligation will be secured by a lien on a dwelling.

This rule eases burden, but it generates inconsistent data to the extent that different lenders choose different scenarios to determine if their refinancings are to be reported. Moreover, it is impossible for the data user to know what the data represent. The proposed rule makes it more likely

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home improvement loans in a metropolitan area in the preceding calendar year.

that the HMDA reporting will capture refinancings of loans originally for home purchase or home improvement.

In the Advance Notice, the Board solicited comment about whether changes to the refinancing category would produce more useful data, as well as whether such changes could ease compliance burden. A number of commenters suggested modifications. Some, including community groups, federal agencies, and others, contended that the existing definition does not result in the collection of useful data because the types of refinancings reported can vary widely from one lender to another. Several financial institutions suggested dropping refinancings from coverage altogether. Others suggested permitting only those refinancings to be reported that satisfy and replace home purchase or home improvement loans, or suggested replacing the home improvement and refinancing categories with a single category consisting of all nonpurchase loans secured by a dwelling.

Based on the public comments and its own analysis, the staff recommends that the Board propose to revise the definition of a refinancing for reporting purposes. A refinancing would be defined as a new obligation satisfying and replacing an existing obligation by the same borrower, where both the existing and the new obligations are secured by a lien on a dwelling. The recommended definition would reduce the inconsistency of refinancing data, because all lenders would be required to report using a single two-pronged test.

The staff also recommends that the Board solicit comment on whether the definition should include not only refinancings where the existing loan was a dwelling-secured loan, but in addition refinancings of unsecured debt, as long as the new loan is dwelling-secured. Under this alternative, for example, a lender that pays off a consumer's existing unsecured loan by extending a new, dwelling-

secured loan to that consumer would report the new loan.

This expanded reporting would entail additional burden to the extent that lenders must adopt a different regimen for identifying covered refinancings. The staff believes, however, that the increased burden would be outweighed by benefits of more focused coverage and more consistent and complete data. The draft Federal Register notice solicits comment on whether the recommended change strikes the right balance between benefit and burden.

C. Reporting Requests for Preapproval

A consumer who wants to purchase a dwelling may request a lender to provide a "preapproval" or commitment, based on a comprehensive underwriting, to make a mortgage loan once the consumer identifies an acceptable property.[6] Regulation C currently instructs lenders not to report these requests. Under the present rule, if a request for preapproval ultimately results in an origination, it is the origination, not the preapproval, that is reported.

[6] Requests for preapproval are to be distinguished from requests for "prequalification." The latter generally involve a cursory review of the consumer's creditworthiness; they do not result in a conditional commitment to extend credit.

Requests for preapproval disposed of in other ways—for example, those that are denied—go unreported.

The Advance Notice asked how requests for preapproval should be defined in the event they are covered. One option presented was to direct lenders to report all requests for credit that, in the case of denials, trigger an adverse action notice under Regulation B (Equal Credit Opportunity). These include all requests regarding which: (1) the creditor evaluates information about the consumer; (2) decides to decline the request; and (3) communicates the decision to the consumer. Some commenters believed that, assuming the Board amended Regulation C to cover requests for preapproval, parallel coverage under both regulations would reduce compliance burden. Other commenters countered that adopting the Regulation B approach would distort the data, capturing denied requests but not requests that are approved but do not lead to an origination.

The issue is whether a consumer who asks for preapproval has filed an application for credit or whether a preapproval is a preliminary exercise. In August 1999, the Board published a proposed rule under Regulation B. The proposal revised the term "application" to include requests for preapproval made under procedures in which a creditor issues creditworthy persons a written commitment to extend credit that may be limited in three ways: (1) the lender specifies the maximum amount of credit that it commits to extend; (2) the lender specifies the period of time during which the commitment remains valid; and (3) the commitment may be subject to conditions.

Based on public comment and on further analysis, the staff recommends that the Board propose to cover requests for the preapproval of home purchase loans under Regulation C using the same definition as in the Regulation B proposal of August 1999. Under this approach, only a limited number

of highly-structured preapproval programs would be covered—those most like programs involving traditional mortgage applications. The recommendation would not cover more informal prequalification programs in which the underwriting may be less rigorous and the lender makes no binding, written commitment.

The statute requires that lenders report loan applications. The staff believes—in this context as under Regulation B—that requests for preapproval, defined in the fashion proposed, represent applications and thus should be reported. Moreover, requests for preapproval are an increasingly prevalent feature of the home mortgage lending process, and the recommended change would provide data about this developing part of the market. And although information about denied requests for preapproval would not include the property location, information about the race or national origin and gender of the applicant could be useful in fair lending enforcement.

The narrow scope of the recommended definition would promote the consistency and accuracy of the data collected—for example, all the data would include information about the amount of the commitment. The recommended definition would also avoid affecting home-ownership counseling programs, which typically do not involve a credit decision by a lender.

The staff considered whether the Board should propose requiring lenders to differentiate requests for preapproval from other applications—for example, through a separate code—or to distinguish actions taken on requests for preapproval from actions taken on other applications. The staff believes the resulting burden would likely exceed the value of these data. The draft Federal Register notice, however, solicits comment on whether lenders should use separate codes to identify requests for

preapproval and the actions taken on them—and, more generally, on whether the recommendations regarding requests for preapproval strike the right balance between benefit and burden.

D. Revising the Definition of a "Home Improvement Loan" and Requiring Creditors to Report Home-Equity Lines of Credit

The Advance Notice solicited comment on whether the reporting categories currently in use should be modified to simplify compliance and improve the usefulness of the data. The Board received a range of responses. Some suggested that the Board change the existing categories—for example, by eliminating the requirement to report home improvement loans, or by revising the definition of a home improvement loan. Others suggested replacing the existing home improvement and refinancing categories with a single category consisting of all nonpurchase loans secured by a dwelling.

The staff is not recommending that the Board propose wholesale changes to the home improvement category. The staff recommends limited changes, as discussed below.

1. Definition of a Home Improvement Loan

Regulation C defines a home improvement loan as any loan classified as such by the lending institution and any part of whose proceeds are to be used for the improvement of a dwelling or the related real property. This definition was intended to minimize burden by not requiring institutions to determine whether a loan is a home improvement loan for HMDA purposes if the loan is classified otherwise by the institution. For example, a lender that makes home improvement loans on an installment basis, and classifies them as installment loans (without differentiating between home improvement loans and loans for other purposes) is not required to report those home improvement loans under HMDA.

The resulting data have proven to be of limited usefulness to examiners, community groups, and

other data users. Institutions' classification schemes differ, making the data inconsistent; and not all loans for home improvement purposes are reported because some are classified as other types of credit.

The staff recommends dropping the classification test. Instead, lenders would be required to report a loan as a home improvement loan if any part of the proceeds is to be used for home improvement, regardless of how the lender classifies the loan. In determining whether loan proceeds are intended for home improvement purposes, lenders could rely on applicants' statements, and would not be required to take any other steps to determine the purpose of the loan. For example, a lender could use a check-box on a loan application to determine whether or not a loan is intended for home improvement purposes.

Redefining home improvement loans as recommended would increase reporting burden by requiring lenders to report a larger number of loans. The staff believes that this compliance burden is justified in order to make home improvement loan data more consistent, complete, and, therefore, useful. The draft Federal Register notice solicits comment on whether the benefits of the recommended change justify the burden.

2. Reporting Home-Equity Lines of Credit

If a home-equity line of credit is to be used for home improvement purposes, an institution currently has the option to report the amount of the line to be used for those purposes as a home improvement loan or not to report credit lines at all. Although most home-equity lines are used, at least in part, for home improvement purposes, some institutions

include home-equity credit lines in their reported home improvement loan data while others do not.[7]

To improve the completeness and comparability of data when lending proceeds are used for home improvement purposes, the staff recommends requiring that all applications for home-equity lines of credit be reported. Also, to facilitate comparisons between the markets for open-end home-equity lines and closed-end home improvement loans—which have distinct demographic characteristics—the staff recommends that the two products be reported separately. Accordingly, the staff recommends that the Board propose to exclude home-equity lines of credit from the definition of a home improvement loan, and place them in their own category.

To simplify the reporting of home-equity lines, and to make reporting more comparable with the reporting of home improvement loans, institutions would report the full amount of a credit line, rather than seeking to ascertain the amount that the borrower intends to use for home improvement purposes. The draft proposed rule specifically solicits comment on whether this approach would, in fact, simplify reporting, as well as on the more general
question of whether the burden resulting from the recommended changes regarding home-equity lines of credit justify the burden that would result from them.

E. Exempting Loans Acquired through a Branch Acquisition

HMDA requires institutions to report all loans that they purchase, including loans purchased in bulk. Section 305 of the statute gives the Board authority to adopt regulations that "contain such classifications, differentiations, or other provisions, and [to] provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary and proper to effectuate the

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[7] See Glenn B. Canner, Thomas A. Durkin, and Charles A. Luckett, "Recent Developments in Home Equity Lending," Federal Reserve Bulletin, vol. 84 (April 1998), pp. 241-251.

purposes of [the statute]." Under this authority, the Board has excluded loans acquired through a merger or acquisition from the reporting requirements of Regulation C.

The Advance Notice solicited comment on whether HMDA data for loans purchased as part of a branch acquisition are useful and whether the exclusion currently allowed for loans obtained through a merger should be extended to such loans. Most commenters who addressed this issue—primarily financial institutions—believed the data would not be useful and need not be reported. These commenters argued that the purchase of a loan as part of a branch acquisition, like the purchase of loans as part of a merger, is not primarily a credit decision but rather is incidental to an investment decision—in this case, to acquire the branch. These commenters also contended that such reporting is burdensome. Some commenters, including community groups and a few financial institutions, urged the Board not to expand the merger exception because doing so would reduce the publicly available data about creditors' loan acquisitions.

Based on the comments and on its own analysis, the staff recommends that the Board propose to exclude loans purchased as part of a branch acquisition from HMDA's reporting requirements. A "branch acquisition" entails the purchase of all the assets and liabilities of a branch of a depository institution; it need not involve the purchase of the branch's physical facilities. Loans purchased as part of a branch asset sale (not including sale of the branch's liabilities) would continue to be reported.

F. Solicitation of Comments on Alternative Approach to Categorizing Loans

Under the current regulation, the categories of loans reported are (1) home purchase loans, (2) home improvement loans, and (3) refinancings. The staff recommends that the Board solicit comment on an alternative approach to categorizing loans for reporting purposes. This approach would require the reporting of more loans—which could enhance some depository institutions' performance under the Community Reinvestment Act—while potentially limiting the additional burden for depository institutions because of its similarity to categories familiar to them from the Call Report or the Thrift Financial Report.[8] The draft Federal Register notice solicits comment on whether lenders would experience more benefit than burden under this approach.

The alternative approach would eliminate refinancings and home improvement loans (except for unsecured home improvement loans) as distinct categories.[9] Instead, the categories reported would be (1) home purchase loans (subdivided into first and junior liens), (2) other mortgage loans (similarly subdivided), (3) home-equity lines of credit, and (4) unsecured home improvement loans. The alternative approach would cover the mortgage lending market more fully than either the current regulation or the proposed revision—for example, by capturing closed-end home-equity loans that are made for purposes other than home improvement.

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[8] The Call Report categories include first lien closed-end mortgage loans, junior lien closed-end mortgage loans, open-end mortgage loans (that is, home-equity lines of credit), and unsecured consumer loans, subdivided into open-end and closed-end loans. The Thrift Financial Report is similar, but does not subdivide closed-end mortgage loans into first and junior liens, and shows unsecured home improvement loans as a subdivision of unsecured closed-end consumer loans. Refinancings are not treated as a separate category in the Call Report or Thrift Financial Report.

[9] HMDA defines a loan subject to reporting as "a loan which is secured by residential real property or a home improvement loan," implying that unsecured home improvement loans are covered by the statute.

II. Recommended Changes Regarding Data To Be Reported

The Board has received many suggestions that it amend Regulation C to require lenders to collect additional data. The staff believes that some of the suggested additional data could help in understanding mortgage lending patterns, particularly in the subprime market, and in enforcing the fair lending laws. Therefore, the staff recommends that the Board propose amending Regulation C to require the reporting of certain additional data, discussed below. This action would be taken pursuant to the Board's authority under section 305 of the statute to adopt new provisions to carry out the act's purposes.

A. Annual Percentage Rate

HMDA data currently include no information on loan pricing. The staff recommends that the Board propose to require that creditors report the APR charged on a loan. This information would ease the identification of subprime loans, which have different characteristics, such as denial rates, from other home mortgage loans. These data may also help supervisory agencies identify practices that potentially raise fair lending concerns and warrant further investigation.

To minimize the burden imposed, the requirement would apply only to loans that are covered by the Truth in Lending Act (TILA) and for which the lender is required to disclose the APR to the consumer. (For example, if the borrower withdraws an application before the lender is required to disclose the APR under Regulation Z, the lender would not be required to report the APR under Regulation C.) The APR must be calculated and disclosed by the lender to comply with TILA in any case, although software changes would be required to capture APR data for HMDA reporting purposes.

Some loans covered by HMDA, such as loans made to corporate borrowers or for multifamily properties, would not be covered by the reporting requirement because they are not subject to TILA.[10]

B. HOEPA Status

Obtaining information on the volume and pattern of lending covered under HOEPA would be useful for better understanding the mortgage market, particularly the subprime market. The staff recommends that the Board propose to require that HMDA reporters indicate whether a loan is covered by the HOEPA provisions, as implemented in Regulation Z. To limit the burden imposed, reporting of this item would be required only for the same loans that would be subject to the APR-reporting requirement (loans covered by Regulation Z and for which the lender is required to disclose an APR).

C. Manufactured Home Status

Currently, loans to purchase mobile and other manufactured homes are reported together with loans to purchase site-built or other types of housing. The Advance Notice solicited comment on whether the Board could improve the usefulness of HMDA data by requiring reporters to identify transactions involving manufactured homes. (The Advance Notice referred to "mobile homes," which are a type of manufactured home. The following discussion employs the broader term.)

[10] TILA disclosure requirements apply only to loans to consumers for personal, family, or household purposes; therefore, commercial loans are excluded. In addition, several other types of credit, such as public utility credit, securities credit, and credit over $25,000 not secured by a lien on a dwelling, are exempted from TILA.

Many commenters—including the federal agencies charged with enforcing the fair lending laws—believed that the Board should require creditors to distinguish loans and applications that involve manufactured homes from other transactions. These commenters contended that such a requirement would further HMDA's purpose of providing the public with data useful in identifying possible discriminatory lending patterns and in enforcing antidiscrimination statutes. Manufactured home loans are typically underwritten differently from other home mortgage loans and have different denial rates. So distinguishing manufactured home transactions, commenters believed, would help those analyzing HMDA data to determine whether a lender's high denial rates are due to its focus on manufactured home lending rather than to some potentially unlawful practice. Other commenters—such as financial institution trade associations—opposed distinguishing transactions involving manufactured homes.

Based on the comments and on its own analysis, the staff recommends that the Board propose to require that creditors identify manufactured home loans and applications. The proposal would identify these loans by using a widely understood definition that appears in the Department of Housing and Urban Development regulation that establishes construction and safety standards for manufactured homes.

III. Other Recommended Changes

A. Reorganizing Regulation C

Currently, formal guidance for compliance with HMDA is contained in Regulation C, in the instructions for completing the loan/application register (Appendix A to the regulation), in the instructions for the collection of certain applicant data (Appendix B), and in the staff commentary. Informal guidance is provided in the FFIEC's "A Guide to HMDA Reporting: Getting It Right!" Compliance officers and other commenters have expressed concern about having to consult several sources to locate a requirement or interpretation dealing with a particular issue.

The Advance Notice solicited comment on the benefit of incorporating all of the interpretive materials into the commentary, reducing the instructions in Appendix A to code descriptions, and reorganizing the material within the regulation. These changes were supported by most of the commenters that addressed them—including both data reporters and data users. They believed that a reorganization would make the regulation easier to understand and decrease possible misinterpretations by reporters and others. For these commenters, the benefits of simplification outweighed the burden of learning a new system of organization.

Several financial institutions opposed any changes. They considered Regulation C easy to understand and expressed concern that the benefits of reorganization did not justify the burden of relearning the regulation. A few commenters recommended streamlining the reporting requirements, rather than the interpretive material, to reduce burden.

Based on the comments and on its own analysis, the staff has reorganized the regulation and commentary, eliminated redundant provisions, revised the instructions to make reporting easier, and made other changes—such as rewording some provisions—so that the regulation becomes more user-friendly.

B. Technical Changes

The staff also recommends a number of technical changes. Discussed in the attached draft Federal Register notice, these changes would, among other things:

- Conform the race and ethnicity categories used in Regulation C to the categories prescribed by the Office of Management and Budget (OMB) in its revised "Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity," which apply to data collection and reporting by federal agencies. The Bureau of the Census uses these OMB standards, for example, in its decennial and other data collections.

- Clarify that institutions reporting data under both HMDA and the Community Reinvestment Act must report the county, state, and metropolitan area of mortgaged property located outside the metropolitan areas where the institutions have offices, but in certain cases need not report the census tract.

RECOMMENDATION

The staff recommends that the Board issue a proposal to revise Regulation C. A draft Federal Register notice appears as Attachment A.[11]

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[11] Attachment A excludes forms (such as the form of the loan/application register) that constitute part of Regulation C, pending the Board's decisions on the staff's recommendations.

Attachment A

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R-]

HOME MORTGAGE DISCLOSURE

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; proposed staff interpretation.

SUMMARY: The Board is proposing amendments to Regulation C (Home Mortgage Disclosure) and to the commentary that applies and interprets Regulation C. These amendments would simplify the definition of a "refinancing," require lenders to report requests for preapproval, simplify the definition of a reportable home improvement loan, require lenders to report home-equity lines of credit, expand coverage of nondepository lenders, and require lenders to report the annual percentage rate of a loan, whether the loan is subject to the Home Ownership and Equity Protection Act, and whether the loan or application involves a manufactured home. The Board also proposes to reorganize the regulation and to make other changes.

DATE: Comments must be received by [insert date 60 days after published in Federal Register].

ADDRESSES: Comments directed to the Board should refer to Docket No. R-____ and may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551, or mailed electronically to

regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room at all other times. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Members of the public may inspect comments in room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: John C. Wood, Counsel, James H. Mann, Senior Attorney, or Kathleen C. Ryan, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-3667 or (202) 452-2412. For users of Telecommunications Device for the Deaf (TDD) *only*, contact Janice Simms at (202) 452-4984.

SUPPLEMENTARY INFORMATION:

I. Background on HMDA and Regulation C

The Home Mortgage Disclosure Act (HMDA) requires depository and certain for-profit, nondepository institutions to collect, report, and disclose data about originations and purchases of home mortgage and home improvement loans. Institutions must also report data about applications that do not result in originations.

The Board's Regulation C implements HMDA. Regulation C generally requires that institutions report data about:

- Each application or loan, including the application date; the action taken and the date of that action; the loan amount; the loan type and purpose; and, if the loan is sold, the type of purchaser;

- Each applicant or borrower, including national origin or race, gender, and annual income; and

- Each property, including occupancy status and location.[1]

HMDA data can be used to help determine whether institutions are serving the housing needs of their communities. The data help public officials target public investment to attract private investment where it is needed. HMDA data also assist in identifying possible discriminatory lending patterns and in enforcing antidiscrimination statutes.

II. The Board's Review of Regulation C

The Board reviews its regulations periodically to identify ways to clarify and simplify the regulatory language; respond to technological and other developments; reduce undue regulatory burden on the industry; delete obsolete provisions; and improve the quality and usefulness of the data. The review of Regulation C began in March 1998 when the Board published an Advance Notice of Proposed Rulemaking (Advance Notice; 63 Fed. Reg. 12329 (March 12, 1998)). In the Advance Notice, the Board identified several possible areas for revision, including: reporting requests for preapproval; exempting loans acquired in a branch acquisition; reporting construction loans and other temporary financing; revising the definitions of reportable refinancings and home improvement loans; reporting manufactured home loans as a separate category; and requiring lenders to report additional data, such as reasons for denial and the appraised value of the property securing a loan. The Board

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[1] Institutions report these data to their supervisory agencies on an application-by-application basis using a register format. Institutions must make their loan/application registers available to the public, with certain fields redacted to preserve applicants' privacy. The Federal Financial Institutions Examination Council (FFIEC), on behalf of the supervisory agencies, compiles the reported data and prepares an individual disclosure statement for each institution, aggregate reports for all covered institutions in each metropolitan area, and other reports. These disclosure statements and reports are also available to the public.

received approximately 100 comment letters. Most commenters addressed only the issues identified in the Advance Notice.

The Board has received many suggestions on how it might use its authority under HMDA to increase understanding of the mortgage markets and to assist in fair lending enforcement. These suggestions have been the main focus of the Board's comprehensive review of the regulation and of its development of proposed revisions.

Other suggestions for change related to increased public and agency concerns about "predatory lending" practices.[2] Some of them were presented in Curbing Predatory Home Mortgage Lending, a report by the Department of Housing and Urban Development and the Department of the Treasury submitted to the Congress in June 2000 (HUD/Treasury Report). These suggestions include requiring reporting of the interest rate on a loan, the fees associated with a loan, whether a loan is subprime, and the applicant's credit score, debt-to-income ratio, and age. The Board received other suggestions at hearings on possible changes to the Home Ownership and Equity Protection Act (HOEPA; Pub. L. 103-325) held in Charlotte, Boston, Chicago, and San Francisco. See 65 Fed. Reg. 42889 (July 12, 2000).[3]

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[2] While no precise definition of this term exists, predatory lending can be regarded as lending activities that, for example, involve targeting financially unsophisticated homeowners—frequently those having significant equity in their homes—for loans with high rates and fees and with repayment terms that are difficult or impossible to meet, thus putting their homes at risk. In addition, fraud or unlawful representations by brokers or lenders are often features of predatory lending.

[3] In 1994, HOEPA amended the Truth in Lending Act. The Act restricts certain loan terms, such as balloon payments in home-equity loans, where (1) the APR exceeds by more than 10 percentage points the yield on Treasury securities of comparable maturity to the loan, or (2) the total points and fees payable by the consumer exceed the greater of 8 percent of the loan amount or a dollar figure that is adjusted annually (currently $451).

