

## **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:** Proposed rule.

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**SUMMARY:** The Board is proposing amendments to Regulation C (Home Mortgage Disclosure). This proposal relates to a final rule amending the regulation, published elsewhere in today's Federal Register. The issues on which the Board seeks public comment are (1) the appropriate price 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); (2) whether the lien status of a loan should be reported; and (3) whether lenders should be required to ask telephone applicants their ethnicity, race, and sex.

**DATE:** Comments must be received by April 12, 2002.

**ADDRESSES:** Comments should refer to Docket No. R-1120 and be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov), or faxing them to the Office of the Secretary at 202-452-3819 or 202-452-3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, N.W. Members of the public may inspect comments in Room MP-500 between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

**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) requires certain depository and for-profit nondepository institutions to collect, report, and publicly disclose data about originations and purchases of home mortgage and home improvement loans. Institutions must also report data about applications that do not result in originations. The Board's Regulation C implements HMDA.

The Board began a review of Regulation C in March 1998 by publishing an Advance Notice of Proposed Rulemaking (63 Fed. Reg. 12329, March 12, 1998). In December 2000, the Board published for public comment a proposed rule to amend Regulation C (65 Fed. Reg. 78656, December 15, 2000). After analyzing the comments on the proposal, the Board has adopted a final rule amending the regulation, published elsewhere in today's Federal Register. The Board is soliciting additional public comment on certain matters.

### **II. Solicitation of Comment and Proposed Amendments**

#### Thresholds for Reporting Loan Pricing Data

In the final rule amending Regulation C published elsewhere in today's Federal Register, the Board adopted a requirement that institutions report the spread between the annual percentage rate (APR) of a loan and the yield on Treasury securities of comparable maturity, for loan originations in which the spread exceeds a specified threshold.

In its notice regarding the final rule, the Board proposed a reporting threshold 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). The thresholds are intended to ensure, to the extent possible, that pricing data for higher cost loans are collected and disclosed. The Board is soliciting comment on the appropriate thresholds before it finalizes them. Information on the following specific issues and questions would be particularly useful to the Board.

The APR spread is determined by the difference between the APR on the loan as of the origination date and the yield on the Treasury note of comparable maturity as of the 15<sup>th</sup> day of the month preceding the month in which the application for the loan was received. See 12 CFR § 203.4(a)(12). This is the rule used for determining HOEPA coverage. Are there more appropriate dates for determining the APR spread?

Comments are requested on 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. Commenters also are asked to identify 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?

There is a 2 percentage point difference between the proposed thresholds for first and junior lien loans. The Board seeks comment on the appropriate difference.

The Board intends to finalize the thresholds for reporting loan pricing information by mid-year 2002.

### Lien Status

The Board solicited comment in its December 2000 proposal on all aspects of the proposed changes and on any other issues that might warrant further review. A number of commenters recommended that the Board require lenders to report the lien status and type of interest rate on a loan, along with other items of data. Other commenters, including a federal agency, said that information on lien status would be useful in interpreting other loan information such as the APR.

The Board proposes to require lenders to report lien status for all originated loans and applications, but not for purchased loans. 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. The Board believes lien status would be useful in interpreting the loan pricing data that will be required under the final rule amending Regulation C, as discussed above and in the Board's notice on the final rule. In addition, the reporting of lien status would make the data on home improvement lending more useful, as it would distinguish dwelling-secured from non-dwelling-secured home improvement loans (which are treated differently for HMDA reporting).

The proposal would require institutions 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 solicits comment on these reporting categories. To limit reporting burden, the Board is not proposing to require lien status to be reported for purchased loans. The Board also solicits comment, however, on whether reporting of lien status should be required for purchased loans.

The proposed amendments to Appendix A set forth below do not contain a proposed revision of the HMDA/LAR form or the accompanying Code Sheet. If the Board adopts the proposal, a section will be added to the Code Sheet, showing the same codes for lien status as set forth below in proposed Appendix A, paragraph I.H.; and a column will be added to the HMDA/LAR form for entering the code for lien status.

### Requesting Applicant Information in Telephone Applications

In the December 2000 proposal, the Board proposed to revise Appendix B to Regulation C to codify a longstanding interpretation. Under that interpretation, if an application is made entirely by telephone, the reporting institution is permitted, but not required, to request data on race, ethnicity, and sex. Many commenters expressed concern that this interpretation may have

contributed to declining overall response rates to these questions. From 1993 to 2000, the proportion of home 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 at about the same rate. It is not clear what proportion of this missing information is attributable to telephone applications. Applicants by mail and internet may have declined to provide the information, even though asked, as required, by the lender. At least part of the substantial decline in response rates regarding race and ethnicity, however, may be explained by the apparent increase in lenders' use of the telephone to take applications.

