FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R-1120]

HOME MORTGAGE DISCLOSURE

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; staff interpretation.

SUMMARY: The Board is publishing amendments to Regulation C (Home Mortgage Disclosure). The amendments establish the thresholds for determining the loans for which financial institutions must report loan pricing data (the spread between the annual percentage rate on a loan and the yield on comparable Treasury securities) as required under a final rule approved in January 2002 (67 FR 7222, February 15, 2002); the thresholds are a spread of 3 percentage points for first-lien loans and 5 percentage points for subordinate-lien loans. The amendments require lenders to report the lien status of a loan or application. The amendments also require that lenders ask applicants their ethnicity, race, and sex in applications taken by telephone; this monitoring requirement is made applicable as of January 1, 2003, through a rule published elsewhere in today's Federal Register.

DATES: The amendments are effective January 1, 2004.

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 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 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). 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. The FFIEC also aggregates data and prepares reports for all lenders in each metropolitan area and for the nation. These disclosure statements and reports are available to the public.

On January 23, 2002, the Board approved amendments to Regulation C after a comprehensive review of the regulation. 67 FR 7222, February 15, 2002. Among other things, the final rule requires lenders to report the spread between the APR on loans and the yield on Treasury securities with comparable maturity periods, if the spread meets or exceeds certain thresholds specified by the Board.

At the same time that the final rule was published, the Board issued a proposed rule for comment on whether thresholds of 3 percentage points above the yield on comparable Treasury securities for first-lien loans and 5 percentage points for subordinate-lien loans (which generally have a higher APR) are appropriate thresholds for identifying the loans for which financial institutions must report loan pricing data. 67 FR 7252, February 15, 2002. The Board also proposed to require lenders (1) to report the lien status on loans and applications and (2) to ask telephone applicants their ethnicity, race, and sex.

The Board received approximately 250 comments on the proposed rule; commenters were generally divided on the issues. Industry commenters provided differing views on the appropriate thresholds for reporting pricing data and on the burden associated with reporting lien status. They were generally opposed to the proposed collection of applicants' ethnicity, race, and sex in telephone applications.

Commenters representing community groups, researchers, and state, local and tribal officials generally urged the Board to require lenders to report pricing information on all loans. These commenters supported the reporting of lien status for originations and applications, and argued for extending the requirement to purchased loans. They believed that lenders should be required to ask for applicants' ethnicity, race, and sex in telephone applications.

Many industry commenters, in addition to commenting on the proposed rule, also requested a delay in the effective date of the final rule published on February 15, 2002. On May 2, 2002, the Board delayed the effective date of the final rule to January 1, 2004. Lenders must, however, use the census tract numbers and corresponding geographic areas from the 2000 Census for all applications and loans recorded on their 2003 HMDA/LAR and reported to the supervisory agencies by March 1, 2004. 67 FR 30771, May 8, 2002.

Industry commenters also requested guidance on how to collect and report data when an application is received before—and final action is taken after—January 1, 2004, the effective date of the revised rule. In some instances, several months may elapse between application and final action, and applications taken in 2003 may not be acted upon until 2004.

Lenders generally must comply with the revised rules for all applications upon which final action is taken on and after January 1, 2004. The Board plans to issue guidance later this year to alleviate the burden on lenders to "look back" at all applications taken in 2003 but acted on in 2004. For example, the Board could establish that for applications taken before a certain date—such as November 1, 2003—a lender would not be required to use the revised rules.

II. Section-by-Section Analysis of the Final Rule

The following discussion generally tracks the regulation (including appendices) as amended by the Board. Revisions to the staff commentary are addressed under the sections of the regulation that they interpret.

Section 203.2—Definitions

2(i) Manufactured Home

Commenters asked whether the definition of a manufactured home in § 203.2(i) includes modular, panelized, and pre-cut homes. The definition in § 203.2 refers to the federal building code for factory-built housing established by the Department of Housing and Urban Development (HUD). The HUD code requires generally that housing be essentially ready for occupancy upon leaving the factory and being transported to a building site. Modular homes that meet all of the HUD code standards are included in the definition because they are ready for occupancy upon leaving the factory. Other factory-built homes, such as panelized and pre-cut homes, generally do not meet the

HUD code because they require a significant amount of construction on site before they are ready for occupancy. Loans and applications relating to manufactured homes that do not meet the HUD code should not be identified as manufactured housing under HMDA. Comment 203.2(i)-1 contains this guidance.

