Proposed Amendments to Regulation C and its Commentary: Home Mortgage Disclosure

March 15, 2001

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street & Constitution Avenue, NW
Washington, DC 20551

Re: Docket No. R-1001; Proposed Amendments to Regulation C and its Commentary:
Home Mortgage Disclosure; 65 Federal Register 78655; December 15, 2000

Dear Ms. Johnson:

The Board of Governors of the Federal Reserve System (the "Board") has proposed numerous changes to Regulation C, which implements the reporting requirements of the Home Mortgage Disclosure Act ("HMDA"). Some of the changes are proposed simplifications and some are to require reporting of additional information on each HMDA-reported loan. Many banks and savings associations are HMDA reporters and will be affected by these proposed changes. The American Bankers Association ("ABA") brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership – which includes community, regional and money center banks and bank holding companies, as well as savings associations, trust companies and savings banks – makes ABA the largest bank trade association in the country.

General Comments

The American Bankers Association urges the Board not to adopt any of the proposed changes that will require additional reporting. ABA believes that the Board has grossly underestimated the increase in regulatory burden associated with the proposed changes. In particular, the reporting of all home equity lines of credit ("HELOCs") would enormously increase the reporting burden of those banks, which currently do not report HELOCs by up to three times. The Board has also underestimated the additional regulatory burden of reporting the annual percentage rate ("APR") on each loan. In order to report as a new item APRs, reporters will be required to create new reporting systems, since most banks generate the APR with loan documentation software that does not currently interface with the banks' reporting systems. All of the other reporting changes, no matter how minor in appearance, such as indicating whether the loan is for manufactured housing or whether the loan is subject to the HOEPA disclosure requirements, involve making several reporting systems changes, and such changes are always expensive and time-consuming. The Board further underestimates the impact of these proposed changes because the Board has apparently not considered the impact of other proposed changes. For example, pending changes to the HOEPA disclosure requirements under Regulation Z would greatly increase the number of HOEPA reportable loans by banks and savings associations, increasing the burden of reporting whether those loans are subject to the HOEPA disclosures. Even banks that do no HOEPA lending at all would be required to reprogram systems in order to report that they do not.

Our second reason for urging the Board not to adopt any of the proposed additional information reporting changes is that the additional information being requested will not generate information that in fact will be useful for what appears to be the Fed's primary purpose in making the changes, combating predatory lending. Not only is the predatory lending that the Board seeks to stop more associated with "home improvement" scams and quick-finance companies that are primarily nondepository institutions, which continue to be largely exempt from HMDA reporting, but also these predatory lenders are not likely be reporting under the current or even the proposed regulations.

Third, we are concerned that some of the proposed changes appear to go beyond the intent of the Home Mortgage Disclosure Act. As we read the findings and purpose of this 1975 statute, it seems clear that it is focused on determining whether lenders are serving the "housing credit needs of the neighborhoods and communities in which they are located." To the extent that the Board's proposal severs the connection between the loans reported and the purpose of the loan, whether for home purchase or home improvement, the Board appears to be regulating beyond the purpose of the statute. The result of this would appear to be data that would in fact decrease our knowledge of whether lenders are serving the housing credit needs of their communities. For example, the Board's proposed requirement that reporters report all Home Equity Lines of Credit ("HELOCs") will also not yield much information about the provision of credit for housing, as most bank-originated HELOCs are not for "home improvement," as suggested by the Board, but are for other, nonhousing purposes.

For these reasons, ABA concludes that the Board's proposed additional reporting fails any cost-benefit analysis, if the costs and benefits are accurately assessed. Therefore ABA believes that the Board should not adopt the proposed additional reporting.

Specific answers to the HMDA questions

<u>1. The Board proposes to simplify the definition of a "refinancing</u>

." The current definition offers lenders several options for deciding which refinancings to report; which some critics complain results in inconsistent data. The Board proposes to establish a definition applicable to all lenders that a refinancing would be a new obligation satisfying and replacing an existing obligation by the same borrower, where both the existing obligation and the new obligation are secured by a lien on a dwelling. The Board proposes as an alternative reporting the refinancing of any debt, as long as the new debt is dwelling-secured.