The Board has analyzed the suggestions received from these and other sources—focusing on whether the likely benefits from each suggestion exceed the probable burdens. In its review of possible changes to Regulation C, the Board met with a wide range of interested parties, including industry and consumer representatives, and officials of financial regulatory and fair lending enforcement agencies. The Board's analysis of possible changes has been guided by consideration of the purposes of the statute. In each case, the Board has considered whether changes to Regulation C could be proposed that might help the public and the regulatory agencies to better understand the mortgage markets, in light of changes that have been taking place in the past decade. The Board gave special attention to data associated with the subprime market—given that this sector has grown substantially in recent years and also in light of concerns that it is the market sector in which predatory lending practices appear more likely to occur.

Based on the comments and on its own analysis, the Board is proposing certain changes to Regulation C. The proposed changes pertaining to the coverage of transactions would broaden the data available on the home mortgage market generally and on the subprime market in particular; they would also reduce inconsistencies among the data reported. One recommended change would expand the coverage of nondepository lenders. Specifically, Board proposes:

- <u>Simplifying the definition of a "refinancing."</u> The current definition offers lenders several options for deciding which refinancings to report; the proposed simplification would establish a definition applicable to all lenders. This would generate more complete and consistent data.

- Requiring lenders to report requests for preapproval. The rule proposed would capture requests for preapproval that are applications for credit, which are covered by the act. Requests for preapproval have been excluded from reporting under HMDA because of earlier concerns about how to differentiate between applications for credit and requests for prequalification. Defining coverage narrowly would limit compliance burden.

- Simplifying the definition of a reportable home improvement loan. In a change to the present reporting system, all loans for the purpose of home improvement would be reported; currently, lenders may exclude them if they do not classify them as home improvement loans. This would produce more consistent data.

- Requiring lenders to report home-equity lines of credit. The reporting of home-equity lines of credit, which is now optional, would become mandatory. Research by Board staff has shown that most home-equity lines of credit are used in part for home improvement purposes, so mandatory coverage would provide more complete information about the home improvement market. Gathering information about home improvement loans has been required by HMDA since its enactment in 1975.

- Expanding coverage of nondepository lenders. Nondepository lenders are particularly active in the subprime market. The Board proposes adding a dollar-volume threshold of $50 million to the current loan-percentage test to better ensure that all significant lenders are covered.

The Board's proposals would also require lenders to report additional items of data that would enhance understanding of the home mortgage market generally and the subprime market in particular. Capturing these data would also assist fair lending enforcement. Specifically, the Board proposes requiring institutions to report:

- The annual percentage rate (APR) of the loan and whether the loan is subject to HOEPA; and

- Whether the loan or application involves a manufactured home.

Each of the Board's proposals directly addresses one or more of HMDA's purposes, which include helping to determine whether financial institutions are serving the housing needs of their communities and assisting in fair lending enforcement. The Board believes that the

benefits of each recommendation—and of the combined package—exceed the additional burden that would be imposed.

Clarifying the definitions of refinancings and home improvement loans (including mandating the coverage of home-equity lines of credit) is necessary if those categories of HMDA data are to be made useful to the agencies and the public. Covering requests for preapproval is necessary to fully implement the statutory coverage of an "application." The narrowly drawn definition should mitigate the burden caused by the change. Amending the coverage test applicable to nondepository lenders will better ensure that significant participants in the mortgage market report under HMDA. The recommendations to require the reporting of pricing information and manufactured home status would produce data useful for fair lending analysis and helpful in understanding the subprime market. To reduce burden, these recommendations leverage existing regulatory definitions or requirements.

Some of the proposed changes have been under consideration for several years. For example, the Board has recognized for some years that the analysis of aggregate data on certain metropolitan areas is complicated by the lack of separate reporting of manufactured home transactions, which have underwriting standards significantly different from those of transactions involving site-built homes. The Board has waited to propose the separate reporting of these loans, together with other revisions, so that lenders could make all upcoming changes to their software and data collection systems at one time and minimize disruption.

There are many data collections suggested by other agencies and the public that, after careful consideration, the Board is not proposing. Generally, the Board determined that in these cases a requirement to collect the data entailed burden not clearly justified by the resulting benefits at this time.

In some cases, the Board is proposing alternatives that would generate greater benefits with less burden. The Board solicits comment on whether each of the additional data collections—and all of them taken together—would enhance HMDA data sufficiently to justify the burden they would impose. In addition, the Board solicits comment on whether institutions should be required to report the loan-to-value ratio (LTV), the reasons why a loan application was denied, and the identities of their parent companies, if any. See section 4(a)(9).

The Board believes that, taken as a whole, the proposed changes to Regulation C strike an appropriate balance between benefit and burden. The Board also took account of the fact that the proposals cannot be evaluated in isolation, but must be assessed in the context of reporting requirements under other applicable laws and regulations. Nonetheless, the Board solicits the public's views on whether there are other ways in which to implement the proposed changes that would further lessen and mitigate the anticipated burden, on all other aspects of the proposed changes, and on any other issues that might warrant further review. After evaluating the comments, the Board will publish a final rule.

III. Discussion of Proposed Revisions

The following discussion generally tracks the regulation (including its appendices) as the Board proposes to reorganize it. Proposed revisions to the staff commentary are addressed under the sections of the regulation that they interpret. Also discussed under the pertinent sections are issues regarding which the Board does not propose any revision. Proposed conforming and non-substantive changes to the regulation and commentary generally are not separately discussed. A few particularly significant features of the proposed reorganization are discussed specifically.

Before turning to the definitions section of the regulation, the Board solicits comment on an alternative system for categorizing loans to be reported. Also, the Board has grouped under a single section (4(a)(9)) its proposals to require lenders to report additional data that it believes will help enhance public understanding of the home mortgage lending market in general and the subprime market in particular.

Solicitation of Comment on Alternative System of Categorizing Loans

Under the current regulation, the categories of loans reported are (1) home purchase loans, (2) home improvement loans, and (3) refinancings. The Board solicits comment on an alternative approach to categorizing loans for reporting purposes. This approach would require the reporting of more loans—which could enhance some depository institutions' performance under the Community Reinvestment Act of 1977 (CRA; 12 U.S.C. 2901 et seq.)—while potentially limiting the additional burden for depository institutions because of its similarity to categories familiar to them from the Call Report or the Thrift Financial Report.[4] The Board specifically solicits public comment on whether lenders would experience more burden than benefit under this approach.

[4] The Call Report categories include first lien closed-end mortgage loans, junior lien closed-end mortgage loans, open-end mortgage loans (that is, home-equity lines of credit), and unsecured consumer loans, subdivided into open-end and closed-end loans. The Thrift Financial Report is similar, but does not subdivide closed-end mortgage loans into first and junior liens, and shows unsecured home improvement loans as a subdivision of unsecured closed-end consumer loans. Refinancings are not treated as a separate category in the Call Report or Thrift Financial Report.

The alternative approach would eliminate refinancings and home improvement loans (except for unsecured home improvement loans) as distinct categories.[5] Instead, the categories reported would be (1) home purchase loans (subdivided into first and junior liens), (2) other mortgage loans (similarly subdivided), (3) home-equity lines of credit, and (4) unsecured home improvement loans. The alternative approach would cover the mortgage lending market more fully than either the current regulation or the proposed revision—for example, by capturing closed-end home-equity loans that are not made for home improvement purposes.

Section 203.2—Definitions

2(b) Application

Requests for preapproval. A consumer who wants to purchase a dwelling may request a lender to provide a "preapproval" or commitment, based on a comprehensive underwriting, to make a mortgage loan once the consumer identifies an acceptable property.[6] Regulation C currently instructs lenders not to report these requests. Under the present rule, if a request for preapproval ultimately results in an origination, it is the origination, not the preapproval, that is reported. Requests for preapproval disposed of in other ways—for example, those that are denied—go unreported.

The Advance Notice also asked how requests for preapproval should be defined in the event they are covered. One option presented was to direct lenders to report all requests for credit that, in the case of denials, trigger an adverse action notice under Regulation B (Equal Credit Opportunity). These include all requests regarding which: (1) the creditor evaluates information about the consumer;

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[5] HMDA defines a loan subject to reporting as "a loan which is secured by residential real property or a home improvement loan," implying that unsecured home improvement loans are covered by the statute.

[6] Requests for preapproval are to be distinguished from requests for "prequalification." The latter generally involve

(2) decides to decline the request; and (3) communicates the decision to the consumer. Some commenters believed that, assuming the Board amended Regulation C to cover requests for preapproval, parallel coverage under both regulations would reduce compliance burden. Other commenters countered that adopting the Regulation B approach would distort the data, capturing denied requests but not requests that are approved but do not lead to an origination.

The issue is whether a consumer who asks for preapproval has filed an application or whether a preapproval is a preliminary exercise. In August 1999, the Board published a proposed rule under Regulation B. 64 Fed. Reg. 44582 (August 16, 1999). The proposal revised the term "application" to include requests for preapproval made under procedures in which a creditor issues creditworthy persons a written commitment to extend credit that may be limited in three ways: (1) the lender specifies the maximum amount of credit that it commits to extend; (2) the lender specifies the period of time during which the commitment remains valid; and (3) the commitment may be subject to conditions.

Based on public comment and on further analysis, the Board proposes to cover requests for the preapproval of home purchase loans under Regulation C using the same definition as in the Regulation B proposal of August 1999. Under this approach, only a limited number of highly-structured preapproval programs would be covered—those most like programs involving traditional mortgage applications. The proposal would not cover more informal prequalification programs in which the underwriting may be less rigorous and the lender makes no binding, written commitment.

The statute requires that lenders report loan applications. The Board believes—in this context as under Regulation B—that requests for preapproval, defined in the fashion proposed, represent

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a cursory review of the consumer's creditworthiness; they do not result in a conditional commitment to extend credit.

applications and thus should be reported. Moreover, requests for preapproval are an increasingly prevalent feature of the home mortgage lending process, and the proposed change would provide data about this developing part of the market. And although information about denied requests for preapproval would not include the property location, information about the race or national origin and gender of the applicant could be useful in fair lending enforcement.

The narrow scope of the proposed definition would promote the consistency and accuracy of the data collected—for example, all the data would include information about the amount of the commitment. The proposed definition would also avoid affecting home-ownership counseling programs, which typically do not involve a credit decision by a lender.

The Board considered whether to propose requiring lenders to differentiate requests for preapproval from other applications—for example, through a separate code—or to distinguish actions taken on requests for preapproval from actions taken on other applications. The Board believes the resulting burden would likely exceed the value of these data. The Board does solicit comment, however, on whether lenders should use separate codes to identify requests for preapproval and the actions taken on them—and, more generally, on whether the Board's proposal regarding requests for preapproval strikes the right balance between benefit and burden.

Other matters. The current definition of an "application" refers to requests for credit made in accordance with "procedures established by a financial institution." To conform to the Board's proposed revision to Regulation B, the definition would be revised to refer to "procedures used by a financial institution." This would focus the definition on what institutions actually do, rather than what their procedures state.

2(d) Dwelling

The Board proposes to clarify, through the staff commentary, that the term "dwelling" does not apply to transitory residences such as college dormitories. This responds to requests by several commenters that the Board clarify the meaning of the term "dwelling," and to similar requests frequently received by the Board outside the notice-and-comment process.

2(e) Financial Institution

Scope of coverage. HMDA defines a covered nondepository lender as "any person engaged for profit in the business of mortgage lending." Congress added this language to the statute in a 1989 amendment that for the first time brought unaffiliated nondepository mortgage lenders within the scope of HMDA.

To implement the statutory language, the Board adopted a coverage test focusing on a lender's home purchase mortgage lending as a proportion of its overall lending volume. Specifically, a nondepository mortgage lender is covered if in the preceding year its home purchase loan originations, including refinancings of home purchase loans, equaled or exceeded 10 percent (by dollar volume) of all its loan originations.[7] The Board intended this test to avoid coverage of lenders that, although making some mortgage loans, arguably were not engaged "in the business of" mortgage lending.

The Board has noted for some time that this test exempts lenders originating large volumes of home purchase loans, when more than 90 percent of their originations involve credit card loans or other non-home purchase products. The HUD/Treasury Report recommended the modification or elimination

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[7] In addition, under Regulation C, a nondepository lender is exempt if its total assets, combined with those of any parent corporation, were $10 million or less on the preceding December 31, and if the institution originated fewer than 100 home purchase loans (again, including refinancings of home purchase loans) in the preceding calendar year. There is also a location test, under which a nondepository lender is exempt if on the preceding December 31 it had no

of the 10 percent test.

The Board proposes to preserve the existing test, while adding a dollar-volume threshold to ensure coverage of nondepository lenders that are significant participants in the home mortgage market. Specifically, a nondepository lender would be required to report HMDA data if its prior-year home purchase loan originations, including refinancings of home purchase loans, equaled or exceeded $50 million, even if they did not equal or exceed 10 percent of total originations.

The average amount of a home purchase loan reported under HMDA is about $120,000, so a lender with annual home purchase originations (including refinancings) of $50 million would have originated between 400 and 500 loans. Among mortgage lenders covered in 1999, approximately half reported originations of $50 million or less. This suggests that a coverage threshold of $50 million is a reasonable test of whether such a lender is "engaged . . . in the business of mortgage lending." The Board solicits comment on whether $50 million is an appropriate threshold.

Other matters. As part of the reorganization of the regulation, coverage criteria that currently appear in section 203.3—"Exempt Institutions"—would be consolidated under the definition of "financial institution" in section 203.3(e). Correspondingly, several staff comments that now appear under section 203.3 would appear instead under section 203.2(e).

2(f) Home-equity line of credit

The Board proposes to define a home-equity line of credit as an open-end credit plan (as defined by Regulation Z) secured by a dwelling. This is substantially consistent with the definition that

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office in a metropolitan area, and received applications for, originated, or purchased fewer than five home purchase or

the Board has long applied informally.

2(g) Home improvement loan

The Advance Notice solicited comment on whether the reporting categories currently in use should be modified to simplify compliance and improve the usefulness of the data. The Board received a range of responses. Some suggested that the Board change the existing categories—for example, by eliminating the requirement to report home improvement loans, or by eliminating the portion of the definition relating to how a lender classifies the loan. Others suggested replacing the existing home improvement and refinancing categories with a single category consisting of all nonpurchase loans secured by a dwelling.

The Board is not proposing wholesale changes to the home improvement category. The Board proposes limited changes, as discussed below.

Classification. Regulation C defines a home improvement loan as any loan classified as such by the lending institution and any part of whose proceeds are to be used for the improvement of a dwelling or the related real property. This definition was intended to minimize burden by not requiring institutions to determine whether a loan is a home improvement loan for HMDA purposes if the loan is classified otherwise by the institution. For example, a lender that makes home improvement loans on an installment basis, and classifies them as installment loans (without differentiating between home improvement loans and loans for other purposes) is not required to report those home improvement loans under HMDA.

The resulting data have proven to be of limited usefulness to examiners, community groups, and

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home improvement loans in a metropolitan area in the preceding calendar year.

other data users. Institutions' classification schemes differ, making the data inconsistent; and not all loans for home improvement purposes are reported because some are classified as other types of credit.

The Board proposes to drop the classification test. Instead, lenders would be required to report a loan as a home improvement loan if any part of the proceeds are to be used for home improvement, regardless of how the institution classifies the loan. In determining whether loan proceeds are intended for home improvement purposes, lenders could rely on applicants' statements, and would not be required to take any other steps to determine the purpose of the loan. For example, a lender could use a check-box on a loan application to determine whether or not a loan is intended for home improvement purposes. (See proposed comment 4(a)(2)-1.)

Redefining home improvement loans as proposed would increase reporting burden by requiring lenders to report a larger number of loans. The Board believes that this compliance burden is justified in order to make home improvement loan data more consistent, complete, and, therefore, useful. The Board solicits comment, however, on whether the benefits of the proposed change justify the burden.

Home-equity lines of credit. If a home-equity line of credit is to be used for home improvement purposes, an institution currently has the option to report the amount of the line to be used for those purposes as a home improvement loan or not to report credit lines at all. Although most home-equity lines are used, at least in part, for home improvement purposes, some institutions include home-equity credit lines in their reported home improvement loan data while others do not.[8]

To improve the completeness and comparability of data when lending proceeds are used for

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[8] See Glenn B. Canner, Thomas A. Durkin, and Charles A. Luckett, "Recent Developments in Home Equity Lending," Federal Reserve Bulletin, vol. 84 (April 1998), pp. 241-251.

home improvement purposes, the Board proposes to require that all applications for home-equity lines of credit be reported. Also, to facilitate comparisons between the markets for open-end home-equity lines and closed-end home improvement loans—which have distinct demographic characteristics—the Board proposes that the two products be reported separately. Accordingly, the Board proposes to exclude home-equity lines of credit from the definition of a home improvement loan, and place them in their own category.

To simplify the reporting of home-equity lines, and to make reporting more comparable with the reporting of home improvement loans, institutions would report the full amount of a credit line, rather than seeking to ascertain the amount that the borrower intends to use for home improvement purposes. The Board solicits comment on whether this approach would, in fact, simplify reporting, as well as on the more general question of whether the burden resulting from the proposed changes regarding home-equity lines of credit justify the burden that would result from them. See section 203.4(a)(2) and Appendix A, paragraphs I.A.4. and I.A.6., below.

2(h) Home purchase loan

A new staff comment would be added to clarify that if an institution making a first mortgage loan also makes a second mortgage loan that finances part or all of the borrower's downpayment, the institution reports each loan separately as a home purchase loan.

2(i) Manufactured home

The Board proposes to add a definition of "manufactured home." See the discussion under section 4(a)(9), below, regarding additional data items relating to the home mortgage lending market in general and the subprime market in particular.

2(j) Metropolitan area

Currently, Regulation C defines "metropolitan statistical area" or "MSA" to mean a metropolitan statistical area or a primary metropolitan statistical area, as defined by the U.S. Office of Management and Budget (OMB). OMB is in the process of revising the standards for defining metropolitan areas. In August 2000, OMB published a notice and request for comment entitled "Final Report and Recommendations From the Metropolitan Area Standards Review Committee to the Office of Management and Budget Concerning Changes to the Standards for Defining Metropolitan Areas" (65 Fed. Reg. 51060 (August 22, 2000)). The report recommended that OMB adopt a new concept called a "core based statistical area" (CBSA) to replace the existing metropolitan statistical area and primary metropolitan statistical area concepts. CBSAs would be subdivided into two categories, "micropolitan areas," which would be defined based on urban cores of 10,000 to 49,999 population, and "metropolitan areas," based on urban cores of 50,000 or more population. The report further stated that, if OMB adopts the recommended standards, the first areas to be designated using the revised standards and Census 2000 data could be designated in 2003.

The Board proposes to replace the term "metropolitan statistical area" with "metropolitan area." "Metropolitan area" would have the same meaning as "metropolitan statistical area" does currently, until such time as OMB adopts and implements revised standards for metropolitan areas; at that time, the term would refer to the areas as defined in the revised standards.

2(k) Refinancing

Definition. Regulation C requires the reporting of refinancings of home purchase and home improvement loans. The regulation defines a refinancing as a loan that satisfies and replaces an existing

obligation by the same borrower.

The Board has adopted several successive approaches to determining whether an application is for the refinancing of a home purchase or home improvement loan. At one time, Regulation C permitted the reporting of refinancings only if they involved an increase in the

outstanding principal. This approach did not adequately cover refinancing activity, such as rate-driven refinancings.

For some years thereafter, Regulation C provided that a loan was covered if the balance owed on the existing loan, plus the amount of new money for home purchase or home improvement purposes, exceeded half of the total new loan amount. But lenders found this computation burdensome—for example, because they were often unable to determine the portion of new money used for the specified purposes. These difficulties also impaired the accuracy and consistency of the data.

To facilitate compliance, Regulation C currently identifies four scenarios typical of the refinancing of a home purchase or home improvement loan. It allows lenders to select from among them in deciding on which refinancings to report:

> (1) the existing obligation was a home purchase or home improvement loan, as determined by the lender (for example, by reference to available documents); or
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> (2) the applicant states that the existing obligation was a home purchase or home improvement loan; or
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> (3) the existing obligation was secured by a lien on a dwelling; or
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> (4) the new obligation will be secured by a lien on a dwelling.

This rule eases burden, but it generates inconsistent data to the extent that different lenders choose different scenarios to determine if their refinancings are to be reported. Moreover, it is impossible for the data user to know what the data represent. The proposed rule makes it more likely that the HMDA reporting will capture refinancings of loans originally for home purchase or home improvement.

In the Advance Notice, the Board solicited comment about whether changes to the refinancing category would produce more useful data, as well as whether such changes could ease compliance burden. A number of commenters suggested modifications. Some, including community groups, federal agencies, and others, contended that the existing definition does not result in the collection of useful data because the types of refinancings reported can vary widely from one lender to another. Several financial institutions suggested dropping refinancings from coverage altogether. Others suggested permitting only those refinancings to be reported that satisfy and replace home purchase or home improvement loans, or suggested

replacing the home improvement and refinancing categories with a single category consisting of all nonpurchase loans secured by a dwelling.

Based on the public comments and its own analysis, the Board proposes to revise the definition of a refinancing for reporting purposes. A refinancing would be defined as a new obligation satisfying and replacing an existing obligation by the same borrower, where both the existing obligation and the new obligation are secured by a lien on a dwelling. The proposed definition would reduce the inconsistency of refinancing data, because all lenders would report using a single two-pronged test.

The Board solicits comment on whether the definition should include not only refinancings where the existing loan was a dwelling-secured loan, but in addition refinancings of unsecured debt, as long as the new loan is dwelling-secured. Under this alternative, for example, a lender that pays off a consumer’s existing unsecured loan by extending a new, dwelling-secured loan to that consumer would report the new loan.

This expanded reporting would entail additional burden to the extent that lenders must adopt a different regimen for identifying covered refinancings. The Board believes, however, that the increased burden would be outweighed by benefits of more focused coverage and more consistent and complete data. The Board solicits comment on whether the proposed change strikes the right balance between benefit and burden.

MECAs. The Board is not proposing any changes regarding modification, extension, and consolidation agreements (MECAs). Several commenters on the Advance Notice suggested that the Board consider treating certain MECAs as refinancings under Regulation C. MECAs substitute for traditional refinancings in some states, such as New York and Texas, to avoid mortgage recording fees and taxes. Such transactions currently are not reported because they do not meet the definition of a refinancing (satisfaction and replacement of an existing mortgage loan). Some commenters suggested that lenders should report MECAs that are the functional equivalent of a refinancing.

