



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

March 9, 2001

Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Ave., N.W.
Washington, DC 20551

Re: Docket No. R-1001

Dear Ms. Johnson:

The Federal Trade Commission ("Commission") appreciates the opportunity to provide its views on the proposed amendments to provisions of Regulation C, which implements the Home Mortgage Disclosure Act ("HMDA"). The Commission strongly supports the proposed amendments because they will enhance the Commission's ability to monitor trends in the mortgage lending market and to identify and investigate abusive lending and other practices that violate fair lending laws.

I. Introduction

As the primary federal agency that enforces consumer credit laws with respect to non-depository institutions, the Commission has a strong interest in HMDA data that reflect important market changes, including those in the subprime market where abusive lending practices continue to be a concern. These data assist the Commission as it enforces various laws governing lending practices, including the Truth in Lending Act ("TILA"), which incorporates the Home Ownership and Equity Protection Act ("HOEPA"), and the Equal Credit Opportunity Act ("ECOA"), as well as prohibitions against unfair or deceptive acts or practices under the Federal Trade Commission Act.⁽¹⁾

The Federal Reserve Board ("Board") requests comments on a number of proposed revisions to Regulation C that expand its coverage to include more non-depository lenders, require additional information about each loan, and simplify some aspects of its reporting requirements. The Board also solicits comment on other potential revisions. The Commission has confined its comments to those aspects of HMDA that will enhance Regulation C to assist the Commission in its activities.

II. Adding New Fields to HMDA Loan Reporting Would Enhance Understanding of the Mortgage Market

The Board proposes to require financial institutions to report, as to each loan subject to TILA, whether it is subject to HOEPA and its annual percentage rate ("APR"). The Commission supports this proposal because it would enhance understanding of mortgage lending patterns, particularly in the subprime market, and facilitate fair lending and other lending law enforcement. The Commission also recommends that the Board consider requiring lenders to report the sum of the points and fees charged when a loan is originated.

The addition of HMDA reporting fields for HOEPA status, APR, and points and fees should not present a significant additional burden to financial institutions. In order to comply with TILA, HOEPA and Regulation Z, a lender originating a loan already must determine the loan's APR, points and fees, and whether it is subject to HOEPA. The small additional cost associated with reporting this currently available information would be far outweighed by the benefits of enhanced law enforcement and increased understanding of the subprime market.

A. HOEPA Status

The Commission has actively pursued enforcement of HOEPA and has a strong interest in enhancing such efforts. In March 2000, the Commission, in conjunction with the United States Department of Justice ("DOJ") and the Department of Housing and Urban Development ("HUD"), announced a settlement with Delta Funding Corporation, a national subprime mortgage lender. In addition to the allegations brought by DOJ and HUD, the Commission alleged that Delta had engaged in a pattern or practice of asset-based lending in violation of HOEPA. In July 1999, as part of "Operation Home Inequity," the Commission settled actions against seven subprime mortgage lenders for violations of HOEPA, the TILA, and Section 5 of

the FTC Act.⁽²⁾ More recently, on July 18, 2000, the Commission settled an additional action of this type against a Washington State lender, Nu West, Inc.⁽³⁾

While HMDA provides certain key data on the mortgage market, loans subject to HOEPA currently are not identifiable with HMDA data (or any other publicly available information). If lenders were required to report the HOEPA status of a loan, enforcement agencies would be able to enforce HOEPA's provisions more efficiently. This crucial information also would enable legislators, consumers, lenders, and federal and state enforcement agencies to evaluate HOEPA's reach.⁽⁴⁾

B. Annual Percentage Rate

The addition of the APR field also is very important. Regulation C's provisions evidence a concern about loan denials. With the emergence of risk-based pricing, the issue of concern increasingly is not whether a borrower obtained a mortgage loan but rather what the borrower paid for that loan (and the loan's other terms and conditions).⁽⁵⁾ Accordingly, the availability of APR data would significantly enhance fair lending enforcement, as well as investigations of predatory lending. As with previously available HMDA data on whether an application was denied, differences in APR alone would not be sufficient to prove fair lending law violations. Rather, it would assist in targeting cases for law enforcement purposes and would facilitate examinations and investigations by ensuring that price data are readily available for review. In addition, there is no consistent designation available to identify subprime loans or lenders. Including APR in the required fields, as well as HOEPA status, would greatly assist in understanding the nature of the high-cost mortgage market.

