

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R-0951]

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment proposed revisions to Regulation C (Home Mortgage Disclosure). The revisions would implement the amendments to the Home Mortgage Disclosure Act included in the Economic Growth and Regulatory Paperwork Reduction Act of 1996. Those amendments increase the exemption threshold for depository institutions and modify certain disclosure requirements. The Board also proposes to extend the information collection authority under the Paperwork Reduction Act for another three years, and to make technical amendments to the transmittal sheet accompanying the loan/application register.

DATES: Comments must be received on or before February 25, 1997.

ADDRESSES: Comments should refer to Docket No. R-0951, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments also may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments received will be available for inspection in Room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell or Manley Williams, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or (202) 452-2412; for the hearing impaired only, Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544.

SUPPLEMENTARY INFORMATION

I. Background

On September 30, the President signed into law the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (the 1996 Act) (Pub. L. 104-208, 110 Stat. 3009). The 1996 Act, in part, amends the Home Mortgage Disclosure Act of 1975 (HMDA) (12 U.S.C. 2801 et seq.). HMDA requires most mortgage lenders located in metropolitan areas to collect data about their housing-related lending activity. Annually, lenders must file reports with their federal

supervisory agencies and make disclosures available to the public. The Board's Regulation C (12 CFR Part 203) implements HMDA.

II. Proposed revisions

A. Increasing the exemption based on asset size

Currently, depository institutions with assets of \$10 million or less are exempt from HMDA. The 1996 Act increases this exemption for depository institutions by adjusting the \$10 million figure by the change since 1975 in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPIW) -- rounded to the nearest million. The Board proposes to revise § 203.3(a)(1)(ii) of Regulation C to implement this amendment to section 309 of HMDA (12 U.S.C. 2808).

The Bureau of Labor Statistics calculates the CPIW monthly and publishes the data with a lag of a few weeks. The seasonally adjusted figures are available with a longer lag. Accordingly, the Board proposes to use the "not seasonally-adjusted" figure. The 1996 Act calls for an initial adjustment based on the percentage by which the CPIW for 1996 exceeds the CPIW for 1975. To ensure that the public is informed of the new threshold promptly, the Board intends to publish a notice with the adjusted threshold as soon as the December 1996 data become available in early January. Based on the increase in the CPIW from December 1975 to October 1996, the adjusted figure would be \$27.9 million, rounded to an exemption threshold of \$28 million. Thus, institutions with assets of \$28 million or less would be exempt from data collection in 1997.

Institutions covered during 1996 but exempt subsequently because of the new threshold (for example, institutions with assets of \$17 million) are required to collect data for all of 1996, and to submit those data by March 1, 1997. Such institutions will not be subject to the data collection requirements for 1997.

The 1996 Act provides that the exemption is to be adjusted annually to reflect future changes in the CPIW. The Board could make the adjustment using December data or, if it wanted to announce the new threshold by year-end, using November data. To make the year-to-year adjustments consistent with the initial adjustment, the Board proposes to base the adjustments on December data and publish the results in the Federal Register as soon as those data become available in January. If the adjustment uses December data the threshold might be higher, but some institutions that are actually exempt might have to collect the data in the early weeks of the year because of the uncertainty as to the threshold. For example, one year the threshold could be \$29 million based on November data and \$30 million based on December data. An institution with assets of \$28.5 million as of that December 31 might want the Board to use the November data and publish the threshold in December so it could cease data collection beginning January 1. An institution with assets of \$29.5 million might want the Board to use the December data so that it would qualify for exemption, even though the institution would have collected data for the first few weeks of January before the new threshold was published. The Board requests comment on whether earlier notice based on November data is preferable to a potentially higher exemption threshold using December data.

Conforming amendments relative to the asset exemption would be made in several sections of Appendix A -- Form and Instructions for Completion of HMDA Loan/Application Register, and in § 203.3 of Supplement I -- Staff Commentary.

Section 309 of HMDA (12 U.S.C. 2808), as amended in 1991, requires the Board, in consultation with the Secretary of the Department of Housing and Urban Development, to establish an exemption for nondepository institutions comparable to the exemption for depository institutions. The 1996 Act amends section 309 by adding a parenthetical stating that the comparable exemption shall be "determined without regard to the adjustment made by subsection (b) [the CPIW adjustments]." Currently, a nondepository institution with offices in an MSA is exempt from HMDA if it had assets of \$10 million or less as of the preceding December 31 and originated fewer than 100 home-purchase loans in the preceding calendar year. In 1996, depository institutions with assets of \$28 million or less, on average, reported about 50 HMDA loan/application register entries apiece. Accordingly, the Board, in consultation with the Secretary, has determined that no change to the existing coverage of nondepository institutions is appropriate at this time.