The existing definition of a refinancing establishes a bright line test for reportable transactions, by defining refinancings as extensions of credit that satisfy and replace an existing loan. Covering other agreements that are "functionally equivalent" to refinancings would complicate the application of this test by requiring institutions and others to resolve innumerable questions about whether particular transactions are in fact functionally equivalent to refinancings. The Board believes that MECA data may be useful in certain instances, but that, under the existing loan-classification scheme, the advantages of a bright-line test for determining whether a transaction should be reported—especially in reducing compliance burden—outweigh the benefits of additional data on these transactions. Moreover, the bright-line test benefits the entire industry, whereas the benefits of a rule adapted to MECAs would be

confined to a few states. Therefore, the Board does not propose to revise the definition of refinancing to include MECAs.

Section 203.4 — Compilation of loan data

4(a) Data format and itemization

Consistent with the proposed revisions regarding the definitions of "home improvement loan," "refinancing," and "home-equity line of credit," the Board proposes to revise the introductory material in section 203.4(a) so that it refers to these as distinct categories.

4(a)(1) Application date

The staff commentary would be revised (proposed comment 4(a)(1)-5) to clarify that the date an institution receives an application is the date on which it or its agent first takes possession of a completed copy of the application. An example shows how this rule applies when an application is taken electronically.

4(a)(2) Type and purpose of the loan

See the discussion of home-equity lines of credit under section 2(g), above.

4(a)(5) Type of action taken and date

Counteroffers. The staff commentary would be revised to clarify that an institution must report a denial on the original terms requested by the applicant when the institution makes a counteroffer—such as an offer of a different amount of credit from the amount requested—and the applicant does not accept the counteroffer or fails to respond. (See comment 4(a)(5)-1.)

Underwriting conditions. The staff commentary would be revised to clarify that if an institution issues a loan approval subject to the applicant's meeting underwriting conditions and the

applicant does not meet them, the institution must report the action taken as a denial. Currently, the staff commentary excludes from this rule the situation in which an approval is subject to "customary conditions." Because of confusion about the scope of this term, and the impracticality of making it precise and comprehensive, the exclusion is being deleted. (See comment 4(a)(5)-4.)

Other matters. As part of the reorganization of the regulation, the Board proposes to move some material regarding the date action is taken from Appendix A into the staff commentary. See proposed comment 4(a)(5)-7.

4(a)(7) Race or National Origin

See Appendix A, paragraph I.D.3., below, regarding changes to conform to revised OMB guidance.

4(a)(9) Additional Items

The Board has received many suggestions that it amend Regulation C to require lenders to report additional data. The Board believes that some of the suggested additional data could be useful in helping the public and regulators to better understand mortgage lending patterns, particularly in the subprime market, and in enforcing the fair lending laws. Therefore, the Board proposes amending Regulation C to require the reporting of certain additional data, discussed below. This action would be taken pursuant to the Board's authority under section 305 of the statute to adopt new provisions to carry out the act's purposes.

Annual percentage rate. HMDA data currently include no information on loan pricing. The Board proposes to require that creditors report the annual percentage rate (APR) charged on a loan.

This information would ease the identification of subprime loans, which have different characteristics, such as denial rates, from other home mortgage loans. These data may also help the public and supervisory agencies identify practices that potentially raise fair lending concerns and warrant further investigation.

To minimize the burden imposed, the requirement would apply only to loans that are covered by the Truth in Lending Act (TILA) and for which the lender is required to disclose the APR to the consumer. (For example, if the borrower withdraws an application before the lender is required to disclose the APR under Regulation Z, the lender would not be required to report the APR under Regulation C.) The APR must be calculated and disclosed by the lender to comply with TILA in any case, although software changes would be required to capture APR data for HMDA reporting purposes.

Some loans covered by HMDA, such as loans made to corporate borrowers or for multifamily properties, would not be covered by the reporting requirement because they are not subject to TILA.[9]

HOEPA status. Obtaining information on the volume and pattern of lending covered under the Home Ownership and Equity Protection Act (HOEPA) would be useful for better understanding the mortgage market, particularly the subprime market. The Board proposes to require that HMDA reporters indicate whether a loan is covered by the HOEPA provisions, as implemented in Regulation Z. To limit the burden imposed, reporting of this item would be required only for the same loans that would

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[9] TILA disclosure requirements apply only to loans to consumers for personal, family, or household purposes; therefore, commercial loans are excluded. In addition, several other types of credit, such as public utility credit,

be subject to the APR-reporting requirement (loans covered by Regulation Z and for which the lender is required to disclose an APR).

Manufactured home status. Currently, loans to purchase mobile and other manufactured homes are reported together with loans to purchase site-built or other types of housing. The Advance Notice solicited comment on whether the Board could improve the usefulness of the HMDA data by requiring reporters to identify transactions involving mobile homes. (The Advance Notice referred to "mobile homes," which are a type of manufactured home. This proposal employs the broader term.)

Many commenters—including the federal agencies charged with enforcing the fair lending laws—believed that the Board should require creditors to distinguish loans and applications that involve manufactured homes from other transactions. These commenters contended that such a requirement would further HMDA's purpose of providing the public with data useful in identifying possible discriminatory lending patterns and in enforcing antidiscrimination statutes. Manufactured home loans are typically underwritten differently from other home mortgage loans and have different denial rates. So distinguishing manufactured home transactions, commenters believed, would help those analyzing HMDA data to determine whether a lender's high denial rates are due to its focus on manufactured home lending rather than to some potentially unlawful practice. Other commenters—such as financial institution trade associations—opposed distinguishing transactions involving manufactured homes.

Based on the comments and on its own analysis, the Board proposes to require that creditors identify manufactured home loans and applications. The proposal would identify these loans by using a widely understood definition that appears in the Department of Housing and Urban Development

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securities credit, and credit over $25,000 not secured by a lien on a dwelling, are exempted from TILA.

(HUD) regulation that establishes construction and safety standards for manufactured homes.

Additional data collections not proposed. These include:

- Interest rate and fees: One fair lending enforcement agency suggested requiring lenders to report the interest rate on the mortgage promissory note; and the HUD/Treasury Report recommended that lenders be required to report certain closing costs. The Board believes that the APR is a better measure than the note rate of the overall cost of credit. Loan fees and charges, such as closing costs, may be useful for data analysis, but defining which fees should be reported may be difficult without being overinclusive or underinclusive, and calculating and reporting these fees might be difficult and time-consuming for lenders.

- Subprime status: Although public concerns about subprime, and possible predatory, lending have increased, the Board is not aware of any generally accepted definition of subprime lending that would be sufficiently precise to facilitate regulatory reporting. Should a definition gain wide acceptance, the Board may reconsider requiring lenders to report whether a loan is within the definition. In the meantime, disclosure of the APR may be used to identify subprime loans, as these loans typically are priced higher than other loans.

4(b) Collection of Data on Race or National Origin, Sex, and Income

4(b)(2) Optional Collection

Regulation C currently provides, in accordance with the statute, that depository institutions with assets on the preceding year-end of $30 million or less may, but need not, collect the data on applicants' race or national origin, sex, and income. Also in accordance with the statute, Regulation C entirely exempts from coverage a depository institution with total assets on the preceding year-end at or below the threshold set annually by the Board based on changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers. In 1999, the Board set this threshold at $30 million for data collection in 2000.

Thus, institutions with assets of less than $30 million are now exempt not only from collecting certain types of data, but from the entire regulation. The more limited exemption is superfluous; the Board proposes to delete it.

4(d) Excluded Data

4(d)(3) Temporary Financing

The Board is not proposing any changes to this provision.

Reporting. Regulation C generally does not permit lenders to report temporary financing. Rather than defining temporary financing, Regulation C provides illustrations, such as bridge and construction loans. While data about some of these loans are captured when a loan is converted to permanent financing, some commenters have expressed concern that construction-only loans are not being reported. Also, some institutions have requested that Regulation C include a general, precise definition of temporary financing.

The Advance Notice solicited comment on the usefulness of data on construction lending and the burden of collecting such data. A few commenters, including community groups, believed the data would be useful and encouraged coverage. These commenters noted that some institutions offer only construction loans and do not provide permanent financing. These institutions are thus unable to report significant portions of their home lending activity.

The majority of commenters on this issue, however—and the large majority of lenders commenting on it—believed that reporting construction lending generally would be duplicative because much of the same data would be captured when the permanent loan is reported. Some commenters also expressed concern about the difficulty of reporting the required property location information for

properties that may lack street addresses at the construction phase.

The Board is not proposing to cover construction loans or other temporary financing because the data would often be duplicative or incomplete. Imposing an additional burden to collect these data would not be justified.

Time period. The Advance Notice also requested comment on whether the regulation should define "temporary loans" in terms of a time period. Some commenters suggested various periods, ranging from no more than one year to three or more years. Others supported leaving the term defined by example. In the absence of any generally accepted timeframe for "temporary financing," the Board is not proposing a "bright-line" definition. Instead, the regulation will continue to offer examples—such as construction financing.

4(d)(6) Purchased Loans

Branch acquisition. HMDA requires institutions to report all loans that they purchase, including loans purchased in bulk. Under the authority conferred by Section 305 of the statute, the Board has excluded loans acquired through a merger or acquisition from the reporting requirements of Regulation C. See 60 Fed. Reg. 63996 (December 11, 1995).

The Advance Notice solicited comment on whether HMDA data for loans purchased as part of a branch acquisition are useful and whether the exclusion currently allowed for loans obtained through a merger should be extended to such loans. Most commenters who addressed this issue—primarily financial institutions—believed the data would not be useful and need not be reported. These commenters argued that the purchase of a loan as part of a branch acquisition, like the purchase of loans as part of a merger, is not primarily a credit decision but rather is incidental to an investment decision—

in this case, to acquire the branch. These commenters also contended that such reporting is burdensome. Some commenters, including community groups and a few financial institutions, urged the Board not to expand the merger exception because doing so would reduce the publicly available data about creditors' loan acquisitions.

Based on the comments and on its own analysis, the Board proposes to exclude loans purchased as part of a branch acquisition from HMDA's reporting requirements. A "branch acquisition" entails the purchase of all the assets and liabilities of a branch of a depository institution; it need not involve the purchase of the branch's physical facilities. Loans purchased as part of a branch asset sale (not including sale of the branch's liabilities) would continue to be reported.

Bulk purchases. The Board is not proposing any changes regarding bulk purchases. A number of commenters on the Advance Notice proposed excluding loans acquired through bulk purchases from the reporting requirements. However, unlike mergers and branch acquisitions, which are transactions driven by a number of factors, bulk purchases typically are based on a credit analysis of the portfolio being sold. Excluding bulk purchases, therefore, would result in the loss of data useful in determining whether institutions are serving the housing needs of their communities. Accordingly, the Board is not proposing to exclude bulk purchases.

"Seasoned loans." The Board is not proposing any changes regarding "seasoned loans." The Advance Notice solicited comment on whether other revisions regarding purchased loans could improve data quality and reduce burden. The Advance Notice referred specifically to the possible exclusion of these loans—such as those originated more than one or two years before the year being reported on. Several commenters, including financial institutions and trade associations, recommended excluding

loans that had been originated, for example, more than six months, one year, or two years prior to purchase. These commenters contended that purchasing such loans does not reflect credit decisions by the acquirer, but rather decisions to purchase assets. They noted that reporting such loans was burdensome since data may be incomplete and difficult to locate.

Other commenters, however, believed that seasoned loans should be reported. These commenters (including financial institutions and community groups) noted, for example, that certain programs prohibit the sale of loans before one or two years have passed—in order to ensure the loans are performing. Some commenters expressed concern that institutions would no longer receive positive consideration for purchases of these loans under the CRAommunity Reinvestment Act of 1977 (CRA; 12 U.S.C. 2901 et seq.), which could reduce the loans' marketability. Certain commenters believed that the burden of tracking seasoned loans in order to exclude them may outweigh the benefits of lessened reporting requirements.

Based on the comments and on further analysis, the Board believes that data on seasoned loans may be useful in evaluating an institution's mortgage lending activity. The Board therefore does not propose to exclude those loans from the reporting requirements.

Section 203.5 — Disclosure and reporting

5(b) Public disclosure of statement

The regulation requires that a financial institution make its disclosure statement available to the public, under certain circumstances, within a specified number of "business days." A paragraph would be added to the staff commentary to clarify that for this purpose a "business day" is any calendar day other than a Saturday, Sunday, or legal public holiday. (See proposed comment 5(b)-1.)

5(f) Loan aggregation and central depositories

As part of the reorganization of the regulation, material on loan aggregation and central depositories that now appears in section 203.1—"Authority, purpose, and scope"—would be moved to section 203.5, as paragraph (f).

Section 203.6 — Enforcement

As part of the reorganization of the regulation, material from the staff commentary (see comments 4(a)-1 and 6(b)-1) would be moved to this section of the regulation. This material clarifies that certain actions do not violate the act or regulation.

IV. Appendix A

The Board's proposed reorganization of the regulation entails non-substantive revisions of Appendix A, such as redesignating several provisions. The Board also proposes certain substantive changes that would conform Appendix A to proposals discussed above.

I. Instructions for Completion of Loan/Application Register

A. Application or Loan Information

4. Purpose

Code 5—Home-equity line of credit. The Board is proposing to add a code identifying home-equity lines of credit. See section 2(g), above.

Code 6—Manufactured home. The Board is proposing to add a code for loans and applications involving manufactured homes. See the discussion of "Manufactured home status" under section 4(a)(9), above. A reporting entity would use this code in addition to any other code identifying

the purpose of the transaction. For example, an application to purchase a single-family manufactured home would be coded as "1, 6."

6. Loan Amount

The Board proposes to require institutions to report the full amount of home-equity credit lines. See section 2(g), above.

C. Property Location

Coordination with the CRA. Regulation C requires an institution to report the property location for loans on properties in metropolitan areas in which it has a home or branch office, by entering codes for the metropolitan area, state, county, and census tract for each loan on its loan/application register. If the property is located in a county not divided into census tracts, an institution is to report "NA" for the census tract, or report the block numbering area; and if the property is located in a county with a population of 30,000 or less, an institution may exercise either of those two options or may report the census tract. Additionally, for loans on property located outside a metropolitan area in which an institution has a home or branch office, an institution may opt either (1) to report the metropolitan area, state, and county codes, and the census tract number, or (2) to enter "NA" for all four items.

These rules have caused some confusion for institutions that are also subject to the CRA. Regulation C provides that large institutions subject to CRA reporting requirements must report the property location for loans outside the metropolitan area in which these institutions have home or branch offices. Questions have arisen as to whether these institutions may report "NA" for the census tract for loans made in untracted areas or in small counties, and whether the institutions may report "NA" for all

property location codes, for loans made outside metropolitan areas in which they have home or branch offices.

To limit burden, the Board is proposing to revise Appendix A to clarify that institutions that are subject to the CRA must report "NA" or the block numbering area for loans secured by property located in untracted areas, and may choose not to report the census tract for loans secured by property located in counties of 30,000 or less. The Board is also proposing, however, to clarify that these institutions may not enter "NA" for all four property location items. Thus, these institutions must always report the county, state, and metropolitan area associated with the property.

Requests for preapproval. The Board is proposing explicitly to include certain requests for preapproval in the definition of an "application." See section 2(b), above. Since these requests would not include data on property location, the Board proposes to clarify that lenders may report "NA" in the property location fields associated with requests for preapproval.

D. Applicant Information—Race or National Origin, Sex, and Income

3. Race or National Origin of Borrower or Applicant. The Office of Management and Budget (OMB) has revised its "Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity." The revised standards prescribe five racial designations: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White. For data on ethnicity, the standards provide for data on whether individuals are Hispanic or Latino, or do not fall within this category. 62 Fed. Reg. 58782 (October 30, 1997). The standards require that respondents be offered the option of selecting one or more designations.

Federal agencies use these OMB standards when racial and ethnic data are collected by means of respondent self-identification or by observers. The Bureau of the Census uses these standards, for example, in its decennial and other data collections.

The Board proposes to revise Regulation C to conform to the revised OMB standards. The Board is also proposing to continue permitting institutions to report that race and ethnicity data were not provided by an applicant in a mail or telephone application, or that such data are not applicable—for example, in connection with a loan to a corporation rather than to a natural person.

5. Income. The Board is not proposing any changes regarding applicant income. Section 203.4(a)(7) of Regulation C provides that an institution must report the "gross annual income relied upon in processing the application" on its loan/application register. In some instances, institutions make credit decisions based only on the portion of an applicant's income necessary for the applicant to qualify for a loan, rather than on an applicant's total annual income. Concern has been expressed that this practice may understate an applicant's income, and may thereby skew a large retail institution's CRA performance rating.

Specifically, CRA examiners evaluate a large retail institution's CRA performance in part based on the number and amount of home mortgages (as reported under HMDA) that the institution makes to low-, moderate-, middle-, and upper-income individuals. 12 CFR 228.22(b)(2)(iii) and (3)(i). The CRA regulations define these income categories based on the median family income for an area, which is calculated using gross annual incomes, not the income relied upon in a credit decision. If an institution reports only part of an applicant's income on its loan/application register, the applicant may appear to be in an income category that is lower than the applicant's actual income category, thus misstating the

lender's CRA performance.

Changing Regulation C, however, would impose significant burden on institutions, many of which are not subject to CRA. It is unclear whether the difference between income relied upon and total annual income is large enough to have a material impact on an assessment of an institution's CRA performance. The Board believes that given this lack of information, imposing additional burden on institutions is not warranted.

Form of Transmittal Sheet

The form of transmittal sheet that accompanies the loan/application register currently calls for the telephone and facsimile numbers of the reporting institution, but not for the e-mail address. The Board proposes to require the institution to provide its e-mail address, if one exists, on the transmittal sheet, because the information would be useful for contacting the financial institution.

G. Other Data

The Board proposes to add fields regarding the APR and HOEPA status. See the discussion under section 4(a)(9), above, of additional items proposed for data collection.

V. Appendix B

Appendix B would be revised to clarify that if an application is made entirely by telephone, the reporting institution is permitted, although not required, to request data on race or national origin and sex. (The public is reminded, however, that these data must be requested when an application is taken over the Internet.) This clarification makes explicit the Board's longstanding views on this issue. Other changes would reflect the revised OMB guidance discussed above.

VI. Reorganization of the Regulation

Currently, formal guidance for compliance with HMDA is contained in Regulation C, in the instructions for completing the loan/application register (Appendix A to the regulation), in the instructions for the collection of certain applicant data (Appendix B), and in the staff commentary. Informal guidance is provided in the FFIEC's "A Guide to HMDA Reporting: Getting It Right!" Compliance officers and other commenters have expressed concern about having to consult several sources to locate a requirement or interpretation dealing with a particular issue.

The Advance Notice solicited comment on the benefit of incorporating all of the interpretive materials into the commentary, reducing the instructions in Appendix A to code descriptions, and reorganizing the material within the regulation. These changes were supported by most of the commenters that addressed them—including both data reporters and data users. They believed that a reorganization would make the regulation easier to understand and decrease possible misinterpretations by reporters and others. For these commenters, the benefits of simplification outweighed the burden of learning a new system of organization.

Several financial institutions opposed any changes. They considered Regulation C easy to understand and expressed concern that the benefits of reorganization did not justify the burden of relearning the regulation. A few commenters recommended streamlining the reporting requirements, rather than the interpretive material, to reduce burden.

Based on the comments and on its own analysis, the Board has reorganized the regulation and commentary, eliminated redundant provisions, revised the instructions to make reporting easier, and made other changes—such as rewording some provisions—so that the regulation becomes more user-friendly.

The cross-references to Appendix A in the staff commentary would be deleted; they would be unnecessary in view of the simplification and reorganization of Appendix A. (To reduce confusion, cross-references have been omitted from the deleted text of Appendix A that appears below in brackets.) "A Guide to HMDA Reporting: Getting It Right!" will continue to be published, in a format reflecting the reorganized regulation.

Provisions of the regulation, appendices, and commentary are redesignated as indicated in the tables below. The first five tables identify redesignated provisions in the first five sections of the regulation and in the corresponding paragraphs of the staff commentary; the sixth and seventh tables identify redesignated provisions in Appendices A and B. While the tables present a substantially complete summary of the proposed reorganization, they should not be used as a substitute for a detailed comparison of the proposal with the existing regulation.

