



# Compliance Corner

FEDERAL RESERVE BANK OF PHILADELPHIA

Prepared for institutions supervised by the Consumer Compliance & CRA Unit

## HMDA Reporting: Will Your Financial Institution Get It Right in 2003 and 2004?

by Eddie L. Valentine, Supervising Examiner

The *Home Mortgage Disclosure Act* (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 Federal Reserve Board's Regulation C implements HMDA.<sup>1</sup>

In January 2002, after a comprehensive review of the regulation, the Federal Reserve Board approved amendments to Regulation C.<sup>2</sup> The approved regulatory changes are intended to improve the quality, consistency, and usefulness of HMDA data.

The new rules were originally intended to become effective on January 1, 2003. However, the Board received a considerable number of letters from financial institutions and major trade associations indicating that the 2003 effective date did not allow adequate time to prepare computer systems and provide training on the new reporting requirements. After considering the feedback, the Board agreed to delay the effective date of the vast majority of the new requirements until January 1, 2004. Despite the delay of the effective date for most changes, the Federal Reserve Board did immediately adopt two amendments to Regulation C, which became effective on January 1, 2003.

### Amendment effective January 1, 2003 for data collected in 2003

*Effective January 1, 2003, lenders are required to request information about race, national origin, and sex for applications taken entirely by telephone.*

This amendment was adopted immediately to reduce the risk of further increases in the rate of missing data on race, national origin, and sex.

<sup>1</sup> The complete Regulation C is available on the Board of Governors web site at <[www.federalreserve.gov/regulations/regref.htm#c](http://www.federalreserve.gov/regulations/regref.htm#c)>.

<sup>2</sup> The press release and final rule are available on the Board of Governors web site at <[www.federalreserve.gov/boarddocs/press/boardacts/2002/20020123/default.htm](http://www.federalreserve.gov/boarddocs/press/boardacts/2002/20020123/default.htm)>.

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However, unlike face-to-face applications, a lender is not required to identify the race, national origin, or sex of a caller who declines to provide that information.

#### **Amendment effective January 1, 2003 for data reported March 1, 2004**

*HMDA data collected in 2003 and reported March 1, 2004 must include 2000 census data.*

Throughout the decade of the 1990s, changes occurred in metropolitan populations and other characteristics for given census tracts, rendering the 1990 census data obsolete. The Federal Reserve Board determined that use of the 2000 census tracts and demographics would produce substantially more accurate and useful HMDA disclosure statements and aggregate reports. In addition, the updated information will enhance evaluations under the *Community Reinvestment Act* and fair lending examinations by more accurately identifying demographic data and lending patterns.

#### **Amendments effective January 1, 2004 for data reported March 1, 2005**

*HMDA data collections in 2004 will be subject to several changes, including disclosure of pricing data on higher cost loans, expansion of the number of non-depository institutions subject to reporting, and revisions to certain definitions to provide for more uniformity of reporting. Specific amendment mandates are as follows.*

- Sets thresholds for determining the loans for which financial institutions must report pricing data. Institutions will be required to report the rate spread (be-

tween the annual percentage rate on the loan and the yield on comparable Treasury securities) if the spread equals or exceeds three percentage points for first-lien loans and five percentage points for subordinate-lien loans.

- Requires lenders to identify loans subject to the *Home Ownership and Equity Protection Act* (HOEPA).
- Confirms the categories for reporting race and ethnicity to government-wide standards established by the Office of Management and Budget. Consistent with those standards, applicants are allowed to record more than one race, and lenders must use the revised race and ethnicity categories when they ask applicants for monitoring information.
- Requires lenders to report denials of applications for credit received through certain pre-approval programs and identify originated loans initiated through pre-approval programs.
- Requires lenders to ask for applicants' ethnicity (a new category), race (with expanded codes), and sex for all applications, including telephone applications.
- Permits, but does not require, lenders to report requests for pre-approval that were approved but that were not pursued by the applicants.
- Expands non-depository lender coverage to include non-deposi-

tory lenders originating more than \$25 million of mortgage loans annually. The final rule retains the existing 10 percent of total loan volume test.

- Modifies the definitions of "refinancing" and "home improvement loan" to generate more consistent, accurate, and useful data.
- Requires lenders to report whether the loan or application involves a manufactured home.
- Requires lenders to report the lien status of applications and originated loans.