The Board proposes, therefore, to conform the telephone application rule to the rule applicable to mail and internet applications. Under the proposed rule, lenders would be required to request this information from telephone applicants. If an applicant chose not to provide the information, then the lender would enter the existing code indicating that the application was taken by telephone, mail, or internet. Under the prescribed formulation given in Appendix B, loan applicants must be advised that the collection of information about race, ethnicity, 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. The Board solicits comment on the benefits and burdens of this proposal.

### **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 has reviewed the proposed revisions under the authority delegated to the Board by the Office of Management and Budget (OMB). 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 would be 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 anti-discrimination statutes.

The respondents are all types of financial institutions that meet the tests for coverage under the regulation. Depository institutions with offices in metropolitan areas whose assets are below an asset size threshold that adjusts yearly (currently \$32 million) 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.

For a discussion of the current estimated annual burden for this information collection, refer to the Paperwork Reduction Act statement contained in the notice of the final amendments to Regulation C set forth elsewhere in today's Federal Register. That statement also contains estimates of the increases in cost burdens attributable to the Federal Reserve's amendments to Regulation C, including both the final amendments and these proposed amendments. The cost burdens attributable to the proposed amendments are likely small relative to the total increase in burden for all of the amendments. The Federal Reserve solicits comment, however, on the incremental burden associated with (1) various thresholds for determining the loans for which institutions must report loan pricing data; (2) collecting and reporting information on lien status; and (3) requesting ethnicity, race, and sex in telephone applications.

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 regulation requires be redacted (loan number, date application received, and date action taken) are given confidential treatment under exemption 6 of the Freedom of Information Act (5 U.S.C. 552(b)(6)).

The Paperwork Reduction Act requires that the Board solicit comment on: (a) whether the proposed revised collection of information is necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed revised information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and the Office of Management and Budget, Paperwork Reduction Project (7100-0247), Washington, D.C. 20530.

#### **IV. Regulatory Flexibility Analysis**

In accordance with section 3(a) of the Regulatory Flexibility Act (5 USC 604(a)), the Board has prepared a regulatory analysis of the amendments to Regulation C, including the final amendments set forth elsewhere in today's Federal Register and these proposed amendments. 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 proposal is a consequence of Board policy to review its regulations periodically and a desire to update the regulation to reflect mortgage markets more clearly, enhance consumer

protection, and comply with new guidance from the Office of Management and Budget concerning collection of data on ethnicity and race by federal agencies.

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

It is difficult to quantify the benefits and costs associated with the proposed 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 would allow for more precise differentiation among loan products and reduce the potential bias that results when dissimilar loan products are jointly classified. The data would also help inform the public about developments in the mortgage market by revealing pricing information on higher-cost home loans. More complete data about applicant characteristics in telephone applications would improve fair lending analysis.

Although the proposed rule will offer 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.

### **List of Subjects in 12 CFR Part 203**

Banks, Banking, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.

### **Text of Proposed Revisions**

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

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 203 as follows:

### **PART 203 – HOME MORTGAGE DISCLOSURE (REGULATION C)**

1. The authority citation for part 203 would continue to read as follows:  
Authority: 12 U.S.C. 2801-2810

2. Section 203.4 would be amended by adding a new paragraph (a)(14), to read as follows:

**§ 203.4 Compilation of loan data.**

(a) Data format and itemization. \* \* \*

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

\* \* \* \* \*

3. Appendix A would be amended by revising paragraph I.D.2. and adding a new paragraph I.H., to read as follows:

**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.**

\* \* \* \* \*

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

\* \* \* \* \*

2. Mail, Internet, or Telephone Applications. [Any loan applications mailed to applicants or made available to applicants via the internet must contain a collection form similar to that shown in Appendix B regarding ethnicity, race, and sex. For applications taken entirely by telephone, you may, but are not required to, request the data on ethnicity, race, and sex.] <All loan applications, including applications taken by telephone, mail, and internet, 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, as applicable.= 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.)

\* \* \* \* \*

<H. Lien Status. Use the following codes for applications and loans that you originate:

Code 1—Secured by a first lien on a dwelling.

Code 2—Secured by a subordinate lien on a dwelling.  
Code 3—Not secured by a lien on a dwelling.  
Code 4—Not applicable (purchased loan).=

\* \* \* \* \*

4. Appendix B would be 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. [When an application is taken entirely by telephone, you may, but are not required to, ask for this information.]

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By order of the Board of Governors of the Federal Reserve System, February 6, 2002.

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