



FEDERAL RESERVE BANK
OF DALLAS

ROBERT D. McTEER, JR.
PRESIDENT
AND CHIEF EXECUTIVE OFFICER

December 17, 1992

DALLAS, TEXAS 75222

Notice 92-121

TO: The Chief Executive Officer of each
member bank and others concerned in
the Eleventh Federal Reserve District

SUBJECT

Amendment to Regulation C
(Home Mortgage Disclosure)

DETAILS

The Board of Governors of the Federal Reserve System has issued an amendment to Regulation C (Home Mortgage Disclosure), which will expand the regulation's coverage of mortgage companies. The rule will require a mortgage company with an office in a metropolitan area to disclose data about home lending activity if its assets exceeded \$10 million or if the company made 100 or more home purchase loans in the preceding calendar year.

The new rule carries out a provision in the FDIC Improvement Act authorizing the Board to set a small-institution exemption standard for mortgage companies that is comparable to the exemption for depository institutions.

The Board also has revised the instructions for reporting loan applications received through a loan broker or correspondent to conform the rule for reporting loan approvals to the existing rule for reporting loan denials. This revision applies to all lenders covered by the Home Mortgage Disclosure Act, not only nondepository mortgage lenders.

ATTACHMENT

A copy of the Board's notice as it appears on pages 56963-68, Vol. 57, No. 232, of the Federal Register dated December 2, 1992, is attached.

MORE INFORMATION

For more information, please contact Marion White at (214) 922-6155. For additional copies of this Bank's notice, please contact the Public Affairs Department at (214) 922-5254.

Sincerely yours,

Robert D. McTeer, Jr.

Rules and Regulations

Federal Register

Vol. 57, No. 232

Wednesday, December 2, 1992

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Docket No. R-0771; Regulation C]

Home Mortgage Disclosure; Final Regulatory Amendments

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing a final rule amending Regulation C, which implements the Home Mortgage Disclosure Act. The Federal Deposit Insurance Corporation Improvement Act of 1991 authorized the Board, in consultation with the Department of Housing and Urban Development, to develop a new exemption standard for nondepository mortgage lenders that is comparable to the exemption for depository institutions. Under the standard that has been adopted by the Board, a nondepository mortgage lender with an office in a metropolitan area is covered if it meets either an asset-size test or a lending activity test.

A nondepository mortgage lender continues to be covered if its assets exceed \$10 million. Regardless of asset size, however, under the final rule a nondepository mortgage lender is also covered if it originated 100 or more home purchase loans (which includes refinancings of home purchase loans) in the preceding calendar year. This dual standard maintains coverage for all nondepository mortgage lenders that currently report under HMDA and extends coverage to firms that are active mortgage lenders despite their smaller asset size.

The Board also has revised the instructions for reporting loan applications received through a loan broker or correspondent to conform the rule for reporting loan approvals to the existing rule for reporting loan denials. This revision applies to all lenders covered by HMDA, not only nondepository mortgage lenders.

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell or W. Kurt Schumacher, Staff Attorneys, or John C. Wood, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-2412 or (202) 452-3667. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452-3544.

SUPPLEMENTARY INFORMATION:

(1) Background

Exemption for Small Nondepository Mortgage Lenders

The Home Mortgage Disclosure Act (HMDA) requires lenders that have over \$10 million in assets and have offices in metropolitan areas to disclose their housing-related lending activity each year. Amendments to HMDA in 1989 extended its scope to cover independent mortgage lenders—nondepository lenders that are unaffiliated with depository institutions or holding companies. Under Regulation C, nondepository mortgage lenders have been subject to the act if the volume of their home purchase loan originations equals or exceeds 10 percent of their total loan origination volume in dollars. As a result, HMDA covers many nondepository mortgage lenders that make loans in metropolitan areas, but only if their assets exceed \$10 million.

Most nondepository mortgage lenders originate loans and then sell them within a short time, and their asset levels often can be relatively low (well under \$10 million). Because the 1989 amendments failed to cover as many of these lenders as Congress had intended, Congress amended HMDA again in 1991. The Federal Deposit Insurance Corporation Improvement Act of 1991 authorized the Board, in consultation with the Department of Housing and Urban Development, to establish a new small institution exemption standard for nondepository mortgage lenders in order to exempt those lenders that are "comparable within their respective industries" to depository institutions that are currently exempt.

In August 1992 the Board published a proposal that included an explicit measure of lending activity together with the existing asset-size test (57 FR 36024, August 12, 1992). The Board received about 40 comment letters on its proposal. After review of these

comments and upon further analysis, the Board has adopted a final rule.

