



FEDERAL RESERVE BANK  
OF DALLAS

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

June 29, 1995

DALLAS, TEXAS  
75265-5906

**Notice 95-60**

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

**SUBJECT**

**Request for Public Comment on  
Proposed Changes to the Official Staff Commentary to  
Regulation C (Home Mortgage Disclosure)**

**DETAILS**

The Board of Governors of the Federal Reserve System has issued for public comment proposed changes to the official staff commentary to Regulation C (Home Mortgage Disclosure).

The proposed commentary provides guidance on various issues including the treatment of prequalifications, participations, refinancings, home equity lines, mergers, and loan applications received through a mortgage broker.

The Board must receive comments by August 7, 1995. Comments should be addressed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. All comments should refer to Docket No. R-0881.

**ATTACHMENT**

A copy of the Board's notice as it appears on pages 30013-19, Vol. 60, No. 109, of the Federal Register dated June 7, 1995, is attached.

**MORE INFORMATION**

For more information, please contact Eugene Coy at (214) 922-6201. For additional copies of this Bank's notice, please contact the Public Affairs Department at (214) 922-5254.

Sincerely yours,

*Robert D. McTeer, Jr.*

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# Proposed Rules

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Federal Register

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## FEDERAL RESERVE SYSTEM

### 12 CFR Part 203

[Regulation C; Docket No. R-0881]

#### Home Mortgage Disclosure

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

**ACTION:** Proposed rule; staff interpretation.

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**SUMMARY:** The Board is publishing for comment a staff commentary to Regulation C (Home Mortgage Disclosure). The commentary applies and interprets the requirements of Regulation C. The proposed commentary provides guidance on various issues including the treatment under Regulation C of prequalifications, participations, refinancings, home

equity lines, mergers, and loan applications received through a broker. The Board believes the proposed commentary will reduce burden and ease compliance by clarifying a number of issues, by providing flexibility in compliance, and by consolidating the guidance that is currently available from a variety of sources.

**DATES:** Comments must be received on or before August 7, 1995.

**ADDRESSES:** Comments should refer to Docket No. R-0881 and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 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, NW. (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 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

**FOR FURTHER INFORMATION CONTACT:** Jane Jensen Gell, W. Kurt Schumacher, or Manley Williams, Staff Attorneys, 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*, Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Board's Regulation C (12 CFR Part 203) implements the Home Mortgage Disclosure Act of 1975 (HMDA) (12 U.S.C. 2801 *et seq.*). 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 reports and disclosures cover loan originations, applications that do not result in originations (for example, applications that are denied or withdrawn), and loan purchases. Information reported includes the location of the property to which the loan or application relates; the race or national origin, gender, and gross annual income of the borrower or applicant; and the type of purchaser for loans sold in the secondary market.

The Board has received many requests from other supervisory agencies and from financial institutions suggesting

adoption of a staff commentary to Regulation C to provide guidance on compliance with the regulation. In response, the Board is proposing to issue a staff commentary (12 CFR part 203 (Supp. I)) that interprets the regulation. The Board believes the commentary will provide significant assistance to institutions by clarifying a number of issues and providing flexibility in compliance with the regulation. The proposed commentary follows the narrative format used in most of the Board's other staff commentaries, such as those issued to interpret Regulation Z (12 CFR part 226) and Regulation B (12 CFR part 202). The proposed commentary provides general guidance in applying the regulation to various transactions, and would be updated periodically to address significant questions that arise.

##### II. Explanation of Proposed Commentary

The proposed commentary incorporates much of the guidance in *A Guide to HMDA Reporting—Getting It Right!*, developed by member agencies of the Federal Financial Institutions Examination Council (FFIEC) (the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Reserve Board), and the Department of Housing and Urban Development. Other sources of material in the proposed commentary include supplementary information published in the **Federal Register** notice of the amendments to Regulation C recently adopted by the Board (59 FR 63698, December 9, 1994) and other **Federal Register** notices on Regulation C, and portions of Appendix A to the regulation. The Board believes that consolidating the guidance that is currently available from a variety of sources into one source will ease compliance and reduce burden.

The Board solicits suggestions on additional issues that are not addressed in this proposal but that may need clarification, and will consider adding commentary material to address such issues in the final version of the commentary.

In cases where provisions of Regulation C have been modified by the amendments issued by the Board in December 1994 (scheduled to take effect on a mandatory basis in calendar year 1996), the relevant commentary provisions relate to those amendments rather than the existing regulatory requirements.