In general, bankers feel that the current reporting test, which has now been in effect since 1995, did not need changing, as ABA wrote in its comment letter on the ANPR. The definition of refinancing has already been amended several times. Each change in definition requires retraining of personnel and sometimes changes in reporting systems. Bankers would prefer to avoid incurring these additional regulatory burden expenses, unless there is some commensurate savings from simplification. The question then would appear to be is the new reporting proposal simpler and relatively easy to implement. Overall, bankers did not see that the change was needed or that it would result in any commensurate savings.

However, if the Board was to simplify the definition of refinancing to provide more consistent data, the Board has suggested that there are two ways in which it could do so. First, the Board could define a refinancing as the replacing of an existing dwelling-secured debt with a new dwelling-secured debt. The second approach would be to require all debt refinanced by a dwelling-secured debt to be reported as a refinancing. There was considerable division on this, since the Board's alternative is simpler, as the bank need only know that the new debt is dwelling-secured. In fact, several large HMDA reporters state that their automated systems for HMDA reporting do not capture information about whether the loan being extinguished was dwelling-secured, and having to obtain that information would require expensive changes to their systems. However, more bankers were concerned that the Board's alternative would not actually meet the statutory purpose of providing information on the provision of housing credit. Consolidation of education loans or consumer debt into additional mortgage debt does not appear to be providing housing credit, as banks and the Board have understood this purpose since the passage of the Act.

ABA does not recommend adopting the change in definition of refinancing, but if the Board does so, then ABA opposes the Board's adoption of the Board's alternative definition.

<u>2. The Board proposes to require lenders to report requests for preapproval by adding preapprovals to the definition of "application.</u>

" The Board states that it is defining preapproval narrowly, in order to avoid most of the anticipated problems, particularly those posed by pre-qualification requests. The Board is proposing a definition that would conform with the proposed (not adopted but apparently to be adopted) Regulation B amendments.

The definition of "application" will include "a request for a preapproval under procedures in which a financial institution issues to creditworthy persons a written commitment for a home purchase loan up to a specified amount that is valid for a designated period of time, even if issued subject to the identification of a suitable property or other conditions."

Bankers identified a number of concerns with the proposal. First, while consistency between regulations might have some value, in fact Regulation B has a different purpose than Regulation C. Regulation C is largely geographically based, to report on the provision of housing credit to the lender's neighborhoods and communities. Most preapprovals, even as narrowly defined as the Board proposes, will not have a house location entry, and thus will not relate to the stated purpose of the Home Mortgage Disclosure Act. While such a preapproval could be considered an application for purposes of the Equal Credit Opportunity Act, it should not be an application for housing credit under the Home Mortgage Disclosure Act, because there is no house identified with the preapproval. If the preapproval is used, then that becomes an application that is reportable under HMDA.

In addition, a significant amount of training would be needed in order to provide all bank employees with the information needed to identify these transactions. If adopted, this change would require, along with training, development of new procedures, system/software changes, and another process for some type of quality review to be sure the reporting is accurate.

Third, the proposal could result in further distortion of the HMDA numbers. Since preapprovals are treated as applications, there would be an increasing number of reported applications approved but not accepted or reported as denials. As we read the proposed reporting instructions, the failure of a borrower to meet a condition of approval must be recorded as a denial. Institutions could be approving many preapprovals that did not result in an origination because the borrower got multiple preapprovals or, after using the preapproval to shop for his/her/their home, then went to another lender for a better rate or lower fees or because the realtor pushed the other lender to the buyer. All of these could be required to be reported as denials, artificially inflating the denial rates of lenders offering preapprovals. In fact, we would anticipate lenders avoiding offering preapprovals just to avoid having these "false" denials appearing in their HMDA reports.