B. Elimination of the branch disclosure requirement

Currently, HMDA provides that within ten business days of receiving the disclosure statement from the Federal Financial Institutions Examination Council (FFIEC), an institution must make a copy of the statement available to the public for inspection and copying in at least one branch office in each additional MSA where the institution has offices. The institution must also make the disclosure statement available at its home office. Regulation C added the requirement that an institution must post a general notice concerning the availability of HMDA data at the institution's home office and at each physical branch in an MSA.

The 1996 Act amends section 304 of HMDA (12 U.S.C. 2803) to specify that an institution need not make the information available at branch offices if the institution posts a notice and makes the information available upon a written request sent to the home office. The proposal amends § 203.5(b) concerning the public disclosure of an institution's mortgage loan disclosure statement accordingly.

For an institution choosing to make the HMDA data available upon written request, the 1996 Act requires a notice stating that the information is available from the home office upon written request. Currently, § 203.5(e) requires an institution to post -- at the home office and at each branch office -- a general notice about the availability of its HMDA data. Upon request, the institution must promptly provide the location where the data is available, and at its option may include the location in the notice. The Board believes the current provisions provide adequate notice and that requiring more detailed notices would not produce sufficient additional benefit to the public to justify the burden of preparing the new notices.

A literal reading of the 1996 Act could suggest that a request for HMDA data must be sent to the home office. The Board believes that specifying the home office as the location where requests are sent would not improve the public availability of this information. Accordingly, the revised § 203.5(e) would allow an institution to specify whatever address it wishes. The

institution could either provide the address promptly upon request, or include the address in its notice.

Technical amendments to paragraphs (b) and (c) of § 203.5 clarify that an institution may continue to provide the data on an MSA-by-MSA basis. For example, if a person requests the disclosure statement for a particular branch location, the institution may provide just the statement for the MSA in which that branch is located.

Conforming amendments would be made in several sections in Appendix A -- Form and Instructions for Completion of HMDA Loan/Application Register.

C. Disclosure formats

Currently, Appendix A to Regulation C provides that an institution may make the public disclosures available in paper or automated form (a computer diskette, for example). The 1996 Act amends section 304 of HMDA (12 U.S.C. 2803) to provide that an institution may not make the information available in automated form (in place of paper) unless the person requesting the information agrees to receiving the data in that format. Appendix A, Section III.F. would be revised accordingly.

D. Revisions to the HMDA loan/application register

The Board proposes to make three minor revisions to the HMDA loan/application register. To comply with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. ch. 3506; 5 CFR 1320 Appendix A.1), the following text would be added: "An agency may not conduct or sponsor, and an organization is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for the HMDA-LAR is 7100-0247." In addition, to facilitate prompt communication with a respondent, a blank for the respondent's facsimile number would be added to the transmittal sheet. To reduce burden, the Board proposes to modify the transmittal sheet so that a respondent will no longer have to enter the name and address of its supervisory agency.

III. Form of comment letters

Comment letters should refer to Docket No. R-0951. The Board requests that, when possible, comments be prepared using a standard courier typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may also be submitted on computer diskettes, using either the 3.5" or 5.25" size, in any IBM-compatible DOS-based format. Comments on computer diskettes must be accompanied by a paper version.

REGULATORY FLEXIBILITY ANALYSIS

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603), the Board's Office of the Secretary has reviewed the proposed amendments to Regulation C. Overall, the amendments are expected to reduce the burden on small entities. The proposed regulatory revisions implement the 1996 Act which, in part, increases the exemption threshold for depository institutions. The 1996 Act also creates an alternative means for making branch disclosures

available. A final regulatory flexibility analysis will be prepared after consideration of comments received during the comment period.

PAPERWORK REDUCTION ACT

I. Paperwork burden

The proposed revisions to the information collection requirements are found in 12 CFR 203.3, 203.5 and Appendix A to Part 203 and implement the data collection and reporting requirements established by the Home Mortgage Disclosure Act. The respondents are mortgage lenders in metropolitan statistical areas. Under the act, each respondent must make its loan/application register available to the public for three years; and must provide for five years the disclosure statement that the FFIEC prepares from the data submitted by the respondent. Local public officials use the data to help identify target areas for residential redevelopment and rehabilitations. Members of the public use the data to help evaluate the extent to which mortgage lenders are serving local community and housing needs.

