FEDERAL RESERVE BANK
OF DALLAS

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

DALLAS, TEXAS
75265-5906

April 17, 1998

Notice 98-32

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

SUBJECT

Reviews of Regulation B (Equal Credit Opportunity) and Regulation C (Home Mortgage Disclosure)

DETAILS

The Board of Governors of the Federal Reserve System has requested public comment on reviews of two of its consumer protection regulations: Regulation B (Equal Credit Opportunity) and Regulation C (Home Mortgage Disclosure). The review of Regulation B will determine whether it should be revised to address technological and other developments, identify areas in the regulation that could be revised to better balance consumer protections and industry burden, and delete obsolete provisions. The purpose of the Regulation C review is to identify ways in which the Board could revise it 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.

The Board must receive comments about the reviews of Regulation B (refer to Docket No. R-1008) and/or Regulation C (refer to Docket No. R-1001) by May 29, 1998. Please address comments to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

ATTACHMENTS

Copies of the Board's notices as they appear on pages 12326–29 (Regulation B) and pages 12329–31 (Regulation C), Vol. 63, No. 48 of the *Federal Register* dated March 12, 1998, are attached.

For additional copies, bankers and others are encouraged to use one of the following toll-free numbers in contacting the Federal Reserve Bank of Dallas: Dallas Office (800) 333-4460; El Paso Branch *Intrastate* (800) 592-1631, *Interstate* (800) 351-1012; Houston Branch *Intrastate* (800) 392-4162, *Interstate* (800) 221-0363; San Antonio Branch *Intrastate* (800) 292-5810.

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.

federal register

Thursday
March 12, 1998

Part V

Federal Reserve System

12 CFR Parts 202 and 203

Equal Credit Opportunity and Home Mortgage Disclosure; Proposed Rules

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R–1008]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Pursuant to its Regulatory Planning and Review Program, the Federal Reserve Board (the "Board") is undertaking a review of Regulation B, which carries out the provisions of the Equal Credit Opportunity Act (the "ECOA"). The ECOA makes it unlawful for creditors to discriminate against an applicant in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age, and other specified bases. The review will determine whether Regulation B should be revised to address technological and other developments; identify areas in the regulation that could be revised to better balance consumer protections and industry burden; and delete obsolete provisions. 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–1008, 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, 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, N.W. (between Constitution Avenue and C Street) any time. Comments may be inspected 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 section 261.12 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Natalie E. Taylor or Sheilah Goodman, Staff Attorneys, or Jane Jensen Gell, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or 452–3667; for the hearing impaired *only,* contact Diane Jenkins, Telecommunications Device for the Deaf (TDD), at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background on ECOA and Regulation B

The Equal Credit Opportunity Act, 15 U.S.C. 1691, enacted in 1974, makes it unlawful for a creditor to discriminate against an applicant in any aspect of a credit transaction on the basis of sex or marital status. In 1975, pursuant to section 703 of the ECOA, the Board issued Regulation B to implement the ECOA. The Congress amended the ECOA in 1976 to prohibit discrimination on the additional bases of race, color, religion, national origin, age (provided the applicant has the capacity to contract), receipt of public assistance benefits, and good faith exercise of a right under the Consumer Credit Protection Act. The Board issued an amended Regulation B in 1976 to reflect the amendments.

Under the Board's Regulatory Planning and Review Program, which requires periodic review of the Board's regulations, the Board reviewed Regulation B and revised it in 1985 (50 FR 48018, November 20, 1985). In 1989, the Board modified Regulation B to implement amendments to the ECOA contained in the Women's Business Ownership Act of 1988. Those amendments required that creditors give written notice to business applicants of the right to a written statement of reasons for a credit denial, and imposed a record retention requirement for records relating to business credit applications (54 FR 50482, December 7, 1989). The Board further modified the regulation in 1993 to implement amendments to the ECOA contained in the Federal Deposit Insurance Corporation Improvement Act of 1991. The amendments provided applicants with a right to obtain a copy of the appraisal report used in an application secured by residential real property, and expanded the enforcement responsibilities of the federal financial supervisory agencies when information about possible violations of the ECOA becomes known (58 FR 65657, December 16, 1993). The Board also modified the regulation in 1997 to implement amendments to the ECOA contained in the Economic Growth and Regulatory Paperwork Reduction Act of 1996. The amendments created a privilege for information developed by creditors as a result of "self-tests" they conduct (62 FR 66412, December 18, 1997).