Table 1. Section 203.1-Authority, Purpose, and Scope

Current	**Proposed**
Commentary 203.1(c)-2, 3, 4	Regulation 203.2(k)
Commentary 203.1(c)-5	Commentary 203.1(c)-2
Commentary 203.1(c)-6	Commentary 203.1(c)-3
Commentary 203.1(c)-7	Commentary 203.1(c)-4
Commentary 203.1(c)-8	Commentary 203.1(c)-5
Commentary 203.1(c)-9	Commentary 203.1(c)-6
Commentary 203.1(c)-10	Commentary 203.1(c)-7
Commentary 203.1(c)-11	Commentary 203.1(c)-8

Commentary 203.1(c)-12	Commentary 203.1(c)-9
Regulation 203.1(d)	Regulation 203.5(f)

Table 2. Section 203.2-Definitions

Current	**Proposed**
Regulation 203.2(f)	Regulation 203.2(g)
Regulation 203.2(g)	Regulation 203.2(h)
Regulation 203.2(h)	Regulation 203.2(j)
Commentary 203.2(e)-1	Commentary 203.2(e)-5
Commentary 203.2(e)-2	Commentary 203.2(e)-6
Commentary 203.2(f)-1	Deleted
Commentary 203.2(f)-2	Commentary 203.4(a)(2)-1
Commentary 203.2(f)-3	Deleted
Commentary 203.2(f)-4	Deleted
Commentary 203.2(f)-5	Commentary 203.2(g)-1
Commentary 203.2(f)-6	Commentary 203.2(g)-2
Commentary 203.2(f)-7	Commentary 203.4(g)(4)-2
Commentary 203.2(f)-8	Commentary 203.2(g)-3
Commentary 203.2(g)-6	Deleted

Table 3. Section 203.3-Exempt Institutions

Current	Proposed
Regulation 203.3(a)(1)	Regulation 203.2(e)(1)
Regulation 203.3(a)(2)	Regulation 203.2(e)(2)
Regulation 203.3(b)	Regulation 203.3(a)
Regulation 203.3(c)(1)	Commentary 203.2(e)-1
Regulation 203.3(c)(2)	Regulation 203.3(b)
Commentary 203.3(a)-1	Commentary 203.2(e)-1
Commentary 203.3(a)-2	Commentary 203.2(e)-2
Commentary 203.3(a)-3	Commentary 203.2(e)-3
Commentary 203.3(a)-4	Commentary 203.4(c)-1

Table 4. Section 203.4-Compilation of Loan Data

Current	Proposed
Commentary 203.4(a)(2)-1	Commentary 203.2(g)-4
Commentary 203.4(a)(3)-1	Deleted
Commentary 203.4(a)(3)-2	Commentary 203.4(a)(3)-1
Commentary 203.4(a)(4)-3	Deleted
Commentary 203.4(a)(4)-4	Commentary 203.4(a)(4)-3
Commentary 203.4(d)-1	Deleted

Table 5. Section 203.5-Disclosure and Reporting

Current	Proposed
Regulation 203.5(a)	Regulation 203.5(a)(1)
Regulation 203.5(b)(1)	Regulation 203.5(b)(2)
Regulation 203.5(b)(2)	Regulation 203.5(b)(3)
Commentary 203.5(a)-1	Commentary 203.5(a)-4
Commentary 203.5(a)-2	Commentary 203.5(a)-5

Table 6. Appendix A

Current	Proposed
I.A.	Deleted
I.B.	Deleted
I.C.	Deleted
I.D.	Deleted
I.E.	Regulation 203.5(a)(2)
I.F.	Regulation 203.3(a)(3)
II.A.	Commentary 203.5(a)-1
II.B.	Commentary 203.5(a)-2
II.C.	Commentary 203.5(a)-3
II.D.	Commentary 203.5(a)-3
II.E.	Regulation 203.4(a)(8)

III.A.	Deleted
III.B.	Commentary 203.5(a)-6
III.C.	Commentary 203.5(a)–7
III.D.1.	Regulation 203.5(b)(1) and (2); Commentary 203.5(b)-1
III.D.1.a.	Regulation 203.5(b)(3)
III.D.1.b	Regulation 203.5(b)(3)
III.D.2.	Commentary 203.5(b)-2
III.E.1.	Regulation 203.5(c)
III.E.2.	Commentary 203.5(c)-1
III.E.3.	Deleted
III.F.1	Commentary 203.5(e)-1
III.F.2.	Commentary 203.5(e)-2
IV.A.1.	Commentary 203.4(a)-1(a)
IV.A.2.	Commentary 203.4(a)-1(b)
IV.A.3.	Commentary 203.4(a)-1(c)
IV.A.4.	Commentary 203.4(a)-1(d)
IV.A.5.	Commentary 203.4(a)-1(e)
IV.B.	Deleted
V.A.1.	1st paragraph App.A.I.A.1; 2nd paragraph

	Commentary 203.4(a)(1)-4
V.A.2.	App. A.I.A.2.
V.A.3.	App. A.I.A.3.
V.A.4.	App. A.I.A.4
V.A.5	App. A.I.A.4; explanatory material regarding home purchase, HELOCs, deleted
V.A.6.	App. A.I.A.5.
V.A.7.	App. A.I.A.5.
V.A.8.	App. A.I.A.6.
V.B.1.	App. A.I.B.1.
V.B.2.	App. A.I.B.1.
V.B.3.	App. A.I.B.2
V.C.	App. A.I.C.
V.C.1	App. A.I.C.1
V.C.2	App. A.I.C.2
V.C.3	App. A.I.C.3
V.C.4.	App. A.I.C.4
V.C.5	App. A.I.C.5
V.C.6	Deleted
V.C.7.	App. A.I.C.6

V.D.	App. A.I.D.
V.D.1.	App. A.I.D.1
V.D.2.	App. A.I.D.2; App.B. I.B.5
V.D.3.	App. A.I.D.3.
V.D.4.	App.A.I.D.4.
V.D.5.	App. A.I.D.5
V.E.1., 2.a, b, c, e	App. A.I.E.
V.E.1., 2.d	Commentary 203.4(a)(8)-2
V.F.	App. A.I.F.
VI.	App. A.II.

Table 7. Appendix B

Current	**Proposed**
I.B.2	App. B.I.B.3
I.B.3	App. B.I.B.4
I.B.4.	App. B.I.B.5.
I.B.5	Deleted

VII. Form of Comment Letters

Comment letters should refer to Docket No. _____, and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text

to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3 1/2 or 5 1/2 inch computer diskettes in any IBM-compatible DOS- or windows-based format.

VIII. Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 USC Ch. 35; 5 CFR 1320 Appendix A.1), the Board has reviewed the proposed revisions under the authority delegated to the Board by OMB. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB number. The OMB control number is 7100-0247.

The information collection requirements that would be revised by this rulemaking appear in 12 CFR part 203. The information collection is mandatory under 12 USC 2801-2810. It generates data used to help public officials determine whether financial institutions are serving the housing needs of their communities, to help target investment to promote private investment where it is needed, and to provide data to assist in identifying possible discriminatory lending patterns and in enforcing antidiscrimination statutes.

The respondents are all types of financial institutions that meet the tests for coverage under the regulation. Under the Paperwork Reduction Act, however, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks, their subsidiaries, subsidiaries of bank holding companies, U.S. 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 (12 USC 601-604a; 611-631). Other agencies account for the paperwork burden for the institutions they supervise. Respondents must maintain their loan/application registers and modified registers for three years, their disclosure statements for five years.

The current estimated annual burden for this information collection varies from 10 to 10,000 hours, depending on individual circumstances, with estimated averages of 202 hours for state member banks and 160 hours for mortgage banking subsidiaries and other respondents. The current estimated annual burden for the 625 institutions under the Federal Reserve supervision is 121,714 hours. The Federal Reserve staff believes that the percentage of burden associated with the disclosures provided to the Federal Reserve and the public is far less than the burden for the data collection and recordkeeping requirements. This is evidenced by the fact that 99 percent of the Federal Reserve respondents reported their data by electronic means; 77 percent reported CY 1999 data on a diskette and 22 percent e-mailed CY 1999 data.

The proposed revisions would increase by 10 to 20 percent the overall burden imposed on institutions with respect to the data collection and reporting requirements. The majority of the proposed revisions would require new information to be reported on the loan/application registers (requests for preapproval, home-equity lines of credit, APR of a loan, HOEPA status of a loan, and whether a loan is for manufactured housing) as well as redefined information (home improvements and refinances). These proposed revisions would require extra training for all lenders. The hourly paperwork burden will increase due to the new requirements. The modification of the coverage test for nondepository lenders would increase by a small amount—probably well under 5 percent—the number of those lenders

required to report HMDA data. This revision would likely increase the number of nondepository institution respondents required to report. The proposed exclusion from the reporting of loans acquired in a branch acquisition would slightly decrease the overall burden. The Federal Reserve expects individual institution burden to vary according to the amount and types of lending done by the institution.

In order to quantify the burden estimates, the Federal Reserve solicits comment on the incremental burden associated with collecting and reporting information on: requests for preapproval, home-equity lines of credit, the redefinition of home improvement loans and refinancings (as well as on the alternative of collecting and reporting information on nonpurchase home loans generally), APR data, HOEPA status, and manufactured housing status. The Federal Reserve also solicits comment on how many institutions have a “structured” preapproval program that would be covered by the proposed HMDA revisions and how long it would take those institutions to collect and report the preapproval data. The Federal Reserve solicits comment on the number of hours on average an institution spends training its staff in a year when no revisions are proposed and how many hours the institution foresees training staff to review these revisions.

The Board’s Legal Division has determined that HMDA data collection and reporting are required by law; completion of the loan/application register, submission to the Federal Reserve, and disclosure to the public upon request are mandatory. The data, as modified according to the regulation, are made publicly available and are not considered confidential. Information that might identify an individual borrower or applicant is given confidential treatment under exemption 6 of the Freedom of Information Act (5 USC 552(b)(6)).

The Paperwork Reduction Act requires that the Board solicit comment on: (a) whether the

proposed revised collection of information is necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed revised information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to OMB, Paperwork Reduction Project (7100-0247), Washington, DC 20530, with copies of such comments to be sent to Mary M. West, Federal Reserve Clearance Officer, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

IX. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (5 USC 603(a)), the Board's Division of Research and Statistics has prepared a preliminary regulatory analysis of this proposal. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-3245. A summary of the preliminary analysis follows.

The major changes proposed for the regulation involve bringing more institutions and transactions under requirements for data collecting and reporting and requiring more data on each covered transaction. Among the proposed revisions, those increasing the transactions covered and the data that are required to be reported are the most significant in terms of potential benefits and in increasing regulatory burden. The proposal would affect all institutions currently within the scope of the

regulation, including covered small institutions. The number of institutions that would newly be brought under the regulation is probably fairly limited; none of any newly covered institutions would be small mortgage lenders in that they would be institutions that originated $50 million or more of home-purchase loans (including refinancings of such loans) in the prior calendar year and they may have significant other lending activities as well.

The draft proposal does not arise from a need to implement specific legislative changes. Rather, it is a consequence of Board policy to review its regulations periodically and a desire to update the regulation to reflect mortgage markets better, enhance consumer protection, and comply with new guidance from the Office of Management and Budget concerning collection of data on race and ethnicity by federal agencies.

It is difficult to quantify the benefits and costs associated with the proposed changes to the regulation. The expanded coverage will provide data to help identify possible discriminatory lending patterns and assist regulators in conducting examinations under the Community Reinvestment Act and other laws. The data will also help inform the public about developments in the mortgage market by revealing the distribution of annual percentage rates on home loans and by ensuring that information is available about a significant and growing segment of the home loan market, home equity lines of credit.

Although the proposed changes may offer a number of benefits they also will impose significant costs on lenders by requiring changes to their current procedures and systems for collecting and reporting required data. The regulatory agencies will take steps to mitigate these costs, but start-up costs for financial institutions to revise current computer and compliance systems are likely to be significant. The regulatory agencies themselves will also incur costs to revise computer software used to

edit the HMDA data prior to its release to the public and to prepare required reports for both the regulated institutions and the public.

List of Subjects in 12 CFR Part 203

Banks, Banking, Consumer protection, Federal Reserve System, Mortgages, Reporting and record keeping requirements.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 203 as follows:

PART 203 -- HOME MORTGAGE DISCLOSURE

1. The authority citation for part 203 remains:

Authority: 12 U.S.C. 2801-2810.

2. The table of contents to part 203 remains:

Section

203.1 Authority, purpose, and scope

203.2 Definitions

203.3 Exempt institutions

203.4 Compilation of loan data

203.5 Disclosure and reporting

203.6 Enforcement

Appendix A—Form and instructions for completion of HMDA loan/application register

Appendix B—Form and instructions for data collection on race or national origin and sex

3. Part 203 is revised as follows:

SECTION 203.1—Authority, Purpose, and Scope.

(a) Authority. This regulation is issued by the Board of Governors of the Federal Reserve System (“Board”) pursuant to the Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.), as amended. The information-collection requirements have been approved by the U.S. Office of Management and Budget <(“OMB”)= under 44 U.S.C. 3501 et seq. and have been assigned OMB numbers 1557-0159, 3064-0046, 1550-0021, [and] 7100-0247 <, and 2502-0529,= for institutions reporting data to the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, [and] the Federal Reserve System, <and the Department of Housing and Urban Development (“HUD”),= respectively [; numbers] <. A number= for the National Credit Union Administration [and the Department of Housing and Urban Development are] <is= pending.

(b) Purpose. (1) This regulation implements the Home Mortgage Disclosure Act, which is intended to provide the public with loan data that can be used—

(i) To help determine whether financial institutions are serving the housing needs of their communities;

(ii) To assist public officials in distributing public-sector investments so as to attract private investment to areas where it is needed; and

(iii) To assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.

(2) Neither the act nor this regulation is intended to encourage unsound lending practices or the allocation of credit.

(c) Scope. This regulation applies to certain financial institutions, including banks, savings associations, credit unions, and other mortgage lending institutions, as defined in section 203.2(e). <The regulation= [It] requires an institution to report data to its supervisory agency about home purchase <loans,= [and] home improvement loans <,refinancings, and home-equity lines of credit that= it originates or purchases, or for which it receives applications; and to disclose certain data to the public.

[(d) Loan aggregation and central data depositories. Using the loan data made available by financial institutions, the Federal Financial Institutions Examination Council will prepare disclosure statements and will produce various reports for individual institutions for each metropolitan statistical area ("MSA"), showing lending patterns by location, age of housing stock, income level, sex, and racial characteristics. The disclosure statements and reports will be available to the public at central data depositories located in each MSA. A listing of central data depositories can be obtained from the Federal Financial Institutions Examination Council, Washington, D.C. 20006.]

SECTION 203.2—Definitions.

In this regulation—

(a) ***Act*** means the Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.), as amended.

(b) ***Application*** means an oral or written request for a home purchase <loan, a= [or] home improvement loan <, a refinancing, or a home-equity line of credit= that is made in accordance with procedures [established] <used= by a financial institution for the type of credit requested. <The term includes a request for a preapproval under procedures in which a financial institution issues to

creditworthy persons a written commitment for a home purchase loan up to a specified amount that is valid for a designated period of time, even if issued subject to the identification of a suitable property or other conditions.=

(c) ***Branch office*** means: (1) Any office of a bank, savings association, or credit union that is approved as a branch by a federal or state supervisory agency, but excludes free-standing electronic terminals such as automated teller machines; and

(2) Any office of a <for-profit= mortgage-lending institution (other than a bank, savings association, or credit union) that takes applications from the public for home purchase <loans= or home improvement loans. A <for-profit= mortgage-lending institution is also deemed to have a branch office in a[n MSA] <metropolitan area= if, in the preceding calendar year, it received applications for, originated, or purchased five or more home purchase <loans= or home improvement loans <secured by= [on] property located in that [MSA] <metropolitan area=.

(d) ***Dwelling*** means a residential structure (whether or not [it is] attached to real property) located in a state of the United States of America, the District of Columbia, or the Commonwealth of Puerto Rico. The term includes an individual condominium unit, cooperative unit, or [mobile or] manufactured home.

[(e) ***Financial institution*** means—

(1) A bank, savings association, or credit union that originated in the preceding calendar year a home purchase loan (other than temporary financing such as a construction loan) including a refinancing of a home purchase loan, secured by a first lien on a one- to four-family dwelling if—

(i) The institution is federally insured or regulated; or

(ii) The loan is insured, guaranteed, or supplemented by any federal agency; or

(iii) The institution intended to sell the loan to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation;

(2) A for-profit mortgage-lending institution (other than a bank, savings association, or credit union) whose home purchase loan originations (including refinancings of home purchase loans) equaled or exceeded ten percent of its loan-origination volume, measured in dollars, in the preceding calendar year.]

<(e) ***Financial institution*** means—

(1) A bank, savings association, or credit union that:

(i) On the preceding December 31 had assets in excess of the asset threshold established and published annually by the Board for coverage by the act, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve month period ending in November, with rounding to the nearest million;

(ii) On the preceding December 31, had a home or branch office in a metropolitan area;

(iii) In the preceding calendar year, originated at least one home purchase loan (excluding temporary financing such as a construction loan) or refinancing of a home purchase loan, secured by a first lien on a one-to-four-family dwelling; and

(iv) Meets at least one of the following three criteria:

(A) The institution is federally insured or regulated;

(B) The mortgage loan referred to in subparagraph (iii) was insured, guaranteed, or supplemented by a federal agency; or

(C) The mortgage loan referred to in subparagraph (iii) was intended by the institution for sale to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; and

(2) A for-profit mortgage-lending institution (other than a bank, savings association, or credit union) that:

(i) In the preceding calendar year either:

(A) Originated home purchase loans, including refinancings of home purchase loans, that equaled at least ten percent of its loan-origination volume, measured in dollars; or

(B) Originated home purchase loans, including refinancings of home purchase loans, that equaled at least $50 million;

(ii) Had either a home office or a branch office in a metropolitan area, on the preceding December 31; and

(iii) Either:

(A) Had total assets of more than $10 million, counting the assets of any parent corporation, on the preceding December 31; or

(B) Originated at least 100 home purchase loans, including refinancings of home purchase loans, in the preceding calendar year.

(f) ***Home-equity line of credit*** means an open-end credit plan secured by a dwelling as defined in Regulation Z (Truth in Lending), 12 C.F.R. Part 226.=

[(f)]<(g)= ***Home improvement loan*** means any loan <, other than a home-equity line of credit,= that [: (1)] is for the purpose, in whole or in part, of repairing, rehabilitating, remodeling or improving a dwelling or the real property on which it is located <.= [; and (2) is classified by the financial institution as a home improvement loan.]

[(g)]<(h)= ***Home purchase loan*** means any loan secured by and made for the purpose of purchasing a dwelling.

<(i) ***Manufactured home*** means any residential structure as defined under regulations of the Department of Housing and Urban Development establishing manufactured home construction and safety standards (24 C.F.R. 3280.2).=

[(h)]<(j)= ***Metropolitan [statistical] area [or MSA]*** means a metropolitan area as defined by OMB.

<(k) ***Refinancing*** means a new obligation satisfying and replacing an existing obligation by the same borrower, where:

(1) For coverage purposes, the existing obligation is a home purchase loan (as determined by the lender, for example, by reference to available documents, or as stated by the applicant), and both the existing obligation and the new obligation are secured by first liens on dwellings; and

(2) For reporting purposes, both the existing obligation and the new obligation are secured by a lien on a dwelling.=

SECTION 203.3—Exempt Institutions.

[(a) ***Exemption based on location, asset size, or number of home purchase loans.*** (1) A bank, savings association, or credit union is exempt from the requirements of

this regulation for a given calendar year if on the preceding December 31—

(i) The institution had neither a home office nor a branch office in an MSA; or

(ii) The institution's total assets were at or below the asset threshold established by the Board. The asset threshold was adjusted from $10 million to $28 million as of December 31, 1996. For subsequent years, the Board will adjust the threshold based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million. The Board will publish any adjustment in the asset figure in December in the staff commentary.

(2) A for-profit mortgage lending institution (other than a bank, savings association, or credit union) is exempt from the requirements of this regulation for a given calendar year if—

(i) The institution had neither a home office nor a branch office in an MSA on the preceding December 31; or

(ii) The institution's total assets combined with those of any parent corporation were $10 million or less on the preceding December 31, and the institution originated fewer than 100 home purchase loans (including refinancings of home purchase loans) in the preceding calendar year.]

[(b)] <(a)= ***Exemption based on state law***. (1) A state-chartered or state-licensed financial institution is exempt from the requirements of this regulation if the Board determines that the institution is subject to a state disclosure law that contains requirements substantially similar to those imposed by this regulation and <that= contains adequate provisions for enforcement.

(2) Any state-chartered or state-licensed financial institution, or association of such institutions may apply to the Board for an exemption under this paragraph.

(3) An institution that is exempt under this paragraph shall <use the disclosure form required by its state law and= submit the data required by <that= [the state disclosure] law to its state supervisory agency for purposes of aggregation.

[(c)] <(b)= ***Loss of exemption*** [(1) An institution losing an exemption that was based on the criteria set forth in paragraph (a) of this section shall comply with this regulation beginning with the calendar year following the year in which it lost its exemption.]

[(2)] An institution losing a[n] <state-law= exemption under paragraph [(b)] <(a)= of this section shall comply with this regulation beginning with the calendar year following the year for which it last reported loan data under the state disclosure law.

SECTION 203.4—Compilation of Loan Data.

(a) Data format and itemization. A financial institution shall collect data regarding applications for, and originations and purchases of, home purchase <loans,= [and] home improvement loans <,= [(including] refinancings [of both)]<, and home-equity lines of credit= for each calendar year. These transactions shall be recorded, within thirty calendar days after the end of each calendar quarter in which final action is taken (such as origination or purchase of a loan, or denial or withdrawal of an application), on a register in the format prescribed in Appendix A [of this part] and shall include the following items:

(1) A<n identifying= number for the loan or loan application, and the date the application was received.

(2) The type and purpose of the loan <or application=.

(3) The owner-occupancy status of the property to which the loan <or application= relates.

(4) The amount of the loan or application.

(5) The type of action taken, and the date.

(6) The location of the property to which the loan <or application= relates, by <metropolitan area= [MSA], state, county, and census tract, if the institution has a home or branch office in that <metropolitan area= [MSA].

(7) The race or national origin and sex of the applicant or borrower, and the gross annual income relied on in processing the application.

(8) The type of entity purchasing a loan that the institution originates or purchases and then sells within the same calendar year <(this information need not be included in quarterly updates).

(9) For a loan or application that is subject to Regulation Z (Truth in Lending, 12 C.F.R. Part 226), the following additional items:

(i) The annual percentage rate for the loan, as calculated and disclosed under section 226.14(b) or 226.22 of Regulation Z.

(ii) An indication whether the loan is subject to the Home Ownership and Equity Protection Act of 1994, as implemented in section 226.32 of Regulation Z.=

(b) Collection of data on race or national origin, sex, and income. (1) A financial institution shall collect data about the race or national origin and sex of the applicant or borrower as prescribed in Appendix B. [If the borrower or applicant chooses not to provide the information, the lender shall note the data on the basis of visual observation or surname, to the extent possible.]

(2) Race or national origin, sex, and income data may but need not be collected for[—

(i)] <l= [L]oans purchased by the financial institution<.=[; or

(ii) Applications received or loans originated by a bank, savings association, or credit union with assets on the preceding December 31 of $30 million or less.]

(c) Optional Data. A financial institution may report the reasons it denied a loan application.

(d) Excluded data. A financial institution shall not report—

(1) Loans originated or purchased by the financial institution acting in a fiduciary capacity (such as trustee);

(2) Loans on unimproved land;

(3) Temporary financing (such as bridge or construction loans);

(4) The purchase of an interest in a pool of loans (such as mortgage-participation certificates <, mortgage-backed securities, or real estate mortgage investment conduits=); [or]

(5) The purchase solely of the right to service loans[.] <; or

(6) Loans purchased as part of a merger or acquisition, or as part of the acquisition of all of the assets and liabilities of a branch office as defined in paragraph 203.2(c)(1).=

(e) Data reporting under CRA for banks and savings associations with total assets of $250 million or more and banks and savings association that are subsidiaries of a holding company whose total banking and thrift assets are $1 billion or more. As required by [agency] regulations that implement the Community Reinvestment Act <of 1977 (12 U.S.C. 2901 et seq.)=, banks and savings associations that had total assets of $250 million or more (or are subsidiaries of a holding company with total banking and thrift assets of $1 billion or more) as of December 31 for each of the immediately

preceding two years [,] shall also collect the location of property located outside the <metropolitan areas= [MSAs] in which the institution has a home or branch office, or outside any <metropolitan areas= [MSAs].