Section 203.4—Compilation of loan data

4(a)(12) Rate Spread Information

The Board proposed a reporting threshold of 3 percentage points above the yield on Treasury securities of comparable maturity for first-lien loans and 5 percentage points for subordinate-lien loans (which generally have a higher APR). The thresholds are intended to ensure, to the extent possible, that pricing data for higher-cost loans are collected and disclosed. The data available to the Board when it proposed the thresholds indicated that these thresholds would exclude the vast majority of prime loans and include the vast majority of other loans. The Board solicited comment on the appropriate thresholds before finalizing them. Information on the following specific issues and questions was also solicited:

- Whether the rule for determining coverage under the Home Ownership and Equity Protection Act (HOEPA) should be used to determine whether rate spread information must be reported under HMDA—specifically, whether the 15th day of the month preceding the month in which the application for the loan was received should be used for determining the APR spread.

- The proportion of loan originations (by number of loans) reported under HMDA that would fall above and below various thresholds, segregated by risk class (for example, A, A-minus, and B) and lien status.

- Circumstances or special credit products that might be particularly subject to misclassification, as loans associated with a higher credit risk than prime loans, should the proposed thresholds be implemented. For example, are there product lines in which loans with very little credit risk nonetheless have high APRs? Alternatively, are there product lines in which loans with relatively high credit risk nonetheless have low APRs?

- Is the 2-percentage point difference between the proposed thresholds for first- and subordinate-lien loans appropriate?

Some industry commenters supported the thresholds of 3 and 5 percentage points, although they objected to reporting any pricing data. These commenters stated that, based on their experience, the tentative thresholds would exclude nearly all prime loans from the pricing-data reporting. Nearly all industry commenters—whether or not they supported thresholds of 3 and 5 percentage points—indicated that a 2-percentage point difference between thresholds is appropriate.

Many industry commenters argued that the proposed thresholds were too low, based on a belief that the thresholds would capture a significant number of prime loans. Some commenters stated that the proposed thresholds would include loans that they believe are not higher-priced loans, for example, short-term loans with balloon payments, loans involving manufactured homes, and FHA-insured and VA-guaranteed loans. These commenters did not, however, provide data to support their views. Industry commenters also expressed concern that stigma would attach to loans that meet the pricing thresholds and that responsible subprime lending would consequently be curtailed.

Some commenters urged the Board to adopt the thresholds for HOEPA coverage (8 percentage points for first-lien loans and 10 percentage points for subordinate-lien loans) for reporting pricing information under Regulation C. Others suggested thresholds of 5 percentage points and 7 percentage points for first- and subordinate-lien loans, respectively, so as to capture only what they believe to be higher-priced loans.

In addition to commenting on the proposed thresholds, many industry commenters urged the Board to reverse its decision to require lenders to report pricing information under HMDA. Some of these commenters stated that, in the alternative, the Board should allow lenders the option of reporting the APR on a loan and having the Board calculate the spread. They said that reporting the spread would be more burdensome than reporting the APR, because lenders do not track the yield on Treasury securities and may have difficulty obtaining the correct information to use in calculating the spread. Commenters were concerned that lenders could make inadvertent errors in calculating the spread and, if the errors were pervasive, could incur the costs of resubmission of HMDA data or civil money penalties.

A few industry commenters urged the Board not to use the yield on Treasury securities for calculating the spread. They suggested that lenders be permitted to use other indices for calculating the spread, such as the LIBOR (London Inter-Bank Offered Rate) index, that they said play a more direct role in their pricing.

Still others—community groups, researchers, and state, local, and tribal officials—urged the Board to require pricing information on all loans reported under HMDA, and not just those that meet or exceed certain thresholds. These commenters believed that requiring pricing information only on higher-priced loans would allow discrimination and other abusive lending practices to go undetected in the prime market. Some of these commenters also argued that the APR, and not the spread, should be reported to facilitate fair lending enforcement. Some community groups, while preferring pricing information on all loans, stated that the thresholds of 3 and 5 percentage points were appropriate.