The amendments that the Board has proposed for public comment would decrease the number of respondents and ease compliance with the public disclosure requirements of the regulation. Small businesses are directly affected by the proposed amendments: many would no longer be required to collect, report, or disclose the information.

Regulation C applies to all types of financial institutions and other mortgage-lending institutions that meet the coverage tests. Under the Paperwork Reduction Act, however, the Board accounts for the paperwork burden associated with Regulation C only for state member banks, their subsidiaries, subsidiaries of bank holding companies, and other entities regulated by the Federal Reserve. Any estimates of paperwork burden for other respondents are provided by the federal agency or agencies that supervise them.

The Board estimates that the amendments' impact on the burden per response is negligible. The estimated burden per response varies from 10 to 10,000 hours, depending on individual circumstances, with estimated averages of 202 hours for state member banks and 160 hours for mortgage banking subsidiaries.

It is estimated that of the 565 state member banks that are currently covered because they exceed the \$10 million asset threshold, 39 will be exempt as a result of the higher threshold. The 93 mortgage banking subsidiaries reporting HMDA data to the Federal Reserve are and would remain covered. The total amount of annual burden is estimated to decrease from 129,168 hours to 121,368 (a change of approximately 6 percent) as a consequence of the higher exemption threshold. The Board estimates that there would be no capital or start up cost associated with these amendments, and that there is no annual cost burden beyond the estimated burden hours.

II. OMB control number

Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and an organization is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number applicable to the HMDA-LAR data collection is 7100-0247.

III. Confidentiality

The Board has previously determined that the HMDA loan/application register is required by law (12 U.S.C. 2801-2810; 12 CFR Part 203) and completion of the register, submission to the appropriate federal supervisory agency, and disclosure to the public on request are mandatory. The data, as modified according to Appendix A of the regulation (paragraph III.E.), are made publicly available and are not considered confidential. Information that might identify individual borrowers or applicants is given confidential treatment under exemption 6 of the Freedom of Information Act (5 U.S.C. 552(b)(6)).

IV. Extension of authority

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed Regulation C under the authority delegated to the Board by the Office of Management and Budget. The Board proposes to extend the authority to collect the HMDA loan/application register for three years through March 31, 2000.

V. Comments

In keeping with OMB regulations, comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information may be sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0247), Washington, D.C. 20503, with copies to Mary M. McLaughlin, Chief, Financial Reports Section, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

LIST OF SUBJECTS IN 12 CFR PART 203

Banks, banking, Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.

TEXT OF PROPOSED REVISIONS:

Certain conventions have been used to highlight the proposed revisions to the regulation. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets.

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. Section 203.3 would be amended by revising paragraph (a)(1)(ii) to read as follows:

§ 203.3 Exempt institutions.

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

(1) * * *

(ii) The institution's total assets were [\$10 million or less] ▶at or below the asset threshold established by the Board. For 1997 data collection, the asset threshold is \$28 million as of December 31, 1996. For subsequent years, the Board will adjust the threshold based on the year-to-year change in the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, as of the month of December, with rounding to the nearest million. The Board will publish the adjusted asset figure in January◀.

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3. Section 203.5 would be amended as follows:

- a. Under paragraph (b), the first sentence would be designated paragraph (1), sentences two and three would be removed, and a new paragraph (2) would be added;
- b. Under paragraph (c), the last sentence would be removed and a new sentence would be added; and
- c. Under paragraph (e), the last two sentences would be revised.

The revisions and additions would read as follows:

§ 203.5 Disclosure and reporting.

* * * * *

(b) Public disclosure of statement. ▶(1)◀ A financial institution shall make its mortgage loan disclosure statement (to be prepared by the Federal Financial Institutions Examination Council) available to the public at its home office no later than three business days after receiving it from the Examination Council. [A financial institution shall also make its disclosure statement available to the public within ten business days in at least one branch office in each additional MSA where the institution has offices. The disclosure statement at a branch office need only contain data relating to properties in the MSA where the branch office is located.]