#### **Conclusion**

The information contained in this article is designed to provide guidance and information on the new reporting requirements of the *Home Mortgage Disclosure Act* as implemented by the Federal Reserve Board's Regulation C. It is projected that the publication *A Guide to HMDA Reporting: Getting It Right* will be revised by year-end 2003 to incorporate the changes that will become effective January 1, 2004.<sup>3</sup> Furthermore, a web-based application similar to *A Guide to CRA Data Collection and Reporting* is in the development stage.<sup>4</sup>

The Federal Reserve Bank of Philadelphia is planning to conduct workshops on the changes to

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<sup>3</sup> The current edition of *A Guide to HMDA Reporting: Getting it Right* is available on the FFIEC's web site at <[www.ffiec.gov/hmda/guide.htm](http://www.ffiec.gov/hmda/guide.htm)>.

<sup>4</sup> *A Guide to CRA Data Collection and Reporting* is available on the FFIEC's web site at <[www.ffiec.gov/cra/pdf/cra\\_guide.pdf](http://www.ffiec.gov/cra/pdf/cra_guide.pdf)>.

Regulation C during the third quarter of 2003. Information regarding these workshops will be mailed to financial institutions in the near future. If you have any

questions regarding the amendments to HMDA and the Board's Regulation C, please contact Eddie L. Valentine, Supervising Examiner (eddie.valentine@phil.frb.org)

at (215) 574-3436 or Connie Wallgren, Consumer Compliance/CRA Examinations Unit Manager (connie.wallgren@phil.frb.org) at (215) 574-6217. ■

## HMDA Reporting Transition Rules

On March 3, 2003, the Board of Governors published proposed transition rules for HMDA reporting of applications received before January 1, 2004 on which final action is or would be taken on or after January 1, 2004. The press release and proposal are available on the Board of Governors web site at <[www.federalreserve.gov/boarddocs/press/bcreg/2003/20030303/default.htm](http://www.federalreserve.gov/boarddocs/press/bcreg/2003/20030303/default.htm)>.

The Board is reviewing comments received on the proposal and will issue transition rules shortly.

## Soldiers' and Sailors' Civil Relief Act of 1940

The *Soldiers' and Sailors' Civil Relief Act of 1940* (SSCRA, or the Act) (50 USC 501) is a reenactment of a statute originally passed in 1918. The intent of the Act is to provide protection for individuals entering or called to active duty in the military service. The Act is designed to:

- Enable service members to fight a war without having to worry about problems that might arise at home, and
- Help service members honor pre-service debts, since military income tends to be less than pre-service income.

All members of the Army, Navy, Marine Corps, Air Force, and Coast Guard on active duty and all officers of the Public Health Services autho-

rized for active duty with either the Army or Navy are covered under the Act. The Act also covers members of the Army and Air National Guard and U.S. military reserves called to active duty, as well as commissioned officers of the National Oceanic and Atmospheric Administration on active duty.

The SSCRA covers such issues as rental agreements, security deposits, prepaid rent, eviction, installment contracts, credit card interest rates, mortgage interest rates, mortgage foreclosure, civil judicial proceedings, and income tax payments. The following summarizes the relief provisions that might affect financial institutions.

**Interest Rates.** Under the SSCRA,

service members can cap the interest rates on all obligations that were entered into before beginning active duty at 6 percent. Obligations include credit cards, mortgages, and non-federally guaranteed student loans. In order to invoke the 6 percent cap, military members must write the lender requesting relief and provide a copy of current military orders. In addition, service members must demonstrate that active duty materially affects their ability to pay. The cap is lifted a short time after active duty ends and the rate reverts to the rate in effect prior to the cap.

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# Regulation Z Update: Recent Commentary Revisions and Review of Public Comments

by Robert W. Snarr, Jr., Supervising Examiner

On November 26, 2002, the Board of Governors of the Federal Reserve System (the Board) published for comment proposed changes to the Official Staff Commentary to Regulation Z, which implements the *Truth in Lending Act*.<sup>1,2</sup> The proposed revisions discussed the status of certain credit card-related fees and the rules for replacing an accepted credit card with one or more cards. The proposed revisions also discussed the disclosure of private mortgage insurance premiums and the selection of Treasury security yields for determining whether a mortgage loan is covered by provisions in Regulation Z that implement the *Home Ownership and Equity Protection Act* (HOEPA). In addition, the Board requested comment on so-called “bounce protection” or overdraft courtesy services.