The Board is adopting the proposed thresholds of 3 and 5 percentage points for first- and subordinate-lien loans, respectively. In January 2002, the Board adopted the requirement to report the spread only for loans over specific thresholds in order to 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 data supplied by commenters tended to confirm the data available to the Board indicating that the proposed thresholds would avoid capturing the vast majority of prime loans while capturing the vast majority of other loans.

The Board believes that the thresholds will not result in misclassification of the products mentioned by some commenters—for example, FHA-insured loans, VA-guaranteed loans and manufactured home loans. While the spread on many manufactured home loans may exceed the thresholds, these loans tend to have elevated credit risk and are generally not considered prime loans. The thresholds should exclude most FHA-insured loans and VA-guaranteed loans. Moreover, Regulation C requires lenders to distinguish FHA and VA loans from other loan types on their HMDA/LARs; and under the final rules, lenders will also be required to distinguish loans for manufactured homes from loans for site-built homes. Thus, even if these loans are misclassified as higher-priced loans, data users can treat these loans as distinct product lines in their analyses.

The Board will take steps to minimize any difficulties lenders may have in calculating the spread and also to minimize the risk of errors. These steps include publishing the applicable Treasury yields for common maturity periods on the FFIEC's Internet web site, in addition to making the information available by fax upon request. Lenders will be required to use only the rates published by the Board—and not the H-15 or the Treasury auction results, which lenders may use for HOEPA purposes—to ensure consistent and accurate calculations for HMDA data collection and reporting. An interactive tool could also be available on the FFIEC web site to calculate the rate spread for a loan, based on information input by the lender.

The final regulation approved in January set an "application date" rule for determining whether the rate spread must be reported. That is, lenders would compare the APR on a loan at consummation with the yield on Treasury securities of comparable maturity as of the 15^{th} day of the month preceding the month in which the loan application was received. This is the rule used to determine HOEPA coverage. The Board solicited comment on whether HOEPA's application date rule is appropriate in calculating the spread for HMDA purposes.

Many industry commenters, including the banking trade associations, supported use of the application date for identifying the applicable Treasury security yield. They noted that adopting the HOEPA rule would ease compliance burden, as lenders whose loans are covered by HOEPA are already familiar with this rule. Other industry commenters suggested that the "lock date," or date that the lender sets the interest rate for the loan, would result in a more accurate determination of whether a loan was a prime loan or a higher-priced loan. A small number of industry commenters suggested using the date of origination or consummation.

The Board is adopting the date the final interest rate is set as the date for determining the yield on comparable Treasury securities. The rule provides that lenders use the 15th-of-the-month prior to the date the final rate is set. For example, if the lender sets the interest rate for the final time before the loan closing on September 3, 2004, the relevant date for use of the Board's table is August 15, 2004; if the lender sets the rate for the final time before closing on September 17, 2004, the relevant date is September 15, 2004. If the rate is set on September 15, 2004, the relevant date is September 15, 2004. These instructions have been incorporated into Appendix A, Paragraphs I.G.1. and 2.

The date the final rate is set more accurately reflects the lender's pricing decision than a date related to the date of application or to the date of consummation. A date related to the date of application or consummation might reflect a different rate environment than existed when the final interest rate was established, and could result in inaccurate and misleading data for periods when interest rates are volatile.

Using the date the final rate is set may impose additional burden on some lenders, as many lenders do not systematically track the date the interest rate is set or locked. In contrast, using the HOEPA rule (a date measured from the application date) may impose less burden on lenders that currently make HOEPA loans or routinely monitor their loans for HOEPA coverage (although it does not pose that advantage for lenders that do not make HOEPA loans); and the dates of application and consummation also may be less burdensome because these dates are already collected and reported under HMDA. On balance, however, the Board believes that the benefits of increasing the accuracy of pricing information by selecting the date the final interest rate is set outweigh the compliance burden associated with the requirement.

Section 4(a)(12) is also modified to clarify that lenders must report the rate spread on a loan if the spread <u>equals</u> or <u>exceeds</u> the thresholds. This change conforms the regulation to the instructions for reporting rate-spread information in Appendix A, Paragraph I.G.1.