SECTION 203.5—Disclosure and Reporting.

(a) Reporting to agency. <(1)= By March 1 following the calendar year for which the loan data are compiled, a financial institution shall send its complete loan/application register to the agency office specified in Appendix A <.= [of this regulation, and] <The institution= shall retain a copy for its records for [a period of not less than] <at least= three years.

<(2) A subsidiary of a bank or savings association shall complete a separate loan/application register. The subsidiary shall submit the register, directly or through its parent, to the agency that supervises its parent.=

(b) Public disclosure of statement. < (1) The Federal Financial Institutions Examination Council ("FFIEC") will prepare a disclosure statement from the data each institution submits.=

[(1)] <(2)= A financial institution shall make its [mortgage loan] disclosure statement ([to be] prepared by the [Federal Financial Institutions Examination Council] <FFIEC=) available to the public at its home office no later than three business days after receiving it from the [Examination Council] <FFIEC=.

[(2)] <(3)= In addition, a financial institution shall either—

(i) Make its disclosure statement available to the public [(]within ten business days of receiving it [)] in at least one branch office in each additional <metropolitan area= [MSA] where the institution has

offices (the disclosure statement need only contain data relating to the <metropolitan area= [MSA] where the branch is located); or

(ii) Post the address for sending written requests for the disclosure statement in the lobby of each branch office in a[n] <metropolitan area= [MSA] where the institution has offices, and mail or deliver a copy of the disclosure statement, within fifteen calendar days of receiving a written request (the disclosure statement need only contain data relating to the <metropolitan area= [MSA] for which the request is made). Including the address in the general notice required under paragraph (e) of this section satisfies this requirement.

(c) Public disclosure of loan application register. A financial institution shall make its loan/application register available to the public after [modifying it in accordance with Appendix A.]< removing the following information regarding each entry: the application or loan number, the date that the application was received, and the date action was taken.= An institution shall make its modified register available following the calendar year for which the data are compiled, by March 31 for a request received on or before March 1, and within 30 days for a request received after March 1. The modified register need only contain data relating to the <metropolitan area= [MSA] for which the request is made.

(d) Availability of data. A financial institution shall make its modified register available to the public for a period of three years and its disclosure statement available for a period of five years. An institution shall make the data available for inspection and copying during the hours the office is normally open to the public for business. It may impose a reasonable fee for any cost incurred in providing or reproducing the data.

(e) Notice of availability. A financial institution shall post a general notice about the availability of its HMDA data in the lobby of its home office and of each branch office located in a[n] <metropolitan area= [MSA]. It shall <provide= promptly upon request [provide] the location of the institution's offices where the statement is available for inspection and copying, or it may include the location in the <lobby= notice.

<(f) Loan aggregation and central data depositories. Using the loan data made available by financial institutions, the FFIEC will produce reports for individual institutions for each metropolitan area, showing lending patterns by location, age of housing stock, income level, sex, and racial characteristics. These reports, as well as individual institution disclosure statements, will be available to the public at central data depositories located in each metropolitan area. A listing of central data depositories can be obtained from the Federal Financial Institutions Examination Council, Washington, D.C. 20006.=

SECTION 203.6—Enforcement.

(a) Administrative enforcement. A violation of the act or this regulation is subject to administrative sanctions as provided in section 305 of the act, including the imposition of civil money penalties, where applicable. Compliance is enforced by the agencies listed in Appendix A [of this regulation].

(b) Bona fide errors.

<(i)= An error in compiling or recording loan data is not a violation of the act or this regulation if it was unintentional and occurred despite the maintenance of procedures reasonably adapted to avoid such errors.

<(ii) An incorrect entry for a census tract number is a bona fide error, and is not a violation of the act or this regulation, provided that the institution maintains reasonable procedures to avoid such errors.

(iii) If an institution makes a good-faith effort to record all data concerning covered transactions fully and accurately within 30 days after the end of each calendar quarter, and some data are nevertheless inaccurate or incomplete, the error or omission is not a violation of the act or this regulation provided that the institution corrects and completes the information prior to reporting the loan/application register to its regulatory agency.=

[APPENDIX A—FORM AND INSTRUCTIONS FOR COMPLETION OF HMDA LOAN/APPLICATION REGISTER

Paperwork Reduction Act Notice

This report is required by law (12 USC 2801–2810 and 12 CFR 203). An agency may not conduct or sponsor, and an organization is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for this information collection are 1557-0159, 3064-0046, 1550-0021, and 7100-0247 for institutions reporting data to the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the Federal Reserve System, respectively; numbers for the National Credit Union Administration and the Department of Housing and Urban Development are pending. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the respective agencies and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

I. Who Must File a Report

A. Depository institutions.

1. Subject to the exception discussed below, banks, savings associations, and credit unions must complete a register listing data about loan applications received, loans originated, and loans purchased if on the preceding December 31 an institution—

a. had assets of more than the asset threshold for coverage as published by the Board each year in December, and

b. had a home or a branch office in a "metropolitan statistical area" or a "primary metropolitan statistical area" (both are referred to in these instructions by the term "MSA").

2. The asset threshold was adjusted from $10 million to $28 million in total assets as of December 31, 1996. Any adjustment to the asset threshold for depository institutions will be published by the Board in December in the staff commentary.

3. Example: If on December 31 you had a home or branch office in an MSA and your assets exceeded the asset threshold, you must complete a register that lists the home purchase and home improvement loans that you originate or purchase (and also lists applications that did not result in an origination) beginning January 1.

B. Depository institutions—exception.

You need not complete a register—even if you meet the tests for asset size and location—if your institution is a bank, savings association, or credit union that made no first-lien home purchase loans (including refinancings) on one- to four-family dwellings in the preceding calendar year. This exception does not apply in the case of nondepository institutions.

C. Other lending institutions.

Subject to the exception discussed below, for-profit mortgage lending institutions (other than banks, savings associations, and credit unions) must complete a register listing data about loan applications received, loans originated, and loans purchased if the institution had a home or branch office in an MSA on the preceding December 31, and—

1. had assets of more than $10 million (based on the combined assets of the institution and any parent corporation) on the preceding December 31, or

2. originated 100 or more home purchase loans (including refinancings of such loans) during the preceding calendar year, regardless of asset size.

D. Other lending institutions—exception.

You need not complete a register—even if you meet the tests for location and asset size or number of home purchase loans—if your institution is a for-profit mortgage lender (other than a bank, savings association, or credit union) and the home purchase loans that you originated in the preceding calendar year (including refinancings) came to less than 10 percent of your total loan-origination volume, measured in dollars.

E. If you are the subsidiary of a bank or savings association, you must complete a separate register for your institution. You will submit the register, directly or through your parent, to the agency that supervises your parent. (See paragraph VI.)

F. Institutions that are specifically exempted by the Federal Reserve Board from complying with the federal Home Mortgage Disclosure Act because they are covered by a similar state law on mortgage loan disclosures must use the disclosure form required by their state law and submit the data to their state supervisory agency.

II. Required Format and Reporting Procedures

A. Institutions must submit data to their supervisory agencies in an automated, machine-readable form. The format must conform exactly to that of form FR HMDA-LAR, including the order of columns, column headings, etc. Contact your federal supervisory agency for information regarding procedures and technical specifications for automated data submission; in some cases, agencies also make software for automated data submission available to institutions. The data must be edited before

submission, using the edits included in the agency-supplied software or equivalent edits in software available from vendors or developed in-house. (Institutions that report 25 or fewer entries on their HMDA-LAR may collect and report the data in paper form. An institution that submits its register in nonautomated form must send two copies that are typed or computer printed and must use the format of form FR HMDA-LAR (but need not use the form itself). Each page must be numbered, and the total number of pages must be given (for example, "Page 1 of 3").

B. The required data are to be entered in the register for each loan origination, each application acted on, and each loan purchased during the calendar year. Your institution should decide on the procedure it wants to follow—for example, whether to begin entering the required data when an application is received, or to wait until final action is taken (such as when a loan goes to closing or an application is denied). Keep in mind that an application is to be reported in the calendar year when final action is taken. Report loan originations in the year they go to closing; if an application has been approved but has not yet gone to closing at year-end, report it the following year.

C. Your institution may collect the data on separate registers at different branches, or on separate registers for different loan types (such as for home purchase or home improvement loans, or for loans on multifamily dwellings). But make sure the application or loan numbers (discussed under paragraph V.A.1., below) are unique.

D. Entries need not be grouped on your register by MSA, or chronologically, or by census tract numbers, or in any other particular order.

E. Applications and loans must be recorded on your register within 30 calendar days after the end of the calendar quarter in which final action (such as origination or purchase of a loan, or denial or

withdrawal of an application) is taken. The type of purchaser for loans sold need not be included in these quarterly updates.

III. Submission of HMDA-LAR and Public Release of Data

A. You must submit the data for your institution to the office specified by your supervisory agency no later than March 1 following the calendar year for which the data are compiled. A list of the agencies appears at the end of these instructions.

B. You must submit all required data to your supervisory agency in one complete package, with the prescribed transmittal sheet. An officer of your institution must certify to the accuracy of the data. Any additional data submissions that become necessary (for example, because you discover that data were omitted from the initial submission, or because revisions are called for) also must be accompanied by a transmittal sheet.

C. The transmittal sheet must state the total number of line entries contained in the accompanying data submission. If the data submission involves revisions or deletions of previously submitted data, state the total of all line entries contained in that submission, including both those representing revisions or deletions of previously submitted entries, and those that are being resubmitted unchanged or are being submitted for the first time. If you are a depository institution, you also are asked to include a list of the MSAs where you have a home or branch office.

D. Availability of disclosure statement.

1. The Federal Financial Institutions Examination Council (FFIEC) will prepare a disclosure statement from the data you submit. Your disclosure statement will be returned to the name and address indicated on the transmittal sheet. Within three business days of receiving the disclosure

statement, you must make a copy available at your home office for inspection by the public. For these purposes, a business day is any calendar day other than a Saturday, Sunday, or legal public holiday. You also must either—

a. make your disclosure statement available to the public, within 10 business days of receiving it from the FFIEC, in at least one branch office in each additional MSA where you have offices (the disclosure statement need only contain data relating to properties in the MSA where the branch office is located); or

b. post in the lobby of each branch office in an MSA the address where a written request for the disclosure statement may be sent, and mail or deliver a copy of the statement to any person requesting it, within 15 calendar days of receiving a written request. The disclosure statement need only contain data relating to the MSA for which the request is made.

2. You may make the disclosure statement available in paper form or, if the person requesting the data agrees, in automated form (such as by PC diskette or computer tape).

E. Availability of modified loan/application register.

1. To protect the privacy of applicants and borrowers, an institution must modify its loan/application register by removing the following information before releasing it to the public: the application or loan number, date application received, and date of action taken.

2. You may make the modified register available in paper or automated form (such as by PC diskette or computer tape). Although you are not required to make the modified loan/application register available in census-tract order, you are strongly encouraged to do so in order to enhance its utility to users.

3. You must make your modified register available following the calendar year for which the data are compiled, by March 31 for a request received on or before March 1, and within 30 days for a request received after March 1. You are not required to prepare a modified loan application register in advance of receiving a request from the public for this information, but must be able to respond to a request within 30 days. A modified register need only reflect data relating to the MSA for which the request is made.

F. Posters.

1. *Suggested language.* Some of the agencies provide HMDA posters that you can use to inform the public of the availability of your HMDA data, or you may create your own posters. If you print your own, the following language is suggested but is not required:

HOME MORTGAGE DISCLOSURE ACT NOTICE

The HMDA data about our residential mortgage lending are available for review. The data show geographic distribution of loans and applications; race, gender, and income of applicants and borrowers; and information about loan approvals and denials. Inquire at this office regarding the locations where HMDA data may be inspected.

2. *Additional language for institutions making the disclosure statement available upon request.* An institution that makes its disclosure statement available upon request instead of at branch offices must post a notice informing the public of the address to which a request should be sent. For example, the institution could include the following sentence in its general notice: "To receive a copy of these data send a written request to [address]."

IV. Types of Loans and Applications Covered and Excluded by HMDA

A. Types of loans and applications to be reported

1. Report the data on home purchase and home improvement loans that you originated (that is, loans that were closed in your name) and loans that you purchased during the calendar year covered by the report. Report these data even if the loans were subsequently sold by your institution. Include refinancings of home purchase and home improvement loans.

2. Report the data for applications for home purchase and home improvement loans that did not result in originations—for example, applications that your institution denied or that the applicant withdrew during the calendar year covered by the report.

3. In the case of brokered loan applications or applications forwarded to you through a correspondent, report as originations loans that you approved and subsequently acquired according to a preclosing arrangement (whether or not they closed in your institution's name). Additionally, report the data for all applications that did not result in originations—for example, applications that your institution denied or that the applicant withdrew during the calendar year covered by the report (whether or not they would have closed in your institution's name). For all of these loans and applications, report the race or national origin, sex, and income information, unless your institution is a bank, savings association, or credit union with assets of $30 million or less on the preceding December 31.

4. Originations are to be reported only once. If you are the loan broker or correspondent, do not report as originations loans that you forwarded to another lender for approval prior to closing, and that were approved and subsequently acquired by that lender (whether or not they closed in your name).

5. Report applications that were received in the previous calendar year but were acted upon during the calendar year covered by the current register.

B. Data to be excluded.

Do not report loans or applications for loans of the following types:

1. Loans that, although secured by real estate, are made for purposes other than home purchase, home improvement, or refinancing (for example, do not report a loan secured by residential real property for purposes of financing college tuition, a vacation, or goods for business inventory).

2. Loans made in a fiduciary capacity (for example, by your trust department).

3. Loans on unimproved land.

4. Construction or bridge loans and other temporary financing.

5. The purchase of an interest in a pool of loans (such as mortgage-participation certificates).

6. The purchase solely of the right to service loans.

V. Instructions for Completion of Loan/ Application Register

A. Application or loan information

1. *Application or loan number.* Enter an identifying number that can be used later to retrieve the loan or application file. It can be any number of your choosing (not exceeding 25 characters). You may use letters, numerals, or a combination of both. Make sure that all numbers are unique within your institution. If your register contains data for branch offices, for example, you could use a letter or a numerical code to identify the loans or applications of different branches, or could assign a certain series of numbers to particular branches to avoid duplicate numbers. You are strongly encouraged not to use the applicant's or borrower's name or Social Security number, for privacy reasons.

2. *Date application received.* For paper submissions only, enter the date the loan application was received by your institution by month, day, and year, using numerals in the form MM/DD/CCYY (for example, 01/15/1999). For institutions submitting data in electronic form, the proper format is CCYYMMDD. If your institution normally records the date shown on the application form, you may use that date instead. Enter "NA" for loans purchased by your institution.

3. *Type.* Indicate the type of loan or application by entering the applicable code from the following:

1—Conventional (any loan other than FHA, VA, FSA, or RHS loans)

2—FHA-insured (Federal Housing Administration)

3—VA-guaranteed (Veterans Administration)

4—FSA/RHS-guaranteed (Farm Service Agency or Rural Housing Service)

4. *Purpose.* Indicate the purpose of the loan or application by entering the applicable code from the following:

1—Home purchase (one- to four-family)

2—Home improvement (one- to four-family)

3—Refinancing (home purchase or home improvement, one- to four-family)

4—Multifamily dwelling (home purchase, home improvement, and refinancings)

5. *Explanation of purpose codes*

Code 1: Home purchase

a. This code applies to loans and applications made for the purpose of purchasing a residential

dwelling for one to four families, if the loan is to be secured by the dwelling being purchased or by another dwelling.

b. At your option, you may use code 1 for loans that are made for home improvement purposes but are secured by a first lien, if you normally classify such first-lien loans as home purchase loans.

Code 2: Home improvement

a. Code 2 applies to loans and applications for loans if (i) a portion of the proceeds is to be used for repairing, rehabilitating, remodeling, or improving a one- to four-family residential dwelling, or the real property upon which it is located, and (ii) the loan is classified as a home improvement loan.

b. Report both secured and unsecured loans.

c. At your option, you may report data about home-equity lines of credit—even if the credit line is not recorded on your institution's books as a home improvement loan. If you choose to do so, you may report a home-equity line of credit as a home improvement loan if the borrower or applicant indicates, at the time of application or when the account is opened, that some portion of the proceeds will be used for home improvement. (See paragraph 8. "Loan amount") If you report originations of home-equity lines of credit, you must also report applications for such loans that did not result in originations.

Code 3: Refinancings

a. Use this code for refinancings (and applications for refinancings) of loans secured by one- to four-family residential dwellings. A refinancing involves the satisfaction of an existing obligation that is replaced by a new obligation undertaken by the same borrower. But do not report a refinancing if,

under the loan agreement, you are unconditionally obligated to refinance the obligation, or you are obligated to refinance the obligation subject to conditions within the borrower's control.

b. Use this code whether or not you were the original creditor on the loan being refinanced, and whether or not the refinancing involves an increase in the outstanding principal.

c. You may report all refinancings of loans secured by one- to four-family residential dwellings, regardless of the purpose of or amount outstanding on the original loan, and regardless of the amount of new money (if any) that is for home purchase or home improvement purposes.

Code 4: Multifamily dwelling

a. Use this code for loans and loan applications on dwellings for five or more families, including home-purchase loans, refinancings, and loans for repairing, rehabilitation, and remodeling purposes.

b. Do not use this code for loans on individual condominium or cooperative units; use codes 1, 2, or 3 for such loans, as applicable.

6. *Owner occupancy.* Indicate whether the property to which the loan or loan application relates is to be owner-occupied as a principal dwelling by entering the applicable code from the following:

1—Owner-occupied as a principal dwelling

2—Not owner-occupied

3—Not applicable

7. *Explanation of codes*

a. Use code 2 for second homes or vacation homes, as well as rental properties.

b. Use code 2 only for nonoccupant loans, or applications for nonoccupant loans, related to

one- to four-family dwellings (including individual condominium or cooperative units).

c. Use code 3 if the property to which the loan relates is a multifamily dwelling; is not located in an MSA; or is located in an MSA in which your institution has neither a home nor a branch office.

d. For purchased loans, you may assume that the property will be owner-occupied as a principal dwelling (code 1) unless the loan documents or application contain information to the contrary.

8. *Loan amount.* Enter the amount of the loan or application. Do not report loans below $500. Show the amount in thousands, rounding to the nearest thousand ($500 should be rounded up to the next $1,000). For example, a loan for $167,300 should be entered as 167 and one for $15,500 as 16.

a. For home purchase loans that you originate, enter the principal amount of the loan as the loan amount. For home purchase loans that you purchase, enter the unpaid principal balance of the loan at the time of purchase as the loan amount.

b. For home improvement loans (both originations and purchases), you may include unpaid finance charges in the loan amount if that is how you record such loans on your books. For a multiple-purpose loan classified by you as a home improvement loan because it involves a home improvement purpose, enter the full amount of the loan, not just the amount specified for home improvement.

c. For home-equity lines of credit (if you have chosen to report them), enter as the loan amount only that portion of the line that is for home improvement. Report the loan amount for applications that did not result in originations in the same manner. Report only in the year the line is established.

d. For refinancings of dwelling-secured loans, indicate the total amount of the refinancing, including the amount outstanding on the original loan and the amount of new money (if any).

e. For a loan application that was denied or withdrawn, enter the amount applied for.

f. If you make a counteroffer for an amount different from the amount initially applied for, and the counteroffer is accepted by the applicant, report it as an origination for the amount of the loan actually granted. If the applicant turns down the counteroffer or fails to respond, report it as a denial for the amount initially requested.

B. Action taken

1. Type of action

Indicate the type of action taken on the application or loan by using one of the following codes. Do not report any loan application still pending at the end of the calendar year. You will report that application on your register for the year in which final action is taken.

1—Loan originated

2—Application approved but not accepted

3—Application denied

4—Application withdrawn

5—File closed for incompleteness

6—Loan purchased by your institution

2. *Explanation of codes.*

a. Use code 1 for a loan that is originated, including one resulting from a counteroffer (your offer to the applicant to make the loan on different terms or in a different amount than initially applied for) that the applicant accepts.

b. Use code 2 when an application is approved but the applicant (or a loan broker or correspondent) fails to respond to your notification of approval or your commitment letter within the specified time.

c. Use code 3 when an application is denied. This includes the situation when an applicant turns down or fails to respond to your counteroffer. Do not report as a withdrawn application or as an application that was approved but not accepted.

d. Use code 4 only when an application is expressly withdrawn by the applicant before a credit decision was made.

e. Use code 5 if you sent a written notice of incompleteness under section 202.9(c)(2) of Regulation B (Equal Credit Opportunity) and the applicant failed to respond to your request for additional information within the period of time specified in your notice.

3. Date of action.

For paper submissions only, enter the date by month, day, and year, using numerals in the form MM/DD/CCYY (for example, 02/22/1999). For institutions submitting data in electronic form, the proper format is CCYYMMDD.

a. For loans originated, enter the settlement or closing date. For loans purchased, enter the date of purchase by your institution.

b. For applications denied, applications approved but not accepted by the applicant, and files closed for incompleteness, enter the date that the action was taken by your institution or the date the notice was sent to the applicant.

c. For applications withdrawn, enter the date you received the applicant's express withdrawal;

or you may enter the date shown on the notification from the applicant, in the case of a written withdrawal.

C. Property location

In these columns enter the applicable codes for the MSA, state, county, and census tract for the property to which a loan relates. For home purchase loans secured by one dwelling, but made for the purpose of purchasing another dwelling, report the property location for the property in which the security interest is to be taken. If the home purchase loan is secured by more than one property, report the location data for the property being purchased. (See paragraphs 5, 6, and 7 of paragraph V.C. of this Appendix for treatment of loans on property outside the MSAs in which you have offices.)

1. MSA.

For each loan or loan application, indicate the location of the property by the MSA number. Enter only the MSA number, not the MSA name. MSA boundaries are defined by the U.S. Office of Management and Budget; use the boundaries that were in effect on January 1 of the calendar year for which you are reporting. A listing of MSAs is available from your regional supervisory agency or the FFIEC. (In these instructions, the term MSA refers to both metropolitan statistical area and primary metropolitan statistical area.)

2. State and county.

You must use the Federal Information Processing Standard (FIPS) two-digit numerical code for the state and the three-digit numerical code for the county. These codes are available from your regional supervisory agency or the FFIEC. Do not use the letter abbreviations used by the U.S. Postal Service.

