

REGULATORY ALERT

NATIONAL CREDIT UNION ADMINISTRATION
1775 DUKE STREET, ALEXANDRIA, VA 22314

DATE: January 2005 **NO.:** 05-RA-01
TO: All Credit Unions
SUBJECT: Regulation C (Home Mortgage Disclosure Act)
ENCL: Federal Reserve Board guidance

Dear Board of Directors:

Credit unions that engage in residential mortgage lending must comply with Regulation C, the Home Mortgage Disclosure Act (HMDA).

The purpose of this regulatory alert is to inform you of:

- the 2005 reporting threshold for HMDA;
- reference material, such as the *HMDA Guide to Getting it Right*;
- the availability of reporting software for 2005 calendar year data;
- reporting options for credit union service organizations (CUSOs);
- filing deadline for 2004 HMDA data;
- NCUA policy concerning the late submission of required HMDA data; and
- potential errors during the collection and report of 2004 data.

Reporting Threshold: Which credit unions are required to file for 2005?

The Board of Governors of the Federal Reserve System (FRB) announced the exemption threshold for depository institutions required to report data under HMDA will increase to \$34 million in assets effective January 1, 2005.

The FRB annually adjusts the asset-size exemption threshold for depository institutions based on annual percentage changes in the consumer price index. A copy of the information is available on the FRB website at:

<http://www.federalreserve.gov/BoardDocs/Press/bcreg/2004/200412212/default.htm>

The following questions should be answered to determine if your credit union is required to collect HMDA data for the 2005 calendar year:

1. Did total assets exceed \$34 million as of December 31, 2004?
2. Did the credit union have a home or branch office in a metropolitan statistical area (MSA) on December 31, 2004?
3. During 2004, did the credit union originate at least one home purchase loan or refinancing of a home purchase loan secured by a first lien on a one-to-four-family dwelling?

If the answer to all three questions is 'YES,' then HMDA data collection and reporting requirements apply. If the answer to any one of the questions is 'NO,' then the credit union is exempt from filing HMDA data for 2005.

An exemption from filing HMDA data for the 2005 calendar year does not affect the requirement to collect and file 2004 data. Credit unions, which are required to report 2004 calendar year data, must meet the March 1, 2005 filing deadline, even if the credit union will not be required to collect and file HMDA data for the 2005 calendar year.

References: Is there a new version of the *Guide to HMDA Reporting, Getting It Right!?*

The most recent version of the ***Guide to HMDA Reporting, Getting It Right!*** (Guide) was published in December 2003. The Guide summarizes management's responsibilities for the collection and report of HMDA information. Since the Guide's publication in December 2003, a few metropolitan statistical codes have been updated. A list of these changes is posted at:

<http://www.ffiec.gov/hmda/guide.htm>

You may obtain an electronic copy of the Guide from the FFIEC web site at: <http://www.ffiec.gov/hmda/guide.htm>. Printed copies of the Guide are also available by contacting the NCUA publications department at (703) 518-6340. There is a \$5 charge for each printed copy; limited quantities are available.

Please note the Guide no longer contains a "Question and Answer" section. This supplementary information is now posted on the FFIEC web site at:

<http://www.ffiec.gov/hmda/faq.htm>

Software: Is the data entry software available for calendar year 2005?

For those credit unions required to collect HMDA data during the 2005 calendar year, the FFIEC HMDA Data Entry Software, version 3.10, may be downloaded and is available on the FFIEC web site at:

<http://www.ffiec.gov/software/default.aspx>

Please note the FFIEC HMDA Data Entry Software is not network compatible, and the FFIEC does not support installation to a network. The software should be

installed locally on a hard disk. The software is only available through download; disks will not be sent to HMDA reporters.

Credit Union Service Organizations (CUSOs): Do CUSOs report for HMDA?