Finally, there will be difficulty for banks in determining if any of their prequalification programs are actually preapproval programs. For example, the Board states in its discussion that "only a limited number of highly-structured preapproval programs would be covered—those most like programs involving traditional mortgage applications. The proposal would not cover more informal prequalification programs in which the underwriting may be less rigorous and the lender makes no binding, written commitment." Many banks issue preapproval commitments <u>subject to subsequent verification of the information provided by the customer</u>. We would conclude that such a condition would mean that the preapproval in fact was not done to the rigorous underwriting standards of the lender, and should be treated as a prequalification rather than a preapproval. However, under the Board's definition, such a condition on a preapproval would not preclude it from being considered an application.

ABA concludes that the Board should not adopt the proposed change to include preapprovals as applications. ABA believes that the data collected would not in fact be tied to the purpose of the Act. Further, the data collected would further distort the HMDA numbers by inflating the reporting of applications approved but not accepted or applications denied. Further, the costs of training and systems changes appear to far outweigh any prospective benefit, particularly if the Board is correct that its definition of preapprovals would actually have limited application.

<u>3. The Board proposes to simplifying the definition of a reportable home improvement loan.</u>

In a change to the present reporting system, all loans for the purpose of home improvement would be reported. Currently, lenders may exclude such loans if they do not classify them as home improvement loans. The example is that some institutions make installment loans for home improvement purposes but also for many other purposes. Since the institution does not classify these installment loans as to their purpose, they are not reportable.

While the Board states that it knows that this will increase the reporting burden, it believes the additional burden is justified by making home improvement loan data "more consistent, complete, and therefore useful." ABA disagrees. First, the Board seems to have underestimated the proposed increase in reporting burden. As the Board defines home improvement loan, a loan would have to be reported as a home improvement loan "if any part of the proceeds is to be used for home improvement, regardless of how the institution classifies the loan." The Board suggests using a checkbox on all loan applications asking whether the loan is to be used for home improvement purposes. Presumably, the Board intends the question to read, "Is any part of this loan to be used for home improvement purposes?" in order to be consistent with the definition of a home improvement loan. Since home improvement loans are reportable, whether secured or unsecured, it would appear that virtually every consumer loan application in the bank will need this checkbox, barring perhaps education loans or a few other specialized loan products restricted in their purpose, such as auto or boat loans. It appears, for example, that all credit card applications would need this checkbox. All consumers, when considering whether to check "yes" or "no" on the credit card application, would think that they would probably go to Home Depot or some other similar store sooner or later and use this credit card for a home improvement purpose. Therefore, the consumer would check "yes." And the reporting burden has just become nearly infinite.

If a loan is reportable if any part of its proceeds would be used for home improvement, the reporting burden balloons to an insupportable level unless it is restricted to loans that are closed-end and dwelling-secured. If not so restricted, we think that there will be many more loans reported as home improvement that will simply be "noise" for regulators and public officials rather than a real increase in information about home mortgage and home improvement lending. We see nothing that this new information would actually tell us about the purposes of the Act. Even if restricted to loans that are closed-end and dwelling-secured, we believe that the home improvement portion of the loans would be small compared to other uses of the loans. Therefore the data would actually distort what we know about home improvement lending. The reporting burden would outweigh the value of the data.

ABA recommends that the proposal not be adopted. As drafted, it would require the reporting of many more loans than is presently required, almost all of which would be multi-purpose loans with no measurable amount of the loan or line of credit attributable to home improvement purposes. If, despite these objections, the Board adopts the proposal, we would recommend these changes: (a) the new reporting requirement should apply only to closed-end loans secured by a dwelling and for personal, family or household purposes, (b) requesting information from the consumer about the purpose of the loan as a means of ascertaining the purpose should be optional, not mandatory, and (c) an application for a loan classified as a home improvement loan by the lender should be reported as for home improvement purposes, without the need for further inquiry as to the consumer's purpose for the loan.

