BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

DIVISION OF CONSUMER AND COMMUNITY AFFAIRS

DATE:	January 16, 2002
TO:	Board of Governors
FROM:	Governor Gramlich, Chairman Committee on Consumer and Community Affairs
SUBJECT:	Amendments to Regulation C (Home Mortgage Disclosure)

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

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DATE: January 16, 2002

TO: Board of Governors

FROM: Division of Consumer and Community Affairs (D. Smith and staff[1])

SUBJECT: Amendments to Regulation C (Home Mortgage Disclosure)

ACTION REQUESTED: Approval to publish a final rule amending Regulation C to improve the quality, consistency, and utility of the data reported under the Home Mortgage Disclosure Act. The changes expand the coverage of nondepository lenders; streamline the definitions of refinancings and home improvement loans; revise the definition of applications to include requests for preapproval; mandate the collection of additional items of information, including the rate spread between the annual percentage rate on a loan and the rate on the comparable Treasury security (for APRs above certain thresholds); and require lenders to request race, ethnicity, and sex data from telephone applicants.

SUMMARY:

The Home Mortgage Disclosure Act (HMDA) has three purposes. One is to provide the public and government officials with data that will help show whether lenders are serving the housing needs of the neighborhoods and communities in which they are located. A second purpose is to help public officials target public investment to promote private investment where it is needed. A third purpose is to provide data that assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.

HMDA accordingly requires certain depository and for-profit nondepository lenders to collect, report, and publicly disclose data about originations and purchases of loans secured by residential real property and of home improvement loans. Lenders must also report data about applications that did not result in originations.

The Board's Regulation C implements HMDA. Regulation C generally requires that, for home purchase and home improvement loans, lenders report data about:

[1] A. Hurt, J. Gell, J. Wood, K. Ryan, and D. Sokolov

- 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 race or national origin, sex, and income; and
- Each property, including location and occupancy status.

Lenders report this information to their supervisory agencies on an application-by-application basis using a loan/application register ("HMDA/LAR"). Lenders must make their HMDA/LARs available to the public, with certain fields redacted to preserve applicants' privacy. The Federal Financial Institutions Examination Council (FFIEC), acting on behalf of the supervisory agencies, compiles the reported information and prepares an individual disclosure statement for each institution, aggregate reports for all covered lenders in each metropolitan area, and other reports. These disclosure statements and reports are available to the public.

The Board began the current review of Regulation C in March 1998 by publishing an Advance Notice of Proposed Rulemaking (Advance Notice). The Advance Notice solicited comment on several specific issues, as well as generally on potential revisions to Regulation C. The specific issues related to the reporting of preapprovals; revising the definitions of reportable refinancings and home improvement loans; coverage of purchased loans, construction loans, and mobile home loans; and reporting the reasons for a credit denial. The Board received approximately 100 comment letters. Most commenters addressed only the issues identified in the Advance Notice; others raised additional issues.

Subsequently, the Board received further suggestions for revising Regulation C, many reflecting increased public and agency concern about predatory lending. For example, the Department of Housing and Urban Development and the Department of the Treasury held hearings on predatory lending and in June 2000 issued a report to Congress, Curbing Predatory Home Mortgage Lending, that contained suggested changes.[2] The Board received other suggestions at public hearings that the Board held on possible changes to the Home Ownership and Equity Protection Act (HOEPA) during the summer of 2000.

In December 2000, the Board published for public comment a proposal to amend Regulation C. The proposed amendments: (1) extended coverage of HMDA to more nondepository lenders; (2) simplified the definitions of reportable refinancing and home improvement loans; (3) required reporting of requests for preapprovals as defined in the regulation; (4) required reporting of home-equity lines of credit; and (5) required reporting on additional items of data, including the annual percentage rate (APR), whether a loan is subject to HOEPA, and whether the loan or application involves a manufactured home.

The Board received almost 300 comments. Most of the commenters—including lenders and related trade associations, community and civil rights groups, and law enforcement agencies—supported expanding the coverage of nondepository lenders. They believed that coverage of these lenders would provide more complete information about the mortgage market and would also result in a more level playing field for depository lenders.

Commenters were divided on all other aspects of the proposal. Many lenders and other industry commenters supported simplification of existing loan categories. Many of these commenters, however, did not want to report additional loans and applications because of concerns about burden. Most lenders were opposed to reporting pricing and other new data items because of concerns about burden and about the potential public misinterpretation of the

[2] In their report HUD and Treasury recommended that the Board revise Regulation C to no longer exempt nondepository lenders that do less than 10 percent of their business in home purchase or refinance loans; collect APR and other data on the cost of credit, including the finance charge and all fees; distinguish manufactured home loans; collect parent company name; require reporting of reasons for denial; and collect loan-to-value ratio.

resulting data. Community groups, civil rights groups, and law enforcement agencies generally supported the revised definitions of reportable loans and applications and the new data items, to assist in enforcement of fair lending laws and to provide better and more consistent information about the mortgage market.

Based on the comments and its own further analysis, the staff recommends that the Board publish a final rule amending Regulation C as set forth below. For each of the proposed changes to the regulation, the staff weighed the benefit and burden that would result. The staff also considered each proposed change in light of the aggregate benefit and burden of the entire proposal. The draft final rule is substantially similar to the proposal, with some revisions to reduce burden and improve the quality of the data. In summary, the draft final rule would do the following:

1. **Coverage of nondepository lenders.**

   Add an annual dollar-volume threshold of $25 million to the current loan percentage test (instead of the $50 million proposed), to ensure that nondepository lenders in the business of mortgage lending are covered as required by the statute.

2. **Reporting of information on loan pricing.**

   Add these data items to improve understanding of the mortgage market, including the subprime market, and assist in enforcing fair lending laws:

   - For originated loans where the APR exceeds the rate on Treasury securities with comparable maturity periods by a specified amount (such as 3 percent for first lien loans), the rate spread between the Treasury rate and the APR on the loan (instead of reporting the APR on all loans as the Board had proposed).

   - Whether the loan is subject to the Home Ownership and Equity Protection Act.

   - Whether the loan or application is secured by a first or junior lien on a dwelling, or is not secured by a lien on a dwelling.

3. **Definitions of reportable loans.**

   Streamline the definition of a reportable refinancing to cover transactions in which a new obligation satisfies and replaces an existing obligation, where both the existing and the new loan are secured by a lien on a dwelling.

Revise the definition of a home improvement loan to include all dwelling-secured loans (except home-equity lines of credit) that are made in whole or in part for home improvement purposes. For home improvement loans not secured by a dwelling, retain the current rule: these loans are reported only if they are for home improvement purposes and the lender classifies them as home improvement loans.

Retain the current rule for home-equity lines of credit (HELOCs): reporting HELOCs is optional, and only the amount intended for home improvement or home purchase purposes is to be reported (instead of requiring lenders to report all HELOCs as the Board had proposed).

4. Certain requests for preapprovals.

Revise the definition of "application" to require reporting of denials under covered preapproval programs for home purchase loans, and to designate which loans already reported under HMDA as originations resulted from a covered preapproval program. Covered preapproval programs are those in which a lender issues a written commitment to lend to creditworthy borrowers up to a specific amount and for a specific period, subject to limited conditions such as locating a suitable property. Lenders would also have the option to report preapproval requests that are approved but not accepted by the applicant.

5. Information regarding property type.

Require lenders to indicate whether an application or loan involves a manufactured home, given that such loans are underwritten differently from loans on other types of property.

DISCUSSION:

I. Expanded Coverage of Nondepository Lenders

HMDA covers nondepository lenders that are "engaged for profit in the business of mortgage lending." 12 U.S.C. 2801-10. Regulation C provides that 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 of all its loan originations (by dollar volume).[3] Some nondepository lenders originate significant numbers of mortgage loans, but because these lenders are also heavily engaged in other types of lending (credit card lending and other consumer lending, for instance) they are not currently covered by HMDA.

The Board proposed to address the coverage issue by preserving the existing percentage-based test and adding a dollar-volume test. A nondepository lender would be covered by Regulation C 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 Board estimated that a $50 million threshold would result in coverage of a nondepository institution making approximately 400 to 500 mortgage loans annually (based on a national average of $125,000 for home purchase loans). Comment was solicited on whether $50 million was an appropriate threshold.

Commenters, including industry, community groups, and law enforcement agencies, supported expanding coverage of nondepository lenders. Many depository lenders asserted that greater coverage of nondepository lenders would create a more level playing field for all lenders. Commenters also stated that expanded coverage of nondepositories could provide the agencies and the public with more information about the subprime market.

Different views were expressed, however, on the best approach for expanding coverage of nondepository lenders. Many commenters supported a dollar-volume threshold, but argued that the $50 million figure proposed was too high. Some industry commenters suggested lowering the dollar-volume threshold to as low as $5 million. Other commenters urged the

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[3] 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 office in a metropolitan area, and received applications for, originated, or purchased fewer than five home purchase or home improvement loans in a metropolitan area in the preceding calendar year.

Board to drop the proposed dollar-volume threshold and to adopt instead a number-of-loans test to address markets where the average loan amount for home purchase loans is smaller than the national average.

Still other commenters, including some community groups and federal agencies, suggested eliminating the 10 percent test. These commenters asserted that a lender's impact on a local or broader home mortgage market is a better measure of whether the lender is in the business of mortgage lending than the relationship between the lender's home mortgage lending and its total loan originations. Some commenters pointed out that in some regions of the country, the average home purchase loan amount is less than the national average of $125,000. For example, based on HMDA data and data provided by the National Association of Realtors, the average home purchase loan amount in the South is approximately $93,000.

The staff recommends a dollar-volume threshold of $25 million. Based on the national average for home purchase loans, a dollar-volume threshold of $25 million would result in coverage of a nondepository institution that originates approximately 200 home purchase loans annually. HMDA data show that, on average, a lender with originations of 200 loans per year receives approximately 400 applications annually. The staff believes that a lender receiving this order of magnitude of home purchase loan applications per year is engaged "in the business of mortgage lending."

II. Additional Data Items Related to Loan Pricing

The statutory findings and purposes section of the Home Mortgage Disclosure Act refers to lenders' responsibilities "to provide adequate home financing to qualified applicants on reasonable terms and conditions," and to the goal of providing the enforcement agencies and the public "with sufficient information to enable them to determine whether [lenders] are filling their obligations to serve the housing needs of the communities and neighborhoods in which they are located. . . ."[4] In addition, the 1989 amendments to the act, requiring reporting of racial characteristics, sex, and income, made clear that another goal of the statute is strengthening enforcement of fair lending laws.[5] The Congress provided that the Board "shall prescribe such regulations as may be necessary" to carry out these purposes.[6]

Obtaining loan pricing data is critical to address fair lending concerns related to loan pricing and to better understand the mortgage market, including the subprime market. The mortgage marketplace has changed significantly since HMDA was enacted and continues to evolve. Along with a substantial growth in the subprime market has come increased variation in loan pricing, generally related to an assessment of risk. In light of these changes, the staff believes that the collection of loan pricing information is necessary to fulfill the statutory purposes of HMDA and to ensure the continued utility of the HMDA data. The staff therefore recommends requiring lenders to report data items related to loan pricing (the rate spread, as described below, HOEPA status, and lien status).

A. Annual Percentage Rate. HMDA data currently include no information on loan pricing. The Board proposed to require that lenders report the annual percentage rate (APR) charged on a loan. This information would facilitate identification of subprime loans, which have different characteristics, such as higher denial rates, from other mortgage loans. Pricing information could also help identify practices that raise potential fair lending concerns warranting further investigation.

The Board proposed to require reporting of the APR only for home purchase and home improvement loans that are covered by the Truth in Lending Act (TILA) for which the lender is

[4] HMDA § 302(a) and (b), 12 U.S.C. 2801(a) and (b).
[5] "A primary purpose of such reporting [under HMDA] is to assist regulatory agencies in identifying possible discriminatory lending patterns that warrant closer scrutiny." H. Conf. Rep. 101-222, p. 459 (Aug. 4, 1989) (report accompanying legislation adding racial characteristics, sex, and income). "The conferees placed highest priority on the collection of analytically useful data by means of which to identify and eliminate discriminatory lending practices." Id.

required to disclose the APR to the consumer. Thus, APR reporting would not be required, for example, on an application withdrawn before the lender is required to disclose the APR, or on a loan to a corporate borrower and therefore not covered by TILA.

1. Public Comment on the APR Proposal. Lenders and their trade associations generally opposed the collection of the APR based on a belief that the data obtained would not be useful enough to justify the burden imposed in gathering it. They argued that APR data, viewed in isolation from other terms and conditions of the loan and from underwriting information, have little value and are subject to misinterpretation by the public. Lenders appeared concerned about unfounded allegations of unlawful credit discrimination should the data reveal disparities among different classes of borrowers, even though the disparities may be based on legitimate risk-based pricing and creditworthiness standards. Lenders also argued that there is no need to require that the APR be reported under HMDA because examiners already have access to APR data in depository lenders' files.

Although the Board proposed to mitigate burden by requiring reporting of APRs only for HMDA loans subject to TILA, for which the APR is already computed by the lender, some lenders contended that reporting under HMDA would still impose a substantial cost burden, because their systems for TILA disclosure and HMDA reporting are separate and do not necessarily interface readily. About half of the comments from lenders and their trade associations stated that reporting of pricing data in particular would be burdensome, although only about half of these offered specific reasons for their claim of burden. Perhaps the most common sources of burden cited were the initial costs of reprogramming software, changing procedures, and training employees, as well as the ongoing costs of data entry and monitoring.

[6] HMDA § 305(a), 12 U.S.C. 2804(a).

Some commenters suggested that if the Board decided to require reporting of the APR, the requirement should be limited to originated loans, to reduce the burden imposed. For example, they stated that denied or withdrawn loan applications and purchased loans should not be subject to the requirement.

Other commenters, including community groups and law enforcement and regulatory agencies, supported collection of the APR. They believe that APR data would be useful as an initial screen in fair lending analysis. They noted that the burden would involve primarily a one-time expense to reprogram systems and the ongoing costs to input data, which would be mitigated by the fact that lenders already calculate and disclose the APR under TILA. Many commenters who supported reporting the APR also advocated collecting data about loan terms and underwriting information such as interest rate, fees, subprime status, lien status, whether the loan is fixed-rate or variable-rate, the term of the loan, loan-to-value ratio, credit score, debt-to-income ratio, and the age of the applicant.

2. Alternative Pricing Disclosure. The proposal would have required lenders to report and disclose the APR for all loan applications and originations. The draft final rule takes a modified approach regarding the rate disclosure and coverage of the rule. Under the draft final rule, lenders would report the rate spread between the APR on a loan and the rate on Treasury securities with comparable maturity periods, for loan originations in which the APR exceeds the applicable Treasury rate by a percentage specified by the Board. The Division of Research and Statistics believes that a reasonable choice for the percentage threshold would be 3 percentage points for first lien loans, and 5 percentage points for subordinate lien loans (which generally have a higher APR).

The staff recommends that the Board adopt this modified approach, which would adjust pricing data to reflect changes in market conditions over time, focus on higher cost loans, and limit reporting burden because fewer loans would be subject to the reporting requirement. The staff recommends limiting the reporting requirement to originations of home purchase loans, secured home improvement loans, and refinancings to minimize burden. The draft final rule excludes from the reporting requirement: (1) applications that are incomplete, withdrawn, denied, or approved but not accepted; (2) purchased loans; and (3) unsecured home improvement loans.

The staff also recommends that the Board seek comment from the public on whether the thresholds of 3 percentage points for first lien loans and 5 percentage points for subordinate lien loans are appropriate. The Board would finalize the thresholds for reporting pricing information by mid-year 2002.

B. Lien Status. The Board solicited comment on all aspects of the proposed changes and on any other issues that might warrant further review. Some community groups recommended that the Board require lenders to report the lien status and type of interest rate on a loan, along with other items of data. Other commenters, including a federal agency, stated that information on lien status would be useful in interpreting other loan information such as the APR.

The staff recommends that the Board require lenders to report lien status, to improve the analytical value of the data. Interest rates, and therefore APRs, vary according to lien status; rates on first lien loans are generally lower than rates on junior lien or unsecured loans. Lien status is also important in interpreting home improvement loan data. The staff recommends adoption of the following lien status categories: (1) secured by a first lien on a dwelling, (2) secured by a junior lien on a dwelling, and (3) not secured by a dwelling. This requirement would not apply to purchased loans.

C. HOEPA Status. The Board proposed to require that in addition to the APR on a loan, lenders report whether the loan is covered by the provisions of the Home Ownership and Equity Protection Act (HOEPA) as implemented in Regulation Z. 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.

Lenders and their trade associations generally opposed the proposal. They contended that HOEPA loans carry reputational risk, and that the requirement to disclose HOEPA status would therefore act as a disincentive to lenders to make such loans. As with APR reporting, commenters suggested that there was no need to require HOEPA status reporting under HMDA, because the same information could be obtained by the banking agencies through the examination process.

Community groups and regulatory and enforcement agencies supported the proposal. They asserted that data on the HOEPA status of loans is critical to the Board's separate rulemaking under HOEPA; that HOEPA status could be considered a proxy for subprime status, and would allow regulators to focus fair lending examinations on that part of the market; and that any burden associated with collecting HOEPA status would be primarily the one-time cost of reprogramming software.

The staff recommends that the Board amend Regulation C, as proposed, to require that the HOEPA status of a loan be reported and disclosed. While HOEPA status can be obtained through bank examinations, nondepository lenders are not subject to regular examinations. Nondepository lenders made about 58 percent of the dollar volume of loan originations reported under HMDA for the year 2000. Moreover, although depository lenders are examined on a regular basis, collecting HOEPA status on the HMDA/LAR is a more efficient way to obtain the data.

Some commenters believed that, if the APR data were to be collected, requiring the reporting of HOEPA status is duplicative. But HOEPA status cannot be determined from the APR alone. HOEPA coverage is based not only on the APR, but also on points and fees; some loans are covered because of the fees charged. Information from industry that was submitted to the Board during the HOEPA rulemaking suggests that roughly 30 percent of the first lien loans that will be covered by HOEPA (as revised in December 2001) will be covered because of the points and fees on the loans. For second lien loans covered by HOEPA, it is estimated that about 23 percent of loans covered by HOEPA will be covered because of the points and fees on the loans. For these reasons, the staff recommends revising the regulation to require lenders to report HOEPA status.

III. Revised Definition of Refinancing

Regulation C requires a lender to report refinancings of home purchase and home improvement loans. A refinancing is defined as a transaction in which a new obligation satisfies and replaces an old obligation by the same borrower. Currently, the regulation allows lenders to select from among four scenarios in deciding 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);
>
> (2) the applicant states that the existing obligation was a home purchase or home improvement loan;
>
> (3) the existing obligation was secured by a lien on a dwelling; or
>
> (4) the new obligation will be secured by a lien on a dwelling.

This rule was adopted to ease compliance burden by providing flexibility, but it generates inconsistent data among HMDA reporters to the extent that different lenders choose different scenarios to determine which refinancings to report. Consequently, it is impossible for the data user to know what the data represent.

To remove this confusion, the Board proposed to define a refinancing as a transaction in which a new obligation satisfies and replaces an old obligation by the same borrower, where both the old 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 also solicited comment on an alternative definition. Under the alternative, a refinancing would be defined as a transaction in which a new obligation satisfies and replaces an existing obligation by the same borrower and the new obligation is secured by a lien on a dwelling. This definition would include not only refinancings where the old obligation was dwelling-secured, but in addition, refinancings of unsecured debt in which the new obligation is dwelling-secured. Under this formulation, 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.

Some commenters opposed any revision in the definition of refinancing, on the grounds that it would reduce flexibility for the industry. Other commenters argued that the proposed definition would impose burden on industry, in that a lender may not know the lien status of the existing obligation, particularly at the time of application. These commenters favored the alternative definition. More commenters supported the proposed definition (both the existing and new loan secured by a lien on a dwelling), acknowledging that the flexibility in the current definition results in inconsistent data.

The staff recommends that the Board adopt the revised definition of refinancing as proposed; under the draft final rule, reportable refinancings are those in which both the existing and the new loan are secured by a lien on a dwelling. Lenders may rely on a borrower's statement about whether the loan being refinanced is dwelling-secured. This definition will avoid covering refinancings of unsecured debt, which could result in a substantial increase in the volume of loans reported, and thus in the reporting burden. It also will reduce the inconsistency of the data.