C. Points and Fees

In addition to requiring information on APR, the Commission recommends that the Board consider requiring lenders to report the sum of points and fees charged when a loan is originated.⁽⁶⁾ This would provide a more complete picture of the cost of a loan, and would further enhance fair lending and predatory lending enforcement.⁽⁷⁾ Points and fees are often the main source of consumer injury from predatory lending, and the effects of these costs are only partially reflected in the APR. The definition of APR contemplates a borrower that pays off the loan over the full term, and therefore the effect of the points and fees on the APR is spread over the full term of the loan. Because the vast majority of borrowers refinance or pay off their loans much sooner than the full term, the APR understates the true impact of the points and fees on the cost of the loan. Requiring lenders to report the HOEPA status of loans would partially address this issue, but would not make it possible to identify high-fee loans that did not reach the HOEPA trigger. In order to simplify the process of complying with a fee-reporting requirement, the Commission recommends that lenders be required to report only those points and fees that, under TILA, are included in the APR calculation.

Because lenders must already calculate these costs, requiring them to report the points and fees should not impose a significant additional burden.

III. Expanding Coverage to More Non-Depository Institutions Would Provide More Complete HMDA Data

The Board proposes expanding the coverage of Regulation C to include non-depository institutions that originate at least \$50 million in home purchase loans or refinancings of home purchase loans. The Commission supports this proposal because the addition of this dollar-volume approach would make HMDA data more complete.

Currently, HMDA data provide an incomplete picture of mortgage lending nationwide because certain large lenders originating a significant volume of mortgage loans are not required to report.⁽⁸⁾ Under Regulation C, lenders are required to report only if their dollar-volume of home purchase loans (or refinancings of home purchase loans) exceeds ten percent of their total loan originations.⁽⁹⁾ Thus, there are lenders that originate a large volume of home mortgage loans, but who do not have to report because they have an even larger volume of other types of loans, such as personal or business loans. By expanding coverage with respect to these institutions, HMDA data would more fully reflect market trends by bringing these lenders under the same reporting regime as other mortgage lenders.

Expanded coverage would enhance understanding of the market and facilitate law enforcement by providing data on loans from a greater number of non-depository institutions. This is of particular interest to the Commission, as it is the primary regulatory agency with respect to non-depository financial institutions. This change also would be consistent with the Board's goal of achieving HMDA coverage for lenders significantly engaged "in the business" of mortgage lending. Although lenders newly covered under this change would incur the increased costs associated with reporting under HMDA, the dollar-volume threshold ensures that only sizeable lenders would be subject to this requirement.

IV. Revising the "Loan Purpose" Reporting System Would Simplify the Reporting Process While Expanding Coverage To Key Market Segments

The Board proposes certain changes regarding how "loan purpose" is reported and solicits comment on other possible changes. Currently, loan purpose is reported as "home purchase," "home improvement," or "refinancing" (*i.e.*, a refinancing of a home purchase or home improvement loan). The definitions for these categories are complex, omit certain mortgage transactions, and lead to inconsistent data. The Board proposes revised definitions for "home improvement" and "refinancing" and solicits comment on a broader definition of "refinancing" than that which is proposed. The Board also solicits comment on changing the entire scheme for reporting "loan purpose." The revised approach would dispense with separate categories for refinancings and home improvement loans and instead would distinguish between home purchase and other mortgage loans (also designating first and second liens), as well as home equity lines of credit and unsecured home improvement loans.

The Commission encourages the full reorganization of "loan purpose" reporting because it would incorporate key segments of the mortgage market while simplifying the reporting process for lenders. If the Board does not adopt such extensive changes to the system of reporting "loan purpose," the Commission recommends that the Board adopt a broad definition of "refinancing" and simplify the definition of "home improvement loan."