<u>4. The Board proposes requiring lenders to report home-equity lines of credit.</u>

The reporting of home-equity lines of credit, which is now optional, would become mandatory. Additionally, the full amount of home equity lines be reported, not just amounts to be used for home improvement. As justification for these changes, the Board cites research by Board staff indicating that most home-equity lines of credit are used in part for home improvement purposes, so the Board believes that mandatory coverage would provide more complete information about the home improvement market. ABA disagrees with the Board's research and reasoning.

First, this proposed change is strongly opposed by banks that do not currently report home equity lines of credit, primarily because of the enormous increase in reporting burden represented by the proposal. Most banks currently not reporting home equity lines estimate significant increases in reporting, far more than the 10-20% increase in reporting burden that the Board estimates for the whole proposal. Several banks that do extensive home equity lending estimate increases of 200 to 300%. An increase in regulatory burden of this magnitude simply requires more justification than the Board has offered.

The research cited by the Board staff is simply out of date. The staff cite "Recent Developments in Home Equity Lending" by Canner, Durkin and Luckett (<u>Federal Reserve Bulletin</u>, April, 1998, pp. 241-251.) for the result that approximately 69% of home equity lines have <u>some</u> home improvement purpose. (Since the survey allowed the consumer to select multiple purposes, and from the results it appears that most did, the amount of the loan for the purpose of home improvement is unknown.) Later research would indicate that only about 25% of HELOCs are for home improvement, according to the Consumer Bankers Association's ("CBA") 2000 Home Equity Study. The CBA member's surveyed reported that only 26% of new home equity lines originated between June 1999 and June 2000 were for home improvement purposes. (CBA notes that whether this result reflects changes in consumer behavior or just differences in survey questions is not entirely clear.) Nonetheless, it is apparent that a substantial number of those who apply for home equity lines are not doing so for home improvement purposes.

The Board itself states that one of the purposes of the proposed changes is to collect more data about subprime lending. While that may be a desirable goal, it does not appear *per se* to fall under the purposes of the Home Mortgage Disclosure Act. In fact, the Board's own research suggests first that HELOCs are not a subprime product, since households with HELOCs have substantially higher incomes, equity and education than holders of home equity loans. Second, the Board's research suggests that subprime home equity loans are not for housing credit. On page 249 of the Canner, et al., article cited by the Board staff, the authors state that such subprime loans do not have a primarily home improvement purpose.

Subprime home equity loans are commonly marketed as bill-consolidation loans, particularly as a means to pay off credit card debt. Given their pricing, collateral, and performance characteristics—relatively high rates of charge-off and delinquency (chart 1)—these real-estate secured loans are more akin to unsecured personal loans than to mainstream home equity loans. [Emphasis added.]

Given the apparent trend in HELOCs away from being for home improvement purposes, it is likely that no more than one in four HELOCs are for home improvement and even fewer subprime home equity loans will be for home improvement. If the large majority of HELOCs will not be directly related to home lending, does not making such reporting mandatory just add more misinformation to the HMDA data? ABA thinks so. Again, the issue is whether the information is about the "housing credit" purpose of the Act. We believe that a loan secured by a home but for purposes other than home purchase or home improvement is not "housing credit" as that term was used by Congress in 1975 in enacting the Home Mortgage Disclosure Act nor is it housing credit today, and data on such loans should not be collected under authority of that Act.

ABA recommends that the Board not adopt the proposal to make the reporting of HELOCs mandatory. ABA believes that the current reporting option of allowing lenders to report HELOCs should be continued.

5. The Board proposes to expand the coverage of nondepository lenders.

According to the Board, nondepository lenders are particularly active in the subprime market. The Board proposes adding a dollar-volume threshold of $50 million to the current loan-percentage test to better ensure that all significant lenders are covered. At present the depository institutions' threshold for reporting, if it has a home office or branch located in an MSA, is $31 million in total assets and one home purchase or refinance loan secured by a first lien on a dwelling. Even after the proposed change in coverage, the threshold would be higher for nondepository mortgage lenders under the loan-percentage test.