Most of the proposed commentary material is self-explanatory. The

following discussion, however, provides some explanation on a few of the points covered in the proposal.

##### Section 203.1—Authority, Purpose, and Scope

###### 1(c) Scope

###### Refinancings

Proposed comments 1(c)-3 and -4 clarify that an origination includes the refinancing of a home purchase loan for purposes of determining coverage and exemptions from coverage. The comments provide guidance on alternate ways an institution may identify transactions to determine coverage and data collection requirements.

###### Participations

Proposed comment 1(c)-7 would allow the reporting of an institution's partial interest in a participation loan, at the institution's option. Among other things, this would allow an institution to report its partial interest in a large-dollar home purchase or home improvement loan. Of course, given the exclusion in section 203.4(d) from reporting the purchase of an interest in a loan pool, the present comment is intended to allow the reporting of partial interests where the reporting institution has a direct interest in the loan itself, and not an interest in a security such as a mortgage-backed security.

The Board solicits comment on whether reporting participation interests in this manner will address home mortgage lending by a consortium of lenders. A consortium may be structured in several ways. If a consortium is a nonprofit mortgage lender, it would not be covered under Regulation C. If the consortium is a for-profit mortgage lender that meets the tests for coverage under Regulation C, it would report applications and loans originated by the consortium. If the consortium is structured so that participating lenders underwrite and originate a loan, each lender may report its partial interest in the loan.

##### Section 203.2—Definitions

###### 2(b) Application

###### Prequalifications

Financial institutions must report action taken upon applications for (as well as originations and purchases of) home purchase and home improvement loans (including refinancings). Institutions have asked the Board for clarification on the correct treatment under Regulation C of prequalification and preapproval programs.

In its amendments to Regulation C issued in December 1994, the Board deferred a final determination on whether and how lenders ought to report prequalifications (or preapprovals). Instead, the Board provided that institutions need not include data about prequalifications (or preapprovals) in their HMDA submissions for calendar year 1994 or 1995.

The Board believes that prequalification requests (as that term is used in the proposed commentary) are not applications for purposes of Regulation C, even though they may be applications under Regulation B. Proposed comment 2(b)-2 provides guidance so that institutions can distinguish a request for a prequalification from an application under Regulation C.

The Board may consider proposing amendments to Regulation C to address prequalifications and preapprovals, including whether institutions should be required to report some or all preapproval requests. (A preapproval request is generally considered to be a request by an applicant for a commitment from an institution to lend a specific amount, subject to the applicant's selection of residential property that is satisfactory to the institution. A preapproval program may be part of or separate from the institution's mortgage loan application program.) If, for example, coverage included all preapprovals, the Board might consider adding to the purpose codes "code 5. Preapproval" to distinguish preapprovals from other application procedures. The Board may also consider adding a new action taken code, such as "code 7. Loan preapproved" to distinguish situations where a loan is preapproved but not originated from other actions taken on applications.

#### 2(e) Financial Institution

##### Foreign banks

Proposed comments 2(e)-1 and -2 discuss coverage of various types of branches and other offices of foreign banks for purposes of Regulation C. The definition of a covered institution in HMDA refers, in part, to banks as defined in the Federal Deposit Insurance Act (FDI Act). The FDI Act definition of "bank" includes certain types of branches and offices of foreign banks, and excludes other types. Accordingly, certain branches and offices of foreign banks, which meet the FDI Act definition of "bank," are covered by HMDA as depository institutions (assuming they are not

excluded by some other exemption). Other branches and offices of foreign banks, which do not meet the FDI Act definition, are covered by HMDA only if they meet the tests for coverage of nondepository institutions.

#### 2(g) Home-purchase Loan

##### Home Equity Lines

Under Regulation C, institutions have the option to report that portion of a home equity line of credit that the borrower indicates, at the time of application or when the account is opened, will be used for home improvement purposes. Proposed comment 2(g)-6 sets forth the same position with regard to home equity lines to be used for home purchase purposes. As in the case of home equity lines for home improvement, the institution may choose not to report home equity lines at all. If the institution reports home equity originations, the institution must also report home equity applications that did not result in originations. If the institution chooses to report a home equity line, it should report only the amount indicated at time of application or establishing the credit line, to be used for purposes of purchasing a dwelling.

#### Section 203.3—Exempt Institutions

##### 3(a) Exemption Based on Location, Asset Size, or Number of Home-purchase Loans

##### Mergers

Proposed comment 3(a)-2 deals with reporting responsibilities in situations where two financial institutions merge. The proposed comment is based on material in the *Guide to HMDA Reporting*, but additional detail has been added concerning mergers involving a covered and an exempt institution. (Other material from the section of the *Guide* relating to mergers and changes in supervisory agencies appears in proposed comments 3(a)-3 and 5(a)-1.)