IV. Revised Definition of Home Improvement Loan

The current rule defines a home improvement loan as a loan made in whole or in part for home improvement purposes, and classified by the lender as a home improvement loan. Thus, a lender may avoid reporting loans made for home improvement purposes by not classifying them as home improvement loans. Although the classification test for home improvement loans has reduced burden on the industry, the resulting data have been of limited usefulness. A loan is reported as a home improvement loan only if a lender classifies it as such. Lenders' classification schemes can vary greatly. The same type of loan might be classified as a home improvement loan by one lender but not by another.

To address these issues, the Board proposed to revise the definition of a home improvement loan by dropping the classification test. Under the proposal, any loan made in whole or in part for home improvement purposes would be reported as a home improvement loan, regardless of how the institution classified the loan.

After considering the comments, the staff <u>recommends</u> modifying the proposal's definition of a home improvement loan. The draft final rule differentiates between secured and unsecured home improvement loans as follows: (1) drop the classification test for dwelling-secured loans, but (2) retain the classification test for loans not secured by a dwelling.

A. <u>Dwelling-Secured Home Improvement Loans</u>. Commenters expressed concern about the burden that would be imposed on lenders if they had to ascertain the purpose of every credit product they offer, including credit cards. The staff believes that, for dwelling-secured loans, it should not be unduly burdensome for lenders to ascertain the intended purpose of the loan proceeds because of the level of documentation and of interaction between lender and applicant in such loan applications. In determining whether loan proceeds are intended for home improvement purposes, lenders may rely on applicants' statements, and are not required to take other steps to determine loan purpose.

B. Home Improvement Loans Not Secured by a Dwelling. The staff recommends that the Board retain the classification test for home improvement loans not secured by a dwelling, so that reporting of such loans and applications will continue to hinge on lenders' own classification systems. Retention of the classification test would mitigate substantially the burden that industry commenters were concerned about. Lenders would not have to report an unsecured loan as a home improvement loan under HMDA if the institution classifies it otherwise.

C. Lien Status of Home Improvement Loans. The staff's recommendation to report lien status was discussed in greater detail above at page 12. The staff believes the data on home improvement lending will be made more useful by the reporting of lien status, as the recommended definition of a home improvement loan turns on whether the loan is dwelling-secured.

V. Reporting Requests for Preapproval

The Board proposed to cover certain requests for preapprovals of home purchase loans. The definition proposed covered those preapproval programs in which a creditor issues a creditworthy applicant a written commitment to extend credit that specifies the maximum amount of credit that it commits to extend and the period of time during which the commitment remains valid. The commitment letter may state limited conditions, such as identification of a property or verification of no material change in the borrower's creditworthiness. This definition does not cover prequalification programs in which the underwriting is less rigorous and the lender makes no binding written commitment to lend.

Commenters were divided on whether lenders should report preapproval requests. Many commenters, including community and civil rights groups, federal agencies, and a few lenders, urged the Board to adopt the proposed rule. Collecting data on preapproval requests, they stated, would better reflect market activity in the home purchase market, consistent with HMDA's purposes. Preapproval data would facilitate enforcement of antidiscrimination laws.

Many other commenters, primarily lenders and their trade associations, were opposed to covering preapproval requests under Regulation C. These commenters generally believe that the burden of collecting preapproval data would outweigh the utility of the data. Commenters stated, for example, that the number of transactions reported would greatly increase, staff would have to be trained, and software and collection procedures would have to be changed. Commenters also stated that the data would not serve the purpose of HMDA—to provide information on whether lenders were meeting the housing needs of their communities—as property location would be available only for those preapproval requests that later resulted in originations.

The staff recommends (1) that lenders be required to report preapproval requests that are denied under defined preapproval programs, (2) that lenders be given the option of reporting preapproval requests that are approved but not accepted by the applicant, and (3) that lenders distinguish preapproval requests from other applications by the use of a separate code. Preapproval requests that are approved and result in loan originations are already reported, although they are not currently identified as preapprovals.

The preapproval programs covered by the draft final rule would involve decisions based on a comprehensive credit underwriting in which a lender collects and reviews the information it typically collects and reviews in making a credit decision on a traditional application. For a preapproval program to be covered, the lender must issue a binding written commitment for approved applicants or deny the request and issue an adverse action notice under Regulation B, based on the lender's review of the applicant's credit record.

The draft final rule also provides that a covered preapproval may be subject to a limited set of conditions. These are identification of a property; verification that the applicant's financial situation has not changed since the request was approved; and other conditions unrelated to creditworthiness that are typically included in traditional loan commitments (such as satisfactory completion of a home inspection or proof of a termite inspection). A staff comment provides guidance on these limited conditions.

Data on denials of preapproval requests will provide more complete data on the availability of home financing, and will be useful in fair lending enforcement. As with traditional applications, these preapproval data will allow comparisons of minority and non-minority populations that will serve as useful screening devices to help identify underwriting processes that may warrant scrutiny. While geographic information will not be available for preapprovals that do not lead to originations, the data will nevertheless be useful for fair lending analyses; preapproval programs are, by definition, not about geographic issues but about the financial strength and creditworthiness of the applicants.

The draft final rule requires lenders to report preapprovals denied, and to designate those loan originations (which are already reported) that were initiated under a covered preapproval program. Lenders may, however, wish to report preapproval requests that are approved but not accepted by the applicant, in order to put into context the preapproval requests that are denied. Accordingly, the staff <u>recommends</u> allowing, but not requiring, lenders to report this category of preapproval requests.

Lenders will not report preapproval requests that are withdrawn or incomplete under the draft final rule. The proportion of preapproval requests that are withdrawn or closed for incompleteness is likely to be relatively small; for traditional mortgage applications, the HMDA data show that in 2000 approximately 7 percent were withdrawn by the applicant and 2 percent were closed by the institution for incompleteness. Thus, the staff believes that any benefit from these data does not warrant the burden of reporting the information.

The Board asked for comment on the relative benefit of a code to identify preapprovals. Nearly all commenters, including those opposed to coverage of preapprovals, stated that the data on preapprovals would be of little use unless lenders differentiate requests for preapproval from other applications. Commenters believed that without a code for preapprovals, denial rates would be artificially inflated. Commenters mistakenly believed that lenders would have to report as denials all of the preapproval requests the lender approved that do not lead to loans with the lender. (Such requests would not be reported as denials under the final rule). Still other commenters were concerned that without a separate code, double counting would occur where a lender approves a preapproval and subsequently originates the loan. Based on comments and on further analysis, the draft final rule requires lenders to distinguish preapproval requests from other applications in their data reporting.

VI. Manufactured Home Status and Other Data Items

A. Manufactured Home Status. The Board proposed to require lenders to identify loans involving manufactured housing, which are underwritten differently from other types of housing loans and tend to have higher denial rates. Commenters were divided on this issue. Many commenters—including community and civil rights groups and the federal agencies charged with enforcing the fair lending laws—favored distinguishing loans and applications for manufactured homes from other transactions. They believed that doing so would improve the public's ability to understand the home mortgage market and would make HMDA data more useful for fair lending purposes.

Many other commenters, including most lenders and their trade associations, were opposed to identifying manufactured home loans. These commenters said that the additional data would be of limited value because there have been no reports of abusive behavior in the manufactured home loan market. They believe that requiring lenders to identify manufactured home loans would not be worth the burden the requirement would entail.

Some commenters stated that lenders do not always know whether an application is for a loan to be secured by manufactured housing. It was suggested that if the Board adopts the proposal, the loan application register must allow a reporter to indicate when it does not know whether the application involves a manufactured home. Commenters also asserted that creditors are not familiar with the proposed definition of manufactured housing found in HUD regulations. Some commenters believed that loan officers would have to review loan applications and files to determine if the property involved met the specifications in the HUD definition.

The staff believes that identifying applications and loans involving manufactured housing will improve the utility of HMDA data. The draft final rule gives guidance for lenders who may not know at the time of application whether a loan is for a manufactured home. Lenders are instructed to indicate that the property is a one- to four-family dwelling, if a lender cannot determine through reasonable means whether the property is a manufactured home. One reasonable means of ascertaining the type of property involved is to rely on the statement of the borrower.

As in the proposal, the draft final rule provides that manufactured home loans will be identified by using the definition that appears in the HUD regulation that establishes construction and safety standards for manufactured homes. This definition is accepted by the manufactured home industry and establishes a clear definition for HMDA reporters.

B. Other Data Items. In the supplementary information to the proposal, the Board sought comment on whether additional data items—such as denial reasons, parent company, loan-to-value ratio or appraised value, points and fees, and the borrower's credit score—should be required. The Board also asked for comment on whether the Board's proposed changes struck the appropriate balance, and whether other data items should be required, considering the benefits and burdens of additional data items and taking into account the items already proposed.

Based on the comments and its own analysis, the staff recommends that the Board require reporting of the identity of a parent company, if any, on the HMDA-LAR's Transmittal Sheet. The requirement was eliminated a few years ago to reduce burden, because parent information is generally available through the NIC database. Data users have asserted, however, that it is important to have the information in the HMDA data rather than in a separate database such as NIC. In addition, the NIC database does not contain data on independent mortgage companies. Generally, commenters supported requiring institutions to report parent company information. Some commenters, including financial institutions, noted that such a requirement would impose minimal burden on lenders.

The staff is not recommending that the Board require the collection of other data items in light of the potential burden imposed on lenders and the value of the data, relative to data items included in the draft final rule.

VII. Changes to Race and Ethnicity Categories

The Board proposed to amend Regulation C to conform to the revised OMB standards for collecting information on race and national origin. The OMB standards allow for the selection of more than one race and reorganize the racial categories. The staff recommends that the Board adopt the proposal with one modification. To conform more closely to OMB guidance, the draft final rule would require lenders to report information on an applicant's Hispanic national origin separately from information on race.

The staff recommends that the Board make one further change with respect to collection of applicant data. The Board had proposed to revise Appendix B to codify a longstanding interpretation that, if an application is made entirely by telephone, the reporting institution is permitted, but not required, to request data on racial characteristics and sex. Many community groups expressed concern that this interpretation has contributed to declining response rates to these questions. HMDA data show that, from 1993 to 2000, the proportion of home loan applications of all types with missing race or ethnicity data increased from about 8 percent to about 28 percent. Missing data about the applicant's sex has increased at about the same rate.

The staff believes that at least part of the substantial decline in response rates regarding race and ethnicity can be explained by the apparent increase in reporting institutions' use of the telephone to take applications. The staff recommends that the Board revise the current rule and require lenders to request this information from telephone applicants. With this revision the rule for telephone applications would be consistent with the rules for applications obtained through the mail or Internet. If an applicant declines to give the information asked for, the lender will enter a code indicating that the application was taken by telephone or mail.

VIII. Reporting Home-Equity Lines of Credit

The current regulation permits, but does not require, reporting of home-equity lines of credit (HELOCs), as home improvement or home purchase loans, depending on the purpose of the credit line. If a lender opts to report HELOCs, it reports only the amount of the line intended for home improvement or home purchase purposes at the time of the application.

The Board proposed to require lenders to report all HELOCs, regardless of the purpose of the credit line. The proposal was based on research showing that about 70 percent of all HELOCs are used at least in part for home improvement purposes. The Board proposed creating a separate category for HELOCs to facilitate comparisons between the markets for home-secured lines of credit and closed-end home improvement loans, which have distinct demographic characteristics. To simplify reporting of HELOCs, the Board proposed to require lenders to report the full amount of the credit line, rather than the amount intended for home improvement (or home purchase).

A number of commenters, including some lenders, supported the proposal to mandate the reporting of HELOCs as a separate loan category. Many others were opposed, however, contending that the change would result in a very large increase in the volume of loans reported under HMDA. In response to the proposal's request that commenters rank the proposed changes in order of burden and benefit, some industry commenters ranked reporting all HELOCs as one of the most costly and least beneficial changes. Many commenters also stated that most HELOCs are <u>not</u> used for home improvement purposes, but for purposes (such as college tuition and debt consolidation) that are unrelated to HMDA's purposes.

The staff <u>recommends</u> that the Board retain the current rule, which makes the reporting of HELOCs optional. Collecting data on all HELOCs for home improvement and home purchase purposes would give a more complete picture of the home mortgage market, but would result in increased burden. The staff has weighed the benefit and burden involved in reporting these data, and believes that the benefit of information on all HELOCs, when ranked with other changes presented in the draft final rule, such as the pricing information, does not support the increased reporting burden.

The staff also <u>recommends</u> that lenders who report HELOCs continue to report only that part of the line that is intended for home purchase or home improvement purposes. Some commenters—including those who opposed the proposal to require reporting of HELOCs—supported reporting the entire amount of the line because it would reduce burden. Other commenters noted that many HELOCs are never drawn upon. The staff believes that reporting the entire amount of the line could overstate the amount of home improvement and home purchase lending.

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R-1001]

HOME MORTGAGE DISCLOSURE

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; staff interpretation.

SUMMARY: The Board is amending Regulation C (Home Mortgage Disclosure) and the commentary interpreting the regulation. The Board's amendments to Regulation C expand the coverage of nondepository lenders by adding a dollar volume to the existing percentage-based coverage test. The amendments require lenders to report data items related to loan pricing; for loan originations in which the annual percentage rate (APR) exceeds the rate for comparable Treasury securities by a specified amount, the lender will report the rate spread between the APR and the comparable Treasury rate. Lenders also must report lien status (whether the loan is secured by a first or subordinate lien); and whether a loan is covered by the Home Ownership and Equity Protection Act (HOEPA). The final rule also requires lenders to report whether an application or loan involves a manufactured home.

The Board is revising certain definitions in the regulation. The definition of an application is revised to include a request for preapproval as defined in the regulation. To promote more consistency in the reported data, the definition of a refinancing, and the definition of a home improvement loan are revised. The Board also has reorganized the regulation and made other technical changes.

DATES: This rule is effective on January 1, 2003. Compliance is mandatory for collection of data that begins on January 1, 2003, which is to be submitted to supervisory agencies no later than March 1, 2004.

The Board is soliciting comment on whether the thresholds of 3 percentage points for first lien loans and 5 percentage points for subordinate lien loans are appropriate. Comment is due by [INSERT 90 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments should refer to Docket No. R-1118 and should be mailed to Ms. 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 also be delivered, between 8:45 a.m. and 5:15 p.m., to the Board's mail facility in the West Courtyard, located on 21st 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 pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: John C. Wood, Counsel, Kathleen C. Ryan, Senior Attorney, or Dan S. Sokolov, Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 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; 12 U.S.C. §§2801-10) has three purposes. One is to provide the public and government officials with data that will help show whether lenders are serving the housing needs of the neighborhoods and communities in which they are located. A second purpose is to help public officials target public investment to promote private investment where it is needed. A third purpose is to provide data that assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.

HMDA accordingly requires depository and certain for-profit nondepository lenders to collect, report, and disclose data about originations, purchases, and refinancings of home purchase and home improvement loans. Lenders must also report data about applications (including certain preapproval requests) that did not result in originations.

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

- <u>Each application or loan</u>, 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;
- <u>Each applicant or borrower</u>, including ethnicity, race, sex, and income; and
- <u>Each property</u>, including location and occupancy status.

Lenders report this information to their supervisory agencies on an application-by-application basis using a loan application register format (HMDA/LAR). Lenders must make their HMDA/LARs—with certain fields redacted to preserve applicants' privacy—available to the public. The Federal Financial Institutions Examination Council (FFIEC), acting on behalf of the supervisory agencies, compiles the reported information and prepares an individual disclosure statement for each institution, aggregate reports for all covered lenders in each metropolitan area, and other reports. These disclosure statements and reports are available to the public.

The Board began the current review of Regulation C in March 1998 by publishing an Advance Notice of Proposed Rulemaking (Advance Notice; 63 Fed. Reg. 12329 (March 12, 1998)). The Advance Notice solicited comment on several specific issues, as well as generally on potential revisions to Regulation C. The specific issues related to the reporting of preapprovals; revising the definitions of reportable refinancings and home improvement loans; coverage of purchased loans, construction loans, and mobile home loans; and reporting the reasons for a credit denial. The Board received approximately 100 comment letters. Most commenters addressed only the issues identified in the Advance Notice; others raised additional issues.

Subsequently, the Board received further suggestions for revising Regulation C, many reflecting increased public and agency concern about predatory lending. For example, the Department of Housing and Urban Development and the Department of the Treasury held hearings on predatory lending and in June 2000 issued a report, Curbing Predatory Home Mortgage Lending, that included recommended changes. The Board received other suggestions at public hearings that the Board held on possible changes to the Home Ownership and Equity Protection Act (HOEPA) during the summer of 2000.

In December 2000, the Board published for public comment a proposal to amend Regulation C. 65 Fed. Reg. 78656 (Dec. 15, 2000). The proposed amendments: (1) extended coverage of HMDA to more nondepository lenders; (2) simplified the definitions of reportable refinancing and home improvement loans; (3) required reporting of requests for preapprovals as defined in the regulation; (4) required reporting of home-equity lines of credit; and (5) required reporting on additional items of data, including the annual percentage rate (APR), whether a loan is subject to HOEPA, and whether a loan or application involves a manufactured home.

The Board received almost 300 comments. Most of the commenters—including lenders and related trade associations, community and civil rights groups, and law enforcement agencies—supported expanding the coverage of nondepository lenders. They believed that coverage of these lenders would provide more complete information about the mortgage market and would also result in a more level playing field for depository lenders.

Commenters were divided on all other aspects of the proposal. Many lenders and other industry commenters supported simplification of existing loan categories. Many of these commenters, however, did not want to report additional loans and applications because of concerns about burden. Most lenders were opposed to reporting pricing and other new data items because of concerns about burden and about the potential public misinterpretation of the resulting data. Community groups, civil rights groups, and law enforcement agencies generally supported the revised definitions of reportable loans and applications and the new data items, to assist in enforcement of fair lending laws, and to provide better and more consistent information about the mortgage market.

II. Summary of the Final Rule

Based on the comments and its own further analysis, the Board is amending Regulation C as set forth below. For each of the amendments to the regulation, the Board weighed the benefit and burden that would result. The Board also considered each proposed change in light of the aggregate benefit and burden of all of the changes. The final rule is substantially similar to the proposal, with some revisions to reduce burden and improve the quality of the data.

Coverage of nondepository lenders is expanded by adding a dollar volume threshold of $25 million to the current loan-percentage test, to ensure that nondepository lenders in the business of mortgage lending are covered as required by the statute.

The definitions of reportable loans have been revised to ensure better and more useful data. The final rule revises the definition of a reportable refinancing to consist of transactions in which a new obligation satisfies and replaces an existing obligation, where both the existing and the new loan are secured by a lien on a dwelling. The final rule amends the definition of a home improvement loan to consist of dwelling-secured loans other than home-equity lines of credit, that are made in whole or in part for home improvement purposes. For home improvement loans not secured by a dwelling, the rule is unchanged: these loans are reported only if they are for home improvement purposes and the lender classifies them as home improvement loans. For home-equity lines of credit, the current rule remains unchanged: lenders report HELOCs at their option, and report only the amount of the line intended for home improvement or home purchase purposes.

The final rule adopts the proposal to revise the term "application" to include preapprovals in which a lender issues a written commitment to lend to creditworthy borrowers up to a specific amount and for a specific time, subject to limited conditions such as locating a suitable property. Lenders are required to report denials of preapprovals as defined in the final rule, as well as preapprovals that result in a loan origination (these are already reported but are not currently distinguished from other applications). A lender may, but is not required to report preapproval requests that are approved but not accepted by the applicant.

Additional data items are required under the final revisions to Regulation C to improve understanding of the mortgage market, including the subprime market, and assist in enforcing fair lending laws. The additional items are:

- For originated loans where the APR exceeds the rate on Treasury securities with comparable maturity periods by a specified amount, the rate spread between the APR on the loan and the Treasury rate;
- Whether a loan is subject to the Home Ownership and Equity Protection Act;
- Whether a loan or application is secured by a first or a junior lien on a dwelling, or is not secured by a dwelling; and
- Whether a loan or application involves a manufactured home.

