



Memorandum

Date: November 29, 2004

To: Chief Executive Officer of
Institution Subject to the Home Mortgage Disclosure Act

From: Tamara Wiseman, Executive Secretary
Federal Financial Institutions Examination Council (FFIEC)

Background

Several Regulation C amendments adopted in 2002 took effect on January 1, 2004. Based on analysis of some preliminary 2004 data, the FFIEC believes that additional guidance is necessary to ensure that data are reported accurately. Please share this memorandum with your institution's compliance officer and/or Home Mortgage Disclosure Act (HMDA) data collection staff.

The areas of discussion pertain to: transition rules; ethnicity, race, and sex (government monitoring information); property location information on refinancings and preapprovals; lien status reporting; loans subject to the Home Ownership and Equity Protection Act (HOEPA loans); and reporting the sale of home purchase loans.

Areas of Discussion

Transition rules: The transition rules apply to applications received before January 1, 2004, on which final action is taken on or after January 1, 2004. The rules cover specific fields, including ethnicity, race and sex for applicants and co-applicants.

Before the 2002 amendments to Regulation C, if there was no co-applicant, the co-applicant's race was reported as a code 8 (Not applicable) and the co-applicant's sex as a code 4 (Not applicable). The 2002 amendments to Regulation C added a new code for "No co-applicant" in the ethnicity, race and sex fields (codes 5, 8, and 5). Many institutions have coded their systems to use the new codes for "No co-applicant" in the ethnicity, race and sex fields for applications and loans on the 2004 Loan Application Register (LAR). Others, however, continued to use the pre-2002 codes for "Not applicable."

Therefore, we are providing the following guidance for applications received before January 1, 2004, which see final action on or after January 1, 2004. If there was no co-applicant, choose either combination in reporting the ethnicity, race and sex fields: 4, 7, 4 (Not applicable) or 5, 8, 5 (No co-applicant); mixing these reporting combinations will result in the failure of several validity edits.

Also, we want to remind you that the transition rules provide that (a) when the applicant/co-applicant race was identified as Hispanic (code 4) in 2003, you must report ethnicity as Hispanic or Latino (code 1) and race as code 7 (Not applicable) on the 2004 LAR; and (b) when the applicant/co-applicant race was identified as Other (code 6) in 2003, you must report ethnicity as code 4 (Not applicable) and race as code 7 (Not applicable) on the 2004 HMDA LAR. This guidance only applies to applications received before January 1, 2004 which see final action on or after January 1, 2004.

Ethnicity and Race: Ethnicity is a new field that was added to the HMDA LAR beginning January 1, 2004. **Institutions must report a code in the ethnicity field for the applicant and co-applicant and at least the first race field for the applicant and co-applicant field on every LAR record.** An applicant and/or co-applicant can designate up to five racial designations and all codes corresponding to the applicant and/or co-applicant's selections must be reported.¹

Beginning with applications taken on or after January 1, 2004, if an applicant self-identifies as "Hispanic or Latino" under the category of "Ethnicity," the applicant should be asked to identify a race or races from among the five choices available. The Office of Management and Budget has adopted definitions for the five races and Hispanic ethnicity. They can be found at http://www.whitehouse.gov/omb/inforeg/re_app-a-update.pdf. OMB's definitions may be offered to the applicant as an aid, but the choice of how to self-identify is entirely the applicant's.

If a lender is face-to-face with an applicant who (1) has self-identified as "Hispanic or Latino" (or whom the lender has identified as of that ethnicity because the applicant has declined to self-identify) and (2) has not identified a race, the lender must identify whatever race or races the lender believes apply, based on surname and visual observation. In those circumstances, the lender may not indicate code 7 (for Not applicable) in the race field. Code 7 is used in the race field only if (1) the applicant is not a natural person, (2) the HMDA reporter has purchased, not originated, the loan, or (3) the application was received before January 1, 2004 and reached final action on or after January 1, 2004.