<u>4(a)(14) Lien Status</u>

The Board proposed to require lenders to report whether a loan is or would be (1) secured by a first lien on a dwelling; (2) secured by a subordinate lien on a dwelling; or (3) not secured by a lien on a dwelling. The Board solicited comment on these reporting categories (and also on whether reporting of lien status should be required for purchased loans). Data on lien status may help explain some pricing disparities, because interest rates, and therefore APRs, vary according to lien status. Rates on first-lien loans are generally lower than rates on subordinate-lien or unsecured loans. In addition, lien status would enable data users to better analyze information on secured and unsecured home improvement loans.

Most industry commenters—although opposed generally to reporting more data under HMDA—stated that lien status was closely linked to pricing and that it would not be unduly burdensome for them to report this information for originations on their HMDA/LAR. Most industry commenters, however, opposed a requirement to collect and report these data for purchased loans, because they believe the additional burden is not warranted. Some commenters stated that lien status should not be required for applications that do not result in loans; they suggested that an application might be denied before the lender knows what the lien status of the loan would have been.

Other industry commenters opposed the requirement to report lien status even for originations as unduly burdensome. These commenters stated that while they know when a loan they make is secured, they often do not know their lien position with certainty. They were concerned that a final rule would require title searches for all reportable loans. Some commenters stated that they generally assume they will have a first lien for all home purchase applications and loans; but for other home mortgages, often they do not know their lien position even if the loan is originated, and base their pricing decisions on the assumption that they will have a subordinate lien. A few commenters suggested that the Board should allow lenders to report lien status based on these assumptions.

Community groups, researchers, and state, local, and tribal officials stated that lien status was critical to interpreting pricing data and distinguishing secured from unsecured home improvement loans, and many argued that lien status should be reported for purchased loans as well. Some of these commenters suggested that the data collection might serve to deter lenders from persuading consumers to consolidate a small first mortgage and unsecured debt into a new first mortgage (when a second mortgage or an unsecured loan might be more in the consumer's interest). Some also stated that data on lien status for purchased loans would facilitate monitoring of the activities of subprime lenders that purchase loans which may be unfairly priced, and for which little data are available.

The final rule requires lenders to report lien status on applications and originations, but not on purchased loans. Conforming changes have been made to the HMDA/LAR and the HMDA/LAR Code Sheet in Appendix A. Lien status on loan originations will help the public and the agencies interpret the pricing information. Collecting lien status on loan originations will enable data users to differentiate between secured and unsecured home improvement loans, and will facilitate fair lending data analysis.

Lien status for applications that do not result in originations is also important information in the analysis of acceptance and denial ratios for borrowers of different races. Disparities by race or ethnicity in acceptance and denial ratios that initially suggest unlawful discrimination are often explained by differences in the lien status of the loan for which application was made, but only after significant effort is expended to retrieve information on lien status from individual loan files.

Lenders are required to report the lien status according to the best information readily available to them at the time final action is taken on an application. A comment has been added to the staff commentary, clarifying that Regulation C does not require lenders to conduct title searches solely for HMDA reporting purposes. Lenders may rely on the title search they routinely require for home purchase loans; lenders may also rely on other information readily available to them and that they reasonably believe to be accurate, such as the applicant's credit report or the applicant's statement on the application. For example, a lender would report a loan origination as secured by a subordinate lien if the application states that there is a mortgage on the property (and the mortgage will not be paid off as part of the transaction). If the same application did not result in an origination—for example, because the application is denied or withdrawn—the lender would report the application as an application for a subordinate-lien loan.

The final rule does not require lenders to collect and report lien status for loans that they purchase. Pricing information is not required for purchased loans, nor is information on ethnicity, race, and sex. Thus, the utility of lien-status data on purchased loans would be limited and would not justify the additional reporting burden.

