

## **FEDERAL RESERVE SYSTEM**

### **12 CFR Part 203**

**[Regulation C; Docket No. R-1145]**

## **HOME MORTGAGE DISCLOSURE**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rules; official staff commentary.

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**SUMMARY:** The Board is publishing final amendments to the official staff commentary to Regulation C (Home Mortgage Disclosure). The amendments provide transition rules for applications received before January 1, 2004, on which final action is taken on or after January 1, 2004.

**DATE:** The amendments are effective [INSERT DATE 30 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

**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 (202) 263-4869.

### **SUPPLEMENTARY INFORMATION:**

#### **I. Background**

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

The Board's Regulation C (12 CFR part 203) implements HMDA. Regulation C generally requires that lenders report data about:

- Each application or loan, including the application date; the action taken and the date of that action; the loan amount; the loan type and purpose; and, if the loan is sold, the type of purchaser;
- Each applicant or borrower, including ethnicity, race, 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 format (HMDA/LAR) set forth in appendix A to the regulation. Each application must be recorded within 30 calendar days after the end of each calendar quarter in which final action is taken (such as origination or purchase of a loan, or denial or withdrawal of an application) on the lender's 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.

## **II. Revisions to Regulation C**

The Board published final revisions to Regulation C on February 15, 2002, and June 27, 2002 ("the 2002 revisions"). 67 FR 7222; 67 FR 43218. The 2002 revisions include, among other things, requirements that lenders report the difference between a loan's annual percentage rate (APR) and the yield on Treasury securities with comparable maturity periods, if the difference equals or exceeds thresholds set by the Board; whether a loan is subject to the Home Ownership and Equity Protection Act (HOEPA); the lien status of applications and loans; and whether an application or loan involves a manufactured home. Certain definitions have also been revised. The definition of an application has been revised to include a request for preapproval as defined in the regulation, for purposes of reporting denials of such requests and identifying loan applications that result from a request for preapproval. The definition of a home improvement loan and the definition of a refinancing have been revised to provide more consistent and useful data. In addition, the 2002 revisions require lenders to request information on applicants' ethnicity, race, and sex in applications taken by telephone, and conform the collection of data on ethnicity and race to standards established by the Office of Management and Budget (OMB) in 1997.

The 2002 revisions were initially scheduled to take effect on January 1, 2003. In May 2002 the Board delayed the effective date, with two exceptions, to January 1, 2004. 67 FR 30771, May 8, 2002. The Board based its decision on a determination that some HMDA reporters, especially the largest ones, would not be able to fully implement the

revised rule by January 1, 2003, without jeopardizing the quality and usefulness of the data and incurring substantial additional implementation costs that could be avoided by a postponement. The two exceptions related to telephone applications and to census tract data: (1) for all applications taken on or after January 1, 2003, lenders must ask telephone applicants for information on the applicant's race or national origin and sex; and (2) for all applications and loans reported on lenders' 2003 HMDA/LARs, lenders must use the census tract numbers and corresponding geographic areas from the 2000 Census.

### **III. Transition Rules**

On March 7, 2003, the Board proposed for comment rules on how to report data for applications received before January 1, 2004, but for which final action is taken in 2004. The rules are set forth in a new comment added to section 203.4 of the Staff Commentary to Regulation C. The Board received approximately 40 comments on the proposed comment. Most industry commenters supported the proposal's flexibility in providing that lenders may, but need not, use revised definitions and identify applications relating to manufactured homes for applications received before January 1, 2004. Industry commenters expressed varying views on the conversion rules for reporting information on ethnicity, race, and sex, and the requirement to report the rate spread beginning January 1, 2004, as discussed below.

Community groups generally opposed the comment, arguing that it would delay the effective date of the 2002 revisions. A few industry commenters opposed the comment on the grounds that flexibility could pose training problems for lenders and could impose additional programming costs if lenders must distinguish between applications received in 2003 and all other applications. Some of these commenters believed that the 2002 revisions should apply only to applications received on or after January 1, 2004.

The Board is adopting the comment substantially as proposed. Under the comment, lenders (1) will not have to indicate whether a loan applied for in 2003 involved a request for preapproval or related to a manufactured home; and (2) may, at their option, apply the current definitions of a home improvement loan and a refinancing in reporting loans applied for in 2003 and acted upon in 2004. The Board believes that the benefit of obtaining data on these items does not warrant the burden associated with revising systems to begin recording the necessary information before January 1, 2004. A lender may, however, opt to begin recording the information before January 1, 2004. If it does, the lender must be generally consistent in its approach; for example, a lender that opts to apply the revised definition of a home improvement loan must do so for all applications received in 2003 and reported in 2004.

The comment provides that lenders must follow special rules for reporting applicants' race and ethnicity for transitional applications, to take account of the changed categories. One technical clarification relating to the sex of a co-applicant has been made, as discussed below.