II. Review of Regulation B

The Board will review Regulation B with three goals in mind: (1) To determine whether regulatory amendments are needed to address technological and other developments; (2) to identify areas in the regulation that could be revised to better balance consumer protections and industry burden; and (3) to delete obsolete provisions.

This Advance Notice of Proposed Rulemaking is intended to gather information about broad policy issues that could be addressed by revisions to the regulation. The Board is soliciting comment on several specific issues, but also requests suggestions generally on other issues that commenters believe should be addressed or clarified. The Board will publish a proposed rule after evaluating the comments and further analysis.

Concurrently, the Board is undertaking a review of Regulation C (Home Mortgage Disclosure); an advance notice of proposed rulemaking is published elsewhere in today's **Federal Register**.

Comment is specifically solicited on the following issues:

1. Preapplication Marketing Practices

The ECOA and Regulation B prohibit discrimination by a creditor against an applicant—a person who has requested or received credit—on a prohibited basis regarding any aspect of a credit transaction. Credit transaction is defined in the regulation as every aspect of an applicant's dealings with a creditor beginning with information requirements. Thus, the coverage of the ECOA is generally limited to a person who has, at a minimum, sought credit information. However, the Board recognizes that a person could be discouraged from seeking credit or credit information. Accordingly, the regulation expressly prohibits a creditor from engaging in any practice that would discourage a reasonable person (on a prohibited basis) from applying for credit. The official staff commentary provides that a creditor is prohibited from using words, symbols, or other forms of communication in advertising that express, imply, or suggest a discriminatory preference or a policy of exclusion, although a creditor is permitted to engage in affirmative advertising to solicit or encourage traditionally disadvantaged groups to apply for credit.

Aside from the prohibition against discouragement, the ECOA has not been interpreted to apply to a creditor's preapplication marketing practices—

such as the selection of persons solicited for a credit card.[1] Creditors use a number of techniques to decide to whom solicitations will be sent. For instance, creditors will often specify criteria to credit bureaus, which then utilize credit reports to compile mailing lists that identify potential applicants who meet those criteria. This marketing technique—involving prescreened solicitations—is usually carried out through mailed solicitations as well as by telemarketing. Because individuals selected through the prescreening process have not requested credit, they are not deemed to be applicants for purposes of Regulation B when the prescreening occurs. It is only after the individuals respond to a creditor's invitation that the regulation applies.

During the 1985 review of Regulation B, the Board considered whether prescreened solicitations should be covered by the regulation. It was generally recognized that prescreened solicitations could result in a greater availability of credit for consumers. Also, there was no evidence at that time that creditors were improperly making use of prohibited characteristics. Therefore, the Board deemed it unnecessary to modify the regulation.

The Board recognizes that prescreening on a prohibited basis may facilitate the identification of potential customers and provide greater access to credit for some consumers. For example, some creditors have used age to target "older" individuals for credit solicitations and related financial services. However, the Board and the other banking agencies have also found instances in which creditors, primarily in the credit card industry, have used age to exclude youth and elderly persons from receiving solicitations for preapproved credit. Given the potential for using prohibited bases in prescreening to improperly exclude certain categories of individuals, the Board seeks to gain a better understanding of current practices, and solicits comment on how and to what extent creditors are using any prohibited bases in preapplication marketing.

2. Inquiry v. Application

Regulation B allows creditors to establish their own application procedures, including what and how much information to provide to consumers who request information before applying for credit. Creditors and others have expressed concern that the current distinction under Regulation B between an inquiry and an application is difficult to apply. The rule distinguishes between an inquiry and an application based on what the creditor communicates to the consumer. When a consumer requests credit information, this inquiry may entail a discussion of the consumer's credit characteristics. Creditors have suggested that under the regulation it is unclear when a creditor is simply providing information rather than communicating a credit decision—for example, when the creditor explains its underwriting standards in the context of the applicant's credit characteristics. A creditor is required to notify a consumer of action taken (including, as appropriate, a notice of adverse action) if in response to a consumer's request for credit information the creditor communicates a decision not to extend credit.

