

(1) What are some mechanisms through which evidence of an application for joint credit can be established?

(2) Should the Board provide guidance to clarify the mechanisms through which an application for joint credit can be evidenced? If not, how can creditors ensure that their practices do not violate the regulation?

#### 6. Business Credit Exemptions

The ECOA authorizes the Board to exempt a class of transactions, or a particular type of transaction within a class, if the Board determines that the application of all or part of the regulation to such transactions would not contribute substantially to effectuating the purposes of the regulation. Pursuant to Section 703 of the ECOA, the Board has exercised its authority to exempt business credit from certain notification and record retention requirements for consumer credit if the business had gross revenues in excess of \$1 million in its preceding fiscal year, or if the business requested an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit.

Amendments to the ECOA contained in the Women's Business Ownership Act of 1988 require the Board to review exemptions after five years to determine whether an additional extension is appropriate. While the exemptions for certain business credit do not affect the basic prohibition against discrimination in credit transactions, the exemptions do reduce burden for creditors by modifying the notice requirements of the regulation under § 202.9(a)(3) and the record retention rules under § 202.12(b)(5). The Board solicits comment on whether these exemptions are still appropriate.

#### 7. Other Issues

The Board solicits comments on any other broad policy issues that should be addressed in the regulation.

By order of the Board of Governors of the Federal Reserve System, March 6, 1998.

**William W. Wiles,**  
Secretary of the Board.

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**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** Pursuant to its Regulatory Planning and Review Program, the Board is undertaking a review of Regulation C (Home Mortgage Disclosure). The purpose of the review is to identify ways in which the Board could revise Regulation C to clarify and simplify the regulatory language; respond to technological and other developments; reduce undue regulatory burden on the industry; delete obsolete provisions; and improve the quality and usefulness of the data. To gather information necessary for this review and to ensure the participation of interested parties, the Board is soliciting comment on several specific issues, while also soliciting comment generally on potential revisions to the regulation.

**DATES:** Comments must be received by May 29, 1998.

**ADDRESSES:** Comments should refer to Docket No. R-1001, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments also may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments received will be available for inspection in Room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.12 of the Board's Rules Regarding Availability of Information.

**FOR FURTHER INFORMATION CONTACT:** Jane Jensen Gell or John C. Wood, Senior Attorneys, or Pamela Morris Blumenthal, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or (202) 452-2412; for the hearing impaired *only*, Diane Jenkins, Telecommunications Device for the Deaf, at (202) 452-3544.

#### SUPPLEMENTARY INFORMATION:

#### I. Background on HMDA and Regulation C

The Home Mortgage Disclosure Act of 1975 (HMDA) (12 U.S.C. 2801 *et seq.*) requires institutions to collect and report data about home purchase and home improvement loans. Institutions must report data for loans originated or purchased, as well as for loan applications that do not result in an origination. Regulation C, which carries out the act, requires institutions to

report information about the application or loan: the application date, the action taken and the date of that action, the loan amount, and the loan type and purpose. Institutions must also report data about applicants or borrowers: their race, sex, and income. Finally, institutions must report the property location and occupancy status, and identify the type of purchaser for loans that they sell.

Institutions report this information to their supervisory agencies on an application-by-application basis using a register format. Institutions must make this register available to the public, with certain fields redacted to preserve applicants' privacy. In addition, the Federal Financial Institutions Examination Council (FFIEC), on behalf of the supervisory agencies, compiles this information and prepares individual disclosure statements for each institution, aggregate reports for all covered institutions in each metropolitan statistical area (MSA), and other reports. Individual disclosure statements are available to the public from each institution, and disclosure statements and aggregate reports are available at central depositories in each MSA.

The purpose of HMDA is threefold. One purpose is to provide the public and government officials with information that will help show whether financial institutions 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 investments to promote private investments in neighborhoods where investment is needed. Finally, the collection and disclosure requirements provide data that assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.

HMDA specifies the data that institutions must collect and report. Because of the volume of information that must be aggregated (in 1996, the data reflected 14.8 million loans and applications) institutions must standardize the data reports and generally submit them to their supervisory agency in a machine-readable form. The Board has imposed few additional items of data collection beyond those in the statute. To facilitate data retrieval, each entry in the institution's HMDA loan/application register (HMDA-LAR) must contain a unique identifier. Each entry must also contain the application date and the action taken date. Institutions must distinguish loans to purchase or improve multifamily dwellings from

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 203

[Regulation C; Docket No. R-1001]

### Home Mortgage Disclosure

**AGENCY:** Board of Governors of the Federal Reserve System.

other home purchase or home improvement loans.

## II. Review of Regulation C

Pursuant to the Board's Regulatory Planning and Review Program, the Board has undertaken a review of Regulation C to determine whether revisions might be made to improve the regulation. The regulation was last reviewed in 1988, when the Board made organizational and technical changes to reduce burden. As discussed below, the Board has identified several possible areas for revision. The Board invites comments on these and any other issues that might warrant review. After evaluating the comments, the Board will publish a proposed rule for public comment.