#### Section 203.4—Compilation of Loan Data

##### 4(a) Data Format and Itemization

##### Paragraph 4(a)(6)

##### Location of Property—BNAs

Proposed comment 4(a)(6)-4 allows institutions to report block numbering areas (BNAs) for properties located in counties for which census tracts have not been established. This option would provide more detailed information that may be used to examine and assess an institution's housing-related lending.

#### Paragraph 4(a)(7)

##### Income of Applicants

Proposed comment 4(a)(7)-5 provides guidance regarding data reporting requirements for applicant income. The comment clarifies that institutions must report all income used to make the credit decision. This figure would include any income the institution considers in qualifying the applicant, even if the funds are not factored into the debt-to-income ratio analysis.

#### III. Form of Comment Letters

Comment letters should refer to Docket No. R-0881. The Board requests that, when possible, comments be prepared using a standard courier typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may also be submitted on computer diskettes, using either the 3.5" or 5.25" size, in any IBM-compatible DOS-based format. Comments on computer diskettes must be accompanied by a hard copy version.

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

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

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 continues to read as follows:

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

2. Part 203 would be amended by adding a new Supplement I—Staff Interpretations after the Appendices to read as follows:

#### Supplement I to Part 203—Staff Interpretations

##### Introduction

1. *Status.* This commentary in this supplement is the vehicle by which the staff of the Division of Consumer and Community Affairs of the Federal Reserve Board issues staff interpretations of Regulation C (12 CFR part 203).

##### Section 203.1—Authority, Purpose, and Scope

##### 1(c) Scope.

1. *General.* The comments in this section address issues affecting coverage of institutions, exemptions from coverage, and data collection requirements. (Paragraphs I., II., IV. and V. of Appendix A of this part.)

2. *Meaning of refinancing.* A refinancing of a loan is the satisfaction and replacement of an existing obligation by a new obligation by the same borrower. The term "refinancing" refers to the new obligation. If the existing obligation is not satisfied and replaced, but is only renewed or modified (such as in certain "modification, extension, and consolidation agreements"), the transaction is not a refinancing. (Paragraph V.A.5. Code 3. of Appendix A of this part.)

3. *Refinancing—coverage.* For purposes of determining whether an institution is covered by Regulation C or is exempt, an origination of a home purchase loan includes the refinancing of a home purchase loan. (Paragraphs I.B., I.C. and I.D. of Appendix A of this part.) When an institution refinances an existing obligation, the institution must either:

i. Assume that if the refinancing results in a new obligation secured by a lien on a dwelling, the new obligation is a refinancing of a home purchase loan under Regulation C (and may assume, if the new obligation is not secured by a lien on a dwelling, that it is not a refinancing of a home purchase loan); or

ii. Determine the purpose of the existing obligation. The institution may use the following guidelines:

a. The institution may rely on the statement of the applicant or borrower.

b. If the existing obligation was secured, the institution may assume that it was for home purchase purposes, and that the new obligation is a refinancing of a home purchase loan under Regulation C.

c. If the existing obligation was unsecured, the institution may assume that it was not for home purchase purposes, and that the new obligation is not a refinancing of a home purchase loan under Regulation C.

4. *Refinancing—data collection.* For purposes of data collection (paragraph V.A.5. Code 3. of Appendix A of this part) an institution must either:

i. Assume that if a refinancing results in a new obligation secured by a lien on a dwelling, the new obligation is a refinancing of a home purchase or home improvement loan under Regulation C (and may assume, if the new obligation is not secured by a lien on a dwelling, that it is not a refinancing of a home purchase or home improvement loan); or

ii. Determine the purpose of the existing obligation. The institution may use the following guidelines:

a. The institution may rely on the statement of the applicant or borrower.

b. If the existing obligation was secured, the institution may assume that it was for home purchase or home improvement purposes, and that the new obligation is a refinancing under Regulation C.

5. *Meaning of "broker" and "investor institution."* The term "broker" (or correspondent) refers to any party (whether a bank, thrift, credit union, mortgage banker, mortgage broker, or other type of depository or nondepository institution) that takes and processes loan applications from applicants and that has an arrangement with another party (an "investor institution") under which the investor institution (1) reviews the application prior to closing, (2) makes a

credit decision, and (3) determines whether to acquire the loan at or after closing. (Paragraphs IV.A. and V.B.1. of Appendix A of this part.)