On March 28, 2003, the Board issued final revisions to the Official Staff Commentary, based on its review and

analysis of the comments received.<sup>3</sup> The revisions, which became effective April 1, 2003 and become mandatory on October 1, 2003, addressed both open-end and closed-end credit.

## Open-End Commentary Final Revisions

The primary revisions to the Official Staff Commentary related to open-end credit address the disclosure of fees to expedite a credit card payment or delivery of a credit card under §226.6(b).

**Expedited Credit Card Payment.** As noted in the Board’s March 28, 2003 press release, credit card issuers have increasingly offered expedited payment services to card holders as an alternative to mailing a credit card payment that might not reach the card issuer by the due date. Under such arrangements, cardholders request expedited payment service, usually by telephone or through other electronic means, for a fee or a charge that is less than the late payment fee imposed by the credit card issuer.

The Board has decided that fees imposed for expedited payment services are not finance charges or “other

charges” under the *Truth In Lending Act* and Regulation Z because the cardholder or consumer has a reasonable means for making payment without paying a fee to the creditor. Nevertheless, the Board has said that creditors should continue the current industry practice of informing consumers of the amount of the charge at the time the service is requested. Also, creditors should be aware that §226.7 of Regulation Z stipulates that when a fee for expedited payment is imposed and charged to the credit account, creditors must show the cost or amount of the fee on the periodic statement for the billing cycle.

**Expedited Credit Card Delivery.** In addition to fees imposed for expedited payments, card issuers may impose a fee for expedited delivery of a credit card upon request by a consumer. Such a request is usually made when a consumer seeks to replace a lost or stolen credit card in a more expedient manner. The Board’s final revisions to the Commentary reflect the view that a fee imposed for the expedited delivery of a credit card, at the consumer’s request, is not incidental to the extension of credit and thus is not a finance charge. In addition, the Board has said that the fee does not appear to be an “other charge” for purposes of Regulation Z.

## Closed-End Commentary Final Revisions

The primary revisions to the Official

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<sup>1</sup> The complete Official Staff Commentary to Regulation Z is available on the Board of Governors web site at <[www.federalreserve.gov/regulations/regref.htm#z](http://www.federalreserve.gov/regulations/regref.htm#z)>.

<sup>2</sup> The press release and request for comment are available on the Board of Governors web site at <[www.federalreserve.gov/boarddocs/press/bcreg/2002/20021126/default.htm](http://www.federalreserve.gov/boarddocs/press/bcreg/2002/20021126/default.htm)>.

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<sup>3</sup> The press release and final rules are available on the Board of Governors web site at <[www.federalreserve.gov/boarddocs/press/bcreg/2003/20030328/default.htm](http://www.federalreserve.gov/boarddocs/press/bcreg/2003/20030328/default.htm)>.

Staff Commentary related to closed-end credit address the inclusion of private mortgage insurance premiums in the payment schedule disclosure and the selection of the appropriate Treasury yield when determining if a mortgage loan is covered by the *Home Ownership and Equity Protection Act* (HOEPA).

**Private Mortgage Insurance Premiums.** Under the *Homeowners Protection Act of 1998*, private mortgage insurance, which protects a creditor against a consumer's default, must generally terminate before the term of a loan expires. The Board's revisions to the Official Staff Commentary to §226.18(g) provide additional guidance on how mortgage premiums should be disclosed on a payment schedule on a Truth In Lending disclosure when some premiums are collected and escrowed at the time the loan is closed. In particular, consistent with the requirement of Regulation Z that a disclosed payment schedule be based on a borrower's legal obligation, the revised Commentary provides an example to facilitate compliance. Also, the text of the revised Commentary was modified to clarify that the revisions in no way affect a creditor's compliance with aggregate accounting rules under the *Real Estate Settlement Procedures Act* (RESPA).

**Treasury Yields and HOEPA.** The *Home Ownership and Equity Protection Act* (HOEPA) requires additional disclosures and provides substantial protections for consumers who receive comparatively high-priced loans secured by their home. HOEPA disclosures apply if the annual percentage rate of the loan exceeds the yield on U.S. Treasury securities with a comparable maturity by a specified num-

ber of percentage points—eight percentage points for first-lien loans and ten percentage points for subordinate-lien loans.

