

# Rules and Regulations

Federal Register

Vol. 68, No. 248

Monday, December 29, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 203

[Regulation C; Docket No. R-1178]

#### Home Mortgage Disclosure

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule; staff commentary.

**SUMMARY:** The Board is publishing a final rule amending Regulation C (Home Mortgage Disclosure) and the staff commentary that interprets the requirements of Regulation C. The regulation and staff commentary are amended to conform them to changes in the Standards for Defining Metropolitan and Micropolitan Statistical Areas published by the U.S. Office of Management and Budget (OMB) in December 2000. The staff commentary also is amended to increase the asset-size exemption threshold for depository institutions based on the annual percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers. The adjustment from \$32 million to \$33 million reflects the increase of that index by 2.30 percent during the twelve-month period ending in November 2003. Thus, depository institutions with assets of \$33 million or less as of December 31, 2003, are exempt from data collection in 2004.

**DATES:** Effective January 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** John C. Wood or Kathleen C. Ryan, Counsels, or Dan S. Sokolov, Senior Attorney, Division of Consumer and Community Affairs, at (202) 452-3667; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

**SUPPLEMENTARY INFORMATION:** The Home Mortgage Disclosure Act (HMDA; 12 U.S.C. 2801 *et seq.*) requires most mortgage lenders located in metropolitan areas to collect data about their housing-related lending activity.

Annually, lenders must report that data to their federal supervisory agencies and make the data available to the public. The Board's Regulation C (12 CFR part 203) implements HMDA.

#### Metropolitan Statistical Areas

The Board is making revisions to Regulation C to conform it to OMB's Standards for Defining Metropolitan and Micropolitan Areas issued in December 2000 under the Metropolitan Area program (the 2000 Standards). 65 FR 82228 (December 27, 2000). The purpose of the Metropolitan Area program is to provide nationally consistent definitions for the federal government to use in collecting, tabulating, and publishing statistics for a set of geographic areas.

Regulation C has incorporated OMB's definitions of a Metropolitan Statistical Area (MSA) and a Primary Metropolitan Statistical Area (PMSA) for determining coverage under HMDA, reporting property location, providing disclosures and reports of lending activity, and posting notices about the availability of HMDA data. OMB's 1990 standards defined an MSA as an urbanized area with at least 50,000 population. *See, e.g.,* 63 FR 70526, 70531 (December 21, 1998). Large MSAs of 1 million or more population were called Consolidated Metropolitan Statistical Areas (CMSAs); CMSAs were subdivided into two or more PMSAs (generally a county or group of counties with at least 100,000 population). Regulation C provided that the relevant geographic unit was the PMSA; if the lender or the property was located in an MSA that was not large enough to be a CMSA, then the MSA was the applicable geographic unit. CMSAs were not used under HMDA.

The 2000 standards supersede OMB's 1990 standards, necessitating a change to Regulation C. Although the 2000 standards retain the concept of an MSA as an urbanized area of 50,000 or more population, the standards no longer designate areas as CMSAs and PMSAs. Instead, the 2000 standards provide that a large MSA (with a population of at least 2.5 million) is divided into "Metropolitan Divisions." Each Metropolitan Division consists of one or more counties that represent an employment center within an MSA.

In June 2003, OMB released the list of MSAs and Metropolitan Divisions, Micropolitan Statistical Areas, and Combined Statistical Areas, based on

the application of the 2000 standards to data from the 2000 Census. Each MSA and Metropolitan Division is assigned a 5-digit number (previously, all MSAs and PMSAs were assigned 4-digit numbers). OMB Bulletin No. 03-04, June 6, 2003. In July 2003, the FFIEC instructed lenders to use the newly released MSAs and Metropolitan Divisions for collecting and reporting HMDA data beginning January 1, 2004. *See* <http://www.ffiec.gov/hmda/pdf/spec2004.pdf>. Regulation C refers to the MSA and the PMSA for determining coverage under HMDA, reporting property location, providing disclosures and reports of lending activity, and posting notices about the availability of HMDA data. The MSA, and in the case of large MSAs, the Metropolitan Division, are the geographic units most analogous to MSAs and PMSAs under the 1990 standards. Thus, their use minimizes any disruption in HMDA data caused by the changes to OMB standards.