6. *The broker rule—originations.* If an investor institution reviews a loan application from a broker prior to closing, makes a decision to extend credit, and then acquires the loan at or after closing, the investor institution originates that loan for purposes of Regulation C, whether the loan closes in the name of the broker or the investor institution. If a broker submits a loan application to more than one investor, each investor reports the action it has taken on the application. For example, each investor denying the application reports a denial. (Paragraphs IV.A. and V.B.1. of Appendix A of this part.)

7. *Broker's use of investor institution's underwriting criteria.* A broker makes a decision to extend credit based on underwriting criteria set by an investor institution, but without the investor institution's review before closing. Under these facts, the broker originates that loan for purposes of Regulation C (unless the broker is an agent or contract underwriter for the investor institution), and the investor institution that acquires the loan after closing purchases the loan under Regulation C. If the broker is subject to Regulation C, the broker reports as originations the loans that it approves and closes, and reports as denials the loan applications that it turns down (either because they do not meet the investor's underwriting guidelines or for some other reason).

8. *Post-closing review by the investor institution.* An investor institution agrees with a broker to purchase loans that meet the investor institution's underwriting guidelines, which the broker uses in making credit decisions on loan applications. The investor institution reviews loans only after closing to confirm that the loans meet its underwriting guidelines. Under these facts, the broker originates the loans and the investor institution purchases the loans under Regulation C. If the broker is covered by Regulation C, the broker reports as originations the loans that it approves and closes, and reports as denials the loan applications that it turns down. The investor reports only those loans it purchases.

9. *Third-party underwriting guidelines.* An investor institution agrees to purchase from a broker loans that have government or private insurance, but does not review loan applications prior to closing. The broker evaluates loan applications using the insurer's guidelines, or delivers applications to the insurer for a determination on whether it will insure the loan. After closing, the investor institution purchases those loans that have been insured. Under these facts, the broker makes the credit decisions and the investor institution purchases the loans under Regulation C. The investor reports those loans it purchases; it does not report other loans. If the broker is covered by Regulation C, it reports as originations the loans that it approves and closes, and reports as denials the loan applications that it turns down.

10. *Participation loan.* If an institution participates in the underwriting and

origination of a home purchase or home improvement loan, it may report the transaction as an origination to the extent of its participation interest, or it may choose not to report the transaction. If an institution chooses to report originations, it must also report applications that do not result in originations (for example, denials). When a single institution originates the loan and subsequently sells participation interests to other institutions, those institutions report their interests as purchased loans. (Paragraphs I., II., IV. and V. of Appendix A of this part.)

#### Section 203.2—Definitions

##### (2)(b) Application.

1. *Consistency with Regulation B.* The definition of "application" in Regulation C is virtually identical to the definition of "application" in Regulation B (Equal Credit Opportunity, 12 CFR Part 202). Accordingly, guidance in the official staff commentary to Regulation B is generally applicable to the definition of an application under Regulation C. (Paragraph IV.A. of Appendix A of this part.)

2. *Prequalification.* A prequalification request is generally considered to be a request by a prospective loan applicant to a lending institution for a preliminary determination on whether the prospective applicant would likely qualify for credit under the institution's standards, or on how much credit the prospective applicant would likely qualify for. Further, a prequalification request is generally evaluated by the institution through a procedure that is separate from the institution's normal loan application process. A prequalification request is not an application under Regulation C, even though it may constitute an application under Regulation B, requiring a lender to notify an applicant of the action taken. (Paragraphs I. and IV.A. of Appendix A of this part.)

##### (2)(c) Branch office.

1. *Depository institution.* A branch of a depository institution does not include a loan production office or the office of an affiliate, nor does it include the office of a third party such as a loan broker. (Paragraphs I., V.A.6. and V.C. of Appendix A of this part.)

2. *Nondepository institution.* A branch of a nondepository institution does not include the office of an affiliate or other third party. (Paragraphs I., V.A.6. and V.C. of Appendix A of this part.) (But see paragraph V.C.6. of Appendix A of this part, requiring nondepository institutions to report property location even in MSAs where they do not have a physical location.)

##### (2)(d) Dwelling.

1. *Scope.* The definition of "dwelling" is not limited to the principal or other residence of the applicant or borrower. Thus, vacation or second homes and rental properties are dwellings under Regulation C. Dwellings include mobile or manufactured homes, multifamily structures (such as apartment buildings), and condominium and cooperative units. Recreational vehicles such as boats or campers are not dwellings. (Paragraphs I.B., IV., and V.A.5. of Appendix A of this part.)