The Board's proposal noted that nondepository mortgage lenders specialize in home loans, unlike most small depository institutions, which engage primarily in other types of retail lending. The data reported by depository institutions currently covered by HMDA indicate that small savings and loan associations (the depository institutions most like nondepository mortgage lenders in the type of lending they do) extended an average of 40 home loans in 1991. Because nondepository mortgage lenders focus on home purchase loans, however, the Board believes it is appropriate to base the exclusion for small nondepository institutions on a higher threshold of loan activity than the average loan volume for small depository institutions.

In its proposal the Board solicited comment on whether 100 home purchase loans is the appropriate level for the small-institution exemption applicable to nondepository mortgage lenders. Most commenters addressing this issue agreed with the proposed level, although a few believed that the exemption standard should be based on a smaller number of transactions to expand the act's coverage. Several commenters suggested that the transactions comprising the volume test also should be widened to include home improvement loans, refinancings of both home purchase and home improvement loans, and even applications for these types of loans.

In response to the comments and upon further analysis, the Board has determined that 100 loans is appropriate as the threshold for coverage of nondepository mortgage lenders, but the Board has broadened the standard by specifying that refinancings of home purchase loans are to be counted in determining whether a lender meets the loan volume test. The Board considered but decided against expanding the threshold to include home improvement loans and applications. The Board believes that keeping the focus on home purchase loans (including refinancings) for determining initial coverage is more consistent with other provisions of the act and regulation. For instance, besides having assets of more than \$10 million and having offices in metropolitan areas, a depository institution must have originated at least one first-lien, home purchase loan in the preceding calendar year to be covered by HMDA. Similarly, a nondepository institution's originations of home purchase loans must amount to 10 percent or more of its total loan originations, in dollars,

before the institution becomes subject to HMDA.

Under the final rule, for-profit nondepository mortgage lenders are covered regardless of lending volume if their assets (including those of any parent company) exceeded \$10 million at the end of the previous calendar year. In addition, firms that have assets of \$10 million or less are covered if they originated 100 or more home purchase loans (including refinancings of such loans) in the previous calendar year. This dual standard maintains coverage for all nondepository mortgage lenders that currently report under HMDA and extends coverage to firms that are active mortgage lenders despite their smaller asset size. The Board believes that this dual standard establishes a small-institution exemption for nondepository mortgage lenders comparable to the current exemption for depository institutions.

Applications Received Through Loan Brokers or Correspondents

Since 1990 the instructions to the HMDA Loan/Application Register (HMDA-LAR) have required that covered lenders report as loan originations only those loans that actually closed in the lender's name. But for applications received through loan brokers or correspondents, institutions reported data for all applications they denied, whether or not the loans would have closed in their name. If a loan closed in the name of a loan broker or correspondent and was immediately purchased by the institution, the institution reported the transaction as a loan purchase—even if it had made the initial credit decision approving the loan application prior to closing.

In August the Board proposed to conform the rule for reporting loan approvals to the rule for reporting loan denials. That is, a lender that preapproved a loan which then closed in another's name, and acquired the loan at or after closing, would report the loan as a loan origination rather than as a loan purchase. Most commenters agreed with the Board's position that this change would more accurately reflect an institution's overall credit decisions.

Under the final version of the revised instructions, if an institution receives an application through a loan broker or correspondent, approves it, and then by pre-arrangement with the broker or correspondent acquires the loan at closing or thereafter, that institution will report the loan as an origination, whether or not the loan closed in that institution's name. This change affects

all lenders covered by HMDA, not just nondepository mortgage lenders.

As has been the case since 1990, lenders will report denials of applications (and other actions taken besides originations, such as applications withdrawn) even if the same applications are denied by other institutions to which they are referred by a loan broker or correspondent.

Institutions that purchase a loan from another entity will continue to report the loan as a loan purchase, as long as they did not approve the corresponding application prior to loan origination. If an institution approves an application for a loan, but does not acquire the resulting loan (because it is sold to another lender, for example), the institution will report the loan as "approved but not accepted."

(2) Revisions

This section describes the changes that have been made to the regulatory provisions and the instructions.

Section 203.2 Definitions

(g) Home Purchase Loan

The Board had proposed, for purposes of defining coverage of lenders, to exclude refinancings from the definition of a home purchase loan. Some commenters noted that nondepository institutions might originate a significant number of home purchase refinancings yet could end up not being covered under the Board's proposed 100 home purchase loan test. Based on the comments and upon further analysis, the Board has adopted a rule that includes refinancings of home purchase loans in defining the threshold. Consequently, the Board did not adopt the proposed change to paragraph 203.2(g).

Section 203.3 Exempt Institutions

(a) Exemption Based on Location, Asset Size, or Number of Home Purchase Loans

The Board is adopting in final form its proposal that the exemption standard for nondepository mortgage lending institutions be based on asset size and number of home purchase loan originations. As discussed above, the Board has established 100 loans as the threshold for the coverage of nondepository mortgage lenders. However, the Board has broadened this standard by specifying that refinancings of home purchase loans are to be counted in determining whether a lender meets the loan volume test.