The revisions to Regulation C formalize the FFIEC's July 2003 guidance. The regulation, Appendix A, and the staff commentary are amended to use the terms "MSA" and "Metropolitan Division." Additionally, references to obsolete Census materials have been deleted from Appendix A.

#### Asset Threshold

Provisions of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (codified at 12 U.S.C. 2808(b)) amended HMDA to expand the exemption for small depository institutions. Prior to 1997, HMDA exempted depository institutions with assets totaling \$10 million or less, as of the preceding year-end. The statutory amendment increased the asset-size exemption threshold by requiring a one-time adjustment of the \$10 million figure based on the percentage by which the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPIW) for 1996 exceeded the CPIW for 1975, and provided for annual adjustments thereafter based on the annual percentage increase in the CPIW. The one-time adjustment increased the exemption threshold to \$28 million for 1997 data collection.

Section 203.2(e)(1)(i) of Regulation C provides that the Board will adjust the threshold based on the year-to-year change in the average of the CPIW, not

seasonally adjusted, for each twelve-month period ending in November, rounded to the nearest million. Pursuant to this section, the Board raised the threshold to \$29 million for 1998 data collection, raised it to \$30 million for 1999 data collection, and kept it at that level for data collection in 2000. The Board raised the threshold to \$31 million for data collection in 2001 and to \$32 million for data collection in 2002; the Board kept the threshold at \$32 million in 2003.

During the period ending November 2003, the CPIW increased by 2.30 percent. As a result, the exemption threshold is raised to \$33 million. Thus, depository institutions with assets of \$33 million or less as of December 31, 2003, are exempt from data collection in 2004. An institution's exemption from collecting data in 2004 does not affect its responsibility to report the data it was required to collect in 2003.

#### Final Rule

Under the Administrative Procedure Act, notice and opportunity for public comment are not required if the Board finds that notice and public comment are unnecessary. 5 U.S.C. 553(b)(3)(B). The amendments in this notice are technical. The Board is amending various provisions of the regulation and commentary to conform them to the current OMB standards that are analogous to standards used previously under HMDA. Comment 2(e)–2 to section 203.2 of the regulation is amended to implement the increase in the exemption threshold. This amendment merely applies the formula established by Regulation C for determining adjustments to the exemption threshold. For these reasons, the Board has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendments are adopted in final form.

#### List of Subjects in 12 CFR Part 203

Banks, Banking, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Board amends 12 CFR part 203 as follows:

#### 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. Section 203.2 is amended by revising paragraphs (c)(2), (e)(1)(ii), (e)(2)(ii), and (j).

#### § 203.2 Definitions.

\* \* \* \* \*

(c) \* \* \*

\* \* \* \* \*

(2) Any office of a for-profit mortgage-lending institution (other than a bank, savings association, or credit union) that takes applications from the public for home purchase loans, home improvement loans, or refinancings. A for-profit mortgage-lending institution is also deemed to have a branch office in an MSA or in a Metropolitan Division, if, in the preceding calendar year, it received applications for, originated, or purchased five or more home purchase loans, home improvement loans, or refinancings related to property located in that MSA or Metropolitan Division, respectively.

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(ii) On the preceding December 31, had a home or branch office in an MSA;

(2) a for-profit mortgage-lending institution (other than a bank, savings association, or credit union) that:

\* \* \* \* \*

(ii) On the preceding December 31, had a home or branch office in an MSA; and

\* \* \* \* \*

(j)(1) Metropolitan Statistical Area or MSA means a metropolitan statistical area as defined by the U.S. Office of Management and Budget.

(2) Metropolitan Division or MD means a metropolitan division of an MSA, as defined by the U.S. Office of Management and Budget.