##### (2)(e) Financial institution.

1. *Branches of foreign banks—treated as a bank.* Both a federal branch and a state-licensed insured branch of a foreign bank are a “bank” under the Federal Deposit Insurance Act, and are covered if they meet the tests for a depository institution found in §§ 203.2(e)(1) and 203.3(a)(1). (Paragraphs I.A. and I.B. of Appendix A of this part.)

2. *Branches and offices of foreign banks—treated as a for-profit mortgage lending institution.* Federal agencies, state-licensed agencies, state-licensed uninsured branches of foreign banks, commercial lending companies owned or controlled by foreign banks, and entities operating under section 25A or 25 of the Federal Reserve Act (Edge Act and agreement corporations) are covered by Regulation C if they meet the tests for a nondepository mortgage lending institution found in §§ 203.2(e)(2) and 203.3(a)(2). (Paragraphs I.C. and I.D. of Appendix A of this part.)

(2)(f) *Home-improvement loan.*  
Paragraph (2)(f)(1).

1. *Home improvement.* A home improvement loan is a loan to be used for improvements to a dwelling or to the real property on which the dwelling is located. (Paragraphs IV. and V.A.5. Code 2. of Appendix A of this part.) Examples include:

- i. Installation of a swimming pool;
- ii. Construction of a detached garage;
- iii. Landscaping; or
- iv. Purchase of appliances to be installed as fixtures to the dwelling.

2. *Multiple properties.* A home improvement loan includes a loan secured by one dwelling, with the proceeds to be used to improve another dwelling. (Paragraphs IV. and V.A.5. Code 2. of Appendix A of this part.)

3. *Mixed-use property.* A loan to improve property used primarily for residential purposes (for example, an apartment building containing a convenience store) is a home improvement loan. (Paragraphs IV. and V.A.5. Code 2.)

4. *Multipurpose loan.* A loan to make home improvements (even though less than 50 percent of the total loan proceeds are to be used for this purpose) may be treated as a home improvement loan provided that the institution classifies the loan as a home improvement loan. (Paragraphs IV. and V.A.5. Code 2. of Appendix A of this part.)

5. *Home equity lines.* An institution may report the part of a home equity line of credit that is for home improvement. An institution that reports the origination of home equity lines must also report applications that did not result in originations. (Paragraphs IV. and V.A.5. Code 2.c. of Appendix A of this part.)

6. *Reliance on statement of borrower.* An institution may rely on the oral or written statement of an applicant or borrower that the loan proceeds will be used for home improvement purposes. (Paragraphs IV. and V.A.5. Code 2.c. of Appendix A of this part.) Paragraph (2)(f)(2).

1. *Classification.* The requirement that a loan be “classified” as a home improvement loan provides flexibility to institutions in determining which loans to report. An institution meets the requirement if it has entered a loan on its books as a home improvement loan, or has otherwise

identified or coded the loan as a home improvement loan. For example, an institution that has marketed a loan, “booked” it, or reported it on a “call report” as home improvement loan has “classified” it as a home improvement loan. (Paragraphs IV. and V.A.5. Code 2. of Appendix A of this part.)

(2)(g) *Home-purchase loan.*

1. *Multiple properties.* A home purchase loan includes a loan secured by one dwelling, with the proceeds to be used to purchase another dwelling. (Paragraphs IV. and V.A.5. Code 1. of Appendix A of this part.)

2. *Mixed-use property.* A loan to purchase property used primarily for residential purposes (for example, an apartment building containing a convenience store) is a home purchase loan. (Paragraphs IV.A., IV.B.1. and V.A.5. Code 1. of Appendix A of this part.)

3. *Commercial and other loans.* A home purchase loan includes a loan for home purchase purposes originated outside an institution’s mortgage lending division (such as a loan for the purchase of an apartment building handled by the institution’s commercial loan department). (Paragraphs IV. and V.A.5. Code 1. of Appendix A of this part.)

4. *Farm loan.* If the property being purchased is used primarily for agricultural purposes—even if the property includes a dwelling—a loan to purchase the property is not a home purchase loan. (Paragraphs IV.B.1. and V.A.5. Code 1. of Appendix A of this part.)

5. *Construction/permanent loan.* Construction-only loans are “temporary” financings under Regulation C and are not reported. If the institution commits to provide both the construction and the permanent financing, however, the loan is a home purchase loan for purposes of Regulation C. (Paragraphs IV.A. and B.2 and V.A.5. Code 1. of Appendix A of this part.)