The Board is adopting the proposed changes to the rules for collecting and reporting information on ethnicity and race of applicants, to conform to guidance issued in 1997 by the Office of Management and Budget ("OMB"). In addition, the Board is revising the rule on collecting information about the applicant's ethnicity, race, and sex for applications taken entirely by telephone; a lender will be required to ask for the monitoring information in telephone applications, consistent with the existing rule for mail and internet applications.

The Board solicited comment on an alternative system for categorizing loans, under which 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.

Some commenters supported the alternative system. Many commenters, including financial institutions and community groups, were opposed. Industry commenters argued that the burden of reprogramming and retraining staff would be very large, and that historical trend analyses of HMDA data would be adversely affected because new data would be inconsistent with data from earlier years. Some commenters believed that the alternative system would reduce the utility of the data, since data on secured home improvement loans and refinancings would be indistinguishable from other loans. A number of commenters advocated other alternatives in which categories of loans would be further broken down into various subcategories.

Based on the comments and its own analysis, the Board has decided not to adopt the proposed alternative system.

III. Section-by-Section Analysis of Final Rule

The following discussion generally tracks the regulation (including appendices) as the Board is amending it. Revisions to the staff commentary are addressed under the sections of the regulation that they interpret. Rules or interpretations that the Board has not revised are also discussed under the pertinent sections. Conforming and non-substantive changes to the regulation and commentary generally are not separately discussed.

Section 203.2 Definitions

2(b) Application

Requests for preapproval. The Board proposed to cover certain requests for preapprovals of home purchase loans. The definition proposed covered those preapproval programs in which a creditor issues a creditworthy applicant a written commitment to extend credit that specifies the maximum amount of credit that it commits to extend and the period of time during which the commitment remains valid. The commitment letter may state limited conditions, such as identification of a property or verification of no material change in the borrower's creditworthiness. This definition does not cover prequalification programs, in which the underwriting is less rigorous and the lender makes no binding written commitment.

Commenters were divided on whether lenders should report preapproval requests. Many commenters, including community and civil rights groups, federal law enforcement agencies, and a few lenders, urged the Board to adopt the proposed rule. Collecting data on preapproval requests, they stated, would better reflect market activity in the home purchase market, consistent with HMDA's purposes. Preapproval data would facilitate enforcement of antidiscrimination laws.

Many other commenters, primarily financial institutions and their trade associations, were opposed to covering preapproval requests under regulation C. These commenters generally believe that the burden of collecting preapproval data would outweigh the utility of the data. Commenters stated, for example, that the number of transactions reported would greatly increase, staff would have to be trained, and software and collection procedures would have to be changed. Commenters also stated that the data would not serve the purposes of HMDA—to provide information on whether lenders were meeting the housing needs of their communities—as property location would be available only for those preapproval requests that later resulted in originations.

The statute requires lenders to report action taken on applications, and the Board believes that requests for preapproval as defined in the proposal and draft final rule represent credit applications.[1] The final rule provides that lenders must report preapproval requests that are denied under defined programs, and that lenders may, at their option, report preapproval requests that are approved but not accepted by the

[1] Preapprovals and prequalifications emerged in the mortgage market in the early 1990s. In 1995, the Board revised the staff commentary to Regulation C to provide that prequalifications are not applications under Regulation C. 60 Fed. Reg. 63393 (Dec. 11, 1995). The Board deferred action on preapprovals, however, and instructed lenders not to report them under Regulation C because there was no common industry definition of a preapproval as distinct from a prequalification. The board stated, however, that it might

applicant. Under the final rule, lenders will continue to report preapprovals that are approved and that result in loan originations. The final rule requires lenders to distinguish preapproval requests from other applications by the use of separate codes.

The preapproval programs covered by the draft final rule would involve decisions based on a comprehensive credit underwriting in which a lender collects and reviews the information it typically collects and reviews in making a credit decision on a traditional application. For a preapproval program to be covered, the lender must issue a binding written commitment for approved applicants or deny the request and issue an adverse action notice under Regulation B, based on the lender's review of the applicant's credit record.

The draft final rule also provides that a covered preapproval may be subject only to a limited set of conditions. These are identification of a property; verification that the applicant's financial situation has not changed since the request was approved; and other conditions unrelated to creditworthiness that are typically included in traditional loan commitments (such as satisfactory completion of a home inspection or proof of a termite inspection). A staff comment provides guidance on these limited conditions.

Data on denials of preapproval requests will provide more complete data on the availability of home financing, and will be useful in fair lending enforcement. As with traditional applications, these preapproval data will allow comparisons of minority and non-minority populations that will serve as useful screening devices to help identify

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consider amending Regulation C at a later time to address whether lenders should report preapprovals.

underwriting processes that may warrant scrutiny. While geographic information will not be available for preapprovals that do not lead to originations, the data will nevertheless be useful for fair lending analyses; preapproval programs are, by definition, not about geographic issues but about the financial strength and creditworthiness of the applicants.

The final rule requires lenders to report preapprovals denied, and to designate those loan originations (which are already reported) that were initiated under a covered preapproval program. Lenders may, however, wish to report preapproval requests that are approved but not accepted by the applicant, in order to put into context the preapproval requests that are denied. Accordingly, the revised rule permits, but does not require, lenders to report this category of preapproval requests.

Under the final rule, lenders will not report preapproval requests that are withdrawn or incomplete. The Board believes that the proportion of preapproval requests that are withdrawn or closed for incompleteness is likely to be relatively small; for traditional mortgage applications, the HMDA data show that in 2000 approximately 7 percent were withdrawn by the applicant and 2 percent were closed by the institution for incompleteness. Thus, the Board believes that any benefit from these data does not warrant the burden of reporting the information.

The Board asked for comment on the relative benefit of a code to identify preapprovals. Nearly all commenters, including those opposed to coverage of preapprovals, stated that the data on preapprovals would be of little use unless lenders differentiate requests for preapproval from other applications. Commenters believed that without a code for preapprovals, denial rates would be artificially inflated. Commenters mistakenly believed that lenders would have to report as denials all of the preapproval requests the lender approved that do not lead to loans with the lender. (Such requests would not be reported as denials under the final rule.) Still other commenters were concerned that without a separate code, double counting would occur where a lender approves a preapproval request and subsequently originates the loan. Based on comments and on further analysis, the draft final rule requires lenders to distinguish preapproval requests from other applications in their data reporting.

Other matters. The definition of an application has been revised to refer to "procedures used by a financial institution." This will focus the definition on what institutions actually do, rather than what their procedures state.

2(d) Dwelling

The staff commentary has been revised to indicate that the term "dwelling" does not apply to transitory residences such as college dormitories. This responds to requests that the Board clarify the meaning of the term “dwelling.”

2(e) Financial Institution

HMDA covers nondepository lenders that are "engaged for profit in the business of mortgage lending." 12 USC §§2801-10. Regulation C provides that 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 of all its loan originations (by dollar volume).[2] Some nondepository lenders originate significant numbers of reportable loans, but because these lenders are also heavily engaged in other types of lending (credit card lending and other consumer lending, for instance) they are not currently covered by HMDA. Coverage of these lenders' mortgage activity would provide more complete information on the mortgage market.

The Board proposed to address the coverage issue by preserving the existing percentage-based test and adding a dollar-volume test. A nondepository lender would be covered by Regulation C 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 Board estimated that a $50 million threshold would result in coverage of a nondepository institution making approximately 400 to 500 mortgage loans annually (based on a national average of $125,000 for home purchase loans). Comment was solicited on whether $50 million was an appropriate threshold.

Commenters, including industry, community groups, and law enforcement agencies, supported expanding coverage of nondepository lenders. Many depository lenders asserted that greater coverage of nondepository lenders would create a more level playing field for all lenders. Commenters also stated that expanded coverage of

[2] 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 office in a

nondepositories could provide the agencies and the public with more information about the subprime market.

Different views were expressed, however, on the best approach for expanding coverage of nondepository lenders. Many commenters supported a dollar-volume threshold, but argued that the $50 million figure proposed was too high. Some industry commenters suggested lowering the dollar-volume threshold to as low as $5 million. Other commenters urged the Board to drop the proposed dollar-volume threshold and to adopt instead a number-of-loans test to address markets where the average loan amount is smaller than the national average.

Still other commenters, including some community groups and federal agencies, suggested eliminating the 10 percent test. These commenters asserted that a lender's impact on a local or broader home mortgage market is a better measure of whether the lender is in the business of mortgage lending than the relationship between the lender's home mortgage lending and its total loan originations. Some commenters pointed out that in some regions of the country, the average home purchase loan amount is less than the national average of $125,000. For example, based on HMDA data and data provided by the National Association of Realtors, the average home purchase loan amount in the South is approximately $93,000.

The Board is adopting a dollar-volume threshold of $25 million. Based on the national average for home purchase loan amount, a dollar-volume threshold of $25

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metropolitan area, and received applications for, originated, or purchased fewer than five home purchase or home improvement loans in a metropolitan area in the preceding calendar year.

million would result in coverage of a nondepository institution that originates approximately 200 home purchase loans annually. HMDA data show that, on average, a lender with originations of 200 loans per year receives approximately 400 applications annually. The Board believes that a lender receiving this order of magnitude of home purchase loan applications per year is engaged "in the business of mortgage lending."

Other matters. As part of the reorganization of the regulation, coverage criteria that used to appear in section 203.3—"Exempt Intitutions" are consolidated under the definition of "financial institution" in section 203.2(e). Correspondingly, several staff comments have been moved from section 203.3 to section 203.2(e).

2(f) Home-equity Line of Credit

The current regulation permits, but does not require, reporting of home-equity lines of credit (HELOCs), as home improvement or home purchase loans, depending on the purpose of the credit line. If a lender opts to report HELOCs, it reports only the amount of the line intended for home improvement or home purchase purposes at the time of the application.

The Board proposed to require lenders to report all HELOCs, regardless of the purpose of the credit line. The proposal was based on research showing that about 70 percent of all HELOCs are used at least in part for home improvement purposes. The Board proposed creating a separate category for HELOCs to facilitate comparisons between the markets for home-secured lines of credit and closed-end home improvement loans, which have distinct demographic characteristics. To simplify reporting of HELOCs, the Board proposed to require lenders to report the full amount of the credit line, rather than the amount intended to be used for home improvement (or home purchase) purposes.

A number of commenters, including some lenders, supported the proposal to mandate the reporting of HELOCs as a separate loan category. Many others were opposed, however, contending that the change would result in a very large increase in the volume of loans reported under HMDA. In response to the proposal's request that commenters rank the proposed changes in order of burden and benefit, some industry commenters ranked reporting all HELOCs as one of the most costly and least beneficial changes. Many commenters also stated that most HELOCs are <u>not</u> used for home improvement purposes, but for purposes (such as college tuition and debt consolidation) that are unrelated to HMDA's purposes.

The Board has retained the current rule regarding HELOCs. Reporting of HELOCs remains optional. Collecting data on all HELOCs for home improvement and home purchase purposes would give a more complete picture of the home mortgage market, but it would result in increased burden. The Board has weighed the benefit and burden involved in reporting these data, and believes that the benefit of information on all HELOCs, when ranked with other changes presented in the final rule, such as the pricing information, does not support the increased reporting burden.

Lenders that report HELOCs will continue to report only that part of the line that is intended for home purchase or home improvement purposes. Some commenters—including those who opposed the proposal to require reporting of HELOCs—supported reporting the entire amount of the line because it would reduce burden. Other commenters noted that many HELOCs are never drawn upon. The Board believes that reporting the entire amount of the line could overstate the amount of home improvement and home purchase lending.

Other matters. The Board is adopting the proposal to clarify the term "home-equity line of credit" as an open-end credit plan secured by a dwelling as defined in Regulation Z (12 CFR Part 226).

2(g) Home Improvement Loan

The current rule defines a home improvement loan as a loan made in whole or in part for home improvement purposes, and classified by the lender as a home improvement loan. Thus, a lender may avoid reporting loans made for home improvement purposes by not classifying them as home improvement loans. Although the classification test for home improvement loans has reduced burden on the industry, the resulting data have been of limited usefulness. A loan is reported as a home improvement loan only if a lender classifies it as such. Lenders' classification schemes can vary greatly. The same type of loan might be classified as a home improvement loan by one lender but not by another.

To address these issues, the Board proposed changes to the treatment of home improvement loans by dropping the classification test. Under the proposal, any loan made in whole or in part for home improvement purposes would be reported as a home improvement loan, regardless of how the institution classified the loan.

The Board is adopting the proposal with modifications. The final rule differentiates between secured and unsecured home improvement loans as follows: (1)

the classification test is eliminated for dwelling-secured loans, but (2) for home improvement loans not secured by a dwelling, the classification test is retained.

Dwelling-Secured Home Improvement Loans. Commenters expressed concern about the burden that would be imposed on lenders if they have to ascertain the purpose of every credit product they offer, including credit cards. The Board believes that, for dwelling-secured loans, it should not be unduly burdensome for lenders to ascertain the intended purpose of the loan proceeds because of the level of documentation and of interaction between lender and applicant in such loan applications. In determining whether loan proceeds are intended for home improvement purposes, lenders may rely on applicants' statements, and are not required to take other steps to determine loan purpose. One method suggested in the proposal for lenders to determine whether a loan is intended for home improvement purposes was a check-box on a loan application form. Some commenters were concerned that if application forms contain check-boxes with a number of choices including home improvement, applicants may tend to check home improvement even if they are not sure they will use the loan for that purpose. The final rule does not require a lender to use a check box; instead, for example, an application form might contain a blank in which the applicant could enter the purpose of the loan, without any prompting or limiting of choices.

Non-Dwelling-Secured Home Improvement Loans. The final rule retains the classification test for home improvement loans not secured by a dwelling, so that reporting of such loans and applications will continue to hinge on lenders' own classification systems. Retention of the classification test will mitigate substantially the burden that commenters were concerned about. Lenders would not have to report an unsecured loan as a home improvement loan for HMDA purposes if the institution classifies it otherwise.

Other matters. The Board believes the data on home improvement lending will be made more useful by the reporting of lien status, as the revised definition of a home improvement loan turns on whether the loan is dwelling-secured. See the discussion under section 203.4(a)(12)-(14), "information related to loan pricing."

2(h) Home Purchase Loan

The Board proposed to clarify, in an addition to the staff commentary, 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. A few comments were received on this issue. One financial trade association asserted that the two loans should be reported as one to reduce burden on institutions; another commenter supported the proposal but believed the number of home purchase loans would be overstated unless the Board required institutions to differentiate these second mortgages from others. The final rule is identical to the proposal. The Board believes that reporting these two loans separately more accurately indicates the lender's home purchase lending, as both loans are made for the purpose of home purchase.

2(i) Manufactured Home

The Board is adopting the proposed definition of "manufactured home." See the discussion under section 4(a)(5) regarding property type.

2(j) Metropolitan Area

The Board amends the regulation, as proposed, to replace the term "metropolitan statistical area" with "metropolitan area." "Metropolitan area" will have the same meaning as "metropolitan statistical area" does currently.

The Office of Management and Budget (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)).

2(k) Refinancing

Regulation C requires a lender to report refinancings of home purchase and home improvement loans. A refinancing is defined as a transaction in which a new obligation satisfies and replaces an existing obligation by the same borrower. Currently, the regulation allows lenders to select from among four scenarios in deciding 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);

(2) the applicant states that the existing obligation was a home purchase or home improvement loan;

(3) the existing obligation was secured by a lien on a dwelling; or

(4) the new obligation will be secured by a lien on a dwelling.

This rule was adopted to ease compliance burden by providing flexibility, but it generates inconsistent data among HMDA reporters to the extent that different lenders choose different scenarios to determine which refinancings to report. Consequently, it is impossible for the data user to know what the data represent.

To remove this confusion, the Board proposed to define a refinancing as a transaction in which a new obligation satisfies and replaces an existing obligation by the same borrower, where both the existing 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 also solicited comment on an alternative definition. Under the alternative, a refinancing would be defined as a transaction in which a new obligation satisfies and replaces an existing obligation by the same borrower and the new obligation is secured by a lien on a dwelling. This definition would include not only refinancings where the old obligation was dwelling-secured, but, in addition, refinancings of unsecured debt in which the new obligation is dwelling-secured. Under this formulation, 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.

Some commenters opposed any revision in the definition of refinancing, on the grounds that it would reduce flexibility for the industry. Other commenters argued that the proposed definition would impose burden on industry, in that a lender may not know the lien status of the existing obligation, particularly at the time of application. These commenters favored the alternative definition. More commenters supported the proposed definition (both the existing and new loan secured by a lien on a dwelling), acknowledging that the flexibility in the current definition results in inconsistent data.

The Board is revising the definition of refinancing as proposed; under the final rule, reportable refinancings are those in which both the existing and the new loan are secured by a lien on a dwelling. Lenders may rely on a borrower's statement about whether the loan being refinanced is dwelling-secured. This definition will avoid covering refinancings of unsecured debt, which could result in a substantial increase in the volume of loans reported, and thus in the reporting burden. It also will reduce the inconsistency of the data.

MECAs. The Board did not propose any changes regarding reporting of modification, extension, and consolidation agreements (MECAs). MECAs are not reported because they do not meet the definition of a refinancing (satisfaction and replacement of an existing mortgage loan). A few commenters asserted, however, that MECAs should be reported because they substitute for traditional refinancings in some states, such as New York and Texas, to avoid mortgage recording fees and taxes.

The final rule does not include MECAs as reportable under HMDA. 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. 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. Therefore, the Board has not revised the definition of refinancing to include MECAs.

Section 203.4-Compilation of loan data

<u>4(a) Data Format and Itemization</u>

The Board had proposed to revise the introductory material in section 203.4(a) to refer to home-equity lines of credit as a distinct category. The final rule does not include this revision because, as discussed below, the Board did not adopt the proposal to require reporting of home-equity lines of credit.

<u>4(a)(1) Application Date</u>

The Board is adopting a revised version of proposed comment 4(a)(l)-5. The comment as proposed provided that the date an institution receives an application is the date on which the institution or its agent first takes possession of a completed copy of the application. Several financial institutions expressed concern that the comment might suggest that "completed application" has a different meaning under Regulation C than under Regulation B. Commenters also opposed the reference to the creditor's "agent," noting that the law of agency varies from state to state and thus the consistency of the data could be affected. The Board has modified the comment to address these concerns.

<u>4(a)(3) Purpose</u>

The Board has reorganized the loan application register to clarify the data, by separating the purpose of the loan from the type of property involved.

4(a)(4) Preapprovals

The loan application register has been revised to include information as to whether an application is a preapproval request. See the discussion under section 203.2(b) "application."

4(a)(5) Property Type—Manufactured Home Status

The Board proposed to require lenders to identify loans involving manufactured housing, which are underwritten differently from other types of housing loans and tend to have higher denial rates. Commenters were divided on this issue. Many commenters—including community and civil rights groups and the federal agencies charged with enforcing the fair lending laws—favored distinguishing loans and applications for manufactured homes from other transactions. They believed that doing so would improve the public's ability to understand the home mortgage market and would make HMDA data more useful for fair lending purposes.

Many other commenters, including most lenders and their trade associations, were opposed to identifying manufactured home loans. These commenters said that the additional data would be of limited value because there have been no reports of abusive behavior in the manufactured home loan market. They believe that requiring lenders to identify manufactured home loans would not be worth the burden the requirement would entail.

Some commenters stated that lenders do not always know whether an application is for a loan to be secured by manufactured housing. It was suggested that if the Board adopts the proposal, the loan application register must allow a reporter to indicate when it does not know whether the application involves a manufactured home. Commenters also asserted that creditors are not familiar with the proposed definition of manufactured housing found in HUD regulations. Some commenters believed that loan officers would have to review loan applications and files to determine if the property involved met the specifications in the HUD definition.

The Board believes that identifying applications and loans involving manufactured housing will improve the utility of HMDA data. As in the proposal, the final rule provides that manufactured home loans will be identified by using the definition that appears in the HUD regulation that establishes construction and safety standards for manufactured homes. This definition is accepted by the manufactured home industry and establishes a clear definition for HMDA reporters. If a lender does not know at the time of application whether a loan is for a manufactured home—and cannot determine through reasonable means whether the property is a manufactured home—the lender reports the property type as a one-to-four family dwelling.

4(a)(7) Type of Action Taken and Date

Counteroffers. A new comment is adopted 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)(7)-l.

