

April 8, 2003

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Regulation C (HMDA) Transition Rules—Docket No. R-1145

Dear Ms. Johnson:

The Consumer Bankers Association (CBA)¹ appreciates the opportunity to comment on the proposed transition rules in the Official Staff Commentary for the Regulation C (the Regulation) by the Federal Reserve Board (the Board).

Before we comment, we wish to express our sincere gratitude to the Board for its willingness to grant the industry an additional year to undertake compliance with the requirements of the revisions to the Regulation. As we said when we requested the additional time, the shorter transition period would have created significant and unnecessary burdens, at a very high cost to banks and other HMDA reporters. Because the Board appreciated the importance of the need for more transition time, the data will be more accurate, and the burden of reporting will be lessened.

However, it is again imperative that the Board act expeditiously to promulgate clear and simple transition rules for lenders attempting to implement the changes in the Regulation. More than a year has now passed, and the industry is still awaiting the final transition rules. The benefits of the additional time that was so generously granted may be lost if the transition rules do not permit lenders to ramp up in the short time that remains. Therefore, we strongly urge the Board to act quickly in issuing final guidance on crossover applications and transition reporting.

Comments

¹ The Consumer Bankers Association is the recognized voice on retail banking issues in the nation's capital. Member institutions are the leaders in consumer financial services, including auto finance, home equity lending, card products, education loans, small business services, community development, investments, deposits and delivery. CBA was founded in 1919 and provides leadership, education, research and federal representation on retail banking issues such as privacy, fair lending, and consumer protection legislation/regulation. CBA members include most of the nation's largest bank holding companies as well as regional and super community banks that collectively hold two-thirds of the industry's total assets.

our comments address those proposed rules that we believe fail to do so. Those comments are as follows.

APR Spread. Our biggest concern is the proposed treatment of the “APR spread” (i.e., the difference between the APR and Treasuries of comparable maturity) on crossover applications (i.e., applications received in 2003 that may reach final disposition in 2004). We believe the burden of providing APR spreads on crossover applications far exceeds the benefits, and we recommend the use of “NA” in place of the proposal.

As proposed, lenders would need to capture the rate lock dates and Treasuries of comparable maturity many months prior to January 1, 2004, so that the information is in the system if the loans close after January 1. But many banks have systems that do not currently capture the applicable rate lock dates on applications or that capture the rate lock date, but do not feed the information to the HMDA reporting system.

After the final rules are implemented later this year, very little time will remain before 2004. Meanwhile, loans can be in the pipeline many months before they close.² There is little enough time to implement a system that tracks this information after January 1, 2004, so it is difficult to imagine most lenders of any size being able to do so for crossover applications as well. At best, lenders would be forced to review many loan files manually to report the APR spread on crossover applications. This would be burdensome and unnecessary, and would result in data with high error rates. It would also divert valuable resources from the intensive effort underway at year-end to ensure accurate reporting of the non-crossover applications in the 2004 LARs.

The Board seeks comment on the implementation of “less burdensome” alternatives, such as using the application or closing date for *all* loans or applying an arbitrary date, such as January 1, 2004, for calculating the spread compared to Treasuries. In neither case suggested by the Board would the burden be sufficiently lessened to warrant adoption and both cases pose other problems, such as the potential to distort the data. Use of alternative date to the lock-in date (which is what both suggestions entail) would not significantly reduce compliance burden. Financial institutions would still have to modify their systems to detect “transitional” loans and apply the appropriate date.

We recommend instead that lenders be permitted to report APR spreads on crossover applications as “NA”. The benefit to the lenders would be great, but the cost to the data would be minimal: A small percentage of the 2004 LARs in the beginning of the year would not have APR spreads; but the data would have fewer errors, and lenders could spend their time and energy on more important priorities. The overall data sample would not be significantly affected.

² The rules require the reporting of construction/permanent loans, where the rate may have locked as much as a year before the permanent loan closes and the data are reported.

Web Calculation Tool. The Board has indicated its intent to provide lenders with a web-based calculation tool to assist in reporting APR spreads. As we understand, lenders would input data, such as APR, rate lock and lien status and the program would determine the correct spread. However, we have been informed that the program would be usable on a loan-by-loan basis.

We appreciate the Board's attempt to make this transition as "user friendly" as possible. However, the value of such a program would be greatly enhanced for larger institutions if the system can accept "batch feeds" (given the volume that large lenders generate. In addition, we ask that the Board make available (as soon as possible) the program specifications; so larger lenders can have the ability to download the data in a form that can be integrated into their systems.