To ensure uniform application of HOEPA, the Board clarified that all creditors must use the constant maturity yields published daily in the Board's *Selected Interest Rates* (statistical release H-15) as the basis for the rate-based trigger calculations.<sup>4</sup> The Board also clarified that creditors should compare the APR on loans of 20 or more years with the yield reported on the H-15 for a 20-year constant maturity. In addition, the final revisions clarify that, for purposes of determining a loan's maturity under HOEPA's rate-based trigger, creditors may rely on rules in §226.17(c)(4). Under this section, creditors may ignore the effect of first payment periods that are slightly longer or shorter than other scheduled payment periods.

#### **Areas Requiring Additional Review**

The Board received many comments from consumer groups and financial institutions in two areas—replacement of accepted credit cards and overdraft courtesy programs. Based on the comments, the Board plans to further study these areas before issuing additional guidance.

#### **Replacing an Accepted Credit Card.**

As a result of recent technological advances, some card issuers now seek

to issue credit cards in different sizes and formats. For example, card issuers may issue a physically smaller credit card designed to attach to a personal key chain in addition to a full-size card that may be issued for the same credit card account. However, the two differently sized cards are not interchangeable, since it is the merchant's actual card reading apparatus that determines whether or not a consumer can use a full-size or special-size card. Accordingly, some card issuers have requested guidance on issuing new cards that are intended to supplement but not necessarily replace a full-size or existing card.

Generally, with the issuance of a credit card of any type, card issuers send inactivated cards and employ security procedures requiring the consumer to verify receipt of the card. However, some consumer groups have opposed the unsolicited issuance of more than one card on an existing account (unless renewal or substitution is involved) without more stringent notification and security requirements.

Based on the substance and extent of comments received regarding the issuance of credit cards, Board staff plans to recommend that the Board consider amending §226.12(a) to allow the unsolicited issuance of additional cards on an existing account outside of renewal or substitution under certain conditions.

#### **Overdraft Courtesy Programs.**

The Board received approximately 300 comment letters in response to its request for public comment on the design, operation, and implementation of overdraft courtesy programs or overdraft privilege programs. The comment letters described overdraft

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<sup>4</sup> The H-15 is available on the Board of Governors web site at <[www.federalreserve.gov/releases/h15/update/](http://www.federalreserve.gov/releases/h15/update/)>.

programs that vary in design and structure between vendors and implementation programs that appear to vary among financial institutions.<sup>5</sup> Board staff is continuing to gather information on these services and will determine at a later date whether addi-

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<sup>5</sup>For additional information on overdraft privilege programs, see "Overdraft Privilege Programs: What Financial Institutions Should Be Aware Of" in the First Quarter 2003 issue of *Compliance Corner* at <[www.phil.frb.org/src/srcinsights/srcinsights/q1cc2\\_03.html](http://www.phil.frb.org/src/srcinsights/srcinsights/q1cc2_03.html)>.

tional guidance for financial institutions is warranted under Regulation Z or other laws.

Please contact Robert Snarr ([robert.snarr@phil.frb.org](mailto:robert.snarr@phil.frb.org)) at (215) 574-3460 or John Fields ([john.fields@phil.frb.org](mailto:john.fields@phil.frb.org)) at (215) 574-6044 with any questions regarding the final revisions to the Board's Official Staff Commentary to Regulation Z, or questions or comments regarding overdraft courtesy programs. ■

## Soldiers' and Sailors' Civil Relief Act of 1940 continued from page CC3



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**Mortgages.** A lender may not foreclose on a mortgage if the obligation originated prior to entry into active duty and the service member's ability to pay is materially affected by military service.

**Installment Loans.** A lender may not exercise any right or option under the contract to terminate an installment contract to purchase real or personal property or to assume possession of the property for nonpayment, if the obligation originated prior to entry into active duty and the service member's ability to pay is materially affected by military service.

**Leases.** A service member may terminate without penalty a lease for property occupied. The property

must have been used for dwelling, professional, business, or agricultural purposes. The service member must have entered into the lease before he or she started active duty. To terminate the lease, the member must provide written notice to the landlord after called to active duty.

Contrary to what many people believe, there are no provisions for re-employment rights as part of the SSCRA. Reemployment rights are contained within separate legislation, *The Uniformed Services Employment and Reemployment Rights Act of 1994* (USERRA).

Additional information on the SSCRA can be found at <[usmilitary.about.com/cs/sscra/](http://usmilitary.about.com/cs/sscra/)>. ■