If the Board is trying to address predatory lending, which the Board says elsewhere it believes is mostly outside of the banking system, then the Board's rather minor increase in coverage of nondepository mortgage lenders amounts to simply not collecting most of the data on subprime and on predatory loans that the Board supposedly is trying to collect. If most predatory loans are targeted to the LMI neighborhoods and many are home improvement loans, then a $50 million threshold on just home purchase loans would mean a predatory lender could make 4,999 $100,000 predatory loans and still not report. Further, real predatory lenders are not worried about violating existing TILA and other protections in the law, so violating HMDA by not reporting would be nothing. Thus the Board appears to be willing to impose a major reporting burden on banks and then allow to escape the very nondepository lenders that the Board believes are largely the source of the problem. If the Board truly intends to utilize HMDA reporting to identify predatory lenders, then the Board will need to lower the $50 million threshold to $10 or even $5 million.

ABA is particularly concerned about the uneven impact of this proposal, largely arising from the uneven supervision and enforcement of the several classes of HMDA reporters. All of the banking Agencies have increased their compliance reviews to look for predatory lending in insured depository institutions. All of the Agencies have stated that predatory lending does not appear to be a problem in depository institutions. Yet the proposed changes in HMDA prompted by the intent to identify predatory lending will fall most heavily on those same depository institutions. The lenders who engage in "predatory" practices appear to be outside of the jurisdiction of any banking regulatory agency but instead are under the jurisdiction of the Department of Housing and Urban Development or the Federal Trade Commission. Because these latter two agencies lack the authority and resources to even identify these nondepository mortgage lenders, much less to perform regular examinations on them (particularly with respect to the accuracy of their HMDA data), the burden of compliance will fall almost exclusively upon depository institutions whose lending practices have already been and will continue to be closely scrutinized by banking regulators under current reporting obligations. This is made clear by the HUD-Treasury Report on Predatory Lending, July, 2000, in which deceptive and illegal sales practices were discussed. The Report then says, "One obstacle to identifying practices of this kind is that <u>most non-depository institutions are not subject to regular examinations for compliance with consumer or civil rights laws</u>." [Page 72, emphasis added.] This uneven enforcement makes the utility of this burdensome proposal highly questionable.

ABA believes that the Board's proposal to collect more data on subprime lending from more nondepository lenders by enlarging the coverage of Regulation C simply misses its target.

However, if the Board adopts the proposal largely as written, the Board will have imposed an enormous new reporting burden on depository institutions that are not the problem and will not be collecting new data from similarly situated nondepository mortgage lenders. In such a case, the Board should extend coverage to nondepository lenders that would be equivalent to the current coverage of depository lenders.

6. The Board proposes to require lenders to report the annual percentage rate (APR) of the loan.

Of all of the proposed changes, this one was the one most strongly opposed by bankers. We believe that the inclusion of the APR by itself would have little benefit to regulators, yet the public disclosure of APRs without any of the other relevant information about the loan would be highly misleading to the public and harmful to lenders.

First, the Board's suggestion that the APR "may … help the public and supervisory agencies identify practices that potentially raise fair lending concerns and warrant further investigation" is not true without access to the many factors that goes into loan pricing, as bank supervisors well know. The APR by itself will tell examiners nothing. Examiners will need to review the file anyway in order to review whether the APR raises any fair lending concerns. Examiners review the loan files currently for fair lending concerns about pricing, and review the APR as part of that review. So examiners already have access to the APR, interest rate, fees and points and all of the other information necessary in order to review for fair lending concerns. The public reporting of APR will not aid real fair lending examinations in depository institutions. But it will confuse the public and possibly harm lenders.

As the Board knows, many factors go into the pricing decisions that creditors make. The APR is a reflection of those decisions, and without knowing the factors known to the creditor, it is impossible to assess the reason why one consumer may obtain a different APR than another. The uselessness of the APR by itself to help identify practices of fair lending concern is evidenced by the number of factors that affect the APR, several of which reflect choices of the borrower. Some of those factors include:

a. Differences in pricing that occur as a result of the different product choices of the borrower.
b. Differences in term, as shorter-term loans will yield a higher APR, even if costs are identical, because the finance charges are amortized over a longer time-span.
c. Differences in the base of calculation, as the APR on an adjustable rate mortgage cannot be adequately compared with fixed rate mortgages
d. Differences in borrower's choices on whether to pay upfront fees and points to reduce the interest rate.
e. Differences in timing of the loan due to fluctuations of interest rates.
f. Differences in the creditworthiness of the borrower, reflected in risk-based pricing.