CUSOs must comply with HMDA data collection and reporting requirements. For purposes of HMDA compliance, a CUSO is a credit union subsidiary if it is more than 50% owned by a credit union. Subsidiary CUSOs use the credit union's charter number for identification purposes when reporting HMDA data. Subsidiary CUSOs should select NCUA as the applicable regulator when reporting HMDA data and, if feasible, consolidate HMDA data with the "owning" credit union to allow for a single HMDA submission under the credit union's charter.

CUSOs that do not qualify as subsidiaries should submit their HMDA data to the Department of Housing and Urban Development (HUD). Non-subsidiary CUSOs may obtain an identification number from HUD for reporting purposes. Non-subsidiary CUSOs should select HUD as the applicable regulator when reporting HMDA data.

Filing Deadlines: When must HMDA data be reported?

HMDA requires quarterly updates of the loan application register (LAR). Once final action is taken on a transaction, it must be appropriately recorded on a LAR within 30 days after the end of a calendar quarter. Credit unions should be able to produce a current LAR at the request of federal or state examiners.

Following the end of a calendar year, a credit union must submit its LAR to the Federal Reserve Board processing center no later than March 1st using the following email address: <mailto:hmdasub@frb.gov>. Internet e-mail is the preferred method for transmitting LAR information. Non-email transmissions may be delayed due to FRB security protocols. Acceptable transmission methods are listed at: <http://www.ffiec.gov/hmda/contactNCUA.htm>

For 2004 HMDA data, all LARs must be submitted and received by the FRB no later than March 1, 2005. To ensure data can be successfully read by the FRB, a credit union should use the edit check feature contained in the HMDA data entry software prior to submitting transmission data.

Data is considered to be successfully received by the FRB once the file has been opened and loaded onto the FRB mainframe. When data is successfully loaded, the FRB will confirm receipt of the file by faxing or emailing a list of potential data errors. Credit unions should retain a dated copy of this receipt. If a credit union does not receive a filing receipt from the FRB, it is the credit union's responsibility to follow up with the FRB.

Early submission by mid-February is strongly recommended. If a data file does not load successfully, it will not be marked as received by the FRB.

Late Submissions: What is NCUA policy concerning late HMDA data?

Credit unions must provide a readable file to the FRB, which processes HMDA data on behalf of NCUA, by the March 1st deadline. Late submission of HMDA data is not acceptable. Following data collection, the FRB will provide NCUA with a list of credit unions that did not meet the March 1st filing deadline. NCUA may assess civil money penalties against late filers.

When assessing civil money penalties against late filers, NCUA will consider exceptional circumstances. A credit union's first time to collect and file HMDA data is not an exceptional circumstance.

Quality of 2004 Data: Is there guidance concerning potential 2004 data errors?

In December 2004, the Federal Financial Institutions Examination Council mailed a guidance letter to anticipated 2004 HMDA filers. This letter discussed unique transition rules for select 2004 data. The letter also contained guidance about potential data quality errors observed during the early review of a sample of 2004 data. A copy of the letter is enclosed.

Synopsis

Credit Unions required to comply with HMDA reporting requirements should carefully review Regulation C and the *Guide to HMDA Reporting, Getting It Right!*. For calendar year 2004, there were changes in data collection and filing requirements. Credit unions required to collect and file 2004 calendar year data must submit HMDA data to the FRB no later than March 1, 2005.

Questions concerning HMDA software, data receipt confirmations, data edits, and other issues related to the submission of HMDA data can be sent to the FRB via email at <mailto:hmdahelp@frb.gov>. Should you have questions about LAR completion, please contact your regional office or state supervisory authority.

Sincerely,

/s/

JoAnn Johnson
Chairman

Enclosure



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

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>.

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;
- 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

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

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.

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

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).

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 <http://www.ffiec.gov/hmda> for these resources. You can also obtain assistance from the Federal Reserve System's HMDA processing staff by e-mailing <mailto:hmdahelp@frb.gov> or calling 202-452-2016.