Underwriting conditions. The staff commentary provides that if an institution issues a loan approval subject to the applicant's meeting underwriting conditions, other than customary conditions, and the applicant does not meet them, the institution must report the action taken as a denial. The Board proposed to delete the exclusion for “customary conditions” from this comment, because institutions expressed confusion about the scope of this term, and the Board believed that it was impractical to make the term precise and comprehensive.

Commenters—primarily financial institutions—opposed the deletion of the exclusion. They stated that without the exclusion for customary conditions, a lender would be viewed as having denied an application, when in fact the reason the loan was not originated was due to circumstances outside the lender's control, such as title difficulties. One commenter argued that customary conditions could be defined as verification of employment, amount of compensation, appraised value, and insurability. Another commenter suggested that loans within the exclusion should be reported as approved but not accepted. See comment 4(a)(7)-4.)

Based on the comments and on its own analysis, the Board has retained the exclusion for customary underwriting conditions. The Board continues to believe, however, that defining customary underwriting conditions is not practicable, given the wide variety of practices among lenders.

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

4(a)(9) Ethnicity and Race

See Appendix A, paragraph I.D.3., below, regarding changes to conform to revised OMB guidance. Appendices A and B are revised to conform the racial designations to the revised OMB standards. The standards eliminate the option of designating "Other." For data on ethnicity, the standards provide for data on whether individuals are Hispanic or Latino, or do not fall within this category. 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. The standards require that respondents be offered the option of selecting one or more designations. 62 Fed. Reg. 58782 (October 30, 1997).

To achieve complete conformity with these guidelines, the Board is making a modification to the proposed appendices. As proposed, the appendices combined the questions of race and Hispanic ethnicity. OMB directs that the question of Hispanic ethnicity be posed separately from the question of race in all cases of self-identification. Therefore, Appendices A and B as adopted separate the questions of ethnicity and race and, as OMB directs, pose the ethnicity question first.

Many industry commenters objected to the proposal. Some cited the cost of converting their data collection systems. The Board believes, however, the compliance burden is outweighed by the importance of uniform adoption of the standards throughout government. The Board also notes that these objections were considered by the OMB before it promulgated the new standards. See 62 Fed. Reg. at 58784 (summarizing comments opposing multiple-race reporting on grounds of increased costs).

Some commenters were concerned that the new system would confuse applicants as well as employees of lenders who have to designate the race and ethnicity of applicants by visual observation. The Board believes that any confusion of lenders' employees can be mitigated by appropriate and timely training. Although some industry commenters requested guidance on designating race under a regime that permits multiple designations, the Board is not revising existing guidance, which provides that designations be made to the extent possible.

Some commenters contended that data collected under the revised standards would not enable proper fair lending assessments. For instance, some commenters expressed concern that permitting multiple designations of race would make it difficult to interpret the data for such purposes. OMB has published guidance on how to aggregate and allocate multiple race responses. See OMB Bulletin No. 00-02, Guidance on Aggregation and Allocation of Data on Race for Use in Civil Rights Monitoring and Enforcement (March 9, 2000) at http://www.whitehouse.gov/omb/bulletinsib00-02.html). Some commenters also expressed concern that data collected under the new standards would not be comparable to data collected under the old standards. OMB has addressed this issue, too. See Provisional Guidance on the Implementation of the 1997 Standards for Federal Data on Race and Ethnicity (December 15, 2000), Appendix C, The Bridge

Report: Tabulation Options for Trend Analysis (available at http:www.whitehouse.gov/omb/inforeg/r&e_app-c&tables.pdf).

Applications Taken by Telephone. The Board proposed to revise Appendix B to codify a longstanding interpretation that, if an application is made entirely by telephone, the reporting institution is permitted, but not required, to request data on race or ethnicity and sex. Many community groups expressed concern that this interpretation may have contributed to declining response rates to these questions. HMDA data show that from 1993 to 2000, the proportion of home loan applications of all types with missing race or ethnicity data increased from about 8 percent to about 28 percent. Missing data about the applicant's sex has increased at about the same rate.

The Board believes that at least part of the substantial decline in response rates regarding race and ethnicity can be explained by the apparent increase in reporting institutions' use of the telephone to take applications. Therefore the Board is amending the current rule to require lenders to request this information from telephone applicants. With this revision the rule for telephone applications will be consistent with the rules for applications obtained through the mail or Internet. If an applicant declines to give the information asked for, the lender will enter a code indicating that the application was taken by telephone or mail.

4(a)(12)-(14) Additional Data Items Related to Loan Pricing

The statutory findings and purposes section of the Home Mortgage Disclosure Act refers to lenders' responsibilities "to provide adequate home financing to qualified applicants on reasonable terms and conditions," and to the goal of providing the enforcement agencies and the public "with sufficient information to enable them to determine whether [lenders] are filling their obligations to serve the housing needs of the communities and neighborhoods in which they are located. . . ."[3] In addition, the 1989 amendments to the act, requiring reporting of racial characteristics, sex, and income, made clear that another goal of the statute is strengthening enforcement of fair lending laws.[4] The Congress provided that the Board "shall prescribe such regulations as may be necessary" to carry out these purposes.[5]

Obtaining loan pricing data is critical to address fair lending concerns related to loan pricing and to better understand the mortgage market, including the subprime market. The mortgage marketplace has changed significantly since HMDA was enacted and continues to evolve. Along with a substantial growth in the subprime market has come increased variation in loan pricing, generally related to an assessment of risk. In light of these changes, the staff believes that the collection of loan pricing information is necessary to fulfill the statutory purposes of HMDA and to ensure the continued utility of the HMDA data. The Board is revising the regulation to require lenders to report data items regarding loan pricing (the rate spread, as described below, HOEPA status, and lien status).

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[3] HMDA § 302(a) and (b), 12 U.S.C. 2801(a) and (b).

[4] "A primary purpose of such reporting [under HMDA] is to assist regulatory agencies in identifying possible discriminatory lending patterns that warrant closer scrutiny." H. Conf. Rep. 101-222, p. 459 (Aug. 4, 1989) (report accompanying legislation adding racial characteristics, sex, and income). "The conferees placed highest priority on the collection of analytically useful data by means of which to identify and eliminate discriminatory lending practices." Id.

[5] HMDA § 305(a), 12 U.S.C. 2804(a).

Annual Percentage Rate. HMDA data currently include no information on loan pricing. The Board proposed to require that lenders report the annual percentage rate (APR) charged on a loan. This information would facilitate identification of subprime loans, which have different characteristics, such as higher denial rates, from other mortgage loans. Pricing information could also help identify practices that raise potential fair lending concerns warranting further investigation.

The Board proposed to require reporting of the APR only for home purchase and home improvement loans that are covered by the Truth in Lending Act (TILA) for which the lender is required to disclose the APR to the consumer. Thus, APR reporting would not be required, for example, on an application withdrawn before the lender is required to disclose the APR, or on a loan to a corporate borrower and therefore not covered by TILA, which applies only to credit extended for consumer purposes.

Lenders and their trade associations generally opposed the collection of the APR based on a belief that the data obtained would not be useful enough to justify the burden imposed in gathering it. They argued that APR data, viewed in isolation from other terms and conditions of the loan and from underwriting information, have little value and are subject to misinterpretation by the public. Lenders appeared concerned about unfounded allegations of unlawful credit discrimination should the data reveal disparities among different classes of borrowers, even though the disparities may be based on legitimate risk-based pricing and creditworthiness standards. Lenders also argued that there is no need to require that the APR be reported under HMDA because examiners already have access to APR data in depository lenders' files.

Although the Board proposed to mitigate burden by requiring reporting of APRs only for HMDA loans subject to TILA, for which the APR is already computed by the lender, some lenders contended that reporting under HMDA would still impose a substantial cost burden, because their systems for TILA disclosure and HMDA reporting are separate and do not necessarily interface readily. About half of the comments from lenders and their trade associations stated that reporting of pricing data in particular would be burdensome, although only about half of these offered specific reasons for their claim of burden. Perhaps the most common sources of burden cited were the initial costs of reprogramming software, changing procedures, and training employees, as well as the ongoing costs of data entry and monitoring.

Some commenters suggested that if the Board decided to require reporting of the APR, the requirement should be limited to originated loans, to reduce the burden imposed. For example, they stated that denied or withdrawn loan applications and purchased loans should not be subject to the requirement.

Other commenters, including community groups and law enforcement and regulatory agencies, supported collection of the APR. They believe that APR data would be useful as an initial screen in fair lending analysis. They noted that the burden would involve primarily a one-time expense to reprogram systems and the ongoing costs to input data, which would be mitigated by the fact that lenders already calculate and disclose the APR under TILA. Many commenters who supported reporting the APR also advocated collecting data about loan terms and underwriting information such as interest rate, fees, subprime status, lien status, whether the loan is fixed-rate or variable-rate, the term of the loan, loan-to-value ratio, credit score, debt-to-income ratio, and the age of the applicant.

Alternative Pricing Disclosure. The proposal would have required lenders to report and disclose the APR for all loan applications and originations. The Board has adopted a modified approach regarding the rate disclosure and coverage of the rule. Under the final rule, lenders would report the rate spread between the APR on a loan and the rate on Treasury securities with comparable maturity periods, for loan originations in which the APR exceeds the applicable Treasury rate by a percentage specified by the Board.

The Board is adopting this approach because it will adjust pricing data for changes in market conditions over time, focus on higher cost loans, and limit reporting burden because fewer loans would be subject to the reporting requirement. The Board has limited the reporting requirement to originations of home purchase loans, secured home improvement loans, and refinancings, to minimize burden. The final rule excludes from the reporting requirement: (1) applications that are incomplete, withdrawn, denied, or approved but not accepted; (2) purchased loans; and (3) unsecured home improvement loans.

The Board believes that the rate spread should only be reported for loans that exceed a threshold of 3 percentage points for first lien loans, and 5 percentage points for subordinate lien loans (which generally have a higher APR). The objective of setting a cutoff is to insure that pricing for subprime loans is collected and at the same time exclude prime market loans from collection. Selecting the appropriate cutoff(s) for price disclosure is not straightforward because there is no absolute demarcation between subprime and prime mortgage markets. Moreover, as market conditions change over time the line between these markets may move. Consequently, any cutoff is subject to some error. Nonetheless, available data on loan pricing suggests that cutoffs can be identified that do a reasonably good job of separating prime and subprime markets. There is currently limited public information on the range of prices (particularly APRs) of closed loans in the mortgage market. Pricing information from a large sample of subprime loans indicates that a cutoff of 3 percentage points or more above the comparable treasury security would cover about 98 percent of the subprime loans that are first liens. It is estimated that a cutoff of 5 percentage points or more would cover about 95 percent of the subprime loans that are junior liens. Evidence from pricing data on the prime market suggests that a cutoff of 3 percentage points would exclude virtually all first lien prime loans (no pricing information is available on prime market junior liens).

Further, data from Freddie Mac’s survey of ?average? mortgage terms indicates that the spread above treasury securities for the ?average? loan is almost always below 3 percentage points, regardless of the macroeconomic conditions. Finally, data from the American Housing Survey, covering the entire spectrum of mortgage loans, indicates that a 3 percentage point cutoff would cover about 10 percent of all first liens, including both prime and subprime loans, and a 5 percentage point cutoff for junior liens would cover about 22 percent of all junior liens. These figures seem in line with estimates of the overall size of the subprime market—between 10-15 percent of the dollar volume of all mortgages.

These cutoffs represent the Board's current estimates of what might be appropriate cutoff(s) based on currently available data. The Board believes, however, that additional data and comment would be useful in determining the cutoffs. Consequently, the Board seeks public comment on the appropriate cutoffs for purposes of reporting before setting the final cutoff levels. In providing such input it would be useful if commenters would describe loan terms or characteristics (for example, jumbo loans or loans backed by private mortgage insurance) that might cause a prime loan to be priced relatively highly and the size of this potential effect on the APR. In addition, evidence on the impact of various cutoff choices on the percentage of subprime market loans that would require price reporting and prime market loans that would be excluded would be very useful.

Additionally, the Board requests comment on guidance as to how lenders determine which Treasury security has a comparable maturity date to a particular loan, which is provided in new comment 4(a)(12)-1. The Board will finalize the thresholds for reporting pricing information by mid-year 2002.

HOEPA Status. The Board proposed to require that in addition to the APR on a loan, lenders report whether the loan is covered by the provisions of the Home Ownership and Equity Protection Act (HOEPA) as implemented in Regulation Z. 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.

Lenders and their trade associations generally opposed the proposal. They contended that HOEPA loans carry reputational risk, and that the requirement to disclose

HOEPA status would therefore act as a disincentive to lenders to make such loans. As with APR reporting, commenters suggested that there was no need to require HOEPA status reporting under HMDA, because the same information could be obtained by the banking agencies through the examination process.

Community groups and regulatory and enforcement agencies supported the proposal. They asserted that data on the HOEPA status of loans is critical to the Board's separate rulemaking under HOEPA; that HOEPA status could be considered a proxy for subprime status, and would allow regulators to focus fair lending examinations on that part of the market; and that any burden associated with collecting HOEPA status would be primarily the one-time cost of reprogramming software.

The Board is amending Regulation C, as proposed, to require that the HOEPA status of a loan be reported and disclosed. While HOEPA status can be obtained through bank examinations, nondepository lenders are not subject to regular examinations. Nondepository lenders made about 58 percent of the dollar volume of loan originations reported under HMDA for the year 2000. Moreover, although depository lenders are examined on a regular basis, collecting HOEPA status on the HMDA/LAR is a more efficient way to obtain the data.

Some commenters believed that, if the APR data were to be collected, requiring the reporting of HOEPA status is duplicative. But HOEPA status cannot be determined from the APR alone. HOEPA coverage is based not only on the APR, but also on points and fees; some loans are covered because of the fees charged. Information from industry that was submitted to the Board during the HOEPA rulemaking suggests that roughly 30 percent of the first lien loans that will be covered by HOEPA (as revised in December

2001) will be covered because of the points and fees on the loans. For second lien loans covered by HOEPA, it is estimated that about 23 percent of loans covered by HOEPA will be covered because of the points and fees on the loans. For these reasons, the regulation has been revised to require lenders to report HOEPA status.

Lien Status. The Board solicited comment in the proposal on all aspects of the proposed changes and on any other issues that might warrant further review. Some community groups recommended that the Board require lenders to report the lien status and type of interest rate on a loan, along with other items of data. Other commenters, including a federal agency, stated that information on lien status would be useful in interpreting other loan information such as the APR.

The Board is revising the regulation to require lenders to report lien status, to improve the analytical value of the data. Interest rates, and therefore APRs, vary according to lien status; rates on first lien loans are generally lower than rates on junior lien or unsecured loans. Lien status is also important in interpreting home improvement loan data. The final rule provides for the following lien status categories: (1) secured by a first lien on a dwelling, (2) secured by a junior lien on a dwelling, and (3) not secured by a dwelling. This requirement does not apply to purchased loans.

Loan-to-Value Ratio/Appraised Value.

The Board requested comment on whether the loan-to-value ratio (LTV), or the appraised value of the property that secures a loan should be reported, based on concerns that appraisals may be used to discriminate against certain home mortgage applicants.

Several commenters supported a requirement to report LTV or appraised value. Some believed that these data would be very useful in rooting out predatory lending, particularly with the APR and points and fees on a loan. The majority of commenters who addressed the issue-including almost all the financial institutions that addressed it—opposed a requirement to report either appraised value or LTV ratio. Some argued that appraisals are too subjective to generate useful data. Others pointed out that complete data could not be gathered, because appraisals are not required for all properties. Similarly, commenters pointed out that these data may only be available for loans originated, because an application may be denied or withdrawn before an appraisal is ordered or an LTV is calculated. One commenter stated that collecting these data would be burdensome, and that the only reason for collecting appraised value and LTV was to combat predatory lending, an objective that is outside the purpose of HMDA.

The final rule does not require lenders to report LTV or appraised value, in light of the potential burden imposed on institutions and the minimal value of these data. Although the data might be used to identify loans that warrant further scrutiny for abusive terms, the Board believes that these data would not be complete because they would in most cases be available only for originated loans.

4(b) Collection of Data on Ethnicity, Race, Sex, and Income

4(b)(2) Optional Collection

The Board has deleted the provision 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, ethnicity, sex, and income. This exemption has become superfluous, because 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 2001, the Board set this threshold at $32 million for data collection in 2002.

4(c) Optional Data

4(c)(1) Reasons for Denial

The statute permits, but does not require, a financial institution to report the reasons why a loan application was denied. Regulation C similarly gave institutions the option to report this information. Based on the comments and its own analysis, the Board has not amended Regulation C to require reporting of denial reasons.

Most commenters who addressed this issue—including several financial institutions, one banking trade association, regulatory agencies, and civil rights and community groups—supported requiring all institutions covered by HMDA to report reasons for denial. These commenters argued that requiring such reporting would facilitate the identification of potential discrimination, and that all lending institutions should be subject to the same rules. They pointed out that reporting denial reasons in all cases would allow better comparison of data from different lenders. They also contended that reporting denial reasons would not be burdensome, because lenders currently must provide the reasons to applicants under the Equal Credit Opportunity Act and Regulation B (or at least inform them of their right to know the reasons).

Some commenters—primarily financial institutions—opposed mandatory reporting. These commenters maintained that denial reasons are not a reliable fair lending indicator because they may oversimplify the reasons for a credit decision. Thus, these commenters contended, users of the HMDA data could be led to believe that discrimination exists when in fact it does not. Some commenters also opposed mandatory reporting on the basis of cost and burden; others argued that the requirement is unnecessary, because examiners can obtain denial reasons from loan files.

4(c)(2) Preapproval Requests.

The regulation has been revised to require lenders to report activity on preapproval requests that are denied or that result in a loan origination. See dicsussion under 203.2(b)—"Application." The Board has also revised the regulation to permit, but not require, lenders to report preapproval requests that are approved by the institution but not accepted by the borrower, using the code provided. See Appendix A., Paragraph I.B.7.

4(d) Excluded Data

4(d)(3) Temporary Financing

Regulation C generally does not permit lenders to report temporary financing. The Board has not amended these rules, for the same reasons as set forth in the proposal. The Board believes that, although in some cases the data would not be duplicative—such as where a lender originates construction loans but does not offer permanent financing—these instances appear to be relatively few. Imposing additional burden industry wide would not be justified.

Time Period. The Board requested comment on whether the regulation should define "temporary loans" in terms of a time period. A few commenters, financial institutions, requested that the Board provide a definition that includes a specific time period. Upon further analysis, the Board believes that in the absence of any generally accepted timeframe for "temporary financing," it is impracticable to provide a "bright-line" definition. Instead, the regulation will continue to offer examples, such as construction financing.

4(d)(6) Purchased Loans

Branch Acquisition. The Board proposed to exclude from reporting loans purchased as part of a branch acquisition. Limited comment on the proposal was received. A community group stated that data on all purchased loans are needed to discourage institutions from purchasing predatory loans. Industry commenters, on the other hand, supported the proposal. They believe that the decision to acquire a branch is an investment decision rather than a credit decision.

Based on the comments and on its own analysis, the Board is adopting the proposal. 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.

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.” The Board has revised 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 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" is 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) is 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 reorganization of the regulation entails non-substantive revisions of Appendix A, such as redesignating several provisions. The Board also makes certain substantive changes that conform Appendix A to revisions discussed above.

1. Instructions for Completion of Loan/Application Register

A. Application or Loan Information

3. Purpose

This field is revised to include only the purpose of the application (i.e., home purchase, home improvement). Information on property type is moved to its own field.

4. Property Type

A new field is added to identify the type of property to which the application or loan relates (one-to-four family dwelling, multifamily dwelling, or manufactured home). See the discussion of "Manufactured home status" under section 4(a)(5), above.

5. Requests for Preapprovals

A new field is added to distinguish requests for preapprovals from other applications.

6. Loan Amount

The final rule requires institutions to report the full amount of home-equity credit lines that meet the definition of a home improvement loan. See the discussion under section 2(f) and (g), above.

B. Action Taken New codes are added for action taken on preapproval requests. An institution is required to report preapproval requests denied, using the action code provided. If an institution chooses to report preapproval requests that are approved but not accepted by the applicant, it uses the code provided.

Code 7—Preapproval approved but not accepted.