The Board proposed no transition rules for reporting the type of purchaser, whether a loan is subject to HOEPA, the lien status of applications and originated loans, and the rate spread, because information about these items is available at the time of final action. The final comment provides some flexibility in the case of the rate spread. For the reasons discussed below, lenders will not be required to report the rate spread for loans in which the rate lock occurs before January 1, 2004.

The affected data items are discussed below, in the order in which they appear on the revised HMDA/LAR.

### **203.4(a)**

#### **Property type**

Currently lenders must report in the “loan purpose” field whether an application or loan involves a one- to four-family dwelling or a multifamily dwelling, and manufactured homes are reported as one- to four-family dwellings. The 2002 revisions add a new field for “property type” and require lenders to identify applications and loans that involve manufactured homes. The final comment provides, as proposed, that for applications received before January 1, 2004, and acted upon in 2004, lenders may, but need not, indicate whether an application involves a manufactured home; lenders may report the property type as one- to four-family.

#### **Purpose of loan—home improvement and refinancing**

Regulation C requires lenders to report home improvement loans and refinancings. The definitions of a home improvement loan and a refinancing were substantially revised in the final rules adopted in 2002. A home improvement loan is defined in § 203.2(f) as a loan intended in whole or in part for home improvement and that the lender classifies as a home improvement loan. Under the 2002 revisions, dwelling-secured loans for home improvement purposes must be reported as home improvement loans beginning in 2004, whether or not the loans are classified as home improvement loans. Loans for home improvement purposes that are not dwelling-secured will continue to be reported only if the lender classifies the loans as 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 commentary to § 203.1(c) 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.

Under the 2002 revisions, reportable refinancings are those in which both the existing loan and the new loan are secured by a lien on a dwelling.

The proposed comment provided that for applications received before January 1, 2004, but for which final action is taken on or after January 1, 2004, lenders may continue to apply the current definitions. Based on comments received and its own analysis, the Board is adopting the guidance as proposed. The comment permits lenders, at their option, to apply the revised definitions to applications received before January 1, 2004.

### **Requests for preapproval**

Under the 2002 revisions, beginning in 2004, lenders must identify whether an application for a home purchase loan is a request for preapproval as defined in the revised regulation. Lenders must also report information on requests for preapproval that are denied; lenders may, but are not required to, report requests for preapproval that are approved but not accepted by the applicant.

The proposed comment provided that lenders may, but need not, report requests for preapproval received before January 1, 2004, that do not result in a traditional loan application. In addition, the proposed comment provided that lenders may, but need not, identify requests for preapproval as such if they were received before January 1, 2004. The Board is adopting the comment as proposed. Thus, for applications received before January 1, 2004, lenders will be permitted to use the code for “Not Applicable” in the preapproval field on the HMDA/LAR.

### **Applicant information**

Ethnicity and Race. The 2002 revisions included changes to the requirement to collect information about an applicant’s ethnicity and race, and to the codes that must be used to report this information on the HMDA/LAR. These changes were made to conform collection of information under Regulation C to standards established by OMB in 1997. Under the proposed transition rules, lenders would report monitoring data collected during 2003 on the 2004 LAR in accordance with conversion rules set forth in proposed comment 4(a)-4(iv).

Most commenters supported the proposed comment requiring lenders to convert the data on ethnicity and race to the new OMB standards. Some lenders suggested that the Board provide a table showing the conversion rules for information on ethnicity and race. Community groups, on the other hand, believed that the proposed comment was an unwarranted delay in the effective date of the 2002 revisions. In addition, a few lenders

believed that transition rules are unnecessary, if the 2002 revisions are applied only to applications received on or after January 1, 2004.

Some industry commenters supported the conversion rules, but requested additional guidance. For example, some lenders asked whether they could begin to use the revised ethnicity and race categories to take applications before January 1, 2004. Some of these commenters stated that they wanted to program their systems to collect data using the revised categories in October 2003, because making changes to their data collection and processing systems after November 1, 2003, could result in system disruption and difficulty in generating year-end reports. These lenders stated that if they were not permitted to use the revised categories in the fall of 2003, they would prefer to continue to use the current categories through February 2004, and convert the data using the conversion rules provided by the Board.

Other lenders requested guidance that would allow them to report "NA" for ethnicity and race on applications received during the first quarter of 2004 on application forms that have not been updated to reflect the revised rules on collecting information on ethnicity and race. For example, a lender might receive an application by mail in early 2004 that had been mailed out to an applicant in 2003 using the current format for reporting race or national origin. In addition, some lenders noted that brokers might want to use up all of their old forms and thus might continue to use the current format even for applications received in 2004. These commenters suggested that the Board allow lenders to convert applications taken on the current form to the revised rules through April 1, 2004.