Appendix A to Part 203—Form and Instructions for Completion of HMDA Loan/Application Register

In the final rules, the instructions for completing the HMDA/LAR provide three codes for indicating whether a loan or application relates to a preapproval request as defined in § 203.2(b). Codes 1 and 2 indicate whether a preapproval for a home purchase loan was requested. Because only preapprovals for home purchase loans are covered under the final rule, lenders use code 3, "not applicable," for refinancings and home improvement loans and applications and for purchased loans of any type. Commenters asked what code should be used for home purchase applications and loans if a lender does not have a preapproval program as defined in § 203.2(b). Appendix A has been changed to clarify that code 3 should be used for home purchase loans and applications if the lender does not offer covered preapprovals.

Instructions for calculating the rate spread and for reporting lien status have been added to Appendix A, as discussed above under §§ 203.4(a)(12) and (14). The HMDA/LAR and the HMDA/LAR Code Sheet have been modified to reflect the requirement in § 203.4(a)(14) to report lien status. Appendix A has also been modified to reflect the revised rules regarding collection of ethnicity, race, and sex in applications taken by telephone, discussed under Appendix B below.

Appendix B to Part 203—Form and Instructions for Data Collection on Ethnicity, Race, and Sex

The Board proposed to conform the telephone application rule regarding ethnicity, race, and sex to the rule applicable to mail and Internet applications. There has been a substantial decline in response rates regarding race and ethnicity. From 1993 to 2000, the proportion of home mortgage 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 have increased in a similar fashion.) At least part of this decline may be explained by an apparent increase in lenders' use of the telephone to take applications. The Board solicited comment on the benefits and burdens of this proposal.

Commenters were divided on whether lenders should be required to ask for ethnicity, race, and sex in telephone applications. Community groups, researchers, and state, local, and tribal officials urged the Board to require lenders to ask for such information on telephone applications. Many of these commenters pointed out that without the information, fair lending analyses based on HMDA data are less effective. These commenters also believe that the number of applications taken by telephone will continue to grow and, thus, that the rate of applications and loans missing information about ethnicity, race, and sex will increase as well. Some industry commenters supported the proposal, stating that it was simpler to have one rule on collection of ethnicity, race, and sex that applies regardless of the manner in which an application is taken.

On the other hand, many other industry commenters opposed the proposal because they believe that applicants will resent the intrusion into an area they regard as confidential or sensitive. Some commenters believe that applicants will fear discrimination, and will not pursue an application, will refuse to supply the information, or will supply incorrect information. Still others said that requiring lenders to ask for information about ethnicity, race, and sex would raise the cost of taking telephone applications. A few commenters asked the Board to provide a script for requesting the information in telephone applications.

The final rule requires lenders to ask for applicants' ethnicity, race, and sex in telephone applications. This amendment will serve the fair lending enforcement purpose of HMDA by improving the data obtained on ethnicity, race, and sex; the Board believes this benefit outweighs the costs of compliance.

The Board is making the amended rule applicable as of January 1, 2003, through a rule published elsewhere in today's Federal Register. Although for at least some lenders the cost of implementing the telephone rule in 2003 may be somewhat greater than the cost of implementing it in 2004, the Board believes that the cost difference is justified by the need to try to stem the increasing rate of missing data.

The final rule conforms the procedures for requesting applicant information in telephone applications to those for applications taken by mail or on the Internet. Generally, loan applicants must be advised that requesting information about ethnicity, race, and sex is mandated by the federal government to assist in the enforcement of fair lending laws. In addition, applicants must be advised that the lenders are prohibited from discriminating on the basis of the information provided, or on the basis of the applicant's choosing to provide or not provide the information.

For applications taken beginning January 1, 2003, lenders are required to ask telephone applicants for monitoring information using the national origin or race categories in the current Appendices A and B, as set forth in a notice published elsewhere in today's Federal Register. For applications taken by telephone on or after January 1, 2004, lenders are required to ask for monitoring information using the ethnicity and race categories in revised Appendices A and B.

III. 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 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 for the Federal Reserve's information collection under Regulation C.

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 antidiscrimination statutes.