▶(2) In addition, a financial institution shall either:

- (i) Make its disclosure statement available to the public within ten business days of receiving it from the Examination Council in at least one branch office in each additional MSA where it has offices (the disclosure statement need only contain data relating to properties in the MSA where the branch office is located); or

(ii) Mail or deliver a copy of its disclosure statement to any person requesting it, within 15 calendar days of receiving a written request (the disclosure statement need only contain data relating to properties in the MSA for which the request is made).◀

(c) Public disclosure of loan application register. * * * [The modified register made available at a branch office need only contain data relating to properties in the MSA where the branch office is located.] ▶The modified register need only contain data relating to the MSA for which the request is made.◀

* * *

(e) Notice of availability. * * * Upon request, it shall promptly provide the location of the institution's offices where the statement is available ▶for inspection and the address where a written request may be sent for a copy of the data◀. At its option, an institution may include [the locations] ▶this information◀ in its notice.

4. Appendix A to Part 203 would be amended by revising paragraph I. as follows:

b. Paragraph I. A. would be revised by designating the introductory text after the heading paragraph 1.;

a. Paragraph 1. would be redesignated paragraph a. and revised;

c. Paragraph 2. would be redesignated paragraph b.;

d. A new paragraph 2. would be added; and

e. The undesignated paragraph EXAMPLE, would be designated paragraph 3. and would be revised.

The revisions would read as follows:

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

* * * * *

I. WHO MUST FILE A REPORT

A. Depository Institutions. ▶1.◀ * * *

[1.]▶a.◀ Had assets of more than [\$10 million] ▶the asset threshold for coverage as published by the Board each year in January◀, and

[2.]▶b.◀ * * *

▶2. For 1997 data collection, the asset threshold is \$28 million in total assets as of December 31, 1996.◀

▶3. Example.◀ If on December 31 you had a home or branch office in an MSA and your assets exceeded [\$10 million] ▶the asset threshold◀, you must complete a register that lists the

home-purchase and home-improvement loans that you originate or purchase (and also lists applications that did not result in an origination) beginning January 1.

5. Appendix A to Part 203 would be amended by revising paragraph III. as follows:
- a. Under paragraph D. the fourth sentence would be removed and a new sentence and new paragraphs 1. and 2. would be added;
 - b. Under paragraph F. the first paragraph would be designated 1. and revised, and the second paragraph would be designated 2.; and
 - c. Under paragraph G. the first paragraph would be designated 1. and a new heading would be added to the newly designated paragraph 1., and paragraph 2. would be added.
- The revisions and additions would read as follows:

III. SUBMISSION OF HMDA-LAR AND PUBLIC RELEASE OF DATA

* * * * *

D. Availability of disclosure statement. * * * [You also must make the disclosure statement available, within ten business days after receiving it from the FFIEC, in at least one branch office in each additional MSA where you have physical offices.] For these purposes a business day is any calendar day other than a Saturday, Sunday, or legal public holiday. ▶ You also must either:

- 1. Make your disclosure statement available to the public, within ten business days of receiving it from the FFIEC, in at least one branch office in each additional MSA where you have offices (the disclosure statement need only contain data relating to properties in the MSA where the branch office is located); or
- 2. Mail or deliver a copy of your disclosure statement to any person requesting it, within 15 calendar days of receiving a written request (the disclosure statement need only contain data relating to the MSA for which the request is made).◀

F. Location and format of disclosed data. ▶ 1.◀ A financial institution must make a complete copy of its disclosure statement and modified register available to the public at its home office. Institutions may make these data available in [hard copy or]▶ paper form or, if the person requesting the data agrees,◀ in automated form (such as by floppy disk or computer tape). [If you have physical branch offices in other MSAs, you must make available, in at least one branch office in each of those MSAs, either a complete copy of the disclosure statement or the portion of it that relates to properties in that MSA. Similarly, a modified register at a branch office need only reflect data concerning properties within the MSA where the branch is located.] ▶ A modified register need only reflect data relating to the MSA for which the request is made.◀

▶ 2.◀ * * *

G. Posters.

▶1. Suggested language.◀* * *

▶2. Optional information. At your option, you may include the location where the disclosed data are available for inspection and the address to be used for making a written request.◀

6. Supplement I to Part 203, under Section 203.3--Exempt Institutions, under 3(a) Exemption based on location, asset size, or number of home-purchase loans, the second sentence of Paragraph 1. General would be revised to read as follows:

SUPPLEMENT I TO PART 203--STAFF COMMENTARY

* * * * *

Section 203.3--Exempt Institutions

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

1. General. * * * For example, a bank whose assets [drop to \$10 million or less] ▶are at or below the threshold ◀ on December 31 of a given year reports data for that full calendar year, in which it was covered, but does not report data for the succeeding calendar year. * * *

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By order of the Board of Governors of the Federal Reserve System, December 16, 1996.

(Signed)
William W. Wiles,
Secretary of the Board