\* \* \* \* \*

■ 3. Section 203.4 is amended by revising paragraphs (a)(9) and (e).

#### § 203.4 Compilation of loan data.

(a) \* \* \*

(9) The location of the property to which the loan or application relates, by MSA or by Metropolitan Division, by state, by county, and by census tract, if the institution has a home or branch office in that MSA or Metropolitan Division.

\* \* \* \* \*

(e) *Data reporting for banks and savings associations that are required to report data on small business, small farm, and community development lending under CRA.* Banks and savings associations that are required to report data on small business, small farm, and community development lending under regulations that implement the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*) shall also collect

the location of property located outside MSAs and Metropolitan Divisions in which the institution has a home or branch office, or outside any MSA.

■ 4. Section 203.5 is amended by revising paragraphs (b)(3)(i) and (ii), (c), (e), and (f):

#### § 203.5 Disclosure and reporting.

\* \* \* \* \*

(b) \* \* \*

(3) In addition, an institution shall either:

(i) Make its disclosure statement available to the public, within ten business days of receiving it, in at least one branch office in each other MSA and each other Metropolitan Division where the institution has offices (the disclosure statement need only contain data relating to the MSA or Metropolitan Division where the branch is located); or

(ii) Post the address for sending written requests in the lobby of each branch office in other MSAs and Metropolitan Divisions where the institution has offices; and mail or deliver a copy of the disclosure statement within fifteen calendar days of receiving a written request (the disclosure statement need only contain data relating to the MSA or Metropolitan Division for which the request is made). Including the address in the general notice required under paragraph (e) of this section satisfies this requirement.

\* \* \* \* \*

(c) *Public disclosure of modified loan/application register.* A financial institution shall make its loan/application register available to the public after removing the following information regarding each entry: the application or loan number, the date that the application was received, and the date action was taken. An institution shall make its modified register available following the calendar year for which the data are compiled, by March 31 for a request received on or before March 1, and within thirty calendar days for a request received after March 1. The modified register need only contain data relating to the MSA or Metropolitan Division for which the request is made.

\* \* \* \* \*

(e) *Notice of availability.* A financial institution shall post a general notice about the availability of its HMDA data in the lobby of its home office and of each branch office located in an MSA and Metropolitan Division. An institution shall provide promptly upon request the location of the institution's offices where the statement is available

for inspection and copying, or it may include the location in the lobby notice.

(f) *Loan aggregation and central data depositories.* Using the loan data submitted by financial institutions, the FFIEC will produce reports for individual institutions and reports of aggregate data for each MSA and Metropolitan Division, showing lending patterns by property location, age of housing stock, and income level, sex, ethnicity, and race. These reports will be available to the public at central data depositories located in each MSA and Metropolitan Division. A listing of central data depositories can be obtained from the Federal Financial Institutions Examination Council, Washington, DC 20006.

■ 5. Appendix A to Part 203 is amended by:

■ a. Revising Paragraph I.A.6.c. introductory text.

■ b. Revising Paragraph I.C

■ c. Revising Paragraphs I.C.1., 3., 4., 5., and 6.

■ d. Revising the Loan/Application Register.

**Appendix A to Part 203—Form and Instructions for Completion of HMDA Loan/Application Register**

I. \* \* \*  
A. \* \* \*

6. \* \* \*

\* \* \* \* \*

Code 3—Not applicable

\* \* \* \* \*

c. Use Code 3 if the property to which the loan relates is a multifamily dwelling; is not located in an MSA; or is located in an MSA or an MD in which your institution has neither a home nor a branch office. Alternatively, at your institution's option, you may report the actual occupancy status, using Code 1 or 2 as applicable.

\* \* \* \* \*

C. Property Location. Except as otherwise provided, enter in these columns the applicable codes for the MSA, or the MD if the MSA is divided into MDs, state, county, and census tract to indicate the location of the property to which a loan relates.

1. *MSA or Metropolitan Division.* For each loan or loan application, enter the MSA, or the MD number if the MSA is divided into MDs. MSA and MD boundaries are defined by OMB; use the boundaries that were in effect on January 1 of the calendar year for which you are reporting. A listing of MSAs and MDs is available from your supervisory agency or the FFIEC.