Thus, under the final rule a nondepository mortgage lender, like a depository institution, is covered if its

assets exceeded \$10 million at the end of the previous calendar year. Additionally, regardless of asset size, a nondepository mortgage lender is also covered if it originated 100 or more home purchase loans (which includes refinancings of home purchase loans) in the prior calendar year.

To better differentiate between the exemption criteria that apply to depository institutions and those that apply to nondepository mortgage lenders, § 203.3(a) sets forth the criteria for exemption in separate subparagraphs.

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

I. Who Must File a Report

The Board is amending Appendix A—Form and Instructions for Completion of HMDA Loan/Application Register—to reflect the new exemption standard for nondepository mortgage lenders. The criteria for these institutions are set forth in a separate paragraph to clearly distinguish this standard from the exemption criteria for depository institutions.

IV. Types of Loans and Applications Covered and Excluded by HMDA

The Board has revised the instructions in paragraph IV.A.3 and has added a new paragraph as IV.A.4 to reflect the requirements for reporting loan applications that are received through a loan broker or correspondent. As discussed above, the Board has conformed the rule for reporting loan approvals to the rule for reporting applications that did not result in originations—for example, loan denials and applications withdrawn. New language in paragraph IV.A.4 clarifies that a loan origination is only reported once.

V. Instructions for Completion of Loan/Application Register

Several commenters pointed out that under the previous rule, the category of the action taken was actually "application approved but not accepted by applicant" (emphasis added). Accordingly, the Board has revised this category—found in paragraph V.B.1. of the instructions—to read "application approved but not accepted." It has also revised the explanation in paragraph V.B.2.a. to make clear that this code applies when either the applicant or the broker or correspondent does not respond to a lender's deadline regarding an approved application.

Loan/Application Register Code Sheet

The Board has revised the Loan/Application Register Code Sheet to reflect the change to the category of the action taken code "application approved but not accepted" discussed above. A copy of the revised Code Sheet accompanies this final rule.

(3) Regulatory Flexibility Analysis

The Board's Division of Research and Statistics has prepared a Regulatory Flexibility Analysis of the revisions to Regulation C. A copy may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-3245.

List of Subjects in 12 CFR Part 203

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

For the reasons set forth in this final rule and pursuant to the Board's authority under section 305(a) of the Home Mortgage Disclosure Act (12 U.S.C. 2804(a)), the Board amends Regulation C, Home Mortgage Disclosure (12 CFR part 203) as set forth below.

PART 203—HOME MORTGAGE DISCLOSURE

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

Authority: 12 U.S.C. 2801-2810.

2. Section 203.3 is amended by revising paragraph (a) and by revising paragraph (c)(1) to read as follows:

§ 203.3 Exempt Institutions.

(a) *Exemption based on location, asset size, or number of home purchase loans.*

(1) A bank, savings association, or credit union is exempt from the requirements of this part for a given calendar year if on the preceding December 31:

(i) The institution had neither a home office nor a branch office in an MSA; or
(ii) The institution's total assets were \$10 million or less.

(2) A for-profit mortgage lending institution (other than a bank, savings association, or credit union) is exempt from the requirements of this part for a given calendar year if:

(i) The institution had neither a home office nor a branch office in an MSA on the preceding December 31; or
(ii) The institution's total assets combined with those of any parent corporation were \$10 million or less on the preceding December 31, and the institution originated fewer than 100 home purchase loans in the preceding calendar year.

* * * * *

(c) *Loss of exemption.* (1) An institution losing an exemption that was based on the criteria set forth in paragraph (a) of this section shall comply with this part beginning with the calendar year following the year in which it lost its exemption.

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3. Appendix A to part 203 is amended by revising paragraphs I.A. through I.D., by revising paragraph IV.A.3, by redesignating paragraph IV.A.4 as IV.A.5 and republishing it, by adding a new paragraph IV.A.4, and by revising paragraphs V.B.1. and V.B.2.a. to read as follows:

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

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I. Who Must File a Report

A. Depository Institutions

Subject to the exception discussed below, banks, savings associations, and credit unions must complete a register listing data about loan applications received, loans originated, and loans purchased if on the preceding December 31 an institution:

1. Had assets of more than \$10 million, and
2. Had a home or a branch office in a "metropolitan statistical area" or a "primary metropolitan statistical area" (both are referred to in these instructions by the term "MSA").

Example: If on December 31 you had a home or a branch office in an MSA and your assets exceeded \$10 million, you must complete a register that lists the home purchase and home improvement loans that you originate or purchase (and also lists applications that did not result in an origination) beginning January 1.