A. New Categories for "Loan Purpose"

The Board solicits comment on changing the system for reporting "loan purpose" by creating the following categories: home purchase (distinguishing between first and second liens); other mortgage loans (distinguishing between first and second liens); home equity lines of credit ("HELOCS"); and unsecured home improvement loans. The Commission supports such a scheme. A primary advantage of this approach would be the ability to distinguish between first and second liens. Because second liens are higher risk than first liens and therefore generally

command higher prices, data on lien position would be helpful in interpreting other loan information, such as APR. Such a scheme also would expand reporting to include data on home equity loans (primarily second liens) not made for home improvement purposes. Because interest on personal loans is no longer tax deductible, consumers increasingly use home equity loans for a variety of purposes. Thus, a potentially significant area of home mortgage lending is not being captured under the current set of "loan purpose" definitions. Further, these new loan purposes would potentially simplify reporting requirements for lenders by establishing categories that lenders likely already use for other purposes.

B. Refinancings

There are currently four definitions of "refinancing" from which lenders can choose when reporting under HMDA. The Board proposes simplifying the definition of "refinancing" to include any new obligation satisfying and replacing an existing obligation by the same borrower, where both obligations are secured by a lien on a dwelling. The Board also solicits comment on whether the definition of refinancing should include refinancings of unsecured debt where the new loan is secured by a lien on a dwelling.

The extensive changes discussed in section IV.A. would render moot the issue of redefining "refinancing." If the Board does not adopt the extensive changes, the Commission recommends that the Board adopt the broad definition of "refinancing" that includes unsecured loans refinanced as secured loans (such as debt-consolidation loans). The adoption of a simple, uniform definition of "refinancing" would lead to more consistent, and therefore more useable, data. In addition, a definition that includes home equity loans that refinance existing unsecured debt is essential because of the expanding role of debt-consolidation loans in the mortgage market. The number of dwelling-secured loans for debt-consolidation purposes has grown significantly following changes in federal law with regard to the deductibility of interest on personal loans, and a rise in consumer credit card debt. The benefits of consistent data and a broader understanding of the mortgage industry would justify the modest additional burden on lenders imposed by this provision.

C. Home Improvement Loans

The Board proposes simplifying the definition of "home improvement" loan to include loans where any proceeds went toward home improvements or improvements to real property. If the Board does not adopt the extensive changes to the system of reporting "loan purpose" discussed in section IV.A, the Commission supports this change because it would provide more consistent data. Because a lender would be permitted to rely on a borrower's statement about the purpose of a loan (e.g., a "loan purpose" checkbox on a loan application), this approach would not greatly increase the cost of HMDA compliance.

V. Adding Preapproval Requests to HMDA Reporting Would Provide Data That Better Reflect Mortgage Market Activity

The Board proposes to cover certain requests for the preapproval of home purchase loans. Currently, lenders are not required to report preapprovals, although originations that result from preapprovals are reported. The proposed category of preapprovals to be reported under HMDA would track the Board's proposed revisions to the definition of "application" under Regulation B (64 Fed. Reg. 44582, Aug. 16, 1999). Thus, lenders would be required to report requests for preapproval made under procedures in which a creditor issues creditworthy persons a written commitment to extend credit that may be limited in three ways: (1) The lender specifies the maximum amount of credit that it commits to extend; (2) the lender specifies the period of time during which the commitment remains valid; and (3) the commitment may be subject to conditions.

The Commission supports this proposal because the proposed definition of "preapproval" would capture only highly-structured preapprovals - those that look like mortgage applications. This change would bring Regulation C further in line with HMDA's statutory language, which requires that lenders report "loan applications." It also would incorporate a growing segment of the market and thus expand fair lending enforcement capabilities. As the Board notes, and the

Commission's experience confirms, preapprovals are becoming an increasingly prevalent practice. Further, defining preapprovals under Regulation C and Regulation B in a similar fashion would enhance efficiency in lender compliance and law enforcement. While the addition of a new category of loan applications to HMDA's reporting requirements would add some additional cost to compliance, these transactions are integral to the mortgage process and should be included.⁽¹⁰⁾

VI. Reporting HELOCS Would Expand Reporting On Home Improvement Loans

The Board proposes requiring lenders to report as a separate category home equity lines of credit ("HELOCS") - open-end credit secured by a lien on a dwelling. The Commission supports this proposal. These transactions, which currently are optional to report, are an important way for consumers to borrow against their home equity. Reporting them therefore is essential to understanding the mortgage market. In addition, HELOCS are often used for home improvements and HMDA, since its enactment, has required the collection of information about home improvement loans.