6. *Home equity lines.* An institution may report the part of a home equity line of credit that is for home purchase. An institution may rely on the oral or written statement of an applicant or borrower that the loan proceeds will be used for home purchase purposes. An institution that reports the origination of home equity lines must also report applications that did not result in originations. (Paragraphs IV. and V.A.5. Code 1. of Appendix A of this part.)

#### Section 203.3—Exempt Institutions

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

1. *General.* An institution that ceases to be a financial institution (as that term is defined in § 203.2(e)) or that becomes an exempt institution under this section may stop collecting HMDA data beginning with the first calendar year after the event that resulted in noncoverage. For example, a bank whose assets drop to \$10 million or less on December 31 of a given year collects data for that full calendar year, but need not collect data for the succeeding year. (Paragraph I. of Appendix A of this part.)

2. *Coverage after a merger.* Data collection responsibilities under several scenarios are described below for the calendar year of the

merger. (Paragraph I. of Appendix A of this part.)

i. Two institutions are exempt from Regulation C. The institutions merge, producing a covered institution. No data collection is required; the surviving institution begins HMDA data collection in the following calendar year.

ii. A covered and an exempt institution merge. The covered institution is the surviving institution. Data collection is required for the covered institution’s transactions; data collection is optional for transactions of the previously exempt institution (for example, transactions handled in offices of the previously exempt institution).

iii. A covered and an exempt institution merge. The exempt institution is the surviving institution. Data collection is required for the covered institution’s transactions taking place prior to the merger, and is optional for transactions taking place after the merger date and attributable to the covered institution.

iv. Two covered institutions merge. The surviving institution is required to collect all data for both institutions; it may file a consolidated submission or separate submissions for that year.

3. *Mergers versus purchases in bulk.* If a covered institution acquires loans in bulk from another institution (for example, the receiver of a failed institution), but no merger or acquisition is involved, the institution treats the loans as purchased loans. (Paragraph V.B. of Appendix A of this part.)

#### Section 203.4—Compilation of Loan Data

4(a) *Data format and itemization.*

1. *Quarterly updating.* An institution should make a good-faith effort to enter all data concerning covered transactions—loan originations (including refinancings), loan purchases, and the disposition of applications that did not result in an origination—fully and accurately within 30 days after the end of each calendar quarter. If the quarterly update shows that some data are inaccurate or incomplete despite this good-faith effort, the error or omission is not a violation of Regulation C. (Paragraph II.E. of Appendix A of this part.)

Paragraph 4(a)(1).

1. *Application date—consistency.* In reporting the date of application, an institution enters the date an application was received or the date shown on the application. The institution should be consistent in its practice. (Paragraph V.A.2. of Appendix A of this part.)

2. *Application date—application received through broker.* For an application forwarded by a broker, an institution enters the date the application was received by the broker, the date the application was received by the institution, or the date shown on the application. The institution should be consistent in its practice. (Paragraph V.A.2. of Appendix A of this part.)

3. *Application date—reinstated application.* If an applicant asks an institution to reinstate a counteroffer that the applicant previously rejected (or to reconsider a denied application), the institution may treat the request as the

continuation of a single transaction if the applicant's request occurs within the same calendar year as the prior disposition of the application. Alternatively, the institution may treat the request as a separate transaction and the date of the request as the application date. (Paragraph V.A.2. of Appendix A of this part.)

Paragraph 4(a)(3).

1. *Loans outside an MSA.* If a loan relates to property not located in an MSA (or to property in an MSA where the institution has no home or branch office under Regulation C), the institution may report the actual occupancy status or use the code for "not applicable." (Paragraphs V.A.7.c. and V.C.6. of Appendix A of this part.)

2. *Multiple properties.* If a loan relates to multiple properties, the institution reports the owner-occupancy status for the property that is reported under comment 1 to paragraph 203.4(a)(6). (Paragraph V.A.6. of Appendix A of this part.)

Paragraph 4(a)(4).

1. *Multiple purpose loan.* If a loan relates to other purposes in addition to home purchase or home improvement, the institution reports the entire amount of the loan, even though not all of the proceeds are for home purchase or home improvement. (Paragraph V.A.8. of Appendix A of this part.)

2. *Home equity line of credit.* An institution that reports home equity lines reports only the amount that the applicant indicates will be used for home improvement or home purchase purposes. (Paragraph V.A.8.c. of Appendix A of this part.)