\* \* \* \* \*

3. *Census Tract.* Indicate the census tract where the property is located. Notwithstanding paragraph 6, if the property is located in a county with a population of 30,000 or less in the 2000 Census, enter "NA" (even if the population has increased above 30,000 since 2000), or enter the census tract number. County population data can be obtained from the U.S. Census Bureau.

4. *Census Tract Number.* For the census tract number, consult the resources provided by the U.S. Census Bureau or the FFIEC.

5. *Property Located Outside MSAs or Metropolitan Divisions.* For loans on property located outside the MSAs and MDs in which an institution has a home or branch office, or for property located outside of any MSA or MD, the institution may choose one of the following two options. Under option one, the institution may enter the MSA or MD, state and county codes and the census tract number; and if the property is not located in any MSA or MD, it may enter "NA" in the MSA or MD column. (Codes exist for all states and counties and numbers exist for all census tracts.) Under this first option, the codes and census tract number must accurately identify the property location. Under the second option, which is not available if paragraph 6 applies, an institution may enter "NA" in all four columns, whether or not the codes or numbers exist for the property location.

6. *Data Reporting for Banks and Savings Associations Required to Report Data on Small Business, Small Farm, and Community Development Lending Under the CRA Regulations.* If your institution is a bank or savings association that is required to report data under the regulations that implement the CRA, you must enter the property location on your HMDA/LAR even if the property is outside the MSAs or MDs in which you have a home or branch office, or is not located in any MSA.

\* \* \* \* \*

BILLING CODE 6210-01-P



**BILLING CODE 6210-01-C**

## 3. In Supplement I to part 203:

a. Under section 203.2 Definitions, 2(c) *Branch Office*, paragraphs 2. and 3. are revised.

b. Under section 203.2 Definitions, 2(e) *Financial Institution*, paragraph 2. is revised.

c. Under section 203.2 Definitions, a new paragraph title 2(j) *Metropolitan Statistical Areas and Metropolitan Divisions* is added, and a new paragraph 1. is added.

d. Under section 203.4 *Compilation of Loan Data*, 4(a)(9) *Property Location*, paragraph 3. is revised.

e. Under section 203.5 *Disclosure and Reporting*, 5(a) *Reporting to Agency*, paragraphs 4. and 8. are revised.

**Supplement I to Part 203—Staff Commentary***Section 203.2 Definitions*

\* \* \* \* \*

2(c) *Branch office.*

\* \* \* \* \*

2. *Depository institution.* A branch of a depository institution does not include a loan-production office, the office of an affiliate, or the office of a third party such as a loan broker. (But see Appendix A, paragraph I.C.6, which requires certain depository institutions to report property location even for properties located outside those MSAs or Metropolitan Divisions in which the institution has a home or branch office.)

3. *Nondepository institution.* For a nondepository institution, “branch office” does not include the office of an affiliate or other third party such as a loan broker. (But note that certain nondepository institutions must report property location even in MSAs or Metropolitan Divisions where they do not have a physical location.)

\* \* \* \* \*

*2(e) Financial Institution*

\* \* \* \* \*

2. *Adjustment of exemption threshold for depository institutions.* For data collection in 2004, the asset-size exemption threshold is \$33 million. Depository institutions with assets at or below \$33 million are exempt from collecting data for 2004.

\* \* \* \* \*

*2(j) Metropolitan Statistical Areas and Metropolitan Divisions*

1. *Use of terms “Metropolitan Statistical Area” and “Metropolitan Division.”* The U.S. Office of Management and Budget defines Metropolitan Statistical Areas and Metropolitan Divisions to provide nationally consistent definitions for collecting, tabulating, and publishing Federal statistics for a set of geographic areas. OMB divides every Metropolitan Statistical Area (MSA) with a population of 2.5 million or more into Metropolitan Divisions (MDs); MSAs with populations under 2.5 million population are not so divided. 67 FR 82228 (December 27, 2000). For all purposes under Regulation C, if an MSA is divided by OMB into MDs, the appropriate geographic unit to be used is the MD; if an MSA is not so divided by OMB into

MDs, the appropriate geographic unit to be used is the MSA.