VII. Reporting Loan Denial Reasons Would Enhance Fair Lending Law Enforcement

The Board solicits comment on whether to require reporting of reasons that a loan application was denied. The Commission supports mandatory reporting of loan denial reasons.⁽¹¹⁾ Currently, such reporting is voluntary. By making such reporting mandatory, more complete information would be available regarding borrowers' access to credit. This would facilitate the identification of potential discrimination. Notwithstanding the rise in risk-based pricing, significant numbers of borrowers still are denied loans every year. Because under the ECOA a lender must provide, or be prepared to provide, a borrower with reasons for denial, this requirement would create only a marginal additional burden on lenders by adding a reporting component. Moreover, because voluntary reporting of denial reasons among nondepository institutions is significantly lower than among depository institutions, instituting a reporting requirement would provide equal access to such information for both types of institutions.

VIII. Conclusion

The Commission appreciates your consideration of these views. If any other information would be useful regarding these matters, please contact Joel Winston, Acting Associate Director, Division of Financial Practices at (202) 326-3224.

By direction of the Commission.

Donald S. Clark
Secretary

Endnotes:

1. The Commission's actions in the mortgage lending area have included the following: FTC v. First Alliance Mortgage Co., Civ. Action No. SA-CV-00-964 (C.D. Calif. filed Oct. 3, 2000) (complaint); United States v. Delta Funding Corp., Civ. Action No. 00 1982 (E.D.N.Y. filed Apr. 2000) (consent decree); FTC v. Fleet Fin., C3899 (FTC Oct. 5, 1999) (consent decree); FTC v. Capital City Mortgage Corp., Civ. Action No. 1:98-CV-00237 (D.D.C. filed Jan. 29, 1998) (complaint).

2. The HOEPA violations alleged included failure to provide required disclosures, asset-based lending, and use of prohibited terms (such as balloon payments on loans with less than five-year terms, increased interest rates after default, and prohibited prepayment penalties). The settlement agreements provide for substantial remedies and protections for past and future borrowers, including consumer redress totaling \$572,500, and, in the case of one lender, a ban against any future involvement with high-cost loans secured by consumers' homes.

3. The complaint alleged that the company failed to disclose to consumers material costs of the loans and other information at least three days before the closing, that it included prohibited balloon payments and increased interest rate provisions in the notes, and that it violated HOEPA by making direct payments to home improvement contractors. The settlement required the defendants to pay more than \$160,000 in consumer redress.
4. Separately, the Board has proposed to change Regulation Z to include optional credit insurance premiums (and similar costs) that are paid at or before closing in the HOEPA fees trigger (65 Fed. Reg. 81438, Dec. 26, 2000). If the Board does not ultimately include this change in Regulation Z, however, it may want to consider including a field in Regulation C's requirements indicating whether a loan included optional credit insurance.
5. See, e.g., *United States v. Delta Funding Corp.*, Civ. Action No. 00 1982 (E.D.N.Y. filed Apr. 2000) (settling charges that the company, *inter alia*, approved and funded home mortgage loans to African American females with higher mortgage broker fees than similarly situated white males).
6. The Departments of the Treasury ("Treasury") and Housing and Urban Development ("HUD") have recommended requiring lenders to report APR and "the cost of credit." See "Curbing Predatory Home Mortgage Lending: A Joint Report," United States Department of the Treasury and United States Department of Housing and Urban Development, June 2000 ("HUD/Treasury Report") at 99.
7. If the Board changes Regulation Z to include optional credit insurance premiums (and similar costs) that are paid at or before closing in the HOEPA fees trigger, such costs still will not be captured by APR-based fee-reporting in HMDA.
8. See, e.g., HUD/Treasury Report at 98.
9. This comment letter assumes that this category of purchase money loans and related refinancings includes those loans where the loan being refinanced is itself a refinance of a home purchase loan (or of a subsequent refinance of such a loan). The Board may want to consider clarification of this point.
10. Because preapprovals are evaluated somewhat differently from other loan applications, the Board should consider requiring lenders to designate preapproval applications with a separate code.
11. The HUD/Treasury Report also endorses such a requirement. See HUD/Treasury Report at 99-100.