The respondents are all financial institutions, depositories and non-depositories, that meet the tests for coverage under the regulation. Depository institutions with offices in metropolitan areas whose assets are below an asset size threshold (currently $32 million) that adjusts yearly 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 has three principal elements. In January 2002, the Board approved several amendments to Regulation C, including one that requires lenders to report the spread between the APR on a loan and the yield on Treasury securities of comparable maturity when the spread exceeds a certain threshold. The final rule sets the reporting threshold (which depends on lien status) at the level proposed by the Board in January 2002. The final rule also adds a field to the HMDA/LAR for lien status, which must be reported for loans and applications, but not for purchased loans. Finally, the final rule requires lenders to ask telephone applicants their ethnicity, race, and sex. The public comments on these issues are summarized above in the Supplementary Information.

When the Board adopted the January 2002 amendments, it estimated the annual burden for the information collection as varying from 12 to 12,000 hours, averaging 242 hours for state member banks and 192 hours for mortgage banking subsidiaries and other respondents. (These estimates were based on the number of HMDA data submissions by Federal Reserve supervised respondents that were required to report calendar year 2000 data in March 2001.) Two items in the present amendments will increase the annual burden: the requirement to report lien status and the requirement to ask telephone applicants their ethnicity, race, and sex. The Board estimates that the addition of these two items will increase the burden by 7 percent. Accordingly, the Board estimates that the annual burden for the information collection varies from 13 to 12,840 hours per institution, averaging 260 hours for state member banks and 200 hours for mortgage banking subsidiaries and other respondents. Therefore, the annual burden of the information collection under Regulation C is estimated to be approximately 155,000 total annual hours for Federal Reserve supervised respondents.

The present rule changes will also cause respondents to incur a modest programming cost in addition to the programming cost associated with the January 2002 amendments. In particular, institutions will have to program their systems to add a new field to the HMDA/LAR for lien status; and institutions that do not now collect ethnicity, race, and sex on telephone applications may have to reprogram their systems to enable such collection. The Board believes that these additional costs will fit within the broad cost ranges the Board estimated applied to the January 2002 amendments. For convenience, those ranges are reproduced here: 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; and institutions that use mainframe systems (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, it is estimated that the average covered financial institution will incur a total cost from the January 2002 amendments and the present amendments of approximately \$17,500.

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 and regulation require be redacted (loan number, date the application is received, and the date the action is taken) are 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 its 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.

IV. 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 analysis of these revisions. 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 and enhance consumer protection.

The Board received no comments specifically responding to the initial regulatory analysis published in conjunction with the proposed rule. As discussed in Sections I and II, however, some comments the Board received discussed the burden arising from particular aspects of the proposed rule. Such comments are summarized throughout Sections I and II, as are the Board's responses. Section II also discusses alternative measures the Board considered.

The changes under the final rule require more data on certain covered transactions. Some of the changes will affect all institutions currently within the scope of the regulation, including covered small institutions; others will affect only certain institutions, depending upon the interest rates and fees they charge and on whether they take applications by telephone.

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 Community Reinvestment Act 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 improve local governments' ability to use HMDA data to help guide local investments. More complete data about applicant characteristics in telephone applications will improve fair lending analysis.

Although the final rule offers 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. The Board believes the benefits outweigh these added costs.

List of Subjects in 12 CFR Part 203

Banks, Banking, 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)

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

Authority: 12 U.S.C. §§ 2801-2810

2. Section 203.4 is amended by:

a. Revising paragraph (a)(12); and

b. Adding a new paragraph (a)(14).

§ 203.4 Compilation of loan data.

(a) <u>Data format and itemization</u>. * * *

(12) For originated loans subject to Regulation Z, 12 CFR part 226, the difference between the loan's annual percentage rate (APR) and the yield on Treasury securities having comparable periods of maturity, if that difference is equal to or greater than 3 percentage points for loans secured by a first lien on a dwelling, or equal to or greater than 5 percentage points for loans secured by a subordinate lien on a dwelling. The lender shall use the yield on Treasury securities as of the 15th day of the preceding month if the rate is set between the 1st and the 14th day of the month and as of the 15th day of the current month if the rate is set on or after the 15th day, as prescribed in Appendix A.

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

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3. Appendix A is amended by:

a. Revising Paragraph I.A.8.;

b. Revising Paragraph I.D.2.;

c. Revising Paragraph I.G.1.;

d. Redesignating Paragraph I.G.2. as Paragraph I.G.3. and adding a new Paragraph I.G.2.;

e. Adding a new Paragraph I.H.;

f. Revising the Loan/Application Register; and

g. Revising the Loan/Application Register Code Sheet.