B. Depository Institutions—Exception

You need not complete a register—even if you meet the tests for asset size and location—if your institution is a bank, savings association, or credit union that made *no* first-lien home purchase loans (including refinancings) on one-to-four-family dwellings in the preceding calendar year. This exception does not apply in the case of nondepository institutions.

C. Other Lending Institutions

Subject to the exception discussed below, for-profit mortgage lending institutions (other than banks, savings associations, and credit unions) must complete a register listing data about loan applications received, loans originated, and loans purchased if the institution had a home or branch office in an MSA on the preceding December 31, and

1. Had assets of more than \$10 million (based on the combined assets of the institution and any parent corporation) on the preceding December 31, or
2. Originated 100 or more home purchase loans (including refinancings of such loans) during the preceding calendar year, regardless of asset size.

D. Other Lending Institutions—Exception

You need not complete a register—even if you meet the tests for location and asset size or number of home purchase loans—if your institution is a for-profit mortgage lender (other than a bank, savings association, or credit union) and home purchase loans that you originated in the preceding calendar year (including refinancings) came to less than 10 percent of your total loan origination volume, measured in dollars.

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IV. Types of Loans and Applications Covered and Excluded by HMDA

A. Types of Loans and Applications to be Reported

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3. In the case of brokered loan applications or applications forwarded to you through a correspondent, report as originations loans that you approved and subsequently acquired according to a pre-closing arrangement (whether or not they closed in your institution's name). Additionally, report the data for all applications that did not result in originations—for example, applications that your institution denied or that the applicant withdrew during the calendar year covered by the report (whether or not they would

have closed in your institution's name). For all of these loans and applications, report the race or national origin, sex, and income information, unless your institution is a bank, savings association, or credit union with assets of \$30 million or less on the preceding December 31.

4. Originations are to be reported only once. If you are the loan broker or correspondent, do not report as originations loans that you forwarded to another lender for approval prior to closing, and that were approved and subsequently acquired by that lender (whether or not they closed in your name).

5. Report applications that were received in the previous calendar year but were acted upon during the calendar year covered by the current register

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V. Instructions for Completion of Loan/ Application Register

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B. Action Taken

1. *Type of action.* Indicate the type of action taken on the application or loan by using one of the following codes. Do not report any loan application still pending at the end of the calendar year; you will report

that application on your register for the year in which final action is taken.

- 1—Loan originated
- 2—Application approved but not accepted
- 3—Application denied
- 4—Application withdrawn
- 5—File closed for incompleteness
- 6—Loan purchased by your institution

2. *Explanation of codes.* a. Use code 2 when an application is approved but the applicant (or a loan broker or correspondent) fails to respond to your notification of approval or your commitment letter within the specified time.

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Appendix A [Amended]

4. The Loan/Application Register Code Sheet that appears at the end of appendix A is revised to read as follows:

BILLING CODE 6210-01-M

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

Type:

- 1 -- Conventional (any loan other than FHA, VA or FmHA loans)
- 2 -- FHA-insured (Federal Housing Administration)
- 3 -- VA-guaranteed (Veterans Administration)
- 4 -- FmHA-insured (Farmers Home Administration)

Purpose:

- 1 -- Home purchase (one-to-four family)
- 2 -- Home improvement (one-to-four family)
- 3 -- Refinancing (home purchase or home improvement, one-to-four family)
- 4 -- Multifamily dwelling (home purchase, home improvement, and refinancings)

Owner-Occupancy:

- 1 -- Owner-occupied as a principal dwelling
- 2 -- Not owner-occupied
- 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 your institution

BILLING CODE 8210-01-C

Applicant Information

Race or National Origin:

- 1 -- American Indian or Alaskan Native
- 2 -- Asian or Pacific Islander
- 3 -- Black
- 4 -- Hispanic
- 5 -- White
- 6 -- Other
- 7 -- Information not provided by applicant in mail or telephone application
- 8 -- Not applicable

Sex:

- 1 -- Male
- 2 -- Female
- 3 -- Information not provided by applicant in mail or telephone application
- 4 -- Not applicable

Type of Purchaser

- 0 -- Loan was not originated or was not sold in calendar year covered by register
- 1 -- FNMA (Federal National Mortgage Association)
- 2 -- GNMA (Government National Mortgage Association)
- 3 -- FHLMC (Federal Home Loan Mortgage Corporation)
- 4 -- FmHA (Farmers Home Administration)
- 5 -- Commercial bank
- 6 -- Savings bank or savings association
- 7 -- Life insurance company
- 8 -- Affiliate institution
- 9 -- Other type of purchaser

Reasons for Denial (optional)

- 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

By order of the Board of Governors of the
Federal Reserve System, November 24, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-29088 Filed 12-1-92; 8:45 am]

BILLING CODE 8210-01-M