

Completion of HMDA Loan/Application Register) to Regulation C. Rather than reproducing the information from Appendix A in the commentary, the Board has incorporated that material only where necessary for clarity.

A number of commenters inquired about the status of *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 (HUD) now that the Board is publishing a commentary to Regulation C. The *Guide* provides information in a more informal manner that many commenters have found useful (for example, its step-by-step guidance and the flow chart on coverage). In addition, the *Guide* provides useful information not provided in the regulation, such as the state and county codes for counties in Metropolitan Statistical Areas (MSAs). Accordingly, the member agencies of the FFIEC and HUD contemplate continuing to publish the *Guide*.

## II. Section-by-Section Analysis

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

**1(c) Scope. Refinancings.** Comments 1(c)–2 through –4 deal with refinancings. Comment 1(c)–2 states that modification, extension, and consolidation agreements (MECAs)—in which the existing obligation is not satisfied and replaced—are not refinancings. Some commenters suggested that the Board treat MECAs as refinancings, on the basis that they may serve the same purpose as formal refinancings. The Board has retained the interpretation as proposed. The Board believes that moving from the current bright-line test for refinancings to a broader test that would include MECAs and other types of renewals and extensions would increase institutions' compliance burdens significantly in determining which transactions are covered and which are not.

Comment 1(c)–3 clarifies that, for coverage purposes, an institution may base its determination of whether a transaction is a refinancing of a home-purchase loan on whether a first lien (as opposed to a subordinate lien) on a dwelling is involved. For institutions that meet the coverage test, comment 1(c)–4 makes clear that the data collection requirement (in contrast to

coverage) does not depend on lien position.

Under both comments, an institution may always determine whether a new transaction is a refinancing for HMDA purposes based on the actual purpose of the existing loan. An institution also has the option to rely on the statement of the applicant or look to the security interest, if any.

**Broker and investor institutions.** The substance of proposed comments 1(c)–5 through –10 has been adopted as proposed, although the comments have been revised and reorganized. To address the concerns of some commenters and to allow the consistent use of the terms “broker” and “investor” in each of the comments, comment 1(c)–5 defines a “broker” and “investor” broadly. For example, as the term is used in the commentary a broker may or may not make the credit decision, depending upon the circumstances. The Board has also adopted a new comment 1(c)–9 which clarifies the reporting responsibilities of an institution that uses an agent.

Some commenters suggested revising the proposed comments to change the existing reporting responsibilities. Under the proposed commentary certain brokers could show a substantial number of denials, yet have few corresponding originations on their HMDA–LARs. This is the case where a broker makes the decision to deny certain applications rather than send them on to an investor for a credit decision. As a result, the investor reports more originations and the broker more denials. A number of commenters suggested revising this approach.

The position stated in the final commentary, like the proposal, is consistent with Appendix A's instructions for completing the HMDA–LAR, paragraphs IV.A.3 and IV.A.4. Prior to January 1, 1993, Regulation C specified that the institution in whose name a loan closed reported an origination (regardless of whether it made the credit decision), while the institution that made the credit decision reported the denials. Thus, a broker might report as an origination a loan that was approved in advance by an investor. In response to public comment, and based on its own analysis, the Board decided in 1992 that the rule for reporting originations in brokered or correspondent situations should match the reporting of denials—that is, the party making the credit decision should report both originations and denials for HMDA purposes. (See the Board's final rule revising Regulation C, at 57 FR 56963, December

2, 1992). Thus, the commentary has been adopted substantially as proposed.

**Affiliate bank underwriting.** In response to public comment, the Board has added a new comment 1(c)–10 to address a pre-closing review by an affiliate bank under 12 CFR 250.250, which interprets section 23A of the Federal Reserve Act, Restrictions on Transactions with Affiliates (sometimes known as a “250.250 review”). Section 23A limits the amount of “covered transactions” that a bank may engage in with a single affiliate. As stated in 12 CFR 250.250, a bank has not engaged in a covered transaction when it purchases a loan made by the affiliate if the bank completes an “independent evaluation of the credit worthiness of the mortgagor(s)” prior to the affiliate's committing to make the loan and the bank promptly purchases the loan after the loan is made. Under HMDA, when a bank conducts an “independent credit evaluation” of an application it must report the action taken on the application, rather than treat the transaction as the purchase of an originated loan.

**Participations.** Proposed comment 1(c)–10 would have allowed the reporting of an institution's partial interest in a participation loan, including interests in some consortium loans, at the institution's option. The Board solicited comment on whether it is appropriate to report partial interests on the HMDA–LAR in this manner. Based on the comments and after further consideration, the Board has decided that for the present the HMDA data should not reflect partial interests in loans. The Board has revised the comment accordingly. Reporting partial interests could distort the HMDA data by showing a single loan as a number of loans (for example, if ten lenders participated in a loan there could be as many as ten entries in HMDA–LARs). The Board may consider amending Regulation C at a later time to allow reporting of partial interests in loans, perhaps establishing a special code to indicate the extent of the interest.

**Assumptions.** In response to public comment, the Board has adopted a new comment 1(c)–12 dealing with assumptions. The comment adopts and expands upon the language found in the FFIEC's

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### *Section 203.2—Definitions*

**2(b) Application.** Comment 2(b)–1 has been revised to clarify that while Board interpretations of the definition of application under Regulation B (Equal