participations. (See discussion of comment 1(c)-11, above.)

Paragraph 4(a)(5)—Type of action taken and date. Comment 4(a)(5)-1 deals with the "action taken" code to be used for counteroffers. A change has been made to illustrate that counteroffers may contain other terms different from those initially requested besides loan amount. Counteroffers that are not accepted by the applicant are to be reported as denials. If there are a series of offers or counteroffers, an institution reports only the final action taken at the conclusion of the negotiations. In addition, in some circumstances a rejected counteroffer that is reinstated and accepted by the applicant need not be reported as a denial. (See comment 4(a)(1)-3.)

Comment 4(a)(5)-2 deals with rescinded transactions. Some commenters asked whether they must consistently report the action taken in the case of a loan rescission as either "approved but not accepted" or as "loan originated." The Board believes that a strict requirement is not warranted in light of the small number of loans that are rescinded.

Comment 4(a)(5)-4 relates to conditional approvals. The proposal stated that if an institution approves an application subject to conditions that are not met, the action is reported as a denial. In response to comments, the Board has revised the comment to reflect that not all instances of failure to satisfy conditions should be classed as denials. For example, if a loan application is approved subject to routine conditions such as attendance at the closing or payment of closing costs, and such conditions are not met, the action is reported as approved but not accepted, rather than denied. However, loan approval subject to an underwriting condition (such as a larger downpayment or obtaining a cosigner or guarantor) is reported as a denial if the condition is not met.

Comment 4(a)(5)-5 gives options for reporting the date of action taken for applications approved but not accepted. In response to comments received, the

options have been expanded.

Paragraph 4(a)(6)—Property location. In response to comments and to improve the usefulness of the HMDA data, the Board has revised proposed comment 4(a)(6)-1 and added a new comment to indicate that for homeimprovement loans involving multiple properties, an institution should generally report the location of the property being improved.

Paragraph 4(a)(7)—Applicant and income data. Applicant data. The Board has revised and reordered comments

4(a)(7)-1 through -5 for greater guidance. For example, comment 4(a)(7)-3 clarifies that a creditor is not required to collect monitoring information if the face-to-face meeting occurs after the application process is complete, and comment 4(a)(7)-4clarifies that a joint applicant may enter the government monitoring information on behalf of an absent co-applicant. The Board has expanded comment 4(a)(7)-5 to address the treatment of remote electronic application processes that use text communication (such as Internetbased services) rather than "live" oral and visual communication. Such applications are treated as mail applications.

Income data. The Board has revised and reorganized the comments concerning the reporting of income data. For example, proposed comment 4(a)(7)–5 provided that institutions must report all income used to make the credit decision, even if the funds were not included in the debt-to-income ratio. Proposed comment 4(a)(7)-7 provided that an institution should not report the income of cosigners and guarantors, even if the creditor relied on that income in making the credit decision. Commenters believed that guarantors' and cosigners' income should be reported if that income was in fact relied upon by the creditor. Several commenters noted that to do otherwise is inconsistent with the general rule that creditors report the income relied on. Some commenters made a distinction between cosigners, who are primarily liable on the obligation, and guarantors, who are secondarily liable. They suggested that an institution should report the income of cosigners but not guarantors. Based on the comments received and upon further analysis, the Board has revised and consolidated the proposed comments into comment 4(a)(7)-6 to clarify that institutions report the income of applicants and cosigners (but not guarantors) to the extent relied upon in making the credit decision.

Paragraph 4(c) Optional data. In response to comments, comment 4(c)-1has been modified to reflect that state regulations also may require the reporting of the reasons for denial.

Section 203.6—Enforcement

6(b) Bona fide errors. Comment 6(b)-1 states that an error is bona fide only if the institution maintains reasonable procedures to avoid the error. To provide an example of reasonable procedures, the proposed comment had used the word "audit" in the sense of examine and check. Because some commenters interpreted this as a

requirement to conduct a formal audit, the Board has revised the comment.

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 amends 12 CFR part 203 as set forth below:

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 is amended by adding a new Supplement I-Staff Commentary after the Appendices to read as follows:

Supplement I to Part 203—Staff Commentary

Introduction

1. Status and citations. The commentary in this supplement is the vehicle by which the Division of Consumer and Community Affairs of the Federal Reserve Board issues formal staff interpretations of Regulation C (12 CFR part 203). The parenthetical citations given are references to Appendix A to Regulation C, Form and Instructions for Completion of the HMDA Loan/Application Register.

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. (Appendix A of this part, I., IV., and V.)

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, modified, extended, or consolidated (as in certain modification, extension, and consolidation agreements), the transaction is not a refinancing for purposes of HMDA. (Appendix A of this part,

Paragraph V.A.5. Code 3.)

3. Refinancing—coverage. The regulation bases coverage, in part, on whether an institution originates home purchase loans. For determining whether an institution is subject to Regulation C or is exempt from coverage, an origination of a home-purchase loan includes the refinancing of a homepurchase loan. An institution may always determine the actual purpose of the existing obligation (for example, by reference to available documents). (Appendix A of this part, Paragraphs I.B., I.C., and I.D.) Alternatively, an institution may:

i. Rely on the statement of the applicant that the existing obligation was (or was not) a home-purchase loan; or

ii. Assume that the new obligation is not a refinancing of a home-purchase loan if