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

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I. INSTRUCTIONS FOR COMPLETION OF LOAN/APPLICATION REGISTER.

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A. Application or Loan Information.

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8. Request for Preapproval of a Home Purchase Loan

Indicate whether the application or loan involved a request for a preapproval of a home purchase loan by entering the applicable code from the following:

Code 1—Preapproval requested
Code 2—Preapproval not requested
Code 3—Not applicable

a. Enter code 2 if your institution has a covered preapproval program but the applicant does not request a preapproval.

b. Enter code 3 if your institution does not have a preapproval program as defined in § 203.2(b).

c. Enter code 3 for applications or loans for home improvement or refinancing, and for purchased loans.

* * * * *

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

* * * * *

2. Mail, Internet, or Telephone Applications. All loan applications, including applications taken by mail, Internet, or telephone must use a collection form similar to that shown in Appendix B regarding ethnicity, race, and sex. For applications taken by telephone, the information in the collection form must be stated orally by the lender, except for information that pertains uniquely to applications taken in writing. If the applicant does not provide these data in an application taken by mail or telephone or on the Internet, enter the code for "information not provided by applicant in mail, Internet, or telephone application" specified in paragraphs I.D.3., 4., and 5. below. (See Appendix

B for complete information on the collection of these data in mail, Internet, or telephone applications.)

* * * * *

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 spread between the annual percentage rate (APR) and the applicable Treasury yield if the spread 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, (1) use the Treasury yield for securities of a comparable period of maturity as of the 15th day of a given month, depending on when the interest rate was set, and (2) use the APR for the loan, as calculated and disclosed to the consumer under §§ 226.6 or 226.18 of Regulation Z (12 CFR part 226). Use the 15th day of a given month for any loan on which the interest rate was set on or after that 15th day through the 14th day of the next month. (For example, if the rate is set on September 17, 2004, use the Treasury yield as of September 15, 2004; if the interest rate is set on September 3, 2004, use the Treasury yield as of August 15, 2004). To determine the applicable Treasury security yield, the financial institution must use the table published on the FFIEC's web site (http://www.ffiec.gov/hmda) entitled "Treasury Securities of Comparable Maturity under Regulation C."

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

c. Enter "NA" in the case of an application that does not result in a loan origination.

d. Enter the rate spread to two decimal places, and use a leading zero. For example, enter 03.29. If the difference between the APR and the Treasury yield is a figure with more than two decimal places, round the figure or truncate the digits beyond two decimal places.

e. If the difference between the APR and the Treasury yield is less than 3 percentage points for a first-lien loan and less than 5 percentage points for a subordinate-lien loan, enter "NA."

2. Date the interest rate was set. The relevant date to use to determine the Treasury yield is the date on which the loan's interest rate was set by the financial institution for the final time before closing. If an interest rate is set pursuant to a "lock-in" agreement between the lender and the borrower, then the date on which the agreement fixes the interest rate is the date the rate was set. If a rate is re-set after a lock-in

agreement is executed (for example, because the borrower exercises a float-down option or the agreement expires), then the relevant date is the date the rate is re-set for the final time before closing. If no lock-in agreement is executed, then the relevant date is the date on which the institution sets the rate for the final time before closing.

* * * * *

H. Lien Status. Use the following codes for loans that you originate and for applications that do not result in an origination:

Code 1—Secured by a first lien.
Code 2—Secured by a subordinate lien.
Code 3—Not secured by a lien.
Code 4—Not applicable (purchased loan).

a. Use Codes 1 through 3 for loans that you originate, as well as for applications that do not result in an origination (applications that are approved but not accepted, denied, withdrawn, or closed for incompleteness).

b. Use Code 4 for loans that you purchase.