3. *Counteroffer.* If an institution makes a counteroffer to lend an amount different from an applicant's initial request and the counteroffer is accepted, the institution reports the loan amount as the amount actually granted. If the counteroffer is rejected or if the applicant fails to respond to the counteroffer, the institution reports the amount initially requested. (Paragraph V.A.8.f. of Appendix A of this part.)

4. *Participation loan.* An institution reporting a participation loan origination enters the amount of its interest. (Paragraph V.A.8. of Appendix A of this part.)

Paragraph 4(a)(5).

1. *Action taken—counteroffer.* If an institution makes a counteroffer to lend an amount different from an applicant's initial request and the counteroffer is accepted, the institution reports the loan as an origination. If the counteroffer is rejected or if the applicant fails to respond to the counteroffer, the institution reports the action taken as a denial. (Paragraph V.B. of Appendix A of this part.)

2. *Action taken—rescinded transaction.* If an applicant rescinds a transaction after closing, an institution reports the action taken as an origination or as approved but not accepted. (Paragraph V.B. of Appendix A of this part.)

3. *Action taken—purchased loan.* An institution reports only purchased loans, not loans that the institution has declined to purchase. (Paragraph V.B. of Appendix A of this part.)

4. *Action taken—conditional approval.* If an institution issues a loan approval subject

to the applicant's meeting certain underwriting or other conditions and the conditions are not met, the institution reports the action taken as a denial. (Paragraph V.B. of Appendix A of this part.)

5. *Action taken date—approved but not accepted.* For a loan approved by the institution but not accepted by the applicant, the institution reports either the date of the commitment letter sent to the applicant or any deadline that the institution gave the applicant for accepting the offer. The institution should be consistent in its practice. (Paragraph V.B.3.b. of Appendix A of this part.)

6. *Action taken date—origination.* Generally, for originations, an institution enters the settlement or closing date. For a loan that an investor institution acquired through a broker and reports as an origination, the institution enters the settlement date, the closing date, or the date the institution acquired the loan from the broker. The institution should be consistent in its practice. (Paragraph V.B.3. of Appendix A of this part.)

7. *Action taken date—construction/permanent loan.* For a construction/permanent loan, the institution reports the date the institution enters into the construction-loan transaction or when the loan converts to the permanent financing. The institution should be consistent in its practice. (Paragraph V.B.3. of Appendix A of this part.)

Paragraph 4(a)(6).

1. *Multiple properties.* For a loan secured by one dwelling and made for the purpose of purchasing or improving another dwelling or dwellings, an institution reports the location of the property taken as security. For a loan secured by two or more dwellings, and for the purpose of purchasing or improving one of those dwellings, an institution reports the location of the purchased property. (Paragraph V.C. of Appendix A of this part.)

For example:

i. For a loan to purchase or improve property A, secured by property B, report the location of B (the property taken as security);

ii. For a loan to purchase or improve properties A and B, secured by property C, report the location of C (the property taken as security);

iii. For a loan to purchase or improve property A, secured by properties A and B, report the location of A (the property purchased or improved); and

iv. For a loan to purchase or improve properties A and B, secured by properties A and B, the institution may report the location of A or B (one of the properties taken as security). Alternatively, the institution may report the loan in two entries on its Loan/ Application Register (using unique identifiers and allocating the loan amount between A and B).

2. *Loans purchased from another institution.* The requirement to report the location of a property in an MSA where the institution has a home or branch office applies not only to loan applications and originations but also to loans purchased from another institution. This includes loans purchased from an institution that itself did not have a home or branch office in that MSA

(and thus may not have collected the property location information). (Paragraph V.C. of Appendix A of this part.)

3. *Mobile or manufactured home.* If information about the potential site of a mobile or manufactured home is not available, an institution may enter the code for "not applicable." (Paragraph V.C. of Appendix A of this part.)

4. *Use of BNA permitted.* Block numbering areas (BNAs) are statistical subdivisions delineated by state agencies and the U.S. Census Bureau for grouping and numbering blocks in counties for which census tracts have not been established. BNAs (which generally are identified in census data by numbers in the range 9501 to 9999.99) may be entered if no census tract number exists. (Paragraph V.C.4. of Appendix A of this part.)

Paragraph 4(a)(7).

1. *Applicant data—joint applicant.* If a joint applicant does not file the application in person and does not provide the monitoring information, the institution reports using the code for information not provided by applicant in mail or telephone application. (Paragraph V.D. of Appendix A of this part.)