Code 8—Preapproval denied

C. Property Location

Coordination with the CRA. Appendix A provides guidance to institutions that report data under the CRA regarding the reporting of property-location information for loans located outside the metropolitan areas where those lenders have offices. In response to inquiries from lenders, the Board is clarifying this guidance, without changing it substantively.

These lenders must report the metropolitan area, state, and county where the property is located. In general, they must also report the census tract. However, if the property is located in a county with a population of 30,000 or less, a lender may report either "NA" or the census tract number.

Block Numbering Areas. Under the current rule, lenders could report the Block Numbering Area (BNA) for untracted areas. In the 2000 census, however, all areas have been assigned census tract numbers. The Board had revised Appendix A to remove the reference to BNAs.

Requests for Preapproval. The final rule requires institutions to identify certain requests for preapproval and to report denials. See discussion under section 2(b), above. Since preapproval requests denied will not include data on property location, the Board is clarifying that lenders may report "NA" in the property location fields associated with requests for preapproval that are denied. Lenders that opt to report preapprovals approved but not accepted also may report "NA" in the property location fields.

D. Applicant Information—Ethnicity, Race, Sex, and Income

3. Ethnicity and Race of Borrower or Applicant. The Board has conformed the racial classifications to the standards set by OMB. See the discussion under section 203.4(a)(10) "collection of ethnicity, race, sex, and income of applicants." Consistent with OMB's guidelines, an applicant is allowed space to designate all racial groups that are applicable, and, information regarding Hispanic or Latino ethnicity is collected separately from information on race. The Board is also revising the rule for applications taken entirely by telephone. Lenders must request the monitoring information in applications taken by telephone. If the applicant chooses not to provide the information, then the lender enters the code to indicate that the application was taken by telephone or mail.

Minor revisions have been made to the codes to provide more clarity in the data. A code 8 has been added, for cases in which there is no co-applicant or co-borrower. In addition, the instructions make clear that the code "not applicable" is to be used only in loans involving a corporate borrower, or for loans purchased by the institution.

E. Type of Purchaser The final rule includes changes to the codes for identifying the type of purchaser of an originated loan. The Board believes these changes will increase the utility of the information about the secondary market available to users of HMDA data. Under the current codes, the categories of “life insurance company,” “commercial bank,” and “savings bank or association,” account for a very small portion of loans sold. About one-third of home loans sold are attributed to the code 9, “other type of purchaser.” The final rule addresses these concerns by expanding certain existing categories, combining others, and adding a new category for private securitization.

G. Other Data

The Board is adding fields for the price of the loan (rate spread), HOEPA status, and lien position. See the discussion under section 4(a)(12)-(14) “additional items related to loan pricing.”.

Form of Transmittal Sheet

Based on the comments and its own analysis, the Board is revising the HMDA/LAR transmittal sheet to require reporting of the identity of a parent company, if any. The requirement was eliminated a few years ago to reduce burden, because parent information is generally available through the NIC database. 63 Fed. Reg. 52140 (September 30, 1998). Data users have asserted, however, that it is important to have the information in the HMDA data rather than in a separate database such as NIC. Generally, commenters supported requiring institutions to report parent company information. Some commenters, including financial institutions, noted that such a requirement would impose minimal burden on lenders.

The transmittal sheet also has been revised to call for the institution's e-mail address, if any exists, in addition to the existing requirements for a telephone and facsimile numbers of the reporting institution.

V. Appendix B

Appendix B is revised to clarify that even if an application is made entirely by telephone, the reporting institution is required to request data on ethnicity, race, and sex. Other changes reflect the revised OMB guidance discussed under section 203.4(a)(10).

VI. Reorganization of the Regulation

The Board proposed to reorganize Regulation C to make it easier to use and to make reporting less burdensome for institutions. In the past, formal guidance for compliance with HMDA was 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 was provided in the FFIEC's "A Guide to HMDA Reporting: Getting It Right!" Compliance officers and other commenters expressed concern about having to consult several sources to locate a requirement or interpretation dealing with a particular issue.

The Board solicited comment on the benefits 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. Based on the comments and its own analysis, the Board is reorganizing 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 is easier to use.

The cross-references to Appendix A in the staff commentary are deleted; they are unnecessary in view of the simplification and reorganization of Appendix A. "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 reorganization, they should not be used as a substitute for a detailed comparison of the revised regulation with the old 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)-l
Commentary 203.2(f)-3	Deleted
Commentary 203.2(f)-4	Deleted
Commentary 203.2(f)-5	Commentary 203.2(g)-l
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)-l
Regulation 203.3(c)(2)	Regulation 203.3(b)
Commentary 203.3(a)-l	Commentary 203.2(e)- I
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)-l

Table 4. Section 203.4-Compilation of Loan Data

Current	Proposed
Commentary 203.4(a)- I	Regulation 203.6(b)(3)
Commentary 203.4(a)(2)-l	Commentary 203.2(g)-4
Commentary 203.4(a)(3)-l	Deleted
Commentary 203.4(a)(3)-2	Commentary 203.4(a)(3)-l
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)-l	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)-l
III.D. La.	Regulation 203.5(b)(3)
III. D. Lb	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)- I
III.E.3.	Regulation 203.5(c)
III.F. I	Commentary 203.5(e)-
III.F.2.	Commentary 203.5(e)-2
IV.A. 1.	Commentary 203.4(a)- I (a)
IV.A.2.	Commentary 203.4(a)- I (b)
IV.A.3	Commentary 203.4(a)- I (c)

IV.A.4.	Commentary 203.4(a)- I (d
IV.A.5.	Commentary 203.4(a)- I (e)
IV.B.	Deleted
V.A. 1.	1" 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. I., 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.11.

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. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. 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 control number. The OMB control number is 7100-0247.

The mandatory collection of information that is revised by this rulemaking is found in 12 CFR Part 203, which implements 12 U.S.C. 2801-2810. Public officials use this information to determine whether financial institutions are serving the housing needs of their communities; to help target public investment to promote private investment where it is needed; and to identify possible discriminatory lending patterns for enforcement of anti-discrimination statutes.

The respondents are all types of financial institutions that meet the tests for coverage under the regulation. Depository institutions with offices in metropolitan areas whose assets are below an asset size threshold that adjusts yearly (currently $32 million) are not required to comply. Under the Paperwork Reduction Act 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 U.S.C. 601-604a; 611-631). Other federal agencies account for the paperwork burden for the institutions they supervise. Respondents must maintain their HMDA-LARs and modified HMDA-LARs for three years, and their disclosure statements for five years.

The final rule amends Regulation C to improve the quality, consistency, and utility of data reported under HMDA. The revisions expand coverage of nondepository lenders, revise definitions of covered loans and applications, and require reporting of additional items of information.

In conjunction with its proposal, the Federal Reserve sought comment on the burden estimates for the proposed changes. The Board received nearly 300 public comment letters, most of which addressed the issue of respondents' burden. These comments were addressed at length earlier in this notice. In general, industry commenters expressed concern that the proposed changes, taken as a whole, would impose significant burdens. The Federal Reserve has revised certain aspects of the proposal to address some of the burden concerns. Those revisions are discussed earlier in this notice.

The estimated annual burden for this information collection varies from 12 to 12,000 hours, depending on individual circumstances, with estimated averages of 242 hours for state member banks and 192 hours for mortgage banking subsidiaries and other respondents. To most accurately estimate the annual burden for this information collection the staff used the number of Federal Reserve supervised respondents that were required to report CY 2000 data in March 2001. The Federal Reserve estimates the annual burden to be 146,234 hours, a 20 percent increase from the last estimate of the annual burden under the current regulation.

Respondents also face a one-time cost burden to reprogram systems to add codes for new data items, update systems with the new definitions for current data items, and create an interface between current HMDA and TILA systems to enable reporting of pricing data. Institutions that use vendor-provided software systems (the bulk of reporting institutions) will face costs averaging around \$2,000 – \$5,000. Institutions that purchase and adapt off-the-shelf applications will face costs averaging between \$20,000 – \$50,000. Institutions that use mainframe systems and employ systems programmers (the largest institutions) will face costs averaging between \$120,000 – \$270,000. Using the maximum cost for each of the three ranges to calculate a weighted average, the Federal Reserve estimates that the average covered financial institution will incur a one-time cost of approximately \$17,400.

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. After the data are redacted as required by the statute and regulation, they are made publicly available and are not considered confidential. Data that the statute requires be redacted (loan number, date application received, and date action taken) is given confidential treatment under exemption 6 of the Freedom of Information Act (5 U.S.C. 552(b)(6)).

The Board has a continuing interest in the public's opinions of the Federal Reserve’s collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0247), Washington, DC 20503.

VIII. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (5 USC 604(a)), the Board has prepared a final regulatory flexibility analysis of this proposal. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452-3245. A summary of the analysis follows.

The final rule is a consequence of Board policy to review its regulations periodically and a desire to update the regulation to reflect mortgage markets more clearly, enhance consumer protection, and comply with new guidance from the Office of

Management and Budget concerning collection of data on ethnicity and race by federal agencies.

The Board received no comments specifically responding to the initial regulatory flexibility analysis published in conjunction with the proposed rule. As discussed in the Supplementary Information, however, many comments the Board received discussed the burdens arising from particular proposals. Such comments are summarized throughout the Supplementary Information, as are the Board's responses. The Supplementary Information also contains discussions of alternative measures the Board considered adopting, and in some cases adopted, to reduce burden.

The major changes in the final rule bring more institutions and transactions under requirements for data collection 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 for each transaction are the most significant in terms of potential benefits and in increasing regulatory burden. The final rule would affect all institutions currently within the scope of the regulation, including covered small institutions.

The number of institutions that would be brought under the regulation for the first time is likely quite limited. No newly covered institution would be a small mortgage lender. The new criterion for coverage-which is added to the existing criteria-is that institutions must have originated at least $25 million home purchase loans (including refinancings of such loans) in the prior calendar year. Board staff projects that any newly covered institutions would be more active in the mortgage business than most of the institutions currently required to report.

It is difficult to quantify the benefits and costs associated with the final rule. The new information will provide data to help identify possible discriminatory lending patterns and assist regulators in conducting examinations under the CRA and other laws. Additional data on covered transactions will allow for more precise differentiation among loan products and reduce the potential bias that results when dissimilar loan products are jointly classified. The data will also help inform the public about developments in the mortgage market by revealing pricing information on higher-cost home loans and by ensuring that more complete and consistent information is available about mortgage refinancings and home improvement lending.

Although the final rule will offer a number of benefits it also will require covered lenders, including small institutions, to change their current procedures and systems for collecting and reporting required data, and potentially to report new transactions. The regulatory agencies will take steps to mitigate these costs, but for at least some covered lenders they are likely to be significant.

List of Subjects in 12 CFR Part 203

Banks, Banking, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.

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

PART 203--HOME MORTGAGE DISCLOSURE (REGULATION C)

Sec.

AUTHORITY: 12 USC 2801-2810

§ 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 ("HMDA") (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 for institutions reporting data to the Office of the Comptroller of the Currency (1557-0159), the Federal Deposit Insurance Corporation (3064-0046), the Office of Thrift Supervision (1550-0021), the Federal Reserve System (7100-0247), and the Department of Housing and Urban Development ("HUD") (2502-0529). A number for the National Credit Union Administration 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 investment 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 requires an institution to report data to its supervisory agency about home purchase loans, home improvement loans, and refinancings that it originates or purchases, or for which it receives applications; and to disclose certain data to the public.

§ 203.2 Definitions.

In this regulation:

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

(b) Application.

(1) In general. Application means an oral or written request for a home purchase loan, a home improvement loan, or a refinancing that is made in accordance with procedures used by a financial institution for the type of credit requested.

(2) Preapproval programs. A request for preapproval for a home purchase loan is an application under paragraph (1) if the request is reviewed under a program in which the financial institution, after fully analyzing the creditworthiness of the applicant, issues a written commitment to the applicant valid for a designated period of time to extend a home purchase loan up to a specified amount. The written commitment may not be subject to conditions other than:

(i) conditions that require the identification of a suitable property;

(ii) conditions that require that no material change has occurred in the applicant's financial condition or creditworthiness prior to closing; and/or

(iii) limited conditions that are not related to the financial condition or creditworthiness of the applicant that the lender ordinarily attaches to a traditional home mortgage application (such as certification of a clear termite inspection).

(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 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 related to property located in that metropolitan area.

(d) Dwelling means a residential structure (whether or not 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:

(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 one or more 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 Fannie Mae or Freddie Mac; 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 10 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 $25 million;

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

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

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

(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 CFR 226.

(g) Home improvement loan means:

(i) A loan secured by a lien on a dwelling that 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

(ii) A non-dwelling secured loan that 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 that is classified by the financial institution as a home improvement loan.

(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 CFR 3280.2).

(j) Metropolitan area means a metropolitan area as defined by the U.S. Office of Management and Budget.

(k) Refinancing means a new obligation that satisfies and replaces an existing obligation by the same borrower, in which:

(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 a first lien on a dwelling; and

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

§ 203.3 Exempt institutions.

(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 shall submit the data required by that law to its state supervisory agency for purposes of aggregation.

(b) Loss of exemption. An institution losing a state-law exemption under paragraph (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.

§ 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, home improvement loans, and refinancings for each calendar year. An institution shall collect data regarding requests under a preapproval program (as defined in section 203.2(b)) only if the preapproval request is denied. An institution must also identify a request for a preapproval under such a program if the request results in the origination of a home purchase loan. All reportable transactions shall be recorded, within thirty calendar days after the end of the 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. The data recorded shall include the following items:

(1) An identifying number for the loan or loan application, and the date the application was received.

(2) The type of loan.

(3) The purpose of the loan or application.

(4) Whether the application is a request for preapproval and whether it resulted in a denial or in an origination.

(5) The property type to which the loan or application relates.

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

(7) The amount of the loan or the amount applied for.

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

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

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

(11) 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).

(12) For loans in which the loan's annual percentage rate (APR) exceeds the yield on a Treasury security with a comparable period of maturity (as of the 15th day of the month immediately preceding the month in which the application for the loan was received by the financial institution) by [3] percentage points for a loan secured by a first lien and by [5] percentage points for a loan secured by a junior lien, the difference between the APR and the yield on the comparable Treasury security.

(13) Whether the loan is subject to the Home Ownership and Equity Protection Act of 1994.

(14) The lien status of the loan (first lien, subordinate lien, or not secured by a lien on a dwelling).

(b) Optional data.

(1) A financial institution may report the reasons it denied a loan application.

(2) A financial institution may report data for requests for preapproval that are approved by the institution but not accepted by the applicant.

(c) Collection of data on ethnicity, race, sex, and income. (1) A financial institution shall collect data about the ethnicity, race, and sex of the applicant or borrower as prescribed in Appendix B.

(2) Ethnicity, race, sex, and income data may but need not be collected for loans purchased by the financial institution.

(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);

(5) The purchase solely of the right to service loans; or

(6) Loans acquired 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 for banks and savings associations that are required to report data on small business, small farm, and community development lending under CRA.

Banks and savings associations that are required to report data on small business, small farm, and community development lending under regulations that implement the Community Reinvestment Act of 1977 (12 U.S.C. 2901 et seq.) shall also collect the location of property located outside metropolitan areas in which the institution has a home or branch office, or outside any metropolitan areas.

§ 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. The institution shall retain a copy for its records for 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. The Federal Financial Institutions Examination Council ("FFIEC") will prepare a disclosure statement from the data each financial institution submits.

(1) An institution shall make its disclosure statement (prepared by the FFIEC) available to the public at its home office no later than three business days after receiving it from the FFIEC.

(2) In addition, an 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 other metropolitan areas where the institution has offices (the disclosure statement need only contain data relating to the metropolitan area where the branch is located); or

(ii) Post the address for sending written requests in the lobby of each branch office in other metropolitan areas 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 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 modified loan/application register. A financial institution shall make its loan/application register available to the public after 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 thirty calendar days for a request received after March 1. The modified register need only contain data relating to the metropolitan area 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 metropolitan area. An institution shall provide promptly upon request 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 submitted by financial institutions, the FFIEC will produce reports for individual institutions for each metropolitan area, showing lending patterns by property location, age of housing stock, and applicants' income level, sex, ethnicity, and race. 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.

§ 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.

(b) Bona fide errors. (1) An error in compiling or recording loan data is not a violation of the act or this regulation if the error was unintentional and occurred despite the maintenance of procedures reasonably adapted to avoid such errors.

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

(3) If an institution makes a good-faith effort to record all data concerning covered transactions fully and accurately within thirty calendar 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 or completes the information prior to submitting the loan/application register to its regulatory agency.

SUPPLEMENT I TO PART 203—STAFF COMMENTARY

Introduction

1. Status. 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).

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.

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.

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.

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.

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).

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.

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.

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.

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 1) 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.

3. Requests for Preapproval. To be a covered preapproval program, the written commitment issued under the program must result from a full review of the creditworthiness of the applicant, including such verification of income, resources and other matters as is typically done by the institution as part of its normal credit evaluation program. The written commitment may be subject only to the following conditions: (1) identification of a suitable property; (2) verification that no material change has occurred

in the applicant's financial condition or creditworthiness; and (3) such other conditions that are not related to the financial condition or creditworthiness of the applicant that the lender ordinarily attaches to a traditional home mortgage application approval.
These conditions are limited to conditions such as requiring an acceptable title insurance binder or a certificate indicating clear termite inspection, and, in the case where the applicant plans to use the proceeds from the sale of the applicant's present home to purchase a new home, a settlement statement showing adequate proceeds from the sale of the present home.

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 USC 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, Paragraph I.C.6, which requires certain depository institutions to report property location even for properties located outside those metropolitan areas 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 certain nondepository institutions must report property location even in metropolitan areas where they do not have a physical location.)

2(d) Dwelling.

1. Coverage. 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 multifamily structure (such as an apartment building).

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 $32 million are exempt from collecting data for 2002.

3. <u>Coverage after a merger</u>. 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 I 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. <u>Originations</u>. 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 §§ 203.1(c) and 203.4(a).

5. Branches of foreign banks—treated as banks. 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 203.2(e)(1) of Regulation C.

6. Branches and offices of foreign banks—treated as for-profit mortgage lending institutions. 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 203.2(e)(2) of Regulation C.

2 (g) Home improvement loan.

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

2. Classification requirement for loans not secured by a lien on a dwelling. An institution has "classified" a loan that is not secured by a lien on a dwelling 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).

3. 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).

4. Commercial and other loans. A home improvement loan may include a loan originated outside an institution's residential mortgage lending division (such as a loan to improve an apartment building made through the commercial loan department).

5. Mixed-use property. A loan to improve property used for residential and commercial purposes (for example, a building containing apartment units and retail space) 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 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. If the loan is unsecured, to report the loan as a home improvement loan the institution must also classify it as such.

6. Multiple-category loans. If a loan is a home improvement loan as well as a refinancing, an institution reports the loan as a home improvement loan.

2(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 CFR 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 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).

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. 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, or a refinancing, an institution reports the loan as a home purchase loan.

Section 203.4—Compilation of Loan Data

Paragraph 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 ethnicity, race, 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.

2. 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.

3. 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.

4. 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.

Paragraph 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 receives a completed application. 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.

Paragraph 4(a)(3) 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, or a purpose line, on a loan application to determine whether or not the applicant intends to use loan proceeds for home improvement purposes.

2. 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.

Paragraph 4(a)(6) Occupancy.

1. Occupancy—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)(8), Property location.)

Paragraph 4(a)(7) 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. An 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—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.

Paragraph 4(a)(8) 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). Notwithstanding 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.

Paragraph 4(a)(9) 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 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 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."

Paragraph 4(a)(10) 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" box the institution reports using the "Asian" 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.

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 ethnicity, race, 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.

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.

Paragraph 4(a)(11) 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. Type of purchaser—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.

Paragraph 4(a)(12) Rate spread information.

1. Treasury securities. To determine the yield on a Treasury security for the pricing information, lenders may use the Board's "Selected Interest Rates" (statistical release H-15) or the actual auction results. Treasury auctions are held at different intervals for the different types of securities. These figures are published by major financial and metropolitan newspapers and are also available from Federal Reserve Banks. Lenders must use the yield on the security that has the nearest maturity at issuance to the loan's maturity. For example, if a lender must compare the annual percentage rate to Treasury securities with either 7-year or 10-year maturities, the annual percentage rate for a 9-year loan is compared with securities that have a 10-year maturity. If the loan maturity is exactly halfway between, the annual percentage rate is compared with the Treasury security that has the lower yield. For example, if the loan has a

maturity of 20 years and comparable securities have maturities of 10 years with a yield of 6.501 percent and 30 years with a yield of 6.906 percent, the annual percentage rate is compared with 10 percentage points over the yield of 6.501 percent, the lower of the two yields.