Concurrently, the Board is also undertaking a review of Regulation B (Equal Credit Opportunity); an advance notice of proposed rulemaking is published elsewhere in today's **Federal Register**.

Comment is specifically solicited on the following issues:

### 1. Reporting Preapprovals

HMDA and Regulation C require lenders to report data regarding applications for mortgage loans that do not result in originations. Under Regulation C, an application is defined as an oral or written request for a home purchase or home improvement loan that is made according to the procedures established by the lender for the type of credit requested. Currently, a creditor that makes a preliminary decision about a potential applicant's creditworthiness before receiving a formal application does not report the decision—whether the decision involves a "prequalification" following a cursory review or involves comprehensive underwriting that could result in an approval subject to the applicant's finding an acceptable property (a "preapproval"). Following a preapproval, home buyers identify the property they wish to purchase and lenders evaluate information relating to the property offered as security for the loan. Preapprovals that lead to an origination are reported on the HMDA-LAR. Currently, requests for preapprovals that result in denials are not reported.

To the extent that reliance on preapprovals becomes standard industry practice, the application data could become less useful for the intended purpose of providing a basis for comparison regarding a creditor's lending decisions. If potential borrowers are denied at the preapproval stage and preapproval decisions are not reported,

the reported denials may not be fully representative of a lender's credit decisions. The Board has been asked to consider requiring creditors to collect and report preapprovals, using a special code to distinguish them from formal applications. Comment is requested on all aspects of the issue including the following:

(1) Has the practice of preapprovals become common enough to suggest the need for coverage under Regulation C?

(2) In preapproval transactions, the creditor may lack some of the data called for by the HMDA-LAR. For example, the loan amount may be preliminary and the consumer often has not identified a property address. What level of information would make the reporting of data on preapprovals useful? More generally, at what stage in the loan application process would data regarding these decisions better reflect the pattern of a creditor's lending practices?

(3) Does reporting preapproval requests represent a potentially greater burden than reporting other transactions? Are there reporting distinctions, in either the level of information or the type of preapprovals, that would minimize the burden?

(4) Home-ownership counseling programs sometimes share similarities with preapproval programs. Some home-ownership counseling programs may target low- and moderate-income consumers; others are available to any first-time home buyer and have elements of both counseling and credit evaluation. The more formal the process of providing information and assistance becomes—for example, by verifying credit information—the more the counseling process resembles a preapproval. The Board believes it is important to ensure that creditors are not discouraged from providing assistance to consumers seeking credit information through counseling programs. Consequently, the Board solicits comment on ways to distinguish counseling programs from preapproval programs so as not to discourage creditors from providing information, assistance, and counseling to consumers shopping for credit.

(5) One approach for reporting preapproval decisions would be to track the requirements of Regulation B (Equal Credit Opportunity) and require reporting of all requests that require an adverse action notice under Regulation B. If a creditor evaluates information about a consumer, decides to decline the request, and communicates the decision to the consumer, Regulation B requires the creditor to treat the request as an application and send a notice of

adverse action. Currently under Regulation C, creditors are instructed not to report preapproval decisions, even if under Regulation B they are required to give adverse action notices on preapproval requests that are denied. One disadvantage to this approach is that only denials would be reported.

(6) Would tracking the requirements of Regulation B work better if that regulation were revised along with Regulation C to establish a "bright-line" test that distinguished between an inquiry and an application? Suppose that, under both regulations, an inquiry (or request for a preapproval) would be treated as an application only if a creditor evaluated or verified credit information through third party information (such as by obtaining a credit report or credit score).

### 2. Reporting Refinancings and Home Improvement Loans

Regulation C provides considerable flexibility in the reporting of refinancing transactions in order to minimize compliance burden. A creditor, at its option, may report a refinancing transaction under one of several tests: if the existing obligation was a reportable transaction under Regulation C; if the existing obligation was secured by a lien on a dwelling; or if the new transaction will be secured by a lien on a dwelling. This approach, adopted in 1995, is intended to facilitate compliance by allowing lenders to report all dwelling-secured refinances.

Some reporting institutions as well as users of the HMDA data believe this rule makes the resulting data difficult to analyze and of limited value. They note that the data merge refinancings to reduce the borrower's interest rate on a home mortgage with newly home-secured loans used by the borrower to consolidate and replace previously unsecured consumer loans such as credit card debt.

The Home Mortgage Disclosure Act requires the reporting of information about mortgage loans in part to determine whether lenders are meeting the housing needs of their communities. The act defines a "mortgage loan" as (1) a loan secured by residential real property or (2) a home improvement loan. Regulation C implements the act by establishing a "purpose test" and requiring lenders to report loans for the purpose of home purchase or home improvement, and the refinancings of those loans. By expanding the definition of "refinancing," the Board broadened that category to include—at the institution's option—all dwelling-secured loans, regardless of the purpose of the original loan. The Board solicits

comment on whether the reporting categories should be further modified. Comment is requested on all aspects of the issue including the following:

(1) Would a change in the reporting categories improve the usefulness of the data?