Creditors say that it is burdensome to provide an adverse action notice to every consumer who is provided with negative information in the information-gathering process. Also, they suggest that some consumers might be concerned about receiving adverse action notices when they are merely in the process of gathering information to shop for a loan.

Most questions that the Board receives regarding the distinction between an inquiry and an application arise in mortgage processes. With the increased use of prequalifications, preapprovals, and interactive loan-calculation tools provided over the Internet, creditors have had difficulty determining whether a notice is required. Sometimes, what begins with a creditor providing information turns into an evaluation of creditworthiness.

With prequalifications or preapprovals, consumers begin their loan-shopping by approaching a lender to determine the price of a home they could afford. In this process, creditors often obtain and review the consumer's credit report for a more accurate picture of the consumer's debt obligations and credit history. In most cases, the consumer has not identified a specific property, nor is the consumer necessarily ready to seek a loan from a particular creditor.

Some creditors provide loan-calculation tools on their home page on the Internet; and consumers are able to calculate the price of a home they could afford by entering information about income and other data. Some programs will calculate the maximum amount for which the consumer could qualify. Other programs encourage the consumer to call the financial institution when information has been entered and it appears from the calculation that the consumer would not qualify for a mortgage due to, for example, low income and high debt. Some creditors' home pages enable the consumer to take the next step of applying to the financial institution for a home loan.

In determining whether it is possible to provide additional guidance to clarify the distinction between an inquiry and application, the Board believes it is important to encourage creditors to provide information, counseling, and assistance to consumers seeking credit information. The sharing of information through counseling programs, such as home-ownership counseling, is a prime example. In home-ownership counseling, a third-party organization and financial institution may partner to counsel potential home buyers—typically first-time home buyers and, often but not necessarily, low-income home buyers—on how to obtain a mortgage. A credit report is often obtained to determine the consumer's financial position and to assist in an ongoing counseling process that could span a year or longer. In some programs, the third-party organization may not only provide counseling services, but also may prescreen applicants for the lender. The Board solicits comment on whether the more formal the process becomes in providing information, counseling, and assisting potential applicants—for example, verifying credit information, or prescreening applicants—the more the process should be treated as an application. The Board also solicits comment on the following:

(1) Should the Board devise a different test for determining when an informal discussion becomes an application? If yes, what should be the test?

(2) Should the Board seek to establish a "bright-line" test? For example, should an inquiry become an application when a creditor evaluates or verifies credit information through third-party information (such as by obtaining a credit report or credit score)?

(3) When, if at all, would the use of an interactive loan-calculation tool constitute an application?

(4) Is it possible or desirable to apply the current notification rules to home-ownership counseling programs? If not, how should the rules be designed to distinguish education-oriented counseling from advice offered by a lender, for example, to a consumer requesting a prequalification decision?

[1] The Fair Housing Act (FHA), which bars discrimination in housing-related transactions, differs in its treatment of prescreened solicitations. The FHA has been interpreted to prohibit persons from prescreening on a prohibited basis, whereas the ECOA permits any prescreening since only "applicants" receive the protections of the act.

(5) Are there some home-ownership counseling programs that have elements of both counseling and applications such that they should be distinguished from education-oriented counseling?

(6) Does the issue of distinguishing an inquiry from an application also arise in nonmortgage processes? If so, what are some of the distinguishing characteristics of such processes? Would a test developed for mortgage processes be effective for nonmortgage processes?

3. Voluntary Data Collection

Regulation B generally prohibits creditors from inquiring about an applicant's sex, marital status, race, color, religion, and national origin. This provision was included in the regulation in the belief that if creditors did not have this information, they could not use it to discriminate against applicants. At the same time, exceptions to this prohibition were also included in Regulation B. The regulation requires creditors to collect "monitoring information" (age, sex, marital status, and race or national origin) for mortgage loan applicants. This requirement was added because of the specific concern that the data was needed to help detect mortgage lending discrimination.

The regulation also allows creditors to collect data if required by another regulation, order, or agreement of a court or enforcement agency to monitor or enforce compliance with the ECOA, Regulation B, or any other federal or state statute or regulation. This exception was included in the regulation so that lenders would not have to choose between competing regulations or statutes. For example, creditors can collect data pursuant to the Home Mortgage Disclosure Act without concerns about violating Regulation B.