Race/Ethnicity Codes. The Board has proposed the use of a set of conversions from the 2003 to the 2004 race and ethnicity codes for monitoring information, where a 2003 application reaches final disposition in 2004. However, a better solution would be to permit "NA" to be entered for all race and ethnicity on crossover applications. The Board's required mapping from one race code under the old regulation to the new race and ethnicity codes under the revised regulation will require unnecessary programming, testing and training, at considerable cost, and will result in unnecessary errors. The use of "NA", on the other hand, will lead to more accurate LARs at a considerable reduction in time, effort and cost to lenders.

We wish to call the Board's attention to two additional issues in regard to the race and ethnicity coding during the transition from the current regulation to the new regulation:

(i) During the first few months of 2004, many lenders will be confronted with applications that were printed and distributed in 2003, such as the Fannie Mae 1003 (which include "old" government monitoring information). Lenders may have mailed or delivered the forms to the customers in 2003 but find they are submitted by applicants in 2004. Furthermore, brokers and correspondents could have supplies of old forms they wish to use up, and it is not always be possible to prevent them from doing so.

We believe loan officers should not have to contact customers and repeat the race and ethnicity monitoring questions under the new format that they have already responded to under the old format, or ask the applicants to re-apply using new forms. This would be costly and burdensome for the lenders, and would be off-putting to the applicants. We therefore suggest that lenders use the "NA" designation as well for such monitoring information—but only through the first quarter of 2004, by which time almost all these residual applications will be gone.

(ii) Many lenders may wish to begin using 2004 codes in late 2003, in anticipation of the January 1, 2004 conversion. For many, a phase-in period will be necessary to make a smooth transition, and to minimize cost. Therefore, the Board needs to clarify that lenders may use "NA" in the event that the application with the 2004 codes reaches final

disposition in 2003 in those instances. Alternatively, the Board should provide a methodology for converting the 2004 codes to 2003 codes (e.g., direct lenders to select and report a single race from the combination provided by the customer).

Reporting of Sex. A similar problem arises regarding the reporting of sex on crossover applications. Under the current rules for reporting the sex of a borrower or applicant, code 4—“NA”—includes applications from trusts, corporations (i.e., where the applicant is not a natural person), purchased loans and applications where there is no co-applicant. Under the new reporting requirements, however, the current code 4 has been split into two codes, and the new Code 4 is reserved for applications where there is no co-applicant or co-borrower. Consequently, if a crossover application is coded in 2003 as Code 4 (old rule), for 2004 reporting the HMDA reporting system would not know whether to report it as a Code 4 or Code 5.

Since there is no easy way for lenders to map systematically the old Code 4 to either the new Code 4 or Code 5, we recommend that the Board permit lenders to continue to report the old Code 4 sex field on crossover applications as Code 4 (“NA”). As with race/ethnicity mapping, we also recommend that the Board provide a grace period for the first quarter of 2004 to permit sex to be reported as “NA” on applications on the old Fannie Mae 1003 form and similar residual applications. This will result in a more accurate LAR without sacrificing the validity of any data analyses that may be performed.

HMDA Edits. We have a number of concerns regarding the 2004 preliminary “HMDA Edits” posted on the Federal Financial Institutions Examination Council web site.

The purpose of the HMDA edit checks is to check for combinations of codes that are either logically impossible or highly improbable, and thus very likely to be in error. Shortly after lenders submit their LARs, the Board sends lenders a list of all applications with fields that have been rejected by the edit program. Lenders must quickly research and correct each “error” and send the results back to the Board certifying that the error has been corrected or that the original report was correct.

We have learned that the 2004 Preliminary HMDA edits appear to contain numerous errors or inaccuracies that could cause large numbers of applications that were reported properly to be rejected improperly. If the Board does not correct these problem edits, the number of improper rejections could well be in the tens of thousands for large lenders, and will result in unnecessary cost and burden for all lenders. In addition, the Board must resolve additional problems lenders have begun to identify to ensure that the new edits do not cause crossover applications to be rejected because of apparent errors caused by the correct implementation of the transition requirements.

We will be happy to work with the Board staff to identify the problems with the HMDA Edits, and to ensure that the transition is smooth and uneventful.

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Thank you for the opportunity to present CBA's comments. If you have any questions, please do not hesitate to call me at (703) 276-3871 or e-mail at szeisel@cbanet.org.

Very truly yours,

A handwritten signature in black ink, appearing to read "Steve Zeisel". The signature is fluid and cursive, with the first name "Steve" and last name "Zeisel" clearly distinguishable.

Steven I. Zeisel
Senior Counsel