For additional instructions on the collection of data on ethnicity, race and sex of the applicant and/or co-applicant, refer to Appendix B, Part 203, paragraphs I and II of the *Guide*. Some highlights of Appendix B are:

- A lender must ask the applicant and/or co-applicant for the government monitoring information, but cannot require them to provide it, whether the application is taken in person, by mail or telephone, or on the Internet;

¹ (Refer to Appendix A, Part 203, paragraph I.D., 1 through 4 in the *Guide to HMDA Reporting – Getting it Right (the "Guide")* for the rules that apply to the reporting of ethnicity and race; for additional guidance, refer to the "frequently asked questions" on the FFIEC web site at <http://www.ffiec.gov/hmda/faqreg.htm>.)

- A lender is required to note the data on the basis of visual observation or surname when the application is taken in person and the applicant and/or co-applicant fail to provide the information;
- The lender must use the code for “information not provided by applicant in mail, Internet, or telephone application” if an application is taken entirely by mail, Internet, or telephone, and the applicant and/or co-applicant declines to provide information on ethnicity, race, or sex.
- A lender must report whatever information the applicant and/or co-applicant supplies, whether partial or complete. For example, if, on an application submitted by mail, an applicant marks a box indicating the applicant does "not wish to furnish" government monitoring information but supplies some or all of the information, the lender must report the information supplied.

Property Location Information on Preapprovals: When the preapproval field was added to the HMDA LAR, it was generally thought that there would not be a property immediately identified on the application. Therefore, in the 2004 HMDA edits, validity edit V305 was added to flag those records where values are reported in the four property location fields and the action taken type code is reported either as a 7 or an 8. If action taken is reported correctly as a code 7 or 8, you must report “NA” in the four property location fields on the 2004 HMDA LAR regardless of whether a property has been identified. In the 2005 HMDA edits, validity edit V305 was replaced with quality edit Q049; this will allow you to include the property location information, when available, on those preapprovals with an action taken code of 7 or 8 on your 2005 HMDA LAR.

Property Location Information on Refinancings: When a loan/application record meets the definition of a refinancing, you should report the property location information of the dwelling that is taken as security. In situations where multiple properties are taken as security on the refinancing, either: (a) choose one property and report the property location information for it, or (b) report the refinancing by making multiple entries on the HMDA LAR (with unique identifiers) and allocate the loan amounts of the refinancing among the properties. (This paragraph clarifies further the information given for refinancings of home purchases or home improvements in the *Guide*, Appendix D, paragraph 4(a)(9), comments 1 and 2 (p. D-12); if it is a refinancing, you do not look at the purpose).

Lien status: Regulation C states that a home purchase loan is any loan secured by and made for the purpose of purchasing a dwelling. A refinancing is any dwelling-secured loan that replaces and satisfies another dwelling-secured loan to the same borrower. By definition, home purchase loans and refinancings must be secured by a lien on a dwelling; therefore, if the purpose code for a loan or application is code 1 (Home purchase) or code 3 (Refinancing), the code for lien status cannot be a code 3 (Not secured by a lien); the lien status must be code 1 or code 2.

Home improvement loans, however, may be either secured or not secured by a dwelling. A home improvement loan is (a) any dwelling-secured loan to be used, at least in part, for repairing, rehabilitating, remodeling, or improving the dwelling or the real property on which the dwelling is

located and (b) any non-dwelling-secured loan (i) that is to be used, at least in part, for one or more of those purposes and (ii) that is classified as a home improvement loan by the institution.

Some confusion has arisen about how to report lien status when an *unsecured* home improvement loan is taken out at the same time as a separate home purchase loan or a refinancing. In such a case, report the home improvement loan separately, using code 2 (Home improvement) for the purpose and code 3 (Not secured by a lien) for lien status. When reporting a non-dwelling-secured home improvement loan, make sure that some or all of the proceeds are used for home improvement purposes and that it is classified as a home improvement loan by the institution.