In April 1995, the Board published for comment a proposed amendment to Regulation B that would have allowed, but not required, creditors to collect information about an applicant's sex, marital status, race, color, and national origin for nonmortgage credit products. The regulation would have continued to bar creditors from considering this information in a credit decision. In December 1996, the Board withdrew the proposed amendment, noting that this issue might be more appropriate for the Congress to consider.

Since issuance of the final action, the Board has received requests from the other federal financial regulatory agencies, creditors, and community groups asking for further consideration of this matter. The Board believes that in light of the overall review of Regulation B it is appropriate to evaluate whether the prohibition on data collection should be changed. The Board solicits comment on whether to consider amending Regulation B to remove the prohibition barring creditors from collecting certain information about applicants for nonmortgage credit products.

4. Definition of Creditor

The ECOA and Regulation B prohibit a creditor from discriminating against an applicant on a prohibited basis regarding any aspect of a credit transaction. The ECOA's definition of creditor includes anyone who "regularly extends" or "regularly arranges for" the extension of credit. Regulation B combines the concepts and defines a creditor as a person who, in the ordinary course of business, regularly participates in the decision of whether or not to extend credit, including persons such as a potential purchaser of an obligation who influences the decision of whether or not to extend credit. For purposes of §§ 202.4 and 202.5(a) (the prohibitions against discrimination and discouragement), brokers or others who regularly refer applicants to creditors (or who select or offer to select creditors to whom applications can be made) are also deemed creditors.

As creditors expand their distribution systems for lending services and products, they have increasingly asked for guidance about how the definition of "creditor" applies when a lender acts in conjunction with other parties and discrimination occurs. The question could arise in the context of transactions in which a mortgage broker discriminates in originating loans that are funded by or closed in the name of the lender, for example, and also could arise in other types of lending, such as automobile financing.

Regulation B provides that a person (who may otherwise be a creditor) is not a creditor regarding a violation of the ECOA or the regulation committed by another creditor unless the person knew or had reasonable notice of the act, practice, or policy that constituted the violation before becoming involved in the credit transaction. The Board solicits comment on whether it is desirable or feasible to provide further guidance in this area, such as the circumstances under which a creditor is deemed to have knowledge of the acts of other parties when the creditor has participated in the decision to extend credit or set the credit terms.

Comment is solicited on the following:

(1) Is it feasible for the regulation to provide more specific guidance given that most issues will depend on the facts of a particular case?

(2) Should the current test—which relies on whether a person knew or had reasonable notice of an act of discrimination—be modified? If so, in what way?

(3) Should the regulation address whether, and under what circumstances, a creditor must monitor the pricing or other credit terms when another creditor (for example, a broker) participates in the transactions?

5. Documentation for Business Credit

Currently, Regulation B requires written applications if the credit is primarily for the purchase or refinancing of an applicant's principal dwelling. This rule does not apply to business credit. Many requests for business credit are made orally or without a formal written application. In such cases, a creditor usually requests that the applicant submit a financial statement for evaluation. As a general rule, Regulation B prohibits creditors from requiring the signature of a person other than the applicant on any credit instrument where the applicant is individually creditworthy. Where the financial statement offered to support the business credit lists jointly held property and is signed by both owners, some creditors are treating the financial statement as a joint application. Accordingly, both owners often are required to sign the note—even where the request for credit is being made by only one of the property owners. The Board does not believe that a joint property owner's signature on a financial statement to attest to the accuracy or veracity of information is definitive evidence of a joint application.

Without documentation in the files other than the financial statement, institutions may be required to spend considerable time and expense establishing that an application was for joint, rather than individual, credit. In addition, agencies that examine for compliance with Regulation B may impose costs and other burdens on institutions when it is difficult to determine whether a joint property owner actually intended to be a joint applicant. Accordingly, the Board has been asked to revise the regulation to provide guidance on what mechanisms may be used by creditors to establish a joint property owner's intent to apply for joint business credit.

The Board solicits comment on the following:

(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.

[FR Doc. 98–6325 Filed 3–11–98; 8:45 am]

BILLING CODE 6210–01–P

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.

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

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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