In fact, there are so many factors that influence the APR, it appears to us that the APR by itself would have no value in any regression analysis model without the addition of many, many more data elements. As there is no uniform methodology for risk-based pricing, an analysis based on a uniform set of criteria, without regard to an individual institution's model, would be of questionable value no matter how much information is put in the analysis. Given the excessive costs already devoted to HMDA reporting, providing all the necessary information through this mechanism would be an economic impossibility.

Second, the Board seems to believe that providing the APR is relatively simple from a systems viewpoint. However, our bankers tell us that that is not the case. In fact, banker after banker told us that the APR is generated by the loan documentation software for the customer in order to satisfy consumer disclosure requirements of the Truth in Lending Act. Since it is pertinent only for the disclosure to the customer, many banks currently do not collect and do not have an easy way to collect APRs. After all, the APR is an arbitrary construct of regulators implementing a disclosure law, and most institutions do not use it for any other purpose. Therefore, it is going to be difficult to collect and ensure its accuracy, as is required for HMDA data. The Board seems dismissive of these costs.

Third, by far the worst damage will be the facile and incorrect analyses made by media and community activists as to "TOP TEN Most Expensive Lenders in America" or "APR data shows bias against minorities", as we have experienced and still are experiencing with respect to borrower's income data, which the Board knows is irrelevant to the loan decision but which has been the basis of numerous "HMDA studies" in recent years. We anticipate calls for investigations of all loans with higher interest rates to borrowers sorted variously by race, ethnicity or gender. Meanwhile bankers and regulators know that these loans are important parts of bank Community Reinvestment Act loan programs, targeted to low income applicants whose poor credit requires appropriate credit risk management practices, including risk-based pricing. It would be an ironic and unfortunate result if the reporting of the APR resulted in less credit being made available due to banks seeking to avoid being labeled as "subprime" or "high rate" lenders.

ABA opposes the reporting of APRs, as that information is already available to examiners, reporting of it would be far more costly than the Board appears to believe, and making it publicly available would only increase misinformation about mortgage lending and lenders.

<u>7. Whether the loan is subject to HOEPA.</u>

The Board proposes to require reporting of whether a loan is covered by the HOEPA provisions implemented in Regulation Z. To minimize the burden, reporting would be required only if it is required to report the APR. HOEPA loans are those that meet certain fee and rate thresholds in the Truth in Lending Act and Regulation Z, and subject to a special regulatory regime. The Board is currently proposing changes to the definition of a HOEPA loan that would, as proposed, greatly expand the coverage.

This may well result in a major increase in reporting, depending upon the final HOEPA regulations and how they define fees for calculating HOEPA coverage. ABA believes that changes in HMDA reporting of this magnitude require more justification than being "useful for better understanding the mortgage market." Large HMDA reporters estimate that at least several hundred hours of programming would be necessary to add HOEPA status as a required data field. Should the Regulation Z proposals expanding HOEPA status be adopted, the costs would dramatically increase, especially if such items as single premium credit insurance are added to fee calculations, thus triggering the inclusion of many more applications as HOEPA credits.