The comment is adopted as proposed. The Board believes that converting data collected under the current rules to the revised OMB standards is necessary to ensure the quality and utility of the data. At the request of commenters, the conversion rules are presented in tabular format in section V of this notice.

The rules for converting information on race and ethnicity apply only to applications received in 2003. In the case of an application provided to an applicant in 2003 that is not returned to the lender until 2004, the existing commentary provides that the lender may consider such an application as received in 2003 if the date shown on the application is in 2003. See 203.4(a)-1. Thus lenders may use the conversion rules provided in the final comment if an application is provided to an applicant in 2003 and is dated in 2003, but is received by the lender in 2004. The conversion rules may not be used, however, where lenders or brokers continue to use loan application forms with the current race format on or after January 1, 2004. Lenders and brokers are responsible for ensuring that applications are taken on the appropriate form.

Sex. A few commenters pointed out that under the current rules lenders must use code 4 (Not Applicable), where the loan is a purchased loan, there is no co-applicant, or the co-applicant is not a natural person. Under the revised rules, code 4 is reserved for applications in which the co-applicant is not a natural person or the information is not available on a purchased loan, and a new code 5 is to be used where there is no co-

applicant. The final comment provides that for applications received before January 1, 2004, in which there is no co-applicant, code 4 may be used on the 2004 HMDA/LAR for sex.

### **Rate spread**

The Board did not propose transition guidance relating to the requirement to report the rate spread between the APR on the loan and the yield on Treasury securities with a comparable maturity. The Board did solicit comment, however, on whether there might be less burdensome alternatives to requiring lenders to use the rate lock date for applications received before and closed on or after January 1, 2004—for example, allowing them to use the date the application was received, the date of consummation, or a date specified by the Board (such as January 1, 2004) that would not require lenders to look back to an earlier period to calculate the rate spread. The Board noted that if lenders used the date of application or consummation, lenders would not have to modify their systems because they already capture these dates for current reporting requirements.

Some industry commenters supported requiring lenders to use the rate lock date to calculate the rate spread. These commenters noted that using the date of application or consummation could distort the pricing data. Other industry commenters urged the Board to allow lenders to use the date of application or of consummation. A few commenters suggested that the Board require lenders to report the rate spread only if the rate lock occurred on or after January 1, 2004. Still other industry commenters said that the Board should require rate spread information only if the application was received on or after January 1, 2004, because of difficulties in collecting the rate lock date and training personnel before then.

Based on the comments and on the Board's analysis, the final comment provides that lenders need not report the rate spread for any loan in which the rate lock occurs before January 1, 2004. The Board recognizes that lenders may not be able to track and report rate lock dates accurately until the 2002 revisions take effect, in January 2004. Although use of the application or consummation date might reduce burden to some degree because lenders are currently responsible for collecting and reporting them, their use of these dates in the rate spread system nonetheless would require special programming. The comment provides examples to illustrate when lenders must calculate and report the rate spread for applications received before January 1, 2004.

## **IV. Other Reporting Requirements**

The Board did not propose any transition guidance for reporting requirements relating to type of purchaser, HOEPA status, and lien status because these data items do not impose a significant burden on lenders to “look back” to applications received prior to 2004. The majority of comments supported the Board's view. The Board is adopting the comment as proposed, without any exceptions for type of purchaser, HOEPA status, and lien status.

## V. Table of Rules for Converting Applicant Information

The rules in the final comment for converting information on race and national origin collected under the current regulation to the revised categories for ethnicity and race under the 2002 revisions are provided in tabular format in response to commenters' requests.

CURRENT CATEGORY	NEW CATEGORY – ETHNICITY	NEW CATEGORY – RACE
Code 1 – American Indian or Alaskan Native	Code 4 – Not Applicable	Code 1 – American Indian or Alaska Native
Code 2 – Asian or Pacific Islander	Code 4 – Not Applicable	Code 2 – Asian
Code 3 – Black	Code 4 – Not Applicable	Code 3 – Black or African American
Code 4 – Hispanic	Code 1 – Hispanic or Latino	Code 7 – Not Applicable
Code 5 – White	Code 4 – Not Applicable	Code 5 – White
Code 6 – Other	Code 4 – Not Applicable	Code 7 – Not Applicable
Code 7 – Mail or Telephone	Code 3 – Mail, Internet, or Telephone	Code 6 – Mail, Internet, or Telephone
Code 8 – Not Applicable	Code 4 – Not Applicable	Code 7 – Not Applicable



## 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 proposes to amend 12 CFR part 203 as follows:

### PART 203—HOME MORTGAGE DISCLOSURE (REGULATION C)

1. The authority citation for part 203 continues to read as follows:

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

2. In Supplement I to part 203, under Section 203.4—Compilation of Loan Data, under 4(a) Data Format and Itemization, a new paragraph 4 is added:

#### SUPPLEMENT I to PART 203—STAFF COMMENTARY

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#### Section 203.4—Compilation of Loan Data

##### 4(a) Data Format and Itemization.

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4. Transition rules for applications received before January 1, 2004, when final action is taken on or after January 1, 2004. For applications received before January 1, 2004, on which final action is taken on or after January 1, 2004, data must be collected and reported on the HMDA/LAR under the revisions to Regulation C that take effect on January 1, 2004, subject to the exceptions for property type, loan purpose, requests for preapproval, applicant information, and rate spread set forth in this comment.

i. Property type. Lenders need not determine whether an application received before January 1, 2004, involves a manufactured home, and may report the property type as 1- to 4-family.

ii. Loan purpose. For applications received before January 1, 2004, lenders may use the definitions of a home improvement loan and a refinancing that were in effect in 2003. For example, a lender need not report data on an application received before January 1, 2004, for a dwelling-secured loan made for the purpose of home improvement, if the lender did not classify the loan as a home improvement loan. Similarly, a lender may report data on an application for a refinancing received in 2003, where the new obligation will be, but the existing obligation was not, secured by a lien on a dwelling.

iii. Requests for preapproval. For requests received before January 1, 2004, lenders need not report requests for preapproval (as that term is defined in § 203.2(b)(2) of the revised Regulation C) that do not result in a traditional loan application. Lenders may, at their option, report requests for preapproval that are denied or that are approved but not accepted. In addition, lenders need not specify whether an application for a home purchase loan involved a request for preapproval, and should use code 3 (Not Applicable) in the preapproval field on the HMDA/LAR.

iv. Applicant information. For applications received before January 1, 2004, lenders must collect data on race or national origin using the categories in effect in 2003, and must convert the data to the codes in effect in 2004 for reporting, using the following conversion guide:

(A) Ethnicity. The revised Regulation C requires lenders to request an applicant's ethnicity first (Hispanic or Latino, Not Hispanic or Latino), and then to request the applicant's race. The HMDA/LAR has been revised accordingly, so that ethnicity and race are distinct fields.

(1) If the applicant's race was identified as Hispanic (code 4) in 2003, use code 1 (Hispanic or Latino) for reporting ethnicity.

(2) If the applicant's race was identified as American Indian or Alaskan Native, Asian or Pacific Islander, Black, White, Other, or Not Applicable (codes 1, 2, 3, 5, 6, or 8) in 2003, use code 4 (Not Applicable) for reporting ethnicity.

(3) If the applicant did not provide information on race in a mail, Internet, or telephone application (code 7) in 2003, use code 3 (information not provided by applicant in mail, Internet, or telephone application) for reporting ethnicity.

(B) Race.

(1) If the applicant's race was identified as American Indian or Alaskan Native, Black, or White in 2003, use the corresponding code for 2004. For example, if the applicant's race was identified as Black (code 3) in 2003, use code 3 (Black or African-American) for reporting race in 2004.

(2) If the applicant's race was identified as Asian or Pacific Islander in 2003, use code 2 (Asian).

(3) If the applicant's race was identified as Hispanic in 2003, use code 7 (Not Applicable).

(4) If the applicant's race was identified as Other in 2003, use code 7 (Not Applicable).

(5) If the applicant did not provide information on race in a mail, Internet, or

telephone application (code 7) in 2003, use code 6 (Information not provided by applicant in mail, Internet, or telephone application).

(6) If the applicant's race was identified as Not Applicable (code 8) in 2003, use code 7 (Not Applicable).

(C) Sex. For applications received before January 1, 2004, in which there is no co-applicant, the lender may use code 4 (Not Applicable) in the field provided for the co-applicant's sex.

v. Rate Spread. For applications received before January 1, 2004, in which the rate lock occurred before January 1, 2004, lenders may report NA (Not Applicable) for rate spread. For applications received before January 1, 2004, for which the rate lock occurred after January 1, 2004, lenders must calculate and report the rate spread in accordance with the rules set forth in new section 202.4(a)(12) (see 67 FR 7222 (Feb. 15, 2002); 67 FR 43223 (June 27, 2002)).

(A) Example: Assume an application is received on December 1, 2003; the rate lock occurs on December 26, 2003, and the loan is originated on January 15, 2004. The lender may report NA (Not Applicable) for rate spread.

(B) Example: Assume an application is received on December 15, 2003; the rate lock occurs on January 3, 2004, and the loan is originated on January 15, 2004. The lender must calculate and report the rate spread in accordance with the rules in new section 202.4(a)(12) (see 67 FR 7222 (Feb. 15, 2002); 67 FR 43223 (June 27, 2002)).

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By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs under delegated authority, May 21, 2003.

(signed) Jennifer J. Johnson  
Jennifer J. Johnson  
Secretary of the Board