3. Census tract.

Indicate the census tract where the property is located.

a. Enter the code "NA" if the property is located in an area not divided into census tracts on the U.S. Census Bureau's census-tract outline maps (see paragraph 4 below).

b. If the property is located in a county with a population of 30,000 or less in the 1990 census (as determined by the Census Bureau's 1990 CPH-2 population series), enter "NA" (even if the population has increased above 30,000 since 1990), or you may enter the census tract number.

4. *Census tract number.*

For the census tract number, consult the U.S. Census Bureau's Census Tract/Street Index for 1990, and for addresses not listed in the index, consult the Census Bureau's census-tract outline maps. You must use the maps from the Census Bureau's 1990 CPH-3 series, or equivalent 1990 census data from the Census Bureau (such as the Census TIGER/Line File) or from a private publisher.

5. Outside MSA

For loans on property located outside the MSAs in which you have a home or branch office (or outside any MSA), you have two options. Under option 1, you may enter the MSA, state, and county codes and the census tract number. You may enter "NA" in the MSA or census tract column if no code or number exists for the property. (Codes exist for all states and counties.) If you choose option 1, the codes and tract number must accurately identify the location for the property in question. Under option 2, you may enter "NA" in all four columns, whether or not the codes or number exist for the property.

6. Nondepository lenders.

If you are a for-profit mortgage lending institution (other than a bank, savings association, or credit union), and in the preceding calendar year you received applications for, or originated or purchased, loans for home purchase or home improvement adding up to a total of five or more for a given MSA, you are deemed to have a branch office in that MSA, whether or not you have a physical office there. As a result, you will have to enter the MSA, state, county, and census tract numbers for any transactions in that MSA. Because you must keep accurate records about lending within MSAs in the current calendar year in order to report data accurately the following year, to comply with this rule you may find it easier to enter the geographic information routinely for any property located within any MSA.

7. Data reporting under CRA for banks and savings associations with total assets of $250 million or more and banks and savings associations that are subsidiaries of a holding company whose total banking and thrift assets are $1 billion or more.

If you are a bank or savings association with total assets of $250 million or more as of December 31 for each of the immediately preceding two years, you must also enter the location of property located outside the MSAs in which you have a home or branch office, or outside any MSA. You must also enter this information if you are a bank or savings association that is a subsidiary of a holding company with total banking and thrift assets of $1 billion or more as of December 31 for each of the immediately preceding two years.

D. Applicant information—race or national origin, sex, and income.

Appendix B of Regulation C contains instructions for the collection of data on race or national

origin and sex, and also contains a sample form for data collection. The form is substantially similar to the form prescribed by section 202.13 of Regulation B (Equal Credit Opportunity) and contained in Appendix B to that regulation. You may use either form.

1. Applicability

You must report this applicant information for loans that you originate as well as for applications that do not result in an origination.

a. You need not collect or report this information for loans purchased. If you choose not to, enter the codes specified in paragraphs 3, 4, and 5 below for "not applicable."

b. If your institution is a bank, savings association, or credit union that had assets of $30 million or less on the preceding December 31, you may—but need not—collect and report these data. If you choose not to, enter the codes specified in paragraphs 3, 4, and 5 below for "not applicable."

c. If the borrower or applicant is not a natural person (a corporation or partnership, for example), use the codes specified in paragraphs 3, 4, and 5 below for "not applicable."

2. *Mail and telephone applications.*

Any loan applications mailed to applicants must contain a collection form similar to that shown in Appendix B, and you must record on your register the data on race or national origin and sex if the applicant provides it. If the applicant chooses not to provide the data, enter the code for "information not provided by applicant in mail or telephone application" specified in paragraphs 3 and 4 below. If an application is taken entirely by telephone, you need not request this information. (See Appendix B for complete information on the collection of this data in mail or telephone applications.)

3. *Race or national origin of borrower or applicant.*

Use the following codes to indicate the race or national origin of the applicant or borrower under column "A" and of any co-applicant or co-borrower under column "CA." If there is more than one co-applicant, provide this information only for the first co-applicant listed on the application form. If there are no co-applicants or co-borrowers, enter code 8 for "not applicable" in the co-applicant column.

1—American Indian or Alaskan Native

2—Asian or Pacific Islander

3—Black

4—Hispanic

5—White

6—Other

7—Information not provided by applicant in mail or telephone application

8—Not applicable

4. *Sex of borrower or applicant.*

Use the following codes to indicate the sex of the applicant or borrower under column "A" and of any co-applicant or co-borrower under column "CA." If there is more than one co-applicant, provide this information only for the first co-applicant listed on the application form. If there are no co-applicants or co-borrowers, enter code 4 for "not applicable."

1—Male

2—Female

3—Information not provided by applicant in mail or telephone application

4—Not applicable

5. Income.

Enter the gross annual income that your institution relied upon in making the credit decision.

a. Round all dollar amounts to the nearest thousand (round $500 up to the next $1,000), and show in terms of thousands. For example, $35,500 should be reported as 36.

b. For loans on multifamily dwellings, enter "NA."

c. If no income information is asked for or relied on in the credit decision, enter "NA."

E. Type of purchaser

1. Enter the applicable code to indicate whether a loan that your institution originated or purchased was then sold to a secondary market entity within the same calendar year:

0—Loan was not originated or was not sold in calendar year covered by register

1—FNMA (Federal National Mortgage Association)

2—GNMA (Government National Mortgage Association)

3—FHLMC (Federal Home Loan Mortgage Corporation)

4—FAMC (Federal Agricultural Mortgage Corporation)

5—Commercial bank

6—Savings bank or savings association

7—Life insurance company

8—Affiliate institution

9—Other type of purchaser

2. Explanation of codes

a. Enter the code 0 for applications that were denied, withdrawn, or approved but not accepted by the applicant; and for files closed for incompleteness.

b. If you originated or purchased a loan and did not sell it during that same calendar year, enter the code 0. If you sell the loan in a succeeding year, you need not report the sale.

c. If you conditionally assign a loan to GNMA in connection with a mortgage-backed security transaction, use code 2.

d. Loans "swapped" for mortgage-backed securities are to be treated as sales; enter the type of entity receiving the loans that are swapped as the purchaser.

e. Use code 8 for loans sold to an institution affiliated with you, such as your subsidiary or a subsidiary of your parent corporation.

F. Reasons for denial

1. You are not required to enter the reasons for the denial of an application. But if you choose to do so, you may indicate up to three reasons by using the following codes:

1—Debt-to-income ratio

2—Employment history

3—Credit history

4—Collateral

5—Insufficient cash (downpayment, closing costs)

6—Unverifiable information

7—Credit application incomplete

8—Mortgage insurance denied

9—Other

2. Leave this column blank if the "action taken" on the application is not a denial. For example, do not complete this column if the application was withdrawn or the file was closed for incompleteness.

3. If your institution uses the model form for adverse action contained in the Appendix to Regulation B (Form C-1 in Appendix C, Sample Notification Form, which offers some 20 reasons for denial), the following list shows which codes to enter.

a. *Code 1 corresponds to:* Income insufficient for amount of credit requested, and Excessive obligations in relation to income.

b. *Code 2 corresponds to:* Temporary or irregular employment, and Length of employment.

c. *Code 3 corresponds to:* Insufficient number of credit references provided; Unacceptable type of credit references provided; No credit file; Limited credit experience; Poor credit performance with us; Delinquent past or present credit obligations with others; Garnishment, attachment, foreclosure, repossession, collection action, or judgment; and Bankruptcy.

d. *Code 4 corresponds to*: Value or type of collateral not sufficient.

e. *Code 6 corresponds to:* Unable to verify credit references, Unable to verify employment, Unable to verify income, and Unable to verify residence.

f. *Code 7 corresponds to:* Credit application incomplete.

g. *Code 9 corresponds to:* Length of residence, Temporary residence, and Other reasons specified on notice.

VI. Federal Supervisory Agencies

Send your loan/application register and direct any questions to the office of your federal supervisory agency as specified below. If you are the nondepository subsidiary of a bank, savings association, or credit union, send the register to the supervisory agency for your parent institution. Terms that are not defined in the Federal Deposit Insurance Act (12 USC 1813(s)) shall have the meaning given to them in the International Banking Act of 1978 (12 USC 3101).

A. *National banks and their subsidiaries and federal branches and federal agencies of foreign banks.*

District office of the Office of the Comptroller of the Currency for the district in which the institution is located.

B. *State member banks of the Federal Reserve System, their subsidiaries, subsidiaries of bank holding companies, 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.*

Federal Reserve Bank serving the District in which the state member bank is located; for institutions other than state member banks, the Federal Reserve Bank specified by the Board of Governors.

C. *Nonmember insured banks (except for federal savings banks) and their subsidiaries and insured state branches of foreign banks.*

Regional director of the Federal Deposit Insurance Corporation for the region in which the institution is located.

D. *Savings institutions insured under the Savings Association Insurance Fund of the FDIC, federally chartered savings banks insured under the Bank Insurance Fund of the FDIC (but not including state-chartered savings banks insured under the Bank Insurance Fund), their subsidiaries, and subsidiaries of savings institution holding companies*.

Regional or other office specified by the Office of Thrift Supervision.

E. *Credit unions*.

National Credit Union Administration, Office of Examination and Insurance, 1776 G Street, N.W., Washington, D.C. 20456.

F. *Other depository institutions*.

Regional director of the Federal Deposit Insurance Corporation for the region in which the institution is located.

G. *Other mortgage-lending institutions*.

Assistant Secretary for Housing, HMDA Reporting—Room 9233, U.S. Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410.]

<APPENDIX A—Form and Instructions for Completion of HMDA Loan/Application Register

Paperwork Reduction Act Notice

This report is required by law (12 USC 2801–2810 and 12 CFR part 203). An agency may not conduct or sponsor, and an organization is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) Control Number. See 12 CFR 203.1(a) for the currently valid OMB Control Numbers, applicable to this information collection, for the agencies responsible for the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the respective agencies and to OMB, Office of Information and Regulatory Affairs, Paperwork Reduction Project, Washington, DC 20503. Be sure to reference the applicable agency and its OMB control number, as found in 12 CFR 203.1(a), when submitting comments to OMB.

I. Instructions for Completion of Loan/Application Register

A. Application or loan information.

1. *Application or loan number.*

a. Enter an identifying number that can be used later to retrieve the loan or application file. It can be any number of your choosing (not exceeding 25 characters). You may use letters, numerals, or a combination of both.

2. *Date application received.*

a. For paper submissions only, enter the date the loan application was received by your institution by month, day, and year, using numerals in the form MM/DD/CCYY (for example,

01/15/2000). For institutions submitting data in electronic form, the proper format is CCYYMMDD. If your institution normally records the date shown on the application form you may use that date instead. Enter "NA" for loans purchased by your institution.

3. Type.

Indicate the type of loan or application by entering the applicable code from the following:

1—Conventional (any loan other than FHA, VA, FSA, or RHS loans)

2—FHA-insured (Federal Housing Administration)

3—VA-guaranteed (Veterans Administration)

4—FSA/RHS-guaranteed (Farm Service Agency or Rural Housing Service)

4. Purpose.

Indicate the purpose of the loan or application by entering the applicable code from the following:

Code 1—Home purchase (one- to four-family)

Code 2—Home improvement (one- to four-family)

a. Report both secured and unsecured loans.

Code 3—Refinancings (one- to four-family)

a. Do not report a refinancing if, under the loan agreement, you are unconditionally obligated to refinance the obligation, or you are obligated to refinance the obligation subject to conditions within the borrower's control.

Code 4—Multifamily dwelling (home purchase, home improvement, and refinancings)

a. Code 4 applies to loans and applications on dwellings for five or more families,

including home purchase loans, refinancings, and loans for repairing, rehabilitating, and remodeling purposes.

b. Do not use Code 4 for loans on individual condominium or cooperative units; use other Codes as applicable.

Code 5—Home-equity line of credit

Code 6—Manufactured home

a. Use the applicable Code from Codes 1-5 and also use Code 6 if applicable.

5. *Owner occupancy*.

Indicate whether the property to which the loan or loan application relates is to be owner-occupied as a principal dwelling by entering the applicable code from the following:

Code 1—Owner-occupied as a principal residence

a. For purchased loans, use Code 1 unless the loan documents or application indicate that the property will not be owner-occupied as a principal residence.

Code 2—Not owner-occupied as a principal residence

a. Code 2 applies to second homes or vacation homes, as well as rental properties.

Code 3—Not applicable

a. Use Code 3 if the property to which the loan relates is a multifamily dwelling; is not located in a metropolitan area; or is located in a metropolitan area in which your institution has neither a home nor a branch office. Alternatively, at your option, you may use Code 1 or 2 for these situations, as applicable, to report the actual occupancy status.

6. *Loan amount*.

Enter the amount of the loan or application. Do not report loans below $500. Show the amount in thousands, rounding to the nearest thousand ($500 should be rounded up to the next $1,000). For example, a loan for $167,300 should be entered as 167 and one for $15,500 as 16.

a. For a home purchase loan that you originated, enter the principal amount of the loan.

b. For a home purchase loan that you purchased, enter the unpaid principal balance of the loan at the time of purchase.

c. For all home improvement loans, enter the entire amount of the loan—including unpaid finance charges if that is how such loans are recorded on your books—even if only a part of the proceeds is intended for home improvement.

d. Report the entire amount of a home-equity line of credit, but only in the year the line is established (or other action is taken, such as denial of an application).

e. For refinancings, indicate the total amount of the refinancing, including both the amount outstanding on the original loan and any amount of "new money."

f. For a loan application that was denied or withdrawn, enter the amount applied for.

B. Action taken

1. Type of action.

Indicate the type of action taken on the application or loan by using one of the following codes.

Code 1—Loan originated.

a. Use Code 1 for a loan that is originated, including one resulting from a counteroffer (your offer to the applicant to make the loan on different terms or in a different amount from the terms or amount initially applied for) that the applicant accepts.

Code 2—Approved but not accepted.

a. Use Code 2 when the application is approved but the applicant (or a loan broker or correspondent) fails to respond to your notification of approval or your commitment letter within the specified time.

Code 3—Application denied.

a. Report as a denial the situation when an applicant turns down or fails to respond to your counteroffer.

Code 4—Application withdrawn.

a. Use Code 4 when the application is expressly withdrawn by the applicant before a credit decision was made.

Code 5—File closed for incompleteness.

a. Use Code 5 if you sent a written notice of incompleteness under section 202.9(c)(2) of Regulation B (Equal Credit Opportunity) and the applicant failed to respond to your request for additional information within the period of time specified in your notice.

Code 6—Loan purchased by your institution.

2. *Date of action.*

For paper submissions only, enter the date by month, day, and year, using numerals in the

form MM/DD/CCYY (for example, 02/22/2000). For institutions submitting data in electronic form, the proper format is CCYYMMDD.

a. For loans originated, enter the settlement or closing date.

b. For loans purchased, enter the date of purchase by your institution.

c. For applications denied, applications approved but not accepted by the applicant, and files closed for incompleteness, enter the date that the action was taken by your institution or the date the notice was sent to the applicant.

d. For applications withdrawn, enter the date you received the applicant's express withdrawal; or enter the date shown on the notification from the applicant, in the case of a written withdrawal.

C. Property location.

Except as otherwise provided, in these columns enter the applicant codes for the metropolitan area, state, county, and census tract for the property to which a loan relates.

1. Metropolitan area.

For each loan or loan application, indicate the location of the property by the metropolitan area number. Metropolitan area boundaries are defined by OMB; use the boundaries that were in effect on January 1 of the calendar year for which you are reporting. A listing of metropolitan areas is available from your supervisory agency or the FFIEC.

2. State and county.

Use the Federal Information Processing Standard (FIPS) two-digit numerical code for the state and the three-digit numerical code for the county. These codes are available from your

supervisory agency or the FFIEC.

3. Census tract.

Indicate the census tract where the property is located. Notwithstanding paragraph 6:

a. Enter the code "NA" if the property is located in an area not divided into census tracts on the U.S. Census Bureau's census-tract outline maps (see paragraph 4 below). Alternatively, if the property is located in a block numbering area (BNA), you may enter the BNA number.

b. If the property is located in a county with a population of 30,000 or less in the 1990 census (as determined by the Census Bureau's 1990 CPH-2 population series), enter "NA" (even if the population has increased above 30,000 since 1990), or enter the census tract number (or the BNA number, if applicable).

4. Census tract number.

For the census tract number, consult the U.S. Census Bureau's Census Tract/Street Index for 1990, and for addresses not listed in the index, consult the Census Bureau's census tract outline maps. Use the maps from the Census Bureau's 1990 CPH-3 series, or equivalent 1990 census data from the Census Bureau (such as the Census TIGER/Line file) or from a private publisher.

5. Outside-metropolitan area.

For loans on property located outside the metropolitan areas in which the institution has a home or branch office, or outside any metropolitan area, an institution may choose one of the following two options. Under the first option, the institution may enter the metropolitan area, state, and county codes and the census tract number. It may enter "NA" in the metropolitan area or

census tract column if no code or number exists for the property. In the census tract column, if there is a BNA number for the property rather than a census tract number, the institution may enter the BNA number at its option. (Codes exist for all states and counties). Under this first option, the codes and tract number must accurately identify the property location in question. Under the second option, which is not available if paragraph 6 applies, an institution enters "NA" in all four columns, whether or not the codes or numbers exist for the property.

6. Data reporting under CRA for banks and savings associations with total assets of $250 million or more and banks and savings associations that are subsidiaries of a holding company whose total banking and thrift assets are $1 billion or more.

If you are a bank or savings association with total assets of $250 million or more as of December 31 for each of the immediately preceding two years, enter the location of property located outside the metropolitan areas in which you have a home or branch office, or outside any metropolitan area. Enter this information also if you are a bank or savings association that is a subsidiary of a holding company with total banking and thrift assets of $1 billion or more as of December 31 for each of the immediately preceding two years.

7. *Requests for preapproval.* Notwithstanding paragraphs 1-6, if the application is a request for preapproval, you may enter the code "NA" in all four columns.

D. Applicant information—race or national origin, sex, and income.

Appendix B contains instructions for the collection of data on race or national origin and sex, and also contains a sample form for data collection.

1. Applicability.

Report this information for loans that you originate as well as for applications that do not result in an origination.

a. You need not collect or report this information for loans purchased. If you choose not to, use the Codes for "not applicable."

b. If the borrower or applicant is not a natural person (a corporation or partnership, for example), use the Codes for "not applicable."

2. Mail or telephone applications.

Any loan applications mailed to applicants must contain a collection form similar to that shown in Appendix B, and you must record on your register the data on race or national origin and sex if the applicant provides it. If the applicant chooses not to provide the data, enter the Code for "information not provided by applicant in mail or telephone application" specified in the next paragraph. (See Appendix B for complete information on the collection of these data in mail or telephone applications.)

3. Race or national origin of borrower or applicant.

Use the following Codes to indicate the race or national origin of the applicant or borrower under column "A" and of any co-applicant or co-borrower under column "CA."

If an applicant selects more than one designation, use all Codes corresponding to the applicant's selections. If there is more than one co-applicant, provide the required information only for the first co-applicant listed on the application form. If there are no co-applicants or co-borrowers, use Code 8 for "not applicable" in the co-applicant column.

1—American Indian or Alaska Native

2—Asian

3—Black or African American

4—Native Hawaiian or Other Pacific Islander

5—White

6—Hispanic or Latino

7—Information not provided by applicant in mail or telephone application

8—Not Applicable

4. Sex of borrower or applicant.

Use the following Codes to indicate the sex of the applicant or borrower under column "A" and of any co-applicant or co-borrower under column "CA." If there is more than one co-applicant, provide this information only for the first co-applicant listed on the application form. If there are no co-applicants or co-borrowers, use Code 4 for "not applicable."

1—Male

2—Female

3—Information not provided by applicant in mail or telephone application

4—Not applicable

5. Income.

Enter the gross annual income that your institution relied on in making the credit decision.

a. Round all dollar amounts to the nearest thousand (round $500 up to the next $1,000), and show in terms of thousands. For example, $35,500 should be reported as 36.

b. For loans on multifamily dwellings, enter "NA."

c. If no income information is asked for or relied on in the credit decision, enter "NA."

E. Type of purchaser.

Enter the applicable code to indicate whether a loan that your institution originated or purchased was then sold to a secondary market entity within the same calendar year:

Code 0—Loan was not originated or was not sold in calendar year covered by register

a. Use Code 0 for applications that were denied, withdrawn, or approved but not accepted by the applicant; and for files closed for incompleteness.

b. Use Code 0 if you originated or purchased a loan and did not sell it during that same calendar year. If you sell the loan in a succeeding year, you need not report the sale.

Code 1—FNMA (Federal National Mortgage Association)

Code 2—GNMA (Government National Mortgage Association)

a. Use Code 2 if you conditionally assign a loan to GNMA in connection with a mortgage-backed security transaction.

Code 3—FHLMC (Federal Home Loan Mortgage Corporation)

Code 4—FAMC (Federal Agricultural Mortgage Corporation)

Code 5—Commercial bank

Code 6—Savings bank or savings association

Code 7—Life insurance company

Code 8—Affiliate institution

a. Use Code 8 for loans sold to an institution affiliated with you, such as your subsidiary or a subsidiary of your parent corporation.

Code 9—Other type of purchaser

F. Reasons for denial.

You are not required to enter the reasons for denial of an application. But if you choose to do so you may indicate up to three reasons using the following codes. Leave this column blank if the "action taken" on the application is not a denial. For example, do not complete this column if the application was withdrawn or the file was closed for incompleteness.

1—Debt-to-income ratio

2—Employment history

3—Credit history

4—Collateral

5—Insufficient cash (downpayment, closing costs)

6—Unverifiable information

7—Credit application incomplete

8—Mortgage insurance denied

9—Other

If your institution uses the model form for adverse action contained in the Appendix to Regulation B (Form C-1 in Appendix C, Sample Notification Form), use the foregoing codes as follows:

a. Code 1 for: Income insufficient for amount of credit requested, and Excessive obligations in relation to income.

b. Code 2 for: Temporary or irregular employment, and Length of employment.

c. Code 3 for: Insufficient number of credit references provided; Unacceptable type of credit references provided; No credit file; Limited credit experience; Poor credit performance with us; Delinquent past or present credit obligations with others; Garnishment, attachment, foreclosure, repossession, collection action, or judgment; and Bankruptcy.

d. Code 4 for: Value or type of collateral not sufficient.

e. Code 6 for: Unable to verify credit references; Unable to verify employment; Unable to verify income; and Unable to verify residence.

f. Code 7 for: Credit application incomplete.

g. Code 9 for: Length of residence; Temporary residence; and Other reasons specified on notice.

