



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

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

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

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.