(2) Would a change in the reporting categories make compliance easier and reduce burden?

(3) Would the cost of a change in the reporting categories outweigh any possible benefits?

### 3. Purchased Loans

Under HMDA and Regulation C, institutions must report all loans that they purchase, even those purchased in bulk or in the context of the purchase of a branch. In some circumstances, this requirement may impose a burden. For example, some institutions believe that obtaining the correct geographic reporting data is more costly if the loans were originated many years ago and the entity that originated and sold the loans was not a HMDA reporter.

The staff commentary to Regulation C provides that a HMDA reporter need not report loans acquired through a merger. The Board has received requests to extend this merger exception to loans acquired through the acquisition of a branch. The Board has also received requests to exclude "seasoned" purchased loans, or those that were not purchased at or shortly after the origination of the loan. Comment is requested on all aspects of the issue including the following:

(1) How useful is public disclosure of data on loans purchased as part of a branch acquisition? To what extent, if any, is it more burdensome to report loans purchased as part of a branch acquisition than other purchased loans? If the Board were to exclude loans purchased as part of a branch acquisition, should the exclusion be limited to a purchase involving "bricks and mortar?" What if an institution purchased the assets of a branch but not the liabilities?

(2) Is there some other way to modify the purchased loan category that would improve the data quality and reduce burden?

### 4. Temporary Financing

Regulation C excludes certain data from HMDA reporting, including temporary financing such as construction or bridge loans. Some institutions that make a considerable number of construction loans would like to include them with their HMDA data. More generally, a number of

HMDA reporters have requested that the Board define "temporary financing." Comment is requested on all aspects of the issue including the following:

(1) How useful would it be for creditors to disclose data on construction lending? Would these data be more burdensome to collect and report than data on permanent financing? If the Board permitted lenders to report construction loans, should such loans be reported with home purchase loans or with a separate code?

(2) Regarding temporary financing generally, should the Board define home purchase loans with a term of less than a specified time as temporary? If so, should the threshold be one year? Two years?

### 5. Mobile Home Transactions

Currently, purchases or refinancings of mobile homes are reported together with purchases or refinancings of traditional homes. However, underwriting standards for transactions involving mobile homes may differ significantly from transactions involving traditional homes. Some HMDA reporters and users of the HMDA data have suggested that the data would be more useful and easier to analyze if transactions involving mobile homes were reported using a separate code. Comment is requested on all aspects of the issue, including whether it would reduce burden and improve the usefulness of the HMDA data to identify transactions involving mobile homes using a special code.

### 6. Additional Reporting

Some users believe that the HMDA data would be more useful if certain additional pieces of information were collected. For example, requiring institutions to report the reasons for denial could facilitate fair lending reviews. Currently, only those institutions supervised by the Office of the Comptroller of the Currency and the Office of Thrift Supervision are required to report denial reasons (which is voluntary under the statute). The data reported voluntarily show that the level of reporting varies by supervisory agency. For example, for data collected in 1996, 84 percent of the denied loans reported to the Federal Deposit Insurance Corporation and 64 percent of the denied loans reported to the Federal Reserve included denial reasons. In contrast, only 27 percent of the denied loans reported to the Department of Housing and Urban Development contained denial reasons.

Other HMDA users suggest that the regulation should require institutions to report the appraised value of the property purchased. This reporting would allow users of the data to calculate a loan-to-value ratio. Comment is requested on all aspects of these issues including the following:

(1) Would the public disclosure of data concerning denial reasons or property value further the purposes of HMDA, and in what way?

(2) Are there practical difficulties in obtaining and reporting these data?

(3) What costs would be involved in reporting denial reasons or property value?

### 7. Reorganization of the Regulation and Appendices

Currently, institutions have a variety of sources to assist them with HMDA compliance. Appendix A to Regulation C provides instructions for completing the loan/application register, and Appendix B provides instructions for completing the data collection form. In addition, the Board issued a staff commentary (as Supplement I to the regulation), and the FFIEC publishes the *Guide to HMDA Reporting: Getting it Right!* The Board will consider reorganizing the regulation, appendices, and supplement to clarify and simplify the presentation of the material, and thereby reduce burden. Comment is requested on all aspects of the issue including the following:

(1) Would it lessen burden if the interpretive material from the instructions were incorporated into the commentary and the instructions were converted into simple code descriptions?

(2) Could the regulation be organized to present information more clearly (for example, by consolidating the coverage requirements currently found in both the definitional section and the exemptions sections in a single "coverage" section)? Would the burden of learning a reorganized regulation outweigh the benefits of simplification and clarification?

### 8. Other Issues

The Board solicits comments on any other broad policy issues that should be addressed in the regulation.

By order of the Board of Governors of the Federal Reserve System, March 6, 1998.

**William W. Wiles,**

*Secretary of the Board.*

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