G. Other data.

For an application or loan covered by the Truth in Lending Act (TILA), enter the following information:

1. Annual Percentage Rate. Enter the annual percentage rate (APR) as calculated and disclosed under Regulation Z.

a. If the application or loan is not subject to TILA, or is subject to TILA but an APR was not required to be disclosed to the applicant (for example, because the application was withdrawn before the time disclosure was required), enter "NA."

b. If only an estimated APR was required to be disclosed to the applicant, enter the estimated APR.

c. Enter the APR to two decimal places. If the APR was disclosed to the applicant showing less than two decimal places, fill the remaining decimal places with zeros; if showing more than two decimal places, the APR may be rounded or the digits beyond two decimal places may be truncated.

d. In a home-equity line of credit with an introductory rate, where both the introductory and regular APR were required to be disclosed to the applicant, enter the regular APR.

2. HOEPA status.

a. If the loan or application is covered by TILA, but is not covered by the Home Ownership and Equity Protection Act of 1994 (HOEPA), as implemented in Regulation Z, § 226.32, enter Code 0.

b. If the loan or application is covered by TILA and by § 226.32, enter Code 1.

c. If the loan or application is not covered by TILA, is covered by TILA but no APR was required to be disclosed to the applicant, or for any other reason it cannot be determined whether the loan or application is covered by § 226.32, enter Code 2.

II. Federal Supervisory Agencies

Send your loan/application register, direct any questions, and direct any requests (such as for a listing of metropolitan areas or FIPS codes) to the office of your federal supervisory agency as specified below. Terms used below that are not defined in the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) have the meanings given to them in the International Banking Act of 1978 (12 U.S.C. 3101).

A. National banks and their subsidiaries and federal branches and federal agencies of foreign banks. District office of the Office of the Comptroller of the Currency for the district in which the institution is located.

B. State member banks of the Federal Reserve System, their subsidiaries, subsidiaries of bank holding companies, 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. Federal Reserve Bank serving the District in which the state member bank is located; for institutions other than state member banks, the Federal Reserve Bank specified by the Board of Governors.

C. *Nonmember insured banks (except for federal savings banks) and their subsidiaries and insured state branches of foreign banks.* Regional director of the Federal Deposit Insurance Corporation for the region in which the institution is located.

D. *Savings institutions insured under the Savings Association Insurance Fund of the FDIC, federally chartered savings banks insured under the Bank Insurance Fund of the FDIC (but not including state-chartered savings banks insured under the Bank Insurance Fund), their subsidiaries, and subsidiaries of savings institution holding companies.* Regional or other office specified by the Office of Thrift Supervision.

E. Credit unions and their subsidiaries. National Credit Union Administration, Office of Examination and Insurance, 1775 Duke Street, Alexandria, VA 22314.

F. Other depository institutions. Regional director of the Federal Deposit Insurance Corporation for the region in which the institution is located.

G. Other mortgage-lending institutions. Assistant Secretary for Housing, HMDA Reporting—Room 9233, U.S. Department of Housing and Urban Development, 451 7th Street, S.W., Washington, DC 20410.=

APPENDIX B to Part 203—Form and Instructions for Data Collection on Race or National Origin and Sex

I. Instructions on collection of data on race or national origin and sex

A. Format.

You may list questions regarding the race or national origin and sex of the applicant on your loan application form, or on a separate form that refers to the application. (See the sample form below for recommended language.)

B. Procedures.

1. You must ask the applicant for this information, but cannot require the applicant to provide it.

2. <You must offer the applicant the option of selecting one or more designations.

3.= [2.] If the applicant chooses not to provide the information for an application taken in person, note this fact on the form and note the data, to the extent possible, on the basis of visual observation or surname.

[3.] <4.= Inform the applicant that the federal government is requesting his information in order to monitor compliance with federal statutes that prohibit lenders from discriminating against applicants on these bases. Inform the applicant that if the information is not provided where the application is taken in person, you are required to note the data on the basis of visual observation or surname.

[4.] <5.= If an application is made entirely by telephone, [this information need not be requested] <you are permitted to request this information but not required to do so=. And the data

need not be provided when an application is taken by mail, if the applicant fails to answer these questions on the application form. Whether an application was received by mail or telephone must be indicated, if it is not otherwise evident on the face of the application.

[5. The “other block is available only to the applicant who chooses to indicate some other appropriate category for race or national origin. If completing the form based on visual observation, do not use this category; use one of the other five categories.]

2. Supplement I to Part 203—Staff Commentary to Regulation C is revised as follows:

SUPPLEMENT I TO PART 203—STAFF COMMENTARY TO REGULATION C

Introduction

1. Status [and citations]. The commentary in this supplement is the vehicle by which the Division of Consumer and Community Affairs of the Federal Reserve Board issues formal staff interpretations of Regulation C (12 C.F.R. Part 203). [The parenthetical citations given are references to Appendix A to Regulation C, Form and Instructions for Completion of the HMDA Loan/Application Register.]

SECTION 203.1—Authority, Purpose, and Scope

1(c) Scope

1. General. The comments in this section address issues affecting coverage of institutions <and= exemptions from coverage [, and data-collection requirements].

[2. Meaning of Refinancing. A refinancing of a loan is the satisfaction and replacement of an existing obligation by a new obligation by the same borrower. The term "refinancing" refers to the new obligation. If the existing obligation is not satisfied and replaced, but is only renewed, modified, extended, or consolidated (as in certain modification, extension, and consolidation agreements), the transaction is not a refinancing for purposes of HMDA.

3. Refinancing—coverage. The regulation bases coverage, in part, on whether an institution originates home purchase loans. For determining whether an institution is subject to Regulation C or is exempt from coverage, an origination of a home purchase loan includes the

refinancing of a home purchase loan. An institution may always determine the actual purpose of the existing obligation (for example, by reference to available documents). Alternatively, an institution may—

i. Rely on the statement of the applicant that the existing obligation was (or was not) a home purchase loan; or

ii. Assume that the new obligation is not a refinancing of a home purchase loan if either the existing obligation or the new obligation is not secured by a first lien on the dwelling.

4. Refinancing—data collection. The regulation requires collection and reporting of data on refinancings of home purchase and home improvement loans. An institution may always determine the actual purpose of the existing obligation (for example, by reference to available documents). Alternatively, an institution may—

i. Rely on the statement of the applicant that the existing obligation was (or was not) a home purchase or home improvement loan; or

ii. Assume that the new obligation is a refinancing of a home purchase or home improvement loan only if the existing obligation was secured by a lien on a dwelling; or

iii. Assume that the new obligation is a refinancing of a home purchase or home-improvement loan only if the new obligation will be secured by a lien on a dwelling.]

[5.] <2.= The broker rule and the meaning of "broker" and "investor." For the purposes of the guidance given in this commentary, an institution that takes and processes a loan application and arranges for another institution to acquire the loan at or after closing is acting as a "broker," and an institution that acquires a loan from a broker at or after closing is acting as an "investor." (The terms

used in this commentary may have different meanings in certain parts of the mortgage lending industry, and other terms may be used in place of these terms, for example in the Federal Housing Administration mortgage insurance programs.) Depending on the facts, a broker may or may not make a credit decision on an application (and thus it may or may not have reporting responsibilities). If the broker makes a credit decision, it reports that decision; if it does not make a credit decision, it does not report. If an investor reviews an application and makes a credit decision prior to closing, the investor reports that decision. If the investor does not review the application prior to closing, it reports only the loans that it purchases; it does not report the loans it does not purchase. Thus, an institution that makes a credit decision on an application prior to closing reports that decision regardless of whose name the loan closes in.

[6.] <3.= Illustrations of the broker rule. Assume that, prior to closing, four investors receive the same application from a broker; two deny it, one approves it, and one approves it and acquires the loan. In these circumstances, the first two report denials, the third reports the transaction as approved but not accepted, and the fourth reports an origination (whether the loan closes in the name of the broker or the investor). Alternatively, assume that the broker denies a loan before sending it to an investor; in this situation, the broker reports a denial.

[7.] <4.= Broker's use of investor's underwriting criteria. If a broker makes a credit decision based on underwriting criteria set by an investor, but without the investor's review prior to closing, the broker has made the credit decision. The broker reports as an origination a loan that it approves and closes, and reports as a denial an application that it turns down (either because the application does not meet the investor's underwriting guidelines or for some other reason). The

investor reports as purchases only those loans it purchases.

[8.] <5.= Insurance and other criteria. If an institution evaluates an application based on the criteria or actions of a third party other than an investor (such as a government or private insurer or guarantor), the institution must report the action taken on the application (loan originated, approved but not accepted, or denied, for example).

[9.] <6.= Credit decision of agent is decision of principal. If an institution approves loans through the actions of an agent, the institution must report the action taken on the application (loan originated, approved but not accepted, or denied, for example). State law determines whether one party is the agent of another.

[10.] <7.= Affiliate bank underwriting (250.250 review). If an institution makes an independent evaluation of the creditworthiness of an applicant (for example, as part of a preclosing review by an affiliate bank under 12 C.F.R. 250.250, which interprets section 23A of the Federal Reserve Act), the institution is making a credit decision. If the institution then acquires the loan, it reports the loan as an origination whether the loan closes in the name of the institution or its affiliate. An institution that does not acquire the loan but takes another action reports that action.

[11.] <8.= Participation loan. An institution that originates a loan and then sells partial interests to other institutions reports the loan as an origination. An institution that acquires only a partial interest in such a loan does not report the transaction even if it has participated in the underwriting and origination of the loan.

[12.] <9.= Assumptions. An assumption occurs when an institution enters into a written agreement accepting a new borrower as the obligor on an existing obligation. An institution reports

as a home purchase loan an assumption (or an application for an assumption) in the amount of the outstanding principal. If a transaction does not involve a written agreement between a new borrower and the institution, it is not an assumption for HMDA purposes and is not reported.

SECTION 203.2—Definitions

2(b) Application

1. Consistency with Regulation B. Board interpretations that appear in the official staff commentary to Regulation B (Equal Credit Opportunity, 12 C.F.R. Part 202, Supplement I) are generally applicable to the definition of an application under Regulation C. However, under Regulation C the definition of an application does not include prequalification requests.

2. Prequalification. A prequalification request is a request by a prospective loan applicant <(other than a request for preapproval)= for a preliminary determination on whether the prospective applicant would likely qualify for credit under an institution's standards, or on the amount of credit for which the prospective applicant would likely qualify. Some institutions evaluate prequalification requests through a procedure that is separate from the institution's normal loan application process; others use the same process. In either case, Regulation C does not require an institution to report prequalification requests on the HMDA-LAR, even though these requests may constitute applications under Regulation B.

2(c) Branch office

1. Credit union. For purposes of Regulation C, a "branch" of a credit union is any office where member accounts are established or loans are made, whether or not the office has been approved as a branch by a federal or state agency. (See 12 U.S.C. §1752.)

2. Depository institution. A branch of a depository institution does not include a loan production office, the office of an affiliate, or the office of a third party such as a loan broker. (But see Appendix A [of this part], Paragraph <I.C.6= [V.C.7], which requires certain depository institutions to report property location even for properties located outside those <metropolitan areas= [MSAs] in which the institution has a home or branch office.)

3. Nondepository institution. A branch of a nondepository institution does not include the office of an affiliate or other third party such as a loan broker. (But [see Appendix A. of this part, Paragraph V.C.6, which requires] certain nondepository institutions <must= [to] report property location even in <metropolitan areas= [MSAs] where they do not have a physical location.)

2(d) Dwelling

1. <Coverage= [Scope]. The definition of "dwelling" is not limited to the principal or other residence of the applicant or borrower, and thus includes vacation or second homes and rental properties. A dwelling also includes [a mobile or manufactured home,] a multifamily structure (such as an apartment building) [, and a condominium or a cooperative unit. Recreational vehicles such as boats or campers are not dwellings for purposes of HMDA].

<2. Exclusions. Recreational vehicles such as boats or campers are not dwellings for purposes of HMDA. Also excluded are transitory residences—whose occupants previously occupied principal residences elsewhere and expect to do so again. Examples include hotels, hospitals, and college dormitories.=

2(e) Financial institution

<1. General. An institution that met the test for coverage under HMDA in year 1, and then ceases to meet the test (for example, because its assets fall below the threshold on December 31 of year 2) stops collecting HMDA data beginning with year 3. Similarly, an institution that did not meet the coverage test for a given year, and then meets the test in the succeeding year, begins collecting HMDA data for the calendar year following the year in which it meets the test for coverage. For example, a for-profit mortgage lending institution (other than a bank, savings association, or credit union) that, in year 1, falls below the thresholds specified in section 203.2(e)(2)(iii), but meets one of them in year 2 (and otherwise meets the criteria for coverage), need not collect data in year 2, but begins collecting data in year 3.

2. Adjustment of exemption threshold for depository institutions. Depository institutions with assets at or below $30 million are exempt from collecting data for 2000.

3. Coverage after a merger. Several scenarios of data-collection responsibilities for the calendar year of a merger are described below. Under all the scenarios, if the merger results in a covered institution, that institution must begin data collection January 1 of the following calendar year.

i. Two institutions are not covered by Regulation C because of asset size. The institutions merge. No data collection is required for the year of the merger (even if the merger results in a covered institution).

ii. A covered institution and an exempt institution merge. The covered institution is the surviving institution. For the year of the merger, data collection is required for the covered

institution's transactions. Data collection is optional for transactions handled in offices of the previously exempt institution.

iii. A covered institution and an exempt institution merge. The exempt institution is the surviving institution, or a new institution is formed. Data collection is required for transactions of the covered institution that take place prior to the merger. Data collection is optional for transactions taking place after the merger date.

iv. Two covered institutions merge. Data collection is required for the entire year. The surviving or resulting institution files either a consolidated submission or separate submissions for that year.=

<4. Originations. Institutions are reminded that coverage depends in part on whether they have originated home purchase loans. To determine whether their activities with respect to a particular loan constitute an origination, institutions should consult, among other parts of the staff commentary, the discussion of the broker rule under sections 203.1(c) and 203.4(a).

[1.] 5.= Branches of foreign banks—treated as [a] bank<s=. A federal branch or a state-licensed insured branch of a foreign bank is a "bank" under section 3(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)), and is covered by HMDA if it meets the tests for a depository institution found in section[s] 203.2(e)(1) [and 203.3(a)(1)] of Regulation C.

[2.] <6.= Branches and offices of foreign banks—treated as [a] for-profit mortgage lending institution<s=. Federal agencies, state-licensed agencies, state-licensed uninsured branches of foreign banks, commercial lending companies owned or controlled by foreign banks, and entities operating under section 25 or 25A of the Federal Reserve Act, 12 U.S.C. 601 and 611 (Edge Act

and agreement corporations) are not “banks” under the Federal Deposit Insurance Act. These entities are nonetheless covered by HMDA if they meet the tests for a <for-profit= nondepository mortgage lending institution found in section[s] 203.2(e)(2) [and 203.3(a)(2)] of Regulation C.

2[(f)] <(g)= Home improvement loan

[1. Definition. A home improvement loan is a loan that is made for the purpose of home improvement and that is classified by the institution as a home improvement loan.

2. Statement of the applicant. An institution may rely on the oral or written statement of an applicant regarding the proposed use of loan proceeds

3. Home-equity lines. An institution that has chosen to report home-equity lines of credit reports as a home improvement loan only the part of a home-equity line that is intended for home improvement. An institution that reports home-equity lines reports the disposition of all applications, not just originations.

4. Classification requirement. An institution has “classified” a loan as a home improvement loan if it has entered the loan on its books as a home improvement loan, or has otherwise coded or identified the loan as a home improvement loan. For example, an institution that has booked a loan or reported it on a “call report” as a home improvement loan has classified it as a home improvement loan. An institution may also classify loans as home improvement loans in other ways (for example, by color-coding loan files).]

[5.] <1.= Improvements to real property. Home improvements include improvements both to a dwelling and to the real property on which the dwelling is located (for example, installation of a swimming pool, construction of a garage, or landscaping).

[6.] <2.= Commercial and other loans. A <home improvement=loan [for improvement purposes] <may include a loan=originated outside an institution’s [consumer] <residential mortgage= lending division (such as a loan to improve an apartment building made through the commercial loan department)<.=[is reported if the institution classifies it as a home improvement loan.]

[7. Multiple-purpose loan. A loan for home improvement and for other purposes is treated as a home improvement loan even if less than 50 percent of the total loan proceeds are to be used for improvement, provided the institution classifies the loan as a home improvement loan. (But see comment (2)(f)-3 of this supplement on home-equity lines of credit.)]

[8.] <3.= Mixed-use property. A loan to improve property used for residential and commercial purposes (for example, a building containing apartment units and retail space) [satisfies the purpose requirement] <is a home improvement loan= if the loan proceeds are <used= primarily to improve the residential portion of the property. If the loan proceeds are <used= to improve the entire property (for example, to replace the heating system), the loan [satisfies the purpose requirement] <is a home improvement loan= if the property itself is primarily residential. An institution may use any reasonable standard to determine the primary use of the property, such as by square footage or by the income generated. An institution may select the standard to apply on a case-by-case basis. [To report the loan as a home improvement loan, the institution must also classify it as such.]

<4. Multiple-category loans. If a loan is a home improvement loan as well as a refinancing, report the loan as a home improvement loan.=

2[(g)]<(h)= Home purchase loan

1. Multiple properties. A home purchase loan includes a loan secured by one dwelling and used to purchase another dwelling.

2. Mixed-use property**.** A <dwelling-secured= loan to purchase property used primarily for residential purposes (for example, an apartment building containing a convenience store) is a home purchase loan. An institution may use any reasonable standard to determine the primary use of the property, such as by square footage or by the income generated. An institution may select the standard to apply on a case-by-case basis.

3. Farm loan. A loan to purchase property used primarily for agricultural purposes is not a home purchase loan even if the property includes a dwelling. An institution may use any reasonable standard to determine the primary use of the property, such as by reference to the exemption from Regulation X (Real Estate Settlement Procedures, 24 C.F.R. 3500.5(b)(1)) for a loan on property of 25 acres or more. An institution may select the standard to apply on a case-by-case basis.

4. Commercial and other loans. A home purchase loan <may= include[s] a loan originated outside an institution's residential mortgage lending division (such as a loan for the purchase of an apartment building made through the commercial loan department). [For home purchase loans, there is no classification test.]

5. Construction and permanent financing. A home purchase loan includes both a combined construction/permanent loan and the permanent financing that replaces a construction-only loan. It does not include a construction-only loan, which is considered "temporary financing" under Regulation C and is not reported.

[6. Home-equity line. An institution that has chosen to report home-equity lines of credit reports as a home purchase loan only the part that is intended for home purchase. An institution may rely on the applicant's oral or written statement about the proposed use of the funds. An institution that reports home-equity lines reports the disposition of all applications, not just the originations.]

<6. Second mortgages that finance the downpayments on first mortgages. If an institution making a first mortgage loan to a home purchaser also makes a second mortgage loan to the same purchaser to finance part or all the home purchaser's downpayment, the institution reports each loan separately as a home purchase loan.

7. Multiple-category loans. If a loan is a home purchase loan as well as a home improvement loan, refinancing, or home-equity loan, report the loan as a home purchase loan.

2(k) Refinancing.

1. Statement of applicant. The financial institution may rely on the statement of the applicant in determining whether the existing obligation is a home purchase or home improvement loan.

2. Certain transactions not refinancings. Do not report a transaction if, under the loan agreement, you are unconditionally obligated to refinance the obligation, or you are obligated to refinance the obligation subject to conditions within the borrower's control.=

[SECTION 203.3—Exempt Institutions

3(a) Exemption based on location, asset size, or number of home purchase loans.

1. General. An institution that ceases to meet the tests for HMDA coverage (such as the 10 percent test for nondepository institutions) or becomes exempt may stop collecting HMDA data beginning with the next calendar year. For example, a bank whose assets are at or below the threshold on December 31 of a given year reports data for that full calendar year, in which it was covered, but does not report data for the succeeding calendar year.

2. Adjustment of exemption threshold for depository institutions. For data collection in 2000, the asset-size exemption threshold is $30 million. Depository institutions with assets at or below $30 million are exempt from collecting data for 1999.

3. Coverage after a merger. Several scenarios of data-collection responsibilities for the calendar year of a merger are described below. Under all the scenarios, if the merger results in a covered institution, that institution must begin data collection January 1 of the following calendar year.

i. Two institutions are exempt from Regulation C because of asset size. The institutions merge. No data collection is required for the year of the merger (even if the merger results in a covered institution).

ii. A covered institution and an exempt institution merge. The covered institution is the surviving institution. For the year of the merger, data collection is required for the covered institution's transactions. Data collection is optional for transactions handled in offices of the previously exempt institution.

iii. A covered institution and an exempt institution merge. The exempt institution is the surviving institution, or a new institution is formed. Data collection is required for transactions of the covered institution that take place prior to the merger. Data collection is optional for transactions taking place after the merger date.

iv. Two covered institutions merge. Data collection is required for the entire year. The surviving or resulting institution files either a consolidated submission or separate submissions for that year.

4. Mergers versus purchases in bulk. If a covered institution acquires loans in bulk from another institution (for example, from the receiver for a failed institution) but no merger or acquisition of an institution is involved, the institution reports the loans as purchased loans.]

SECTION 203.4—Compilation of Loan Data

4(a) Data Format and Itemization

<1. Reporting requirements. (a) An institution reports data on covered loans that it originated and covered loans that it purchased during the calendar year described in the report. An institution reports these data even if the loans were subsequently sold by the institution.

(b) An institution reports the data for applications for covered loans that did not result in originations—for example, applications that the institution denied or that the applicant withdrew during the calendar year described in the report.

(c) In the case of brokered loan applications or applications forwarded through a correspondent, the institution reports as originations loans that it approved and subsequently acquired according to a pre-closing arrangement (whether or not they closed in the institution's

name). Additionally, the institution reports the data for all applications that did not result in originations—for example, applications that the institution denied or that the applicant withdrew during the calendar year covered by the report (whether or not they would have closed in the institution's name). For all of these loans and applications, the institution reports the required data regarding the borrower's or applicant's race or national origin, sex, and income.

(d) Originations are to be reported only once. If the institution is the loan broker or correspondent, it does not report as originations loans that it forwarded to another lender for approval prior to closing, and that were approved and subsequently acquired by that lender (whether or not they closed in the institution's name).