HOEPA status: HOEPA status is a new field that was added to the HMDA LAR beginning January 1, 2004.² There are two quality edits (Q044 and Q045) that check whether specific loans reported on the 2004 HMDA LAR are HOEPA loans. For example, it is expected that the majority of: (a) originated home improvement loans or refinancings that are secured by a first lien with a rate spread greater than 8% or (b) originated home improvement loans or refinancings that are secured by a subordinate lien with a rate spread greater than 10% will be classified as HOEPA loans. Only a very small percentage of the loans from (a) or (b) above would not actually be HOEPA loans.

Institutions should ensure that all HOEPA calculations are correct. It is important to note that the lock-in date used to calculate the rate spread on HMDA data may not be the same date that is used for the HOEPA APR trigger calculations.

Report the Sale of Originated and Purchased Loans: There is a type of purchaser (TOP) quality edit (Q028) that checks the sale of originated (action taken code of 1) and purchased (action taken code of 6) loans. TOP is a required reporting field that must be completed on all HMDA LAR records.³ If you sell a loan in the same calendar year in which it was originated or purchased, you must identify the type of purchaser to whom it was sold, using codes 1 through 9.

Report zero (0) in the TOP field on the HMDA LAR when:

- The loan was originated but **not** sold in the calendar year covered by the HMDA LAR activity year;
- The loan was purchased from another entity but **not** sold in the calendar year covered by the register;
- The application was denied, withdrawn by the applicant, approved but not accepted by the applicant; or closed for incompleteness;
- A portion of the loan is sold and you retain a majority interest.

² For more information about HOEPA, see 12 CFR §§ 226.31 et seq.

³ For guidance, see the *Guide*, Appendix D, paragraph 4(a)(11), comments 1 and 2 (pp. D-13 and D-14); and Appendix A.I.E. (pp. A-7 and A-8).

Other important reminders regarding the reporting of TOP:

- If the loan is sold to more than one purchaser, use the code for the entity purchasing the greatest interest;
- Loans “swapped” for mortgage-backed securities are to be treated as sales; the TOP is the entity receiving the loans that are swapped.
- If there is another department at your institution (e.g., commercial) that handles the selling of these loans, the HMDA LAR must be updated to include the sale of the loan prior to submitting it to your HMDA processing agency;
- If the loans are sold in a succeeding year, do not report the loan sale on that year’s LAR. Furthermore, do not go back and update the TOP column on the LAR for the year the loans were initially reported; in this case the sale will never be reported.

Transition Rule Flag

Transition rules allow that rate spreads do not have to be reported on loans with a lock-in date prior to January 1, 2004. This has the potential to create some distortion in aggregate and institution-level data regarding the incidence of high rate loans over the course of the year, because loans below the spread will look identical to loans with rates above the spread but where the spread was not reported because the lock-in date was prior to January 1, 2004.

To correct for this distortion, the FFIEC-prepared aggregate and institution-level tables on pricing to be released for the 2004 data will be based only on loans with application dates of January 1, 2004 or later because the loans cannot have a lock-in date that is covered by the transition rules. To enable the public to compute pricing incidence on a consistent basis, the FFIEC will add a data field at the end of each of the publicly-released HMDA LAR data in which all applications/loans with an application date prior to January 1, 2004 will be coded as one (1); those with an application date after January 1, 2004 will be coded as zero (0); and those in which the application date is reported as NA (for Not applicable) – such as purchased loans – will be assigned a code of two (2). Institutions, at their option, may choose to add a similar field to the 2004 modified registers that they must make available to the public upon request.

There are several online resources available to assist you in collecting and reporting your 2004 HMDA LAR data. Browse the FFIEC web site at www.ffiec.gov/hmda for these resources. You can also obtain assistance from the Federal Reserve System’s HMDA processing staff by e-mailing hmdahelp@frb.gov or calling 202-452-2016.