2. *Applicant data—application completed in person.* When an applicant meets with a loan officer to complete an application that was begun previously (for example by mail or telephone), the institution must treat the application as taken in person and request the monitoring information. A loan closing is not a meeting with a loan officer to complete an application. (Paragraph V.D. of Appendix A of this part.)

3. *Applicant data—completion by applicant.* An institution reports the monitoring information an applicant provides. If an applicant fails to provide the requested information for an application taken in person, the institution enters the data on the basis of visual observation or surname. If an applicant checks the "other" box the institution must report using the "other" code. (Paragraph V.D. of Appendix A of this part.)

4. *Applicant data—interactive video application.* An institution that uses an interactive application process with video capabilities should treat these applications as taken in person and collect the information about race or national origin and sex of applicants. (Paragraph V.D. of Appendix A of this part.) (See Appendix B of this part for procedures to be used for data collection.)

5. *Income data—income relied upon.* Except for income of cosigners (sureties) and guarantors, an institution enters the gross annual income relied on in evaluating the creditworthiness of applicants. For example, if an institution uses an applicant's salary to compute a debt-to-income ratio, but also relies on the applicant's annual bonus to meet underwriting standards and approve the loan, the institution reports both salary and bonus. (Paragraph V.D.5. of Appendix A of this part.)

6. *Income data—co-applicant.* If two persons jointly apply for a loan and both list income on the application, but the institution relies only on the income of one applicant in evaluating creditworthiness, the institution should report only the income of the one



applicant. (Paragraph V.D.5. of Appendix A of this part.)

7. *Income data—cosigners and guarantors.* Although an institution may rely on the income of cosigners and guarantors in making a credit decision, an institution does not report this income. Because cosigners and guarantors generally are not "applicants" under Regulation B, they are not treated as co-applicants under Regulation C. (Paragraph V.D.5. of Appendix A of this part.)

8. *Income data—loan to employee.* An institution may enter "NA" in the income field for a loan to its employee for privacy reasons, even though the institution may have relied on income in making its credit decisions. (Paragraph V.D.5. of Appendix A of this part.)

Paragraph 4(a)(8).

1. *Type of purchaser—loan participation interests sold to more than one entity.* Where a loan is originated by one institution but is sold to more than one entity, the originating institution reports the type of purchaser based on the entity purchasing a majority interest, if any. Otherwise, the institution uses the code for loans not sold in the calendar year covered by the register. (Paragraph V.E. of Appendix A of this part.)

4(c) *Optional data.*

1. *Agency requirements.* The reporting of reasons for denial, although optional under HMDA and Regulation C, may be required information for institutions that are regulated by an agency such as the Office of Thrift Supervision. (Paragraph V.F. of Appendix A of this part.)

4(d) *Excluded data.*

1. *Loan pool.* The purchase of an interest in a loan pool (such as a mortgage-participation certificate, a mortgage-backed security, or a real estate mortgage investment conduit or "REMIC") is a purchase of an interest in a security and is not reported. (Paragraph IV.B.5. of Appendix A of this part.)

#### Section 203.5—Disclosure and Reporting

5(a) *Reporting to agency.*

1. *Change in supervisory agency.* If the supervisory agency of a covered institution changes, the institution reports data for the year of the change and subsequent years to its new supervisory agency. (Paragraphs I., III. and IV. of Appendix A of this part.)

2. *Subsidiaries.* An institution is a subsidiary of a bank or savings association (for purposes of reporting HMDA data to the parent's supervisory agency) if the bank or savings association holds or controls an ownership interest that is greater than 50 percent of the institution. (Paragraph I.E. of Appendix A of this part.)

5(e) *Notice of availability.*

1. *Poster—suggested text.* The wording of the poster text provided in Appendix A ("Instructions for Completing the HMDA-LAR") is optional. An institution may use other text that meets the requirements of the regulation. (Paragraph III.G. of Appendix A of this part.)

#### Section 203.6—Enforcement

6(b) *Bona fide errors.*

1. *Bona fide error—data from third parties.* Although an institution may obtain the

property location information for applications and loans from third parties (such as appraisers or "geocoding" vendors), the reporting institution is responsible for ensuring that the data are correct. An incorrect census tract number can be treated as a bona fide error (and is thus not a violation of the act or regulation) only if the institution has maintained procedures reasonably adopted to avoid the error, such as performing an audit of the information. (Paragraph V.C. of Appendix A of this part.)

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, June 1, 1995.

**William W. Wiles,**

*Secretary of the Board.*

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