(e) An institution reports applications that were received in the previous calendar year but were acted upon during the calendar year covered by the current register.

(f) A financial institution submits all required data to its supervisory agency in one package, with the prescribed transmittal sheet. An officer of the institution certifies to the accuracy of the data.

(g) The transmittal sheet states the total number of line entries contained in the accompanying data transmission.=

[1. Quarterly updating. An institution must make a good-faith effort to record all required data concerning covered transactions—loan originations (including refinancings), loan purchases, and the disposition of applications that did not result in originations—fully and accurately within 30 days after the end of each calendar quarter. If some data are inaccurate or incomplete despite this good-faith effort, the error or omission is not a violation of Regulation C provided that the institution

corrects and completes the information prior to reporting the HMDA-LAR to its regulatory agency.]

2. Updating—agency requirements. Certain state or federal regulations, such as the Federal Deposit Insurance Corporation's regulations, may require an institution to update its data more frequently than is required under Regulation C.

3. Form of updating. An institution may maintain the quarterly updates of the HMDA-LAR in electronic or any other format, provided the institution can make the information available to its regulatory agency in a timely manner upon request.

4(a)(1) Application <number and application= date

1. Application date—consistency. In reporting the date of application, an institution reports the date the application was received or the date shown on the application. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of loans).

2. Application date—application forwarded by a broker. For an application forwarded by a broker, an institution reports the date the application was received by the broker, the date the application was received by the institution, or the date shown on the application. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of loans).

3. Application date—reinstated application. If, within the same calendar year, an applicant asks an institution to reinstate a counteroffer that the applicant previously did not accept (or asks the institution to reconsider an application that was denied, withdrawn, or closed for incompleteness), the institution may treat that request as the continuation of the earlier transaction or as a new transaction. If the institution treats the request for reinstatement or reconsideration as a new transaction, it reports the date of the request as the application date.

<4. Application or loan number. An institution ensures that each reported identifying number is unique within the institution. If an institution's register contains data for branch offices, for example, the institution could use a letter or a numerical code to identify the loans or applications of different branches, or could assign a certain series of numbers to particular branches to avoid duplicate numbers. Institutions are strongly encouraged not to use the applicant's or borrower's name or social security number, for privacy reasons.

5. Application—date of receipt. For reporting purposes, the date a lender or broker receives an application is the date on which it or its agent first takes possession of a physical or electronic copy of the application in completed form. State law determines whether one party is the agent of another. For example, if a completed application is received by a lender on the Friday before a three-day weekend, and the lender uploads the application onto its computer system the following Tuesday, the lender should report Friday's date as the date it received the application.

6. Application—year action taken. An institution must report an application in the calendar year in which the institution takes final action on the application.=

4(a)(2) Type and purpose

<1. Purpose—statement of applicant. An institution may rely on the oral or written statement of an applicant regarding the proposed use of loan proceeds. For example, a lender could use a check-box on a loan application to determine whether or not a loan is intended for home improvement purposes.=

[1. Purpose—multiple-purpose loan. If a loan is for home improvement and another covered purpose, an institution reports the loan as a home improvement loan if the institution classifies it as a home improvement loan. Otherwise the institution reports the loan as a home purchase loan or a refinancing, as appropriate. An institution may determine how to report such loans on a case-by-case basis.]

4(a)(3) Occupancy

[1. Actual occupancy status. If a loan relates to multifamily property, property located outside an MSA, or property in an MSA where the institution has no home or branch office, the institution may either report the actual occupancy status or report using the code for "not applicable." (A nondepository institution may be deemed to have a home or branch office in an MSA under section 203.2(c)(2) of Regulation C.)]

[2.] <1.= Multiple properties. If a loan relates to multiple properties, the institution reports the owner occupancy status of the property for which property location is being reported. (See the comments to paragraph 4(a)(6), Property location.)

4(a)(4) Loan amount

1. Loan amount—counteroffer. If an applicant accepts a counteroffer for an amount different from the amount initially requested, the institution reports the loan amount granted. If an applicant does not accept a counteroffer or fails to respond, the institution reports the loan amount initially requested.

2. Loan amount—multiple-purpose loan. [Except in the case of a home-equity line of credit, a]<A=n institution reports the entire amount of the loan, even if only a part of the proceeds is intended for home purchase or home improvement.

[3. Loan amount—home-equity line. An institution that reports home-equity lines of credit reports only the part that is intended for home improvement or home purchase purposes. An institution may rely on the applicant’s oral or written statement about the proposed use of the loan proceeds.]

[4.] <3.= Loan amount—assumption. An institution that enters into a written agreement accepting a new party as the obligor on a loan reports the amount of the outstanding principal on the assumption as the loan amount.

4(a)(5) Type of action taken and date

1. Action taken—counteroffers. If an institution makes a counteroffer to lend on terms different from the applicant’s initial request (for example, for a shorter loan maturity <or in a different amount=) and the applicant does not accept the counteroffer or fails to respond, the institution reports the action taken as a denial <on the original terms requested by the applicant.=

2. Action taken—rescinded transactions. If a borrower rescinds a transaction after closing, the institution, on a case-by-case basis, may report the transaction either as an origination or as an application that was approved but not accepted.

3. Action taken—purchased loans. An institution reports the loans that it purchased during the calendar year, and does not report the loans that it declined to purchase.

4. Action taken—conditional approvals. If an institution issues a loan approval subject to the applicant's meeting underwriting conditions [(other than customary loan-commitment or loan closing conditions, such as a clear-title requirement or an acceptable property survey)] and the applicant does not meet them, the institution reports the action taken as a denial.

5. Action taken date—approved but not accepted. For a loan approved by an institution but not accepted by the applicant, the institution reports using any reasonable date, such as the approval date, the deadline for accepting the offer, or the date the file was closed. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of loans).

6. Action taken date—originations. For loan originations, an institution generally reports the settlement or closing date. For loan originations that an institution acquires through a broker, the institution reports either the settlement or closing date, or the date the institution acquired the loan from the broker. If the disbursement of funds takes place on a date later than the settlement or closing date, the institution may use the date of disbursement. For a construction/permanent loan, the institution reports either the settlement or closing date, or the date the loan converts to the

permanent financing. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of loans). <Nothwithstanding this flexibility regarding the use of the closing date in connection with reporting the date action was taken, the year in which an origination goes to closing is the year in which the institution must report the origination.

7. Action taken—pending applications. An institution does not report any loan application still pending at the end of the calendar year; it reports that application on its register for the year in which final action is taken.=

4(a)(6) Property location

1. Property location—multiple properties (home improvement/refinance of home improvement). For a home improvement loan, an institution reports the property being improved. If more than one property is being improved, the institution reports the location of one of the properties or reports the loan using multiple entries on its HMDA-LAR (with unique identifiers) and allocating the loan amount among the properties.

2. Property location—multiple properties (home purchase/refinance of home purchase). For a home purchase loan, an institution reports the property taken as security. If an institution takes more than one property as security, the institution reports the location of the property being purchased if there is just one. If the loan is to purchase multiple properties and is secured by multiple properties, the institution reports the location of one of the properties or reports the loan using multiple entries on its HMDA-LAR (with unique identifiers) and allocating the loan amount among the properties.

3. Property location—loans purchased from another institution. The requirement to report the property location by census tract in a[n MSA] <metropolitan area= where the institution has a home or branch office applies not only to loan applications and originations but also to loans purchased from another institution. This includes loans purchased from an institution that did not have a home or branch office in that <metropolitan area= [MSA] and did not collect the property-location information.

4. Property location—mobile or manufactured home. If information about the potential site of a [mobile or] manufactured home is not available, an institution reports using the code for “not applicable.”

5. Property location—use of BNA. At its option, an institution may report property location by using a block numbering area (BNA). The U.S. Census Bureau, in conjunction with state agencies, has established BNAs as statistical subdivisions of counties in which census tracts have not been established. BNAs are generally identified in census data by numbers in the range 9501 to 9989.99.

4(a)(7) Applicant and income data

1. Applicant data—completion by applicant. An institution reports the monitoring information as provided by the applicant. For example, if an applicant checks the <“Asian”= [“other”] box the institution reports using the <“Asian”= [“other”] code.

2. Applicant data—completion by lender. If an applicant fails to provide the requested information for an application taken in person, the institution reports the data on the basis of visual observation or surname. [As stated in paragraph I.B.5 to Appendix B of this part, the

institution does not use the "other" code, but selects from the categories listed on the form.]

3. Applicant data—application completed in person. When an applicant meets in person with a lender to complete an application that was begun by mail or telephone, the institution must request the monitoring information. If the meeting occurs after the application process is complete, for example, at closing, the institution is not required to obtain monitoring information.

4. Applicant data—joint applicant. A joint applicant may enter the government-monitoring information on behalf of an absent joint applicant. If the information is not provided, the institution reports using the code for "information not provided by applicant in mail or telephone application."

5. Applicant data—video and other electronic-application processes. An institution that accepts applications through electronic media with a video component treats the applications as taken in person and collects the information about the race or national origin and sex of applicants. An institution that accepts applications through electronic media without a video component (for example, the Internet or facsimile) treats the applications as accepted by mail. [(See Appendix B of this part for procedures to be used for data collection.)]

6. Income data—income relied on. An institution reports the gross annual income relied on in evaluating the creditworthiness of applicants. For example, if an institution relies on an applicant's salary to compute a debt-to-income ratio but also relies on the applicant's annual bonus to evaluate creditworthiness, the institution reports the salary and the bonus to the extent relied upon. Similarly, if an institution relies on the income of a cosigner to evaluate creditworthiness, the institution includes this income to the extent relied upon. But an institution does not include the income of a guarantor who is only secondarily liable.

7. Income data—co-applicant. If two persons jointly apply for a loan and both list income on the application, but the institution relies only on the income of one applicant in computing ratios and in evaluating creditworthiness, the institution reports only the income relied on.

8. Income data—loan to employee. An institution may report "NA" in the income field for loans to employees to protect their privacy, even though the institution relied on their income in making its credit decisions.

4(a)(8) Type of purchaser

1. Type of purchaser—loan-participation interests sold to more than one entity. An institution that originates a loan, and then sells it to more than one entity, reports the "type of purchaser" based on the entity purchasing the greatest interest, if any. If an institution retains a majority interest, it does not report the sale.

<2. Swapped loans. Loans "swapped" for mortgage-backed securities are to be treated as sales; the purchaser is the type of entity receiving the loans that are swapped.=

4(c) Optional data

1. Agency requirements. Certain state or federal entities, such as the Office of Thrift Supervision, require institutions to report the reasons for denial even though this is optional reporting under HMDA and Regulation C.]

4(d) Excluded data

[1. Loan pool. The purchase of an interest in a loan pool (such as a mortgage-participation certificate, a mortgage-backed security, or a real estate mortgage investment conduit or "REMIC") is a purchase of an interest in a security under HMDA and is not reported on the HMDA-LAR.]

<1. Mergers, purchases in bulk, and branch acquisitions. If a covered institution acquires loans in bulk from another institution (for example, from the receiver for a failed institution) but no merger or acquisition of the institution, or acquisition of a branch, is involved, the institution reports the loans as purchased loans.=

SECTION 203.5—Disclosure and Reporting

5(a) Reporting to agency

<1. Submission of data. Institutions submit data to their supervisory agencies in an automated, machine-readable form. The format conforms to that of the HMDA-LAR. An institution should contact its federal supervisory agency for information regarding procedures and technical specifications for automated data submission; in some cases, agencies also make software for automated data submission available to institutions. The data are edited before submission, using the edits included in the agency-supplied software or equivalent edits in software available from vendors or developed in-house. (Institutions that report twenty-five or fewer entries on their HMDA-LAR may collect and report the data in paper form. An institution that submits its register in nonautomated form sends two copies that are typed or computer printed and must use the format of the HMDA-LAR (but need not use the form itself). Each page is numbered, and the total number of pages are given (for example, "Page 1 of 3").

2. Procedures for entering data. The required data are entered in the register for each loan origination, each application acted on, and each loan purchased during the calendar year. The institution should decide on the procedure it wants to follow—for example, whether to begin entering the required data, when an application is received, or to wait until final action is taken (such

as when a loan goes to closing or an application is denied).

3. Options for collection. An institution may collect data on separate registers at different branches, or on separate registers for different loan types (such as for home purchase or home improvement loans, or for loans on multifamily dwellings). Entries need not be grouped on the register by metropolitan area, or chronologically, or by census tract numbers, or in any other particular order.=

[1.] <4.= Change in supervisory agency. If the supervisory agency for a covered institution changes (as a consequence of a merger or a change in the institution's charter, for example), the institution must report data to its new supervisory agency for the year of the change and subsequent years.

[2] <5.= Subsidiaries. An institution is a subsidiary of a bank or savings association (for purposes of reporting HMDA data to the parent's supervisory agency) if the bank or savings association holds or controls an ownership interest that is greater than 50 percent of the institution.

<6. Transmittal sheet—additional data submissions. Each additional data submission that becomes necessary (for example, because the institution discovers that data were omitted from the initial submission, or because revisions are called for) must be accompanied by a separate transmittal sheet.

7. Transmittal sheet—revisions or deletions. If a data submission involves revisions or deletions of previously submitted data, state the total of all line entries contained in that submission, including both those representing revisions or deletions of previously submitted entries, and those that are being resubmitted unchanged or are being submitted for the first time. Depository

institutions must provide a list of the metropolitan areas in which they have home or branch offices.

5(b) Public disclosure of statement

1. Business day. For purposes of section 203.5, a business day is any calendar day other than a Saturday, Sunday, or legal public holiday.

2. Format. An institution may make the disclosure statement available in paper form or, if the person requesting the data agrees, in automated form (such as by PC diskette or computer tape).

5(c) Public disclosure of loan/application register

1. Format. An institution may make the modified register available in paper or automated form (such as by PC diskette or computer tape). Although institutions are not required to make the modified register available in census tract order, they are strongly encouraged to do so in order to enhance its utility to users.=

5(e) Notice of availability

1. Poster—suggested text. [The suggested wording of the poster text provided in Appendix A of this part is optional. An institution may use other text that meets the requirements of the regulation.] <An institution may use any text that meets the requirements of the regulation. Some of the federal financial regulatory agencies and HUD provide HMDA posters that an institution can use to inform the public of the availability of its HMDA data, or the institution may create its own posters. If an institution prints its own, the following language is suggested but is not required:

HOME MORTGAGE DISCLOSURE ACT NOTICE

The HMDA data about our residential mortgage lending are available for review. The

data show geographic distribution of loans and applications; race, gender, and income of applicants and borrowers; and information about loan approvals and denials. Inquire at this office regarding the locations where HMDA data may be inspected.

2. Additional language for institutions making the disclosure statement available on request. An institution that posts a notice informing the public of the address to which a request should be sent could include the following sentence, for example, in its general notice: "To receive a copy of these data send a written request to [address]."=

SECTION 203.6—Enforcement

6(b) Bona fide errors

1. Bona fide error—information from third parties. An institution that obtains the property-location information for applications and loans from third parties (such as appraisers or vendors of "geocoding" services) is responsible for ensuring that the information reported on its HMDA-LAR is correct. [An incorrect entry for a census tract number is a bona fide error, and is not a violation of the act or regulation, provided that the institution maintains reasonable procedures to avoid such errors (for example, by conducting periodic checks of the information obtained from these third parties).]

By order of the Board of Governors of the Federal Reserve System, November **, 2000.

Jennifer J. Johnson
Secretary to the Board
BILLING CODE 6210-01P

Attachment B

Changes Not Recommended

The staff is not recommending several changes discussed in the Advance Notice or suggested by commenters or others. These include:

- Additional data collections;
- Expanding coverage to include construction loans and other temporary financing;
- Expanding coverage to include "MECAs," or modification, extension, and consolidation agreements, which substitute in some states for traditional refinancings;
- Exempting bulk purchases and "seasoned" loans; and
- Revising the reporting requirements regarding applicant income.

These suggestions, and the reasons why the staff does not recommend them, are briefly discussed below.

A. Additional Data Collections

These include:

- Interest rate and fees: One fair lending enforcement agency suggested requiring lenders to report the interest rate on the mortgage promissory note; and the HUD/Treasury Report recommended that lenders be required to report certain closing costs. The staff believes that the APR is a better measure than the note rate of the overall cost of credit. Loan fees and charges, such as closing costs, may be useful for data analysis, but defining which fees should be reported may be difficult without being overinclusive or underinclusive, and calculating and reporting these fees might be difficult and time-consuming for lenders.

- Subprime status: Although public concerns about subprime, and possible predatory, lending have increased, the staff is not aware of any generally accepted definition of subprime lending that would be sufficiently precise to facilitate regulatory reporting. Should a definition gain wide acceptance, the staff may reconsider requiring lenders to report whether a loan is within the definition. In the meantime, disclosure of the APR may be used to identify subprime loans, as these loans typically are priced higher than other loans.

B. Covering Construction Loans and Other Temporary Financing

Regulation C generally does not permit lenders to report temporary financing. Rather than defining temporary financing, Regulation C provides illustrations, such as bridge and construction loans. While data about some of these loans are captured when a loan is converted to permanent financing, some commenters have expressed concern that construction-only loans are not being reported. Also, some institutions have requested that Regulation C include a precise definition of temporary financing in addition to the examples provided.

1. Construction Loans

The Advance Notice solicited comment on the usefulness of data on construction lending and the burden of collecting such data. A few commenters, including community groups, believed the data would be useful and encouraged coverage. These commenters noted that some institutions offer only construction loans and do not provide permanent financing. These institutions are thus unable to report significant portions of their home lending activity.

The majority of commenters on this issue, however—and the large majority of lenders commenting on it—believed that reporting construction lending generally would be duplicative because much of the same data would be captured when the permanent loan is reported. Some commenters also expressed concern about the difficulty of reporting the required property location information for properties that may lack street addresses at the construction phase.

The staff does not recommend covering construction loans or other temporary financing because the data would often be duplicative or incomplete. Consequently, imposing an additional burden to collect these data would not be justified.

2. Temporary Financing Generally

The Advance Notice also requested comment on whether the regulation should define "temporary loans" in terms of a time period. Some commenters suggested various periods, ranging from no more than one year to three or more years. Others supported leaving the term defined by example. In the absence of any generally accepted timeframe for "temporary financing," the staff does not recommend a "bright-line" definition of "temporary financing." Instead, the regulation would continue to offer examples—such as construction financing.

C. Expanding Coverage to Include MECAs

Several commenters on the Advance Notice suggested that the Board consider treating certain modification, extension, and consolidation agreements (MECAs) as refinancings under Regulation C. MECAs substitute for traditional refinancings in some states, such as New York and Texas, to avoid the imposition of mortgage recording fees and taxes. Such transactions currently are not reported because they do not meet the definition of a refinancing (satisfaction and replacement of an existing mortgage loan). Some commenters suggested that lenders should report MECAs that are the functional equivalent of a refinancing.

The existing definition of a refinancing establishes a bright line test for reportable transactions, by defining refinancings as extensions of credit that satisfy and replace an existing loan. Covering other agreements that are "functionally equivalent" to refinancings would complicate the application of this test by requiring institutions and others to resolve innumerable questions about whether particular transactions are in fact functionally equivalent to refinancings. The staff believes that MECA data may be useful in certain instances, but that, under the existing loan-classification scheme, the advantages of a

bright-line test for determining whether a transaction should be reported—especially in reducing compliance burden—outweigh the benefits of additional data on these transactions. Moreover, the bright-line test benefits the entire industry, whereas the benefits of a rule adapted to MECAs would be confined to a few states. Therefore, the staff does not recommend that the Board propose to revise the definition of refinancing to include MECAs.

D. Exempting Bulk Purchases and "Seasoned" Loans

A number of commenters on the Advance Notice proposed excluding loans acquired through bulk purchases from the reporting requirements. However, unlike mergers and branch acquisitions, which are transactions driven by a number of factors, bulk purchases typically are based on a credit analysis of the portfolio being sold. Excluding bulk purchases, therefore, would result in the loss of data useful in determining whether institutions are serving the housing needs of their communities. Accordingly, the staff does not recommend that the Board propose to exclude bulk purchases.

The Advance Notice solicited comment on whether other revisions regarding purchased loans could improve data quality and reduce burden. The Advance Notice referred specifically to the possible exclusion of "seasoned loans"—such as those originated more than one or two years before the year being reported on. Several commenters, including financial institutions and trade associations, recommended excluding loans that had been originated, for example, more than six months, one year, or two years prior to purchase. These commenters, including financial institutions and community groups, contended that a decision to purchase such loans does not reflect a credit decision by the acquirer, but rather a decision to purchase assets. They noted that reporting such loans was burdensome since data may be incomplete and difficult to locate.

Other commenters, however, believed that seasoned loans should be reported. These commenters (including financial institutions and community groups) noted, for example, that certain programs prohibit the sale of loans before one or two years have passed—in order to ensure that the loans are performing. Some commenters expressed concern that institutions would no longer receive positive consideration for purchases of these loans under the Community Reinvestment Act (CRA), which could reduce the loans' marketability. Certain commenters believed that the burden of tracking seasoned loans in order to exclude them might outweigh the benefits of lessened reporting requirements.

Based on the comments and on further analysis, the staff believes that data on seasoned loans may be useful in evaluating an institution's mortgage lending activity. The staff recommends that the Board not propose to exclude those loans from the reporting requirements.

E. Applicant Income

Regulation C provides that an institution must report the "gross annual income relied upon in processing the application" on its loan/application register. In some instances, institutions make credit decisions based only on the portion of an applicant's income necessary for the applicant to qualify for a loan, rather than on an applicant's total annual income. Concern has been expressed that this practice may understate an applicant's income, and may thereby skew a large retail institution's CRA performance rating.

Specifically, CRA examiners evaluate a large retail institution's CRA performance in part based on the number and amount of home mortgages (as reported under HMDA) that the institution makes to low-, moderate-, middle-, and upper-income individuals. The CRA regulations define these income categories based on the median family income for an area, which is calculated using gross annual

incomes, not the income relied upon in a credit decision. If an institution reports only part of an applicant's income on its loan/application register, the applicant may appear to be in an income category that is lower than the applicant's actual income category, thus misstating the lender's CRA performance.

Changing Regulation C, however, would impose significant burden on institutions, many of which are not subject to CRA. It is unclear whether the difference between income relied upon and total annual income is large enough to have a material impact on an assessment of an institution's CRA performance. The staff believes that given this lack of information, imposing additional burden on institutions is not warranted.