ABA is submitting separate comments on the Board's HOEPA proposed changes, but one aspect of the proposal bears addressing in this letter. ABA is deeply concerned about the impact on subprime lending of a broad expansion of the definition of an HOEPA loan, and then its reporting on HMDA data. Many depository institutions have said they simply will not be HOEPA lenders, because of perceived stigmata of being a "high cost" and thus "predatory" lender. This does not mean they will lend for less, as risk-based pricing would prohibit that, but rather that they will lend less in the subprime market. As we stated in our March 6 letter to the Agencies on the new Expanded Guidance on Subprime Lending Programs:

"All of the Agencies have been working to reduce predatory lending, including proposed amendments to Home Mortgage Disclosure Act's Regulation C and the Home Owners' Equity Protection Act's provisions of Regulation Z to help identify predatory loans. At the same time, the Agencies have all stated repeatedly that they find very little evidence of predatory lending by regulated banking institutions. But if the Agencies or state and local governments unreasonably curtail the availability of subprime credit from banking institutions, subprime borrowers are more likely to be the victims of predatory lenders due to the resulting reduction in competition in the subprime market. At least that is the conclusion of Robert E. Litan in a recently released research paper. As Dr. Litan puts it, "In short, predatory loans are those that would not have been made in more competitive markets and where borrowers are more fully informed about the credit alternatives. Put differently, borrowers are more likely to be victims of one or more of the practices just listed in geographic areas where there may be relatively few lenders and where the borrowers themselves are not financially sophisticated and thus relatively easy prey for unscrupulous lenders."

If the impact of the combined HOEPA and HMDA changes is to constrict subprime lending by depository institutions, then the result of that effect appears to be directly opposite of the goals of these proposed changes.

ABA recommends that the proposal not be adopted. However, if it is, ABA recommends that the proposed loan coding be simplified to a simple "yes/no" coding rather than the more complicated codes proposed by the Board. Reporters that do not make HOEPA loans should be able to just indicate "no" on the Transmittal sheet of their HMDA report.

8. The Board proposes to require a reporter to indicate whether the loan or application involves a manufactured home.

ABA does not believe that the identification of manufactured homes will prove to be of material value with respect to the purposes of HMDA. Bankers disagree with the suggestion that applications for loans secured by manufactured homes are usually underwritten under different terms than other credits, and they question whether specific information obtained in identifying manufactured home loan applications will provide meaningful information relative to discriminatory lending practices. While some loans for manufactured homes are underwritten differently than single-family, detached housing, so are many other loan products, including co-op loans, planned unit development loans, and others. Additionally, ABA believes the proposed definition of "manufactured home" will be confusing and trigger considerable data integrity problems for many institutions. Many lenders will be unfamiliar with the HUD definition regarding manufactured home construction and safety standards, erroneously assuming that only mobile homes are covered. To the extent that new processes are required to identify dwellings that fall within this HUD definition, the costs associated with compliance would be significant. Because of the complicated definition of "manufactured home", training requirements will be significant if staff are required to manually inspect loan documents for HUD building specifications and manually input data onto a loan application register. Given the uncertainty pertaining to these definitions, the costs incurred in connection with a reasonable data integrity program would be significant.

ABA recommends that the Board not adopt the proposal. ABA does not see a justification for the compliance burden which adding this data field will provide.

9. Removal of transitory residences from the definition of "dwelling."

ABA supports this clarification.

10. Confirm that down payment loans are separately reportable.

ABA supports this clarification.

11. Type of Action Taken and Date

. The Board proposes to rewrite the commentary to require that a loan approval subject to the applicant meeting certain underwriting conditions be treated as a denial if the applicant does not meet them. The vast majority of all underwriting approvals contain some conditions (and in many cases, these conditions can be classified as standard, or customary or non-substantive). The impact of this change to the commentary will be that the vast majority of all approved loans that do not close will be reported as denied applications rather than as approved but not accepted applications. [We have noted this problem also under the proposed reporting of preapprovals.] We believe that there are truly customary conditions in the industry, such as a person unable to get clear title, which should be treated as approved but not accepted as opposed to a denial.

ABA opposes the proposed change in interpretation.

12. Adjust definitions of race and MSA codes.

The Board proposes to change the reporting of race and ethnicity and the definition of MSA to conform to changes made by the Office of Management and the Budget ("OMB"). With respect to race and ethnicity, the OMB has revised its "Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity" to prescribe five racial designations:

1. American Indian or Alaska Native
2. Asian
3. Black or African American
4. Native Hawaiian or Other Pacific Islander
5. White

For data on ethnicity, the standards provide for data on whether individuals are Hispanic or Latino, or do not fall within this category. The standards require that respondents be offered the option of selecting one or more designations.