\* \* \* \* \*

*Section 203.4 Compilation of Loan Data*

\* \* \* \* \*

4(a)(9) *Property location.*

\* \* \* \* \*

3. *Property location—loans purchased from another institution.* The requirement to report the property location by census tract in an MSA or Metropolitan Division where the institution has a home or branch office applies not only to loan applications and originations but also to loans purchased from another institution. This includes loans purchased from an institution that did not have a home or branch office in that MSA or Metropolitan Division and did not collect the property-location information.

\* \* \* \* \*

*Section 203.5 Disclosure and Reporting*5(a) *Reporting to Agency*

\* \* \* \* \*

4. *Options for collection.* An institution may collect data on separate registers at different branches, or on separate registers for different loan types (such as for home purchase or home improvement loans, or for loans on multifamily dwellings). Entries need not be grouped on the register by MSA or Metropolitan Division, or chronologically, or by census tract numbers, or in any other particular order.

\* \* \* \* \*

8. *Transmittal sheet—revisions or deletions.* If a data submission involves revisions or deletions of previously submitted data, it must state the total of all line entries contained in that submission, including both those representing revisions or deletions of previously submitted entries, and those that are being resubmitted unchanged or are being submitted for the first time. Depository institutions must provide a list of the MSAs or Metropolitan Divisions in which they have home or branch offices.

\* \* \* \* \*

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs under delegated authority, December 18, 2003.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 03-31694 Filed 12-24-03; 8:45 am]

**BILLING CODE 6210-01-P**

**SMALL BUSINESS ADMINISTRATION****13 CFR Part 121**

**RIN 3245-AE80**

**Small Business Size Standards; Information Technology Value Added Reseller**

**AGENCY:** U.S. Small Business Administration (SBA).

**ACTION:** Final rule.

**SUMMARY:** The U.S. Small Business Administration (SBA) is establishing a new industry category and size standard of 150 employees for Information Technology Value Added Resellers under the industry of Other Computer Related Services, North American Industry Classification System industry code 541519. This industry category and size standard is being established to better apply small business eligibility requirements under Federal contracts that combine substantial services with the acquisition of computer hardware and software.

**DATES:** This rule is effective on January 28, 2004.

**FOR FURTHER INFORMATION CONTACT:** Gary Jackson, Assistant Administrator for Size Standards, at (202) 205-6464 or [sizestandards@sba.gov](mailto:sizestandards@sba.gov).

**SUPPLEMENTARY INFORMATION:** On July 24, 2002, the SBA proposed to establish a size standard for businesses described as Information Technology Value Added Resellers (ITVAR) (67 FR 48419). Under the North American Industry Classification System (NAICS), value added resellers are classified in the Wholesale Trade Sector along with merchant wholesalers, distributors, drop shippers, brokers, and agents. For purposes of Federal contracting, a wholesale trade firm that provides supplies to the Federal Government that it did not manufacture is small if it, including its affiliates, has not more than 500 employees. The SBA proposed to retain the 500 employee size standard applicable to value added resellers and other wholesale trade nonmanufacturers for the proposed industry category of ITVARs.

In response to a large number of comments objecting to the 500 employee size standard for ITVAR, the SBA reassessed its decision to retain the nonmanufacturer size standard for this new industry category. As described below, the SBA has decided to establish a size standard of 150 employees for ITVARs. This decision is based on a review of the comments received to the proposed rule and an analysis of the characteristics of firms in the computer services and wholesale trade industries that are engaged in providing services along with information technology (IT) equipment. Below is a discussion of the comments received on the proposed rule and the size standard analysis.

**Discussion of Comments**

The SBA received 291 timely comments on the proposed rule. Two hundred and seventy six comments