Paragraph 4(d) Excluded data.

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

Paragraph 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.

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.

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.

Paragraph 5(b) Public disclosure of statement.

1. Business day. For purposes of § 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).

Paragraph 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.

Paragraph 5(e) Notice of availability.

1. Poster—suggested text. 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; ethnicity, 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.

Paragraph 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.

By order of the Board of Governors of the Federal Reserve System, January **, 2002.

Jennifer J. Johnson
Secretary of the Board

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APPENDIX A TO PART 203 FORM AND INSTRUCTIONS FOR COMPLETION OF HMDA LOAN/APPLICATION REGISTER

PAPERWORK REDUCTION ACT NOTICE

This report is required by law (12 U.S.C. 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 valid Office of Management and Budget (OMB) Control Number. See 12 CFR 203.1(a) for the valid OMB Control Numbers, applicable to this information collection. 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 the 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 loan number that can be used later to retrieve the loan or application file. It can be any number of your institution's choosing (not exceeding 25 characters). You may use letters, numerals, or a combination of both.

2. Date Application Received.

a. Enter the date the loan application was received by your institution by month, day, and year. 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. For paper submissions only, use numerals in the form MM/DD/CCYY (for example, 01/15/2003). For submissions in electronic form, the proper format is CCYYMMDD.

3. Type of Loan or Application.

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

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

Code 2—FHA-insured (Federal Housing Administration)

Code 3—VA-guaranteed (Veterans Administration)

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

4. Purpose of Loan or Application.

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

Code 1—Home purchase

Code 2—Home improvement

Code 3—Refinancing

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

5. Property Type.

Indicate the property type by entering the applicable code from the following:

Code 1—One- to four- family dwelling (other than manufactured housing)

Code 2—Manufactured home

Code 3—Multifamily dwelling

a. Use Code 1, not Code 3, for loans on individual condominium or cooperative units.

b. If you cannot determine (despite reasonable efforts to find out) whether the loan or application relates to a manufactured home, use Code 1.

6. Owner Occupancy.

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

Code 1—Owner-occupied as a principal residence

Code 2—Not owner-occupied as a principal residence

Code 3—Not applicable

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.

b. Use Code 2 for second homes or vacation homes, as well as for rental properties.

c. 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 institution's option, you may report the actual occupancy status, using Code 1 or 2 as applicable.

7. 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 (round $500 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 a home improvement loan, 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. If you opt to report home equity lines of credit, report only the portion of the line intended for home improvement or home purchase.

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.

8. Request for Preapproval.

Indicate whether the application is a request for a preapproval by entering the applicable code from the following:

Code 1—Preapproval requested.

Code 2—Preapproval not requested.

Code 3—Not applicable

B. Action Taken.

1. <u>Type of action</u>.

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

Code 1—Loan originated

Code 2—Application approved but not accepted

Code 3—Application denied

Code 4—Application withdrawn

Code 5—File closed for incompleteness

Code 6—Loan purchased by your institution

Code 7— Preapproval request denied

Code 8— Preapproval request approved but not accepted (optional)

Use Code 1 for a loan that is originated, including one resulting from a request for preapproval.

a. For a counteroffer (your offer to the applicant to make the loan on different terms or in a different amount from the terms or amount applied for), use Code 1 if the applicant accepts. Use Code 3 if the applicant turns down the counteroffer or does not respond.

b. Use Code 2 when the application is approved but the applicant (or the loan broker or correspondent) fails to respond to your notification of approval or your commitment letter within the specified time. Do not use this code for a preapproval request.

d. Use Code 4 only when the application is expressly withdrawn by the applicant before a credit decision is made. Do not use code 4 if a request for preapproval is withdrawn; preapproval requests that are withdrawn are not reported under HMDA.

e. Use Code 5 if you sent a written notice of incompleteness under § 202.9(c)(2) of Regulation B (Equal Credit Opportunity) and the applicant did not respond to your request for additional information within the period of time specified in your notice. Do not use this code for requests for preapproval that are incomplete; these preapproval requests are not reported under HMDA.

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, 02/22/2003). For submissions 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 and preapprovals denied, applications and preapprovals 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 the applicant expressly withdrew the application. Enter the date shown on the notification from the applicant, in the case of a written withdrawal.

e. For preapprovals that lead to a loan origination, enter the date of the origination.

C. Property Location.

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

1. Metropolitan area.

For each loan or loan application, enter 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, if the property is located in a county with a population of 30,000 or less in the 2000 census (as determined by the Census Bureau's 2000 CPH-2 population series), enter "NA" (even if the population has increased above 30,000 since 2000), or 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 2000; for addresses not listed in the index, consult the Census Bureau's census tract outline maps. Use the maps from the Census Bureau's 2000 CPH-3 series, or equivalent 2000 census data from the Census Bureau (such as the Census TIGER/Line file) or from a private publisher.

5. Property Located Outside Metropolitan Area.

For loans on property located outside the metropolitan areas in which an institution has a home or branch office, or outside any metropolitan area, the institution may choose one of the following two options. Under option one, the institution may enter the metropolitan area, state and county codes and the census tract number; and if the property is not located in any metropolitan area, it may enter "NA" in the metropolitan area column. (Codes exist for all states and counties and numbers exist for all census tracts). Under this first option, the codes and census tract number must accurately identify the property location. Under the second option, which is not available if paragraph 6 applies, an institution may enter "NA" in all four columns, whether or not the codes or numbers exist for the property location.

6. Data Reporting for Banks and Savings Associations required to report data on small business, small farm, and community development lending under the CRA regulations.

If your institution is a bank or savings association that is required to report data under the regulations that implement the CRA, you must enter the property location on your HMDA/LAR even if the property is outside metropolitan areas in which you have a home or branch office, or outside any metropolitan area.

7. Requests for Preapproval.

Notwithstanding paragraphs 1through 6, if the application is a request for preapproval that is denied or that is approved but not accepted by the applicant, you may enter the code "NA" in all four columns.

D. Applicant Information—Ethnicity, Race, Sex, and Income.

Appendix B contains instructions for the collection of data on ethnicity, race, 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 regarding ethnicity, race, and sex. For applications taken by telephone, you must request the data on ethnicity, race, and sex, using the Appendix B collection form. If the applicant does not provide these data in an application taken by mail or telephone, 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. Ethnicity of Borrower or Applicant.

Use the following codes to indicate the ethnicity of the applicant or borrower under column "A" and of any co-applicant or co-borrower under column "CA."

Code 1—Hispanic or Latino

Code 2—Not Hispanic or Latino

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

Code 4—Not applicable

Code 5—No co-applicant

4. Race of Borrower or Applicant.

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

Code 1—American Indian or Alaska Native

Code 2—Asian

Code 3—Black or African American

Code 4—Native Hawaiian or Other Pacific Islander

Code 5—White

Code 6—Information not provided by applicant in mail or telephone application

Code 7—Not applicable

Code 8—No co-applicant

a. If an applicant selects more than one racial designation, enter all Codes corresponding to the applicant's selections.

b. Use code 7 for "not applicable" only when the applicant or co-applicant is a corporation or when applicant or co-applicant information is unavailable because the loan has been purchased by your institution.

c. 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 “no co-applicant” in the co-applicant column.

5. <u>Sex of Borrower or Applicant</u>.

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."

Code 1—Male

Code 2—Female

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

Code 4—Not applicable

5—No co-applicant or co-borrower

a. Use code 4 for "not applicable" only when the applicant or co-applicant is a corporation or when applicant or co-applicant information is unavailable because the loan has been purchased by your institution.

b. 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 5 for “no co-applicant” in the co-applicant column.

6. 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 thousands. For example, report $35,500 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

Code 1—Fannie Mae (Federal National Mortgage Association)

Code 2—Ginnie Mae (Government National Mortgage Association)

Code 3—Freddie Mac (Federal Home Loan Mortgage Corporation)

Code 4—Farmer Mac (Federal Agricultural Mortgage Corporation)

Code 5— Private securitization

Code 6—Commercial bank, savings bank or savings association

Code 7—Life insurance company, credit union, mortgage bank, or finance company

Code 8—Affiliate institution

Code 9—Other type of purchaser

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.

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

d. 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 may report the reason for denial, and 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.

Code 1—Debt-to-income ratio

Code 2—Employment history

Code 3—Credit history

Code 4—Collateral

Code 5—Insufficient cash (downpayment, closing costs)

Code 6—Unverifiable information

Code 7—Credit application incomplete

Code 8—Mortgage insurance denied

Code 9—Other

2. If your institution uses the model form for adverse action contained in the Appendix to Regulation B (Form C-1in 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. Pricing-Related Data.

1. Rate Spread .

a. For a home purchase loan, a refinancing, or a dwelling-secured home improvement loan that you originated, report the rate spread if the difference between the APR and the applicable Treasury rate is equal to or greater than 3 percentage points for first-lien loans or 5 percentage points for subordinate-lien loans. To determine whether the rate spread meets this threshold, use the Treasury rate for a comparable period of maturity as of the 15th of the month preceding the application date for the loan and the annual percentage rate (APR) for the loan, as calculated and disclosed under § 226.6 or 226.18 of Regulation Z. 12 CFR 226.

c. If the loan origination is not subject to Regulation Z, or involves a home improvement loan that is not dwelling-secured, or involves a loan that you purchased, enter "NA."

d. If the difference between the APR and the Treasury rate is less than 3 percentage points for first-lien loans and 5 percentage points for subordinate-lien loans, enter "NA."

e. Enter the rate spread to two decimal places. For example, enter 3.29. If the difference between the APR and the Treasury rate is a figure with more than two decimal places, round the figure or truncate the digits beyond two decimal places.

2. HOEPA Status. For a loan that you originated or purchased that is subject to the Home Ownership and Equity Protection Act of 1994 (HOEPA), as implemented in Regulation Z (12 CFR 226.32), because the APR or the points and fees on the loan meet or exceed the HOEPA triggers, enter Code 1. Enter code 2 for a loan that you originated or purchased that is not subject to the requirements of HOEPA.

H. Lien Status.

Use the following codes for applications and loans you originate (exclude loans you purchase):

Code 1—Secured by a first lien on a dwelling.

Code 2—Secured by a subordinate lien on a dwelling.

Code 3—Not secured by a lien on a dwelling.

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 USC 1813(s)) have the meanings 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 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 ETHNICITY, RACE, AND SEX

I. INSTRUCTIONS ON COLLECTION OF DATA ON ETHNICITY, RACE, AND SEX.

You may list questions regarding the ethnicity, race, 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 model language.)

II. PROCEDURES.

A. You must ask the applicant for this information (but you cannot require the applicant to provide it) whether the application is taken in person or by telephone or mail or on the internet.

B. Inform the applicant that the federal government requests this 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.

C. You must offer the applicant the option of selecting one or more racial designations.

D. If the applicant chooses not to provide the information for an application taken in person, note this fact on the form and then note the applicant’s ethnicity, race, and sex on the basis of visual observation or surname, to the extent possible.

E. If the applicant declines to answer these questions or fails to provide the information on an application taken by mail or telephone or on the internet, the data need not be provided. Indicate whether an application was received by mail or telephone, if it is not otherwise evident on the face of the application.

DRAFT

Form FR HMDA-LAR
OMB Nos. 1557-0159 (OCC), 3064-0046 (FDIC), 1550-0021 (OTS), 7100-0247 (FRB), and 2502-0529 (HUD); NCUA number pending.

LOAN/APPLICATION REGISTER TRANSMITTAL SHEET

You must complete this transmittal sheet (please type or print) and attach it to the Loan/Application Register, required by the Home Mortgage Disclosure Act, that you submit to your supervisory agency.

Reporter's Identification Number	Agency Code	Reporter's Tax Identification Number	Total line entries contained in attached Loan/Application Register
__________ –	__	___ – _______	______

The Loan/Application Register that is attached covers activity during the year______ and contains a total of ______ pages.

Enter the name and address of your institution. The disclosure statement that is produced by the Federal Financial Institutions Examination Council will be mailed to the address you supply below:

____
Name of Company

____
Address

____
City, State, ZIP

Enter the name and address of any parent company:

____
Name of Parent Company

____
Address

____
City, State, ZIP

Enter the name, telephone number, facsimile number, and e-mail address of a person who may be contacted about questions regarding your register:

Name	Telephone Number	Facsimile Number	E-Mail Address
____________	( ) ________	( ) ________	____________

An officer of your institution must complete the following section.

I certify to the accuracy of the data contained in this register.

Name of Officer	Signature	Date
____________	____________	______

LOAN/APPLICATION REGISTER Page___of___

Form FR HMDA–LAR

Reporter's Identification Number ____________ Agency Code ___

____________________ Name of Reporting Institution

____________________ City, State, ZIP

All columns (except Reasons for Denial) must be completed for each entry. See the instructions for details

Application or Loan Information								Action Taken		Property Location				Applicant Information A = Applicant CA = Co-Applicant									Other Data		
														Ethnicity		Race		Sex							
Application or Loan Number	Date Application Received (mm/dd/ccyy)	Loan Type	Property Type	Purpose	Owner Occupancy	Loan Amount in Thousands	Preapproval	Type	Date (mm/dd/ccyy)	Four-Digit Metropolitan Area Number	Two-Digit State Code	Three-Digit County Code	Six-Digit Census Tract	A	CA	A	CA	A	CA	Gross Annual Income in thousands	Type of Purchaser of Loan	Reasons for Denial (optional)	Rate Spread	HOEPA Status	Lien Status
Example of Loan Originated Following Preapproval LB-687439	01/15/2003	1	1	1	1	65	1	1	02/22/2003	8840	51	059	4219.85	2	5	3,5	8	1	5	24	7		NA	2	1
Example of Preapproval Request Denied 567890432l-1234098765	06/01/2003	1	1	1	1	125	1	8	06/20/2003	NA	NA	NA	NA	2	2	3	2	1	2	60	0	1,3	NA	2	1
Example of Application Denied Following Preapproval 0123456789-9876543210	03/20/2003	1	1	1	1	30	1	3	04/30/2003	0450	01	015	0021.00	1	1	5	3	2	1	20	0	4,5	NA	2	1
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LOAN/APPLICATION REGISTER
CODE SHEET

Use the following codes to complete the Loan/Application Register. The instructions to the HMDA-LAR explain the proper use of each code.

Application or Loan Information

Loan Type:
- 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 (Farm Service Agency or Rural Housing Service)

Property Type:
- 1—One to four-family (other than manufactured housing)
- 2—Manufactured housing
- 3—Multifamily

Purpose of Loan:
- 1—Home purchase
- 2—Home improvement
- 3—Refinancing

Owner-Occupancy:
- 1—Owner-occupied as a principal dwelling
- 2—Not owner-occupied
- 3—Not applicable

Preapproval (home purchase loan only):
- 1—Preapproval was requested
- 2—Preapproval was not requested
- 3—Not applicable

Action Taken:
- 1—Loan originated
- 2—Application approved but not accepted
- 3—Application denied by financial institution
- 4—Application withdrawn by applicant
- 5—File closed for incompleteness
- 6—Loan purchased by your institution
- 7—Preapproval request denied by financial institution
- 8—Preapproval request approved but not accepted (optional reporting)

Applicant Information

Ethnicity:
- 1—Hispanic or Latino
- 2—Not Hispanic or Latino
- 3—Information not provided by applicant in mail or telephone application
- 4—Not applicable (see App. A, I.D.)
- 5—No co-applicant

Race:
- 1—American Indian or Alaska Native
- 2—Asian
- 3—Black or African American
- 4—Native Hawaiian or Other Pacific Islander
- 5—White
- 6—Information not provided by applicant in mail or telephone application
- 7—Not applicable (see App. A, I.D.)
- 8—No co-applicant

Sex:
- 1—Male
- 2—Female
- 3—Information not provided by applicant in mail or telephone application
- 4—Not applicable (see App. A, I.D.)
- 5—No co-applicant

Type of Purchaser

- 0—Loan was not originated or was not sold in calendar year covered by register
- 1—Fannie Mae
- 2—Ginnie Mae
- 3—Freddie Mac
- 4—Farmer Mac
- 5—Private securitization
- 6—Commercial bank, savings bank or savings association
- 7—Life insurance company, credit union, mortgage bank, or finance company
- 8—Affiliate institution
- 9—Other type of purchaser

Reasons for Denial (optional reporting)

- 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

Other Data

HOEPA Status (only for loans originated or purchased):
- 1—HOEPA loan
- 2—Not a HOEPA loan

Lien Status (except loans purchased by your institution):
- 1—Secured by a first lien on a dwelling
- 2—Secured by a junior lien on a dwelling
- 3—Not secured by a lien on a dwelling

SAMPLE DATA-COLLECTION FORM
INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the federal government for certain types of loans related to a dwelling in order to monitor the lender's compliance with equal credit opportunity, fair housing, and home mortgage disclosure laws. You are not required to furnish this information, but are encouraged to do so. You may select one or more designations for "Race." The law provides that a lender may not discriminate on the basis of this information, or on whether you choose to furnish it. However, if you choose not to furnish the information and you have made this application in person, under federal regulations the lender is required to note ethnicity, race, and sex on the basis of visual observation or surname. If you do not wish to furnish the information, please check below.

APPLICANT:

☐ I do not wish to furnish this information

Ethnicity:

☐ Hispanic or Latino
☐ Not Hispanic or Latino

Race:

☐ American Indian, Alaska Native
☐ Asian
☐ Black or African American
☐ Native Hawaiian or Other Pacific Islander
☐ White

Sex:

☐ Female
☐ Male

CO-APPLICANT:

☐ I do not wish to furnish this information

Ethnicity:

☐ Hispanic or Latino
☐ Not Hispanic or Latino

Race:

☐ American Indian, Alaska Native
☐ Asian
☐ Black or African American
☐ Native Hawaiian or Other Pacific Islander
☐ White

Sex:

☐ Female
☐ Male

LOAN/APPLICATION REGISTER

Page___of___

Form FR HMDA–LAR

____
Name of Reporting Institution

____
City, State, ZIP

Reporter's Identification Number

Agency Code

All columns (except Reasons for Denial) must be completed for each entry. See the instructions for details.

Application or Loan Information								Action Taken		Property Location				Applicant Information A = Applicant CA = Co-Applicant									Other Data		
														Ethnicity		Race		Sex							
Application or Loan Number	Date Application Received (mm/dd/ccyy)	Loan Type	Property Type	Purpose	Owner Occupancy	Loan Amount in Thousands	Preapproval	Type	Date (mm/dd/ccyy)	Four-Digit Metropolitan Area Number	Two-Digit State Code	Three-Digit County Code	Six-Digit Census Tract	A	CA	A	CA	A	CA	Gross Annual Income in thousands	Type of Purchaser of Loan	Reasons for Denial (optional)	Rate Spread	HOEPA Status	Lien Status
Example of Loan Originated Following Preapproval LB-687439	01/15/2003	1	1	1	1	65	1	1	02/22/2003	8840	51	059	4219.85	2	5	35	8	1	5	24	7		NA.	2	1
Example of Preapproval Request Denied 5678904321-1234098765	06/01/2003	1	1	1	1	125	1	8	06/20/2003	NA	NA	NA	NA.	2	2	3	2	1	2	40	0	1,3	NA.	2	1
Example of Application Denied Following Preapproval 0123456789-9876543210	03/20/2003	1	1	1	1	30	1	3	04/30/2003	0450	01	015	0021.00	1	1	5	3	2	1	20	0	4,5	NA.	2	1
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LOAN/APPLICATION REGISTER CODE SHEET

Use the following codes to complete the Loan/Application Register. The instructions to the HMDA-LAR explain the proper use of each code.