* * * * *

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	01/15/2004	1	1	1	1	65	1	1	02/22/2004	8840	51	059	4219.85	2	5	35	8	1	5	24	7		NA.	2	1
Example of Preapproval Request Denied 5678904321-1234098765	06/01/2004	1	1	1	1	125	1	7	06/20/2004	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	03/20/2004	1	1	1	1	50	1	3	04/30/2004	0450	01	015	0021.00	1	1	5	3	2	1	30	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 loans 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 financial 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, Internet, 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, Internet, 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, Internet, 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 (only for applications and originations):
- 1—Secured by a first lien
- 2—Secured by a subordinate lien
- 3—Not secured by a lien
- 4—Not applicable (purchased loans)

4. Appendix B is amended by revising Paragraph II.A to read as follows:

APPENDIX B TO PART 203—FORM AND INSTRUCTIONS FOR DATA COLLECTION ON ETHNICITY, RACE, AND SEX

* * * * *

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, by mail or telephone, or on the Internet. For applications taken by telephone, the information in the collection form must be stated orally by the lender, except for that information which pertains uniquely to applications taken in writing.

* * * * *

5. In Supplement I to Part 203:

a. Under <u>Section 203.2—Definitions</u>, a new heading <u>2(i) Manufactured Home</u> and a new paragraph 1 are added.

b. Under <u>Section 203.4—Compilation of Loan Data</u>, under <u>Paragraph 203.4(a)(12)</u>, paragraph 1 is revised; and a new heading <u>Paragraph 4(a)(14)</u> and a new paragraph 1 are added.

SUPPLEMENT I TO PART 203—STAFF COMMENTARY

* * * * *

Section 203.2—Definitions

* * * * *

<u>Paragraph 2(i) Manufactured Home</u>

1. <u>Definition of a manufactured home</u>. The definition in § 203.2(i) refers to the federal building code for factory-built housing established by the Department of Housing and Urban Development (HUD). The HUD code requires generally that housing be essentially ready for occupancy upon leaving the factory and being transported to a building site. Modular homes that meet all of the HUD code standards are included in the definition because they are ready for occupancy upon leaving the factory. Other factory-built homes, such as panelized and pre-cut homes, generally do not meet the HUD code because they require a significant amount of construction on site before they are ready for occupancy. Loans and applications relating to manufactured homes that do not meet the HUD code should not be identified as manufactured housing under HMDA.

* * * * *

Section 203.4—Compilation of Loan Data

4(a) Data Format and Itemization * * *

Paragraph 4(a)(12) Rate spread information

1. Treasury securities of comparable maturity. To determine the yield on a Treasury security, lenders must use the table entitled “Treasury Securities of Comparable Maturity under Regulation C,” which will be published on the FFIEC’s web site (http://www.ffiec.gov/hmda) and made available in paper form upon request. This table will provide, for the 15th day of each month, Treasury security yields for every available loan maturity. The applicable Treasury yield date will depend on the date on which the financial institution set the interest rate on the loan for the final time before closing. See Appendix A, Paragraphs I.G.1. and 2.

* * * * *

Paragraph 4(a)(14) Lien status

1. Determining lien status for applications and loans originated. Lenders are required to report lien status for loans they originate and applications that do not result in originations. Lien status is determined by reference to the best information readily available to the lender at the time final action is taken and to the lender’s own procedures. Thus, lenders may rely on the title search they routinely perform as part of their underwriting procedures—for example, for home purchase loans. Regulation C does not require lenders to perform title searches solely to comply with HMDA reporting requirements. Lenders may rely on other information that is readily available to them at the time final action is taken and that they reasonably believe is accurate, such as the applicant’s statement on the application or the applicant’s credit report. For example, where the applicant indicates on the application that there is a mortgage on the property or where the applicant’s credit report shows that the applicant has a mortgage—and that mortgage is not going to be paid off as part of the transaction—the lender may assume that the loan it originates is secured by a subordinate lien. If the same application did not result in an origination—for example, because the application is denied or withdrawn—the lender would report the application as an application for a subordinate-lien loan.

Lenders may also consider their established procedures when determining lien status for applications that do not result in originations. For example, a consumer applies to a lender to refinance a $100,000 first mortgage; the consumer also has a home equity line of credit for $20,000. If the lender’s practice in such a case is to ensure that it will have first-lien position—through a subordination agreement with the holder of the mortgage on the home equity line—then the lender should report the application as an application for a first-lien loan.

* * * * *

By order of the Board of Governors of the Federal Reserve System, June 21, 2002.

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