First, substantial programming changes will need to be made in order to allow multiple selections in these categories. This is particularly problematic programming, because in theory the program must allow for the maximum number of choices that the borrower could select, which appears to be as many as all five racial codes. Second, ABA understands that the Board keys much of its analysis to the HMDA data to the census data, which uses the new definitions. However, borrowers are not required to use the same designations as the borrower used in making his census return, so that analysis of the data is now much more problematic, which ABA is sure that the Board has already considered. Third, ABA believes the option of reporting more than one "race" for an individual may confuse customers and will certainly confuse bank employees. Under Regulation C, lenders must fill in customer information that the customer has refused to supply, if they can. This raises such complicated questions as whether a lender is required to enter more than one racial or ethnic category, as appropriate, based on appearance, if the consumer has not responded, or is it sufficient to enter only one? If a consumer enters one category, but the lender believes, based on observation, that the consumer belongs in more than one category, is it permissible (or necessary) to designate a second category? The Board has provided no guidance on these conundrums, and should not adopt the proposal until it has answered these and other questions raised by these new optional designations.

ABA recommends that if the Board adopts the new multi-racial and multi-ethnic designations, then the Board remove the requirement that the lender fill in the information if the customer fails to do so.

13. The Board proposes to exclude from HMDA reporting data loans purchased in a branch acquisition. A branch acquisition is defined to be the purchase of all the assets and liabilities of a branch of a depository institution. It need not involve the purchase of a branch's physical facilities. Loans purchased as part of a branch asset sale (not including sale of the branch's liabilities) would continue to be reported. The Board states that it believes that the purchase of a branch's assets and liabilities is essentially an investment decision, not a credit decision, and so should not be included in the HMDA reports.

ABA has no objection to the proposal to exclude loans purchased as part of a branch acquisition from HMDA's reporting requirements.

14. The Board solicits comment on three other items of information that might be required to be reported: (1) the reasons why a loan application was denied, (2) the loan-to-value ratio (LTV), and (3) the identity of an institution's parent company, if any.

> As to (1), ABA has long opposed mandatory reporting of denial reasons for all lenders. ABA believes that the reasons for denial, particularly as to creditworthiness, lack sufficient granularity to be meaningful. Therefore, the reporting of the data has limited public policy benefit balanced against the costs that are incurred. ABA continues to oppose requiring denial reasons.
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> As to (2), ABA would strongly oppose this addition as a required data field. Often this information may not be available at the time a credit decision is made or might be irrelevant to the decision. There are too many methods of determining the value of secured real estate, varying from a "drive by" or "comparable comparison" basic review to a full-scale appraisal, which includes a property inspection. Any comparison of loan-to-value ratios, given the varying methodology employed for appraisals of the underlying data, would be misleading. Also, bankers indicate that this would be a very costly addition to HMDA required data for them to collect and report.
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> As to (3), ABA has no objection to the collection of parent company information.

Conclusion

The American Bankers Association appreciates the opportunity afforded it to comment on the Board's proposal to significantly revise the Home Mortgage Disclosure Act's Regulation C. The Board's proposal arises from its periodic review of the regulation "to identify ways 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." ABA wants to work with the Board to make HMDA reporting less burdensome and more meaningful. However, ABA believes that the Board's proposal materially underestimates the regulatory burden to be imposed upon the industry and significantly overestimates any value that the additional reporting would bring to either the public or governmental policy makers. While some of the proposed changes would be very burdensome, ABA believes the reporting of APR without the numerous other factors that clearly affect the APR would be clearly harmful to its members and, indirectly, to the public. However, reporting of the additional factors to make the APR data item meaningful would be enormously burdensome. ABA hopes that the Board will agree with the ABA's recommendations. If the Board has any questions about these comments, please call the undersigned.

Sincerely,

Paul A. Smith