Application or Loan Information

Loan Type:
- 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 (Farm Service Agency or Rural Housing Service)

Property Type:
- 1—One to four-family (other than manufactured housing)
- 2—Manufactured housing
- 3—Multifamily

Purpose of Loan:
- 1—Home purchase
- 2—Home improvement
- 3—Refinancing

Owner-Occupancy:
- 1—Owner-occupied as a principal dwelling
- 2—Not owner-occupied
- 3—Not applicable

Preapproval (home purchase loan only):
- 1—Preapproval was requested
- 2—Preapproval was not requested
- 3—Not applicable

Action Taken:
- 1—Loan originated
- 2—Application approved but not accepted
- 3—Application denied by financial institution
- 4—Application withdrawn by applicant
- 5—File closed for incompleteness
- 6—Loan purchased by your institution
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- 7—Life insurance company, credit union, mortgage bank, or finance company
- 8—Affiliate institution
- 9—Other type of purchaser

Reasons for Denial (optional reporting)

- 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

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APPLICANT:

☐ I do not wish to furnish this information

Ethnicity:

☐ Hispanic or Latino
☐ Not Hispanic or Latino

Race:

☐ American Indian, Alaska Native
☐ Asian
☐ Black or African American
☐ Native Hawaiian or Other Pacific Islander
☐ White

Sex:

☐ Female
☐ Male

CO-APPLICANT:

☐ I do not wish to furnish this information

Ethnicity:

☐ Hispanic or Latino
☐ Not Hispanic or Latino

Race:

☐ American Indian, Alaska Native
☐ Asian
☐ Black or African American
☐ Native Hawaiian or Other Pacific Islander
☐ White

Sex:

☐ Female
☐ Male

TO: Board of Governors

FROM: Division of Research and Statistics
(Glenn Canner, Robert Avery and Thomas A. Durkin)

SUBJECT: Regulatory Analysis of Proposed Amendments to Regulation C

DATE: January 15, 2002

SUMMARY

Staff is proposing that the Board publish amendments to Regulation C, which implements the Home Mortgage Disclosure Act of 1975 (HMDA). The recommendation follows analysis of comments received after the issuance of a proposal to amend HMDA on December 14, 2000.[1]

The major changes proposed for the regulation involve (1) bringing more institutions within the scope of the regulation; (2) expanding coverage to additional transactions for covered institutions; and (3) requiring more data on covered transactions. Among the proposed revisions, those increasing the transactions covered and the data that are required to be reported are likely to be significant both in terms of potential benefits and increasing regulatory burden; the impact of expanding the number of covered institutions is likely minor. The proposal would affect all of the roughly 7,800

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[1] Additional comments on proposed changes to HMDA were received earlier in response to an Advance Notice of Proposed Rulemaking (ANPR) issued in March 1998, reports to the Congress on mortgage-related issues by the Federal Reserve and other federal agencies in the recent past, and hearings on related aspects of the Home Ownership and Equity Protection Act (HOEPA) held by the Board in four cities in 2000. For further information, see Board of Governors of the Federal Reserve System and Department of Housing and Urban Development, Joint Report to the Congress Concerning Reform to the

institutions currently within the scope of the regulation, including covered small institutions.[2]

The proposed amendments to Regulation C do not arise from a need to implement specific legislative changes. Rather, they are 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.

Benefits associated with the proposed changes to the regulation include availability of new information to help identify possible discriminatory lending patterns and to assist regulators in conducting examinations under the Community Reinvestment Act and other laws. Additional data on covered transactions allow for more precise differentiation among loan products and reduce the potential bias that results when dissimilar loan products (such as, manufactured home loans and other home loans) are jointly classified for fair lending enforcement. In addition, the data will help inform the public about developments in the mortgage market by revealing pricing information on

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Truth in Lending Act and the Real Estate Settlement Procedures Act, 1998; Department of Housing and Urban Development and Department of the Treasury, Curbing Predatory Home Mortgage Lending, 2000.

[2] HMDA and Regulation C exempt depository institutions that do not have a home office or branch in a metropolitan area (or, in the case of nondepository institutions, that do not make more than five loans in a metropolitan area); most of these institutions are relatively small. Further, depository institutions with offices in metropolitan areas whose assets are below an asset size threshold that adjusts yearly (currently $32 million) are not required to comply. The Congress established the asset exemption standard to avoid imposing compliance costs on the smallest depository institutions.

home loans with relatively high prices and by ensuring that more complete and consistent information is available about mortgage refinancings and home improvement lending.

Although the proposed changes may offer a number of benefits, they will also impose costs on all covered lenders, including small institutions, by requiring changes to their current procedures and systems for collecting and reporting required data. Among the proposed regulatory changes, those that would require the reporting of information on additional transactions are likely to impose the largest additional compliance costs because all of the data items for each transaction will need to be assembled and disclosed. Because these data may come from different segments of the institution and different stages of the lending process, coordination of activities and integration of computer systems will need to be enhanced.

Perhaps the most potentially controversial of the recommendations is the proposed collection of loan pricing data for the first time under HMDA. Historically, the lending performance measures collected under HMDA focused on loans originated and applications that did not result in an extension of credit. Collection of loan pricing data is an expansion of these performance measures. Staff believes that developments in the mortgage market over the past few years warrant this expansion. However, because the costs of compliance and the potential reputational risks associated with such expansion are substantial, staff is recommending that the pricing data be limited to the higher-priced (subprime) portion of the mortgage market. Under the staff proposal, the costs of compliance and reputational risks will be small for institutions that do little or no subprime lending.

The regulatory agencies will take steps to mitigate the costs associated with the regulatory change, but start-up costs for financial institutions to retrain staff, to revise loan application procedures, forms, and computer and compliance systems are likely to be significant. The regulatory agencies themselves will also incur costs to change the computer software used to facilitate data collection and to edit the HMDA data prior to its public release. The agencies will also need to modify the HMDA disclosure reports prepared on behalf of both the regulated institutions and the public. Finally, the agencies will need to undertake efforts to educate the public about the potential value and limitations of the new data in order to maximize their usefulness and to limit the potential adverse effects of their public release on the reputations of banking institutions complying with fair lending and other laws.

DISCUSSION

HMDA was enacted in response to the findings of the Congress that depository institutions sometimes had contributed to the decline of certain neighborhoods by failing to provide adequate home financing to creditworthy individuals on reasonable terms and conditions. The original purposes of the Act were to:

(1) provide the general public and governmental entities sufficient information to enable them to determine whether the institutions covered by the law were meeting their obligations to serve the housing needs of their local communities; and

(2) assist public officials in determining how best to invest public funds to improve the environment for private sector investment.

HMDA has been amended over the years to expand coverage to nondepository mortgage lenders and to increase the scope and detail of the information about home lending that must be disclosed to the public. The most significant changes to HMDA were the 1989 amendments that made it clear that one of the goals of the Act was to facilitate enforcement of the nation's fair lending laws.

Regulation C currently requires that covered institutions record and send to supervisory federal agencies information on certain applications and loans in a specified format known as the loan/application register (HMDA-LAR). Required data are collected on home purchase and home improvement applications and on loans originated, purchased, or refinanced. The HMDA-LAR data covering activity in the year 2000 include information on over nineteen million loans and applications. Staff estimates that HMDA data include information on about 80 percent of the home purchase loans extended each year.[3]

The Federal Financial Institutions Examination Council (FFIEC) and the Department of Housing and Urban Development (HUD) aggregate the information reported by individual institutions and make the data available to the public in a variety of formats and reports. The federal supervisory agencies routinely use the data in their fair lending and CRA enforcement activities. Members of the public and local

[3] This estimate excludes, to the extent possible, loans to purchase manufactured homes. The main omission from HMDA coverage is home loans made by institutions with offices only in rural areas and loans extended by small institutions in metropolitan areas.

governments use the data in many ways, including to help monitor the activities of mortgage lending institutions in their local communities and to facilitate community development activities. As one of only a few publicly available micro data series on mortgage lending activities, HMDA data are also widely used by researchers and others to conduct analyses on a range of issues. The revised regulation is intended to enhance the scope and utility of the HMDA data by making changes in institutional coverage, transaction coverage, and required data on reported transactions.

1) Institutional coverage. Currently, Regulation C requires reporting by depository institutions with assets greater than $32 million as of December 31 of the previous year (adjusted annually to reflect changes in the Consumer Price Index), with a home office or branch in a metropolitan statistical area (MSA), and that made first-lien home purchase loans on 1-4 family dwellings or refinanced such loans in the past year. The regulation also requires reporting by other for-profit lending institutions that had an office or loan activity in a MSA and that either (1) had assets of more than $10 million (based on combined assets of the institution and any parent corporation), or (2) originated or refinanced 100 or more home purchase loans in the past year, subject to the exception that for-profit, nondepository lenders need not comply if their home purchase loans and refinancing of such loans amounted to less than 10 percent of total lending volume in dollars in that year.

The proposed revisions to Regulation C would not change coverage for depository institutions. However, for nondepository institutions, the revised regulation would employ a new test that would add to covered entities any institution with prior-year originations of home purchase loans (including refinancing of home purchase loans) that equaled or exceeded $25 million (assuming the other coverage tests are met). In effect, this would eliminate the 10 percent exemption test for some nondepository lenders. The intent of the change in coverage rules is to include within the scope of the regulation any nondepository lending institutions that, while extending relatively large numbers of home purchase and refinancing loans, are not currently reporting, presumably because their originations of covered loans do not rise to 10 percent of their overall lending due to the size of their other credit-related activities (including unsecured lending, such as credit card credit).

The average size of a mortgage extended in 2000 by HMDA reporters was about $125,000.[4] Assuming the lending activities of newly covered institutions are similar to those currently covered, this average loan amount suggests that an institution at the $25 million threshold will extend about 200 loans each year. Further analysis of HMDA data indicates that across all lenders only about 50 percent of home loan applications result in an extension of credit. Thus, an institution at the $25 million threshold of coverage could be expected to receive about 400 reportable mortgage applications in a given year.

For the 2000 data year, there were 7,469 reporting institutions that originated or refinanced home purchase or home improvement loans: 6,236 depository institutions,

[4] This figure excludes loans extended by HMDA reporters determined by HUD to specialize in lending for manufactured homes. In 2000, such loans averaged about $45,000. This figure also excludes loans for home improvements or the purchase of multifamily properties. There is considerable variation in the size of mortgages by purpose and type of loan. For example, the average conventional home purchase mortgage in 2000 was for $135,000, while the average for a refinancing was about $103,000.

264 affiliates of depository institutions, and 969 independent mortgage companies.[5] Among reporting institutions of *all* types, 5,528 (74 percent) originated or purchased less than $25 million in home purchase loans or refinanced home purchase loans in 2000. Among nondepository institutions, about 35 percent originated less than $25 million in home purchase loans or refinanced home purchase loans in 2000. Thus, the new $25 million threshold for coverage will not bring under HMDA coverage any institutions as small (measured by lending activity) as many of those currently covered. The 2000 HMDA data also indicate that roughly three-quarters of all lenders currently covered by HMDA and about 40 percent of covered nondepository institutions received 400 or fewer home loan applications in 2000. Thus, any newly covered institutions would likely be more active in the mortgage business than most of the institutions currently required to report.

It is difficult to tell with available information precisely how many additional institutions the revised regulation would newly cover, although staff does not believe that the number is large. A review of publicly available sources indicates that HMDA already covers the largest home lenders; therefore, lending by any newly covered institutions is likely to increase only marginally the volume of data reported under HMDA.

2) Transaction coverage. At present, Regulation C requires that covered institutions record and report certain data from applications, originations, and purchases of home purchase and secured or unsecured home improvement loans, including

[5] In addition, about 240 institutions were required to report in 2000 because they qualified as reporters as of December 31, 1999, the date for determining 2000 reporters, but they did not make any covered loans in 2000. These institutions are excluded from the totals.

refinanced loans of both kinds. The revised regulation would affect the number of covered transactions at covered lenders through a number of separate revisions to the regulation.

A. *Definition of refinancing*. Regulation C currently permits some discretion for covered institutions in determining which refinanced loans are to be reported. The current rule was adopted to ease compliance burdens; however, it results in inconsistent data because lenders can select among four distinct options for reporting purposes. The proposed amendments would remove this discretion in favor of a more precise definition of refinanced loans. The new amendment would define refinanced loans as credits satisfying and replacing an existing home-secured obligation by the same borrower where the new loan is also secured by a lien on a dwelling. Staff believes that changes in this area would produce greater consistency of data collection and reporting across lenders.

The new rule for reporting refinancings is straightforward: any new mortgage replacing another mortgage is reportable. This rule is not the most expansive of the current reporting options that lenders may follow when choosing among rules for reporting refinancings. It is not possible to determine how many lenders or loans would be affected by the proposed changes in transaction coverage, although it seems likely that many, if not most, of the loans that would be reported under the revised definition are already reported under current rules. Nonetheless, the change in coverage could lead to the reporting of additional applications and loans. In particular, some lenders may not have reported in the past refinancings of all forms of secured debt, particularly if they were unsure whether the original loan involved a home improvement purpose. Although the proposed rule is straightforward, it will place a burden on lenders to try to determine in all cases the lien status of the loans being refinanced. This information should generally be available when a new loan is extended, but may not be known for some applications that do not result in an extension of credit. As a consequence, lenders may need routinely to ask applicants about the lien status of their existing debt, potentially requiring changes in application forms.

B. *Definition of home improvement loans*. The current regulation permits covered institutions to report loans as home improvement credits based upon the purpose of the loan being home improvement and the classification of loans as such by the covered institution's definitions and classification systems.[6] Consequently, if an institution chooses not to classify loans made by borrowing purpose (if, for example, it classified all installment loans simply as installment loans, and not by purpose), then it is not required to report these loans as home improvement loans. The revised rule would change this treatment. Henceforth, home-secured loans would be reportable as home improvement loans if a stated purpose of the loan is for home improvement even if it is not classified explicitly as such. (However, home equity lines of credit would continue to be reported at the option of the lender.) For unsecured loans, the rule would not be changed, only those loans explicitly classified as home improvement loans would be reported.

The revised definition of home improvement loans for reporting purposes raises questions whether lending institutions are able to identify consumers' uses of loan funds

[6] Under Regulation C, a home improvement loan need not be a mortgage loan.

with any degree of accuracy and whether lenders will be able to comply in a meaningful way. From available data it is not possible to determine the extent of any additional reporting. The staff recommendation anticipates that for home-secured loans, lenders will modify application forms, to the extent necessary, to provide consumers an opportunity to identify the purpose of the loan. This will result in additional costs to modify forms and change systems and procedures to capture the information for purposes of reporting.

C. *Preapprovals.* The revised regulation would extend coverage of the regulation to a new area, preliminary approvals that provide a written commitment up to a designated amount for a certain period of time but which do not comprise a full credit underwriting that evaluates a particular property (sometimes called "preapprovals"). Currently, preapprovals are not covered by HMDA, except in the case where a preapproval ultimately leads to an application for credit on a specific property. Under the proposed rule, the only additional requests for preapproval that must be reported are those that are denied. The lender would have the option to report preapproval requests approved by the lender but not accepted by the borrower.

While there is only limited information on the number of covered institutions offering preapproval programs, anecdotal evidence suggests that many of the largest institutions have such programs and their prevalence is growing. In recent years, many of the larger depository and nondepository institutions have put in place preapproval programs that qualify potential customers before they choose a property. The programs are intended to aid prospective homebuyers by demonstrating to home sellers that the prospective purchaser can meet mortgage-underwriting standards and qualify for a specified amount of credit. These programs would become newly subject to requirements for data reporting. However, since the category of preapprovals is narrowly drawn, not all programs would necessarily be subject to reporting.

Mandatory collection of data on preapprovals that are denied would require institutions to establish or modify systems to capture and record data. Some commenters on the December 2000 proposal, which would have required the reporting of all preapprovals, suggested that the effect of this possible revision could be a diminution of the willingness to offer any type of preapproval product. This seems unlikely, however, because preapproval programs appear to be a popular product, the category is narrowly drawn, and only a subset of all preapprovals that do not become loans would need to be reported. Rather, the likely impact of this proposed change in coverage of the regulation would be on the underlying regulatory costs associated with the mortgage process.

Staff believes that the proposed change may provide an opportunity to evaluate more fully lenders' compliance with the fair lending laws because it will enable regulators and the public to track denials at an earlier stage of the application process. To be sure, geographic matching, currently a central element of differences in decisions on loan applications across the population will not be possible for preapproval requests because, by definition, such requests are filed before a prospective borrower has identified a specific property. Nevertheless, regulators will be able to match applicants of different ethnicities, races, and genders on the basis of their financial strength and creditworthiness.

As proposed, the new rule would require lenders to identify and track preapprovals and report much of the same information reported for regular applications for credit that are turned down. This activity will require staff retraining and changes both to data collection and reporting systems. To facilitate reporting and to avoid double counting, as well as to improve ability to analyze the data, the regulation would establish distinct codes to be used when reporting information on preapprovals. Nonetheless, collecting information on this type of activity is likely to impose substantial costs on creditors offering these programs. Some commenters on the December 2000 proposal raised the concern that limiting reporting only to preapprovals that are denied would result in an incomplete and potentially misleading profile of their lending activities. Consequently, the staff proposal would allow voluntary reporting of all preapprovals. This approach would allow each institution to weigh for itself the costs and benefits of more expansive reporting.

3) Required data. The current regulation requires collection of thirteen items of information on covered mortgage applications and loans in three categories (an institution also has the option to report the reasons it denied the granting of a loan):[7]

a) Data on applications and loans:

1) Loan or application number;

2) Date application received;

3) Type of loan;

[7] Institutions supervised by the Office of the Comptroller of the Currency and the Office of Thrift Supervision currently are required to report the reasons for denial.

4) Purpose of loan;

5) Amount of loan or application;

6) Action taken on application;

7) Date of action taken; and

8) Type of institution purchasing loans sold within the same year as origination or purchase.

b) Data on applicants or borrowers:

9) Race or national origin of applicant(s) or borrower(s);

10) Gender of applicant(s) or borrower(s); and

11) Gross annual income of applicant(s) or borrower(s) relied upon in processing the application.

c) Data on the property:

12) Owner-occupancy status of related property; and

13) Location (MSA, state, county, and census tract) of loans for which the institution has a home or branch office in the MSA.

A. *Expanded collection of race, ethnicity, and gender information.* Currently, covered institutions are not required to request race, ethnicity, or gender information if an application is taken entirely by telephone. This information must be sought in other non-personal types of applications, such as those submitted by mail or over the internet. Over the past several years, the proportion of home loan applications of all types reported with missing race and ethnicity data has increased from about 8 percent in 1993 to about 28 percent in 2000. For home purchase applications, the proportion of applications with missing race and ethnicity data has increased from 4 percent to 11 percent. The intertemporal pattern for applications with missing gender data is similar. The proportion of all home loan applications missing gender data was about 4 percent in 1993 and 23 percent in 2000. For home purchase applications, the proportion of applications missing gender data has increased from 3 percent to 11 percent.

Race and ethnicity information, and, to a lesser extent, gender information, are among the cornerstones of the HMDA data. These data are used to help monitor fair lending compliance and to track changes over time in home lending across different populations. The utility of the HMDA data is compromised by the growing incidence of missing data. Although not known with certainty, it appears that the exception in the current regulation for collecting race, ethnicity, and gender information in applications taken entirely by telephone is the main cause of the missing data. The proposed regulation would require lenders to ask applicants for race, ethnicity, and gender information in telephone applications.

The new rule will impose costs on those lenders who currently rely on applications taken entirely by telephone, as they will need to train staff to ask applicants for this information and enter the data into their HMDA reporting systems. However, experience with telephone surveys of homeowners conducted on behalf of the Federal Reserve Board suggests that as many as 97 percent of these individuals are willing to provide race, ethnicity, and gender information if asked.

B. *New data requirements.* Staff considered a large number of different items for potential data collection. All of the items suggested in public comments and weighed in the staff review arguably have merit. In establishing priorities, staff considered several factors including public comments on the potential utility of the data and on the difficulty and costs of compliance. Staff also considered the potential for adverse effects on the reputations of some creditors and the potential for disclosure of proprietary business information.

The revised regulation would add to the current information collected on many covered transactions. In addition to the above race, ethnicity, and gender information, it would require collection of new or revised information in the following areas:

a) Data on applications and loans:

1) Loan pricing (the spread APR) for high-priced loans, discussed in detail below;

2) Whether a loan is subject to the Home Ownership and Equity Protection Act (HOEPA);

3) Lien status of the loan, that is, first, junior, or no lien.

b) Data on applicants or borrowers:

4) Revised categories and more options for race or national origin conforming to new guidelines of the Office of Management and Budget.

c) Data on the type of property:

5) Whether the loan or application involves a manufactured home.

