

LENDERS COMPLIANCE GROUP

“Converting Risk to Opportunity”

ADVISORY BULLETIN

July 30, 2008

FRB Proposes Revision to Regulation C (HMDA)

In our recent *Advisory Bulletin*,¹ we notified you that the Federal Reserve Board approved a final rule which amends Regulation Z (Truth in Lending) and was adopted under the Home Ownership and Equity Protection Act (HOEPA).² The new rule addresses and defines “higher-priced” mortgage loans, while also providing additional protection to consumers.³

The rule establishes a **category of “higher-priced mortgage loans”** secured by a consumer's principal dwelling, defined as a first-lien mortgage that has an annual percentage rate (APR) that is 1.5 percentage points or more above, or, if the loan is a subordinate-lien loan, 3.5 percentage points above the **“average prime offer rate.”**

The average prime offer rate is survey-based, and, for the foreseeable future, the FRB plans to use a specific survey currently published by Freddie Mac.⁴ The survey, called the **Primary Mortgage Market Survey® (PMMS)**, can be found at the following webpage:

<http://www.freddiemac.com/dlink/html/PMMS/display/PMMSOutputYr.jsp>.

PMMS and Reporting the Rate Spread

Due to the final revisions to Regulation Z regarding the definition of a “higher-priced mortgage loan,” the FRB is proposing to revise Regulation C, which implements the Home Mortgage Disclosure Act (HMDA). The proposed amendments are intended to facilitate regulatory compliance by conforming the test for rate spread threshold reporting under Regulation C to the new definition of higher-priced mortgage loans under Regulation Z.

¹ *FRB Finalizes Revision to Regulation Z (Truth in Lending)*, 07/30/08. Please contact us for a copy.

² 12 CFR, Part 226. FRB Press Release: July 14, 2008. Federal Register 73:147 pp 44522-44614 (2008.07.30)

³ Compliance with the new rules, other than the escrow requirement, is mandatory for all applications received on or after October 1, 2009. The escrow requirement has an effective date of April 1, 2010 for site-built homes, and October 1, 2010 for manufactured homes

⁴ Average prime offer rates are annual percentage rates derived from average interest rates, points, and other loan pricing terms offered to borrowers by a representative sample of lenders for mortgage loans that have low-risk characteristics. To obtain the average prime offer rates, the Board is using the PMMS survey because it both meets the criteria of §203.4(a)(12)(ii) and provides pricing terms for at least two types of variable-rate transactions and at least two types of non-variable-rate transactions. [Sup. I to Part 203, *Staff Commentary*, 1., Op. Cit. FR 73:147 p 44195]

Consequently, the Board proposes to revise the rules for reporting price information of “higher-priced mortgage loans” by conforming relevant HMDA data collection information to the new definition. Also, this revision will *mutatis mutandis* provide better and more useful pricing data on higher-priced loans reported under Regulation C.

The proposed revision to Regulation C,⁵ like the rule now being implemented, would set a threshold above a market rate to trigger reporting. However, the market rate the Board is proposing will conform to the average prime offer rate. Therefore, the proposed threshold to be reported in the HMDA data can be stated as follows:

Proposed HMDA Rate Spread Threshold⁶

The spread between the loan’s APR and the average prime offer rate (as published in the Primary Mortgage Market Survey®) offered on prime mortgage loans of comparable type if the spread meets or exceeds 1.5 percentage points for a first-lien (or 3.5 percentage points for a subordinate-lien loan).

The threshold itself is different: instead of utilizing the yields on Treasury securities of comparable maturity, the FRB’s proposal would require lenders to report HMDA data using the difference between a loan’s APR and the **average prime offer rate** on a comparable type of loan transaction if the difference met or exceeded the threshold.

Effective Date

Although the Regulation Z amendments concerning higher-priced mortgage loans do not take effect until October 1, 2009, the Board has proposed an effective date of **January 1, 2009** to implement the revisions to Regulation C. As proposed, loans consummated on or after January 1, 2009 would be subject to the new rule, while loans consummated before January 1, 2009 would continue to be subject to the old (current) rule. The FRB would publish the average prime offer rates on the Internet dating from the beginning of **October 2008** for loans that are locked in or after October 1, 2008 but are closed in 2009. Loans locked prior to October 1, 2008 would be subject to the old (current) rule.

ACTION PLAN

We strongly urge you to immediately review all HMDA collection and reporting policies, procedures, software, and protocols in order to assure that you are prepared by October 1, 2008 to submit HMDA data in accordance with the proposed revisions to Regulation C. Our risk management group can assist you in this process by conducting full reviews of your HMDA recordation and reporting platform. Please contact us to discuss your regulatory compliance needs.

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⁵ 12 CFR, Part 203. FRB Press Release: July 14, 2008. Federal Register 73:147 pp 44189-44197 (2008.07.30)

⁶ The creditor uses the most recently available average prime offer rate as of the date the creditor sets the transaction’s interest rate for the final time before consummation. [FR 73:147 p 44535]