Staff is proposing to expand data collection for a number of reasons. Much of the new information is intended to enhance enforcement of HOEPA and the fair lending laws. Additional detailed information on covered transactions allows for more precise differentiation among loan products and reduces the potential bias that results when dissimilar loan products and applications for credit are jointly classified for fair lending enforcement. For example, HMDA data do not currently include information on the lien status of a loan. Lack of such information hampers the agencies' fair lending reviews because initial screens for fair lending compliance that are based on HMDA data may match loans (and applications) of different lien status even though they represent different credit risks. One consequence is that some lenders may be subject to more intensive fair lending reviews (or public criticisms) than are warranted; others may not get enough scrutiny. Aside from the usefulness in the fair lending arena, the new data items would be helpful in monitoring and understanding mortgage market developments, particularly in the subprime loan and manufactured home loan markets.

Information on HOEPA status will allow the regulatory agencies to identify readily lenders active in this portion of the mortgage market and specific loans that may warrant particular scrutiny. Information on whether a loan involves a manufactured home would be used to enhance fair lending enforcement and to provide information about mortgage market activity. Manufactured home loans are generally underwritten differently than other home loans, and, consequently, need to be accounted for separately in fair lending reviews. Manufactured home lending activity also has a great influence on denial rates observed in the HMDA data, and identifying such loans and applications would improve interpretation of changes in denial rate patterns observed in HMDA data.[8]

[8] It is estimated that applications to obtain conventional loans to buy manufactured homes are about 23 percent of all home purchase applications, but they account for about 57 percent of all the denials of conventional home purchase loans reported in HMDA data for 2000.

It will also help regulators select, in a more refined manner, lenders that may need more intensive fair lending scrutiny.

At a minimum, the new items for data collection would require system alterations for every covered institution and would affect every covered application and loan. Also, there would be additional costs associated with personnel training and for management and legal supervision. Available research on the costs associated with implementing disclosure regulations suggests that there are economies of scale associated with compliance costs.[9] Thus, while all covered financial institutions will incur costs as a result of implementing the proposed changes to the regulation, institutions with large numbers of transactions likely will have a cost advantage per account. There also will be budget implications for the supervisory agencies that conduct consumer compliance examinations and process the HMDA information, and for the FFIEC that prepares the public reports.

C. Collection of loan pricing information. Among the proposed data items that would be added to HMDA reporting, disclosure of pricing information is perhaps the most controversial. The discussion that follows is intended to provide a relatively detailed review of this aspect of the staff proposal.

1. General changes in the mortgage market. The past decade or so has witnessed a number of important developments in the mortgage market. Traditionally, mortgage lenders offered consumers a relatively limited array of mortgage products at prices that

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[9] See Gregory E. Elliehausen, The Cost of Banking Regulation: A Review of the Evidence, Federal Reserve Board, *Staff Study* 171, April 1998.

varied by product type (for example, conventional as compared to government-backed loans) and characteristic (for example, loan size or loan-to-value ratio) but not according to the creditworthiness of the borrower. Effectively, borrowers either met or did not meet the underwriting criteria for a particular product, and those that did meet the criteria paid the same rate. This market characterization may explain why congressional revisions to HMDA in 1989 focused on gathering data on accept/deny decisions rather than prices to facilitate fair lending evaluations.

Improvements in technology and information processing capabilities have spurred many changes over the past decade. Prominent among these has been the movement to explicit risk-based pricing of mortgage credit. Now, the creditworthiness of individual borrowers can lead to different prices for the same product. Less creditworthy applicants are increasingly less likely to be turned down for a loan; rather, they are offered credit at higher prices.

2. <u>Growth and characteristics of the subprime market</u>. The growth of the subprime mortgage market reflects these changes in pricing. Reflecting variability in creditworthiness, borrowers in subprime markets typically pay rates exceeding those paid by prime borrowers. Estimates of the size of the subprime market vary, but all sources agree that this market has grown substantially in recent years. For example, HMDA data suggest more than a five-fold increase in the number of subprime loans between 1994 and 2000. Further, subprime lending is no longer a minor segment of the mortgage market. Inside Mortgage Finance Publications, a private publishing company that surveys

mortgage lenders, estimates that subprime loans account for about 13 percent of the mortgage market.

Available research finds that subprime borrowers are more likely than prime market borrowers to have relatively poorer credit profiles.[10] This is supported by research showing subprime borrowers have, on average, lower Fair, Isaac and Company (FICO) credit scores than prime market borrowers. With regard to other borrower characteristics, analysis of HMDA data, as well as other research, indicates that subprime borrowers are disproportionately lower income or black or Hispanic, and they reside more often in lower income or predominately minority neighborhoods.[11] Other research confirms these findings but also reveals that subprime borrowers are more likely than prime market borrowers to have less education, to be older, and to be female.[12] Subprime borrowers are also more likely to have experienced difficulty in obtaining credit and to have had problems associated with a loss of income and employment or a major medical expense.

There has been some limited research that points to differences between subprime and prime market borrowers in their credit search activities.[13] Surveys indicate

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[10] See, for example, Anthony Pennington-Cross, Anthony Yezer and Joseph Nichols, "Credit Risk and Mortgage Lending: Who Uses Subprime and Why?," Research Institute for Housing America, *Working Paper* , no. 00-03; and Howard Lax, Michael Manti, Paul Raca and Peter Zorn, "Subprime Lending: An Investigation of Economic Efficiency," Freddie Mac, *Working Paper*, December, 21, 2000.

[11] See, for example, Glenn B Canner, Elizabeth Laderman and Wayne Passmore, "The Role of Specialized Lenders in Extending Mortgages to Lower-Income and Minority Borrowers," *Federal Reserve Bulletin*, vol. 85, no. 11 (November 1999), pp.709-23.

[12] See, Lax, Manti, Raci and Zorn.

[13] See, Lax, Manti, Raca and Zorn.

that subprime borrowers are more focused on whether they can obtain credit and the size of the monthly payment, while prime market borrowers are more focused on the interest rate on the loan. In particular, subprime borrowers are far more likely to respond to sales calls or ads from lenders that offer Aguaranteed@ loan approvals.

The characteristics and circumstances of subprime borrowers suggest the possibility that a market failure may arise in this market, because some subprime borrowers may not be sufficiently knowledgeable or able to shop for credit effectively. In addition, competition in the subprime market may be more limited than in the prime lending market. The subprime market relies much less on automated underwriting for credit evaluation and requires that loan officers have more specialized skills, which may hinder market entry. Finally, the secondary market for subprime loans is much less developed than the secondary market for prime loans, discouraging market entry by firms that specialize in originating but not owning loans.

3. <u>Changes in competition</u>. Another development in the mortgage market has been substantial change in the channels by which loans are originated. For example, today many loan originators, both brokers and lender employees, are compensated, at least in part, by the price paid for the loan by the consumer. In these circumstances, the loan originator shares with the lending institution part of the difference between the interest rate and point combination posted on a Arate sheet@ and the price agreed to by the consumer. This type of compensation system is one way to motivate loan originators to maximize the returns to a lender. But, the pricing discretion afforded loan originators under this compensation system makes it more difficult for the institution to be sure a

loan originator does not violate the fair lending laws. At a minimum, it opens an institution to allegations that it may take advantage of some applicants and treat them unfairly.

4. Benefits of new pricing information. The Congressional Findings and Purposes of HMDA include facilitating fair lending enforcement and providing information to members of the public and public entities that will allow them to determine whether lenders covered by the Act are helping to meet the housing credit needs of their communities at reasonable terms and conditions.

In general, markets operate most efficiently when both buyers and sellers have full information. Additional public information about loan pricing may spur competition and allow public and private entities to target investment to borrowers and locations in need of special assistance (such as those paying high rates). Public access to price information matched with other public data, could allow lenders to identify specific borrowers who may benefit from refinancing. Such Apoaching@ may particularly benefit borrowers with good or improved creditworthiness.

Loan pricing information can also be used by the banking regulators and others, including the Department of Justice, to screen and target lenders, their products, and specific geographic markets for possible fair lending violations. Such screening already takes place using the loan application disposition information in HMDA. Loan pricing information would create opportunities to expand these screening activities. Finally, distinguishing between prime and subprime loans is important for interpreting trends observed in the HMDA data with regard to both denial rate patterns and changes in lending to various subpopulations.

5. Options on what pricing data to collect. Given recent developments in the mortgage market, disclosure of mortgage pricing information under HMDA would provide an opportunity to effectuate the purposes of the Act and to address possible market failures. Although pricing information on all segments of the mortgage market could be helpful in furthering the goals of HMDA, such broad coverage would impose significant costs on creditors and ultimately mortgage borrowers. Staff believes that a more focused disclosure requirement, narrowly drawn to cover that portion of the mortgage market where a market failure is more likely to exist, is consistent with the desire to impose regulatory requirements only where the potential benefits exceed the costs. As a consequence, the staff recommendation would only require the disclosure of pricing information for loans with relatively high prices, that is, subprime mortgages.

Several options are possible with regard to collecting and disclosing loan pricing information. If data collection is restricted to a single pricing variable, the APR is the natural candidate, because it is the primary pricing variable currently required to be disclosed to borrowers during the application process. The principal alternative, the contract rate, would not account for points, leading to significant understatement of the price of credit with points. Arguably, the APR is not a perfect measure because it assumes the borrower keeps the loan to maturity and does not reflect the effective yield of any loan with points that is prepaid. Nevertheless, there is no obvious better single-variable alternative.

The staff proposal would require collection of pricing information on subprime loans. However, the APR would not be collected because APR variations reflect both differences in underlying market rates over the year as well as “treatment” of individuals. The unadjusted APR on a loan is a good measure of the absolute price that a borrower pays; however, it may not be the best measure to use when comparing the Atreatment@ of different borrowers applying at different points in time. This is a particular concern in HMDA, where information on all loans made in the course of a year is released at once with information on the date of the loan suppressed to protect the privacy rights of individuals. Thus, borrowers with different loan rates borrowing at different times may actually have been treated identically, relative to the market, yet appear to have been treated differently.

A potential solution to the timing problem is to collect Aadjusted@ pricing information that accounts for changes in market conditions. One such option, and the approach preferred by staff, is to use the HOEPA trigger base (the treasury rate for a comparable maturity as of the 15th of the month preceding the application date) to express the loan price as a Aspread@ between the APR and the trigger. The spread should better reflect the pricing of a mortgage relative to market norms than the raw APR; this is analogous to expressing the price of business (and some consumer and mortgage) credit as a spread over a benchmark market rate (for example, the prime rate). The HOEPA trigger base is not the only rate that could be used as the basis for calculating the spread. It has significant appeal, however, because it has to be readily available to lenders in order to determine if a loan is subject to the protections of HOEPA, and it has the precedent of already being used as a base measure of market prices. An additional argument for this measure is that the length of the mortgage is taken into account by the use of different HOEPA trigger bases, depending on the term to maturity of the mortgage.

The spread APR (i.e. the APR on a loan minus the HOEPA trigger base rate) could be collected for all originated loans reported in HMDA. An alternative option and the one proposed by staff is to require reporting only for those loans with spreads above a preset cutoff. All loans with a spread above the cutoff would be required to report the amount of the spread. Given differences in the credit risks associated with senior and junior liens, different cutoffs could be selected for each type of loan.

Selecting the appropriate cutoff(s) for price disclosure is not straightforward because there is no absolute demarcation between subprime and prime mortgage markets. Moreover, as market conditions change over time the line between these markets may move. Consequently, any cutoff is subject to some error. Nonetheless, available data on loan pricing suggests that cutoffs can be identified that do a reasonably good job of separating prime and subprime markets.

There is limited information on the range of prices of closed loans in the mortgage market. Pricing information from a large sample of subprime loans indicates that a cutoff of 3 percentage points or more above the comparable treasury security would cover about 98 percent of the subprime loans that are first liens (table 1). It is estimated that a cutoff of 5 percentage points or more would cover about 95 percent of the subprime loans that are junior liens. Evidence from pricing data on the prime market suggests that a cutoff of 3 percentage points would exclude virtually all first lien (no pricing information is available on junior liens) prime loans (table 2). Further, data from Freddie Mac's survey of Aaverage@ mortgage terms indicates that the spread above treasury securities for the Aaverage@ loan is almost always below 3 percentage points, regardless of the macroeconomic conditions (figure1).

Finally, overall data covering the entire spectrum of loans, indicates that a 3 percentage point cutoff would cover about 10 percent of all first liens, including both prime and subprime loans, and a 5 percentage point cutoff for junior liens would cover about 22 percent of all junior liens (table 3). These figures seem in line with estimates of the overall size of the subprime market, about 13 percent of the dollar volume of all mortgages. Since there is no clear demarcation line between the subprime and prime mortgage markets, the staff recommendation provides for seeking public comment on the appropriate cutoffs for purposes of reporting.

6. Who would be covered. For 2000, 7,713 home lenders submitted HMDA data, including 6,423 depository institutions and 1,290 mortgage companies (of which 1,009 were independent entities). Each year, HUD identifies HMDA reporters whose business focus is subprime mortgage lending. Using the 2000 HMDA data, HUD identified 185 subprime lenders (of which 63 percent were independent mortgage companies). Of the remaining subprime lenders on the HUD list, 31 (17 percent of the total) were affiliates of a bank or savings association holding company; the remaining lenders were either depository institutions or their direct subsidiaries (table 4).

It is difficult to determine the total number of HMDA reporters that extend subprime loans. Comparing estimates of the volume of subprime lending conducted by lenders on the HUD subprime list with subprime volume estimates from Inside Mortgage Finance Publications suggests that HMDA may pick up about 60 percent of the subprime market. If subprime lending tends to be a specialized activity, then the number of HMDA reporters extending significant subprime credit that are not on the HUD list may not be large, perhaps on the order of 200 firms. However, many other institutions may extend some subprime loans in the course of their regular mortgage lending activities.

7. Costs of reporting pricing data. A new rule requiring the reporting of loan pricing information would impose both direct and indirect (including possible reputation risk) costs on covered institutions and may result in some changes in market outcomes. Covered institutions would incur direct costs to comply with a loan pricing disclosure. These mainly are changes to systems for gathering and reporting data and for training staff. All the information needed for reporting is already available, as the HOEPA trigger needs to be considered in determining whether a given mortgage is subject to the disclosure rules and other protections of HOEPA. But, the information needed for reporting may currently be kept in distinct paper or computer files and would need to be integrated to comply with a new pricing disclosure. Only if a covered institution knew it made no subprime loans at all would limiting disclosure to the high rate segment of the market significantly limit compliance costs.

In addition to compliance costs, disclosure of pricing information may create reputational risk unfairly for lending institutions that are fully complying with the fair lending laws. Potentially, variations in the underlying credit risk profiles and product preferences of different populations that result in different pricing may make it appear that lenders are not treating borrowers from different groups the same. For example, compared to higher income borrowers, lower income borrowers may require loans with higher loan-to-value ratios or prefer loans with fewer points because they are cash constrained. Each of these circumstances would result in higher loan rates but not necessarily represent unequal treatment. Without full information on the circumstances of each borrower, it is not possible to fully assess the fairness of credit decisions or pricing. The HMDA data will not include many of the items needed to judge creditworthiness. Consequently, it can be expected that unfounded allegations of unfair treatment will arise and require innocent lenders to defend their actions, both in the media and before regulators. This may impose two different costs, direct cost associated with responding to the allegations and indirect cost of potential entrants not entering the market or current participants reducing activity.

Public reporting of the spread above the designated cutoff on a loan may result in the disclosure of information that some lenders may consider to be proprietary. In this regard, two main possibilities exist. First, disclosure of the spread information would help competitors to identify the market focus of an institution, for example, by identifying the specific geographic markets where the institution is able to extend large numbers of higher priced loans. Second, by matching HMDA data with property records maintained by local governments, competitors can identify specific borrowers who have mortgage credit with a Ahigh@ price. Such borrowers may be good prospects for poaching, particularly if they paid an excessive price initially, or if their credit circumstances have improved.

As with most regulations, the possibility of unintended market distortions may arise with a new rule. If the cutoff(s) selected do a good job of distinguishing prime and subprime loans, there is not likely to be any significant unforeseen problems. However, even in this circumstance, there is the possibility that loan pricing around the cutoff could be effected as some lenders seek to avoid being labeled as a subprime lender or have specific loans subject to poaching. If the cutoff is poorly chosen, either many subprime loans will escape coverage or many prime loans will be improperly classified as subprime loans.

A pricing disclosure may also have the unintended effect of discouraging or limiting the use of price driven commission-based compensation systems, even for lenders that comply fully with the fair lending laws. Limitations on this type of compensation system may follow from the possibility that differences in average rates paid by borrowers in different racial or ethnic groups may appear to the public and regulators to be due to discrimination.

1. APR Spreads of Subprime Mortgages Over Treasury Securities[1]

All Subprime Mortgages, Cumulative Percent Distribution

APR Spread	1st Mortgages	Junior Liens
Less than 1	0.0	0.0
Less than 2	0.1	0.1
Less than 3	2.0	0.3
Less than 4	8.6	0.9
Less than 5	22.4	3.3
Less than 6	41.0	7.9
Total	100.0	100.0

[1] Includes only subprime mortgages.
Source: Credit Research Center at Georgetown University

2. APR Spreads of Prime Mortgages Over Treasury Securities, by Loan Type[1]

Prime Mortgages, Cumulative Percent Distribution

APR Spread	Fixed Conforming	Fixed Jumbo	Adj Conforming	Adj Jumbo
Less than 1	4.7	5.0	45.0	40.9
Less than 2	83.8	81.9	95.2	97.3
Less than 3	98.2	98.7	99.3	99.8
Less than 4	99.5	99.8	99.8	99.9
Less than 5	99.9	100.0	100.0	100.0
Less than 6	100.0	100.0	100.0	100.0
Total	100.0	100.0	100.0	100.0

[1] Includes only single-family conventional home purchase loans. Likely does not include many subprime loans.

Source: Federal Housing Finance Board, Mortgage Interest Rate Survey, 1999

3. APR Spread of All Outstanding Mortgages Over Treasury Securities

All Mortgages, Cumulative Percent Distribution

APR Spread	1st Mortgages	Junior Liens
Less than 1	15.4	8.2
Less than 2	72.0	23.7
Less than 3	89.5	45.4
Less than 4	93.9	64.9
Less than 5	96.9	78.4
Less than 6	98.1	86.6
Total	100.0	100.0

First Mortgages Only, Cumulative Percent Distribution

APR Spread	Non-Mobile Home				Mobile Hom
	Fixed Conforming	Fixed Jumbo	Adj Conforming	Adj Jumbo	
Less than 1	15.0	18.1	24.4	15.4	10.7
Less than 2	73.2	80.7	62.6	80.8	36.0
Less than 3	91.2	96.7	79.4	92.3	48.0
Less than 4	95.0	98.9	89.3	96.2	65.3
Less than 5	97.5	99.3	94.7	100.0	81.3
Less than 6	98.5	100.0	98.5	100.0	84.7
Total	100.0	100.0	100.0	100.0	100.0

Source: American Housing Survey, 1998 - 1999

4. Proportion of Mortgage Activity by Type of Lending Institution, 2000

Type of Institution	Number of Subprime Lenders	Proportion of Subprime or Prime Loans Held by Institution Type[1]					
		Home Purchase		Home Equity		All	
		Subprime	Prime	Subprime	Prime	Subprime	Prime
1. Banks, Thrifts, and Credit Unions	14	7	39	14	73	12	51
2. Subsidiary of Banks, Thrifts, and Credit Unions	24	33	30	23	14	27	24
3. Holding Company Subsidiary of Banks and Thrifts	31	16	3	16	2	16	3
4. Independent Mortgage Companies	116	44	28	47	12	46	22
Total[2]	185	100	100	100	100	100	100

[1] Excludes lending done by manufactured home lenders.
[2] Rows may not sum to 100 due to rounding.
Source: 2000 HMDA Data

Figure 1. Comparison of APR Spreads for 30 Year Fixed, 15 Year Fixed, and One Year Adjustable Mortgages with Average Treasury Security Yield